

# INTERCARGO

INTERNATIONAL ASSOCIATION OF DRY CARGO SHIPOWNERS

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## **BULLETIN** NO. 177 September/October 2000

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<b>INTERCARGO 2000 Diary</b>	
<b>October</b>	
13-15	Asia Panel and Newbuilding Committee, <i>Cheju Island, South Korea</i>
18	Management Committee <i>London</i>
18	European Panel and Dinner <i>London</i>
19	Association Chairmen – Round Table Meeting <i>London</i>
<b>November</b>	
7	Asian Technical Seminars: Hong Kong
9	Beijing, China
14	Tokyo, Japan
22	Kuala Lumpur, Malaysia
24	Singapore
<b>January / February 2001</b>	
To be confirmed	<b>INTERCARGO</b> Executive Committee Meeting, Commercial Panels China / Thailand

**Federal Maritime Commission and Mississippi Towage**

Finishing the first stage of the process, at least seven Intercargo members and associates have submitted responses to the FMC regarding the hardship caused to bulk shipping interests through exclusive towage contracts on the Mississippi and elsewhere.

The considerable effort put into gathering the necessary information has been appreciated by all concerned – the FMC, which is now in the process of assessing reports from nearly 100 relevant port calls and

*INTERCARGO's* U.S. legal advisor who has praised the commitment of companies to change this situation and the quality of the responses received. Without such a commitment, it is likely that there would have been little incentive to change the situation.

Given that the responses indicate the degree of financial loss involved, it is assumed that the FMC will, in due course, formally acknowledge the problem by advising us of the next stage of the process. Members will be kept informed.

## Chartering Issues

Circular No 1 – A meeting took place between **INTERCARGO** and representatives of Cargill on 25 September. Cargill made it clear that they were unhappy about the terminology used in Circular Number 1 of the July Bulletin and in particular, the reference to “Chartering Malpractice”.

It was never intended to infer that Cargill were acting improperly by referring to their name in a paragraph headed “chartering malpractice.” Through the medium of the Circular, the intention had been to inform the membership about changes in Agency Clauses concerning the use of Protecting Agents and to advise members that care should be exercised when considering the inclusion of the standard clause without modification.

Cargill explained that their wording was designed to improve efficiency at the load and discharge ports by the use of agents who were familiar with the trade. Cargill stressed that the Agency Clause was open to negotiation and that members should not feel constrained to discuss and negotiate the wording of any clause.

It should be added that the expression “...agents as selected by Charterers...” imposed a responsibility on the Charterer to provide a quality Agent to fairly represent the interests of both parties. Any evidence of nominated Agents who have failed to act fairly and evenly should be submitted to the Intercargo Secretariat for further action and follow up.

## INTERCARGO & the US Coast Guard

The Association continues to make progress in creating a meaningful dialogue with the US Coast Guard.

Having discussed – in principle – the benefits from a USCG perspective of **INTERCARGO** membership, conferring a certain seal of quality on vessels likely to be targeted under US Port State Control measures, the USCG will carry forward such discussions with **INTERCARGO** under their “QUALSHIP 21” programme. This will ensure that high quality vessels receive fewer inspections provided that the vessel / owner meets certain registry and classification society requirements – one of the pre-conditions of **INTERCARGO** membership.

Further information will be given on how this on-going relationship with the USCG develops.

## Asia Technical Seminars

With the excellent support of the **INTERCARGO** country managers, the programme of seminars to be given by Mr. Peter Kidman, **INTERCARGO's** Safety, Environmental and Technical Manager, has now been virtually finalised.

Covering a range of contemporary regulatory and technical issues, the seminars are designed to update members and potential members on the role played by IMO, Flag State, Port State and Classification Societies and the work of **INTERCARGO's**

CASTEC Committee. Those members wishing to attend the seminars should contact their local Country Manager or the Seminar Co-ordinator listed below.

