

Protection, 1300 Pennsylvania Avenue, NW, Suite 1500N, Washington, DC 20229, 202-344-1060.

Dated: June 18, 2009

IRA S. REESE,  
*Executive Director,*  
*Laboratories and Scientific Services.*

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DEPARTMENT OF HOMELAND SECURITY,  
OFFICE OF THE COMMISSIONER OF CUSTOMS.  
*Washington, DC, June 24, 2007*

The following documents of U.S. Customs and Border Protection (“CBP”), Office of Regulations and Rulings, have been determined to be of sufficient interest to the public and CBP field offices to merit publication in the CUSTOMS BULLETIN.

SANDRA L. BELL,  
*Executive Director,*  
*Regulations and Rulings,*  
*Office of International Trade.*

**PROPOSED MODIFICATION AND REVOCATION OF  
RULING LETTERS RELATING TO THE CUSTOMS  
POSITION ON THE 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”) position regarding the 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 intends to modify its position regarding which merchandise may be transported between coastwise points

without violating 46 U.S.C. § 55102, (i.e. the Jones Act), and accordingly, proposing to strictly interpret T.D. 78–387 (Oct. 7, 1976). In addition, CBP intends to modify its position regarding how it determines what constitutes “vessel equipment” as defined in T.D. 49815(4) and the application of T.D. 49815(4) in cases involving the transportation of merchandise under 46 U.S.C. § 55102. CBP is proposing to interpret T.D. 49815(4) to limit the definition of equipment, as it relates to the transportation of merchandise under 46 U.S.C. § 55102, to articles necessary and appropriate for the navigation, operation, or maintenance of the vessel *itself* and the safety and comfort of the persons on board, as opposed to being necessary and appropriate for a vessel to engage in a particular activity. CBP intends to revoke or modify all prior rulings inconsistent with these proposed interpretations. Comments are invited on the correctness of the intended actions.

DATE: Comments must be received on or before August 16, 2009.

ADDRESS: Written comments are to be addressed to U.S. Customs and Border Protection, Office of International Trade, Regulations and Rulings, Attention: Trade and Commercial Regulations Branch, 799 9th Street, N.W., Mint Annex, Washington, D.C. 20229. Submitted comments may be inspected at U.S. Customs and Border Protection, 799 9th Street, N.W., Washington, D.C., during regular business hours. Arrangements to inspect submitted comments should be made in advance by calling Joseph Clark of the Trade and Commercial Regulations Branch at (202) 325–0118.

FOR FURTHER INFORMATION CONTACT: Lisa L. Burley, Cargo Security, Carriers, and Immigration Branch, at (202) 325–0215.

SUPPLEMENTARY INFORMATION:

### BACKGROUND

On December 8, 1993, Title VI (Customs Modernization), of the North American Free Trade Agreement Implementation Act (Pub. L. 103–182, 107 Stat. 2057) (hereinafter “Title VI”), became effective. Title VI amended many sections of the Tariff Act of 1930, as amended, and related laws. Two new concepts which emerge from the law are **informed compliance** and **shared responsibility**. These concepts are premised on the idea that in order to maximize voluntary compliance with customs laws and regulations, the trade community needs to be clearly and completely informed of its legal obligations. Accordingly, the law imposes a greater obligation on CBP to provide the public with improved information concerning the trade community’s responsibilities and rights under the customs and related laws. In addition, both the trade 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 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.

Pursuant to section 625(c)(1), Tariff Act of 1930 (19 U.S.C. 1625(c)(1)), as amended by section 623 of Title VI, this notice advises interested parties that CBP proposes to modify its position regarding which merchandise may be transported between coastwise points without violating 46 U.S.C. § 55102 and its position regarding how it determines what constitutes “vessel equipment” under T.D. 49815(4) (Mar. 13, 1939) and the application of T.D. 49815(4) in cases involving the transportation of merchandise under 46 U.S.C. § 55102. Although in this notice CBP specifically refers to the revocation and modification of the Headquarters Ruling Letters (“HQ”) listed below, this notice covers any rulings raising these issues which 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. Any party 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 should advise CBP during this notice period.

Similarly, pursuant to section 625 (c)(2), Tariff Act of 1930 (19 U.S.C. 1625(c)(2)), as amended by section 623 of Title VI, CBP proposes to modify or revoke any treatment previously accorded by CBP to substantially identical transactions. Any person involved in substantially similar transactions should advise CBP during this notice 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.

### **Transportation of Merchandise**

The coastwise law pertaining to the transportation of merchandise, 46 U.S.C. § 55102, also known as the “Jones Act”, provides in pertinent part, that the transportation of merchandise 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 and documented under the laws of the United States and owned by persons who are citizens of the United States, *i.e.* a coastwise-qualified vessel, is prohibited. “[M]erchandise includes (1) merchandise owned by the United States Government, a State, or subdivision of a State; and (2) valueless material.” 46 U.S.C. § 55102(a), *et seq.*; *see also* 19 U.S.C.

§ 1401(c)(stating that “[t]he word ‘merchandise’ means goods, wares and chattels of every description and includes merchandise the importation of which is prohibited . . .” The CBP Regulations promulgated under the authority of 46 U.S.C. § 55102 provide that a coastwise transportation of merchandise takes place when merchandise laden at a point embraced within the coastwise laws (“coastwise point”) is unladen at another coastwise point, regardless of origin or ultimate destination. See 19 C.F.R. § 4.80b(a)(2009).<sup>1</sup>

In T.D. 78–387 (Oct. 7, 1976), the proposed use of a foreign-built vessel was to primarily support dive operations “in the construction, maintenance, repair, and inspection of offshore petroleum-related facilities” which included, inter alia, specifically: pipelaying; repairing pipe and underwater portions of a drilling platform; installation and transportation of anodes; transportation of pipeline burial tools; transportation of pipeline repair materials; installation and transportation of pipeline connectors and wellheads; installation and transportation of wellhead equipment, valves, and valve guards; and the transportation of machinery and production equipment.

CBP held that “the sole use of a vessel in laying pipe is not a use in the coastwise trade of the United States” reasoning that “the fact the pipe is not landed but only paid out in the course of the pipelaying operation which makes the operation permissible.” See T.D. 78–387, subparagraph (1). CBP noted, however, that the transportation of pipe by any vessel other than a pipelaying vessel between two coastwise points would have to be accomplished by a coastwise-qualified vessel. *Id.*

In addition, CBP held that repairing pipe is also not a use in the coastwise trade and therefore, the transportation of pipe and repair materials was not an activity that would be prohibited by the coastwise laws. See T.D. 78–387, subparagraph (2). With regard to the repair of offshore or subsea structures, CBP also held the use of such vessel was not a use in the coastwise trade; therefore, the transportation by that 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)” was permitted provided that the installation of the repair materials onto the underwater portions of the structure is a) unforeseen b) the repair material or component to be installed is of de minimis value,

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<sup>1</sup>The laws of the United States, including the coastwise laws, are extended, under Section 4(a) of the Outer Continental Shelf Lands Act of 1953 (OCSLA), 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 installation or other device (other than a ship or a 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 within a State.”

and c) such materials are “usually carried aboard the vessel as supplies.” See *id.* at subparagraph (6) (emphasis added). If the installation of the repair materials is foreseen and more than de minimis value (e.g. a structural member), the transportation of such materials must be made by a coastwise-qualified vessel. *Id.* The ruling distinguished between repair materials to be installed on the underwater portions of the structure versus materials to be installed on the platform holding that transportation of the latter would have to be accomplished by a coastwise-qualified vessel. *Id.* CBP emphasized that the foregoing repair work had to be done “on or from” the vessel or in its service capacity under water rather than on or from the structure itself. *Id.* (emphasis added). Otherwise, the delivery of such materials, other than legitimate equipment of the vessel would have to be accomplished by a coastwise-qualified vessel. *Id.*; see also subparagraph (4) (holding that 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 the tools are considered to be part of the legitimate equipment of that vessel).

CBP held that the vessel’s installation of the pipeline connectors to the offshore drilling platform and subsea wellheads was not coastwise trade. See T.D. 78–387, subparagraph (4). In addition, the transportation of the pipeline connectors would not be in violation of the coastwise laws if the pipeline connectors were installed by the crew of the work barge *incidental to the pipelaying operations of that vessel*. *Id.* (emphasis added).

CBP held that the installation of the wellhead assembly to a location within U.S. waters or the servicing of the wellheads would not be a use in the coastwise trade; however, the transportation of the wellhead assembly to the same location would be deemed an engagement in coastwise trade and would, therefore, have to be accomplished by a coastwise-qualified vessel. See T.D. 78–387, subparagraph (10). Further, CBP held that 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 coastwise-qualified vessel. See *id.* at subparagraph (8).

In prior rulings, CBP’s application of T.D. 78–387 allowed the transportation of what is characterized as “pipeline connectors” by a foreign-flagged vessel engaged in connecting the foregoing merchandise to previously laid or installed pipelines, flowlines, or wellheads on the Outer Continental Shelf (OCS). In interpreting T.D. 78–387, CBP held that such transportation was permissible if the work was done on or from the vessel transporting the article to be installed. See HQ 115185 (Nov. 20, 2000); and HQ 115218 (Nov. 30, 2000); and HQ 115311 (May 10, 2001). This limited interpretation does not include the operative language in Subparagraph (4) of T.D. 78–387,

which holds that transportation and installation of pipeline connectors is not coastwise trade *if it is incidental to the pipe-laying operation of that vessel*. CBP recognizes that allowing foreign-flagged vessels to transport merchandise from one U.S. point and install that merchandise at another point on the OCS on the condition that it merely be accomplished “on or from that vessel” would be contrary to the legislative intent of 46 U.S.C. § 55102.

Insofar as the installation and transportation of the pipeline connectors contemplated in HQ 115185 and HQ 115218 were not incidental to the pipe-laying activities of that vessel, the transportation of the pipeline connectors would be in violation of 46 U.S.C. § 55102. The contemplated transportation and installation of a pipeline connector in HQ 115311 was incidental to the pipe-laying activities of the subject foreign-flag vessel; however, the ruling does cite or address the holding in Subparagraph (4) of T.D. 78–387. Accordingly, CBP intends to modify HQ 115185 as it relates to the first and second factual scenarios raised, with proposed HQ H061697 (Attachment A); revoke HQ 115218 with proposed HQ H061698 (Attachment B); and modify HQ 115311 as it relates to the first issue in that case, with proposed HQ H061700 (Attachment C), to apply the holding in Subparagraph (4) of T.D. 78–387.

In addition, CBP intends to modify other rulings that based on the facts provided appear to be consistent with T.D. 78–387, but, do not address or apply the correct holding in T.D. 78–387. The rulings we have identified are:

HQ 115522 (Dec. 3, 2001); and

HQ 115771 (Aug. 19, 2002)

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

### **Vessel Equipment**

The definition of vessel equipment 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 Act of 1930, codified at 19 U.S.C. § 1309, that provides for the duty free withdrawal of supplies and equipment for certain domestic 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). CBP has been applying the aforementioned definition of equipment to rulings involving the transportation of merchandise under 46 U.S.C. § 55102. In addition to citing the italicized language above in its rulings, CBP required that the use of the item in question be “in furtherance of the primary mission of the vessel” see HQ 110402 (Aug. 18, 1989), HQ 114305 (Mar. 31, 1998), and HQ 115333 (Apr. 27, 2001); “in furtherance of the operation of the vessel” see HQ 111892 (Sept. 16, 1991); “essential to the mission of the vessel” see HQ 113841 (Feb. 28, 1997); “necessary for the accomplishment of the mission of the vessel” HQ 114435 (Aug. 6, 1998); “in furtherance of the mission of the vessel” HQ 115381 (June 15, 2001); “necessary to the accomplishment of the mission of the vessel” HQ 115487 (Nov. 20, 2001); “fundamental to the vessel’s operation” HQ 115938 (Apr. 1, 2003); “used by a vessel in the course of its business” HQ 116078 (Feb. 11, 2004); and “necessary to carry out a vessel’s functions” HQ H029417 (June 5, 2008) and H032757 (July 28, 2008).

The foregoing phrases appear to paraphrase or state parts of the holding in T.D. 78–387, Subparagraph (6), as well as the language in T.D. 49815(4). As stated above, subparagraph (6) of T.D. 78–387, provides, in part:

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 [sic] 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.

(emphasis added).

In applying T.D. 49815(4) to 46 U.S.C. § 55102 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 consid-

ered vessel equipment without regard to whether the article was necessary to the navigation, operation, and maintenance or comfort and safety of the individuals aboard the vessel *itself*. As such, it appears that although T.D. 49815(4) was cited, it was a very minute part of T.D. 78-387, paraphrased and used out of context which was applied as the rule of law in these cases.

Several of the cases that cited T.D. 49815(4), involved OCS activity including drilling, well stimulation, cable-laying, pipe-laying, and maintenance and construction. Many of the rulings, listed below, that have used the paraphrased language of T.D. 49815(4) and T.D. 78-387, as described above, to hold that pipe and cable, e.g. items that are paid out and not unladen, are vessel equipment. The paying out of pipe, cable, flowlines, and umbilicals is permissible because there is no landing of merchandise and therefore, no engagement in coastwise trade. See T.D. 78-387, subparagraph (1). In addition, two rulings, HQ 111889 (Feb. 11, 1992) and HQ 115938 (Apr. 1, 2003) imply that certain articles to be installed, e.g. multi-well templates, marine risers, oilfield equipment, and structural components, are vessel equipment which is contrary to T.D. 78-387, subparagraphs (4), (6), (8), and (10), supra.

