

BULLETIN No. 187
Autumn 2002

INTRODUCTION

Added to the two issues of safety and security which are currently dominating discussion in the dry cargo industry, this Bulletin also highlights another issue which could have significant consequences in the future - the cost and availability of capital finance – Basel II.

Also of note this month was the Round Table shipbuilding seminar and workshop in Shanghai chaired by Frederick Tsao. Details of the outcome of this important event involving class, shipyards and the owners associations follows in this Bulletin and as a Press Release to be found on the Intercargo website.

1. ASSOCIATION POLICY & INDUSTRY NEWS

1.1 Bulk Carrier Safety

An IACS/Industry Meeting on Bulk Carrier Safety held on 16 September and co-chaired by Mr. Alan Gavin (IACS) and Mr. Dimitris Fafalios (Industry) discussed the "eight initiatives" announced by IACS on 15 March 2002. This was arranged in response to concerns from Industry that because parallel discussions were taking place in IMO, the end result could be dual technical standards and implementation schedules. A report of the meeting is annexed to the CASTEC Agenda Notes prepared for the 4

November meeting which can be found on the Bulletin Board.

The next IACS/Industry meeting will take place on 17 December when the outcome of the IMO Maritime Safety Committee 76 will be reviewed. In addition, IACS will report on its progress with the "eight initiatives".

IMO MSC 76 will continue its review of the formal safety assessment studies and develop a final preliminary list of recommendations. It will also adopt two new SOLAS regulations; 'Access to and within spaces in the cargo area' and 'Water ingress alarms'.

Intercargo has submitted two papers to MSC 76 - a general submission designed to

- (i) encourage alignment between IACS and IMO rule-making and the packaging of measures to avoid, as much as possible, excessive and duplicate rule-making; and also arguing that any introduction of double hulls is best left to market forces and not made mandatory; and
- (ii) a specific submission on the matter of hold water ingress alarms to argue for less prescriptive regulation wording; together with a relaxation of the application date. The papers are also annexed to the CASTEC Agenda Notes.

A large number of papers have been submitted to MSC 76. The UK paper MSC 76/5/17, for example, proposes a very onerous approach to improving the safety of bulk carriers. It advocates, amongst other things: the mandatory introduction of double hulls for new

bulk carriers; all new double hull and existing single hull bulk carriers to be able to withstand flooding of any one cargo hold; the mandatory fitting to all new and existing bulk carriers free-fall lifeboats; and the introduction of a Bulk Carrier Endorsement.

1.2 Round Table Seminar and Workshop on Shipbuilding in Shanghai

An invitation-only seminar held in Shanghai earlier this month under the auspices of the Round Table of maritime associations and chaired by Intercargo's Frederick Tsao, attracted an impressive number of the world's leading figures from the shipbuilding, classification and owners associations bodies.

The Round Table – incorporating BIMCO, ICS, Intercargo and Intertanko meet from time to time to address and wherever possible, co-ordinate policy and direction. On this occasion, shipbuilding standards, capacity and contractual issues were the topics addressed – issues which had been identified as significant at the previous meeting of the Round Table held in Singapore in February.

As ever, the success of this platform should be judged against the fact that the meeting created significant and meaningful dialogue between the owners, shipyards and Class interests.

A copy of the Press Release issued by the Round Table of maritime associations after the meeting is contained on the publicly available “News” part of the Intercargo website. Please take time to have a look at this document to see how the industry will address this crucial issue.

1.3 Basel II – Financing the Shipping Industry in years' to come

One aspect of Intercargo's work which receives little publicity concerns the output of our “London Committee” – a multidisciplinary Committee involving owners, charterers, banking, insurance and class representatives which makes appropriate recommendations to Intercargo's Executive Committee.

At a recent meeting of the London Committee, banking interests reported the impact that the Basel II agreement might have on shipowners seeking to raise capital after 2006/7.

