



DEPARTMENT OF THE TREASURY
U.S. CUSTOMS SERVICE

HQ 113841

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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

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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

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safety of the persons on board." (Treasury Decision 49815(4), March 13, 1939). Customs has specifically ruled that, "Vessel equipment placed aboard a vessel at one United States port may be removed from the vessel at another United States port at a later date without violation of the coastwise laws." (Customs Ruling Letter 102945, November 8, 1978). Decisions as to whether a given article comes within the definition of "vessel equipment" are made on a case by case basis.

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

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

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

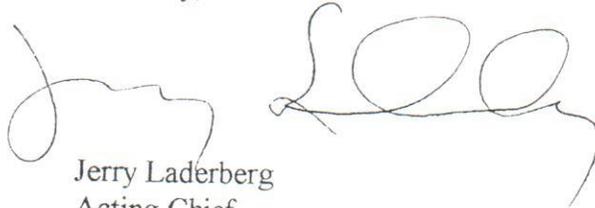
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operation with no specifically identifiable point of unloading, the proposal under consideration involves the transportation of pipeline segments from a shore point in the United States to an operating site on the OCS which is considered to be a second 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.

Sincerely,



Jerry Laderberg
Acting Chief
Entry and Carrier Rulings Branch

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