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STOPIA 2006 AND TOPIA 2006

Note by the Director

Summary:

At its June 2007 session, the Administrative Council, acting on behalf of the Assembly, discussed the operational aspects of STOPIA 2006 and TOPIA 2006 on the basis of a document submitted by one delegation, suggesting that clarification be sought as to whether a better guarantee of compensation under these agreements could be provided. The Administrative Council instructed the Director to investigate the issue further and report to the Assembly at its next session. This document provides factual information about the numbers of ships entered and not entered in STOPIA 2006 and TOPIA 2006 and sets out the results of the investigation by the Director.

Action to be taken: Information to be noted.

1 Introduction

- 1.1 At its 3rd session, held in June 2007, the Administrative Council, acting on behalf of the Assembly, discussed the operational aspects of the Small Tanker Owners Pollution Indemnification Agreement (STOPIA 2006) and the Tanker Owners Pollution Indemnification Agreement (TOPIA 2006) on the basis of a document submitted by the delegation of the Netherlands (92FUND/A/ES.12/13). In the document it was suggested that clarification be sought as to whether a better guarantee of compensation could be provided, for example, by amending the original versions of STOPIA 2006 and TOPIA 2006. The Council instructed the Director to investigate the issue further and report to the Assembly at its next session.
- 1.2 The Director has held discussions with the International Group of P&I Clubs, and received information from the International Group about the numbers of ships entered in STOPIA 2006 and TOPIA 2006.
- 1.3 On the basis of this information and the discussions held, the Director's views in respect of the operational aspects of STOPIA 2006 and TOPIA 2006 are set out below.

2 Number of tankers entered in International Group Clubs that are entered in STOPIA 2006 and of those that are not entered in STOPIA 2006

- 2.1 STOPIA 2006 applies to pollution damage in States in which the 1992 Fund Convention (1992 FC) is in force and is a contract between owners of small tankers to increase, on a voluntary

basis, the limitation amount applicable to the tanker under the 1992 Civil Liability Convention (1992 CLC).

The concept of 'Relevant Ship' under STOPIA 2006

- 2.2 STOPIA 2006 provides that all tankers will be considered a 'Relevant Ship' if they are 29 548 tons or less, are entered in one of the P&I Clubs which are members of the International Group of P&I Clubs and are reinsured through the pooling arrangements of the International Group (Clause III (B)).

List of ships entered in STOPIA 2006

- 2.3 The International Group is required to notify the 1992 Fund every six months of the names of all ships entered in each International Group Club which are also entered in STOPIA 2006, in accordance with Article 9D of the Memorandum of Understanding (MOU) between the Funds and the International Group of P&I Clubs regarding the operation of STOPIA 2006 and TOPIA 2006.
- 2.4 The list of ships provided by the International Group to the Fund in the first half of 2007 contained 5 680 tankers entered in International Group Clubs and entered in STOPIA 2006. These figures were also presented to the 37th session of the Executive Committee, held in June 2007 (document 92FUND/EXC.37/8).
- 2.5 In August 2007 the International Group provided to the Fund a revised list of ships entered in STOPIA 2006, which contained 4 540 ships. The International Group explained that the decrease of 1 140 ships compared to the initial list was a result of the fact that the initial list erroneously also contained tankers that were not relevant for the purpose of the 1992 CLC or 1992 FC, such as LNG tankers, LPG tankers and certain chemical tankers. This revised list included the coastal tankers referred to in paragraphs 2.7-2.9.
- 2.6 The International Group also reported to the IOPC Funds in September 2007 that the number of 'Relevant Ships' entered in a P&I Club and not entered in STOPIA 2006 was nil and that the number of 'Relevant Ships' entered in STOPIA 2006 which ceased to be in STOPIA 2006 whilst insured by a P&I Club was also nil.

