



REVIEW OF THE INTERNATIONAL COMPENSATION REGIME

INTRODUCTION OF A MECHANISM TO PROMOTE QUALITY SHIPPING

A discussion paper

Submitted by Japan

Summary:	This paper presents a proposal, with draft treaty texts and explanations, to promote quality shipping by the use of a disincentive scheme.
Related document:	92FUND/WGR.3/19/12/Rev.1
Action to be taken:	See section 4

1 Introduction

- 1.1 Japan is of the view that the deterrence of the use of substandard ship as a means of transportation of oil is extremely important in order to prevent and reduce tanker incidents causing oil pollution damage.
- 1.2 Last year, in the course of the Diplomatic Conference at which the Supplementary Fund Protocol was adopted, we have experienced that the massive social reaction against large-scale pollution incidents, such as the *Nakhodka*, the *Erika* and the *Prestige*, has resulted in priority being given to consideration of the establishment of further remedies for victims, leaving aside the discussion of legal issues of introducing liability of registered owners within the Supplementary Fund.
- 1.3 These large-scale incidents were caused by substandard ships. One of the common characteristics of these ships is their old age. Thus, the need to introduce an effective mechanism to deter the use of ships in a certain category is now widely recognised by consensus in the international community.
- 1.4 Recognising this necessity, it is reasonable to say that the deterrence of the use of substandard ships should be achieved, as a matter of priority, by all possible means. Not only the safety regulations of tankers, but also a liability/compensation regime can effectively, economically and efficiently contribute to achieving the objective.
- 1.5 This reiterates the background of the Japanese proposal in February 2004 for imposing certain additional liability on the registered owners of substandard ships and imposing certain

responsibility of contribution on receivers of oil transported by substandard ships (document 92FUND/WGR.3/19/12/Rev.1).

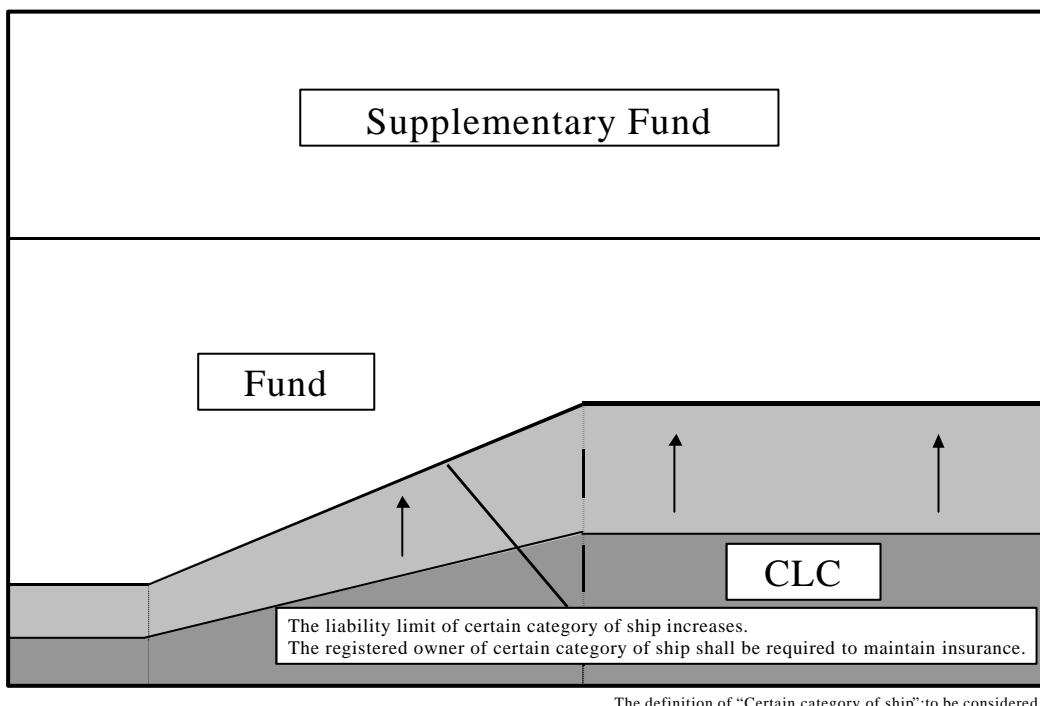
- 1.6 At the last session of the Working Group, it was summarised by the Chairman that the document needed reworking for the Group's next meeting. Japan hereby proposes a mechanism, the objective of which, we believe, is more clearly set out for further discussion within the Working Group.

