

U.S. Department of
Homeland Security

United States
Coast Guard



Director
National Vessel Documentation Center

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16713/5/2
January 12, 2007

Jonathan K. Waldron, Esq.
Blank Rome LLP
Watergate
600 New Hampshire Ave., N.W.
Washington, D.C. 20037

Dear Mr. Waldron:

We refer to your letter of August 31, 2006 and its enclosures as well as to your follow up letter of November 2, 2006 and e-mail of January 9, 2007 with its attachment. You have sought a preliminary rebuild determination on behalf of Keystone Shipping Co. as to the M/V DELAWARE TRADER, official number 652547 (the "Vessel"). Specifically, as described and revealed in greater detail by your initial letter and its accompanying drawings, you are considering the fabrication of a tank boundary to modify the wing tanks in this double bottom tanker so that the vessel will fully meet the technical double hull specifications of the Oil Pollution Act of 1990, P.L. 101-380 ("OPA 90"). In conjunction with this work, a reconfiguration of the port and starboard segregated ballast tanks will occur as a result of building a tank boundary. As you propose to accomplish this work in a foreign shipyard you have requested a preliminary determination in accordance with 46 C.F.R. § 177(g) that the coastwise eligibility of the Vessel will not be adversely affected.

In accordance with the second proviso of 46 App. U.S.C. § 883 (recodified by P.L. 109-304 on October 6, 2006 as 46 U.S.C. §§ 12101(a) and 12132(b)), any vessel that has acquired the lawful right to engage in the coastwise trade by virtue of having been built in or documented under the laws of the United States, and that is later rebuilt outside of the United States, permanently loses its coastwise trading privileges. The test to determine whether a vessel has been rebuilt is set forth at 46 C.F.R. § 67.177 which provides, in general, that a vessel is deemed rebuilt (1) when relevant work (that is, work performed on its hull or superstructure) constitutes a "considerable part" of the hull or superstructure or (2) when a major component of the hull or superstructure, not built in the United States, is added to the vessel.

With regard to the former test, percentage limitations have been established at 46 C.F.R. § 177(b) to ascertain the meaning of "considerable part" as it would apply to vessels of various materials of construction. With regard to vessels the hull and superstructure of which is constructed of steel, the following thresholds have been established:

- (i) A vessel is *deemed* rebuilt if the relevant work constitutes more than 10% of the vessel's steelweight prior to the work;
- (ii) A vessel *may* be considered rebuilt if the relevant work constitutes more than 7.5% but not more than 10% of the vessel's steelweight prior to the work; and
- (iii) A vessel is *not* considered rebuilt if the relevant work constitutes 7.5% or less of the vessel's steelweight prior to the work.

With regard to the latter test, if a major component of the hull or superstructure, not built in the United States, is added to the vessel it will be determined to have been rebuilt regardless of the material of construction.

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You have correctly noted from prior determinations with regard to similar work, that the Coast Guard has determined that the proposed work, which would essentially add a watertight boundary intrinsic to the hull and integral to providing both the flotation envelope and structural integrity of the Vessel, would constitute building upon or substantially altering the hull or superstructure of the Vessel. Accordingly, you have proceeded to address the question of whether or not the proposed work would constitute a "considerable part" of the hull based upon the steelweight parameters set forth above.

We accept the steelweight calculation, as modified by the revised Hull Steel Weight Estimate submitted as an attachment to your e-mail of January 9, 2006, by which it is represented that the added steelweight percentage, which in this case greatly exceeds the percentage of removed steel, would be 9.40%. Consequently, the added steelweight percentage falls within the threshold of work by which the Vessel *may, but need not*, be considered rebuilt. We note your citation to previous favorable determinations which have been in this same range, above it and close below it, and because we find no compelling reason to require a contrary determination in this case, we find that the Vessel would not be considered rebuilt in this case.

In making this determination we are cognizant of the fact (as you have forthrightly brought it to our attention) that the Hull Steel Weight Estimate excludes consideration of a relatively small quantity of material that will be removed for the purpose of creating temporary access areas. The same material, unaltered, will then be put back in place upon completion. Based upon your representation that this same material will be reattached to the Vessel in the same manner and without alteration, addition or depletion of steelweight, and because its inclusion would not in any event cause the overall steelweight percentage to exceed the 10% threshold, we will accept your calculation as presented in this case.

Finally, we note that your initial letter indicated that the steelweight percentage calculation contained therein "includes a 5% margin to account for structural design detail development and other unknown factors". If the actual steelweight added should fall below 9.40% as a consequence of that margin that will not be a concern. However, you are cautioned that this determination should not be assumed to include a margin of error above that percentage.

We turn now to the proposed reconfiguration of the port and starboard ballast tanks. With regard to the installation of required segregated ballast tanks, 46 U.S.C. § 3704 provides as follows:

"A segregated ballast tank, a crude oil washing system, or an inert gas system, required by this chapter or a regulation prescribed under this chapter, on a vessel entitled to engage in the coastwise trade under section 27 of the Merchant Marine Act, 1920 (46 App. U.S.C. § 883), shall be installed in the United States (except the trust territories). A vessel failing to comply with this section may not engage in the coastwise trade."

As your letter indicates, however, the Vessel had segregated ballast tanks installed when it was originally built in the United States and the modifications contemplated in this instance would merely reconfigure the existing tanks over the length of the Vessel rather than having them concentrated amidships. We concur, therefore, that this reconfiguration, which would be undertaken on a voluntary basis in connection with other unrelated modifications, does not constitute the *installation of required* segregated ballast tanks as contemplated by that provision.

In light of all of the above, we find that, though the proposed work implicates the hull of the Vessel and is subject to the rebuild parameters of 46 C.F.R. § 67.177, the work to be performed will not constitute a considerable part of the hull and will not result in a determination that the Vessel has been rebuilt foreign.

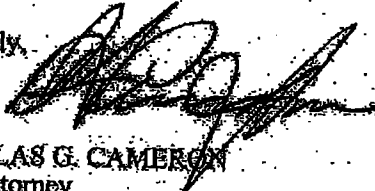
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Furthermore, we find that the segregated ballast tank reconfiguration in a foreign shipyard is not prohibited by 46 U.S.C. § 3704.

Consequently, we determine that the work contemplated in a foreign shipyard would not adversely affect the coastwise eligibility of the Vessel.

You are cautioned that this is a preliminary determination based upon the estimates provided. If the steel work performed exceeds the estimate it is possible that our exercise of discretion in determining that the work to be performed does not constitute a considerable part of the hull could be affected. If at the conclusion of the project the steel work performed exceeds 799.71 long tons, which represents 9.40% of the steel weight prior to the work having been performed, it will be necessary to submit an application for a final determination in accordance with the provisions of 46 C.F.R. § 67.177(e). Moreover, in the event it is determined that the final steel weight added does not exceed those thresholds, we ask that you send written confirmation of that fact.

Sincerely,



DOUGLAS G. CAMERON
Staff Attorney
By direction