Situation in respect of coastal tankers

- 2.7 The present situation with regard to STOPIA 2006 and tankers insured with a P&I Club belonging to the International Group but not participating in the International Group's pooling arrangements, in particular certain Japanese coastal tankers entered in the Japan P&I Club, is as follows:

Year	Number of Japanese coastal tankers entered in Japan P&I Club	Entered in STOPIA 2006	% entered in STOPIA 2006 total
2007/2008	609	250	41

Year	Number of Japanese coastal tankers > than 200 gt in Japan P&I Club	Entered in STOPIA 2006	% entered in STOPIA 2006
2007/2008	178	128	72

- 2.8 As can be seen from the tables, out of the 609 Japanese coastal tankers, 250 or 41% have been entered in STOPIA 2006 and 359 or 59% have not. The majority of these tankers (431 out of 609) are small ships of less than 200 GT. Of the 178 Japanese coastal tankers which are over 200 GT 128 or 72 % are entered in STOPIA 2006.

- 2.9 In addition, the figure of 12 coastal tankers that had been reported in the initial list as entered in the Steamship Mutual Underwriting Association (Bermuda) Limited and not entered in STOPIA 2006 was changed to two tankers in the revised list (cf document 92FUND/EXC.37/8, paragraph 2.6).

Summary: total numbers of ships entered and not entered in STOPIA 2006

- 2.10 In summary, the revised total number of small tankers entered in the International Group of P&I Clubs and reinsured through the Group's pooling arrangements, and therefore automatically entered in STOPIA 2006, and those that are entered in one of the International Group Clubs but not entered in STOPIA 2006 because they are not reinsured through the pooling arrangements, are as set out in the table below. It should be noted that, according to the information received from the International Group, there are no 'Relevant Ships' entered with a P&I Club belonging to the International Group that are not entered in STOPIA 2006, and neither are there 'Relevant Ships' which ceased to be entered in STOPIA 2006 whilst insured by a P&I Club belonging to the International Group. It should further be noted that the figure of 4540 ships entered in STOPIA 2006 includes 250 ships which are not 'Relevant Ships', but are nevertheless entered in STOPIA 2006 by virtue of a written agreement between the shipowner and the P&I Club involved.

Year	Number of tankers entered in STOPIA 2006	Number of tankers not entered in STOPIA 2006	Total	% of total entered in STOPIA 2006
2007/08	4540	361	4901	92.6

3 Number of tankers entered in International Group Clubs that are entered in TOPIA 2006 and of those that are not entered in TOPIA 2006

- 3.1 TOPIA 2006 applies to pollution damage in States in which the 2003 Supplementary Fund Protocol is in force, and is a contract between owners of tankers to indemnify, on a voluntary basis, the Supplementary Fund for 50% of the compensation amounts paid by it under the Supplementary Fund Protocol.

The concept of 'Relevant Ship' under TOPIA 2006

- 3.2 TOPIA 2006 provides that all tankers will be considered a 'Relevant Ship' if they are entered in one of the P&I Clubs which are members of the International Group of P&I Clubs and reinsured through the pooling arrangements of the International Group (Clause III (B)).

List of ships entered in TOPIA 2006

- 3.3 Each P&I Club which is a member of the International Group is required to notify the Supplementary Fund of any 'Relevant Ship' which is accepted for entry in that Club without being or becoming entered in TOPIA 2006, as well as of any Ship which has been entered in TOPIA 2006 and which ceases to be entered in TOPIA 2006 whilst remaining insured by that Club, in accordance with Article 10D of the MOU between the Funds and the International Group of P&I Clubs regarding the operation of STOPIA 2006 and TOPIA 2006.
- 3.4 In September 2007 the International Group reported to the Funds that the number of 'Relevant Ships' entered in a P&I Club and not entered in TOPIA 2006 was nil, and that the number of 'Relevant Ships' entered in TOPIA 2006 and which ceased to be in TOPIA 2006 whilst insured by a P&I Club was also nil.

