U.S. Department of Homeland Security

United States Coast Guard

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16713/5/2
October 20, 2021

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Dear Mr. Papavizas:

I am writing in response to your letter of September 7, 2021, wherein you requested confirmation by the National Vessel Documentation Center (NVDC) that certain vessels to be constructed by Blount Boats, Inc. (Blount) at its shipyard in Warren, Rhode Island, will qualify as U.S. built vessels under 46 C.F.R. § 67.97. I also refer to and have reviewed your correspondence by e-mail with the NVDC subsequent to that letter as well as your letter of September 13, 2021, in which you responded to certain questions put to you.

In brief, the vessels will be constructed using foreign manufactured aluminum panels formed by welding together foreign manufactured extruded aluminum planks (all as further described below). Those panels will form part of the vessels' hulls when constructed at Blount's shipyard and you have requested confirmation that those vessels could be deemed built in the U.S. "regardless of how many panels are included during construction".

The question you have asked at this time is limited to the unlimited use of the materials you have described and which are further discussed herein. As such, and because we do not yet have full information as to the vessels to be constructed, this letter is not, and should not be considered to be, a final U.S. build determination as to those vessels.

The vessels to be constructed will be crew transfer vessels (CTVs) intended to assist during the construction of offshore wind farms and to provide for the transfer of repair and construction crews during their life. Blount is bidding on the construction of several CTVs for various clients to be put to that use.

According to your letter, vessels of the intended design are constructed in Europe in the Grovfjord Mek. Verksted shipyard where the vessels are constructed with aluminum panels which are formed by the assembly and welding together of extruded aluminum planks. Those panels are purchased from the mill in Norway (Hydro Extrusion Norway AS, Gaustadvegen 136, 2240 Magnor, Norway) where the planks, and the panels created from those planks, are produced. The panels are created by assembling the extruded planks and joining them together

by a welding method called 'Friction Stir Welding'. Blount proposes to order the panels from the mill, which would extrude the planks (a standard item) and join them into the ordered panel sizes. Blount proposes to use 47 panels for each vessel ranging in size by standard increments.

You have stated that there are no U.S. mills which can produce these panels using the Friction Stir Welding process. However, you have also stated that there are U.S. mills which can produce planks by other methods and you have also stated that there are U.S. fabrication shops which can do Friction Stir Welding. Finally, you have stated that there are no U.S. shipyards which can do that welding.

In summary, I understand the basic factual underpinnings of your request regarding the use in unlimited quantities of the panels in the vessels to be constructed by Blount to be essentially as follows:

(1) Individual planks (approx. 16" wide) will be produced by the mill in Norway using an extrusion process not dissimilar to the process used to create aluminum bulb flats or angles. Those planks will then be assembled into panels by that same mill by joining them edge-to-edge using the welding method already mentioned. Blount will order the panels in various sizes from the mill in Norway.
(2) There are no U.S. mills which can produce such panels with that welding method. There are U.S. mills which can produce planks by other methods and there are also U.S. fabrication shops which can do that welding. However, there are no U.S. shipyards which can do so.
(3) The panel dimensions will range in "stock" sizes (within broad limits) that the mill in Norway can and does offer to other customers. In this case the panel dimensions will be limited by the dimensions of the shipping containers that will transport them from Norway to the U.S.
(4) The 'as-delivered' panels will be flat, rectangular and, if the process by which the individual planks are joined to form the panels were to be excluded, otherwise unworked.
(5) The panels will subsequently be cut, bent, welded and otherwise worked into shape for assembly into structural hull components, all at the Blount shipyard.

The standards which must be met in order for a vessel to be deemed built in the United States are set forth at 46 C.F.R. § 67.97, as follows:

"To be considered built in the United States a vessel must meet both of the following criteria:

(a) All major components of its hull and superstructure are fabricated in the United States; and
(b) The vessel is assembled entirely in the United States."

