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COMPENSATION
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REVIEW OF THE INTERNATIONAL COMPENSATION REGIME

DISINCENTIVES FOR USE OF DEFICIENT OIL TANKERS

Submitted by Italy, Portugal and the United Kingdom

Summary:	<p>The 7th meeting of the 3rd Intersessional Working Group considered proposals to amend the international oil pollution compensation regime.</p> <p>The issue of substandard oil transportation was considered by the Working Group. This paper proposes a means of addressing this issue through the liability and compensation regime.</p>
Related documents:	92FUND/WGR.3/19/7, 92FUND/WGR.3/19/8 and 92FUND/WGR.3/19/12/Rev.1
Action to be taken:	See section 3

1 Disincentives for Use of Deficient Tankers

- 1.1 The 7th meeting of the Working Group considered four separate papers on the substandard transportation of oil submitted by Canada and the United Kingdom, France, Japan and OCIMF. These proposals focussed on:
- (a) consideration of the report of OECD on marine insurance (92FUND/WGR.3/19/7);
 - (b) an exception to a shipowner's right of limitation when the damage appeared to result from the structural condition of the ship (92FUND/WGR.3/19/8);
 - (c) an amendment to the 1992 Civil Liability Convention to the effect additional liability if an incident is caused by a substandard ship registered in a Contracting State (FUND92/WGR.3/19/12/Rev.1); and
 - (d) an amendment to the test of a shipowner's right to limit liability, for example by reverting to the 'fault and privity' test in the 1969 Civil Liability Convention.
- 1.2 Some delegations expressed a willingness to explore the possibility of linking the issue within the legal framework of the Conventions. The co-sponsors note the statement from the Chairman at the

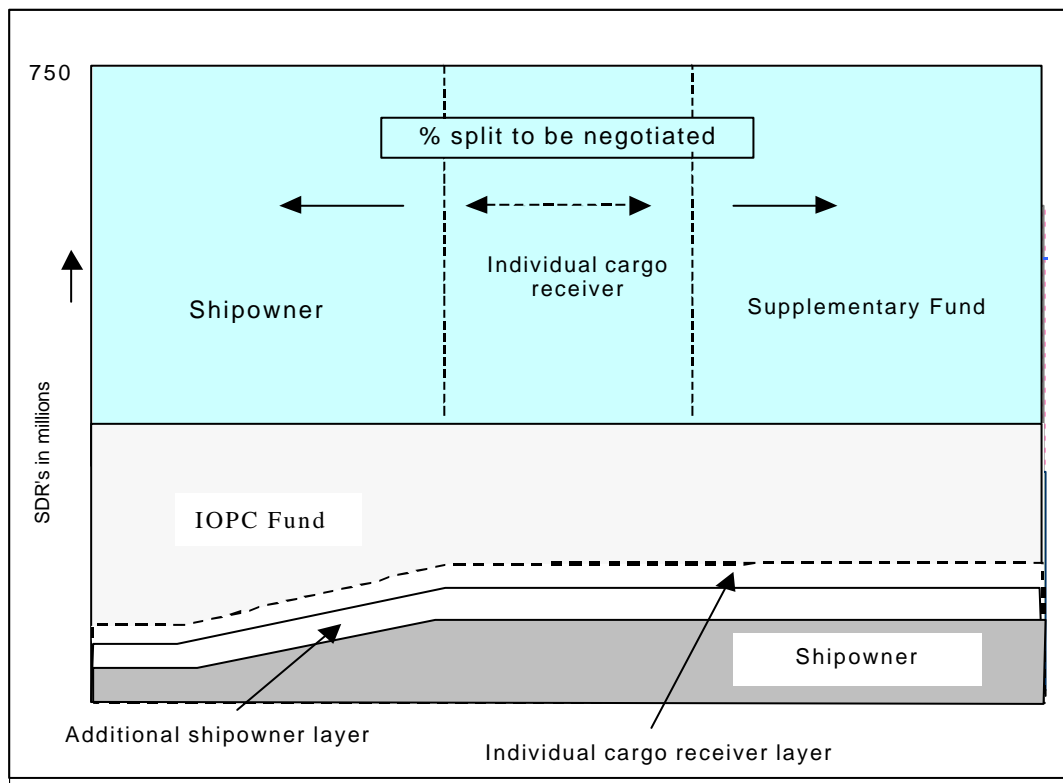
7th Working Group meeting that documents needed reworking for the 8th meeting, and submit the following two proposals for consideration as disincentives for the use of deficient oil tankers.