CBP recognizes that allowing a foreign-flagged vessel to transport articles that are not needed to navigate, operate, or maintain that vessel or for the safety and comfort of the persons on board that vessel, but rather to accomplish a activity for which that vessel would be engaged, would be contrary to the legislative intent of 46 U.S.C. § 55102.

Accordingly, CBP intends to modify HQ 111889 (Feb. 11, 1992) with HQ H061934 (Attachment D); HQ 113841 (Feb. 28, 1997) with HQ H061935 (Attachment E); HQ 115938 (Apr. 1, 2003) with HQ H061992 (Attachment F); HQ H029417 (June 5, 2008) with H061933 (Attachment G); and HQ H032757 (July 28, 2008) with H061944 (Attachment H).

In addition, CBP has identified the following rulings which would be modified with respect to their findings that certain merchandise is vessel equipment or that otherwise applies the paraphrased version of T.D. 49815(4), as described above, if this proposal is adopted:

HQ 110402 (Aug. 18, 1989);  
HQ 111892 (Sept. 16, 1991);  
HQ 112218 (July 22, 1992);  
HQ 113838 (Feb. 25, 1997);  
HQ 114305 (Mar. 31, 1998);  
HQ 114435 (Aug. 6, 1998);  
HQ 115333 (Apr. 27, 2001);  
HQ 115381 (June 15, 2001);



HQ 115487 (Nov. 20, 2001); and  
HQ 116078 (Feb. 11, 2004).

CBP recognizes that the list of rulings and decisions in this notice may not be complete and that there may exist other rulings which have not been identified which are inconsistent with this notice. Accordingly, this notice is intended to cover any ruling which pertains to whether certain merchandise transported on vessels is considered vessel equipment or merchandise pursuant to T.D. 49815(4) and T.D. 78-387. CBP also intends to revoke and/or modify all other previously issued ruling letters with findings that are inconsistent with this notice. In addition, pursuant to 19 U.S.C. § 1625(c)(2), CBP intends to revoke or modify any treatment previously accorded by CBP to substantially identical transactions by this notice. Before modifying or revoking the above-cited rulings or other similar rulings pertaining to what is considered vessel equipment or merchandise under T.D. 49815(4) and T.D. 78-387, consideration will be given to any written comments timely received.

DATED: June 22, 2009

CHARLES RESSIN,  
*Acting Director,*  
*Border Security and Trade Facilitation Division.*

[ATTACHMENT A]

DEPARTMENT OF HOMELAND SECURITY,  
U.S. CUSTOMS AND BORDER PROTECTION,  
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 SCRSP 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 SCRSP 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 well-

head 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.

LARRY L. BURTON,  
*Chief,*  
*Entry Procedures and Carriers Branch.*

[ATTACHMENT B]

DEPARTMENT OF HOMELAND SECURITY,  
U.S. CUSTOMS AND BORDER PROTECTION,  
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 question, 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 predicated 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.

LARRY L. BURTON,  
*Chief,*  
*Entry Procedures and Carriers Branch.*

## [ATTACHMENT C]

DEPARTMENT OF HOMELAND SECURITY,  
U.S. CUSTOMS AND BORDER PROTECTION,  
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.

## ISSUES:

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.

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 unladen). 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 unlade 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)

## HOLDINGS:

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.

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.

LARRY L. BURTON,

*Chief,*

*Entry Procedures and Carriers Branch.*

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[ATTACHMENT D]

DEPARTMENT OF HOMELAND SECURITY.

U.S. CUSTOMS AND BORDER PROTECTION,

HQ 111889

February 11, 1992

VES-3-CO:R:IT:C 111889 LLB

CATEGORY: Carriers

MR. PATRICK H. PATRICK

JONES, WALKER, WAECHTER, POITEVENT, CARRERE AND DENEGRE

201 St. Charles Avenue

New Orleans, Louisiana 70170-5100

RE: Coastwise trade; Merchandise; Passengers; Crew members; Equipment of vessels; Outer Continental Shelf; Oil production platform

DEAR MR. PATRICK:

Reference is made to your letter of August 27, 1991, in which you request a ruling on issues associated with the use of a foreign-built, foreign-flag modified semi-submersible drilling vessel to be used as a stationary floating oil production station at a site on the outer Continental Shelf.

## FACTS:

It is proposed that a foreign-built and foreign-registered semi-submersible drilling vessel be modified in a United States shipyard and towed by properly qualified vessel to a point on the high seas which overlies well heads already drilled on the outer Continental Shelf. The modified production vessel would have aboard at the time of its tow from a shoreside point to the well head site, equipment essential to its intended operation. It is our understanding that no vessel or other structure will be at the high seas site at which the production vessel will arrive and be anchored and subsequently attached to the seabed well heads.

It is anticipated that the production vessels would remain stationary, except for incidental movement resulting from the action of winds, tides, and wave action, and would remain at the same site for a period of eight to ten years.

The vessel would operate as a production platform by means of a device known as a multi-well template which will be placed on the sea floor over

several well heads. A flexible pipe known as a marine riser will be attached to the template for the purpose of funneling oil or natural gas from the wells to the vessel. Oil and natural gas would leave the production vessel via pipelines which would be installed. These lines would either lead ashore, or to an off shore gathering platform. It is stated that the only materials aboard would be necessary equipment, the only persons aboard would be production crew members, and any other vessels involved in moving between the production vessel and points within the jurisdiction of the United States would be coastwise qualified.

**ISSUE:**

Whether the movement and use of a foreign built and documented drilling vessel/production platform, as described in the Facts portion of this ruling, is permissible under the coastwise laws as administered by the Customs Service.

**LAW AND ANALYSIS:**

The coastwise law pertaining to the transportation of merchandise, section 27 of the Act of June 5, 1920, as amended (41 Stat. 999; 46 U.S.C. App. 883, often called the Jones Act), provides that:

No merchandise shall be transported by water, or by land and water, on penalty of forfeiture of the merchandise (or a monetary amount up to the value thereof as determined by the Secretary of the Treasury, 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 the laws of the United States and owned by persons who are citizens of the United States . . .

The Act of June 19, 1886, as amended (24 Stat. 81; 46 U.S.C. App. 289, sometimes called the coastwise passenger law), 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.

For your general information, we have consistently interpreted this prohibition to apply to all vessels except United States-built, owned, and properly documented vessels (see 46 U.S.C. 12106, 12110, 46 U.S.C. App. 883, and 19 C.F.R. 4.80).

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 the internal waters, landward of the territorial sea baseline, in cases where the baseline and the coastline differ. These laws have also been interpreted to apply to transportation between points within a single harbor. Merchandise, as used in section 883, includes any article, including even materials of no value (see the amendment to section 883 by the Act of June 7, 1988, Pub. L. 100-329; 102 Stat. 588).

Under Section 4(a) of the Outer Continental Shelf Lands Act of 1953, as amended (43 U.S.C. 1333(a) (OCSLA)), 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. The provisions for dutiability of merchandise, as well as the coastwise and other navigation laws, apply to production platforms. C.S.D. 83–52.

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.

For the purposes of the coastwise laws, the term “passenger” is defined in section 4.50 (b), Customs Regulations (19 CFR 4.50 (b)), as “. . . any person carried on a vessel who is not connected with the operation of such vessel, her navigation, ownership, or business.” In view of the fact that the vessel in question will have aboard only necessary equipment and crew members during its movement and, further, that it will be towed by a qualified vessel from a coastwise point to a point on the high seas overlying a point on the outer Continental Shelf at which there will be no surface installation, we have determined that no coastwise laws will be violated in the course of the proposed vessel movement. It should be noted, however, that the production vessel will itself become a coastwise point once attached to the seabed, and any further movements of equipment and personnel from a coastwise point to the production site must be accomplished by use of a coastwise qualified vessel.

**HOLDING:**

Following a thorough review of the facts and analysis of the relevant law and precedents, we have determined, in accord with the information set forth in the Law and Analysis section of this ruling letter, the proposed operation does not violate any of the coastwise laws administered by the Customs Service.

B. JAMES FRITZ,  
*Chief,*  
*Carrier Rulings Branch.*

## [ATTACHMENT E]

DEPARTMENT OF HOMELAND SECURITY,  
U.S. CUSTOMS AND BORDER PROTECTION,  
HQ 113841  
February 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 (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 ROV 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")I , 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 unloading 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. 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 unloading, 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 unloading 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.

JERRY LADERBERG,  
*Acting Chief,*  
*Entry and Carrier Rulings Branch.*



## [ATTACHMENT F]

DEPARTMENT OF HOMELAND SECURITY,  
U.S. CUSTOMS AND BORDER PROTECTION,  
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 well-head 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. em-

braced 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 well-head 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.

GLEN E. VEREB,  
*Chief,*  
*Entry Procedures and Carriers Branch.*

[ATTACHMENT G]

DEPARTMENT OF HOMELAND SECURITY.  
U.S. CUSTOMS AND BORDER PROTECTION,  
**HQ H029417**  
**June 5, 2008**  
**VES-3-01-OT:RR:BSTC:CCI H029417 JLB**  
**CATEGORY: Carriers**

MS. JEANNE M. GRASSO  
BLANK ROME LLP  
*Watergate*  
*600 New Hampshire Avenue, NW*  
*Washington, DC 20037*

RE: Coastwise Transportation; 46 U.S.C. §§ 55102, 55103; Vessel Equipment; Coastwise Towing; 46 U.S.C. § 55111

DEAR MR. GRASSO:

This letter is in response to your correspondence dated May 27, 2008, on behalf of your client, Hannah Marine Corporation (the "Company"), in which you inquire about whether your client's use of a non-coastwise-qualified barge as an exhibit hall constitutes a violation of 46 U.S.C. §§ 55102 and 55103. Our ruling on your request follows.

#### **FACTS**

The Company is chartering a coastwise-qualified tug and a non-coastwise-qualified deck barge to a charterer that will use the barge as a floating exhibit hall. In order to facilitate its use as an exhibit hall, the barge will first be modified in the U.S. by adding customized shipping containers that will either be bolted or welded to the deck. Then the floating exhibit hall will be towed by a coastwise-qualified tug to various U.S. and Canadian ports. The barge will be carrying products and equipment used for demonstration/exhibition purposes and will not carry any passengers during its voyages. Any staff of the exhibit hall will travel over land or by air to each port, or aboard the coastwise-qualified tug.

Upon completion of the charter, the exhibit hall structure will be removed from the barge in the U.S. but the removal may occur at a location different from the location where the barge was modified. As for the products and equipment that will be used for demonstration/exhibition purposes, these items will either be unladen at the same coastwise point at which they were laden or, if they will be unladen at a different coastwise point than which they were laden, they will be transported aboard the coastwise-qualified tug during all voyages.

**ISSUE**

- (1) Whether the use of the non-coastwise-qualified barge and coastwise-qualified tug as described above constitute an engagement in coastwise trade pursuant to 46 U.S.C. §§ 55102 and 55103?
- (2) Whether the exhibit hall structure described above is merchandise within the meaning of 46 U.S.C. § 55102 and 19 U.S.C. § 1401(c)?

**LAW AND ANALYSIS**

The Jones Act, former 46 U.S.C. App. § 883 recodified as 46 U.S.C. § 55102, pursuant to P.L. 109-304 (October 6, 2006), states that “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 a foreign port” unless the vessel was built in and documented under the laws of the United States and owned by persons who are citizens of the United States. (See also 19 C.F.R. §§ 4.80, 4.80b). Such a vessel, after it has obtained a coastwise endorsement from the U.S. Coast Guard, is said to be “coastwise qualified.” 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.

Pursuant to 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, and monetary instruments as defined in section 5312 of Title 31.” For purposes of the Jones Act, merchandise also includes “valueless material.” See 46 U.S.C. § 55102(a)(2). U.S. Customs and Border Protection (“CBP”) Regulations promulgated under the authority of 46 U.S.C. § 55102 provide that a coastwise transportation of merchandise takes place when merchandise laden at a coastwise point is unladen at another coastwise point, regardless of origin or ultimate destination. See 19 C.F.R. § 4.80b(a).

In this case, the barge will carry products and equipment to be displayed in the exhibit hall. You present two different scenarios for unloading this merchandise upon conclusion of the exhibit. In the first scenario, the merchandise will be unladen at the same coastwise point at which it was laden. In that instance, the coastwise transportation of the subject merchandise on the non-coastwise-qualified barge does not constitute a violation of 46 U.S.C. § 55102.

In the second scenario, the remaining merchandise will be unladen at a different coastwise point than the point of lading. Accordingly, the vessel transporting such merchandise must be coastwise-qualified. This requirement is satisfied by your assertion that “any exhibit hall materials and personnel that will travel with the vessels during coastwise transits that may be unladen at different coastwise points than at which laden will transit aboard the coastwise-qualified tug.” Since the merchandise, which will ultimately be unladen at another coastwise point, will be transported between coastwise points aboard the coastwise-qualified tug, in lieu of the non-coastwise-qualified barge, no violation of 46 U.S.C. § 55102 exists.