Also applicable to my determination in this matter is the longstanding practice and policy which addresses the incorporation of standard construction materials (most commonly steel) acquired

from foreign mills into the hull and superstructure of vessels deemed built in the U.S. This practice and policy is set forth in the document entitled "Review Criteria for Steel Weight Components WRT U.S. Build and Foreign Rebuild Determinations" (Rev: March 7, 2019) and posted on the NVDC website. It provides as follows:

> "It is also the case by long-standing practice that, in general, standard steel stock as delivered from the mill (i.e., plates, bars, channels, angles, bulbs, etc.) are basic construction materials of a vessel, and their weight is intrinsically included in the overall vessel weight. Steel acquired from foreign mills is not included in foreign component weight calculations; provided, that: (1) the steel is delivered from the mill in original (unworked) stock sizes, shapes, and lengths; and (2) all subsequent work on the steel (including marking, cutting, drilling, beveling, bending, shaping, etc. is done by the shipyard or an American fabricator."

Although written to address vessels constructed of steel (the most common material used in the construction of commercial vessels) this policy and practice is no less applicable to vessels constructed of aluminum. This is consistent with the regulation which addresses the foreign rebuilding of vessels at 46 C.F.R. § 67.177. It specifically refers to both steel and aluminum and applies the same standard to both (see, 46 C.F.R. § 67.177(b)).

In the course of our deliberations on this matter we also consulted with the Coast Guard's Naval Architecture Division (NAD) for background on vessel construction and related matters. However, the decision-making authority and responsibility rests with the NVDC.

Consistent with the policy and practice quoted above and published by the NVDC, I believe, and find for the purposes of this determination, that the extruded aluminum planks produced at the mill in Norway closely fit the description of standard stock produced by a foreign mill and as such, would be permitted to be used in unlimited quantities in the construction of a U.S. built vessel if received at the shipyard or a U.S. fabrication shop without having been further worked. The unresolved issue then concerns the panels which are to be assembled from those planks by the mill in Norway and received at the Blount shipyard as assembled panels for incorporation into the hulls of vessels constructed there. The use of those panels in the construction of vessels by Blount at its shipyard must satisfy both criteria of the U.S. build test at 46 C.F.R. § 67.97.

The first criterion of that test requires that all major components of the vessel's hull and superstructure must be fabricated in the U.S. Moreover, since you sought confirmation that the vessels constructed by Blount would qualify as U.S.-built "regardless of how many panels are included during construction" I need not address the permissible limit for foreign fabricated materials of 1.5% of the vessels discounted lightship steel weight.

The closest analogous case appears to have been addressed by the NVDC determination letter issued to Dakota Creek Industries, Inc. dated August 31, 2017, in connection with its construction of the vessel AMERICA'S FINEST. That vessel had been constructed by the installation of foreign-sourced cold-formed compound curvature plates in its hull. These plates

(which were themselves standard steel stock) were cold-formed to curvatures custom-designed for and to create the shape of the hull of an identified vessel. It was acknowledged (in retrospect) in that case that these plates had, thus, undergone fabrication (the cold-forming process) outside of the United States and should have been accounted for in the steel weight calculation for major components of that vessel's hull.

In this case the extruded aluminum planks are clearly (and I have already found them to be) standard mill stock. It also seems undeniable that if received at the shipyard in the U.S. from the mill in Norway in the form of panels, they will have undergone a fabrication process when those planks are welded together to form those panels. However, it is argued (and with some basis) that those panels, themselves, are standard and commonly-available mill stock and, unlike the cold-formed compound curvature plates used by Dakota Creek Industries, Inc., are not custom-fabricated for use on any particular vessel or vessel design. Instead, they will be cut, bent and welded to shape for assembly into the vessel at the Blount shipyard.

So the question is what category these panels should fall into: (1) standard mill stock, even though the planks used to create them have undergone fabrication abroad, or (2) fabricated components of the hull, even though not custom-tailored by that fabrication to a particular vessel or vessel design.