2 Japanese proposal

- 2.1 Japan proposes a mechanism to introduce a disincentive on registered owners and oil receivers to use "a certain category of ships" for the transportation of oil by sea. (See section 3 for the definition of "certain category of ships".)
- 2.2 The draft text of the Japanese proposal is as follows:

[Option 1]

The diagram shows our proposal for illustrative purposes only.



Text of Convention: Civil Liability Convention

The following provision shall be added to Article I

"A certain category of ships" means -----

Article V paragraph 1 of the 1992 Liability Convention is replaced by the following text:

- 1 *The owner of a ship **other than a certain category of ships** shall be entitled to limit his liability under this Convention in respect of any one incident to an aggregate amount calculated as follows:*

- (a) 4,510,000 units of account for a ship not exceeding 5,000 units of tonnage;
- (b) for a ship with a tonnage in excess thereof, for each additional unit of tonnage, 631 units of account in addition to the amount mentioned in subparagraph (a);
- provided, however, that this aggregate amount shall not in any event exceed 89,770,000 units of account.*

1 bis

The owner of a certain category of ships shall be entitled to limit his liability under this Convention in respect of any one incident to an aggregate amount calculated as follows:

- a. [] units of account for a certain category of ships not exceeding 5,000 units of tonnage;
- b. for a ship with a tonnage in excess thereof, for each additional unit of tonnage, [] units of account in addition to the amount mentioned in subparagraph (a);

provided, however, that this aggregate amount shall not in any event exceed [] units of account.

Article VII paragraphs 8 and 12

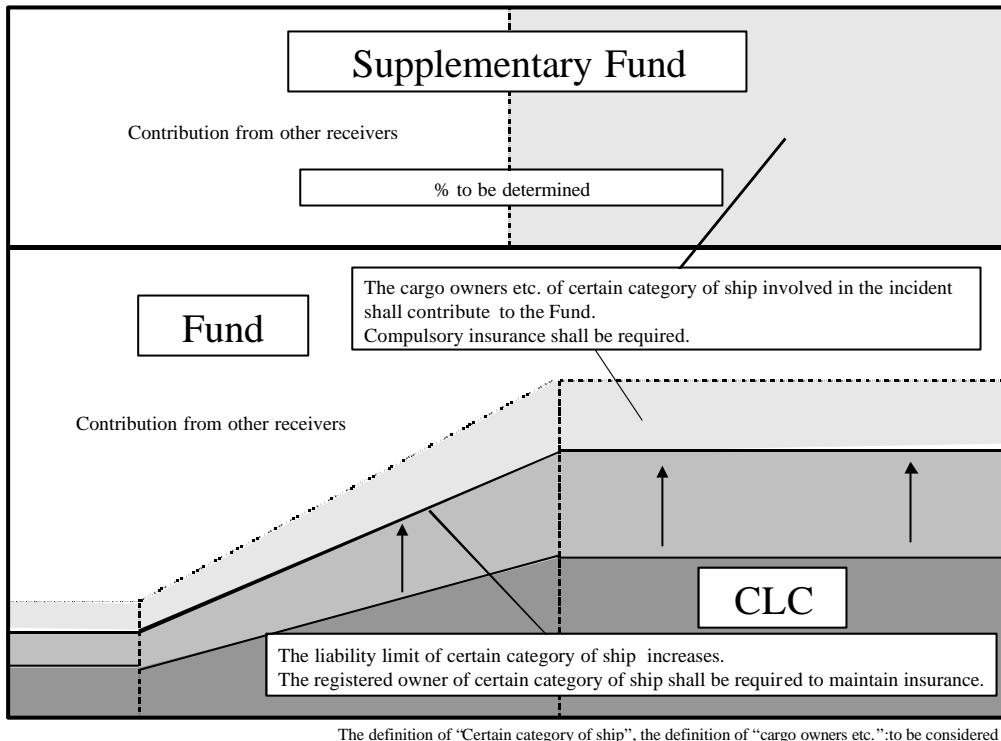
References to paragraph 1 shall be amended to read 'paragraphs 1 and 1 bis'.