**Hong Kong – 7 November**

Co-ordinator - Mr. Xu Zunwu,  
COSCO (HK) Shipping  
Venue: COSCO Tower

**Beijing, China – 9 November**

Co-ordinator - Mr. Ding Chun Kui,  
COSCO Bulk  
Venue: Offices of China Classification Society

**Tokyo, Japan - 14 November**

Co-ordinator - Mr. T Kubodera, NYK Line  
Venue: Offices of NYK Line

**Kuala Lumpur, Malaysia - 22 November**

Co-ordinator - Mr. Dharmarajah,  
MISC  
Venue: Offices of MISC

**Singapore - 24 November**

Co-ordinator - Mr. K H Li, IMC Shipping  
Venue: TBA

**Bulk Carrier Terminal Report**

Following the launch of a joint industry initiative some five years ago, INTERCARGO has been collecting Bulk Carrier Terminal Reporting Forms that have been completed and returned by ships. Over one thousand replies have been received. These have now been analysed and a report produced, which is enclosed with this edition of the Bulletin as **Annex 1**.

The Report was reviewed at the last meeting of *INTERCARGO's* Technical Committee CASTEC. At that meeting it was agreed that this reporting activity provided very useful feedback for members and therefore should continue with an annual report

produced, subject to the receipt of a sufficient number of returns. Reporting on an annual basis would also allow a more detailed terminal-specific analysis to be undertaken with a view to identifying those terminals where poor loading / unloading practices exist.

CASTEC also considered the *existing* Form and decided that it needed to be revised. A draft form has been developed and circulated for comments with the minutes of the meeting. It is planned to circulate the *new* Form with the next edition of the Bulletin. When this is circulated, it is hoped that members will bring the Form to the attention of their Commercial Departments and their ships. Without your support it will not, of course, be possible to analyse the performance of terminals with any degree of accuracy.

**Response to US Coast Guard on Charterer quality questionnaire.**

A thank-you to members who responded to the questionnaire in last month's Bulletin aimed at giving the US Coast Guard feedback on the role played by charterers in providing high quality, safe bulk shipping services. From the responses received, *INTERCARGO* was able to confirm that charterers played a prominent role in the provision of high-quality shipping services. Furthermore, the industry supported the view that the publication of charterers who persistently chartered vessels detained under Port State Control measures would benefit the safety of shipping generally. *INTERCARGO* re-affirmed in its submission that IMO should be the discussion point for changing or amending international standards.

The outcome of this information gathering exercise will be reported in future Bulletins but for information, a copy of our response is attached as Annex 2.

### **INTERCARGO Committee work**

#### CASTEC

CASTEC met in London on 19 September. Among the issues discussed were:-

- Bulk Carrier Casualty Statistics - it was agreed that the annual analysis and reporting of casualties by **INTERCARGO** should attempt to cover incidents of partial damage, and provide information on the vessel's last loading port.
- Bulk Carrier Safety – the work at the IMO on bulk carrier safety was discussed, and it was noted that no decisions from IMO can be expected before the results of the work of the various formal safety assessment studies were available
- Navigational Equipment – in particular, the carriage of Voyage Data Recorders under a revised SOLAS chapter V
- Ship Recycling - while noting that the International Chamber of Shipping (ICS) co-ordinated Industry Working Group on Ship Re-cycling was developing a standard inventory document for ships to enter all known hazardous materials, it might not be a feasible proposition for existing ships
- Ballast Water Management - on the matter of ships undertaking exchanges at sea, it was agreed that that it was important that any ballast water management plan should be an approved document

- Port State Control - A document *Port State Control - A guide for ships involved in the dry bulk trades* prepared by the Secretariat was endorsed for publication and circulation to members. This Guide is currently being printed. The Committee also approved the development and circulation of an *Inspection Reporting Form* for members to use to report incidents of poor port State control inspection practice / performance.
- Bulk Terminal Reporting - a report analysing the 1000 + *Bulk Terminal Reporting Forms* returned from members over the last 5 years was approved for circulation to members (see below).

#### European / Asia Panel Meetings

Both European and Asia Panels are meeting this month to discuss issues such as :-

- The Intercargo Strategy Paper
- E Commerce
- Bulkvoy 2000 – reviewing the latest draft of this standard bulk charter party.
- Communication with the Membership – the Panels will consider the merits of a move to greater use of e mail and the Intercargo website to provide the membership with information and an avenue for feedback.
- Crewing – consideration of quantity and quality issues.

