International Chamber of Shipping
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ECSA
European Community Shipowners' Associations

ASIAN SHIPOWNERS' ASSOCIATION

21 November 2019

To the attention of: Cargo Security, Carriers and Restricted Merchandise Branch
Office of Trade, Regulations and Rulings
U.S. Customs and Border Protection
90 K St., NE, 10th Floor, Washington D.C. 20229-1177
United States of America

To whom it may concern,

PROPOSED MODIFICATION AND REVOCATION OF RULING LETTERS RELATING TO CBP's APPLICATION OF THE JONES ACT TO THE TRANSPORTATION OF CERTAIN MERCHANDISE AND EQUIPMENT BETWEEN COASTWISE POINTS - CUSTOMS BULLETIN (VOL. 53, NO. 38, AT P. 12)

Joint Submission by:

The International Chamber of Shipping (ICS), the European Community Shipowners' Associations (ECSA) and the Asian Shipowners' Association (ASA)

Introduction

ICS, ECSA and ASA are the global and regional trade associations for shipowners and operators, representing all sectors and trades.

Their membership combined represents more than 90% of the world's merchant tonnage and is comprised of over forty national shipowners' associations from around the world, some of whose member companies include offshore support vessel (OSV) operators providing services to United States' oil production, exploration as well as offshore wind companies within the U.S. Outer Continental Shelf (OCS).

On 23 October 2019, the U.S. Customs and Border Protection (CBP) published a Notice proposing modification and revocation of ruling letters related to the CBP's application of the Jones Act to transportation of certain merchandise and equipment between coastwise points in the United States. In this respect, ICS, ECSA and ASA hereby formally submit comments on behalf of the offshore support vessel (OSV) operators which they represent.

General comments

In broad terms, ICS, ECSA and ASA wish to express their support for the CBP's latest proposed modification and revocation of ruling letters. This latest proposal, which to an extent seems to be aligned with the U.S. Government's aim to achieve

“American energy dominance”, provides clarity to some, but not all, ICS, ECSA and ASA members.

Although ICS, ECSA and ASA remain supportive of the CBP rulemaking process, it is acknowledged that some of the proposals put forward in the latest consultation document seek to provide guidance to the industry on certain aspects of the CBP’s application of the Jones Act. Such clarifications are welcomed and highly appreciated.

Specific comments

Proposed revocation of “Koff” rulings

ICS, ECSA and ASA fully support this proposal, noting that if the “Koff” rulings are applied broadly, the undesired consequence would be that any movement necessary to safely conduct installation, construction or decommissioning work by highly specialised vessels offshore could be prohibited.

Proposed definition of “lifting operations”

ICS, ECSA and ASA are of the view that this proposed definition is essential to ensure that OCS operations are safe and practical, by making a clear distinction between those activities and the transportation of merchandise, which is otherwise covered by the Jones Act.

Outstanding concerns: ‘Merchandise’ vs ‘Vessel equipment’

The above notwithstanding, ICS, ECSA and ASA also wish to highlight some serious concerns about the impact of some of the proposals on Inspections, Repair and Maintenance (IRM) operations.

Based on our current understanding of the proposal, an item would be deemed to be ‘vessel equipment’ or ‘merchandise’ based on “whether the item is integral to vessel performance”, as opposed to being based on “whether the item is critical to the accomplishment of the vessel’s mission”, which is currently the case.

If this interpretation is correct, ICS, ECSA and ASA are concerned that there is the potential that items such as tools, pipes, connectors, cement, etc., carried by non-coastwise qualified service vessels – e.g. liftboats, workboats, repair or other vessels – from a U.S. shore point to a U.S. Outer Continental Shelf (OCS) oil and gas drilling or production site, could be deemed to be “merchandise” rather than “vessel equipment”. Currently, it is understood that such items, as part of the vessel’s mission, are not considered to be “merchandise”.