The coastwise passenger statute, former 46 U.S.C. App. § 289 recodified as 46 U.S.C. § 55103, pursuant to P.L. 109-304 (October 6, 2006), states that no foreign vessel shall transport passengers “between ports or places in the United States to which the coastwise laws apply, either directly or by way of a foreign port,” under a penalty of \$300 for each passenger so transported and landed. See also 19 C.F.R. § 4.80(b)(2). You state that all the

staff of the floating exhibit hall will travel to the different ports by land, air or aboard the coastwise-qualified tug. Accordingly, given that no individuals will be transported aboard the non-coastwise-qualified vessel, no violation of 46 U.S.C. § 55103 exists. Furthermore, as discussed above, transporting the subject individuals aboard a coastwise-qualified vessel, such as the coastwise-qualified tug in question, does not constitute a violation of 46 U.S.C. § 55103.

Pursuant to the coastwise towing statute, former 46 U.S.C. App. § 316(a) recodified as 46 U.S.C. § 55111, pursuant to P.L. 109–304 (October 6, 2006), except when towing a vessel in distress, only a coastwise-qualified vessel may do any part of any towing between coastwise points. Given that a coastwise-qualified tug is utilized, there would be no violation of the coastwise towing statute, 46 U.S.C. § 55111.

#### Exhibit Hall Structure

For its use as a floating exhibit hall, the barge will be modified to include customized shipping containers either bolted or welded to the deck of the barge. You state that the exhibit hall structure will ultimately be removed in the U.S. upon completion of the charter but the removal may occur at a different coastwise point than the point of modification. In accordance with the Jones Act, 46 U.S.C. § 55102, if the exhibit hall structure constitutes “merchandise” pursuant to 19 U.S.C. § 1401(c), its coastwise transportation aboard the non-coastwise-qualified barge is a violation of 46 U.S.C. § 55102. Thus, you assert that the materials and equipment installed to modify the barge are vessel equipment and accordingly, they may be transported aboard the vessel without violating 46 U.S.C. § 55102.

As stated above, merchandise for purposes of these statutory requirements “means goods, wares, and chattels of every description, and includes merchandise the importation of which is prohibited, and monetary instruments as defined in section 5312 of Title 31.” 19 U.S.C. § 1401(c). However, merchandise does not include the equipment of a vessel so long as it is used by that vessel. Such articles have been defined as 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.” See Headquarters Ruling Letter 114298, dated July 7, 1998 quoting Treasury Decision (“T.D.”) 49815(4), March 13, 1939. Whether such articles constitute vessel equipment is a case-by-case determination. See Headquarters Ruling Letter 115938, dated April, 1, 2003; Headquarters Ruling Letter 114487, dated October 19, 1998. CBP 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.” See Headquarters Ruling Letter 113137, dated June 27, 1994; Headquarters Ruling Letter 115938, dated April, 1, 2003.

In Headquarters Ruling Letter 115356, dated May 22, 2001, a non-coastwise-qualified power barge was retrofitted with electric generating equipment in Mississippi. When the equipment, which was welded to the deck, was unladen in Oregon, CBP held that since the generating equipment was integral to the operation of the vessel as a power barge and since the equipment was transported aboard the vessel on which it was used, it was vessel equipment that could be unladen and uninstalled from the barge without violating the Jones Act, 46 U.S.C. § 55102.

CBP has consistently held that vessel equipment consists of articles necessary to carry out a vessel’s functions. See Headquarters Ruling Letter

112218, dated July 22, 1992 (equipment transported aboard non-coastwise-qualified oil and gas well drilling, workover and service barges used to remove broken tools from a well shaft, perform well cleaning and other tasks is vessel equipment since it is necessary to the work of the vessel); Headquarters Ruling Letter 103995, dated July 16, 1979 (the carriage of cement on a non-coastwise-qualified barge engaged in oil well stimulation is vessel equipment given that the purpose of the vessel is the blending, mixing, and placing of cement in the wells). In the present case, the subject barge's function, for the period of the charter, is to operate as an exhibit hall. In order to accomplish this purpose, it is necessary to modify the structure of the barge's deck. The exhibit hall structure, essentially the bolted or welded customized shipping containers, is integral to the operation of the vessel as an exhibit hall. Consequently, the structure, which is transported aboard the vessel on which it is used, constitutes vessel equipment as defined in T.D. 49815(4), not merchandise as defined in 19 U.S.C. § 1401(c). As a result, no violation of 46 U.S.C. § 55102 exists if the structure is unladen at a different coastwise point than the point of lading.

**HOLDING**

- (1) The proposed use of the non-coastwise-qualified barge and coastwise-qualified tug does not constitute an engagement in coastwise trade for purposes of 46 U.S.C. §§ 55102 and 55103.
- (2) The subject exhibit hall structure constitutes vessel equipment, not merchandise. Accordingly, the coastwise transportation of the subject structure does not constitute a violation of 46 U.S.C. § 55102.

GLEN E. VEREB,  
*Chief,*  
*Cargo Security,*  
*Carriers and Immigration Branch.*

[ATTACHMENT H]

DEPARTMENT OF HOMELAND SECURITY,  
U.S. CUSTOMS AND BORDER PROTECTION,  
HQ H032757  
July 28, 2008  
VES-3-01-OT:RR:BSTC:CCI H032757 CK  
CATEGORY: Carriers

MR. MARTIN E. MCDANIEL, JR.  
LOCKE LORD BISSELL & LIDDELL LLP  
3400 JP Morgan Chase Tower, 600 Travis  
Houston, TX 77002

RE: Coastwise Transportation; 46 U.S.C. §§ 55102, 55103; Vessel Equipment; Coastwise Towing; 46 U.S.C. § 55111

DEAR MR. MCDANIEL:

This letter is in response to your correspondence dated July 2, and July 15, 2008, on behalf of your client, Oliver Schrott Kommunikation ("OSK") (the "Company"), in which you inquire about whether your client's use of a non-coastwise-qualified barge as an exhibit hall constitutes a violation of 46 U.S.C. §§ 55102 and 55103. Our ruling on your request follows.



## FACTS

The Company was hired to design and construct a mobile exhibition center upon a chartered non-coastwise-qualified deck barge, formerly a tank barge, which will be used as a floating exhibit hall. In order to facilitate its use as an exhibit hall, the barge will first be modified in the U.S. by adding approximately 50 customized shipping containers that will be secured in several levels to each other and to the barge so as to provide some 10,000 square feet of exhibition space. A specially designed “platform” is being affixed to the barge’s upper deck where it will remain until the charter is terminated. The customized shipping containers which comprise the exhibit hall will be secured to the platform (and in turn to the barge) by “twist locks.” The arrangement will stay in place throughout the charter until termination whereupon the platform and exhibit hall will be removed.

The purpose of the exhibit hall barge will serve as center in which Siemens will conduct trade shows and multi-media presentations of its various products for its present and/or potential customers at different U.S. and Canadian ports. The exhibit hall will contain Siemens products and equipment used solely for demonstration purposes. The barge will not carry any passengers during its voyages between ports. Any staff for the exhibit hall will not travel on the barge between ports. The floating exhibit hall will be towed by a coastwise-qualified tug to various U.S. and Canadian ports.

Upon completion of the charter, the exhibit hall structure will be removed from the barge in the U.S. but the removal may occur at a location different from the location where the barge was modified.

## ISSUE

Whether the use of the non-coastwise-qualified barge and coastwise-qualified tug as described above constitute an engagement in coastwise trade pursuant to 46 U.S.C. §§ 55102 and 55103?

Whether the exhibit hall structure described above is merchandise within the meaning of 46 U.S.C. § 55102 and 19 U.S.C. § 1401(c)?

## LAW AND ANALYSIS

The Jones Act, former 46 U.S.C. App. § 883 recodified as 46 U.S.C. § 55102, pursuant to P.L. 109–304 (October 6, 2006), states that “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 a foreign port” unless the vessel was built in and documented under the laws of the United States and owned by persons who are citizens of the United States. (See also 19 C.F.R. §§ 4.80, 4.80b). Such a vessel, after it has obtained a coastwise endorsement from the U.S. Coast Guard, is said to be “coastwise qualified.” 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.

Pursuant to 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, and monetary instruments as defined in section 5312 of Title 31.” For purposes of the Jones Act, merchandise also includes “valueless material.” See 46 U.S.C. § 55102(a)(2). U.S. Customs and Border Protection (“CBP”) Regulations promulgated under the authority of 46 U.S.C. § 55102 provide that a coastwise transportation of mer-

chandise takes place when merchandise laden at a coastwise point is unladen at another coastwise point, regardless of origin or ultimate destination. See 19 C.F.R. § 4.80b(a).

In this case, the barge will carry products and equipment to be displayed in the exhibit hall. You did not state whether the exhibit hall materials will be laden at one coastwise port and unladen at a different coastwise point. Should that be the case, the vessel transporting such merchandise must be coastwise-qualified. Consequently, whether the merchandise will be transported between coastwise points aboard the coastwise-qualified tug or the non-coastwise-qualified barge, is determinative of whether a violation of 46 U.S.C. § 55102 exists.

The coastwise passenger statute, former 46 U.S.C. App. § 289 recodified as 46 U.S.C. § 55103, pursuant to P.L. 109-304 (October 6, 2006), states that no foreign vessel shall transport passengers “between ports or places in the United States to which the coastwise laws apply, either directly or by way of a foreign port,” under a penalty of \$300 for each passenger so transported and landed. See also 19 C.F.R. § 4.80(b)(2). You state that all the staff of the floating exhibit hall will not travel to the different ports aboard the barge. Accordingly, given that no individuals will be transported aboard the non-coastwise-qualified vessel, no violation of 46 U.S.C. § 55103 exists.

Pursuant to the coastwise towing statute, former 46 U.S.C. App. § 316(a) recodified as 46 U.S.C. § 55111, pursuant to P.L. 109-304 (October 6, 2006), except when towing a vessel in distress, only a coastwise-qualified vessel may do any part of any towing between coastwise points. Given that a coastwise-qualified tug is utilized, there would be no violation of the coastwise towing statute, 46 U.S.C. § 55111.

#### Exhibit Hall Structure

For its use as a floating exhibit hall, the barge will be modified to include customized shipping containers attached by “twist locks” to the platform built upon the deck of the barge. You state that the exhibit hall structure will ultimately be removed in the U.S. upon completion of the charter but the removal may occur at a different coastwise point than the point of modification. In accordance with the Jones Act, 46 U.S.C. § 55102, if the exhibit hall structure constitutes “merchandise” pursuant to 19 U.S.C. § 1401(c), its coastwise transportation aboard the non-coastwise-qualified barge is a violation of 46 U.S.C. § 55102. Thus, you assert that the materials and equipment installed to modify the barge are vessel equipment and accordingly, they may be transported aboard the vessel without violating 46 U.S.C. § 55102.

As stated above, merchandise for purposes of these statutory requirements “means goods, wares, and chattels of every description, and includes merchandise the importation of which is prohibited, and monetary instruments as defined in section 5312 of Title 31.” 19 U.S.C. § 1401(c). However, merchandise does not include the equipment of a vessel so long as it is used by that vessel. Such articles have been defined as 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.” See Headquarters Ruling Letter 114298, dated July 7, 1998 quoting Treasury Decision (“T.D.”) 49815(4), March 13, 1939. Whether such articles constitute vessel equipment is a case-by-case determination. See Headquarters Ruling Letter 115938, dated April, 1, 2003; Headquarters Ruling Letter 114487, dated October 19, 1998. CBP 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.” See Headquarters Ruling Letter 113137, dated June 27, 1994; Headquarters Ruling Letter 115938, dated April, 1, 2003.

In Headquarters Ruling Letter 115356, dated May 22, 2001, a non-coastwise-qualified power barge was retrofitted with electric generating equipment in Mississippi. When the equipment, which was welded to the deck, was unladen in Oregon, CBP held that since the generating equipment was integral to the operation of the vessel as a power barge and since the equipment was transported aboard the vessel on which it was used, it was vessel equipment that could be unladen and uninstalled from the barge without violating the Jones Act, 46 U.S.C. § 55102.

CBP has consistently held that vessel equipment consists of articles necessary to carry out a vessel’s functions. See Headquarters Ruling Letter 112218, dated July 22, 1992 (equipment transported aboard non-coastwise-qualified oil and gas well drilling, workover and service barges used to remove broken tools from a well shaft, perform well cleaning and other tasks is vessel equipment since it is necessary to the work of the vessel); Headquarters Ruling Letter 103995, dated July 16, 1979 (the carriage of cement on a non-coastwise-qualified barge engaged in oil well stimulation is vessel equipment given that the purpose of the vessel is the blending, mixing, and placing of cement in the wells). In the present case, the subject barge’s function, for the period of the charter, is to operate as an exhibit hall. In order to accomplish this purpose, it is necessary to modify the structure of the barge’s deck. The exhibit hall structure, essentially the bolted or welded customized shipping containers, is integral to the operation of the vessel as an exhibit hall. Consequently, the structure, which is transported aboard the vessel on which it is used, constitutes vessel equipment as defined in T.D. 49815(4), not merchandise as defined in 19 U.S.C. § 1401(c). As a result, no violation of 46 U.S.C. § 55102 exists if the structure is unladen at a different coastwise point than the point of lading.

