



16713/5/2  
March 6, 2019

Greggory B. Mendenhall, Esq.  
G B Mendenhall Pllc  
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Dear Mr. Mendenhall:

I refer to your letter of December 5, 2018, and the supporting exhibits which accompanied it. You have requested a determination pursuant to 46 C.F.R. § 67.97 that, based upon the proposed procurement and build details for the construction by Keppel AMFELS, LLC ("Keppel") at its Brownsville, Texas shipyard of two vessels (the "Vessels") under a Vessel Construction Agreement with The Pasha Group, the vessels at issue will be deemed to have been built in the United States and as such eligible to engage in the coastwise trades of the United States.

The Vessels are two (2) 2,525 TEU class container carriers. They will be dual fuel, capable of burning natural gas (re-gasified liquefied natural gas, or LNG) as a fuel for propulsion and auxiliary purposes and capable of operating on heavy fuel oil or marine gas oil. They will be constructed of steel with a bulbous bow, a transom stern, flush decker type with sunken stern and forecandle deck, open water type stern frame, single rudder and single screw propeller driven by a dual diesel engine. Their approximate steel weights as reported by your submission, will be 10,414.92 MT.

Keppel intends to purchase most of the equipment and material necessary to build and fully assemble the Vessels at its Brownsville, Texas shipyard. The Vessels are intended for use in the coastwise trades of the United States and you are seeking confirmation that the proposed procurement and build details are consistent with applicable United States build requirements and that their construction in the manner described will not adversely affect their United States build determination and eligibility to operate in the intended trades.

The standards that 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."

In addition, the following definitions at 46 C.F.R. § 67.3 are pertinent to the application of those criteria:

**“Hull”** means the shell, or outer casing, and internal structure below the main deck which provide both the flotation envelope and structural integrity of the vessel in its normal operations...(portions omitted)”

and

**“Superstructure”** means the main deck and any other structural part above the main deck.”

Your letter evidences a clear understanding of the criteria and with its supporting exhibits, proceeds to raise and address, and request determinations as to certain specific aspects of the proposed procurement and construction of the subject Vessels. As an aid to our review of your proposal, and consistent with our established practice, we requested a review and analysis of the materials you submitted by the Coast Guard’s Naval Architecture Division (“NAD”).

### **Specialty Steel Plates and Angles**

You have reported that certain materials (high strength flat plates and inverted angles) will be imported and received at Keppel’s shipyard as rolled raw stock from foreign steel mills but that all fabrication and assembly processes, including marking, cutting, drilling, beveling, bending or otherwise preparing the steel form use in the Vessels will be performed by and at Keppel’s shipyard. Under those circumstances, although the weight of this foreign-source steel stock would be included in the calculation of the discounted steel weight of the Vessels, it would not be included in the steel weight calculation of foreign fabricated components.

This practice is consistent with numerous past determinations that have held that there is no regulatory or statutory limit on the amount of foreign materials, such as steel, which may be used in the construction of a vessel considered to be built in the United States; provided that, as your submission has represented will be the case with the Vessels at issue here, the steel is not worked in any way and that it is imported in standard shapes and sizes as produced at the steel mill.

### **Foreign-Fabricated Components of the Hull and Superstructure**

With regard to the foreign-fabricated components you have identified that would be included in the foreign steel weight calculations (watertight doors and hatches, stern boss, manhole coamings and covers, and bottom drain plugs), with a total weight of 50.02 Mtons, we have determined, based on the review and analysis of the NAD, to exclude from that total the weight of the manhole coamings and covers (8.95 Mtons). These have been observed to be internal covers (not

16713/8/2  
March 6, 2019

weather-exposed load line covers). The revised total weight of foreign-fabricated components would therefore be 41.07 Mtons.

The NAD has calculated the discounted steel weight of each vessel to be 10,386.33 Mtons. Consequently, the 41.07 Mtons of such items is well within the allowable 1.5% fabricated foreign component weight limit (which limit would be 155.9 Mtons).

**Foreign-Fabricated and Assembled Equipment and Outfitting**

Based upon the review and analysis of the NAD, the list you have set forth of the foreign-fabricated and assembled modules, sub-assemblies, equipment and outfitting to be used in the construction of the Vessels, including the King Support Rudder, is accepted. These items would, therefore, not be included in steel weight calculations. You have indicated that a precise list of modules and sub-assemblies is unavailable at this time. However, in light of your description of all of the categories of such units, and your representation that all will be free-standing, self-supporting and independent of the Vessel's structure, they are accepted as well.

In accordance with past determinations, as well as the decision in Philadelphia Metal Trades Council v. Allen, 2008 WL 4003380 (E.D. Pa., August 21, 2008), I do not find that the requirements of 46 C.F.R § 67.97(b) are adversely implicated by the use of the foreign-fabricated and assembled items described.

In light of the foregoing and based upon the information you have provided, I confirm that Keppel's proposed procurement and build details for the Vessels, as described in your letter of December 5, 2018, and its supporting exhibits, will not adversely affect their status as having been built in the United States at Keppel's shipyard in Brownsville, Texas and, as such, their eligibility to operate in the coastwise trades of the United States.

Sincerely,



Christina G. Washburn  
Director