As a consequence, there is also concern that non-coastwise qualified service vessels will no longer be allowed to carry the above mentioned items, even in the event that they would be used to perform work “from and on” non-coastwise qualified vessels, rather than being unladen for work to be performed on an OCS rig or platform.

While a number of the CBP's proposals could provide certainty for some OSV operators, giving them the confidence to invest in new U.S. offshore projects, these proposals could potentially have the opposite effect for other important offshore vessel operators.

More specifically, from the standpoint of offshore operators providing Inspection, Repair and Maintenance (IRM) services, some of the proposals would likely lead to serious consequences. There is the potential for a significant restriction in activities for those IRM offshore vessel operators, who engage U.S. project crew on board to conduct inspections, repairs and maintenance activities for the subsea structure and use associated U.S. services.

Should the proposal be implemented as suggested by the CBP, it could severely restrict any kind of IRM operations by non-coastwise qualified vessels, since coast-wise qualified supply vessels would be required to transport out all of the equipment related to those operations – if it is not certain whether they are classed as "vessel equipment" – to the non-coastwise qualified vessels in the field. This could lead to significant delays for all those stakeholders conducting offshore energy activities, which rely on those repairs to take place. Such equipment would also need to be returned in the same way at the end of the operation.

ICS, ECSA and ASA are deeply concerned about the impractical nature of this proposed way forward, which could make IRM operations by non-coastwise qualified vessels cost prohibitive and incur delays to others involved in offshore energy operations. Those IRM vessel operators could potentially be unable to compete for such work, despite having made substantial investments toward resources for specialist IRM operations and having committed to providing key services to this vital U.S. industry.

Proposed distinctions to be made between "pipe laying" and "pipe repair"

ICS, ECSA and ASA welcome the proposal to continue to treat pipe laying as non-Jones Act trade if it is "paid out, not unladen". However, the following proposals are potentially concerning:

(a) To ***not*** treat pipe repair in the same way as pipe laying;
(b) To ***not*** take into account "incidental" movements of materials; or
(c) To remove the concept of foreseeability.

The proposals overall introduce uncertainty as to whether existing inspection, repair and maintenance (IRM) vessels can continue to conduct pipe repair operations in the same way, because the proposals frame the tests that need to be met in a new manner, i.e. either "paid out, not unladen" or if such materials qualify as "vessel equipment".

The impact of these proposed changes on IRM operations in the U.S. OCS would likely be severe and protracted, as the number of coastwise qualified vessels of the type and specification required is simply too limited to be able to fully meet the current demands of the U.S offshore oil industry for IRM services.

Proposed revocation and modification to "equipment of the vessel" rulings

ICS, ECSA and ASA support the proposal to clarify the rulings in relation to what constitutes "equipment of the vessel". However, in general terms, it is unclear what the effect of changing the framing of the question from analysing the vessel's "mission" to whether it is "integral to the vessel's performance" will be. ICS, ECSA and ASA are therefore concerned with unforeseen limitations that this may impose.]

Conclusion

ICS, ECSA and ASA fully respect the purpose and principles of the Jones Act, which safeguards the fundamental right of coast-wise qualified vessels to transport merchandise from a U.S. shore point to and from an OSC oil and gas drilling or production site.

We therefore welcome the intention by the CBP to clarify the rulings and their application, but are also concerned about the potential cumulative effect of such proposals on vessels conducting IRM services, if some of their equipment are subsequently reclassified as merchandise.

As relates to pipe laying services, ICS, ECSA and ASA respectfully recommend that, as with pipe repair, this should be treated as non-Jones Act trade if it is "paid out, not unladen".

Likewise, ICS, ECSA and ASA are also of the view that "incidental" movements of materials should be taken into account, while the concept of foreseeability should be retained.

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ICS, ECSA and ASA hope that the CBP will give careful consideration to the comments and recommendations hereby submitted, to safeguard economic growth and energy independence in the United States.

Yours sincerely,



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Mr Guy Platten	Mr Martin Dorsman	Mr Michael Phoon
Secretary General	Secretary General	Secretary General
ICS	ECSA	ASA