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REVIEW OF THE INTERNATIONAL COMPENSATION REGIME

INSURANCE, CERTIFICATION AND LIABILITY CONSIDERATIONS

A Discussion Paper

Submitted by Canada and the United Kingdom

Summary:

The international efforts to provide incentives for quality shipping have important implications for the CLC/Fund regime. The Working Group should address how the regime should complement efforts in other forums to improve safety.

The IOPC Fund has a close policy interest in the certification and insurance requirements for tankers under the regime. This is the particular focus of this paper which proposes that consideration should be given to possible amendment to the Conventions to apply higher liability when a sub standard tanker is involved in an incident.

Action to be taken: See Section 6.

Related documents: Official Records of the Diplomatic Conferences 1969, 1971 and 1984.

1 Introduction

- 1.1 The 3rd Intersessional Working Group has been established to review the operation and effectiveness of the CLC/Fund regime. While the prime purpose of the regime must always remain the payment of compensation to victims, it would be inconsistent not to address how the IOPC Fund review might also help to reduce financial calls on the regime by providing effective economic incentives that would complement international efforts to improve oil tanker safety. Sub standard tankers can be expected to cause the greatest risk of incidents - causing losses for victims of pollution and thereby greater costs for both insurers and contributors.

- 1.2 The regime should continue to be the international means of governing the liabilities and financial protection for coastal communities from the consequences of tanker accidents. As with all forms of transportation, however, there will always be degrees of risk associated with shipping, but these risks must be managed and wherever possible minimised. The co-sponsors believe that the IOPC Fund Working Group should consider how the review of the oil pollution compensation system can minimise this risk, without penalising well-maintained vessels and responsible shipowners, or detracting from the regimes main objective of paying compensation to victims.
- 1.3 Tanker safety has improved markedly since the CLC and, subsequently, the Fund Convention came into force. During this period the frequency of major oil spills has also reduced. This trend largely reflects developments in international regulation and a general improvement in compliance. In addition, industry has sought to develop a better safety culture, for example through the vetting of management and standard of ships used for the transport of oil by major oil companies. The development of port state control measures has also ensured that standards have improved.

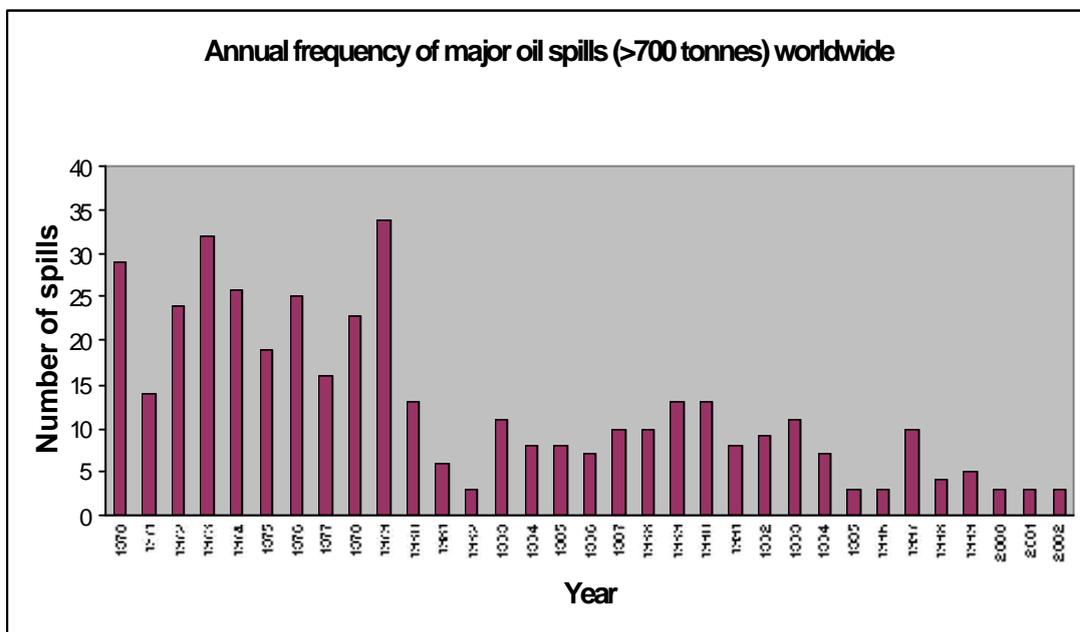


Fig 1. (Source ITOFF)