**HOLDINGS:**

The proposed use of the non-coastwise-qualified barge and coastwise-qualified tug does not constitute an engagement in coastwise trade for purposes of 46 U.S.C. §§ 55102 and 55103, provided the products and equipment to be displayed in the exhibit hall are not laden upon the barge at one U.S. point and unladen at a different coastwise point. Should the latter scenario be the case, it would constitute a violation of 46 U.S.C. § 55102.

The subject exhibit hall structure constitutes vessel equipment, not merchandise. Accordingly, the coastwise transportation of the subject structure does not constitute a violation of 46 U.S.C. § 55102.

GLEN E. VEREB,  
*Chief,*  
*Cargo Security,*  
*Carriers and Immigration Branch.*

## [ATTACHMENT I]

DEPARTMENT OF HOMELAND SECURITY.  
U.S. CUSTOMS AND BORDER PROTECTION,  
HQ H061697  
VES-3-15 OT:RR:BSTC:CCI  
H061697 LLB  
Category: Carriers

KARLA R. HOLOMON, ESQ.  
EXXONMOBIL DEVELOPMENT COMPANY  
12450 Greenspoint Drive  
Houston, Texas 77210-4876

RE: Coastwise transportation; 46 U.S.C. § 55102; 19 C.F.R. § 4.80b(a);  
modification of HQ 115185 (Nov. 20, 2000).

DEAR MS. HOLOMAN:

On November 20, 2000, U.S. Customs and Border Protection (“CBP”) issued Headquarters Ruling (“HQ”) 115185 to you. In HQ 115185, CBP held, in part, that the transportation of jumper pipes, hull mounted risers (HMR) and steel catenary riser spool pieces (SCRSP) by a foreign-flagged vessel between U.S. ports and coastwise points on the OCS was not in violation of 46 U.S.C. § 55102.<sup>2</sup> We have recently recognized that the foregoing holding in HQ 115185 is contrary to a CBP decision, specifically, T.D. 78-387 (Oct. 7, 1976), which interprets 46 U.S.C. § 55102. Consequently, this ruling, HQ H061698, modifies HQ 115185 with regard to the first two factual scenarios provided and provides a decision consistent with T.D. 78-387.

**FACTS**

The following facts are from HQ 115185. 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 HMR and 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 SCRSP will be bolted together and installed in existing clamps that are attached to the side of the DDCV. Pro-

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<sup>2</sup>Formerly 46 U.S.C. App. § 883. Recodified by Pub. L. 109-304, enacted on October 6, 2006.

duced fluids will be carried through the subsea pipeline and the HMR and SCRSP 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.

Under the foregoing scenarios, CBP held in HQ 115185, that the foregoing coastwise transportation of the jumper pipes, HMR, and SCRSP would not be in violation of 46 U.S.C. § 55102. As explained in the "Law and Analysis" section of this ruling, this holding is inapposite to T.D. 78-387.

#### ISSUE

Whether the transportation of the jumper pipes, HMR, and SCRSP, between coastwise points would be in violation of 46 U.S.C. § 55102.

#### LAW AND ANALYSIS

The coastwise laws prohibit the transportation of 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. Such a vessel, after it has obtained a coastwise endorsement from the U.S. Coast Guard, is said to be "coastwise qualified." 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. See 33 C.F.R. § 2.22(a)(2)(2009).

The coastwise law pertaining to the transportation of merchandise, 46 U.S.C. § 55102, also known as the "Jones Act", provides in pertinent part, that the transportation of merchandise 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 and documented under the laws of the United States and owned by persons who are citizens of the United States, i.e. a coastwise-qualified vessel, is prohibited. "[M]erchandise includes (1) merchandise owned by the United States Government, a State, or subdivision of a State; and (2) valueless material." *Id.* at 46 U.S.C. § 55102(a), *et seq.*; see also 19 U.S.C. § 1401(c) (stating that "[t]he word 'merchandise' means goods, wares and chattels of every description and includes merchandise the importation of which is prohibited . . ."). The CBP Regulations promulgated under the authority of 46 U.S.C. § 55102 provide that a coastwise transportation of merchandise takes place when merchandise laden at a point embraced within the coastwise laws ("coastwise point") is unladen at another coastwise point, regardless of origin or ultimate destination. See 19 C.F.R. § 4.80b(a)(2009).

Section 4(a) of the Outer Continental Shelf Lands Act of 1953 (OCSLA),<sup>3</sup> provides, in part, that the laws of the United States are extended to:

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<sup>3</sup> 67 Stat. 462; 43 U.S.C. § 1333(a).

. . . 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 installation or other device (other than a ship or a 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 within a State.

The subject of this modification is whether the transportation of the subject merchandise would be in violation of 46 U.S.C. § 55102. In T.D. 78-387 (Oct. 7, 1976), CBP enumerated several circumstances in which the transportation of merchandise between coastwise points would not violate the coastwise laws. The proposed use of a foreign vessel was to primarily support dive operations “in the construction, maintenance, repair, and inspection of offshore petroleum-related facilities” which included, *inter alia*: pipe-laying; repairing pipe and underwater portions of a drilling platform; installation and transportation of anodes; transportation of pipeline burial tools; transportation of pipeline repair materials; and installation and transportation of pipeline connectors and wellheads.

CBP held that “the sole use of a vessel in laying pipe is not a use in the coastwise trade of the United States” reasoning that “the fact the pipe is not landed but only paid out in the course of the pipelaying [sic] operation which makes the operation permissible.” See subparagraph (1). CBP noted, however, that the transportation of pipe by any vessel other than a pipe-laying vessel between two coastwise points would have to be accomplished by a coastwise-qualified vessel. *Id.*

T.D. 78-387 distinguished between repair materials to be installed on the underwater portions of the structure versus materials to be installed on the platform holding that transportation of the latter would be considered merchandise and would have to be accomplished by a coastwise-qualified vessel. T.D. 78-387, subparagraph (6) (emphasis added). CBP emphasized that the foregoing repair work had to be done “on or from” the vessel or in its service capacity under water rather than on or from the structure itself. *Id.* (emphasis added). Otherwise, the delivery of such materials, other than legitimate equipment of the vessel would have to be accomplished by a coastwise-qualified vessel. *Id.*; see also subparagraph (4) (holding that the “transportation of pipeline burial tools by the work barge for use by the crew of the work barge to accomplish the pipe-laying operations is not an activity prohibited by the coastwise laws since the tools are considered to be part of the legitimate equipment of that vessel).

CBP also held that the vessel’s installation and transportation of the pipeline connectors to the offshore drilling platform and sub-sea wellheads was not coastwise trade and would not be in violation of the coastwise laws *if* the pipeline connectors were installed by the crew of the work barge *incidental to the pipe-laying operations*. See T.D. 78-387, subparagraph (4). *Id.* (emphasis added).

In the present case, you propose to transport pieces of pipe (jumper pipes), HMR, and SCRSP from Louisiana and Texas, respectively, to be installed at coastwise points in the Gulf of Mexico. As stated above, pipe-laying is not an engagement in coastwise trade if the pipe is paid out. Because the pipes would be laden at a Louisiana port and unladen and installed at a sub-sea wellhead on the OCS, not paid out, such activity would be an engagement in

coastwise trade and the transportation of the pipe would be in violation of 46 U.S.C. § 55102. See T.D. 78–387, subparagraph (1). To the extent that all of the foregoing merchandise are pipeline connectors, the installation and transportation of such would not be incidental to a pipe-laying operation; therefore, the foregoing activity would be an engagement in coastwise trade and the transportation of the merchandise, e.g. jumper pipes, HMR, and SCRSP, would be in violation of 46 U.S.C. § 55102. See T.D. 78–387, subparagraph (4).

#### **HOLDING**

The jumper pipes, HMR, and SCRSP, as described above, are merchandise; therefore, the transportation of these articles between coastwise points would violate 46 U.S.C. § 55102.

#### **EFFECT ON OTHER RULINGS**

HQ 115185, dated November 20, 2000, is hereby modified.

CHARLES RESSIN,  
*Acting Director,*  
*Border Security and Trade Compliance Division.*

[ATTACHMENT J]

DEPARTMENT OF HOMELAND SECURITY,  
U.S. CUSTOMS AND BORDER PROTECTION,  
HQ H061698  
VES–3–15 OT:RR:BSTC:CCI  
H061698 LLB  
Category: Carriers

KEVIN T. DOSSETT, ESQ.  
PREIS, KRAFT & ROY  
520 Post Oak Boulevard  
Suite 800  
Houston, Texas 77027

RE: Coastwise transportation; 46 U.S.C. § 55102; 19 C.F.R. § 4.80b(a); revocation of HQ 115218 (Nov. 30, 2000).

DEAR MR. DOSSETT:

On November 3, 2000, U.S. Customs and Border Protection (“CBP”) issued Headquarters Ruling (“HQ”) 115218 you. In HQ 115218, CBP held, that the transportation of a pipeline tie-in spool piece by a foreign-flagged vessel between U.S. ports and coastwise points on the OCS was not in violation of 46 U.S.C. § 55102.<sup>4</sup> We have recently recognized that the foregoing holding in HQ 115218 is contrary to a CBP decision, specifically, T.D. 78–387 (Oct. 7, 1976), which interprets 46 U.S.C. § 55102. Consequently, this ruling, HQ H061698, revokes HQ 115218 and provides a decision consistent with T.D. 78–387.

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<sup>4</sup>Formerly 46 U.S.C. App. § 883. Recodified by Pub. L. 109–304, enacted on October 6, 2006.

**FACTS**

The following facts are from HQ 115218. 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 flow-line 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 flow-line, as without it the flow-line cannot be made operative.

A Panamanian-flagged vessel will be used for the installation operation. The vessel is a multi-purpose vessel, capable of sub-sea construction, maintenance and inspection, heavy lift, and flexible flow-line, umbilical and coiled tube lay operations, among others. The vessel in question is capable of being fitted with a modular carousel system for pipe-laying operations and has been utilized as a pipe-laying 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 pipe-laying phase of the project and will not involve the vessel that was used in the original pipe-laying 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.

Under the foregoing scenario, CBP held in HQ 115218, that the foregoing coastwise transportation of the pipeline tie-in spool piece would not be in violation of 46 U.S.C. § 55102. As explained in the “Law and Analysis” section of this ruling, this holding is inapposite to T.D. 78–387.

**ISSUE**

Whether the transportation of the pipeline tie-in spool piece, between coastwise points would be in violation of 46 U.S.C. § 55102.

**LAW AND ANALYSIS**

The coastwise laws prohibit the transportation of merchandise between points in the United States embraced within the coastwise laws in any ves-



sel other than a vessel built in, documented under the laws of, and owned by citizens of the United States. Such a vessel, after it has obtained a coastwise endorsement from the U.S. Coast Guard, is said to be “coastwise qualified.” 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. See 33 C.F.R. § 2.22(a)(2)(2009).

The coastwise law pertaining to the transportation of merchandise, 46 U.S.C. § 55102, also known as the “Jones Act”, provides in pertinent part, that the transportation of merchandise 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 and documented under the laws of the United States and owned by persons who are citizens of the United States, i.e. a coastwise-qualified vessel, is prohibited. “[M]erchandise includes (1) merchandise owned by the United States Government, a State, or subdivision of a State; and (2) valueless material.” *Id.* at 46 U.S.C. § 55102(a), *et seq.*; see also 19 U.S.C. § 1401(c) (stating that “[t]he word ‘merchandise’ means goods, wares and chattels of every description and includes merchandise the importation of which is prohibited . . .”). The CBP Regulations promulgated under the authority of 46 U.S.C. § 55102 provide that a coastwise transportation of merchandise takes place when merchandise laden at a point embraced within the coastwise laws (“coastwise point”) is unladen at another coastwise point, regardless of origin or ultimate destination. See 19 C.F.R. § 4.80b(a)(2009).

Section 4(a) of the Outer Continental Shelf Lands Act of 1953 (OCSLA),<sup>5</sup> 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, or any installation or other device (other than a ship or a 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 within a State.

The subject of this revocation is whether the transportation of the subject merchandise would be in violation of 46 U.S.C. § 55102. In T.D. 78-387 (Oct. 7, 1976), CBP enumerated several circumstances in which the transportation of merchandise between coastwise points would not violate the coastwise laws. The proposed use of a foreign vessel was to primarily support dive operations “in the construction, maintenance, repair, and inspection of offshore petroleum-related facilities” which included, *inter alia*: pipelaying; repairing pipe and underwater portions of a drilling platform; installation and transportation of anodes; transportation of pipeline burial tools; transportation of pipeline repair materials; and installation and transportation of pipeline connectors and wellheads.