### London Committee

The London Committee met on 12 October and the following items were discussed :-

- ISM Code – considered that more time is needed to study the main effect of changing the cultural attitudes of the maritime industry. The Committee felt that more could be done to harmonise and standardise the survey and inspection of dry cargo vessels as a means of avoiding duplication of effort. The Committee agreed to investigate further the suspected culture of under-reporting accidents.
- Environment – the Committee considered that consideration should be given by all International Associations of advising the media of the general facts and benefits of the shipping industry so as to mitigate the effect of “bad news” reporting after a casualty. It was acknowledged that the Association could not play a significant role in the event of a particular casualty.
- Ship to Shore – it was acknowledged that the Terminal Operators had a duty of care to the vessel.

### Deballasting requirements – Mormugao, India

Information has filtered back from a member relating to the deballasting requirements at Mormugao. Members are invited to take particular note of this development as it could have an

impact on the safety of vessels using this particular port.

On September 14, the Mormugao Port Trust advised that deballasting at the berth should be limited to five hours in total. Vessels exceeding such a period when others were waiting to berth at Berth no. 9 could – at the Port’s discretion, be moved off this berth provided that the vessel deballasting had not exceeded 11.0 metres draft. Vessels exceeding this draft would be forced to pay five times the normal berth hire charges and could be debarred from using Berth 9 in the future unless repairs or modifications to the deballasting equipment were carried out to the satisfaction of the Port Authorities.

### IMO SUB-COMMITTEE ON STABILITY AND LOAD LINES AND ON FISHING VESSELS – 43<sup>rd</sup> SESSION : 11-15 September 2000

A report of some of the issues discussed is as follows:-

### Revision of Parts B and B-1 of Chapter II-1 of the SOLAS Convention

In future, a single set of probabilistic-based subdivision/damage stability regulations covering both passenger ships and dry cargo ships will be introduced although it is recognised that probabilistic techniques which are theoretically complicated will not be embraced by the shipping industry. To take this harmonisation a stage further, the regulations for cargo ships will be designed so as to provide the same safety level for each type of ship. Finalisation of the revised Chapter is

scheduled for 2006 but it will only apply to ships built after the amendment comes into force.

#### Revision of the technical regulations of the 1966 Load Lines Convention

Since 1966, IMO has approved a number of amendments to the Load Lines Convention but none have taken effect because this depended on the explicit consent of a minimum number of Parties to the Convention which have never been obtained. The 1988 Protocol to the Convention, which came into effect earlier this year, paves the way for what is called the tacit amendment procedure. This will make it a great deal easier to amend the technical regulations of the Convention.

The changes will fall into two categories: tidying up amendments agreed in the past but not yet in force; and introducing those which, in the light of modern technology and scientific findings, define the requirements of the 1966 Convention more rationally. An example of the latter is the use of a direct computational method for determining bow heights, based on a probabilistic theory. In order to undertake further research, the Sub-Committee has therefore decided to postpone the final consideration of the first set of amendments to 2002. The revision will apply only to ships built after the amendments come into force.

#### Bulk carriers

Consideration will be given to how bulk carrier safety-related issues should be dealt with in the context of the revision, in particular, examination of the strength of hatch covers and coamings; freeboard and bow height;

and the protection of the crew when access to the fore deck is necessary for the operation of the ship.

Research undertaken by the UK on hatch covers and coamings, purports to show that No. 1 hatch covers in capesize vessels when stationary in typhoon wave conditions, and on capesize and panamax vessels at 3.7 knots in 10m waves, experience wave loads in excess of those predicted by IACS Unified Requirements UR S21. IACS disputes this finding but it is collaborating with the UK in a test programme to establish common ground. The results, subject to statistical analysis and realistic lifetime operational conditions of bulk carriers, will be used to re-assess URS 21. The Sub-Committee has decided to retain the current criteria until the research now being undertaken justifies change.

Bow height - The Sub-Committee has agreed, in principle, that computational methods based on probabilistic theory could be used for deriving relatively simple formula for minimum bow heights of conventional ships.