- 1.4 The higher levels of compensation now available under the 1992 CLC/Fund regime (and as complemented by the Supplementary Fund for those States that choose to join) demands yet greater responsibility on all involved in the carriage of oil by sea. Apart from the ongoing work in the IMO on technical standards to improve safety, there has also been work at the OECD's^{<1>} Maritime Transport Committee (MTC) to consider possible economic incentives for encouraging quality shipping. To date no consideration has been given by the Working Group as to how the regime might take account of good safety practise or how it should deal with unacceptable standards of operation. But, as part of the fundamental re-appraisal of the CLC and Fund regime, it is now necessary and timely for the Working Group to address how the regime should take account of appropriate safety considerations and how these could be strengthened by appropriate economic incentives so as to reduce the financial calls on the regime for the benefit of all involved in the carriage of oil, the insurers, contributors and potential claimants.
- 1.5 The membership of the Working Group has the expertise for such work and to make necessary recommendations that can then be taken up through the appropriate international fora. The co-

^{<1>} The Organisation for Economic Co-operation and Development.

sponsors recognise that some delegations have previously argued that matters relating to ship safety standards should be discussed in other fora such as the IMO, and not in the IOPC Fund. However, the co-sponsors note that the 1971 Diplomatic Conference discussed the relationship of compensation and compliance with safety standards, and consistency with the principles of pollution prevention. Subsequently, States adopted provisions within the 1971 Fund Convention which made financial relief for the shipowner conditional upon compliance with minimum safety standards through the shipowner's indemnification provision (see Articles 2 (1) (b) and 5 (3) of the 1971 Fund Convention).

- 1.6 It would, of course, be preferable if the regime did not have to specifically address the issue and that reliance could be placed entirely on the efforts of the industry or the various international instruments. However, experience to date suggests the problem of sub standard shipping persists. In its work on substandard shipping, the OECD's MTC noted that the majority of shipowners already meet their international safety and performance standards and that some meet higher standards than required by international regulations. But some do not - and although these are a minority, there are still an unacceptable number of ships that fall below the required standards. The same is generally true of oil tankers with the potential for additional financial calls on both the shipowners' insurers and the Fund. A general inspection of the detention rates from the various regional MoU agreements clearly indicates that individual oil tankers are detained with a number of deficiencies on more than one occasion over a relatively short period of time.
- 1.7 Therefore, the work at the OECD MTC has a direct bearing on the policy interests of the IOPC Fund insofar as the operation of sub-standard tankers is likely to give rise to, or poses a risk of, claims against the CLC/Fund regime.
- 1.8 There have been a number of OECD documents that have a bearing on this issue and recent work at the OECD MTC is very relevant to the current work of the IOPC Fund's Working Group. The OECD MTC has published a Policy Statement in April 2002 (see Annex I) and has also instigated a study into Marine Insurance (the terms of reference for this study are at Annex II).