In general terms, changes to complex international Banking instruments cannot be easily influenced by shipowner lobbying activities although we are indebted to fellow Round Table member, the International Chamber of Shipping, for keeping us informed about their activities in this particular area. Also playing an equally prominent role in these discussions is the European Community Shipowners Association.

Arising from the London Committee were a number of “what if's” relating to the future quality and structure of the shipping and banking sectors. Impact assessments are currently being considered by the banks and in this respect, any direct concerns should be directed to national banking interests via national shipowner associations. In summary, Basel II may have the following consequences :-

Capital adequacy for banks

1. Basel II will require banks to hold a capital adequacy to risk ratio of 12% rate for corporate structures rated as BB- or below – a not untypical rating for many

shipowners. London Committee banking interests pointed out three relevant issues – that examination of loan books can be retrospective, in tighter lending conditions the bond market may well become more attractive and the fact that under Basel II proposals, ship mortgages cannot be considered in the capital adequacy calculations.

2. Banks will use external rating agencies to assess maritime corporate structures, or if they are a size to support it, the bank will use their own resources to assess risk. This may lead to some traditional smaller shipping banks quitting shipping finance activity. Shipowners may therefore have to pay more for their capital in the future.

Quality

In assessing risk for capital adequacy purposes, banks will have to pay closer attention to the opaque nature of some corporate structures in adherence to the OECD's view that there should be greater transparency in identifying the beneficial ownership of business concerns. As banks raise the cost of capital, market corrections could see some shipowners unable to meet these costs deciding to exit the industry.

Basel II could therefore have an impact on the smaller 1/few ship operating structures. Pooling could be seen as a logical step to create a smaller number of investment grade corporate structures.

1.4 Port State Control Benchmarking data

At the end of 2002, members will receive a short report on the aggregate

totals of 10,000+ dwt bulk carriers detained in the Paris MoU, Tokyo MoU and USCG areas of jurisdiction together with other useful Industry benchmarking information.

Pro tem, statistics collated by Intercargo for the year to 30 September 2002 show 328 separate detentions so far – a small decrease on the comparable period for 2001. Vessels entered with Intercargo account for just 7.69% of this total.

It is estimated that there are currently around 5,500 bulk carriers larger than 10,000 dwt in the world trading fleet.

1.5 Australian Taxation Proposals

The Australian Taxation Office (ATO) has issued a draft ruling related to payment of tax on time charter or bare boat charter hire earned by overseas shipowners who have time chartered or bareboat chartered their vessels to Australian charterers.

This development should not to be confused with a tax on freight or cargo. It is a tax on hire as hire is deemed to be a royalty earned by the Owner on the use of the ship.

The Australian Shipowners Association has formally objected to the proposals suggesting that the tax authorities have failed to appreciate the commercial realities of time charter arrangements.

If it does go through as a final ruling, questions will arise as to how the tax authorities will deal with this royalty withholding tax measure. Although not decided, a possibility exists that the onus may be put on the Australian Charterer to deduct the liability from the last or penultimate hire payment.

Again, a matter of conjecture, it could be the case that Australian charterers may be penalized by having to pay increased charter hire to offset this royalty obligation, but as usual, commercial pressures and realities may be the order of the day. The tax of 30 % of the royalty amount is reduced to 10 % by the application of Double Tax Agreements between Australia and various countries (but not some significant countries such as Panama and Liberia). Nevertheless, this is still a significant amount.

1.6 Classification Society news

- i) ABS have made available on their website (www.eagle.org) a report entitled "An Evaluation of the effectiveness of the Flag State - Recognized Organization relationship;
- ii) GL have issued a Press Release stating that they do not support the *mandatory* necessity for double-hull bulk carriers; and
- iii) LR has outlined information on EPIRBS which may be found in the Class Direct element of its website, www.cdlive.lr.org

1.7 Intercargo Bulletin Board and website

Examples of information added to the website and Bulletin Board :-

California COFR – resumption of its unannounced drill programme. (Members should also note that the Californian Office of Spill Prevention and Response (OSPR) has recently authorised a significant increase in fees relating to the Californian Certificate of Financial Responsibility (COFR).