I find that the facts in this case are actually more fittingly resolved by application of the second criterion of the U.S. build test at 46 C.F.R. § 67.97. And since both criteria must be satisfied in order for a vessel to be deemed built in the United States I need not address the above question at this time and on these facts. I therefore decline to do so.

The second criterion of the U.S. built test requires that the vessel must be "assembled entirely in the United States." The most comprehensive discussion of this requirement may be found in the case of Philadelphia Metal Trades Council v. Allen, 2008 WL 400380 E.D. Pa. (August 21, 2008) which addressed vessels constructed at the Aker Philadelphia Shipyard (hereinafter Aker).

In Aker, the NVDC had determined that modules containing various systems of outfit items (i.e., not components of the hull or superstructure) could be pre-assembled and manufactured at a foreign location as long as those modules were assembled into the vessel in the United States (see, NVDC Determination Letters dated December 6, 2004, and May 24, 2006). In an appeal of the latter Determination Letter the Coast guard affirmed that NVDC determination and denied the appeal on November 15, 2006. After extensive discussion of the "assembled entirely" requirement by the Aker Court it affirmed the NVDC (and Coast Guard) positions.

I do not refer to Aker in this case in any way to suggest that it serves as binding legal precedent which, by itself, is determinative as to the facts presented here. The facts there (involving pre-assembled modules that were acknowledged to have nothing to do with the hull or superstructure of the vessel) were clearly quite different from the facts presented here. Indeed, I believe the fact that the panels in this case will be integral to, in fact basic building blocks of, the hull of the

vessels differentiates this case from the facts of Aker. I also believe that, because of that difference, the discussion there suggests that a different outcome would be appropriate here.

In discussing those modules as it arrived at its decision that the pre-assembly of those modules did not adversely implicate the second criterion of the regulatory U.S. build test, the Aker Court engaged in an extensive review of the legislative and regulatory history, and administrative application, of that criterion. It is clear from that discussion that nearly all, if not all, questions concerning the "assembled entirely" requirement have focused on the incorporation into vessels of pre-assembled items of outfit, such as, e.g., propulsion systems and similar assemblies which are unrelated to a vessel's hull or superstructure. In fact, the Aker Court quoted from the Coast Guard's own explanation of the "assembled entirely" requirement in response to comments received during the notice and comment phase of the current regulation, wherein the Coast Guard stated as follows:

> "It is not necessary for the Coast Guard to become involved in questions of where items **which are not an integral part of the hull or superstructure** were procured in order to answer the basic question of whether a vessel can reasonably be considered the product of a U.S. shipyard." (emphasis added) 48 Fed. Reg. 20,251 (May 5, 1983)

The negative implication of that explanation must surely mean, at the very least, that different considerations would (and should) apply where the issue is the foreign assembly of parts or materials that ARE, or ARE to become, integral parts of the hull or superstructure.

I find that the panels at issue here are (or will be) integral parts of the hull of the vessels. In fact, if these basic building blocks of the hull (i.e., the panels) were permitted to be assembled outside of the United States, I believe that it would create not unreasonable concerns and questions about the efficacy and usefulness of that standard going forward when applied to the hulls or superstructures of U.S. built vessels.

Consequently, I conclude that use of these panels in the unlimited quantities proposed, if pre-assembled at a location outside of the United States, would violate the second criterion of the U.S. build test at 46 C.F.R. § 67.97.

However, by your e-mail of September 13, 2021, you supplemented your initial application and asked us to confirm that panels produced from planks manufactured at the mill in Norway but assembled by joining them into panels at a mill or fabricator in the United States could be incorporated into the vessels to be built by Blount at its shipyard without running afoul of 46 C.F.R. § 67.97.

That is confirmed. 46 C.F.R. § 67.97 requires assembly entirely in the United States. It doesn't specify the location or type of facility in the United States where that work must be done.

Moreover, as I found earlier, the planks themselves are standard mill stock and, as such, may be used in unlimited quantities.

Sincerely,

Christina G. Washburn

Christina G. Washburn
Director