Situation in respect of coastal tankers

- 3.5 The International Group also reported to the Funds that the Japan P&I Club had informed it that the coastal tankers entered in the Japan P&I Club that have entered STOPIA 2006 by written agreement are not also entered in TOPIA 2006, because the size of these coastal tankers is generally so small that it is considered most unlikely that the costs of claims for pollution damage arising from an incident with such a tanker will exceed the 1992 Fund limit, ie 203 million SDR. The number of these tankers not entered in TOPIA 2006 because they are not participating in the pooling arrangements of the International Group is 611, made up of 609 Japanese coastal tankers (paragraph 2.7) and 2 entered with Steamship Mutual Underwriting Association (Bermuda) Limited (paragraph 2.9).

4 The International Group of P&I Clubs' position in respect of the operational aspects of STOPIA 2006 and TOPIA 2006

- 4.1 In the discussions held with the Director, the International Group stressed the importance of the definition of 'Relevant Ship', being the core definition of STOPIA 2006 and TOPIA 2006. According to that definition, a ship can only be a 'Relevant Ship' under the Agreements if it is reinsured through the pooling arrangements of the International Group. The underlying rationale is that if a ship is not reinsured through the pooling arrangements of the International Group, it is not contributing to the costs of operating this Pool and the underlying reinsurance and, therefore, should not have the benefit of being protected by the Pool and the underlying reinsurance.
- 4.2 The International Group pointed out that in addition there is the possibility of an agreement between the shipowner and the P&I Club involved whereby a ship which would not otherwise be a 'Relevant Ship' is deemed to be a 'Relevant Ship' for the purpose of STOPIA 2006 and/or TOPIA 2006.
- 4.3 Clauses 9C and 10C of the Memorandum of Understanding between the International Group of P&I Clubs and the 1992 Fund and Supplementary Fund (MOU) provide for automatic entry of a 'Relevant Ship' in the respective agreements, but expressly recognise the right of the shipowner to decline to participate in the Agreements, or to withdraw from them. In the view of the International Group, this is a fundamental right of the shipowner and any attempt to compel participation would be unsustainable, particularly from a competition law perspective, also bearing in mind the significant general competition law issues arising in relation to the operation of the International Group.
- 4.4 The International Group has also stressed that it was pointed out from the outset of the discussions which led to the implementation of STOPIA 2006 and TOPIA 2006 that, whilst the great majority of tanker tonnage would in practice be covered by the Agreements, not all tankers would be covered. This was made clear both in respect of the relatively small category of ships which are not 'Relevant Ships' and in respect of the express recognition in the MOU of the possibility for shipowners to not participate in, or withdraw from, the Agreements.
- 4.5 In the opinion of the International Group, the figures given for the years 2005 – 2007 show that the P&I Clubs belonging to the International Group have been successful in their encouragement of owners of non-'Relevant Ships' to sign up to the Agreements. The International Group stressed that those P&I Clubs belonging to the International Group which hold entries for non-'Relevant Ships' will continue these efforts in the future.
- 4.6 The International Group also pointed out that currently there are no 'Relevant Ships' insured with P&I Clubs belonging to the International Group which are not entered in STOPIA 2006 and/or TOPIA 2006.

- 4.7 In conclusion, the International Group did not consider any amendments to STOPIA 2006 and/or TOPIA 2006 or the MOU necessary or desirable. It was of the opinion that, should the possibility of non-entry be deleted from the Agreements, in accordance with the suggestion made in document 92FUND/A/ES.12/13, paragraph 3.2, owners not wishing to be party to the Agreement would simply give an immediate notice of cessor of entry which would, in the International Group's view, be a rather pointless exercise. The International Group failed therefore to see how the suggested amendment would in any way strengthen the operability of STOPIA 2006 and TOPIA 2006.
- 4.8 Finally the International Group pointed out that STOPIA 2006 and TOPIA 2006 contained provisions regarding a review in 2016 of the Agreements and their effectiveness in practice and expressed a strong preference to await the outcome of that.