[Explanation of Option 1]

- 2.3 Japan is of the view that introducing a disincentive to the transportation of oil by a certain category of ships is crucial for the prevention and the deterrence of large-scale oil pollution incidents caused by tankers. For this purpose, to increase the limit of liability of the registered owners of a certain category of ships is one of the most effective measures.
- 2.4 Option 1 proposes to increase the limit of liability on the registered owners of a certain category of ships under the 1992 CLC. The increased limit of liability has to be sufficient to deter the transportation of oil by a certain category of ships, and has to be determined by a Diplomatic Conference.
- 2.5 By introducing this mechanism, the use of a certain category of ships will be deterred, and the prevention and the deterrence of large-scale incidents will be achieved. The introduction will also minimise the payment of compensation from/contribution to the Supplementary Fund, established as a safety net for remedies for victims of large scale incidents.

[Option 2]

The diagram shows our proposal for illustrative purposes only.



Text of Conventions: Civil Liability Convention

The following provision shall be added to Article I

"A certain category of ships" means -----

Article V paragraph 1 of the 1992 Liability Convention is replaced by the following text:

1 *The owner of a ship **other than a certain category of ships** shall be entitled to limit his liability under this Convention in respect of any one incident to an aggregate amount calculated as follows:*

- (a) *4,510,000 units of account for a ship not exceeding 5,000 units of tonnage;*
- (b) *for a ship with a tonnage in excess thereof, for each additional unit of tonnage, 631 units of account in addition to the amount mentioned in subparagraph (a);*

provided, however, that this aggregate amount shall not in any event exceed 89,770,000 units of account.

1 bis

The owner of a certain category of ships shall be entitled to limit his liability under this Convention in respect of any one incident to an aggregate amount calculated as follows:

- (a) [] units of account for a certain category of ships not exceeding 5,000 units of tonnage;
- (b) for a ship with a tonnage in excess thereof, for each additional unit of tonnage, [] units of account in addition to the amount mentioned in subparagraph (a);

provided, however, that this aggregate amount shall not in any event exceed [] units of account.

Article VII paragraphs 8 and 12

References to paragraph 1 shall be amended to read 'paragraphs 1 and 1 bis'.

Fund Convention

Article 1 paragraph 2

A reference to the definition of "a certain category of ships" shall be added.

The following definition shall be added to Article 1:

"Cargo owners etc" means -----

Article 12, paragraph 2 of the 1992 Fund Convention is replaced by the following text:

2 *The Assembly shall decide the total amount of contributions to be levied. On the basis of that decision and subject to paragraph 2 bis, the Director shall, in respect of each Contracting States calculate for each person referred to in Article 10 the amount of his annual contribution:*

- (a) *in so far as the contribution is for the satisfaction of payments referred to in paragraph 1(i)(a) and (b) on the basis of a fixed sum for each ton of contributing oil received in the relevant State by such persons during the preceding calendar year; and*
- (b) *in so far as the contribution is for the satisfaction of payments referred to in paragraph 1(i)(c) of this Article on the basis of a fixed sum for each ton of contributing oil received by such person during the calendar year preceding that in which the incident in question occurred, provided that State was a party to this Convention at the date of the incident.*

2 bis

If any payments are made by the Fund for the satisfaction of claims against the Fund due under Article 4, including repayments on loans previously taken by the Fund for the satisfaction of such claims, in respect of an incident involving a certain category of ships, the Director shall calculate the amount of contributions as follows:

- (a) *up to [] units of account shall be contributed by the cargo owners etc. of a certain category of ships;*
- (b) *the total amount of payments exceeding the amount payable under subparagraph (a) shall be contributed by each person referred to in Article 10 on the basis of a fixed sum for each ton of contributing oil received by such person during the calendar year preceding that in which the incident in question occurred.*

The following provision shall be added to the 1992 Fund Convention:

Article Y

The cargo owners etc.. of a certain category of ships shall be required to maintain insurance or other financial security, such as the guarantee of a bank or a certificate delivered by an international compensation fund, in the sums sufficient to cover his responsibility for the payment of contributions under this Convention.

