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U.S. VIRGIN ISLANDS ANNOUNCES THE FIRST INTERNATIONAL U.S. FLAG OPEN SHIP REGISTRY AND AMBITIOUS PLAN TO ENERGIZE THE U.S. COMMERCIAL MARITIME SECTOR

On February 1, 2022 the Governor of the U.S. Virgin Islands (USVI) signed an agreement with the Northeast Maritime Institute's Center for Ocean Policy and Economics (COPE) to establish the first international open ship registry in the United States. Press releases in January and February indicate that the new ship registry will be run by the USVI in partnership with the Northeast Maritime Institute, a private maritime college based in Massachusetts.

According to the recent press releases, the policy for this USVI open ship registry is outlined in *A Revitalization Plan for US Maritime Trade, Commerce and Strategic Competition* ("The Revitalization Plan" or "Plan") drafted by COPE.¹ The six point Revitalization Plan proposes to lay a foundation for revival of the U.S. commercial maritime sector, to help resolve America's supply chain crisis, and to ensure maritime sovereignty and security.²

The Revitalization Plan outlines six action items:

1. Launching the international USVI open ship registry;³
2. Development of a short sea transshipment hub in the Caribbean Sea region to alleviate supply chain congestion;⁴
3. Establishing a green shipping strategy, including decarbonization of the U.S.-flagged fleet;⁵
4. Creating a Maritime Venture Capital Fund to finance commercially advanced technologies that solve maritime and ocean industry problems with a focus on environmental vulnerabilities;⁶
5. Building public and private international partnerships to address strategic maritime issues, increase transparency and enforce legal and ethical standards;⁷ and
6. Modernizing the maritime workforce by deploying state of the art education and training tools in the US and abroad.⁸

It will be interesting to follow the development of the new USVI vessel registry, which would be distinct from the existing U.S. flag registry. It raises some unusual legal questions about the USVI and the Northeast Maritime Institute's authority to create and manage an international vessel registry. It is not clear, at this time, whether the U.S. federal government, the U.S. Coast Guard, and vessel classification societies are on board with this new registry. Descriptions of the USVI vessel registry indicate that proponents of the registry believe vessels trading under the USVI flag would have enhanced security protection from the U.S. Navy,⁹ if necessary, although the legal authority for this point is not readily apparent.

Some commentators have questioned whether U.S. law permits the USVI to create an international vessel registry separate from the U.S. vessel documentation system in place under existing U.S. federal law. The USVI is a U.S.

¹ *A Revitalization Plan for US Maritime Trade, Commerce and Strategic Competition*, Northeast Maritime Institute's Center for Ocean Policy and Economics, at p. 5 (Dec. 19, 2021), available at <https://thecopeco.org/wp-content/uploads/2021/12/A-Revitalization-Plan-for-U.S.-Maritime-Trade-Commerce-and-Strategic-Competition-NMI-COPE.pdf>.

² *Id.*, at p.1.

³ *Id.*, at p.6.

⁴ *Id.*, at p.12.

⁵ *Id.*, at p.28.

⁶ *Id.*, at p.21.

⁷ *Id.*, at p.24.

⁸ *Id.*, at p.18.

⁹ *Id.*, at p.7.

territory, so it is not a U.S. state and it does not act with the authority of the U.S. federal government. The U.S. coastwise trade laws, commonly known as the Jones Act, carve out an exception for the USVI. Under this exception, transportation of merchandise and passengers between the USVI and other U.S. ports does not require a U.S. flag vessel with a coastwise trade endorsement. The Jones Act prohibits transportation of merchandise between coastwise points in the United States on any vessel that is not: (1) owned by U.S. citizens; (2) built in the U.S.; (3) documented under the laws of the U.S.; and (4) crewed by U.S. licensed mariners. It appears the USVI flag vessels would not be entitled to engage in U.S. coastwise trade, but of course the new registry is intended for vessels engaged in international trade.

Currently, the largest vessel registries in the world are open registries, meaning that anyone can register a vessel there without having substantial ties to the flag state country that maintains the registry.

The Revitalization Plan published by COPE proposes several arguments in support of the new USVI flag registry. The Plan says the new registry would allow a U.S. territory flag, without U.S. ties, to fly on a much larger fleet of vessels and engage in international trade around the world.¹⁰ The Plan argues that "[n]ew international standards are required to create a safer, cleaner, and more transparent shipping industry."¹¹ The Plan states it would compete with China's Maritime Silk Road and provide the U.S. government with a platform for further intervention on the high seas to counter a wide variety of illicit activities.¹² The Plan also claims that formation of the registry could facilitate growth of the U.S. commercial fleet and increase the U.S.'s role in influencing the practices of international flags.¹³

As this is a developing initiative, HFW will continue to monitor and provide updates as they arise in relation to this USVI open vessel registry and The Revitalization Plan.

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¹⁰ *Id.*, at p. 6-7.

¹¹ *Id.*, at p.6.

¹² *Id.* at p.9. Referencing the sea route part of the Belt and Road Initiative which is a Chinese strategic initiative to increase investment and foster collaboration across the historic Silk Road.

¹³ *Id.* at p.6.

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