Fees will rise from USD 100 to USD 2,500) for nontank vessels such as bulk carriers with effect from next year.

MARPOL sewerage rules – to enter into force in 2003

US security advice – advice received from the US relating to shipowner security issues; and

Crew issues – US advice on restricting access to certain nationalities of seafarers during US port calls.

1.8 E Mail contact with Intercargo

If you e mailed the Intercargo secretariat between 1 November and 11 November, there is a possibility that your e mail was not delivered correctly. This was due to a problem with our service provider. Please resend your e mail if you think a reply is outstanding.

1.9 Seminars and Conferences

DBTG, Lisbon

Peter Kidman attended the annual meeting of the International Dry Bulk Terminals Contact Group (DBTG) held in Lisbon at the end of September. The DBTG was set-up to provide a forum for dry bulk terminals world-wide and in conjunction with an Australian-based coal exporting organisation, has formed the International Bulk Terminals Association (IBTA) which now has been granted consultative status at the IMO. Preliminary discussions have been held with the DBTG with a view to exploring to what extent the two Associations can work together on common issues.

Mare Forum, Houston

This conference on 18-19 of November will discuss issues connected with forecasted demand, and environmental regulatory and security issues connected with the marine transportation of energy. Roger Holt from Intercargo will be speaking on dry bulk ocean shipping issues.

1.10 New Intercargo Members

Intercargo is delighted to welcome International Registries (UK) Ltd as a recently joined Associate Member.

Contact details of IRU – the administrator of the Marshall Islands Shipping Register are as follows :-

Mr John Ramage

Tel : 020 7247 8782

London@register-iri.com

www.register-iri.com

1.11 Next Intercargo Executive Committee and AGM

As advance notification to all Intercargo members – full and associate, Intercargo Executive Committee members have been asked for their views on holding the next Intercargo meeting immediately before or immediately after the Intertanko Annual General Meeting which takes place in Washington from 5-9 April 2003. It is suggested that organising meetings which coincide with Intertanko will improve the attraction of the event and streamline the number of “association” meetings which representatives of companies with dual membership of both associations will feel that they need to attend.

If the Intercargo Executive Committee meeting takes place in Washington as envisaged, this will be combined with the Intercargo Annual General meeting which is, naturally, open to all full and associate Intercargo members. Advice of dates and notification of ancillary programmes and events will be given in due course.

2. OPERATIONAL ISSUES

2.1 Panama Canal : toll increases

Further to previous Bulletins, owners will have seen Panama Canal tolls rise by about 8% on 1 October with a further increase averaging 4.5% due to take effect in July 2003. Initially, a one-off payment had been proposed by the Panama Canal Authority but this was rescinded following intervention from the Round Table and others.

2.2 Maritime Security

Piracy

Intercargo has been asked by IMO to support their campaign to encourage Masters to promptly report to the nearest RCC, the designated focal point of the coastal State concerned and to its flag State, all piracy or attempted piracy attacks. Please see our Bulletin Board for further information on this topic.

Maritime Security at IMO

Work has continued to develop a new regulatory regime based on new SOLAS chapter XI regulations supported by an International Ship and Port Facility Security (ISPS) Code. Concluding discussions are expected to take place at MSC 76 and a Diplomatic

Conference in December, with entry into force on 1 July 2004.

US Security Requirements

- a) Pre IMO discussions, the US Coast Guard has issued Navigation & Vessel Inspection Circular # 1002 dated 21 October 2002 on 'Security Guidelines for Vessels'. Please see the Intercargo Bulletin Board.
- b) Manifest filing 24 hours in advance of *loading*. US Customs has confirmed that this does not apply to cargoes carried in bulk (defined as "homogenous cargo stowed in bulk ...loose in the hold and not enclosed in any container... freeflowing articles such as oil, grain, coal, ore and so on..which can be pumped...and articles which require mechanical handling such as bricks, pig iron, lumber, steel beams etc".)