- 1.3 The views expressed in this paper should not be taken as representing the formal position of the sponsoring delegations or their governments on any item discussed. The options presented in this paper are for illustrative purposes only.

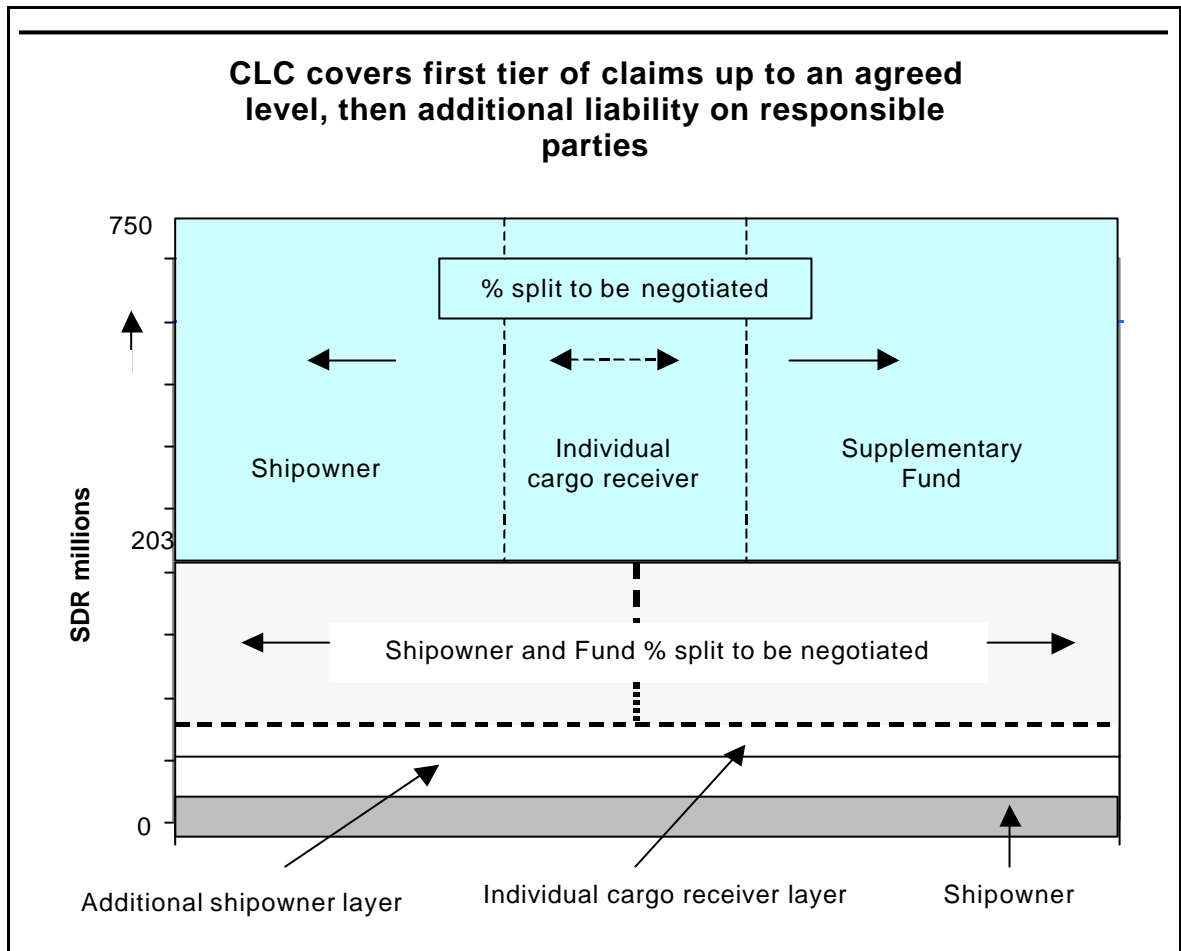
2 Proposal

- 2.1 Where an oil tanker spill involves a deficient oil tanker, additional layers of liability will apply. In the first instance, there would be an additional layer of liability for the shipowner, on top of that which would ordinarily apply through the Civil Liability Convention.
- 2.2 If the Supplementary Fund were engaged in a spill involving a deficient oil tanker, then the shipowner would also be required to make additional contributions to the Supplementary Fund. Such contributions would be a pre-determined percentage, to be agreed by Diplomatic Conference, and the remaining proportion would be met by the usual contributions from oil receivers.
- 2.3 Furthermore, this model could also include a new layer of 'liability', or a 'responsibility to contribute' on the individual cargo receiver who would have been the recipient of the cargo involved in such a spill. The individual receiver could also contribute an agreed percentage towards any Supplementary Fund payments, if required.
- 2.4 The following diagrams show how these proposals could fit in with the options for amending shipowners' liability set out in document 92FUND/WGR.3/22/9 concerning amendments to shipowner liability as submitted for discussion at this Working Group.

Option (a): Additional layer of shipowner and cargo receiver liability for use of a deficient oil tanker:



Option (b): Additional layer of shipowner and cargo receiver liability for use of deficient tanker:



- 2.5 Options (a) and (b) contain proposals based in particular on the papers submitted by Japan and Italy to the last Working Group meeting that would involve:
- (a) an increase in the shipowner's limit of liability where pollution damage arises as a result of a defect or deficiency on the oil tanker which led to the incident; and
 - (b) above this, an amount equal to the additional liability of the shipowner to be levied, in addition to the usual contributions, on the individual cargo receiver in the Contracting State.
