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REVIEW OF THE INTERNATIONAL COMPENSATION REGIME

SUBSTANDARD SHIPPING

Submitted by INTERTANKO and the International Chamber of Shipping

Summary:	The document takes note of the initiatives reported by the P&I Clubs to tackle substandard ships (document 92FUND/WGR.3/25/3) and draws attention to other relevant measures to address this problem.
Action to be taken:	Information to be noted.

1 The issue

- 1.1 The document submitted by the International Group of P&I Clubs (document 92FUND/WGR.3/25/3) suggests that the problem of substandard shipping has been a powerful motivating force behind many of the proposals that have been made to revise the 1992 Civil Liability and Fund Conventions. INTERTANKO and the International Chamber of Shipping (ICS) would agree. We would also fully agree with the Clubs' contention that additional liability will not improve the behaviour of the substandard operator. Indeed, the principle of compulsory insurance, necessarily introduced to ensure that pollution victims are not denied compensation, also has the effect of cushioning an owner against the impact of increased liability. The International Group's document explains this well. Accordingly INTERTANKO and ICS are opposed to any revision of the Conventions to address this problem.
- 1.2 However, INTERTANKO and ICS accept that the elimination of substandard shipping – and in this context, of substandard oil transportation – remains a challenge for the entire maritime community. The requirement for compulsory insurance under CLC in effect makes a P&I Club certificate a licence to trade. The P&I Clubs therefore assume a most important role in ensuring that substandard tankers do not obtain insurance cover.
- 1.3 Following the publication in April 2004 of the report 'The Removal of Insurance from Substandard Shipping', commissioned for the OECD Maritime Transport Committee, the P&I industry became the focus of attention with respect to the battle against substandard shipping. INTERTANKO and ICS have maintained a close dialogue with the International Group on this issue, and have encouraged the steps outlined in document 92FUND/WGR.3/25/3. We fully support the practical steps the International Group is putting in place as outlined in its 'Report on Ship Safety' appended to its document. We also share the International Group's view that other industry partners, and not least States themselves, have a role to play in support of the International Group's initiatives.

- 1.4 The debate on substandard shipping in the 1992 Fund Working Group is not of course taking place in isolation. Since the loss of the *Erika* and the *Prestige* there has been a spate of IMO regulatory activity and associated industry action which is directly relevant to enhanced safety and environmental protection, including:
- The accelerated phase-out of single hull tankers;
 - The banning of the carriage of any heavy oil in single hull tankers;
 - Massive investment in new tonnage by the shipping industry - since 1993 tanker owners have invested more than \$100 billion^{<1>} in modern tonnage (at end 2004 63% of the fleet above 5 000 dwt was double hull, and another 7% double bottom or sides);
 - Extension of the Condition Assessment Scheme (CAS) to all tankers over 15 years (this covers hull strength);
 - Pressure on Port State Control to better target substandard shipping rather than operate on an arbitrary quota system;
 - Progress towards flag state audits, supported by industry guidelines on flag state performance;
 - Increasingly rigorous vetting schemes by various organisations, including the oil majors.
- 1.5 The actions of the P&I Clubs as outlined in the International Group's document are directly complementary to measures such as these.
- 1.6 INTERTANKO and ICS note the recommendation of the International Group for an informal working group to consider the concrete proposals appended to its document paper. We welcome the implied suggestion that governments should be encouraged to underpin the Clubs' efforts but question whether the forthcoming IOPC Fund meetings provide the most appropriate forum for such discussion, bearing in mind the broader work and role of IMO in tackling substandard ships. The Working Group may therefore wish to consider referring the proposal to the Secretary-General of IMO for a more detailed discussion.
- 1.7 More generally, some administrations have advocated a strictly limited reopening of the Conventions with some clearly defined objectives. We do not believe this is realistic, given the diversity of views amongst States and the fact that reopening would pave the way for all States to rethink their positions and consider all options. For example, on the issue of funding it would surely not be possible to limit discussion to a review of the current sharing arrangements if some States were to feel that consideration should be given to involving oil producers or charterers in the financial burden. There could be no guarantee that the reopening would be limited in scope: indeed we think it more likely that it would be opening 'Pandora's Box'. Any such uncertainty must be potentially prejudicial to the victims of oil spills as their current automatic rights to compensation may no longer be in place.

2 Conclusion

In sum, INTERTANKO and ICS support the measures introduced by the International Group to address substandard shipping and would like to see all sides of the industry continue to take constructive measures to address the issue. But we continue to believe that the CLC and Fund regime is not the appropriate vehicle to tackle substandard shipping, that increased liability is not an effective deterrent in that regard, and that it would be counterproductive to embark on review of a regime which benefits the victims of oil spills, is nearly universally applicable and provides an effective compensation regime.

3 Action to be taken by the Working Group

The Working Group is invited to take note of the information contained in this document.

<1> Based on figures from Clarkson Shipyard Monitor, tanker contracting 1993-October 2004