BIMCO

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IDEA 2
SHARE DOCUMENTS • WORK TOGETHER

Share documents, work together

New BIMCO SERVICECON contract

The impact of Tier III NOx regulation on the shipping industry

Why language and communication matters

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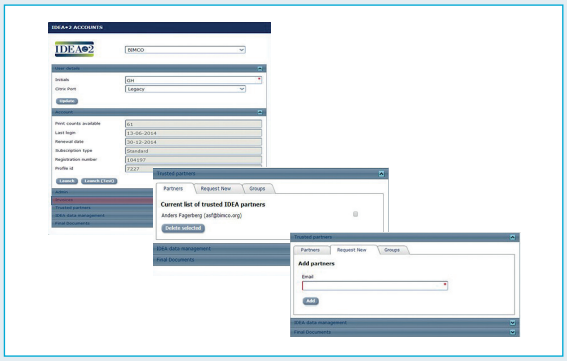
New IDEA•2 feature – share documents, work together *p.2*



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Container vessel at Rotterdam's Euromax terminal. (Photo: portpictures.nl*)*

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IDEA•2
SHARE DOCUMENTS • WORK TOGETHER

Share documents, work together

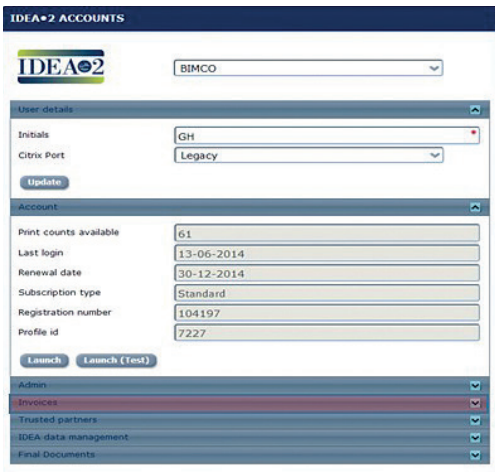
New document rights management "sharing" feature further enhances IDEA•2.

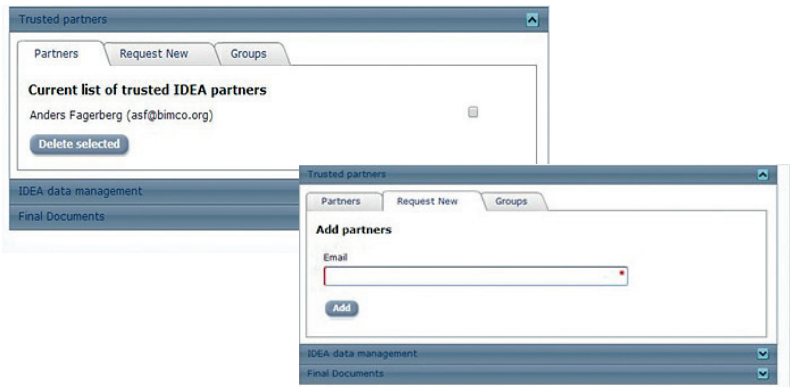
As the many thousands of users worldwide have discovered, IDEA•2 provides an easy-to-access online platform for the preparation of a wide variety of maritime contracts ranging from charter parties to newbuilding agreements.

For over ten years the user-base for IDEA•2 has grown steadily as more and more companies have realised the benefit of using this familiar Microsoft Word-based editor to take the chore out of producing agreements based on standard forms.

Up until now, users have been restricted to working with documents stored in their own private online accounts which can only be

Screen-shot 1





"exchanged" in a non-editable PDF format. While in many cases it may be very convenient for one party to be assigned the task of editing and amending an agreement during negotiations, there are some users who would like to be able to transfer editing rights for a particular contract to the party on the other side of the negotiation. Enabling this "rights management" feature in IDEA•2 effectively creates a document sharing environment where two or more IDEA•2 users in different companies can in turn make track changes to the same contract.

But the feature can also be used to give another IDEA•2 user editing rights to a user-created template containing standard amendments and additional clauses. This could be between departments or companies in the same group or to an external company or user, provided they are all registered IDEA•2 users.

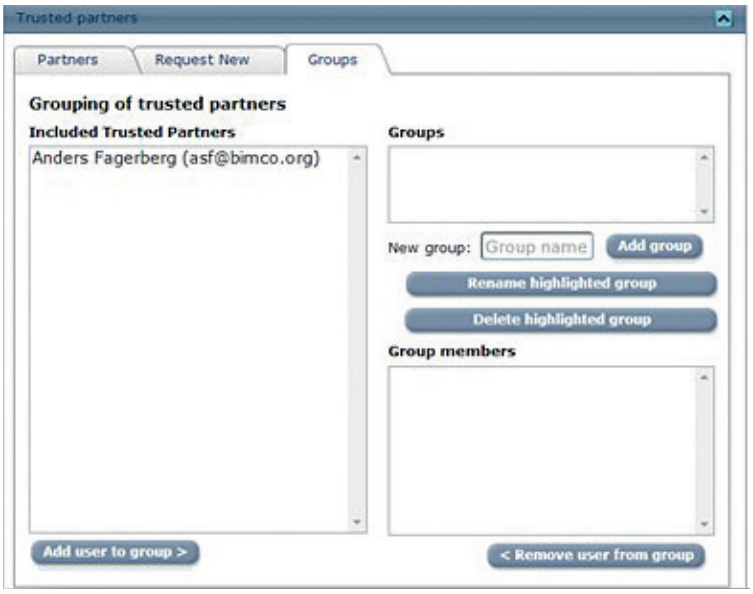
Trusted partners

BIMCO has created a system within IDEA•2 that allows users to nominate "trusted partners" – other IDEA•2 users who can be assigned the right to edit and amend one of the documents stored in your own private user account. Security is of course of paramount importance – your documents will never be physically sent to another user. Instead, that user once invited, will be granted temporary access to your centrally stored contract.

If you go to BIMCO's homepage and click on the "My Account" settings and then select "BIMCO's IDEA2" you will see at the bottom of the Accounts section a new tab called "Trusted partners". This is the "key" that unlocks the door to document sharing in IDEA•2. To give someone "Trusted partner" status you simply click on the tab, select "Request new" and then fill in their e-mail address to send them an invitation. Anyone to whom you have already conferred "Trusted partner" status will be listed under this tab, and you can easily remove them from the list at any time simply by selecting their name and clicking the delete button (see screen-shot 1).

It may well be that you will want to provide document access to a group of people either within your own company or in other companies or project groups. A third tab under "Trusted partners" allows you to create such groups for easy administration (see screen-shot 2).

Screen-shot 2



Once the request has been received and acknowledged by the invited "Trusted partner" you can begin to work together with them on selected documents of your choice. You decide which documents you want to share, with who and for how long – overall control remains with you as originating author of the document.

So what happens next? Well, once that you have set up your "Trusted partners" you can launch IDEA•2 (see screen-shot 3) and choose a document to share from the menu ribbon. When you click "share" (see screen-shot 4) your list of "Trusted partners" is displayed either as individuals or by groups.

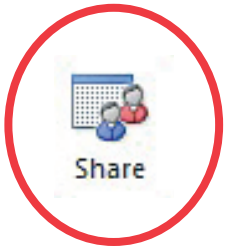
Just tick the box next to the name of the person you want to share the document and then click "invite" (see screen-shot 5). The invitee will receive an e-mail notification that they have been invited to share the document and will also get a pop-up message the next time they launch IDEA•2.