Freeboard - The Sub-Committee decided that the existing freeboard tables should be retained in the first revision of the Convention. Early comparisons suggest that under the computational method, the freeboard of large ships could be reduced, but in smaller ships a freeboard increase may well be likely.

Air pipes - The fitting of weathertight devices to air pipes has been discussed at length but it was decided that the existing requirements were satisfactory.

Damage survivability - Damage

survivability requirements currently included in the Load Lines Convention is to be retained.

### **Third International Seminar on Bulk Carrier Casualties**

Safety and quality were the combined themes of a presentation given by the Secretary-General to Russian shipowners and other members of the Russian maritime community at St. Petersburg on 17 October.

The paper outlined how dry cargo interests can achieve tangible improvements to the industry safety record by working together for the common good under the *INTERCARGO* umbrella.

### **St. Lawrence Seaway Development Corporation**

As part of a series of visits, representatives from the U.S. Department of Transportation St. Lawrence Seaway Development Corporation (SLSDC) and the Canadian Government St. Lawrence Seaway Management Corporation visited *INTERCARGO* on 18 September to explain future initiatives.

The delegation, which included representatives from the Ports of Duluth and Cleveland, discussed planned infrastructure improvements to the Seaway including an increase in draft from 25 ft to 26 ft 3 inches and eventually to 26 ft 6 inches. A permissible deadweight of 37,000 dwt was the ultimate objective of a five year policy to increase the overall dimensions of the waterway and as evidence of improved service to users, the SLSDC reported that the 2000 season would end on 25 December – the latest on record.

The Seaway representatives explained how the US and Canadian authorities worked together to improve flexibility by using one SLSDC ship inspector instead of separate officials from the US and Canadian Administrations. Another service available to the admittedly diminishing pool of Laker-sized vessel owners was a facility whereby companies contemplating the construction of Laker-sized vessels can – free of charge – obtain advice on making their vessels Seaway-compatible at the construction stage.

As part of their aim to improve vessel and terminal safety, the SLSDC were informed about the relationship between *INTERCARGO* and the US Coast Guard. The delegation was also supplied with a copy of the IMO BLU (“Safe Loading and Unloading of Bulk Carriers) Code with which it had previously been unacquainted.

### **E Commerce**

As part of the brief given to it by the Commercial Panel, *INTERCARGO* was represented at a shipping e-commerce seminar held in Plymouth on 13 October by Plymouth’s Nautical Degree Association and Shippingjobs.com. Although well attended, there were 250 delegates, it was poorly represented by shipowners, charterers, etc. Was this because it was just another conference or because shipowners have yet to feel encouraged by e-commerce? Although there are 37 different projects (sites) it was strongly felt that there were two contributory factors to the shipowners’ lack of interest in e-commerce: one that many sites did not meet the industry’s needs, and second shipowners were nervous of making the change. One shipowner, however, did report that using the Internet had improved his company’s procurement.

Much talk focused on the role of the shipbroker. Some considered that the role of the middleman would disappear, whilst others felt that shipbroking would turn into a more consultative status.

Who knows what the future has in store? Perhaps the good news for the shipowner will be that by this time next year there will be fewer sties to choose from as some will have merged and others will cease to exist. Nevertheless it could be said that e-commerce will not happen until the industry wants it – although it appears to be travelling at a marathon pace rather than a sprint.

### **Association Publicity**

For information, an article on bulk carrier safety and the role of class written by the *INTERCARGO* SET Manager appeared in a recent issue of Maritime Consultant and Surveyor. This is reproduced as Annex 3.

### **Time Charter Interpretation Code 2000**

FONASBA, the Federation of National Associations of Ship Brokers and Agents has sent us a courtesy copy of their recently produced Code.

This is reproduced as Annex 4.

### **Fairplay Cup**

Fairplay Publications have written to ask for expressions of interest in putting together an “Intercargo” yacht to compete in the seventh annual Fairplay Cup yacht race in the Southampton / Portsmouth area on 14 June 2001. Involving an informal gathering of 20+ Sunfast 36’s provided by a chartering company and crewed by teams from DNV, The Baltic

Exchange, Stentex, Shell Marine Products etc, teams compete in two races followed by a post-race dinner and prizes in a suitably historic location.