CBP held that “the sole use of a vessel in laying pipe is not a use in the coastwise trade of the United States” reasoning that “the fact the pipe is not landed but only paid out in the course of the pipelaying [sic] operation which

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<sup>5</sup> 67 Stat. 462; 43 U.S.C. § 1333(a).

makes the operation permissible.” See T.D. 78–387, subparagraph (1). CBP noted, however, that the transportation of pipe by any vessel other than a pipe-laying vessel between two coastwise points would have to be accomplished by a coastwise-qualified vessel. *Id.*

T.D. 78–387 distinguished between repair materials to be installed on the underwater portions of the structure versus materials to be installed on the platform holding that transportation of the latter would be considered merchandise and would have to be accomplished by a coastwise-qualified vessel. T.D. 78–387, subparagraph (6) (emphasis added). CBP emphasized that the foregoing repair work had to be done “on or from” the vessel or in its service capacity under water rather than on or from the structure itself. *Id.* (emphasis added). Otherwise, the delivery of such materials, other than legitimate equipment of the vessel would have to be accomplished by a coastwise-qualified vessel. *Id.*; see also subparagraph (4) (holding that the “transportation of pipeline burial tools by the work barge for use by the crew of the work barge to accomplish the pipe-laying operations is not an activity prohibited by the coastwise laws since the tools are considered to be part of the legitimate equipment of that vessel).

CBP also held that the vessel’s installation and transportation of the pipeline connectors to the offshore drilling platform and sub-sea wellheads was not coastwise trade and would not be in violation of the coastwise laws *if* the pipeline connectors were installed by the crew of the work barge *incidental to the pipe-laying operations*. See T.D. 78–387, subparagraph (4). *Id.* (emphasis added).

In the present case, you propose to transport a pipeline tie-in spool piece to be installed at a coastwise point in the Gulf of Mexico. As stated above, transportation and installation of a pipeline connector by a pipe-laying vessel is not an engagement in coastwise trade if it is accomplished incidental to the pipe-laying activity of that same vessel. See T.D. 78–387, subparagraph (4). Here, the subject vessel is being “separately mobilized” to install a pipeline connector with a flow-line that has been previously laid. As such, such installation and transportation would not be incidental to a pipe-laying operation of that vessel; therefore, the foregoing activity would be an engagement in coastwise trade and the transportation of the subject merchandise, e.g. the pipeline tie-in spool piece, would be in violation of 46 U.S.C. § 55102. See T.D. 78–387, subparagraph (4).<sup>6</sup>

#### **HOLDING**

The pipeline tie-in spool piece, as described above, is merchandise; therefore, the transportation of this article between coastwise points would violate 46 U.S.C. § 55102.

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<sup>6</sup>The transportation of the equipment, tools, and installation personnel would be incidental to the transportation and installation of the pipeline spool piece; therefore, a determination as to whether such personnel could be transported without violating 46 U.S.C. § 55102 and whether the equipment to install the spool piece is merchandise would be moot and will not be addressed.

**EFFECT ON OTHER RULINGS**

HQ 115218, dated November 30, 2000, is hereby revoked.

CHARLES RESSIN,  
*Acting Director,*  
*Border Security and Trade Compliance Division.*

[ATTACHMENT K]

DEPARTMENT OF HOMELAND SECURITY.  
U.S. CUSTOMS AND BORDER PROTECTION,  
HQ H061700  
VES-3-15 OT:RR:BSTC:CCI  
H061700 LLB  
Category: Carriers

PHYLLIS PRICE  
CONTRACT ENGINEER  
COFLEXIP STENA OFFSHORE INC.  
7660 Woodway, Suite 390  
Houston, Texas 77063

RE: Coastwise transportation; 46 U.S.C. § 55102; 19 C.F.R. § 4.80b(a); revocation of HQ 115311 (May 10, 2001).

DEAR MS. PRICE:

On May 10, 2001, U.S. Customs and Border Protection (“CBP”) issued Headquarters Ruling (“HQ”) 115311 to you. In HQ 115311, CBP held, in part, that the transportation of flexible flow-lines, umbilical lines, and risers by a foreign-flagged vessel between U.S. ports and coastwise points on the OCS was not in violation of 46 U.S.C. § 55102.<sup>7</sup> We have recently recognized that although the foregoing holding, based on the facts presented in HQ 115311, is consistent with T.D. 78-387 (Oct. 7, 1976), the statement of law upon which this holding was based was stated incorrectly. Consequently, this ruling, HQ H061700, modifies HQ 115311 as it relates to Issue 1 of that ruling and provides a correct statement of the law as it appears in T.D. 78-387 with a corresponding analysis of the facts provided.

**FACTS**

The following facts are from HQ 115311. 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.

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<sup>7</sup> Formerly 46 U.S.C. App. § 883. Recodified by Pub. L. 109-304, enacted on October 6, 2006.

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.

Under the foregoing scenario, CBP held in HQ 115311, that the coastwise transportation of the flexible flow-lines and risers would not be in violation of 46 U.S.C. § 55102 stating the following:

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.

As explained in the “Law and Analysis” section of this ruling, the legal reference to T.D. 78-387 was not a complete statement of law.

#### **ISSUE**

Whether the use of a foreign-flagged vessel for the installation and transportation of flexible flowlines, umbilical lines and risers on the OCS as described above constitutes a violation of 46 U.S.C. § 55102.

#### **LAW AND ANALYSIS**

The coastwise laws prohibit the transportation of 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. Such a vessel, after it has obtained a coastwise endorsement from the U.S. Coast Guard, is said to be “coastwise qualified.” 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. See 33 C.F.R. § 2.22(a)(2)(2009).

The coastwise law pertaining to the transportation of merchandise, 46 U.S.C. § 55102, also known as the “Jones Act”, provides in pertinent part, that the transportation of merchandise 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 and documented under the laws of the United States and owned by persons who are citizens of the United States, i.e. a coastwise-qualified vessel, is prohibited. “[M]erchandise includes (1) merchandise owned by the United States Government, a State, or subdivision of a State; and (2) valueless material.” 46 U.S.C. § 55102(a), *et seq.*; see also 19 U.S.C. § 1401(c) (stating that “[t]he word ‘merchandise’ means goods, wares and chattels of every description and includes merchandise the importation of which is prohibited . . .”). The CBP Regulations promulgated under the authority of 46 U.S.C. § 55102 provide that a coastwise transportation of merchandise takes place when merchandise laden at a point embraced within the coastwise laws (“coastwise point”) is unladen at another coastwise point, regardless of origin or ultimate destination. See 19 C.F.R. § 4.80b(a)(2009).

Section 4(a) of the Outer Continental Shelf Lands Act of 1953 (OCSLA),<sup>8</sup> 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, or any installation or other device (other than a ship or a 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 within a State.

The subject of this modification is whether the transportation of the subject merchandise would be in violation of 46 U.S.C. § 55102. In T.D. 78–387 (Oct. 7, 1976), CBP enumerated several circumstances in which the transportation of merchandise between coastwise points would not violate the coastwise laws. The proposed use of a foreign vessel was to primarily support dive operations “in the construction, maintenance, repair, and inspection of offshore petroleum-related facilities” which included, *inter alia*: pipelaying; repairing pipe and underwater portions of a drilling platform; installation and transportation of anodes; transportation of pipeline burial tools; transportation of pipeline repair materials; and installation and transportation of pipeline connectors and wellheads.

CBP held that “the sole use of a vessel in laying pipe is not a use in the coastwise trade of the United States” reasoning that “the fact the pipe is not landed but only paid out in the course of the pipelaying [sic] operation which makes the operation permissible.” See T.D. 78–387, subparagraph (1). CBP noted, however, that the transportation of pipe by any vessel other than a pipe-laying vessel between two coastwise points would have to be accomplished by a coastwise-qualified vessel. *Id.*

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<sup>8</sup> 67 Stat. 462; 43 U.S.C. § 1333(a).

T.D. 78–387 distinguished between repair materials to be installed on the underwater portions of the structure versus materials to be installed on the platform holding that transportation of the latter would be considered merchandise and would have to be accomplished by a coastwise-qualified vessel. T.D. 78–387, subparagraph (6) (emphasis added). CBP emphasized that the foregoing repair work had to be done “on or from” the vessel or in its service capacity under water rather than on or from the structure itself. *Id.* (emphasis added). Otherwise, the delivery of such materials, other than legitimate equipment of the vessel would have to be accomplished by a coastwise-qualified vessel. *Id.*; see also subparagraph (4) (holding that the “transportation of pipeline burial tools by the work barge for use by the crew of the work barge to accomplish the pipe-laying operations is not an activity prohibited by the coastwise laws since the tools are considered to be part of the legitimate equipment of that vessel).

CBP also held that the vessel’s installation and transportation of the pipeline connectors to the offshore drilling platform and sub-sea wellheads was not coastwise trade and would not be in violation of the coastwise laws *if* the pipeline connectors were installed by the crew of the work barge *incidental to the pipe-laying operations* of that work barge. See T.D. 78–387, subparagraph (4) (emphasis added).

In the present case, you propose to transport and install flexible flowlines and risers at a coastwise point in the Gulf of Mexico. As stated above, pipe-laying is not an engagement in coastwise trade if the pipe is paid out. See T.D. 78–387, subparagraph (1). Similarly, here the flowlines and umbilical lines are paid out; therefore, such activity would not be an engagement in coastwise trade and the transportation of the flowlines and umbilical lines would not be in violation of 46 U.S.C. § 55102. See T.D. 78–387, subparagraph (1). To the extent that the risers are used as a connection between the sub-sea wellheads and the TLP and the installation and transportation of the risers is incidental to the laying of the flexible flowlines and the umbilical lines, the foregoing activity would not be an engagement in coastwise trade and the transportation such would not be in violation of 46 U.S.C. § 55102. See T.D. 78–387, subparagraph (4).

#### **HOLDING**

The use of the subject foreign-flagged vessel for the installation and transportation of flexible flowlines, umbilical lines, and risers on the OCS, as described above, does not constitute a violation of 46 U.S.C. § 55102 insofar as the flowlines and umbilical lines are paid out and the transportation and installation of the risers is incidental to the laying of the flowlines and umbilical lines by that same vessel.

#### **EFFECT ON OTHER RULINGS**

HQ 115311, dated May 10, 2001, is hereby modified.

CHARLES RESSIN,  
*Acting Director,*  
*Border Security and Trade Compliance Division.*

[ATTACHMENT L]

DEPARTMENT OF HOMELAND SECURITY,  
U.S. CUSTOMS AND BORDER PROTECTION,  
HQ H061934  
VES-3-15 OT:RR:BSTC:CCI  
H061934 LLB  
Category: Carriers

MR. PATRICK H. PATRICK  
JONES WALKER  
201 St. Charles Avenue.  
New Orleans, LA 70170

RE: Coastwise transportation; 46 U.S.C. § 55102 and 46 U.S.C. § 55111;  
19 C.F.R. § 4.80b(a); modification of HQ 111889 (Feb. 11, 1992); T.D.  
78-387 (Oct. 7, 1976).

DEAR MR. PATRICK:

On February 11, 1992, Customs and Border Protection (“CBP”) issued Headquarters Ruling (“HQ”) 111889 to you. In HQ 111889, you proposed using a coastwise-qualified tugboat to tow a foreign-flagged vessel between U.S. ports and sub-sea wellheads on the Outer Continental Shelf (OCS) that would have aboard multi-well templates as well as marine risers aboard. CBP held that the foregoing activity was not in violation of 46 U.S.C. § 55102<sup>9</sup> because the foreign-flagged vessel would only have necessary equipment and crew aboard, that it would be towed to a point on the OCS where there was no surface installation, and the tow would be by a coastwise-qualified vessel. We have recently recognized that the foregoing reasoning based on the facts presented in HQ 111889, is contrary to T.D. 78-387 (Oct. 7, 1976); HQ 110959 (Aug. 8, 1990); and HQ 106910 (July 9, 1984). Consequently, this ruling, HQ H061934, modifies HQ 111889 and provides an analysis of the facts consistent with the foregoing rulings.

**FACTS**

The following facts are from HQ 111889. It is proposed that a foreign-built and foreign-registered semi-submersible drilling vessel be modified in a United States shipyard and towed by properly qualified vessel to a point on the high seas which overlies wellheads already drilled on the outer Continental Shelf. The modified production vessel would have aboard at the time of its tow from a shoreside point to the well head site, equipment essential to its intended operation. It is our understanding that no vessel or other structure will be at the high seas site at which the production vessel will arrive and be anchored and subsequently attached to the seabed wellheads. It is anticipated that the production vessels would remain stationary, except for incidental movement resulting from the action of winds, tides, and wave action, and would remain at the same site for a period of eight to ten years.

The vessel would operate as a production platform by means of a device known as a multi-well template which will be placed on the sea floor over several wellheads. A flexible pipe known as a marine riser will be attached to the template for the purpose of funneling oil or natural gas from the wells

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<sup>9</sup>Formerly 46 U.S.C. App. § 883. Recodified by Pub. L. 109-304, enacted on October 6, 2006.

to the vessel. Oil and natural gas would leave the production vessel via pipelines which would be installed. These lines would either lead ashore, or to an offshore gathering platform. It is stated that the only materials aboard would be necessary equipment, the only persons aboard would be production crew members, and any other vessels involved in moving between the production vessel and points within the jurisdiction of the United States would be coastwise qualified.