When a document is in "sharing" mode a number of new options appear on the menu ribbon bar. If more than one person can edit a document it is of course essential that their amendments can be clearly distinguished from other people's amendments, so that you know who has changed what. Using Word's track changes feature,

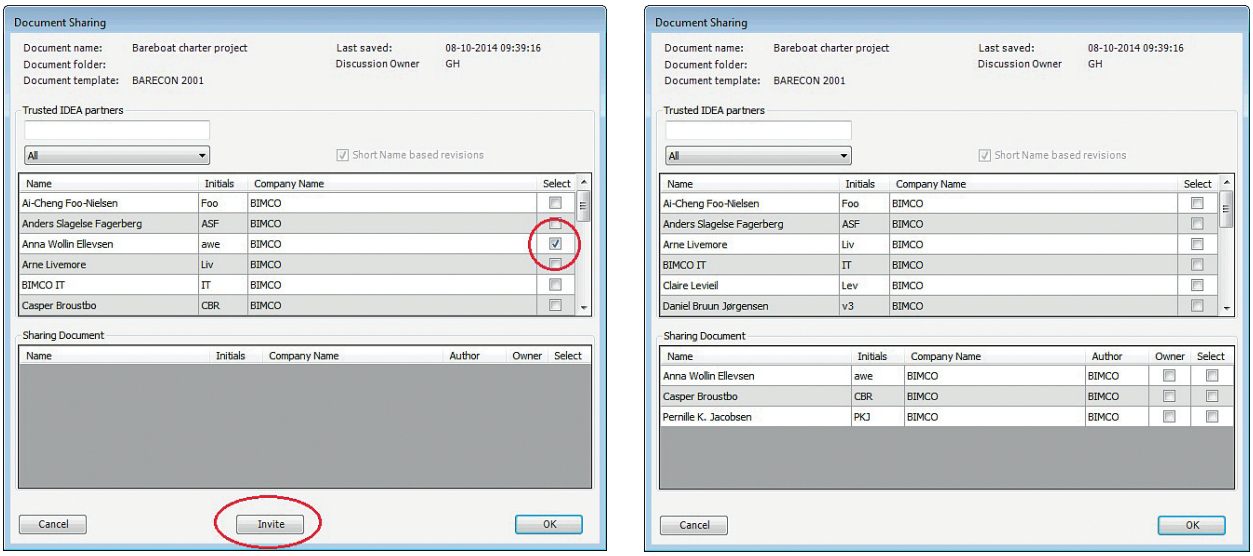
Screen-shot 3

IDEA•2 assigns a colour code to each person editing the document so that their changes show in a different colour to yours. By clicking the "Active Authors" button you will be able to see not only who has been editing the

Screen-shot 4



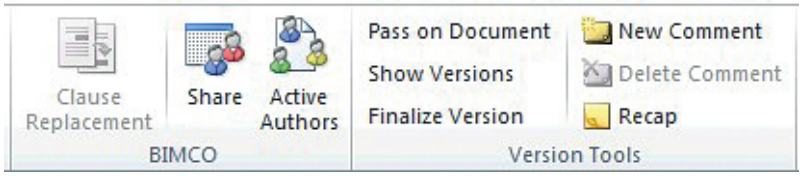
Screen-shot 5



document, but also identify their comments from the colour code assigned to them.

Only one person can edit a document at a time. Whoever is the active author must pass the editing rights to the document on to a "Trusted partner" once they have finished doing their amendments. This is done by clicking the "Pass on Document" button on the menu bar which saves and closes the document and releases it for editing by another author (see screen-shot 6). You have the option to describe your version of the draft contract and to notify the other author by e-mail that they can now edit the contract.

Screen-shot 6



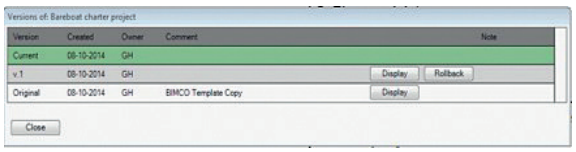
Controlling amendments

By extending IDEA•2's features to allow document sharing and management, a key factor is controlling the possibly very long sequence of amendments that may form part of a contract negotiation. IDEA•2 manages this by maintaining versions of each and every saved set of amendments by each author. This "version control" allows parties to not only carefully audit a series of amendments leading to a final contract, but also to "roll back" to an earlier version rather than try to undo a large number of amendments that are to be discarded (see screen-shot 7).

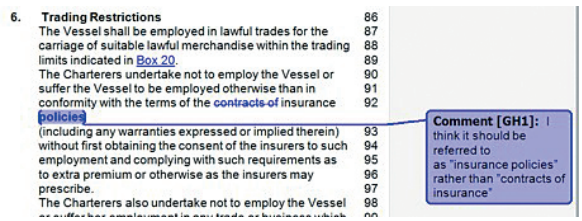
Throughout the editing process the various authors can provide written comments on each version. This can be done by annotating amendments within the document or by attaching a comment note to the draft in the form of a recap. This provides a means of creating a full audit trail of the entire document editing process (see screen-shot 8).

Once all the amendments are done the contract can be finalised. This basically means locking the document so that no

Screen-shot 7



Screen-shot 8



further editing can take place. Again, this is simply done by clicking the "Finalize Version" button on the menu bar. This locks all the editing tools to prevent further changes, although it is possible to still add comments to a finalised draft. Should there be a need to make a further amendment, perhaps because some detail has been omitted or an error has been detected, the original author has the ability to reverse the finalisation.

Printing a copy

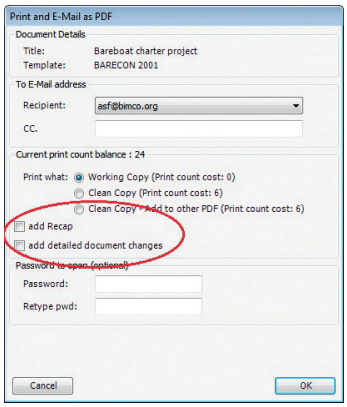
The final stage is to print a copy of the finalised agreement. A shared document has a number of new print dialogue options. You can add a recap summary to the document and you can provide a detailed summary of all the changes and amendments (this is basically a line by line summary comparing the final version with the original clean and un-amended template version) see screen-shot 9). These two additional options will be sent attached to the e-mail containing the finalised document in PDF format.

For many IDEA•2 users the ability to share documents and work together will provide a faster, more efficient and accurate method of producing a final agreement. The importance of having a properly prepared and agreed contract often only becomes apparent when a dispute arises. By making the process easier, more flexible and quicker for IDEA•2 users, the effort put into contract preparation will be time well spent.

Further guidance and videos

The new IDEA•2 sharing feature is available to all users now. To guide people we have prepared a series of "how-to" videos that can be viewed from the IDEA•2 section of the BIMCO website. For those who like user manuals, we have also prepared a written guide that can be downloaded from *www.bimco.org*. (GH)

Screen-shot 9



BIMCO launches Standard Service Contract – SERVICECON

Liner trades are characterised by a small number of very large shippers with high shipment demands and the majority of small to medium sized companies whose transportation needs range from relatively modest cargo movements to significant numbers of containers.

Much of the trade is based on service contracts whereby, in return for a favourable freight rate, shippers undertake to transport a minimum number of (usually) containers over an agreed given period. Multinational shippers have developed their own individual contractual arrangements but despite the number and global value of shipments, until now no standard contract has been available to meet the needs of other trade interests.

However, as a result of discussions over a two year period between carrier and shipper representatives, the BIMCO SERVICECON Standard Service Contract has been developed to provide a basis for volume carriage in liner trades.

BIMCO wishes to thank the following representatives of carriers and shippers for their assistance in the work: Frank Sandford MSC; Charlotte Peddie Maersk Line; Martin Clausen Maersk Line; Erwann Merrien Marfret Compagnie Maritime; Stephen Mills North of England P&I Club; Howard Finkel COSCO; Chris Welsh Global Shippers' Forum UK; Barry Wallace Marks and Spencer; Peter Gatti NIT League USA and Don Pisano Coffee Corps of America.

General principles

SERVICECON is a framework agreement designed for worldwide trading. It can be used and amended as necessary to suit commercial parties' individual needs and circumstances. This flexibility to adjust the content should avoid the likelihood of conflict with competition legislation although in the event of any doubt, appropriate legal advice should be taken.

In practical terms, SERVICECON has been drafted as a starting point for carrier/shipper negotiations. The central feature is shippers' declared "Minimum Quantity Commitment" (MQC) which will be the basis for determining the freight rate and providing carriers with the necessary information to reserve cargo space over the contractual period.

However, as shippers will not necessarily be able to predict the extent of their forward needs, figures often err on the side of caution when agreeing the minimum number. In reality, shipment demands often prove to be much higher than the initial estimate and this is addressed by allowing acceptance, at carriers' option, of cargo beyond shippers' declared MQC.

Shippers' failure to fulfil their minimum obligation will mean that cargo space set aside by the carrier is unused with resulting lost revenue. In such circumstances carriers are to be automatically compensated through agreed liquidated damages. The measurement of loss for carrier failure to lift the MQC is more complex and will depend on extra costs and expenses actually incurred by shippers (such as higher freight for carriage on another vessel). Shippers' proven damages are therefore the basis for determining carrier compensation for failure to carry an agreed MQC.

Individual shipments are subject to the contracting carrier's own bill of lading or seawaybill which is incorporated, by reference, into the SERVICECON contract.