The cost for the yacht would be approximately £270 per person based on a seven-person crew. Each yacht is supplied with a skipper although eight persons are allowed if a qualified skipper can be found “in-house”

If anyone is interested from a crew / guest point of view, please get in touch with the *INTERCARGO* Manager. To encourage membership contact we would propose a maximum of two crew from any one company.

### **Publications**

#### **Environmental Criminal Liability in the United States**

Published by the Chamber of Shipping of America, this analyses issues such as drawing up an effective compliance programme and protecting the company during any criminal investigation.

Priced USD 50, copies may be obtained from the Chamber of Shipping of America, 1730 M Street NW, Suite 407, Washington DC 20036-4517 Tel: + 1 202 775 4399

#### **International Salvage Union : Salvage Contracts on CD**

In cooperation with BIMCO, the ISU has produced a CD-ROM covering a number of individual contracts such as TOWCON, TOWHIRE, ISU Award Sharing Sub-contracts and ISU Guarantee forms. Priced at GBP 30, the CD-ROM will enable access to unlimited copies of draft forms but a subscription to BIMCO’s Charterparty Editor (USD 200 per 100 final copies

for those who do not already subscribe) will be required to print off any final documents required. For

## **Conferences**

The Bulletin will now include details of forthcoming conferences which may be of interest to Members. Endorsement by **INTERCARGO** of any of the conferences mentioned should not be automatically assumed.

18-20 October – Lloyd's List 1<sup>st</sup> International Shipping Convention, London

Includes a parallel sessions dealing with Bulk, Passenger and Liner Shipping.

Bookings / further information : +44 20 7453 5492

further information, please contact the ISU on T : +44 20 7345 5122 or F: +44 20 7345 5722

26-27 October – Lloyd's List : Ship Management 2000, Limassol

Bookings / further information : +44 20 7453 5492

14-15 November – Shipping Finance Conference, London

Bookings / further information : +44 20 7453 5492

22-23 February 2001 – European Dry Bulk Shipping, London

(At the time of writing, the agenda for this conference has not been established although Intercargo is being actively canvassed for its opinions)

**REQUEST FOR COMMENTS ON THE ROLE OF CHARTERERS AND  
CARGO OWNERS IN INFLUENCING THE QUALITY OF SHIPPING  
USCG 2000 - 7796**

**SUBMISSION BY INTERCARGO  
- THE INTERNATIONAL ASSOCIATION OF DRY CARGO SHIPOWNERS**

**General**

1. With reference to your request for comments, please find attached **INTERCARGO's** submission.
2. Representing 140 members operating 75 million dead weight tonnes of dry cargo ships, our comments are clearly geared towards this particular element of the trade and transportation sector.
3. **INTERCARGO's** stance on quality and safety, it is believed, will be well known to the US Coast Guard. Under these circumstances, we have kept our replies specific to the questions in hand and have not sought to elaborate our relationship with you under the Quality Shipping partnership initiative.
4. In summary, **INTERCARGO** believes that the quality of vessel charterers is one of the wide ranging factors which can have a direct bearing on the safety of our member's vessels and the environment.
5. For further information, please contact : The Manager, Intercargo, 4 London Wall Buildings, Blomfield St, London EC2M 5NT, United Kingdom  
Tel : +44 20 7638 3989 Fax : +44 20 7638 3943  
rob.lomas@intercargo.org

