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

HQ 114435

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CATEGORY: Carriers

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

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

Dear Mr. Duncan:

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

FACTS:

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

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

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

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

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

ISSUE:

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

LAW AND ANALYSIS:

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

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

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

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

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

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

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

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

With respect to the dutiability of all or a portion of the umbilical, Customs has had occasion to rule on similar matters. In Headquarters Letter 106454, dated November 16, 1983, the issue of the dutiability of certain flexible pipeline laid on the seabed between two fixed platforms was considered. Customs determined in those circumstances that duty liability is limited to that portion of the pipeline which rises along the structure of a production platform, beginning with its first point of attachment to the structure. No subsequent rulings have altered this finding.

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

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

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

HOLDING:

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

Sincerely,

Jerry Laderberg
Chief
Entry Procedures and Carriers Branch