Cargo declarations must nevertheless still be submitted at least 24 hours in advance of *arrival* at the US Port as is currently the case.

Carriers of breakbulk cargoes should apply to the US Customs Service in Washington if they wish to take advantage of a 24 hour in advance of *loading* exemption policy.

2.3 Terminal Reporting Forms

An interim report on the 241 Bulk Carrier Terminal Reports received by the Secretariat to date is attached to this Bulletin. Due to the relatively small number of forms returned, only a tentative analysis has been possible at this stage. Members are again urged to participate in this reporting scheme – the Terminal Reporting form is available as either a 'Word' document

from the Secretariat or it can be downloaded from the website. Please see the insert to the last Bulletin for a hard copy of the Reporting form.

Three forms (i) Ship/shore safety checklist; (ii) Description of damages by stevedores to ship or goods; and (iii) Damages statement are available from Peter Kidman on request as Chinese language versions.

2.4 Canada Oil Spill Registration

On 27 September, Canada signed the International Convention on Civil Liability for Bunker Oil Pollution Damage – the practical effect of which is that shipowners trading to Canada must register with the authorities to ensure that a contractual party (i.e. the shipowner or other contact point) can be readily established in the event of a pollution incident.

An Intercargo member trading to the West Coast of Canada has reported the impossibility of registering direct with the clean-up company. Instead, owners are referred to the Chamber of Shipping of British Columbia for registration purposes. We are told that the additional administration charges levied by the Chamber are small when compared to the old system of registering direct with the clean-up company.

It goes without saying that in the event of an oil spill, financial penalties following a conviction under the Canadian Shipping Act are extremely severe. On this basis, payment of the Preparedness Fee is presumably not in question – merely the mechanics of paying direct to the Registered Operator (where shipowners payments are likely to be refused) or via a third party.

Notification of how individual shipowners are paying their fees would be gratefully received by Rob Lomas.

2.5 Californian Bunker Tax

The Governor of California recently vetoed a bill on Bunker tax, paving the way for sales tax to be added to the cost of bunkers sold to vessels in Californian ports. Had the bill been passed, it would have extended the current exemption from sales tax of bunkers sold to ships until 2013.

2.6 Greenpeace / Shiprecycling

A reminder that Greenpeace has initiated a campaign to identify 55 vessels which in their opinion, may be subjected to inappropriate recycling. The names of these targeted vessels may be found on the Greenpeace website.

3. COMMERCIAL ISSUES

3.1 Mississippi Exclusive Towage

Intercargo is continuing to do its utmost to bring to an end this unfair practice. Progress continues to be made in the pursuit of an Order to stop the exclusive tug practice on the Mississippi River.

Due to a Statute of Limitation of 3 years, owners / operators are advised that if you intend submitting a claim for damages as a result of the imposition of the exclusive tug contracts, then it is necessary for you to prepare your claim rather quickly. Claims should be submitted to the Federal Maritime Commission and your lawyer will be in a position to advise you accordingly.

Roger Holt would be grateful if you could notify Intercargo if it is your intention to pursue a claim for damages.

3.2 "OREVOY" with Intercargo Amendments

Members will recall that during last year a considerable amount of work was done to review BIMCO's OREVOY C/P at the request of the Intercargo Commercial Panel. Revised Parts I & II were drafted and named "OREVOY with Intercargo Amendments" but the revisions were never taken to the final stage of completion as the potential users within Intercargo were not certain of clear opportunities to use OREVOY as a standard C/P even in a revised form.

BIMCO have approached Intercargo and have asked us to make it quite clear to Intercargo members that there is only one authorised version of the OREVOY C/P which is the one developed and published by BIMCO. If there is any possible doubt or confusion in this matter then please contact the Intercargo Secretariat.