Under the foregoing scenario, CBP held in HQ 111889 that the coastwise movement of the vessel would not be in violation of 46 U.S.C. § 55102 reasoning the following:

In view of the fact that the vessel in question will have aboard only necessary equipment and crew members during its movement and, further, that it will be towed by a qualified vessel from a coastwise point to a point on the high seas overlying a point on the outer Continental Shelf at which there will be no surface installation, we have determined that no coastwise laws will be violated in the course of the proposed vessel movement. It should be noted, however, that the production vessel will itself become a coastwise point once attached to the seabed, and any further movements of equipment and personnel from a coastwise point to the production site must be accomplished by use of a coastwise qualified vessel.

As explained in the “Law and Analysis” section of this ruling, the foregoing reasoning implies that certain articles aboard were vessel equipment which is contrary to T.D. 78–387. Further, the foregoing reasoning implies that because there was no surface installation at the point on the OCS to where the subject vessel would be towed, that point is not a coastwise point. There were two published rulings, HQ110959 (Aug. 8, 1990) and HQ 106910 (July 9, 1984) that were in existence at the time HQ 111889 was issued that hold that wellhead sites, unless permanently abandoned, are coastwise points.

#### **ISSUE**

Whether the use and transportation of the foreign-flagged vessel is an engagement in coastwise trade in violation of 46 U.S.C. § 55102.

#### **LAW AND ANALYSIS**

The coastwise laws prohibit the transportation of 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. Such a vessel, after it has obtained a coastwise endorsement from the U.S. Coast Guard, is said to be “coastwise qualified.” 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. See 33 C.F.R. § 2.22(a)(2)(2009).

The coastwise law pertaining to the transportation of merchandise, 46 U.S.C. § 55102, also known as the “Jones Act”, provides in pertinent part, that the transportation of merchandise 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 and documented under the laws of the United States and owned by persons who are citizens of the United States, i.e. a coastwise-qualified vessel, is pro-



hibited.<sup>10</sup> The CBP Regulations promulgated under the authority of 46 U.S.C. § 55102 provide that a coastwise transportation of merchandise takes place when merchandise laden at a point embraced within the coastwise laws (“coastwise point”) is unladen at another coastwise point, regardless of origin or ultimate destination. See 19 C.F.R. § 4.80b(a)(2009). Pursuant to 46 U.S.C. § 55111,<sup>11</sup> the towing of vessels between points in the United States embraced within the coastwise laws, either directly or via a foreign port, 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, i.e. a coastwise-qualified vessel, is prohibited. See 46 U.S.C. § 55111(a) and (b)(1); see, e.g. HQ 110956 (June 7, 1990).

Section 4(a) of the Outer Continental Shelf Lands Act of 1953 (OCSLA),<sup>12</sup> 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, or any installation or other device (other than a ship or a 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 within a State.

The subject of this modification is whether the movement of the subject vessel, which would have aboard a multi-well template and marine risers, between the U.S. shipyard and the sub-sea wellheads, would be in violation of 46 U.S.C. § 55102. CBP has held that sub-sea wellheads, unless permanently abandoned, are coastwise points. See HQ 110959 (Aug. 8, 1990) (holding that temporarily abandoned well was a coastwise point until permanently abandoned according to Department of Interior regulations); HQ 106910 (July 9, 1984) (holding that well was a coastwise site until permanently plugged and capped); HQ 113113 (June 28, 1994) (temporarily abandoned well head); and HQ 116350 (Jan. 18, 2005) (exploratory well head). In T.D. 78–387, CBP held that the vessel’s installation and transportation of the pipeline connectors to the offshore drilling platform and sub-sea wellheads was not coastwise trade and would not be in violation of the coastwise laws *if* the pipeline connectors were installed by the crew of the work barge *incidental to the pipe-laying operations*. See T.D. 78–387, subparagraph (4). *Id.* (emphasis added). T.D. 78–387, also held that the use of a vessel in the transportation of machinery or production equipment to a coastwise point, would be deemed a use in the coastwise trade. See *id.* at subparagraph (8).

Here, to the extent that the risers are used as a connection between the sub-sea wellheads and the vessel and the transportation of the risers is not incidental to the laying of a pipeline, the risers would be considered mer-

<sup>10</sup> “[M]erchandise includes (1) merchandise owned by the United States Government, a State, or subdivision of a State; and (2) valueless material.” 46 U.S.C. § 55102(a), *et seq.*; see also 19 U.S.C. § 1401(c) (stating that “[t]he word ‘merchandise’ means goods, wares and chattels of every description and includes merchandise the importation of which is prohibited . . .”).

<sup>11</sup> Formerly 46 U.S.C. App. § 316(a). Recodified by Pub. L. 109–304, enacted on October 6, 2006.

<sup>12</sup> 67 Stat. 462; 43 U.S.C. § 1333(a).

chandise pursuant to T.D. 78-387, subparagraph (4). The multi-well template is production equipment and would likewise be considered merchandise, pursuant to T.D. 78-387, subparagraph (8). Because the transportation of the foregoing merchandise would be between to coastwise points, e.g. a U.S. shipyard and sub-sea wellheads, the transportation would have to be accomplished by a coastwise-qualified vessel. You assert that the movement of the subject vessel will be accomplished by coastwise-qualified tugboats and not the vessel itself. Although the towing of the vessel by coastwise-qualified tugboats would not be in violation of 46 U.S.C. § 55111, the transportation of the merchandise by the vessel would be in violation of 46 U.S.C. § 55102.

#### **HOLDING**

The transportation of the merchandise aboard the subject foreign-flagged vessel, from a U.S. point to subsea wellheads on the OCS, as described above, constitutes a violation of 46 U.S.C. § 55102. However, the towing of the foreign-flagged vessel by coastwise-qualified tugboats would not be in violation of 46 U.S.C. § 55111.

#### **EFFECT ON OTHER RULINGS**

HQ 111889, dated February 11, 1992, is hereby modified.

CHARLES RESSIN,  
*Acting Director,*  
*Border Security and Trade Compliance Division.*

[ATTACHMENT M]

DEPARTMENT OF HOMELAND SECURITY.  
U.S. CUSTOMS AND BORDER PROTECTION,  
HQ H061935  
VES-3-15 OT:RR:BSTC:CCI  
H061935 LLB  
Category: Carriers

MR. GEORGE H. ROBINSON, JR.  
LISKOW AND LEWIS, PLC  
822 Harding Street  
P.O. Box 52008  
Lafayette, Louisiana 70505-2008

RE: Coastwise transportation; 46 U.S.C. § 55102; 19 C.F.R. § 4.80b(a); modification of HQ 113841 (Feb. 28, 1997); T.D. 49815(4)(Mar. 13, 1939); T.D. 78-387 (Oct. 7, 1976); vessel equipment; merchandise.

DEAR MR. ROBINSON:

On February 28, 1997, Customs and Border Protection ("CBP") issued Headquarters Ruling Letter ("HQ") 113841 to you. In HQ 113841, as it relates to the first and second issues presented in that ruling, you proposed using a foreign-flagged cable-laying vessel to lay foreign-laded umbilical cable lines between a production manifold and fixed production platform on the Outer Continental Shelf (OCS) and to transport an Remotely Operated Vehicle (ROV) from a U.S. port to the OCS returning to the same U.S. port of lading. CBP held that the foregoing activity was not in violation of 46

U.S.C. § 55102<sup>13</sup> because the ROV and the umbilical lines would be considered equipment of the foreign-flagged vessel that was “essential to the mission of the vessel.” We have recently recognized that the foregoing holding and reasoning, based on the facts presented in HQ 113841, is contrary to T.D. 49815(4) (Mar. 13, 1939) and T.D. 78–387 (Oct. 7, 1976). Consequently, this ruling, HQ H061935, modifies HQ 113841 as to issues one and two and provides an analysis of the facts provided consistent with the foregoing rulings.

#### **FACTS**

The following facts, as it relates to issues one and two in HQ 113841, are from your October 18, 1996, and February 17, 1997, letters. The subject foreign-flagged vessel (the “vessel”) was constructed specifically for the purpose of laying and repairing submarine cables. The vessel will lade umbilical cable at a foreign port and proceed to a port in Louisiana where it will lade an ROV. The vessel would then proceed to the Gulf of Mexico where it will use the ROV to assist with laying the foreign-laden cable between a production manifold and a fixed production platform. At the conclusion of the foregoing activities, the vessel would return to the port at which the ROV was laden and unlade the ROV and any remaining cable.

Under the foregoing scenario, CBP held in HQ 113841 that the coastwise movement of the vessel would not be in violation of 46 U.S.C. § 55102 reasoning the following:

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, its 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 the cable.

. . . we find that both the umbilicals (including the spares) and the ROV are considered to be equipment of the foreign-flag umbilical laying vessel which are essential to 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.

As explained in the “Law and Analysis” section of this ruling, the foregoing holding and reasoning that the ROV and umbilical cable are vessel equipment because they are “essential to the mission of the vessel” is contrary to T.D. 78–387 and T.D. 49815(4).

#### **ISSUE**

Whether the transportation and installation of the foreign-laden umbilical lines by the foreign-flag installing vessel, as described above, and the trans-

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<sup>13</sup> Formerly 46 U.S.C. App. § 883. Recodified by Pub. L. 109–304, enacted on October 6, 2006.

portation of the ROV by the same vessel from a U.S. port to the installation and returning to the same U.S. port would violate 46 U.S.C. § 55102.

#### LAW AND ANALYSIS

The coastwise laws prohibit the transportation of 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. Such a vessel, after it has obtained a coastwise endorsement from the U.S. Coast Guard, is said to be “coastwise qualified.” 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. See 33 C.F.R. § 2.22(a)(2)(2009). The laws of the United States, including the coastwise laws, are extended, under Section 4(a) of the Outer Continental Shelf Lands Act of 1953 (OCSLA),<sup>14</sup> 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 installation or other device (other than a ship or a 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 within a State.

The coastwise law pertaining to the transportation of merchandise, 46 U.S.C. § 55102, also known as the “Jones Act”, provides in pertinent part, that the transportation of merchandise 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 and documented under the laws of the United States and owned by persons who are citizens of the United States, i.e. a coastwise-qualified vessel, is prohibited. “[M]erchandise includes (1) merchandise owned by the United States Government, a State, or subdivision of a State; and (2) valueless material.” 46 U.S.C. § 55102(a), *et seq.*; *see also* 19 U.S.C. § 1401(c) (stating that “[t]he word ‘merchandise’ means goods, wares and chattels of every description and includes merchandise the importation of which is prohibited . . .”). The CBP Regulations promulgated under the authority of 46 U.S.C. § 55102 provide that a coastwise transportation of merchandise takes place when merchandise laden at a point embraced within the coastwise laws (“coastwise point”) is unladen at another coastwise point, regardless of origin or ultimate destination. See 19 C.F.R. § 4.80b(a)(2009)

However, not all transportation of merchandise is a coastwise transportation of merchandise. Although vessel equipment could be considered merchandise, e.g. a good, ware, or chattel, under 19 U.S.C. § 1401(c), CBP has held that vessel equipment is not merchandise within the meaning of 46 U.S.C. § 55102. See HQ 111892 (Sept. 16, 1991) and HQ 112479 (Jan. 6, 1993). The definition of vessel equipment CBP has used in its carrier rulings, has been based on T.D. 49815(4), which interprets § 309 of the Tariff

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<sup>14</sup>67 Stat. 462; 43 U.S.C. § 1333(a).

Act of 1930<sup>15</sup> that provides for the duty free withdrawal of supplies and equipment for certain domestic 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.

#### **Umbilical Cable Lines**

You assert that the umbilical lines do not constitute merchandise under 46 U.S.C. § 55102 and “are considered to be in the nature of supplies necessary for the accomplishment of the mission of the vessel.” In HQ 113841, CBP considered the umbilical lines to be equipment of the vessel that is “essential to the completion of the mission of the vessel.” Neither principle is determinative as to whether an article is vessel equipment or supplies of the vessel. Pursuant to T.D. 49815(4), the term “supplies” includes:

articles commonly known as “sea stores”, that is, food, medicines, toiletries, and so forth, and in addition, all consumable articles *necessary and appropriate for the propulsion, operation and maintenance of the vessel*, such as coal, grease, gasoline, fuel oil, caulking cotton, putty, paint, waste, wiping rags, sandpaper, emery cloth, candles, polishes, cleansing compounds, and solvents.

(emphasis added). Notwithstanding the fact that the subject umbilical lines are not consumable articles, the umbilical lines are not necessary to propel, operate, or maintain the subject vessel. Therefore, the umbilical lines would not be considered supplies of the vessel. Moreover, the umbilical lines would not be considered vessel equipment. As stated above, vessel equipment “. . . 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.” T.D. 49815(4). Insofar as the umbilical lines are not necessary to navigate, operate, or maintain the subject vessel, they would not be considered vessel equipment within the meaning of T.D. 49815(4). Accordingly, because the umbilical lines are not supplies or equipment of the vessel, they are considered merchandise.