Detailed content

SERVICECON follows BIMCO's traditional style. Part I contains a box layout for variable information to be agreed and inserted by the parties. Part II contains the terms and conditions while three supporting annexes A, B and C respectively set out Federal Maritime Commission (FMC) provisions where US jurisdiction applies; ports and rates within the scope of the contract; and shipper details.

Part I

Particular attention is drawn to Box 8 where the MQC figure must be entered. If it is left blank, the contract will be null and void.

Part II

Preamble

This notes that the contract is between the carrier and shipper, including the shipper's associated companies as listed in Annex C.

Definitions

Terms used throughout SERVICECON are set out and their meaning explained.

Clause 1 Scope of Contract and Rates

A cross reference is made to Annex B which contains details of the geographic scope of the parties' agreement, together with applicable freight rates.

Clause 2 Carrier's Commitment

Sub-clause (a) sets out the carrier's central obligation to provide space to meet the shipper's MQC during the contractual period. Carriers my also, at their option (i.e. depending on available space and scheduling requirements), lift cargo in excess of the MQC.

Shipper access to the carrier's container tracking service is provided for at sub-clause (b).

Sub-clause (c) addresses standards of training for the carrier's personnel while sub-clause (d) states the requirement for carriers to maintain, and if necessary confirm, that appropriate cargo liability cover is in place.

Clause 3 Shipper's Commitment

Sub-clause (a) sets out shipper's obligation to provide not less than the agreed MQC. Unless otherwise agreed, shipments are to be evenly distributed throughout the contractual period or the carrier advised where this cannot be achieved. Any changes in arrangements must be mutually agreed.

Sub-clause (b) requires the shipper to give the carrier the number of days' notice stated in Annex B prior to loading cargo. In the absence of an agreed and stated figure, the default position is 15 days' notice.

Sub-clause (c) provides that the agreed rates and cargo quantities are specific to the contract and cannot be used to claim any discount or as part of a cargo commitment under any other contractual arrangements with the carrier.

Clause 4 Verification of Contract Carryings
In order to qualify for the agreed freight rate and to fulfil the MQC, cargo must be moved during the Contract Period set out in Part I at Box 5 (Commencement Date) and Box 6 (Expiration Date or Period).

In accordance with sub-clause (a), the date when cargo is received by the carrier determines whether or not it is within the Contract Period. Administrative provisions for compliance with the contractual arrangements are set out at sub-clause (b). Sub-clause (c) contains a table comparing different container dimensions with the standard TEU for the purpose of calculating the agreed TEU-based MQC.

Clause 5 Non-performance
Sub-clause (a) provides that where cargo obligations are not fulfilled, the carrier's losses (i.e. reduced freight earnings due to unused space) are automatically compensated in accordance with the agreed rate of Liquidated Damages (as stated in Part I Box7) covering the difference between the MQC and number of containers actually shipped.

If the carrier fails to lift cargo tendered in accordance with the MQC, sub-clause (b) provides that the shipper's commitment may be reduced by that number and, in the event of repeated failures (constituting a material breach), the contract may be terminated in accordance with clause 9(b) (below).

As to damages, the position for determining shippers' losses is less easily measured than carriers' unused space and resulting reduced earnings. Cargo may be shipped on another vessel at the same, or lower, freight. Sub-clause (c) therefore provides that the shipper's losses will be determined at the end of the Contract Period by reference to their proven damages up to the agreed freight rate per TEU.

Clause 6 Force Majeure
This sets out a list of illustrative political events and natural disasters beyond the parties' control and for which they are relieved from their performance obligations, other than in respect of payments. Changes in market conditions or other commercial issues are expressly excluded. Once the Force Majeure event has come to an end, the contract will resume with pro rata adjustment, where appropriate, to the shipper's MQC. Under certain circumstances set out in the clause, the contract may be terminated.

Clause 7 Contracts of Carriage
The carrier's standard bill of lading or waybill is incorporated by reference into SERVICECON. In the event of conflict between the two, SERVICECON prevails.

Clause 8 Assignment
Either party may assign the contract to any company within its Group (i.e. which it controls) but must obtain the counterparty's agreement for assignment outside its Group. The original contracting party always remains responsible for due performance.

Clause 9 Termination
The contract is subject to termination:
Sub-clause (a) once the MQC has been reached when notice may (but does not have to) be, given by either party;

Sub-clause (b) in the event of a material breach or repeated non-material breaches where the party in breach fails to rectify the position within 30 days; and

Sub-clause (c) if one of the parties is subject to winding-up procedures, bankruptcy or receivership.

In accordance with sub-clause (d), termination is without prejudice to prior accrued rights.

Clause 10 Dispute Resolution Clause
All disputes under SERVICECON are to be determined in accordance with the dispute resolution provisions in the carrier's contract of carriage (which is incorporated into SERVICECON by reference, see clause 7).

Clause 11 Confidentiality
Subject to limited exceptions or where required by law, pre-contractual discussions and the contract's contents must remain confidential until twelve months after the date of termination. Nevertheless, certain information, in anonymous format, may be disclosed for the purposes of statistical data.

Clause 12 Entire Contract
The contract is defined by its written provisions and all exchanges prior to the date of the agreement, stated and entered in Part I Box 2, are excluded. Any modifications must be agreed in writing.

Clause 13 Notices
This sets out the basis for giving and receiving notices under the contract.

Annex A (FMC Requirements)
This applies where shipments are subject to US jurisdiction. The shipper's status must be certified and certain documentation retained by the carrier or a designated agent.

Annex B (Scope of Contract and Rates)
Details are to be inserted of ports within the contractual geographic scope together with the number of days' notice to be given prior to loading and a copy of the schedule of agreed freight rates attached.

Annex C (SHIPPERS-associated companies)
This is for shippers to list the names and addresses of their related companies to be covered by the contract.

Availability

The full text of the contract is printed in this Bulletin on pages 52-60. It can also be downloaded free of charge from the Chartering/Clauses section of the BIMCO website (*www.bimco.org*).

Users of the IDEA•2 contract editing system, which contains digital copies of all the widely used BIMCO standard contracts, can add the new Clause to their agreements by using the Clause Manager. (GH)

Danish Shipping Academy, SUPPLYTIME in Singapore and Voyage Chartering in Geneva

The BIMCO SUPPLYTIME Seminars continue to be conducted worldwide, but in-house seminars are also popular.

The Danish Shipping Academy

In 2012, the Danish Shipowners' Association introduced "The Commercial Shipping Programme". This two-year international educational programme for shipping trainees is a combination of classroom lectures in Denmark and webinars.

When BIMCO introduced its eLearning Programme in 2011, webinars were also included as an integrated part of the modules. The platform used for the BIMCO Webinars turned out to be ideally suited to serve as the platform for delivering the educational webinars for "The Commercial Shipping Programme". BIMCO delivers two core subjects: Maritime Law (with Gorrisen Federspiel) and Maritime Economics.

BIMCO at the DSA introduction to the world of shipping.

Introduction to the world of shipping

In addition to Maritime Law and Maritime Economics, BIMCO also delivers the introduction to the world of shipping, when students meet for their first seminar at the start of their two-year trainee period. The 43 trainees from 11 countries were introduced to a new visual aid for the first seminar. The presentation, conducted by Peter Grube, Senior Education Officer at BIMCO, was created by two artists hand-drawing the messages from the presentation.


BIMCO can deliver tailor-made in-house seminars worldwide. In-house course for Thenamaris.

SUPPLYTIME in Singapore

This popular seminar returned to Singapore from 18-19 September and continues to create keen interest within the offshore sector.

The seminar attracted a wide range of participants, not only from Singapore, but also from other countries in the region.