2 Considerations

- 2.1 The CLC/Fund regime was created in recognition that accidents will happen. The purpose has always been to ensure that third parties and coastal states that suffer physical and economic damages arising from the carriage of oil by sea have an effective and simplified legal means of cost recovery. The intention has never been for compensation from the IOPC Fund to provide a means of 'underwriting' the consequences of incidents involving substandard tankers.
- 2.2 The 'mutuality' built into the regime is well accepted for it ensures compensation is available for all state parties to the 1992 regime, whether they are oil exporting or importing states, or coastal states en route. But it would not be acceptable if the high levels of financial protection now available through the IOPC Fund were to provide a financial 'safety net' for failures to invest in ship safety and maintenance as well as full compliance with international operational standards.
- 2.3 The co-sponsors recognise that the establishment of shipowner relief in the 1971 Fund Convention provided a reward for compliance with certain safety standards, although this was withdrawn from the 1992 regimes. It is not the intention of the co-sponsors to revert to that policy given that the incentive was a reward for meeting standards that should already have been adhered to as a matter of course. Therefore, the co-sponsors believe that it is now more appropriate to explore how to introduce disincentives to deter tankers with low levels of maintenance, poor performance, or a poor track record in terms of claims.
- 2.4 This would ensure that the well-maintained tanker operators are not competitively disadvantaged and that the contributors are not expected to 'subsidise' damage arising from poor quality tankers.

3 The current situation

- 3.1 It is understood that some 85-90% of the insurance for oil tankers is provided by the members of the International Group of P&I Clubs (IG). The insurance for CLC risks through the P&I Clubs is provided on a mutual arrangement between the members of each Club up to US \$5 million per occurrence. When a claim exceeds that limit, the excess liability is shared under a pooling arrangement within the IG up to US \$50 million. The IG maintains reinsurance for claims that exceed the latter limit up to an overall limit for oil pollution of US \$1 billion per occurrence.
- 3.2 Badly maintained and poorly managed tankers present a greater risk of claims under the CLC/Fund regime. It is understood that typically, before entry to a P&I Club, tankers (and other ships) are required to undergo inspection by one of the classification societies. It is understood too that the Clubs themselves undertake their own inspection programmes. The standards of inspection among the classification societies should be equally robust.
- 3.3 It is crucially important that a high standard is required for initial entry into a P&I Club and that this is maintained. It also has to be made clear to all that there is a genuine cost disincentive for failure to maintain the vessel to acceptable standards. The co-sponsors applaud the Clubs' policy that the lowest cost for insurance cover for CLC risks should be enjoyed entirely by those shipowners with a better claims record. What is not clear, however, is whether this policy is always a sufficient incentive to shipowners to maintain high standards.
- 3.4 It might be argued that such matters are primarily a concern for the members of the particular Club under the arrangements by which risks are mutually shared. However, there are now potentially very significant cost consequences for contributors arising from a major oil tanker incident where costs also fall onto the IOPC Fund – in the most serious of incidents the majority of the costs would be borne by the Fund. The need for financial disincentives for sub standard tankers is, therefore, a very real concern for contracting states too.
- 3.5 In certain regions a robust line is taken on substandard ships by virtue of Port State Control inspections, including banning substandard ships from such regions. While this is beneficial in terms of averting incidents in these areas and reducing financial calls on the Fund, if poor quality tankers are simply diverted elsewhere in the world, there is still a significant risk that the continued operation of such tankers will eventually lead to incidents that will result in financial calls on the Fund.

4 Ensuring good standards

- 4.1 The international community and all contracting States to the CLC and Fund Convention also have a strong interest in establishing that the P&I Clubs are maintaining the highest standards for entry into the Clubs. It would, therefore, be helpful to have greater transparency as to what disincentives the clubs apply to tanker operators. It is understood that in general terms consideration is given by the Clubs to the claims record of each individual member/shipowner over previous years when determining premiums. However, there is currently no clear picture as to the practices commonly applied by the Clubs in this area.
- 4.2 Neither are the cost implications for substandard operators clear as to how the standard of maintenance and management continues to be monitored by the Clubs over the life of the policy cover e.g. a tanker may retain a good claims record but, through substandard maintenance, pose a risk that could lead to major financial consequences for both the Club concerned, the Fund and contributors. If insurance continues to be made available for substandard tankers the costs will continue to fall on those contributors who go to considerable lengths to ensure their own cargoes are carried on good quality and well managed and maintained vessels, or on contributors who have no influence whatsoever on the choice of tanker for the carriage of the oil for which they contribute.

