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NON-TECHNICAL MEASURES TO PROMOTE QUALITY SHIPPING FOR CARRIAGE OF OIL BY SEA

PRELIMINARY RESPONSE OF THE INTERNATIONAL GROUP OF P&I CLUBS TO THE ISSUES ARISING
OUT OF THE MANDATE AND ITS SPECIFIC AREAS OF FOCUS

Submitted by the International Group of P&I Clubs

Summary:	This document summarises the measures taken by the International Group of P&I Clubs in relation to quality shipping and contains a number of suggestions for specific actions that might be taken by States to address the areas of focus identified by the 1992 Fund Assembly at its 10th extraordinary session in February 2006 (document A/ES.10/18, paragraph 5.9).
Action to be taken:	The Working Group is invited to consider the matters raised in this paper and to follow up on these if thought appropriate.

1 Introduction

- 1.1 At its 10th extraordinary session in February 2006 the 1992 Fund Assembly decided to establish a Working Group on non-technical measures to promote quality shipping for the carriage of oil by sea and set the Working Group's mandate and specific areas of focus (document 92FUND/A/ES.10/18, section 5).
- 1.2 This submission sets out the preliminary response of the International Group of P&I Clubs to the issues arising out of the mandate and its specific areas of focus.

2 Working Group mandate

- 2.1 The mandate of the Working Group is:

'to develop proposals in respect of non-technical measures and guidelines for Contracting States and the industry to promote quality shipping by ensuring that effective checks and procedures are in place to establish that ships insured and certificated are suitable for the carriage of oil by sea covered under the CLC/Fund regime. '

- 2.2 The Assembly decided that, in conducting its work, the Working Group should focus on six specific areas. These are individually addressed in more detail in the paragraphs which follow.

- 2.3 The Assembly emphasised that it was essential that the Working Group did not stray into the areas of competence or duplicate work undertaken by the IMO, but that it could take cognisance of the work done on quality shipping by OECD.

3 Summary of measures taken in relation to quality shipping by the International Group of P&I Clubs

- 3.1 At the 9th meeting of the third intersessional Working Group in March 2005 the International Group set out in the appendix (Report on Ship Safety) to its document 92FUND/WGR.3/25/3 a summary of the measures already taken by the clubs in relation to ship safety (Part 1) and a series of proposals for further action made partly in response to the 2004 OECD Report (Part 2).
- 3.2 At the October 2005 session of the 1992 Fund Assembly the International Group recommended the establishment of an informal working group to examine the issue of substandard transportation of oil and annexed a detailed report prepared by Mr Frank Wall, ex-senior civil servant in the UK Department for Transport (document 92FUND/A.10/32). Not surprisingly, this report focused in large part on the key roles and functions of classification and statutory certification and port state control. The report also addressed the complementary, but necessarily more limited, roles played by industry groups and insurers.
- 3.3 Following publication of, and in light of the conclusions of, the 2004 OECD report, the Ship Standards sub-committee and the Ship Technical committee of the International Group undertook a detailed review of the ways in which member clubs of the International Group, individually and collectively, could more effectively address the issue of quality shipping. Recommendations were made by the sub-committee and subsequently approved by the International Group and adoption/implementation of these recommendations is well advanced.
- 3.4 Prior to the 2004 OECD report, the International Group clubs had already put in place ship quality measures including common club rules for compliance with classification requirements, common club rules for compliance with flag state requirements and for compliance with the ISM and ISPS codes, condition survey requirements and safety and loss prevention programmes.
- 3.5 Ship quality measures agreed and implemented within the International Group following publication of the OECD report include:
- new underwriting guidelines for vessel entry for new members providing for specified indicators of quality to be checked on each application including vessel type, age, flag, build and any subsequent modification details, current and previous Classification, ISM and ISPS certification details, area and type of trade, officer and crew nationalities, management details, P&I condition survey history, claims and port state control records and details of any previous refusal to cover withdrawal of cover.
 - harmonisation of ship survey target criteria by the introduction of new more stringent condition survey triggers and reporting procedures for suspected substandard vessels.
 - common minimum scope of information for club condition surveys and the development of a common survey report form.
 - establishment of a central ship survey database updated monthly by all clubs with details of vessels surveyed during the previous month to be consulted by underwriters prior to quoting on vessels.
- 3.6 Ship quality measures in the course of implementation include:
- 'Designated vessel' procedure for vessels failing to meet acceptable quality standards. It is intended that under this procedure a club will 'designate' a vessel which it considers does not meet the standards expected of vessels entered with Group clubs. A database of designated vessels will be maintained by the Group. Whilst this procedure is a potentially powerful tool in addressing quality shipping issues, it does raise potentially

sensitive competition issues and the possibility that, in seeking to progress the quality shipping issues, the International Group, or its member clubs, could breach competition regulations.

- double retention mechanism for vessels failing to meet acceptable quality standards.
- new underwriting guidelines for existing members providing for specified Indicators of Quality. These substantially replicate those identified in paragraph 4.5 above.

3.7 Subject to satisfactory resolution of the outstanding measures detailed above, the International Group member clubs have responded to and substantially implemented measures to address the recommendations contained in the OECD report.

4 Working Group areas of specific focus

4.1 The position of the International Group on the prescribed specific areas of focus of the Working Group is set out below:

4.2 (a) 'consider and make proposals on the development of common criteria to be uniformly applied by Contracting States to ensure that fully effective insurance is in place before States issue CLC Certificates'

Comment: The International Group support and encourage efforts to achieve harmonised criteria across States. The current system of 'blue cards' against which States issue CLC certificates has proved to work well over many years. This has been aided by the fact that over 95% of the world tanker fleet is entered within the International Group clubs and the financial viability of the clubs has been recognised by States. Where blue cards are issued by financial providers other than clubs, States need to be certain of their financial viability before issuing CLC certificates.