**Specific questions**

1.	<p><i>What role do the charterer and cargo owner play in ensuring ships are in compliance with international safety and pollution regulations ?</i></p> <p>Although it is more accurate to report that charterers of tankers engaged in the international transport of petroleum products play a greater role in determining the quality of that particular type of vessel, <b>INTERCARGO</b> sees no reason in principle why charterers of dry-cargo vessels should not also insist on the highest possible adherence to international safety and pollution regulations for their chartered shipping.</p> <p><b>INTERCARGO</b> as an association strictly insists on its members vessels / companies adhering to the International Safety Management Code, that the member's vessels must be entered with a Full Member of IACS and</p>
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	<p>the company ships should be P&amp;I insured. On an international basis, we believe some charterers would not be aware of this as the minimum acceptable standard.</p>
2.	<p><i>Would publication of a list of charterers and cargo owners that are associated with detentions improve compliance with international safety standards ?</i></p> <p><b>INTERCARGO</b> believes that this would be a sensible step to make in raising the quality of dry bulk vessels used.</p>
3.	<p><i>Should the charterer and cargo owner be included in the Coast Guard's Port State Control targeting matrix ? If so, does the type of chartering agreement matter when a decision is made to determine who should be associated with a detention ?</i></p> <p>Although there may be practical difficulties in ensuring that <u>all</u> cargo owners of a bulk carrier used in a common carrier mode are identified in the case of a detention (there may be more than one), <b>INTERCARGO</b> would support the inclusion of the voyage charterer / cargo owner in the targeting basis.</p>
4.	<p><i>What is the screening process used by your company prior to chartering a vessel ? How is the final vessel selection made ?</i></p> <p>This situation would not apply to the majority of <b>INTERCARGO</b> members who are the owner / operators of the vessels themselves rather than the vessel charterers. We would however, refer to the points made in Question 1 and hope that cargo interests can play their part in encouraging quality and removing substandard vessels.</p>
5.	<p><i>What factors are considered when you select a vessel for charter ?</i></p> <p style="text-align: center;">Not applicable</p>
6.	<p><i>Do you consider a vessel's safety or casualty record, including its Port State Control history in your decision process ?</i></p> <p style="text-align: center;">Not applicable</p> <p>However, bearing in mind the experiences of the European Commission's Equasis database, the need for accuracy of information must be carefully considered to ensure that, for example, vessels of similar name are not targeted under port state control measures. It is recognised that the probability of this happening is remote.</p>

7.	<p><i>Does a charterer or cargo owner ever change during a voyage ? If yes, what are the circumstances and in general, how often does this occur ?</i></p> <p>A charterer does not change during a voyage as he has a binding contract with the owner. He may only change with consent from the owner, which rarely occurs.</p> <p>Under a time-charter, the head-charterer may sub-charter the vessel to another time-charterer without the owner being aware.</p> <p>It is not normally the case that the dry-bulk vessel owner would be aware of the cargo owner which in the case of bulk commodities, may well change frequently during a voyage.</p>
8.	<p><i>In those instances where the charterer changes during the voyage or there are multiple cargo owners or cargo ownership changes, how is responsibility for ensuring compliance with international maritime safety and pollution prevention standards determined ?</i></p> <p>Although there is a dual responsibility for ensuring adherence to international standards – port state and flag state, <b>INTERCARGO</b> believes that port states are effective regulators of international shipping standards – as promulgated by the IMO. We therefore fully support the effort to broaden responsibilities to charterers and cargo interests.</p>
9.	<p><i>What documentation does the vessel owner, agent, master, person-in-charge or operator have that identifies the charterer or cargo owner ? Is this documentation available onboard the vessel ?</i></p> <p>The vessel owner or his agent will usually have information about the vessel charterer. In practice, under Port State Control inspections, the Master would be able to obtain such information from his Head Office either instantly or within a very short time frame. We are not aware of any internationally agreed on-board documentation covering information about the vessel charterer.</p> <p>The ship-owner or the vessel usually has no knowledge about the identity of the cargo owners – there may be more than one cargo owner when there are parcels of bulk commodities.</p>
10.	<p><i>How is the cost of a delay resulting from a Port State Control action or detention measured or determined ? Who absorbs or pays for it ?</i></p> <p>The vessel owner would ultimately be responsible for the additional costs of port state control measures. <b>INTERCARGO</b> is striving towards</p>