- 4.3 The co-sponsors believe that greater transparency on these matters would be a positive incentive to encourage full compliance with international standards which would complement the international efforts to sustain quality shipping.

5 Deterrence by means of the Conventions

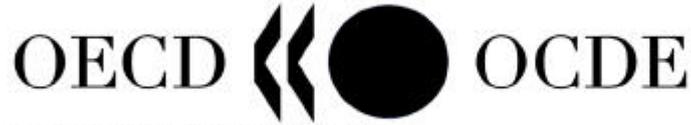
- 5.1 The co-sponsors believe that in addition to appropriate incentives or significant disincentives, consideration should be given to other measures that could be introduced in the CLC and Fund Convention such as a formula by which the level of liability of the shipowner could automatically increase for a 'substandard' tanker that is involved in an incident. This could be an effective means of penalising lower standards of operation and maintenance whilst reducing unjust financial calls on the Fund and its contributors.
- 5.2 It would be premature at this stage to propose how this objective might be best achieved. The co-sponsors therefore propose to revert to this idea following the outcome of a current study in OECD MTC on the role of insurance in relation to substandard shipping so that the conclusions reached in that forum can be taken into account in future deliberations in the Working Group.

6 Conclusions and recommendations

- 6.1 The co-sponsors strongly recommend that delegations refer to the ongoing work elsewhere to deter substandard shipping. This is relevant to the work of the Working Group. In particular, the IOPC Fund Working Group should take a close interest in the outcome of the MTC's study.
- 6.2 Paragraph 3 of the OECD Policy statement (at Annex II) is unequivocal, recording that:
- 'The Maritime Transport Committee therefore urges all flag and port states, shipowners, ship operators, shipping companies, shippers, and other parties involved in the maritime sector to act effectively and conscientiously in their approach to sub-standard shipping, so that the ability of unscrupulous operators to offer substandard ships, and the opportunity for unscrupulous or gullible charterers and shippers to accept them, is severely limited or removed completely.'
- 6.3 The co-sponsors subscribe fully to this approach and believe that the OECD is pursuing a goal that is entirely compatible with the mandate of the Working Group to take the CLC/Fund regime forward so that it continues to be the preferred solution for most states for dealing with oil pollution for many years to come. The OECD's work should, therefore, provide a good basis on which to take the issues raised in this paper further forward.
- 6.4 In the meantime, the Working Group is invited to consider the issues raised in this document and decide how best to take forward initiatives that would go some way to redressing the financial balance in favour of the best shipowners by reducing the risk of financial calls by substandard ships on their Clubs, and in turn on the Fund.
- 6.5 The co-sponsors recognise that the consideration of liability, insurance and safety standards within this forum may feed into agenda items on the work programme of the IMO, and specifically the Legal Committee under the existing agenda item of Provision of Financial Security. The co-sponsors believe that it is entirely appropriate that the IOPC Fund should also facilitate the work of the IMO and its Committees in this respect, given the consequences for the IOPC Fund.
- 6.6 The co-sponsors recommend that before reaching any final conclusions on initiatives relating to insurance and liability for substandard tankers, the Working Group should await the outcome of the work at OECD and as appropriate should then propose how the Working Group, or the IMO, should take matters forward. The report on the outcome of the OECD's study should be available for the MTC by the end of April 2004.

ANNEX I

ORGANISATION DE COOPÉRATION ET DE DÉVELOPPEMENT ÉCONOMIQUES



ORGANISATION FOR ECONOMIC CO-OPERATION AND DEVELOPMENT

MARITIME TRANSPORT COMMITTEE

Policy Statement on Substandard Shipping by the Maritime Transport Committee of the OECD

Preamble

The Maritime Transport Committee considers that substandard ships² carry with them a higher than normal risk of being involved in serious incidents, which impose large costs on communities, including loss of life and environmental damage. This is a situation which should not be tolerated by governments, shipowners, shippers and the maritime industry generally.