Members may wish to take note of the fact that BIMCO is about to complete its revision of the OREVOY Charter. A final draft revision will be submitted to BIMCO's Documentary Committee for approval at its meeting on 14 November 2002. If the draft revision is approved by the Documentary Committee, BIMCO expects the revised OREVOY to be ready for market use early in year 2003.

3.3 House of Lords opinion on Shipping Company Directors and the law of tort.

In a recent judgement, the House of Lords ruled that the position of Company Director did not exonerate an individual from tort related to fraud – even if the individual claimed that he was acting in his capacity of company representative when the tort was committed.

The action – The Standard Chartered Bank v Pakistan National Shipping Corporation, related to the backdating of Bills of Lading before the goods had been shipped. A false statement was made by the beneficiary – a Company Director, relating to a letter of credit which had been issued by a Vietnamese bank. Standard Chartered, knowing that documentation had been submitted after the date applicable to the credit negotiation, released funds amounting to USD 1.1 million which it has been unable to recover.

4. TECHNICAL NEWS AND IMO NEWS

4.1 CASTEC

A meeting of CASTEC for its European members took place on 4 November in London. The minutes, once agreed, will be posted on the Bulletin Board. The next meeting of CASTEC is scheduled to take place in Kuala Lumpur in March 2003.

IACS / General Cargo Ships

IACS has adopted a new Unified Requirement (UR Z10.6) which introduces to certain general cargo ships, requirements for close-up surveys and more extensive steel

thickness measurements along the lines applied already to oil tankers, chemical tankers and bulk carriers. In applying this standard, IACS has considered the casualty records of ship types, and those with relatively favorable casualty records - such as containerships, pure car carriers, ro-ro cargo ships, reefers, wood chip carriers and cement carriers, have been excluded. This new standard is likely to be applicable to general cargo ships used for the carriage of dry bulk cargoes.

IMO MEPC 48 – Recycling and Ballast Water Management

In October a number of environmental issues were considered at IMO's Marine Environment Protection Committee meeting.

The IMO is in the process of developing Guidelines on Ship Recycling using the Industry Code of Practice as a base document and it expects to have a final draft ready for adoption by the next IMO Assembly in 2003. The concept of a "Green Passport" for ships is included in the guidelines. It is envisaged that this document, containing an inventory of all materials potentially hazardous to human health or the environment used in the construction of a ship, would accompany the ship throughout its working life. Produced by the shipyard at the construction stage and passed to the purchaser of the vessel, the document would allow subsequent changes in materials or equipment to be recorded. Successive owners of the ship would maintain the accuracy of the Green Passport and incorporate into it all relevant design and equipment changes with the final owner responsible for delivering it with the vessel, to the recycling yard.

The issue of ballast water management continues to be debated. It has been estimated that two more sessions are needed to complete the work so it is now proposed to hold an additional intersessional working group on the subject in March 2003 and prior to MEPC 49 which meets in July. Such a programme will then mean that a Diplomatic Conference to adopt a draft convention could be convened in early 2004.

4.2 European Union Safety Policy

The European Commission has recently publicised European Union safety initiatives that should “drive substandard ships from European waters within two years”. These measures are :-

- The so called “Erika I” package increasing the numbers of port state control inspectors / inspections, monitoring classification society activities and eliminating single hull tankers; and
- The “Erika II” package which will create a compensatory fund for oil spills, closer monitoring of traffic in European waters (including issues related to Black Boxes and Ports of Refuge) and the creation of a European Maritime Safety Agency to support the action of the Commission, the Member States and those countries who will shortly join the European Union

The Commission has publicly stated its intention to publish a blacklist of its substandard ships in its Official Journal from January 2003.

4.3 UK Parliamentary motion

The issue of safe freeboard of older large bulk carriers has been raised in a UK Early Day Motion in Parliament.