Supplementary Fund Protocol

Article 11, paragraph 2 is replaced by the following text:

- 2 *The Assembly shall decide the total amount of contributions to be levied. On the basis of that decision **and subject to paragraph 2 bis**, the Director of the Supplementary Fund shall, in respect of each Contracting States calculate for each person referred to in Article 10, the amount of that person's annual contribution:*
- (a) *in so far as the contribution is for the satisfaction of payments referred to in paragraph 1(i)(a) on the basis of a fixed sum for each ton of contributing oil received in the relevant State by such person during the preceding calendar year; and*
 - (b) *in so far as the contribution is for the satisfaction of payments referred to in paragraph 1(i)(b) on the basis of a fixed sum for each ton of contributing oil received by such person during the calendar year preceding that in which the incident in question occurred, provided that State was a Contracting State to this Protocol at the date of the incident.*

2 bis

If any payments are made by the Fund for the satisfaction of claims against the Fund due under Article 4, including repayments on loans previously taken by the Fund for the satisfaction of such claims, in respect of an incident involving a certain category of ships, the Director shall calculate the amount of contributions as follows:

- (a) *[]% of contributions shall be contributed by the cargo owners etc. of the a certain category of ships;*
- (b) *the total amount of contribution other than subparagraph (a) and (b) above shall be contributed by each person referred to in Article 10 on the basis of a fixed sum for each ton of contributing oil received by such person during the calendar year preceding that in which the incident in question occurred.*

The following provision shall be added to the Supplementary Fund Protocol:

Article Z

The cargo owners etc. of a certain category of ships shall be required to maintain insurance or other financial security, such as the guarantee of a bank or a certificate delivered by an international compensation fund, in the sums sufficient to cover his responsibility for the payment of contributions under this Protocol.

[Explanation of Option 2]

- 2.6 Japan is of the view that imposing a new financial burden on persons involved in the transportation of oil by a certain category of ships other than the registered owner's (hereinafter referred to as "cargo owners etc") will contribute to more effective measures to deter the transportation of oil by a certain category of ships.
- 2.7 In this document, we propose a mechanism to impose an obligation to pay contributions to the 1992 Fund and the Supplementary Fund on the cargo owners etc.
- 2.8 Under this mechanism, the cargo owners etc. will refrain from being involved in the transportation of oil by a certain category of ships in order to avoid the risk of contributions. This is a disincentive to use a certain category of ships. The reduction of the use of a certain category of ships will reduce tanker incidents causing oil pollution damage.
- 2.9 By introducing this mechanism, the use of a certain category of ships will be deterred, and the prevention and the deterrence of large-scale incidents will be achieved. Also, as in the Option 1, the introduction will minimise the payments of compensation from contributions to the Supplementary Fund, established as a safety net for remedies for victims of large-scale incidents. Furthermore, the burden of contributions on oil receivers will be alleviated, because cargo owners etc. will pay a part of these contributions.
- 2.10 However, the use of this mechanism may raise some points (eg the practical feasibility of identifying cargo owners etc) which need further discussion, taking into account the practice of maritime oil transportation, and thus needs to be considered further at this session and at future sessions of the Working Group.

3 Definition of a certain category of ships

- 3.1 It has been pointed out that there is not, at this stage, a clear definition of the term 'substandard ship'. As an alternative (similar but not identical to substandard ships), Japan proposes a new term "a certain category of ships". For the definition, an objective criterion, extracted from the characteristics of ships involved in the past large-scale incidents, has to be used. The mechanisms above apply to this "a certain category of ships".
- 3.2 The definition of "a certain category of ships" must be drafted with prudence, because the applicability of the definition will decide the scope of the mechanisms above. Japan is of the view that this definition has to be elaborated, based upon comments from the other Member States.
- 3.3 Japan also thinks that the definition should be clear enough to affect the decision of the persons concerned in order to function as a disincentive. For this purpose, an example would be "a ship over [] years of age, except a ship which is double hulled, or certified as level 1 or 2 in the Condition Assessment Program". If the definition is based on an ambiguous criterion, all persons concerned would suffer because of its lack of predictability, especially its unequal application among Member States. Thus the equal treatment of victims may not be achieved. Therefore, the definition should have a clear criterion, enough to distinguish between ships to which the mechanisms would apply and those to which it would not.

4 Action to be taken

The Working Group is invited to consider the options presented in this document.