While the MTC recognises that the International Maritime Organization has prime competence for the regulation of shipping engaged in international trade from the maritime safety, efficiency of navigation and prevention and control of marine pollution from the ship's point of view, there is much that can be done by Governments, international organisations and other players in the maritime industry to minimise the incidence of substandard shipping. This is a collective responsibility that requires efforts on everyone's part.

The Maritime Transport Committee therefore urges all flag and port states, shipowners, ship operators, shipping companies, shippers, and other parties involved in the maritime sector to act effectively and conscientiously in their approach to substandard shipping, so that the ability of unscrupulous operators to offer substandard ships, and the opportunity for unscrupulous or gullible charterers and shippers to accept them, is severely limited or removed completely.

To further this objective, the Maritime Transport Committee, and its Member states have endorsed this Policy Statement to demonstrate the importance attached to the campaign to eliminate substandard shipping, and to highlight the actions that will be taken by the Committee and its Member states in pursuance of that objective.

The MTC also invites all non-OECD states that share this concern to associate themselves with this Statement, in order to highlight to the operators and users of substandard ships of the weight of international opinion that is ranged against them.

With this background firmly in mind, the Maritime Transport Committee and its Member states endorses the following actions as reflecting their policy stance with respect to substandard shipping.

2. For the purposes of this policy statement a "substandard ship" is regarded as a vessel that, through its physical condition, its operation or the activities of its crew, fails to meet basic standards of seaworthiness and thereby poses a threat to life and/or the environment. This would be evidenced by the failure of the vessel to meet regulations contained in international maritime conventions to the extent that it would be considered unfit to sail by a reasonable flag state or port state inspection.

Flag States

- Flag States have principal responsibility for identifying and dealing with substandard ships, and must take effective action to ensure that such ships cannot operate as long as they fail to meet international maritime conventions. Flag states should not accept new vessels on their registers without ensuring that they meet all international requirements.
- The Committee notes the large number of international maritime conventions that if effectively implemented would deal with the problem of substandard shipping. However, the Committee also notes with great concern that there is clear evidence that these conventions are often applied ineffectually, or inconsistently, and therefore urges all flag states to ensure that these conventions are effectively implemented in their jurisdictions.
- MTC members support IMO efforts to strengthen the implementation of international rules and standards, including action by the IMO to review flag state performance.
- MTC members also support proposals to examine the extension of the IMO's charter to give it the ability to actively review the performance of flag states, as well as the means of enforcing mandatory requirements.

Port States

- Port States can be effective in identifying substandard ships, and they are encouraged to communicate with flag States concerned and freely exchange all available information among themselves. Port states should also ensure that existing internationally accepted rules and standards are rigorously and uniformly applied within their jurisdictions. For their part, MTC members will work actively through other fora, such as the various Port State Control Memoranda of Understanding and regional Agreements, to encourage the widespread development of a safety culture and environmental conscience in as many jurisdictions as possible.
- Without discriminating in form or fact against vessels of any State, Port states should apply sanctions (including detentions) and penalties that are adequate to discourage operators and users of substandard ships.

Classification Societies

- Classification societies play an extremely important role in the process, and must perform their tasks effectively and with great diligence. Classification societies should ensure that their own standards are maintained. This applies especially those under the IACS umbrella which could provide the standard against which other societies could be measured. MTC members encourage all classification societies to achieve a cohesive and uniform approach to ship inspections.
- If incident and detention statistics indicate that some classification societies are unable to ensure appropriately high standards, MTC members will consider establishing, maintaining and publicising a list of these societies that are not applying adequate standards.
- MTC Member countries will also consider the possibility of promoting an international licensing system, perhaps operated by the IMO, aimed at ensuring that classification societies meet acceptable standards of performance.