5 Director's analysis

- 5.1 Document 92FUND/A/ES.12/13 submitted by the Netherlands pointed out that, in the context of agreeing the final editorial amendments to the MOU relating to STOPIA 2006 and TOPIA 2006, a change had been made to the final draft of a provision of the MOU relating to TOPIA 2006. Apart from providing for a possibility of 'cessor of entry' in TOPIA 2006 as was the case in the original version, the final version of the MOU also provided for 'non-entry' in TOPIA 2006, the which provision did not appear in the draft text of the MOU which had been submitted to the Assemblies of the 1992 Fund and of the Supplementary Fund at their sessions held in February/March 2006.
- 5.2 This amendment was made to bring the part of the text of the MOU relating to TOPIA 2006 in line with the part of the text of the MOU relating to STOPIA 2006, which had already in the original version contained a provision regarding both non-entry and cessor of entry. Alignment of the texts relating to the respective agreements was considered important since both agreements were meant to work in tandem.
- 5.3 The Director believes that alignment of the two parts of the text of the MOU is important from the point of view of uniformity and legal clarity. A difference as was present in the original text would, however, in his view not be unworkable, especially taking into account that STOPIA 2006 is an arrangement for small tankers, whereas TOPIA 2006 is an arrangement for incidents of extreme magnitude. It is therefore, although not impossible, not very likely that both agreements will apply in respect of one incident.
- 5.4 The Director agrees however with the International Group that a mere deletion of the words 'non-entry' in article 10F of the MOU would not be of real benefit to the operation of TOPIA 2006 in practice, since the possibility for a shipowner to withdraw from the Agreement would still exist.
- 5.5 As to any other possible amendments to strengthen the operability of STOPIA 2006 and TOPIA 2006, the Director would like to make the following observations.
- 5.6 Firstly, the Director understands, from the perspective of the shipping and insurance industry, the concept of 'Relevant Ship', in the sense that it seems logical that ships which are not contributing to the pooling arrangements should not benefit from those arrangements. Secondly, the Director understands, from the perspective of the shipping and insurance industry, that to require all shipowners entered with a P&I Club belonging to the International Group to be a party to STOPIA 2006 and/or TOPIA 2006 might cause problems from a competition law point of view.
- 5.7 There is, however, also the perspective of the international community, which has a legitimate interest to ensure that as many ships as possible are covered by international arrangements aimed at ensuring an equitable sharing of the burden of the international compensation regime between the shipping industry and the oil receiving industry, such as STOPIA 2006 and TOPIA 2006. From that perspective it is unfortunate that a significant number of ships is not covered in practice, and that apparently the International Group of P&I Clubs does not see a possibility of making sure that all of these ships will indeed be entered in STOPIA 2006 and TOPIA. 2006. In

the Director's view this illustrates, in full recognition however of the commendable efforts made by the International Group, the inherent weaknesses of any voluntary regime.

- 5.8 The only way to ensure the greatest possible coverage of STOPIA 2006 and TOPIA 2006 would, however, be for all P&I Clubs belonging to the International Group to compel all tanker owners entered with those Clubs to be a party to these agreements. This solution, if possible at all, might raise serious issues of competition law and would certainly not have the support of the International Group of P&I Clubs. To pursue this might therefore even endanger the availability of the protection which exists under the present agreements.
- 5.9 In the present situation, given the fact that the great majority of tanker tonnage is actually entered in STOPIA 2006 and TOPIA 2006, as set out in paragraphs 2 and 3 above, this could well prove to be an unwise course of action.
- 5.10 In conclusion therefore, the Director believes it would not be advisable at this stage to try to re-open STOPIA 2006 and/or TOPIA 2006 and the MOU. He is also convinced, however, that it is very important for the International Group to continue, and indeed strengthen, its efforts to urge all shipowners entered with their member Clubs to become party to the Agreements. To that end the Director intends to regularly monitor, with the International Group, the situation and progress made, with a view to enhancing the coverage of STOPIA 2006 and TOPIA 2006, and report to the governing bodies of the 1992 Fund and the Supplementary Fund at future sessions.

6 Action to be taken by the Assemblies

The Assemblies are invited to take note of the information contained in this document and to give the Director such instructions they may deem appropriate.