In T.D. 78-387 (Oct. 7, 1976), the proposed use of a foreign vessel was to primarily support dive operations “in the construction, maintenance, repair, and inspection of offshore petroleum-related facilities” which included, *inter alia*, pipelaying. CBP held that “the sole use of a vessel in laying pipe is not a use in the coastwise trade of the United States” reasoning that “the fact the pipe is not landed but only paid out in the course of the pipelaying operation which makes the operation permissible.” See T.D. 78-387 (Oct. 7, 1976), subparagraph (1). CBP has likewise held that cable is paid out during a cable-laying operation is not coastwise trade. HQ 112901 (Oct. 20, 1993); HQ 105648 (July 21, 1982).

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<sup>15</sup> Codified at 19 U.S.C. § 1309.

In the present case, the cable-laying vessel would lade the umbilical cable at a foreign port, pay out that cable between a production manifold and a fixed production platform in the Gulf of Mexico, and unlade any of that remaining cable at a U.S. port. As stated above, pursuant to 19 C.F.R. § 4.80b(a), a coastwise transportation of merchandise takes place when merchandise laden at a point embraced within the coastwise laws (“coastwise point”) is unladen at another coastwise point, regardless of origin or ultimate destination. Insofar as the umbilical cable will be laden at a foreign port and the paying out of the umbilical does not constitute an unlading of that merchandise, there will be no coastwise transportation of merchandise within the meaning of 19 C.F.R. § 4.80b(a). To the extent the remainder of that foreign-laden cable will be unladen at U.S. port, there will be not a coastwise transportation of merchandise within the meaning of 19 C.F.R. § 4.80b(a), because while the merchandise will be unladen at a U.S. point, the merchandise will not be laden at a point embraced by the coastwise law, e.g. a foreign port.

#### **ROV**

With regard to the ROV, you assert that it is “necessary equipment for the installation of the umbilicals.” In HQ 113841, CBP considered the ROV as equipment of the vessel that is “essential to the completion of the mission of the vessel.” Treasury Decision 49815(4), in defining vessel equipment, does not contemplate whether such equipment is necessary for the activity in which the vessel will be engaged or “essential to the completion of the mission of the vessel.” Rather, the equipment must be necessary to navigate, operate, or maintain the vessel or for the safety and comfort of the persons aboard. T.D. 49815(4). Nevertheless, we conclude the ROV is vessel equipment. In order for the vessel to operate as a cable-laying vessel, e.g. the operation for which it was designed, an ROV is necessary to monitor the placement of the cable being laid by the vessel.

#### **HOLDING**

Insofar as the merchandise, e.g. umbilical lines, will be laden in a foreign port and the remnants of which will be unladen at a U.S. point, the transportation of such merchandise would not be in violation of 46 U.S.C. § 55102 and 19 C.F.R. § 4.80b(a). Because the ROV is vessel equipment within the meaning of T.D. 49815(4), and not merchandise, its transportation between coastwise points would not be in violation of 46 U.S.C. § 55102 and 19 C.F.R. § 4.80b(a).

#### **EFFECT ON OTHER RULINGS**

HQ 113841, dated February 28, 1997, is hereby modified.

CHARLES RESSIN,  
*Acting Director,*  
*Border Security and Trade Compliance Division.*

[ATTACHMENT N]

DEPARTMENT OF HOMELAND SECURITY,  
U.S. CUSTOMS AND BORDER PROTECTION,  
HQ H061992  
VES-3-15 OT:RR:BSTC:CCI H061992 LLB  
Category: Carriers

J. KELLY DUNCAN, ESQ.  
JONES WALKER  
201 St. Charles Ave.  
New Orleans, Louisiana 70170-5100

RE: Coastwise transportation; 46 U.S.C. § 55102; 19 C.F.R. § 4.80b(a);  
modification of HQ 115938 (Apr. 1, 2003); T.D. 49815(4)(Mar. 13,  
1939); T.D. 78-387 (Oct. 7, 1976); vessel equipment; merchandise.

DEAR MR. DUNCAN:

On April 1, 2003, Customs and Border Protection (“CBP”) issued Headquarters Ruling Letter (“HQ”) 115938 to you. In HQ 115938, you proposed using a non-coastwise qualified liftboat to, *inter alia*, transport, for the purpose of installation, compressors, generators, pumps and other oilfield equipment, decks, heliports, well-jackets, stairways, grating, handrails, boat landings and similar equipment and pre-fabricated structural components, from a U.S. port to wells and platforms on the Outer Continental Shelf (OCS). CBP held that the foregoing articles were not merchandise because the “articles [are] necessary to carry out the vessel’s functions” and “constitute equipment that is fundamental to the mission of the vessel.” Accordingly, CBP held that the transportation of the foregoing articles was not in violation of 46 U.S.C. § 55102.<sup>16</sup> We have recently recognized that the foregoing holding and reasoning, based on the facts presented in HQ 115938, is contrary to T.D. 49815(4) (Mar. 13, 1939) and T.D. 78-387 (Oct. 7, 1976). Consequently, this ruling, HQ H061992, modifies HQ 115938 as to the determination that the foregoing articles are not merchandise and provides an analysis of the facts provided consistent with the foregoing rulings.

**FACTS**

The following facts, as it relates to the determination of whether the subject articles and its transportation and installation, violate 46 U.S.C. § 55102 are from HQ 115938. [] liftboats are U.S. documented self-propelled, non-coastwise qualified, 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.

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<sup>16</sup>Formerly 46 U.S.C. App. § 883. Recodified by Pub. L. 109-304, enacted on October 6, 2006.

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.

Under the foregoing scenario, CBP held in HQ 115938 that the coastwise movement of the vessel would not be in violation of 46 U.S.C. § 55102 reasoning that “[t]he 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.” As explained in the “Law and Analysis” section of this ruling, the foregoing holding and reasoning is contrary to T.D. 78–387 and T.D. 49815(4).

#### ISSUE

Whether the transportation, for the purpose of 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, from a U.S. port to wells and platforms on the OCS, as described above, would violate 46 U.S.C. § 55102.

#### LAW AND ANALYSIS

The coastwise laws prohibit the transportation of 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. Such a vessel, after it has obtained a coastwise endorsement from the U.S. Coast Guard, is said to be “coastwise qualified.” 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. See 33 C.F.R. § 2.22(a)(2)(2009). The laws of the United States, including the coastwise laws, are extended, under Section 4(a) of the Outer Continental Shelf Lands Act of 1953 (OCSLA),<sup>17</sup> 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 installation or other device (other than a ship or a 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 within a State.

The coastwise law pertaining to the transportation of merchandise, 46 U.S.C. § 55102, also known as the “Jones Act”, provides in pertinent part, that the transportation of merchandise 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 and documented under the laws of the United States and owned by persons who are citizens of the United States, i.e. a coastwise-qualified vessel, is prohibited. “[M]erchandise includes (1) merchandise owned by the United States Government, a State, or subdivision of a State; and (2) valueless material.” 46 U.S.C. § 55102(a), *et seq.*; see also 19 U.S.C. § 1401(c)(stating that “[t]he word ‘merchandise’ means goods, wares and chattels of every description and includes merchandise the importation of which is prohib-

<sup>17</sup> 67 Stat. 462; 43 U.S.C. § 1333(a).

ited . . .” The CBP Regulations promulgated under the authority of 46 U.S.C. § 55102 provide that a coastwise transportation of merchandise takes place when merchandise laden at a point embraced within the coastwise laws (“coastwise point”) is unladen at another coastwise point, regardless of origin or ultimate destination. See 19 C.F.R. § 4.80b(a)(2009)

However, not all transportation of merchandise is a coastwise transportation of merchandise. CBP has held that vessel equipment is not merchandise within the meaning of 46 U.S.C. § 55102. See HQ 111892 (Sept. 16, 1991) and HQ 112479 (Jan. 6, 1993). The definition of vessel equipment CBP that has used in its carrier rulings, has been based on T.D. 49815(4), which interprets § 309 of the Tariff Act of 1930<sup>18</sup> which provides for the duty free withdrawal of supplies and equipment for certain domestic 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.

In HQ 115938, CBP considered compressors, generators, pumps and other oilfield equipment, decks, heliports, well-jackets, stairways, grating, handrails, boat landings and similar equipment and pre-fabricated structural components to be equipment of the vessel reasoning that “[t]he articles [are] necessary to carry out the vessel functions described above, [and] constitute equipment that is fundamental to the vessel’s operation essential to the completion of the mission of the vessel.” Neither principle is determinative as to whether an article is vessel equipment. As stated above, vessel equipment “. . . 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.” T.D. 49815(4). Treasury Decision 49815(4) does not contemplate the activity or “mission” in which the vessel will be engaged; rather, it contemplates the articles that are needed to navigate, operate, or maintain the vessel *itself*. Insofar as compressors, generators, pumps and other oilfield equipment, decks, heliports, well-jackets, stairways, grating, handrails, boat landings and similar equipment and pre-fabricated structural components are not necessary to navigate, operate, or maintain a liftboat, they would not be considered vessel equipment within the meaning of T.D. 49815(4).

In addition, the transportation of the foregoing articles would be contrary to T.D. 78–387. In T.D. 78–387, the proposed use of a foreign vessel was to primarily support dive operations “in the construction, maintenance, repair, and inspection of offshore petroleum-related facilities” which included, *inter alia*: repairing pipe and underwater portions of a drilling platform; transportation of pipeline repair materials; installation and transportation of pipeline connectors and wellheads; and the transportation of machinery and production equipment.

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<sup>18</sup> Codified at 19 U.S.C. § 1309.

CBP held that repairing pipe is not a use in the coastwise trade and therefore, the transportation of pipe and repair materials was not an activity that would be prohibited by the coastwise laws. See T.D. 78-387, subparagraph (2). With regard to the repair of offshore or subsea structures, CBP also held the use of such vessel was not a use in the coastwise trade; therefore, the transportation by that 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)” *provided that* the installation of the repair materials on to the underwater portions of the structure is a) unforeseen b) the repair material or component to be installed is of de minimis value, and c) such materials are “usually carried aboard the vessel as supplies.” See *id.* at subparagraph (6) (emphasis and lettering added). If the installation of the repair materials is foreseen and more than de minimis value (e.g. a structural member), the transportation of such materials must be made by a coastwise-qualified vessel. *Id.* The ruling distinguished between repair materials to be installed on the underwater portions of the structure versus materials to be installed on the platform holding that transportation of the latter would have to be accomplished by a coastwise-qualified vessel. *Id.* (emphasis added). CBP emphasized that the foregoing repair work had to be done “*on or from*” the vessel or in its service capacity under water rather than on or from the structure itself. *Id.* (emphasis added). Otherwise, the delivery of such materials, other than legitimate equipment of the vessel would have to be accomplished by a coastwise-qualified vessel. *Id.* Further, CBP held that 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 coastwise-qualified vessel. See *id.* at subparagraph (8).

Here, it is asserted that part of the services provided by the liftboat will be the “installation” of the subject articles. With regard to the transportation of the compressors, generators, pumps and other oilfield equipment by the non-coastwise qualified lift boat, that activity would be prohibited by T.D. 78-387, subparagraph (10), which holds that that transportation of machinery or production equipment to a coastwise point would be deemed a use in the coastwise trade and would therefore have to be accomplished by a coastwise-qualified vessel. With regard to the remaining articles, T.D. 78-387, subparagraph (6) holds that articles to be installed at a coastwise point are considered merchandise unless they are considered repair materials which would be installed due to an a) unforeseen repair; b) is of de minimis value; and c) “usually carried aboard the vessel as supplies.” Subparagraph (6) specifically states as an example that structural members are more than de minimis value. Accordingly, the fabricated structural components would have to be transported by a coastwise-qualified vessel. With regard to the remaining articles, without any evidence that the subject articles are repair materials under T.D. 78-387, subparagraph (6), we conclude they are merchandise under T.D. 78-387, subparagraph (6).

In conclusion, because the articles described in the “FACTS” section above are merchandise, their transportation from U.S. ports to coastwise points on the OCS, would be coastwise transportation of merchandise pursuant to 19 C.F.R. § 4.80b(a) and therefore; be in violation of 46 U.S.C. § 55102.

**HOLDING**

The transportation, for the purpose of 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, from a U.S. port to wells and platforms on the OCS, as described above, would violate 46 U.S.C. § 55102 .

**EFFECT ON OTHER RULINGS**

HQ 115938, dated April 1, 2003, is hereby modified.

CHARLES RESSIN,  
*Acting Director,*  
*Border Security and Trade Compliance Division.*

[ATTACHMENT O]

DEPARTMENT OF HOMELAND SECURITY.  
U.S. CUSTOMS AND BORDER PROTECTION,  
HQ H061993  
VES-3-15 OT:RRBSTC:CCI H061993 LLB  
Category: Carriers

JEANNE M. GRASSO, ESQUIRE  
BLANK ROME LLP  
*Watergate*  
*600 New Hampshire Avenue, NW*  
*Washington, O.C. 20037*

RE: Coastwise transportation; 46 U.S.C. §§ 55102; 19 C.F.R. § 4.80b(a); modification of HQ H029417 (June 5,2008); TO. 49815(4)(Mar. 13,1939); TO. 78-387 (Oct. 7, 1976); vessel equipment; merchandise.