Marine Insurance

- The insurance industry provides a crucial financial safety net for commercial enterprises. At the same time (and probably as an unintended consequence) it also provides a very effective cover for substandard ships by allowing their risk to be spread over many players in the transportation chain, and ultimately to consumers. The insurance industry should therefore identify and target providers and users of substandard ships and should consider refraining from providing insurance cover unless the deficiencies which make these ships unsafe are eliminated.
- In support of the above measure, MTC members, with the assistance of the insurance industry, will undertake a study of the international maritime insurance system to establish whether,

without prejudice to potential victims, it is feasible to remove the cover available to substandard shipping, while still maintaining the necessary risk spreading coverage for the rest of the industry.

- Furthermore, MTC members will actively promote the introduction of compulsory insurance by the IMO for all vessels, including provisions preventing insurers paying fines for shipowners when prosecuted and found guilty of safety or pollution related offences.

Substandard Crews

- While the MTC accepts that there is a clear place for crews that are low cost and efficient, substandard crews or substandard crew conditions should not be tolerated. The MTC therefore strongly supports the IMO's strenuous efforts to enhance the training and qualifications of seafarers, as well as the intent and concepts behind the ILO's maritime conventions, and welcomes the recent decision by the ILO to revisit its maritime instruments in order to improve their relevance and encourage their wider ratification.

Incentives and Rewards

- Incentive and reward programs can be effective tools to help combat substandard shipping. It is noted by the MTC that some programs currently exist and others are being developed. MTC members strongly endorse the acceleration and expansion of efforts to reward responsible shipowners and other industry parties, through incentives and other recognition programs aimed at maintaining high standards, and to assist regulators in combating substandard ships. These programs could encompass for example, reduced classification fees, lower insurance premiums, fewer and less time consuming port state inspections and where this is possible, lower port charges.
- MTC members will work with industry to develop the concept of incentives for responsible shipowners and other parties in the industry, in order to encourage them to attain appropriate standards, and to be able to better combat the non-market competition posed by operators and users of substandard shipping.

Information and Publicity

- Good, as well as bad, publicity can be an important tool in combating substandard shipping. MTC members recognise the many efforts already underway, such as white lists, black lists and detention lists regularly and readily available over the Internet and in publications. MTC members will examine whether this information lends itself to further consolidation and release on the MTC's substandard shipping web-site. MTC members will positively co-operate to use the EQUASIS and expand its content.
- Industry should help to avoid the development of unnecessary or excessive regulation; instead every effort should be made to facilitate the effective enforcement of existing regulations, for example through the free exchange of information and facilitating the identification of substandard ships and their operators and users.
- Also, the MTC urges all of its members to ensure that their maritime administrations freely and frequently make information on substandard shipping publicly available, inter alia, through EQUASIS.
- While the Committee recognises that there may be some legal problems associated with identifying and publicising those involved in the operation, use of, or other involvement in, substandard ships, this should not prevent the increasing use of such a powerful deterrent. MTC members will join with all other interested parties to address problems that may arise through the reasonable dissemination and use of such information, in good faith and in the public interest.

Legal Matter

- MTC members will work actively, including through the IMO, to consider some international means of facilitating proof of negligence not only for shipowners, but also charterers, cargo

interests, classification societies and others, where they have wilfully taken advantage of the existence of substandard shipping.

Conclusion

This Policy Statement represents a strong demonstration of the determination of the Maritime Transport Committee, and its Member states, to ensure that continued high priority is given to the elimination of substandard shipping. This remains an issue of great concern and potentially of great cost, and pressure on those who would operate or use such ships must not be eased in any way.

The Policy Statement also highlights the strong view held by the MTC that if this problem is to be resolved industry itself must play a major role in this effort. However, if this is going to succeed responsible shipowners and users must be given every incentive to ensure that they will not be disadvantaged by acting responsibly. In other words, irresponsible operators and users must be detected and held accountable, and must not be permitted by the international system to profit unfairly from their actions. Those who operate or use substandard ships in contravention of internationally accepted rules and standards should face strong disincentives and penalties, and these should not be permitted to be simply added to the list of risks against which the perpetrators can already insure.