Although calling for the introduction of new standards of permissible freeboard for large bulk carriers built before 1998, EDM’s within the UK parliamentary process do little more than gauge opinions and it is unlikely this will progress to influencing UK statutory requirements.

The UK administration will nevertheless play an active role in the forthcoming Formal Safety Assessment discussions at IMO.

4.4 Navigation in the Turkish Straits

New regulations introduced by the Turkish administration relating to the safety of navigation in the Turkish Straits appear to have affected transit times within this region. Anecdotal evidence from members has suggested delays of as much as 45 hours in transit times for both wet and dry cargoes and although Intertanko has played an active role in monitoring the situation, operations and commercial departments may wish to consider the possibility of delays when fixing vessels within this extended geographical region.

4.5 IMO Legal Committee

Issues discussed at the IMO LEG 85 included – a draft convention on wreck removal (where the prime responsibility for locating, marking and removing a wreck will be for the registered shipowner concerned); and a review of the Convention for the

Suppression of Unlawful Acts Against the Safety of Maritime Navigation.

Please see the Bulletin Board for a Committee Report on this meeting.

4.6 IMO Dangerous Goods, Solid Cargoes and Containers Sub Committee

Again, please see the Bulletin Board for a short report on two outcomes of the DSC 7 meeting – to note that the next version of the Code of Safe Practice for Solid Bulk Cargoes is not now expected until 2004 and that the Sub Committee decided against developing a manual to assist terminal representatives in their duties and responsibilities when loading and unloading solid bulk cargoes.

FOR FURTHER INFORMATION :

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RL : 19.11.02

Interim Intercargo Bulk Carrier Terminal Report

[Period from Q4 2000 to Q3 2002]

Total number of replies:	241
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Ship type:	#
Capesize	207
Panamax	16
Handymax	4
Handysize	14

Countries visited (top 10):	#
China	30
Australia	30
Brazil	26
South Africa	20
Japan	18
Netherlands	18
U.K	13
Canada	11
France	9
Mexico	7

Ports visited (top 10):	#
Rotterdam, Netherlands	14
Saldahna Bay, South Africa	13
Tubarao, Brazil	13
Port Hedland, Australia	11
Beilun, China	10
Boashan, China	10
Dunkirk France	8
Hay Point, Australia	8
Hamburg, Germany	7
Richards Bay, South Africa	7

Cargoes carried (top 5):	#
Iron ore	162
Coal	53
Grain / edible cargoes	8
Alumina / bauxite	6
Cement	2

Operational damage:	#
None	197
Hold fittings / ladders / pipes	14
Tank top	9
Hatch coamings / covers	9
Side frames / hopper tanks	9
Bulkhead / stools	8
Other	6
On deck	3

SHIP/TERMINAL INTERFACE

Ship/Shore Safety Checklist

▪ IMO-approved checklist used	173
▪ Other checklist used	44
▪ None used	16
▪ Boashan	3
▪ Beilun	2

Terminal Representative:

▪ Appointed /available	186
▪ Responds to requests from ship	117

Ship's Loading/Unloading Plan

▪ Plan accepted by terminal	218
▪ Plan complied with	102
▪ Plan not used	16
▪ Boashan	6
▪ Beilun	3

Ship/Terminal Communication:

▪ Satisfactory	201
▪ Unsatisfactory	40
▪ Boashan	8
▪ Rotterdam	6
▪ Beilun	5

GENERAL COMMENTS

Excessive loading rates	10
▪ Ponta da Madeira	4
▪ Tubarao	3

Repeated changes to the plan	52
▪ Baoshan	9
▪ Beilun	7
▪ Rotterdam	5
▪ Tubarao	3

Improper freeing of hung cargo	9
▪ Rotterdam	3

Poor jetty safety, access, services	21
▪ Saldahna Bay	4
▪ Sepetiba	2