



16713/5/3  
December 21, 2016

Mr. William L. Oppenheimer  
Vice President, Maintenance  
Kirby Offshore Marine, LLC  
3245 Richmond Terrace  
Staten Island, NY 10303

Dear Mr. Oppenheimer:

I am writing in response to your letter of November 14, 2016, concerning the barge T/B DBL 55, official number 1229343 (the "Barge").

Your letter recounted that the Barge was involved in an incident in the course of a voyage from Ketchikan, Alaska, to Burnaby, British Columbia, Canada, resulting in significant damage to the bottom plating and double bottom structure of the Barge. The Barge was towed to Vancouver, B.C. where it was dry docked and an order was issued by Transport Canada requiring that the barge be repaired before it will be allowed to depart Canada.

You have requested confirmation, pursuant to 46 C.F.R. § 67.177, that the repairs proposed to be done to the Barge in Canada will not result in a determination that the Barge had been rebuilt foreign. The consequence of such a determination would, as you recognize, render the Barge ineligible for a coastwise endorsement without which it would be prohibited from engaging in the coastwise trades of the United States.

As is also implicit in your request, you understand, correctly, that the fact that the Barge suffered a casualty which forced it to seek refuge in a foreign port for repairs does not exempt or exclude that work from the requirements and calculations of 46 C.F.R. § 67.177 nor of the consequences of a determination that, as a result of that work, the Barge may have been rebuilt foreign.

46 C.F.R. § 67.177 provides, in pertinent part (and with emphasis added), as follows:

"A vessel is deemed rebuilt foreign when any considerable part of its hull or superstructure is built upon or substantially altered outside of the United States. In determining whether a vessel is rebuilt foreign, the following parameters apply:

- (a) Regardless of its material of construction, a vessel is deemed rebuilt **when a major component of the hull or superstructure not built in the United States is added to the vessel.**
- (b) For a vessel of which the hull and superstructure is constructed of steel or aluminum ---



- (3) A vessel **is not considered rebuilt** when work performed on its hull or superstructure **constitutes 7.5 percent or less** of the vessel's steelweight prior to the work."

As has been well-established by past practice and affirmed by legal precedent, the two tests set forth in subparagraphs (a) and (b) of 46 C.F.R. § 67.177 are separate and independent of one another and must both be met in order for a determination to be made that a vessel has not been rebuilt foreign.

As a preliminary matter I note that the calculations you have submitted in support of your determination of the steelweight, or discounted lightship weight, of the Barge prior to the work were conducted with respect to a different barge than the one at issue in this application --- T/B DBL 54, official number 1221438. However, you have also submitted a Coast Guard Stability Letter dated June 22, 2010, which confirms that the T/B DBL 55 and the T/B DBL 54, hull numbers 678 and 677, respectively, are sister vessels. On that basis, I have determined that we will accept those calculations as applicable to the Barge at issue in this application.

With regard to those calculations, your submissions were referred to the Coast Guard's Naval Architecture Division ("NAD") for their analysis and conclusions.

Drawing upon that analysis and those conclusions, I have also determined that we will accept the calculation of the discounted lightship weight of the Barge, prior to the work, as 1,994.56 LTs. Consequently, on the basis of that discounted lightship weight, the upper limit on permitted foreign steel work (up to 7.5% of the discounted lightship weight prior to the work, per 46 C.F.R. § 67.177 (b)(3)) would be 149.6 LTs.

You have provided calculations of the estimated steel work to be done (based upon the weight of the steel to be added which, per your e-mail of November 21, 2016, would marginally exceed the weight of the steel to be removed). That estimate is 126.7 LTs which, at 6.35%, is below the threshold set forth above by a margin of 22.9 LTs.

However, because what you have submitted is a pre-repair estimate based upon certain assumptions and it is understandably difficult to accurately predict repair weights on a badly damaged structure, it was recommended by the NAD that you be required to confirm to this office in writing the actual steel weight of the work done upon the completion of that work. I concur with that recommendation and am issuing this letter subject to receipt of that confirmation.

Finally, I also note the representation made in your e-mail of November 21, 2016, submitted in response to question from this office, that "the shipyard has been given explicit instructions that all plate and structural steel, whether installed singularly or as a module, must weigh less than 1.5% of the discounted lightship weight." These instructions were given to ensure compliance with the requirements of 46 C.F.R. § 67.177(a) with regard to the addition of major components of a vessel which are not built in the United States. However, I also ask that you confirm to this office in writing upon the completion of the work that the

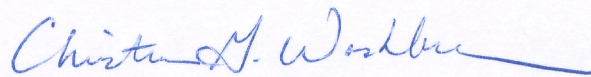


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shipyard complied with those instructions. Again, I am issuing this letter subject to receipt of that confirmation.

In light of all of the above, however, and subject to receipt of the written confirmations required hereby upon completion of the work, I confirm that, upon completion of the work to the Barge in Canada as described in your submissions, the Barge would not be deemed to have been rebuilt foreign and, consequently, would remain eligible, notwithstanding that work, to participate in the coastwise trades of the United States as a vessel built in the United States.

Sincerely,



Christina G. Washburn  
Director