BIMCO Masterclass on Voyage Chartering, Geneva

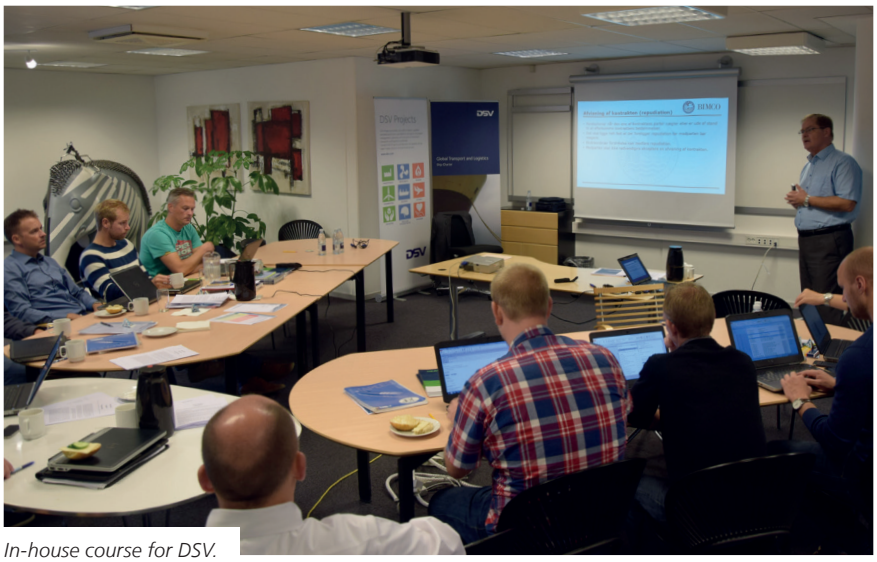
The Masterclass on Voyage Chartering was introduced several years ago now to provide an overarching approach to some of the general principles of voyage chartering and to supplement the Masterclasses on Bills of Lading and Laytime and Demurrage.

BIMCO In-House Training

Why not have it your way? BIMCO can deliver tailor-made in-house seminars worldwide on specific documents or topics. It is a cost-effective way of training groups of employees in the context of the company itself, while they network and interact.

Based on your requirements and specifications, we will tailor a programme to suit your needs. As with all BIMCO courses, they are conducted by expert lecturers drawn from the global BIMCO network of professionals who fully understand the challenges in the international shipping environment – because they are a part of it on a daily basis. (PG)

SUPPLYTIME in Singapore.



In-house course for DSV.

Correction

On page 17 of Bulletin 4/2014, in an article under the heading ***The importance of data***, a picture of a sinking was used. The picture was a stock photo taken in 2007 and clearly showed the name of the vessel and port of registry. This should have been obscured in the absence of permission from the vessel's owners.

The then-managers of the vessel have since contacted BIMCO and have requested us to make it clear that the accident in question took place many years ago and that the picture does not have any connection with the contents of the article.

BIMCO apologises unreservedly for this oversight and would like to emphasise that there was no intention to impugn the reputation of the company in question.

The BIMCO Biofouling Survey

Biofouling is the accumulation of aquatic organisms on the immersed parts of the ship. Antifouling systems can, among other things, be coating systems consisting of different biofouling-resistant materials.

Different antifouling systems are designed for different ships operating in different trades. Several factors will influence how the limitation of biofouling is operationally managed, e.g. periods between dry-dockings, ship speed, and water temperature.

Modern coatings are expensive and some perform less efficiently than others and are more exposed to wear and tear, especially in connection with niche areas and weld lines. In other cases, coatings call for in-water hull cleaning and there are places in the world where this is not allowed. Biofouling management may therefore be a complex task for ship owners and operators to perform in practice.

The International Maritime Organization (IMO) has developed and adopted a set of Guidelines (Resolution MEPC.207 (62)) entitled *2011 Guidelines for the control and management of ships' biofouling to minimize the transfer of invasive aquatic species*. The aim of the Guidelines is to provide a globally consistent approach to managing biofouling reduction by providing recommendations on e.g. corrosion, clogging, and decrease in the efficiency of moving parts for all types of ships.

BIMCO recommends owners to follow the Guidelines as far as possible, for example by developing a ship-specific biofouling management plan and using a Biofouling Record Book.

Some member states of the IMO aim to make mandatory regulations on biofouling management and the industry has already seen local regulation, for example in certain individual US States. Furthermore, Biofouling is covered under the US EPA General Vessel Permit.

Survey and participation

Biofouling management on ships is sensible from an environmental protection point of view as well as an economical perspective, especially considering the high fuel costs at present. BIMCO is aware that ship owners and operators are managing biofouling but we do not have a clear overview of biofouling management practices. In fact, there is a lack of collective knowledge on biofouling management and treatment practices in the shipping industry

BIMCO has, therefore, devised a survey in order to obtain a detailed picture of the methods ship owners and operators are using for the treatment of biofouling and the performance of the various methods on different ships over varying time periods and trades.

Help BIMCO to help you

We kindly encourage you to participate in this BIMCO biofouling survey. It can be accessed on line on the BIMCO website (*www.bimco.org*).

Aron Frank Sørensen

The deadline for the survey is 21 November 2014.

BIMCO will use and share the results to work on the industry's behalf to highlight any issues of concern. Once analysed, the survey results could form the basis for a BIMCO submission to the IMO.

Contact: *Marinesurveys@bimco.org*

Editor's Note: Aron Frank Sørensen is BIMCO's Chief Marine Technical Officer.

Welcome to BIMCO!

BIMCO would like to extend a warm welcome to the following new members, admitted during the period from 1 August 2014 to 30 September 2014.

Owner Members

Bremen, Germany	Bremer Bereederungsgesellschaft mbH & Co. KG
Piraeus, Greece	Trustchart Limited
Singapore	Louis Dreyfus Commodities Freight Asia Pte. Ltd.
London, United Kingdom	Maran (UK) Limited
Wilton, CT, United States	Louis Dreyfus Commodities LLC

Broker Members

Helsinki, Finland	Cosfim Oy
Mumbai, India	Jesai Shipping Lines
Naples, Italy	Velian Shipbrokers s.r.l.
Dubai, United Arab Emirates	The Middle East Marine LLC
London, United Kingdom	Offshore Shipbrokers Ltd.

Agency Members

Casablanca, Morocco	SOMASHIP Sarl
Port Sudan, Sudan	Darka Shipping Agencies & Stevedoring

Associate Members

Shanghai, China	Shanghai Institute of Marine Insurance
Limassol, Cyprus	Diaplous Maritime Services Ltd.
Limassol, Cyprus	LSS Cyprus Ltd.
Copenhagen, Denmark	Survey Association Ltd.
Singapore	Infinite Security Solutions Limited
St. Petersburg, Russia	IBICON LLC
Corsham, United Kingdom	Corinthian Protection International Maritime Ltd.

Re-routeing the globe

The expansion of the Panama Canal, with its new locks and deeper channels, is due to open next year, 101 years after the waterway caused a revolution in East-West shipping.

It is an extraordinary tribute to the foresight of its original builders that the "Panamax" dimensions have remained of significance all these years, with only the last 25 years seeing such growth in the number of ships which were too big to make the transit.

We know a great deal about the extraordinary engineering feat that is represented by the redevelopment of this major trade artery. The authority has commendably adopted a policy of openness and transparency, which has facilitated external observation of the civil engineering and its progress, the dredging programme and the ingenious design features which will save substantial quantities of water.

The industry has had precise measurements of what will constitute the "new Panamax"; ships with dimensions that must not exceed 366 metres in length overall, 49 metres beam and a draught of 15.2 metres. The lead time has been such that designers have been able to form a very good idea of a range of ships which will form the additional 4,750 vessels which the enhanced waterway will be able to accommodate each year.

Starting up their own programmes

A number of the ports that are expected to see their trade changed by the expanded waterway across the isthmus have begun their own programmes to attract the larger ships that they hope will be making the transit. Dredged channels and port infrastructure are being improved, with the rationale being that both will be necessary if the bigger users of the waterway are to be attracted.

A number of these schemes are quite ambitious – like the huge Bayonne Bridge, under which large ships must pass into Port Elizabeth in New York-New Jersey – the structure of which is being lifted up to provide the necessary air draft for a new generation of Panama-transiting container ships.

All is being made ready for the opening of this amazing expanded waterway. The pilots are in training for a new system that will see the ships moving through the lock chambers without the ministrations of the locomotives that have always towed ships through the original locks. The tug crews are practising their operations, getting to grips with the problems of handling ships with far larger dimensions and increased windage.

One large question mark

There is, however, one large question mark about the expanded canal, and that is precisely what ships might be expected to use the new facilities? There have, of course, been extensive economic studies of the prospects. Those who attended BIMCO's Paris Annual General Meeting in 2013 will recall the Administrator of the Panama Canal, Jorge L. Quijano, set out the latest estimates of trade and which categories of operator might be expected to use the waterway once it was in operation.

