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THIRD INTERSESSIONAL
WORKING GROUP
Agenda item 2

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REVIEW OF THE INTERNATIONAL COMPENSATION REGIME

FINE TUNING OF THE CONTRIBUTION SYSTEM

Submitted by The Federation of European Tank Storage Associations (FETSA)

Summary:

In meetings of the Third Intersessional Working Group consideration was given to the need to maintain an equitable balance between the contributions by various interests in the existing schemes, notably in the case of a secondary Fund. This has raised concern among the independent tank storage owners, represented by FETSA, since certain contributors in some countries do not have an interest in the cargo received other than to provide temporary storage services, physically receiving cargo but on behalf of a principal. The purpose of this submission is to provide a proposal on the basis of definitions derived from and thus achieving compatibility, with the International Convention on Liability and Compensation for Damage in Connection with the Carriage of Hazardous and Noxious Substances by Sea (HNS convention), which has a more accurate view of the role of independent tank storage within the existing schemes of trade.

Action to be taken:

The Working Group is invited to consider this submission in the light of the refinement of the contribution system.

1 Introduction: The relative role of Tank Storage Companies

- 1.1 Tank Storage Companies provide facilities for the storage of large quantities of bulk liquids. Products stored typically include crude oil, petroleum products and chemicals, as well as potable liquids, edible oils and fats. Receipt and delivery of these products takes place by means of sea transport, inland barge, road, rail and cross-country pipeline. Tank storage provides an interface

between these various modes of transport. There is, of course, a common interest and commitment between the storage industry and the operators of the various modes of transport in achieving high standards of safety and environmental protection throughout their operations. The industry also provides additional services to clients, such as heating or blending. The fact that this industry is able to meet the clients' diverse requirements effectively, safely and efficiently for a large and ever-changing inventory of products is one of the strengths of the industry.

- 1.2 Independent tank storage companies, who are represented by FETSA, do not own the products they store as these products are stored for third parties. This is in contrast to in-house storage facilities which are owned and often also physically linked to a manufacturing facility. This differentiation between independent and in-house storage is particularly significant when addressing the recovery of costs incurred as a result of legislation. Such costs are frequently relatively small when related to the value of the client's product, for example in relation to the consumers price for automotive fuels, but is disproportionately high when related to the costs of storage alone. Moreover, experience shows that these costs cannot be recovered in the going rates between tank storage companies and their principals.
- 1.3 The position is worse for costs incurred in arrears. The most significant examples are those related to incidents that are recognised for compensation under the International Oil Pollution Compensation Fund. A substantial number of tank storage companies within the FETSA contour have been designated as 'receiver', even though they do not own the product as explained above. These costs are billed a long time after the deals were closed. Clients are only prepared to reopen the books in exceptional cases. This often means that deals concluded in the past, which provided a commercially viable margin over which taxes have been paid, now become a loss. Several tank storage companies have tried to enter clauses for remediation in their contracts but market circumstances have made these attempts ineffective. This position will become worse if the Fund becomes extended by a Supplement.
- 1.4 FETSA feels that tank storage companies are hit in an inequitable manner and suffer hardship in relation to their economic significance in the entire trading cycle of products targeted by the International Oil Pollution Compensation Fund(s) currently in force. However, FETSA recognises that tank storage companies are significant in terms of volume turnover and may be material for the proper administrative functioning of the Fund.

2 Possible solution

- 2.1 The question for FETSA and its members therefore is how to maintain an instrumental role in the functioning of the Fund without suffering an inequitable and unforeseeable financial burden. The solution perhaps presents itself in the International Convention on Liability and Compensation for Damage in Connection with the Carriage of Hazardous and Noxious Substances by Sea (HNS Convention), Article. 1, paragraph 4, under (a), on the concept of 'receiver', and Article 1, paragraph 10, cargo in transit on the issue of 'contributing cargo':

(quote)

the person who physically receives contributing cargo discharged in the ports and terminals of a State Party: provided that if at the time of receipt the person who physically receives the cargo acts as an agent for another who is subject to the jurisdiction of any State Party, then the principal shall be deemed the receiver, if the agent discloses the principal to the HNS Fund; (unquote) respectively,

(quote)

Contributing cargo means any hazardous and noxious substances which are carried by sea as cargo to a port or terminal in the territory of a State party and discharged in that State. Cargo in transit which is transferred directly, or through a port or terminal, from one ship to another, either wholly or in part, in the course of carriage from the port or terminal of

original loading to the port or terminal of final destination shall be considered as contributing cargo only in respect of receipt at the final destination.
(unquote)

- 2.2 Through the instrument of disclosure, the unfair effect of tying receivership and tank storage company together can be mitigated. Furthermore solutions can be sought by allowing for 'deferred payments' in the same sense as was agreed during the HNS Conference.

3 Action requested

- 3.1 The IOPC Fund Assembly and respectively the Third Intersessional Working Group are invited to consider the issue of the contribution system, particularly in relation to the position and role of tank storage companies that are classified as receiver under the current system of the Fund in general and, in relation to the establishment of Supplementary Funds in particular and to make recommendations to the IOPC Fund Assembly and the IMO Legal Committee.
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