	improved targeting as a means of ensuring the elimination of substandard tonnage.
11.	<p><i>Would requiring that the name of the charterer and cargo owner be provided as part of the notice of arrival have an impact on small businesses ?</i></p> <p><b>INTERCARGO</b> would support an agreed international solution to ensuring the targeting of “sub-standard” charterers. This may work in circumstances where the charterer can be easily and speedily identified (see question nine) but we cannot, of course, speak on behalf of non-bulk shipping.</p> <p>The reality is that the vessel owner currently has no information about who the cargo owner is and does not have the means of finding out such information. To insist that the charterers provide such information may require changes to international custom and practice. If such a requirement is deemed desirable, then <b>INTERCARGO</b> believes that the IMO and its Facilitation Committee should be used as the forum for discussing the practicalities of adding charterer’s names to the information legally required under the Arrival Note.</p> <p>We are mindful of suggesting increases to on-board workloads but the costs – in terms of time and effort to complete the documentation, should perhaps be considered against the value of identifying persistent charterers of sub-standard tonnage.</p>
12.	<p><i>What would the cost be to your company of adding the name of the charterer and cargo owner to the information reported in the notice of arrival ? Does this cost differ according to the type of charter, cargo owner or vessel type ? What is the basis for your estimate ?</i></p> <p>The net cost of adding the name of the charterer (the name of the cargo owner cannot be ascertained by the shipowner) would be minimal.</p> <p>The communication chain : perhaps one line of data from the owner to the master, thence a similar transmission from the master to the port agent would scarcely be measurable in an era of relatively low cost electronic communications. Although requirements for additional information requirements would need to be carefully considered in the appropriate forum (IMO), <b>INTERCARGO</b> suggests that the benefits of quality and safety far outweigh these miniscule additional costs.</p>
13.	<p><i>What is your estimate of the total cost to industry of adding the name of the charterer and cargo owner to the information reported in the notice of arrival ? What is the total cost by charterer, cargo owner or vessel type ? What is the basis for your estimate ?</i></p>

To be completely explicit, we believe that the removal of sub-standard shipping will raise the costs to charterers of chartering quality tonnage. This has to be borne against the benefits that this will bring in terms of safety and the environment.

In terms of communication costs to the vessel owner, we nevertheless believe such additional costs to be insignificant on the assumption that chartering interests readily agree to such potentially commercially sensitive information being released to port state control interests.

## **FONASBA**

### **The Federation of National Associations of Ship Brokers and Agents**

#### **TIME CHARTER INTERPRETATION CODE 2000**

##### **Disclaimer**

Where any of this code conflicts with any of the terms of the relevant time charter, those of the latter shall prevail to that extent, but no further :

##### **Introduction**

##### **AIMS AND OBJECTS**

In commercial practice many aims and objectives for standardisation are often frustrated by the laws in different jurisdictions and where the legal understanding and interpretation may differ the one from the other.

The main jurisdictions applicable to maritime disputes are :

- a) The Common Law countries – mainly England and the USA.
- b) The Civil Law countries such as France, Germany, Italy etc.

This endeavour is not going to be the alter-ego of the Laytime Definitions for Voyage Charters; nor is this an attempt to create new charter party clauses, but merely a Code of how to interpret existing charter party clauses as well as to assist disputing parties where charter parties are silent or non-determining.

There is a vast difference between definition and interpretation, but in some ways and sometimes they may compliment one another. For example, nobody in shipping needs a definition of what speed and consumption are or mean, but how should one deal with a speed claim, if any ?

The chief objective of the Code is to try to eliminate many oft occurring and avoidable maritime charter parties disputes in the field of time charter.

##### **1. Speed and Consumption**

The following is to apply to any dry cargo time charter not containing a performance clause, and to any combination carrier when engaged in dry cargo trading.

The speed and consumption warrantees of the time charter are to apply for its duration and whether the vessel is fully, partly loaded or in ballast, and shall

be computed from pilot station to pilot station on all sea passages while the vessel is on hire, excluding :

- a) Any day on which winds of Beaufort Wind Scale 4 or above are encountered for more than six (6) consecutive hours.
- b) Any time during which speed is deliberately reduced for reasons of safety, or on charterers' orders to steam at economical or reduced speed, or when the vessel is navigating within confined waters, or when assisting vessels in distress;
- c) Any complete sea passage of less than 24 hours duration from pilot station to pilot station;
- d) Periods in which time is lost on charterer's instructions or due to causes expressly excepted under terms of the time charter;
- e) Periods when the vessels' speed is reduced by reason of hull fouling caused by charterers' trading orders.

When specific figures have been agreed to for the vessel in ballasted condition these shall be taken into consideration as shall agreed specifics for reduced or economical speed and consumption, when computations are made.

The mileage made good during qualifying periods shall be divided by the warranted speed and compared to the time actually spent.