But of course, these were only estimates, although they reflect the growth of world trade and its changes, some of which can be surprisingly rapid. It is a reasonable suggestion that with a container ship of some 13,200 TEU able to make the transit, many liner operators will take advantage of this new opportunity. But the numbers of these cannot be guaranteed – it is equally reasonable to assume that the ports on both eastern and western seaboards feeding the internal spaces of the US will work hard to retain their traffic that currently is railed into the interior from ports on the East and West Coasts.

A new energy mix

The changes in the energy mix of the United States caused by the fast accelerating opportunities from shale gas might also be expected to impact upon the tanker traffic passing through the waterway, with LNG tonnage becoming a significant element. But nobody really quite knows the routes that this traffic is to follow, at a time when worldwide energy politics and economics are so very unpredictable and prone to change.

Similarly, dry bulk is expected to be a major trade flow, with ships up to "mini-Capesize of around 95,000 DWT accommodated, but exactly where these ships will trade remains a matter of speculation. Costs and competition will drive this decision making, with neither being settled! Commodity prices, transport costs, the costs of using the waterway and the savings the transit might make, form the fascinating criteria of important calculations, the answer to which only a very bold person would forecast.

It would also be very unwise to examine the new opportunities of the expanded waterway in isolation. Ship operators will "vote with their passage plans" although weighing up the pros and cons of the new dispensation will not be easy. Nobody is compelled to use the waterway and its administrators have to prove its attractions in practice. Users do have a certain degree of "buyer power" in the alternatives they can employ. One can recall tough times in the 1990s when round-the world container ship operators elected to steam around Cape Horn rather than taking their traditional short cut.

Other options

It is also worth noting what might be happening in that other great waterway of Suez, and plans announced for major productiv-

ity improvements, with a parallel USD 4 billion canal for more than half the canal's length. This will provide faster transits, reducing the need for ships to stop to permit convoys to pass in the opposite direction. With the geography of the Suez canal facilitating such an expansion, using dredgers and without the massive civil engineering that has been required in Panama, it has been estimated that this project can be completed within five or six years. Long-haul shipping will benefit, but how this will affect routeing is, of course, a matter of present speculation. There can never be any certainty, which is, perhaps, one of the fascinations of the shipping industry!

Might the Northern Sea Route be something of a "wild card" in these cost calculations for East-West trade? We now have some political uncertainty to add to the vagaries of the weather, which still continues to surprise, despite all the long term climate forecasts suggesting the retreat of the ice sheets. The Summer of 2014, it seems, was late arriving and the amount of ice being encountered has exceeded that of the previous few seasons. A good deal more experience, it has been suggested, will be necessary to convince hull insurers that this is a routine passage. Weather remains as unpredictable as it has always been, even in an era of climate science and powerful ships supported by ice-breakers.

These are exciting times for the industry, not least because of all these uncertainties. But ships, while the servants of world trade, have always been its "flexible friends", and in times when there is a certain fluidity in trade flows, do have certain inbuilt advantages.

A strange sort of sea life

Under the terms of the Maritime Labour Convention 2006, "seafarer" means "any person who is employed or engaged or works in any capacity on board a ship to which this Convention applies".

It also provides for any anomalies to be decided by "the competent authority" of each member government. But such a definition is not always obvious.

Operators of cruise ships see all sorts of occasional visitors to their ships who, it would be difficult to so define. Entertainers of various kinds may well be classified as seafarers if they are part of the regular "hotel staff", but special acts who may come on board for a limited season may be a popular passenger attraction, but the temporary nature of their employment (they are invariably booked by a theatrical agent) may exclude them from a seafaring definition.

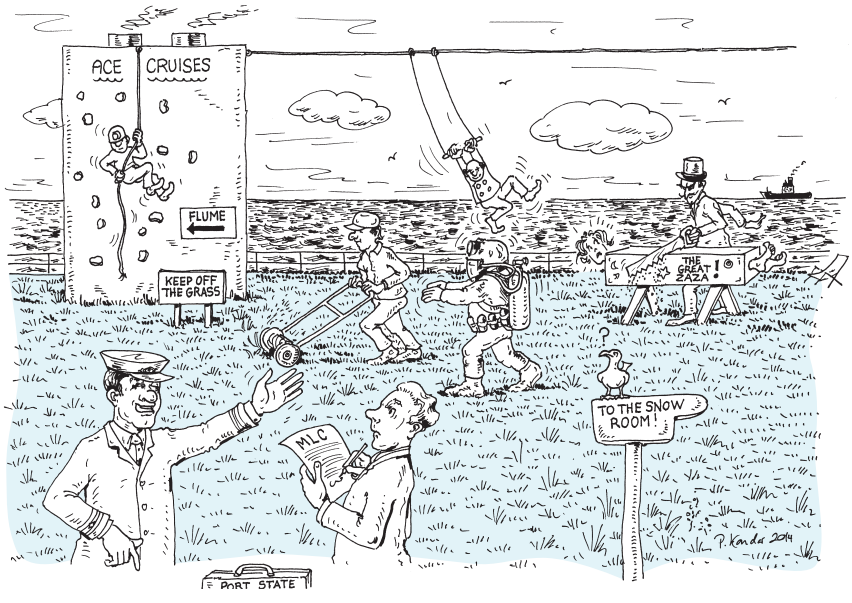
Itinerant specialists

They are not alone in this, with the offshore sector also employing all manner of itinerant specialists, people who deal with operational problems and move on. It requires a delicate judgement for "competent authorities".

There is, these days, some very curious employment to be found among the regular staff of a cruise ship, such are the manifold attractions now put on board for the enjoyment of their passengers. There are professional mountaineers found aboard ship with climbing walls, some of which are alarmingly high.

Water sports experts are employed to keep thrill seekers safe in wave "flumes", expert green-keepers look after the verdant real lawns on the upper deck of one huge ship.

Perhaps the strangest of all will be the staff who will be employed to look after the "real snow" chamber, which will be a major attraction aboard a new vessel now building in Italy! Ski instructors, perhaps, might apply?



"They are all seafarers except the magician – he is just here for the season!"

Fuel safety, hazardous substances and electronic certificates on IMO agenda

Since the report in the last Bulletin, BIMCO has participated in two International Maritime Organization (IMO) meetings.

The first of these was the session of the IMO Sub-Committee on Carriage of Cargoes and Containers (CCC 1), formerly known as the Sub-Committee for Dangerous Goods, Solid Cargoes and Containers (DSC), held from 8-12 September 2014. The second one was the 39th Session of the Facilitation Committee (FAL 39), held from 22-26 September 2014.

Sub-Committee on Carriage of Cargoes and Containers

CCC 1 continued to work on the draft *International Code of Safety for Ships Using Gases or Other Low-flashpoint Fuels Code* (IGF Code) and agreed to make it mandatory under the SOLAS Convention.

The IGF Code provides mandatory provisions for the arrangement, installation, control and monitoring of machinery, equipment and systems using low flashpoint fuels. In order to minimise the risk to the ship, her crew and the environment, it addresses areas that need special consideration for the usage of low flashpoint fuels and giving the basis for the design, construction and operation of ships.

The IGF Code will apply to new ships and to existing ships converting from the use of conventional oil fuel to the use of gases or other low-flashpoint fuels. The IGF Code will apply to ships of 500 gross tonnage or more, but the provisions of the IGF Code can be applied to smaller ships based on national legislation. The working group completed the following items:

- SOLAS amendments on the application of the IGF Code;
- Definition of low-flashpoint fuel;
- Alternative design and arrangements;
- New part G of SOLAS Chapter II-1;
- Amendments to SOLAS Regulation II-2/4;
- Amendments to the forms of certificates;
- Draft International Code of Safety for Ships using Gases or other Low-flashpoint Fuels (IGF Code).

The draft amendments to SOLAS, together with the draft IGF Code, will be submitted to the Maritime Safety Committee meeting (MSC 94) which will be held in November 2014 for approval and subsequent adoption.

The Sub-Committee on Carriage of Cargoes and Containers (CCC 1) meeting. (Photo: IMO)

The principal unsolved issue related to the location of fuel tanks has been deferred to MSC 94, which will have to decide between two options on the threshold values for the length of the fuel tanks and a factor which accounts for collision damages that may occur within a zone limited by the longitudinal projected boundaries of the fuel tank.

Harmful to the Marine Environment (HME) substances

The sub-committee also discussed HME substances within the *International Maritime Solid Bulk Cargoes Code* (IMSBC Code) in relation to the revised MARPOL Annex V. The following proposals were prepared:

1. A non-mandatory section 14 entitled *Prevention of Pollution by Cargo Residues from Ships*;
2. Amendment to Section 4.2 (Cargo Information) to include information on whether the cargo is HME or non-

HME including the said declaration by the shipper;
3. A draft MEPC circular with the indicative lists of cargoes which are HME, non-HME and cargoes which could be either HME or non-HME.