Suggested action: States should consider adopting common guidelines for issuing CLC certificates against 'blue cards' issued by International Group clubs. In the case of other financial providers, common criteria should be put in place for assessing their financial viability with a view to establishing a list of approved providers against whose security CLC certificates may be issued by States.

4.3 (b) 'identify factors that prevent the sharing of information between marine insurers and seek to develop a common policy or other measures that would facilitate such sharing of information'

Comment: The International Group support the objective of sharing information between insurers and has sought and obtained legal advice on this issue. As presently identified, legislation in Norway relating to confidentiality imposes a barrier to free sharing of all relevant information and any intervention which can be made in this State to remove such barriers would considerably facilitate progressing this issue.

Suggested action: States should check to ensure that so far as practicable their national legislations do not impede or prevent the free sharing of information between insurers and, if necessary (as in Norway), should support and, if appropriate, put in hand the necessary legislative measures to remove such impediments.

4.4 (c) 'identify practical measures to achieve better and more transparent co-ordination between insurers, shipowners and cargo interests that would promote quality shipping'

Comment: This goes largely to the issue of freedom of exchange of information between insurers and relevant industry players. The more information that can be freely exchanged between insurers and relevant industry players and the easier it will become for these parties to identify and target sub-standard vessels.

Suggested action: States should direct efforts towards removing national barriers and impediments to the free exchange of information.

- 4.5 (d) 'consider possible measures for the denial or withdrawal of insurance cover in order to improve the safer transportation of oil'

Comment: The rules of all International Group clubs provide for the right to terminate cover in the event a vessel becomes 'sub-standard' e.g. fails to meet, or comply with, Class requirements. In the context of the liability cover provided by the International Group clubs, ship quality evaluation measures are already in place, e.g. condition survey procedures and the power to require compliance with recommendations made following such surveys or in the course of implementation, e.g. the 'designated' ship procedure (3.6). These measures, in particular those recently introduced and in course of implementation, will make it easier for the International Group clubs to identify and target vessels which pose a threat to the safe transportation of oil with a view to satisfactorily addressing the threat, alternatively denying, or withdrawing, club cover in respect of such vessels.

- 4.6 (e) 'consider the feasibility and impact of differentiated insurance rates and premiums that would encourage quality shipping'

Comment: The price which shipowners pay for their P&I insurance already reflects their claims record. A ship with a poor loss record will attract increases in the premium charged to its owner. It is important to note however that the International Group has found no evidence to establish that there is a direct correlation between substandard ships and a bad claims record. A quality operator can have a bad claims record (due to fortuity or the nature of trade or trading areas in which he operates) whilst a substandard operator may have a good claims record (for similar reasons). The media attention and focus on maritime casualties involving substandard vessels creates a misleading picture of the reality which is that the great majority of maritime casualties involve well found and good quality vessels.

Insurance costs form a very modest part of a ship owners operating costs and even a significant increase is unlikely to have a meaningful deterrent effect on the substandard operator. Furthermore, because of the mutual nature of the insurance provided by clubs, the financial burden of a substantial claim arising out of a substandard ship is shared between the club's members up to the club's individual retention (currently US \$6,000,000) and thereafter by all shipowner members of Group clubs through the Pooling Agreement mechanism. The particular substandard operator's financial exposure is therefore likely to be limited at most to a possible rise in premium based on his claims record.

The objective should therefore be to identify and subsequently withdraw or deny insurance to the substandard operator rather than to simply increase the cost of his insurance cover. The procedures which the International Group has already adopted (3.5) or is currently developing (3.6) are aimed at achieving this objective.

Suggested action: For the reasons set out above, differentiated insurance rates are unlikely, in the context of a shipowner's liability insurance, to encourage safer transportation of oil. States should focus on developing and supporting measures aimed at identifying sub-standard vessels so that if they are not brought up to a required a minimum standard, their insurance cover can be withdrawn with the result that the vessels can thereby be effectively prevented from trading.

- 4.7 (f) 'examine ways of encouraging and strengthening the participation of classification societies in the promotion of quality shipping'

Comment: As is acknowledged by all stakeholders, Classification societies, Flag State and Port State Control are in the best position to police ship standards and to take appropriate action when standards are not met or maintained. The International Group support the measures taken by these bodies to deal with sub-standard ships. It is crucial however that such measures do not impose unworkable or excessively onerous inspection/certification requirements on shipowners.

5 Summary

- 5.1 The International Group will continue to work towards implementation of the outstanding measures identified in paragraph 3.6 above and, through its Ship Standards Sub-Committee and Ship Technical Committee, will continue to investigate ways of addressing the issue of quality shipping within the Group clubs. The International Group currently liase with, and will continue to liase with, industry colleagues and Hull and Machinery insurers and will support and assist the Working Group on these issues.
- 5.2 An important step forward would be the amendment of national legislation in those States where there are restrictions on exchange of information between insurers and other relevant industry organisations.
- 5.3 The support of States for the 'designated vessel' (paragraph 3.6 above) procedure would be helpful in the context of possible competition law issues arising.

6 Action to be taken by the Working Group.

The Working Group is invited to consider the matters raised in this paper and to follow up on these if thought appropriate.