The MTC also considers that its 1998 Action Plan to Combat Substandard Shipping, adopted as a result of a roundtable meeting with industry, can still make a considerable contribution, as it aims to strengthen industry involvement and attempts to promote effective exchanges of information between various industry players. Therefore, the Action Plan will continue to be implemented in support of this Policy Statement, but will now be treated as a longer term activity, aimed at gradually strengthening action against substandard shipping.

Action by the MTC

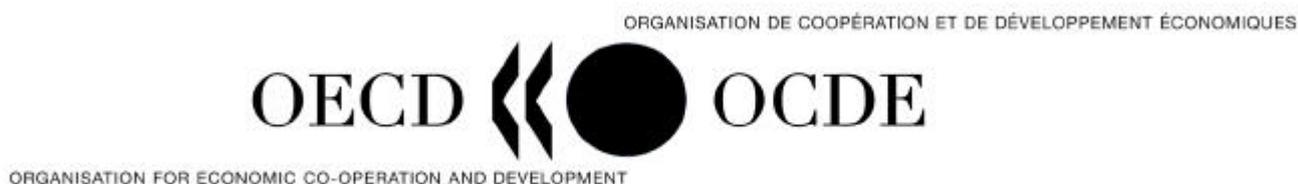
A number of the actions mentioned above (for example, activities at the IMO) can only be undertaken by MTC member governments. However, consistent with the points contained in this Policy Statement the Committee will itself:

- Work with industry to develop the concept of incentives for responsible shipowners and other parties in the industry, in order to encourage them to attain appropriate standards and to be able to better combat the non-market competition of operators and users of substandard shipping.
- Consult with the IMO on what economic, legal, policy and political avenues could be explored by the MTC to support the IMO's own activities to enhance compliance with existing international marine conventions, and help it to pursue new activities such as compulsory insurance.
- With the assistance of industry, the MTC will agree on a mandate to undertake a study of the international maritime insurance system to establish whether scope exists to remove the cover available to substandard shipping, while still maintaining the necessary risk spreading coverage for the rest of the industry.
- Examine whether existing information on substandard shipping from various sources lends itself to further consolidation and release on the MTC's substandard shipping web-site, in order to expose operators and users of substandard shipping or promote responsible shipowners and other industry parties.
- Continue with the implementation of those aspects of the 1998 Action Plan to Combat Substandard Shipping that are of interest to the various industry players, and which provide an incentive to sustain high quality participation in shipping. These aspects are likely to involve enhancing the availability of information, and perhaps the construction of various detailed Codes of Best Practice, aimed primarily at setting a benchmark against which individual enterprises can be measured. This may facilitate the identification of those who do not meet minimum acceptable standards.

Paris
April 2002

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ANNEX II



OECD MARITIME TRANSPORT COMMITTEE

MARINE INSURANCE STUDY TERMS OF REFERENCE

Introduction

These Terms of Reference cover a proposed consultancy to carry out work on aspects of marine insurance that may impact substandard shipping.

The genesis of this work is a consultant's report that investigated who actually bears the cost of incidents involving substandard shipping. The key findings of that study³ are encapsulated in the following paragraph drawn from the consultant's report:

Based on the information that was obtained, it emerges that the majority of parties that are directly involved in the use of substandard shipping do not apparently incur significant costs that they need to bear themselves. Rather, as noted in Section 2, the insurance industry provides cover for most prospective liabilities

The purpose of this consultancy is to consider what could be done to address this potentially serious problem, which could encourage the operation and use of substandard ships, and which will inevitably lead to non-commercial competition which could seriously affect responsible ship owners and users.

The Task

The marine insurance industry provides a crucial financial safety net for commercial enterprises. However, at the same time it also provides a very effective cover for substandard ships by allowing their risk to be spread over many players in the industry, and ultimately to consumers.