The following problems were encountered when drafting of the above proposals:
1. A fundamental inconsistency of non-mandatory application of Section 3.4 of the MARPOL 2012 Guidelines (where to shipper has to classify and declare a solid bulk cargo as to whether it is HME or not to the mandatory cargo information) to the mandatory section 4.2 (cargo information required from the shipper) of the IMSBC Code. The legal linkage between the MARPOL Convention and the IMSBC Code will have to be determined, since the IMSBC Code is mandated by SOLAS and not MARPOL;
2. The purpose and usage of indicative lists for HME cargoes and non-HME cargoes and difficulties in compiling such lists;
3. Difficulties in the gathering of information for assessment and classification of cargoes as HME or non-HME substances.

BIMCO expressed the above-mentioned concerns and urged the sub-committee to refer the compilation of the lists to the parent Marine Environmental and Protection Committee in order that they should provide guidance on the above issues. A general concern was further raised by several delegations on whether such lists were really necessary, considering that a shipper is the relevant body to be responsible for classifying and declaring a cargo as HME or not.

Iron ore fines were added to Group A of the IMSBC Code.

Materials Hazardous in Bulk (MHB) in the IMSBC Code

A notational listing system was agreed to assist in the identification of chemical hazards for the MHB based on a joint-submission made by the United States, Germany and BIMCO.

This was further supplemented by another notation to identify "other hazards" that fall outside the MHB ones but yet constitute a sufficient chemical hazard to fall under the MHB classification. The notational references are given in Table 1. All new cargo schedules in the IMSBC Code for 03-15 Amendments will carry this notational listing system as relevant to the cargo's chemical hazards when it is classified as a MHB cargo.

New Solid Bulk Cargoes to be included in the 03-15 Amendments to the IMSBC Code

Based on the report of the IMSBC Code's Editorial &Technical Group meeting held in April 2014 (CCC 1/5), the it was agreed to include the following cargoes into the third set of amendments (03-15) to the IMSBC Code:

1. Aluminium Fluoride, Group A
2. Boric Acid, Group , Group B/ MHB (TX)
3. Chemical Gypsum, Group A4. Copper Slag, Group A
4. Glass Cullet, Group C
5. Iron and Steel Slag and its mixture, Group A
6. Iron Ore Fines, Group A
7. Iron Sinter, Group C
8. Manganese Component FerroAlloy Slag, Group C
9. Steel Generated from the Iron and Steel Making Process, Group A
10. Wood pellets containing additives and/or binders, Group B/MHB (WF)
11. Wood pellets not containing any additives and/or binders, Group B/MHB (OH)
12. Zinc slag, Group A

New cargo proposals were referred to the E&T 22, which was held the week after CCC 1, for further consideration. Thee E&T 22 were also instructed to finalise all draft amendments 03-15 to the IMSBC Code, for circulation with a view to adoption by MSC 95 (June 2015).

Amendment 03-15 to the IMSBC Code will be mandatory with effect from 1 January 2017 and on a voluntary basis with effect from 1 January 2016.

Table 1

MHB Chemical Hazard	Notational Reference
Combustible solids	CB
Self-heating solids	SH
Solids that evolve flammable gas when wet	WF
Solids that evolve toxic gas when wet	WT
Toxic solids	TX
Corrosive solids	CR
Other hazards	OH

The 39th Session of the Facilitation Committee (FAL 39). (Photo: IMO)

Committee on Facilitation

FAL 39 resumed its debate on the use of electronic certificates as equivalent to traditional paper certificates and concluded that this subject was closely connected to the establishment of a "single window" for electronic data exchange. The two subjects were consequently combined and it was agreed to deal with them under the same umbrella.

A maritime "single window" will, when established, be focusing on facilitating the clearance of ships, passengers and crew members and on connecting the cargo-related information with the single window on cargo clearance already in place.

The access to electronic certificates, e.g. from a website, would significantly reduce the administrative burden for those issuing the certificates, as well as on board ships, and facilitate the process of entrance into port by providing access to the electronic certificates in advance.

The committee agreed to quickly establish a "Survey and certification" module under the IMO Global Integrated Shipping Information System (GISIS) portal and to include references to Administrations issuing electronic certificates, including the list of certificates issued electronically by each Administration. This specific module should be accessible by general public in order to ease the readily access.

The experience of those Administrations which had started using printed versions of electronic certificates, was that Port State Control Officers had generally accepted their use as equivalent to traditional paper certificates.

Several Administrations had already implemented electronic certificates, which were not scanned copies of original paper certificates but an electronic format of the information contained in certificates available for viewing on-line via a website. It was also mentioned that currently, Administrations are using different methods of electronic signatures in order to authenticate the certificates. In that light, the committee agreed that electronic certificates should include a unique tracking number, which could be used to confirm the authenticity and validity of an electronic certificate.

The committee was unable to finalise the work at this session, but in order to ease the usage of electronic certificates, FAL 39 approved guidelines for the use of electronic certificates and requested the Maritime Safety Committee (MSC) and the Marine Environment Protection Committee (MEPC) to take action as appropriate. BIMCO will circulate the Guidelines to its members when issued by the IMO.

Cyber security

FAL 39 initiated discussions on cyber security, an issue which BIMCO is currently exploring with a view to issuing guidance to its members. A Canadian submission made clear that the maritime sector is vulnerable to cyber threats and that unauthorised access to systems could compromise strategic, proprietary, or personal information, or lead to temporary loss and damage to critical systems.

BIMCO agreed verbally with the Canadian paper and informed the committee that the organisation, together with other industry associations, is already in the process of developing industry guidance concerning cyber security.

Although there was considerable support for progressing the work, FAL 39 was unable to address the subject further, as the responsibility falls under the Maritime safety Committee (MSC) and not FAL.

Following lengthy discussions FAL agreed that as a matter of procedure, the committee should not work on cyber security at this time, but that a new agenda item was needed to allow for the facilitation-related aspects to be properly addressed. (AFS)

On the Horizon...

DATE	VENUE	EVENT	CONTACT
3 Nov. 2014	London	**Double Jeopardy, Trial by Media, Trial by Law**	Grant Hunter: gh@bimco.org
3 Nov. 2014	Chongqing	**World Shipping Summit**	Lars Robert Pedersen: lrp@bimco.org Wei Zhuang: zw@bimco.org
6-7 Nov. 2014	Aberdeen	**BIMCO Seminar: Using SUPPLYTIME**	Peter Grube: pg@bimco.org
7 Nov. 2014	Copenhagen	**BIMCO Documentary Committee Meeting**	Doris Larsen: dla@bimco.org
9-10 Nov. 2014	Rotterdam	**Executive Committee/Board of Directors Meeting**	Karin Petersen: kp@bimco.org
10-15 Nov. 2014	Tokyo	**ISO 19030 Working Group**	Jeppe Juhl: jsj@bimco.org
12 Nov.2014-25 Feb.2015	eLearning	**eLearning Course: Tanker Laytime and Demurrage**	Mette Juul Madsen: mem@bimco.org
12 Nov. 2014	Brussels	**Sulphur Task Force**	Lars Robert Pedersen: lrp@bimco.org
17 Nov. 2014	Singapore	**BIMCO HEAVYLIFT Contracts Workshop**	Thomas Timlen: tt@bimco.org
17 Nov. 2014	London	**BIMCO Videotel Steering Group Meeting**	Miaojia Liu: mjl@bimco.org
17-21 Nov. 2014	London	**IMO Maritime Safety Committee**	Aron Sørensen: afs@bimco.org Giles Noakes: gno@bimco.org
19 Nov. 2014	Rotterdam	**49th Green Award Committee Meeting**	Lars Robert Pedersen: lrp@bimco.org
19-21 Nov. 2014	Genoa	**BIMCO Seminar: Trading and Carrying Goods**	Peter Grube: pg@bimco.org
20 Nov. 2014	Athens	**14th NAVIGATOR 2014: The Greek Decision Makers Forum**	Michael Lund: mlu@bimco.org
24-26 Nov. 2014	Hong Kong	**BIMCO Masterclass Workshop: Time Chartering**	Peter Grube: pg@bimco.org
25-26 Nov. 2014	Stavanger	**Gas Fuelled Ships 2014**	Lars Robert Pedersen: lrp@bimco.org
26-28 Nov. 2014	Rotterdam	**BIMCO Masterclass Workshop: Project & Heavylift Chartering**	Peter Grube: pg@bimco.org
1-2 Dec. 2014	Barcelona	**Platts 3rd Annual Mediterranean Bunker Fuel Conference**	Peter Sand: ps@bimco.org
3-5 Dec. 2014	Antwerp	**BIMCO Masterclass Workshop: Bills of Lading**	Peter Grube: pg@bimco.org
8-12 Dec. 2014	Antwerp	**Lloyds List 10th Annual BWMTech Conf. & Workshop**	Peter L. Rasmussen: plr@bimco.org
9-12 Dec. 2014	Tenerife	**TOC West Africa**	Giles Noakes: gno@bimco.org
29 Jan.-28 Apr. 2015	eLearning	**eLearning Course: Time Chartering**	Mette Juul Madsen: mem@bimco.org
19 Feb.-19 May 2015	eLearning	**eLearning Course: Bills of Lading**	Mette Juul Madsen: mem@bimco.org
26-27 Feb. 2015	Singapore	**Executive Committee Dinner/Meeting**	Karin Petersen: kp@bimco.org
5 Mar.-23 Apr. 2015	eLearning	**eLearning Course: Introduction to Shipping**	Mette Juul Madsen: mem@bimco.org
23-25 Mar. 2015	Stamford	**CMA**	Michael Lund: mlu@bimco.org
26 Mar.-25 June.2015	eLearning	**eLearning Course: Dry Cargo Laytime and Demurrage**	Mette Juul Madsen: mem@bimco.org
13-17 Apr. 2015	London	**IMO Legal Committee**	Christian Hoppe: cho@bimco.org
16 Apr.-27 Aug. 2015	eLearning	**eLearning Course: Time Chartering**	Mette Juul Madsen: mem@bimco.org
20-24 Apr. 2015	Singapore	**Singapore Maritime Week**	Thomas Timlen: tt@bimco.org
5 May-15 Sep. 2015	eLearning	**eLearning Course: Tanker Laytime and Demurrage**	Mette Juul Madsen: mem@bimco.org