- 2.6 These additional layers are provided on top of the shipowner's liability in the underlying regime in the event of an incident involving a deficient tanker. At the same time, the proposals also provide for involvement in the Supplementary Fund of the shipowner and the individual cargo receiver in such an event.
- 2.7 The co-sponsors believe that the increased protection provided by the 2003 increases to the limits of liability and the Supplementary Fund Protocol, demand that all parties must play a greater role in ensuring the safe transportation of oil.
- 2.8 Each proposal takes account of those parties with the primary responsibility for, and economic interest in, the safe transportation of the cargo. The proposals would only place an additional liability on the individual cargo receiver of the oil where a defect or deficiency on the ship has contributed to the incident. The proposal would not, therefore, place an additional liability on all

contributors to the underlying Fund, or the Supplementary Fund, but would provide a disincentive on shipowners to use, and oil receivers to charter, deficient oil tankers.

- 2.9 The co-sponsors believe that the proposals to provide for disincentives for the use of deficient oil tankers should reduce:
- (a) the financial calls on the regime for the benefit of all involved in the carriage of oil; and
 - (b) the consequences of incidents arising from such carriage.
- 2.10 The co-sponsors believe that it would be premature at this stage to consider in detail the definition of 'deficiency' or 'defect'. However, the co-sponsors do not believe that it should be related to non-compliance with international statutory requirements. Previous incidents have highlighted concerns about ships that have met international statutory requirements but may still have a defect or deficiency. It could include any failings in relation to the operation of the tanker that has contributed to the incident, a vessel certified at Level 1 or 2 on the Condition Assessment Programme (CAP). The co-sponsors believe that this, and the necessary treaty text, can be considered further in light of the outcome of the study in OECD MTC on insurance and substandard shipping.

3 Action to be taken

The co-sponsors request that the Working Group consider the options presented in this paper.