The consultant's task is to establish whether, without prejudice to victims, it would be feasible, to remove the cover available to substandard ships, while still maintaining the necessary risk-spreading coverage for the rest of the industry. The analysis should cover both P&I Clubs and marine insurers.

While the consultant is free to propose a methodology for this study, the OECD would expect the following issues to be covered in the analysis:

- A description of the operation of the marine insurance market, differentiating as necessary between P&I Clubs and marine insurers.

3 The full consultant's report, "*Costs to Users of Substandard Shipping*" is available at the MTC website at <http://www.oecd.org/dataoecd/27/18/1827388.pdf>

- A definition of substandard ships for the purposes of this analysis. This definition is not intended to become an “industry standard”, but should enable recognition of those vessels that could be subject to any insurance-based measures that may eventually emerge from this initiative. Therefore, while based on IMO standards, this definition could have some flexibility in order to best allow it to fulfil its purpose.
- A clear analysis of the possible effects of the insurance industry providing a “shield” for substandard ships, focusing on the cost difference (i.e. the insurance premium vs. freight revenues).
- Whether, and to what extent, the existing marine insurance arrangements lower the cost of operating and using substandard ships (by providing insurance cover without taking sufficient account of unsafe practices), and whether this could increase the costs borne by responsible ship owners and users (through having to pay similar insurance premiums despite meeting all of their regulatory responsibilities).
- Whether it would be feasible for the insurance industry to identify operators and users of substandard ships (perhaps through their claim histories, including claims for personal injury and loss of life), and whether loading their premiums to reflect the higher risk associated with those vessels would provide a sufficient deterrent for those owners/users. The consultant should consider whether Classification Societies may also have information that could help in the identification of such owners.
- Whether the insurance industry, either before or after a specific incident, could reduce or remove cover for the costs that would otherwise be borne by the providers and users of substandard ships (e.g. personal/corporate liability, fines and penalties, loss of vessel, loss of cargo, etc.) without affecting coverage for the good-faith victims of those incidents, nor adversely affecting seafarers serving on “de-insured” ships.
- Whether it would be feasible for the insurance industry to refuse to insure substandard ships, and what supplementary provisions would be required to make this enforceable in a way that would stop such ships from operating (e.g. compulsory insurance requirement by the IMO, link to the ISM Code, enforcement by flag and port states, etc.). This aspect would also cover the potential impact of uninsured and/or uninsurable vessels continuing to operate without any cover.
- Whether there are lessons that could be learnt from the insurance arrangements that operate in the commercial passenger and cargo aviation sectors.

Consultation with Industry and the IMO

The principal industry groups that may be affected by this project are the P&I Clubs and the marine insurers, and the consultant will be expected to work closely with these groups. The OECD will make contact with these key groups, and will provide the consultant with an appropriate introduction to relevant contacts.

Other actors in the maritime sector, such as shipowners, cargo interests, charterers and others will also have an interest in this project. The OECD will contact key organisations in these industry sectors and will provide appropriate contact details to the consultant. The consultant will be expected to involve these (and any other parties considered necessary by the consultant) in the course of the project.

Finally, it is expected that the International Maritime Organization (IMO) will have a strong interest in this project. The OECD will alert the IMO to the fact that this project is being undertaken and will invite it to become involved to the extent it believes is necessary during the course of the study, and will advise the consultant.

Timing and Output

Prior to the finalisation of the report, the consultant will provide a draft report to the OECD for comment. Unless otherwise agreed, the final report will be available within four (4) months of the signing of the contract authorising this study. [This timing may change after consultation with consultant]⁴

OECD Management

The OECD contact will be Mr Danny Scorpecci, Principal Administrator, Division of Transport (phone (33 1) 45 24 94 33, fax: (33 1) 45 24 93 86, email: danny.scorpecci@oecd.org).

⁴ It is understood that the consultant's draft report should be ready at the end of April 2004.