BY MICHAEL GREY

Why language and communication matters

Up to about the 1980s, it would never have occurred to most practising seafarers that it would be a good idea to seek employment aboard ships in which nobody actually spoke their language, or that it would be either safe or socially desirable to have ships manned by a crew of people, none of whom were able to comprehensively understand the conversation, or instruction, of the others. It would have seemed to be a recipe for absolute disaster.

How very strange and out of date such views are in the shipping industry today, when multinational manning and the international sourcing of crews has become the ship owners' survival strategy and although efforts are made to select people that have some working knowledge of English – the so-called international language of maritime commerce – it is the cost of manpower which tends to predominate in the selection process.

The Master of a large passenger ship interviewed recently said that there were around 40 nations represented in her crew, which may have been wonderful for the cause of multiculturalism and a matter for celebration. He did, however, confess to some sleepless nights worrying about emergencies and that terrifying saying that "everyone panics in his, or her, own language".

People as a component

Language comprehension really matters and some might contend that the shipping industry has taken this too lightly over the years, armed with a traditional belief that if you shout a bit louder or repeat yourself several times, it will all sort itself out in the end. Perhaps this might be an exaggeration, but if language is thought to be a secondary consideration, safety, compatibility, social cohesion – and indeed the enjoyment of the seafaring experience – may well suffer from this treatment of people as a "component".

Language matters far more than the shipping industry often seems to think it does. (Cartoon: Seahealth, Denmark)

There was recent correspondence in a professional journal some months ago with a senior surveyor of one of the major classification societies who took exception to an article published about the opportunities and sheer interest in marine engineering at sea today. He didn't deny that there was great interest and technical challenge in the sophisticated ships at sea, but cited the example of his son, who had followed in his father's footsteps, but was finding his sea experience as an engineering cadet one of misery and loneliness. He was almost the only English speaker aboard his ship, unable to communicate with fellow crew members whose knowledge of this language was poor. In the end he threw in the towel and is now reading marine engineering at Newcastle University, so perhaps his talents are not entirely lost to the maritime world.

Social isolation common

This is by no means an unusual case. Seafarers today often speak about the social isolation they experience aboard ship, in an era of small crews, closed cabin doors and a socially deprived existence revolving around work, sleep and largely silent mealtimes in the mess room, with people anxious to return to their cabins and to log on to their laptops to continue their private lives.

Dr. Martin Dyer-Smith, a Chief Officer at sea before becoming a distinguished sociologist, spoke about people who have been exposed to this sort of life "having to be reintroduced to society" at the end of such

Seafarers today often speak about the social isolation they experience aboard ship.

a voyage. And it is language and the inability to communicate which needs to be taken more seriously if we are to persuade anyone with an ounce of sensitivity or intelligence to go to sea and seek a career in this essential industry. Only a sociopath would enjoy solitary confinement.

Language matters far more than the shipping industry often seems to think it does and the evidence has been mounting up in poor retention figures, in casualties and difficulties in recruitment. It was some years ago that an owner confided about a ship he operated lying in a Caribbean port, where he had taken the decision to change the crew to a cheaper complement provided by a third party agency. They all appeared to be well-qualified, at least on paper, but he was subsequently informed that this crew, who appeared to speak no known language when they turned up, was unable to start the main engine. Even the owner's superintendent on the spot was unable to get the crew to operate in a competent fashion and after more days of frustration, they were paid off and the previous crew re-hired. He said that he had learned from the experience.

Historical precedent

There is, perhaps, a tradition of multinational manning at sea, which goes a long way back into history. Around 20% of Nelson's sailors who manned the British fleet at Trafalgar spoke a language that was not English and the articles of British merchant ships in sailing ship days which are kept as historical records demonstrate this international flavour in manning practices. Somehow they managed to operate ships effectively in such a fashion.

But this was in a far less technical age when ships were manned far more generously, with even a small ship being a well-ordered society, with its population able to function as a cohesive and efficient unit.

Safety considerations paramount

But important as job satisfaction and enjoyment might be, they are surely secondary to the matter of safety, in a maritime industry where ships are becoming bigger, more expensive, more sophisticated and complex and where the consequences of accidents can be so very terrible.

Language and communication are so very important if we are going to run these ships safely. Nobody would willingly travel on an aircraft where the two crew on the flight deck were unable to understand each other or were unable to understand the instructions from air traffic control. A ship, like an aircraft, is run as a team effort and no team is able to properly function safely without its members being able to understand each other.

A manager in the London Underground, which is one of the world's most complex railways, notes that almost all the serious accidents they suffer are caused by one person's failure to understand another. Why should the operation of ships be any different to that of rail or aviation, where so much can depend upon a single helm order, or the understanding of proper procedures, or the prompt execution of an order?

Nobody can deny that an adequate grasp of language, whatever that ship's language might be, is essential if the ship and those aboard her are to stay safe. What is the point of all the carefully written procedures and Safety Management Systems, if the reader cannot understand them, or misunderstands what they are trying to say? Today there is rightfully a focus upon health, safety and environmental issues, bookshelves with yards of safety manuals and miles of written safety advice are available, but if there is no adequate com-

prehension, they are all a complete waste of time.

Toolbox talk

We are encouraged to ensure that before any task is undertaken aboard ship these days, there is a "toolbox talk". A Chief Officer, writing in the Nautical Institute *Seaways* magazine a few months ago, told of his frustration as he watched his crew every day listening to his orders with evident incomprehension, nodding enthusiastically when he asked them if they had understood, before going off to do precisely the opposite!

There is no doubt whatever that numbers of deaths and injuries and serious marine accidents are at least partly caused by somebody just not understanding the safety messages. Read the accident reports by the various authorities, the published accounts which confirm this. Remember that instructions are very often quite complex, frequently require people to do things in a pre-determined sequence and need to be carefully followed if people are to stay safe. As an example, there is concern in the industry about the number of deaths and serious incidents involving enclosed spaces. Three died aboard a timber carrier in the British port of Goole just a few months ago.

Did those seafarers, whose lifeless bodies were lifted out of an enclosed space, really understand the rules that were to be followed and which expressly prohibited that which led to their deaths? It is a reasonable enough question. But was it still reasonable if half a dozen different first languages were spoken by a small crew, who possibly didn't understand the instructions they were being given, or simply misunderstood them?