DEAR MR. GRASSO:

On June 5, 2008, Customs and Border Protection (“CBP”) issued Headquarters Ruling Letter (“HQ”) H029417 to you. In HQ H029417, as it relates to the second issue presented, you proposed using a coastwise-qualified tug-boat to tow a non-coastwise qualified deck barge with an exhibit hall structure aboard. CBP held that the exhibit hall structure was vessel equipment and not merchandise because it “is integral to the operation of the vessel as an exhibit hall.” Accordingly, CBP held that the transportation of the exhibit hall structure was not in violation of 46 U.S.C. § 55102. <sup>1</sup>We have recently recognized that the foregoing holding and reasoning, based on the facts presented in HQ H029417 is contrary to T.D.49815(4) (Mar. 13, 1939). Consequently, this ruling, HQ H061993 modifies HQ H029417 as to the determination that the exhibit hall structure is not merchandise and provides an analysis of the facts provided consistent with the T.D. 49815(4).

<sup>1</sup> Formerly 46 U.S.C. App. § 883. Recodified by Pub. L. 109-304, enacted on October 6,2006.

**FACTS**

The following facts, as it relates to the determination of whether the exhibit hall structure is merchandise, are from HQ H029417. The Hannah Marine Company (the “Company”) is chartering a coastwise-qualified tug and a non-coastwise-qualified deck barge to a charterer that will use the barge as

a floating exhibit hall. In order to facilitate its use as an exhibit hall, the barge will first be modified in the U.S. by adding customized shipping containers that will either be bolted or welded to the deck. Then the floating exhibit hall will be towed by a coastwise-qualified tug to various U.S. and Canadian ports. The barge will be carrying products and equipment used for demonstration/exhibition purposes and will not carry any passengers during its voyages. Any staff of the exhibit hall will travel over land or by air to each port, or aboard the coastwise-qualified tug.

Upon completion of the charter, the exhibit hall structure will be removed from the barge in the U.S. but the removal may occur at a location different from the location where the barge was modified. As for the products and equipment that will be used for demonstration/exhibition purposes, these items will either be unladen at the same coastwise point at which they were laden or, if they will be unladen at a different coastwise point than which they were laden, they will be transported aboard the coastwise-qualified tug during all voyages.

Under the foregoing scenario, CBP held in HQ H029417, that the exhibit hall structure was vessel equipment rather than merchandise reasoning that "is integral to the operation of the vessel as an exhibit hall." As explained in the "Law and Analysis" section of this ruling, the foregoing holding and reasoning is contrary to T.D. 49815(4).

#### **ISSUE**

Whether the exhibit hall structure is merchandise within the meaning of 46 U.S.C. § 55102 and 19 U.S.C. § 1401(c).

#### **LAW AND ANALYSIS**

The coastwise laws prohibit the transportation of 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. Such a vessel, after it has obtained a coastwise endorsement from the U.S. Coast Guard, is said to be "coastwise qualified." 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. See 33 C.F.R. § 2.22(a)(2)(2009).

The coastwise law pertaining to the transportation of merchandise, 46 U.S.C. § 55102, also known as the "Jones Act", provides in pertinent part, that the transportation of merchandise 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 and documented under the laws of the United States and owned by persons who are citizens of the United States, i.e. a coastwise-qualified vessel, is prohibited. "[M]erchandise includes (1) merchandise owned by the United States Government, a State, or subdivision of a State; and (2) valueless material." 46 U.S.C. § 55102(a), et seq.; see also 19 U.S.C. § 1401(c) (stating that "[t]he word 'merchandise' means goods, wares and chattels of every description and includes merchandise the importation of which is prohibited . . ." The CBP Regulations promulgated under the authority of 46 U.S.C. § 55102 provide that a coastwise transportation of merchandise takes place when merchandise laden at a point embraced within the coastwise laws

(“coastwise point”) is unladen at another coastwise point, regardless of origin or ultimate destination. See 19 C.F.R. § 4.80b(a)(2009)

However, not all transportation of merchandise is a coastwise transportation of merchandise. CBP has held that vessel equipment is not merchandise within the meaning of 46 U.S.C. § 55102. See HQ 111892 (Sept. 16, 1991) and HQ 112479 (Jan. 6, 1993). The definition of vessel equipment CBP that has used in its carrier rulings, is based on T.O. 49815(4), which interprets § 309 of the Tariff Act of 1930<sup>2</sup> which provides for the duty free withdrawal of supplies and equipment for certain domestic 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.

In HQ H029417, CBP determined that the exhibit hall structure was integral to the vessel’s operation as an exhibit hall. Treasury Decision 49815(4) does not contemplate the activity or “mission” in which the vessel will be engaged; rather, it contemplates the articles that are needed to navigate, operate, or maintain the vessel *itself*. In HQ 115356 (May 22, 2001), a non-coastwise qualified power barge was outfitted with electrical generating equipment at one U.S. port and subsequently, the generating equipment was unladen at a different U.S. port. CBP held that the generating equipment was vessel equipment reasoning, in part, that the equipment was integral to the operation of the vessel as a power barge.

We distinguish the facts of HQ 115356 from the present case. Here, an exhibit hall structure is not needed to navigate, operate, or maintain a deck barge whereas as in HQ 115356, generating equipment would be necessary to operate a power barge. Accordingly, the exhibit hall structure would not be considered vessel equipment within the meaning of T.O. 49815(4) and would be considered merchandise within the meaning of § 55102. Therefore, the transportation of the exhibit hall structure aboard the deck barge between two different coastwise points would violate 46 U.S.C. § 55102. ●

<sup>2</sup> Codified at 19 U.S.C. § 1309. 4

#### **HOLDING**

The exhibit hall structure is merchandise within the meaning of 46 U.S.C. § 55102 and 19 U.S.C. § 1401(c); accordingly, its transportation aboard a non-coastwise qualified deck barge between two different coastwise points would be in violation of 46 U.S.C. § 55102.

#### **EFFECT ON OTHER RULINGS**

HQ H029417, dated June 5, 2008, is hereby modified.

CHARLES RESSIN,  
*Acting Director,*  
*Border Security and Trade Compliance Division.*

[ATTACHMENT P]

DEPARTMENT OF HOMELAND SECURITY,  
U.S. CUSTOMS AND BORDER PROTECTION,  
HQ H061994  
VES-3-15 OT:RR:BSTC:CCI H061994 LLB  
Category: Carriers

MR. MARION E. MCDANIEL, JR.  
LOCKE LORD BISSELL & LIDDELL LLP  
3400 JP Morgan Chase Tower, 600 Travis  
Houston, Texas 77002

RE: Coastwise transportation; 46 U.S.C. § 55102; 19 C.F.R. § 4.80b(a);  
modification of HQ H032757 (July 28, 2008); T.D. 49815(4)(Mar. 13,  
1939); vessel equipment; merchandise.

DEAR MR. MCDANIEL:

On July 28, 2008, Customs and Border Protection (“CBP”) issued Headquarters Ruling Letter (“HQ”) H032757 to you. In HQ H032757, as it relates to the second issue presented, you proposed using a coastwise-qualified tugboat to tow a non-coastwise qualified deck barge with an exhibit hall structure aboard. CBP held that the exhibit hall structure was vessel equipment and not merchandise because it “is integral to the operation of the vessel as an exhibit hall.” Accordingly, CBP held that the transportation of the exhibit hall structure was not in violation of 46 U.S.C. § 55102.<sup>19</sup> We have recently recognized that the foregoing holding and reasoning, based on the facts presented in HQ H032757 is contrary to T.D. 49815(4) (Mar. 13, 1939). Consequently, this ruling, HQ H061994 modifies HQ H032757 as to the determination that the exhibit hall structure is not merchandise and provides an analysis of the facts provided consistent with the T.D. 49815(4).

**FACTS**

The following facts, as it relates to the determination of whether the exhibit hall structure is merchandise, are from HQ H032757. The Oliver Schrott Kommunikation Company (the “Company”) was hired to design and construct a mobile exhibition center upon a chartered non-coastwise-qualified deck barge, formerly a tank barge, which will be used as a floating exhibit hall. In order to facilitate its use as an exhibit hall, the barge will first be modified in the U.S. by adding approximately 50 customized shipping containers that will be secured in several levels to each other and to the barge so as to provide some 10,000 square feet of exhibition space. A specially designed “platform” is being affixed to the barge’s upper deck where it will remain until the charter is terminated. The customized shipping containers which comprise the exhibit hall will be secured to the platform (and in turn to the barge) by “twist locks.” The arrangement will stay in place throughout the charter until termination whereupon the platform and exhibit hall will be removed.

The purpose of the exhibit hall barge will serve as center in which Siemens will conduct trade shows and multi-media presentations of its various products for its present and/or potential customers at different U.S. and

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<sup>19</sup> Formerly 46 U.S.C. App. § 883. Recodified by Pub. L. 109-304, enacted on October 6, 2006.

Canadian ports. The exhibit hall will contain Siemens products and equipment used solely for demonstration purposes. The barge will not carry any passengers during its voyages between ports. Any staff for the exhibit hall will not travel on the barge between ports. The floating exhibit hall will be towed by a coastwise-qualified tug to various U.S. and Canadian ports. Upon completion of the charter, the exhibit hall structure will be removed from the barge in the U.S. but the removal may occur at a location different from the location where the barge was modified.

Under the foregoing scenario, CBP held in HQ H032757, that the exhibit hall structure was vessel equipment rather than merchandise reasoning that “is integral to the operation of the vessel as an exhibit hall.” As explained in the “Law and Analysis” section of this ruling, the foregoing holding and reasoning is contrary to T.D. 49815(4).

#### **ISSUE**

Whether the exhibit hall structure is merchandise within the meaning of 46 U.S.C. § 55102 and 19 U.S.C. § 1401(c).

#### **LAW AND ANALYSIS**

The coastwise laws prohibit the transportation of 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. Such a vessel, after it has obtained a coastwise endorsement from the U.S. Coast Guard, is said to be “coastwise qualified.” 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. See 33 C.F.R. § 2.22(a)(2)(2009).

The coastwise law pertaining to the transportation of merchandise, 46 U.S.C. § 55102, also known as the “Jones Act”, provides in pertinent part, that the transportation of merchandise 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 and documented under the laws of the United States and owned by persons who are citizens of the United States, i.e. a coastwise-qualified vessel, is prohibited. “[M]erchandise includes (1) merchandise owned by the United States Government, a State, or subdivision of a State; and (2) valueless material.” 46 U.S.C. § 55102(a), *et seq.*; see also 19 U.S.C. § 1401(c) (stating that “[t]he word ‘merchandise’ means goods, wares and chattels of every description and includes merchandise the importation of which is prohibited . . .”). The CBP Regulations promulgated under the authority of 46 U.S.C. § 55102 provide that a coastwise transportation of merchandise takes place when merchandise laden at a point embraced within the coastwise laws (“coastwise point”) is unladen at another coastwise point, regardless of origin or ultimate destination. See 19 C.F.R. § 4.80b(a)(2009)

However, not all transportation of merchandise is a coastwise transportation of merchandise. CBP has held that vessel equipment is not merchandise within the meaning of 46 U.S.C. § 55102. See HQ 111892 (Sept. 16, 1991) and HQ 112479 (Jan. 6, 1993). The definition of vessel equipment CBP that has used in its carrier rulings, is based on T.D. 49815(4), which interprets



§ 309 of the Tariff Act of 1930<sup>20</sup> which provides for the duty free withdrawal of supplies and equipment for certain domestic 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.

In HQ H032757, CBP determined that the exhibit hall structure was integral to the vessel’s operation as an exhibit hall. Treasury Decision 49815(4) does not contemplate the activity or “mission” in which the vessel will be engaged; rather, it contemplates the articles that are needed to navigate, operate, or maintain the vessel *itself*. In HQ 115356 (May 22, 2001), a non-coastwise qualified power barge was outfitted with electrical generating equipment at one U.S. port and subsequently, the generating equipment was unladen at a different U.S. port. CBP held that the generating equipment was vessel equipment reasoning, in part, that the equipment was integral to the operation of the vessel as a power barge.

We distinguish the facts of HQ 115356 from the present case. Here, an exhibit hall structure is not needed to navigate, operate, or maintain a deck barge whereas in HQ 115356, generating equipment would be necessary to operate a power barge. Accordingly, the exhibit hall structure would not be considered vessel equipment within the meaning of T.D. 49815(4) and would be considered merchandise within the meaning of § 55102. Therefore, the transportation of the exhibit hall structure aboard the deck barge between two different coastwise points would violate 46 U.S.C. § 55102.

#### **HOLDING**

The exhibit hall structure is merchandise within the meaning of 46 U.S.C. § 55102 and 19 U.S.C. § 1401(c); accordingly, its transportation aboard a non-coastwise qualified deck barge between two different coastwise points would be in violation of 46 U.S.C. § 55102.

#### **EFFECT ON OTHER RULINGS**

HQ H032757, dated July 28, 2008, is hereby modified.

CHARLES RESSIN,  
*Acting Director,*  
*Border Security and Trade Compliance Division.*

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<sup>20</sup> Codified at 19 U.S.C. § 1309.