Any excess is to be treated as off-hire. If the word "about" preceded the speed and consumption, same will be understood to mean  $\frac{1}{2}$  knot less in the speed and 5% more in consumption, not to be cumulative.

As to consumption, the recorded qualifying periods, as above shall be multiplied by the warranted consumption on the qualifying days and compared to the actual consumption. In case of any excess, the charterers are to be compensated by the owners for such excess in cost to the charterers calculated at the prices at the last port bunkers were supplied during the time charter, or those at delivery whichever applicable. Such amount may be deducted from hire.

The immediate financial consequences of a speed deficiency shall be set-off with any savings caused by under-consumption.

The computations shall be made sea passage by sea passage. The vessel's speed and consumption shall be reviewed at the end of each twelve months, or other lesser period as appropriate.

If in respect of any such review period it is found that the vessel's speed has fallen below the warranted speed, hire shall be reduced by an amount equivalent to the loss in time involved at the rate of hire. And if in respect of

any review period it is found that the vessel's consumption has exceeded the warranted consumption, the additional costs shall be borne by the owners.

The foregoing is without prejudice to any other claim(s) that a party may have on the other.

## 2. Withdrawal for late/non payment of hire

Except where otherwise specifically permitted in the provisions of the charter party, the charterers shall have no right to make arbitrary deductions from hire which shall remain payable punctually and regularly as stipulated therein. Nothing in the charter party shall, however, prejudice the charterers' right to make any equitable set-off against a hire payment due provided that the calculation is reasonable, made bona fide, and that it is in respect of a claim arising directly out of their deprivation of the use of the vessel in whole or in part.

Except as provided herein, the owners shall have a right of permanent withdrawal of their vessel when payment of hire has not been received by their bankers by the due date by reason of oversight, negligence, errors or omissions of charterers or their bankers. In such cases prior to effecting a withdrawal of the vessel, the owners shall put the charterers on preliminary notice of their failure to pay hire on the due date, following which the charterers shall be given two clear banking days to remedy the default. When the breach has been cured the payment shall be deemed to have been made punctually.

In respect to a payment of hire made in due time, but insufficient in amount, the owners shall be permitted a reasonable time to verify the correctness of a deduction. If, thereafter, there is found to be disagreement on the amount of the deduction, then the amount in dispute shall be placed in escrow by the charterers and the matter referred to immediate arbitration in accordance with the terms of the charter party's arbitration clause. In that event there shall be no right of withdrawal.

Except as provided heretofore, withdrawal of the vessel may be made by the owners, which shall without prejudice to any other claim they may otherwise have on the charterers.

## 3. Off-hire

Any period of time qualifying as off-hire under terms of the charter-party shall be allowed to the charterers for any time lost in excess of three consecutive hours for each occurrence.

In addition to matters referred to as off-hire in the charter party, shall be included time lost to the charterers caused by interference by a legal, port of governmental authority, resulting in the charterers being deprived of their unfettered use of the vessel at any given time during the currency of the

charter party, or in the vessel being prevented from leaving the jurisdiction contrary to charterers' requirements.

4. Deviation

All periods of off-hire due to deviation shall run from the commencement of the loss of time to charterers, deviation or putting back, and shall continue until the vessel is again in a fully efficient state to resume her service from a position not less favourable to the charterers than that at which the loss of time, deviation or putting back occurred.

5. Legitimacy of the Last Voyage

In the absence of any specific provision in the time charter relating to re-delivery and orders for the final voyage, the following shall apply :

Charterers undertake to arrange the vessel's trading so as to permit redelivery within the period and permissible redelivery area as contained in the charter party. As soon as the charterers have arranged the final voyage they shall immediately so inform the owners giving a realistic itinerary up to redelivery time. The owners shall notify the charterers within two working days thereafter as to whether they agree or disagree with charterers' estimate. Should they disagree and consider the vessel will overlap the maximum period, they shall nonetheless allow the voyage to be undertaken at the time charter rate of the charter party without prejudice to their ultimate right to compensation for additional hire at the market rate should an overlap subsequently have proven to have occurred, and should the market rate be higher than the charter party rate of hire.