We know all about the importance of positive reporting, of not merely assuming the other person understands, of the need to repeat the orders to demonstrate that you have heard them. But it is also important that the hearers understand them, and obey them, because it is sometimes easy to misconstrue them.

Words, ironically, can themselves cause a lot of harm. The steering and sailing rules – what we like to call the Collision Rules that are there to prevent ships colliding – have been carefully devised to keep ships safely apart without the need for one ship to speak, or signal to another.

But now there is brilliant inter-ship communications in the shape of VHF and the "other ship" can be easily identified by her unique signal from the Automated Identification System (AIS). So there is often too much temptation to chat to the person on the opposite bridge to try and persuade him to make life easier by altering course where the rules say he should maintain his course and speed, or just waste time trying to establish communication when it would have been sensible to make an early and significant alteration of course. So communications can be a real menace when not properly understood.

Communication assisted collision

There was a very expensive "communication assisted" collision last year investigated by the UK Marine Accident Investigation Branch, which has all the classic symptoms of how incomprehension can be deadly. It took place off the coast of China between a British flagged container ship and a Chinese bulk carrier. On the container ship, there was a multinational crew with Romanian senior officers, Philippine junior officers and crew, supplemented by a Chinese Second Officer who was undertaking a familiarisation voyage. The ship's working language was English.

Aboard the Chinese bulker the crew spoke Mandarin, but the accident was largely contributed to by the helpful efforts of the container ship's Chinese supernumerary Second Officer, acting as a translator in a pointless VHF conversation with the Mandarin-speaking officers aboard the bulker, so confusing the Philippine watchkeeper that he altered course the wrong way. The fact was that if nobody had said anything to anyone and the two officers had obeyed the regulations to the letter, the ships would have passed perfectly safely rather than costing the insurers several million dollars and leaving more than 600 tons of fuel oil in the sea. In some circumstances then, silence is golden.

More than a smattering of phrases

Language is important, in training, in mentoring and in gaining the vital experience that makes a person a safe professional and

Michael Grey

it is quite ridiculous to suggest that you can get by understanding the meaning of helm orders or just basic commands. While it may not be important that everyone on board speaks the same language, it is a great advantage if they do, in every respect. Cohesion is surely enhanced by the social environment provided by the whole crew speaking the same tongue.

Shipping in the 21st century has an absolute requirement for safety, society has an absolute intolerance of accident and there is a growing demand for precision in operations in this most essential of service industries. Language matters, because understanding is all-important and there is such an emphasis on every form of communication, whether it is understanding the detailed orders of an officer or chatting about the football results in the mess-room.

The testing of language skills needs to be taken seriously, not just paid lip service to, with one eye on the need to get a ship to sea as expeditiously as possible; because language is more than a smattering of phrases and words and is a major contributor, at least aboard ship, to society and safety alike.

Editor's Note: The above article has been adapted from a talk given at a British Council event in Athens in October 2014. Michael Grey is BIMCO's Correspondent in London. He is a former Editor of Lloyd's List and a regular contributor to many maritime publications.

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BY DR JOHNNY BRIGGS

The impact of Tier III NOx regulation on the shipping industry

The International Association for Catalytic Control of Ship Emissions to Air (IACCSEA) – The leading global authority on marine SCR technology – explores the operational and cost implications of MEPC 66 on ship owners and operators.

The 66th meeting of the IMO's Marine Environment Protection Committee (MEPC66), which culminated on 4 April in London, agreed a revised course to regulate NOx emissions from shipping.

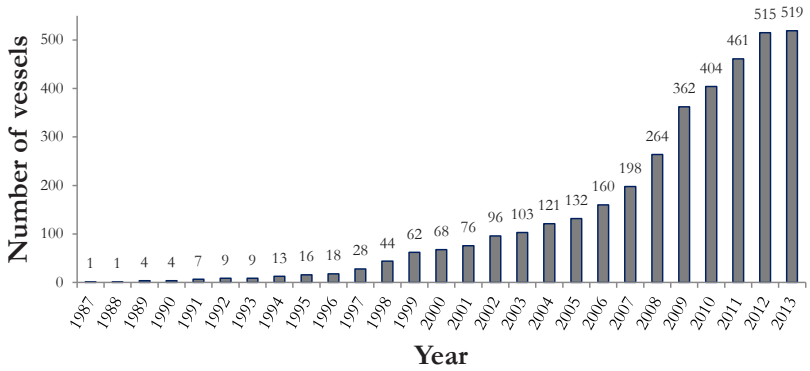
To summarise the agreement:

- For the existing North American NOx Emission Control Areas (NECA), and the United States Caribbean Sea NECA, Tier III NOx emission standards will apply to marine diesel engines installed on new ships constructed on or after 1 January 2016[1,2]. As such, all eligible vessels built from 2016, when sailing in the North American or Caribbean Sea NECAs, must be Tier III compliant[3].
- For any new NECAs which come into force, Tier III NOx emission standards will apply to marine diesel engines installed on vessels constructed on or after the date of adoption of a new NECA by the Marine Environment Protection Committee, or a later date as may be specified in the application for the new NECA. (see Table 1)

Table 1

NOX Emission Control Area	Implementation Date of Tier III NOX Standards
North American & US Caribbean Sea	Applies to engines on ships constructed on or after 1 Jan 2016
Future NECAs	Applies to engines on ships constructed on or after the date specified in the amendment designating the future NECA

Figure 1: Total number of vessels with SCR installations



IACCSEA

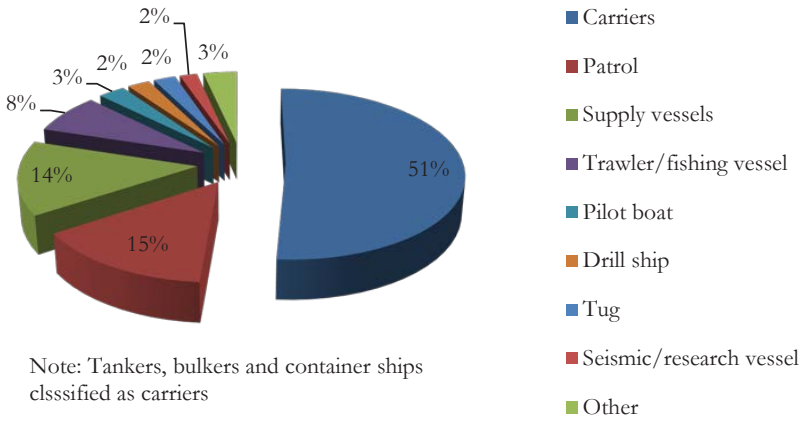
The International Association for the Catalytic Control of Emissions to Air (IACCSEA) was formed in early 2011. From the outset, the objective of the Association (whose membership includes Yara, Johnson Matthey, Hitachi Zosen, Ibiden, Haldor Topsoe and Cormetech) has been chiefly scientific – namely the demonstration of the technological and economic viability of using catalytic emission control technologies on ships.

As such, IACCSEA has addressed several questions related to the installed base of marine SCR as well as the technical capabilities and costs of the technology.

Installed base of marine SCR technology

The 2012 IMO NOx Review was undertaken by a correspondence group of key stakeholders, including nation states and industry associations. The purpose of the group was to review whether technologies would be available to meet strict NOx limits in time for the proposed 2016 imple-

Figure 2: Number of various types of vessels with SCR



Note: Tankers, bulkers and container ships clsssified as carriers

mentation date of Tier III NOx regulations. IACCSEA contributed a database of the installed base of marine SCR. The database, compiled using the knowledge and experience of IACCSEA member organisations, accounted for over 90% of SCR experience on marine vessels at the time.

Using the database, it was demonstrated that SCR systems have been installed on over 500 marine vessels over the last 30 years. Some have been in operation for well over 10 years and have accumulated >80,000 hours of experience (see Figures 1 and 2).

Information held within the database also demonstrated how engine manufacturers have applied SCR to a wide range of ship types and engine sizes, utilizing different fuels (of differing sulphur content) and operating over a range of engine conditions.

Cost of marine SCR

In order to grant further insight into the costs and benefits associated with installing and operating SCR technology to meet IMO Tier III NOx limits, IACCSEA developed a first order economic analysis (cost calculation model[4]).

Inputs to the model

The major costs of SCR will depend on engine operation and on the time spent in a NECA. Fixed costs include initial capital and installation costs for the equipment. The major operational costs are those of the reducing agent (e.g. urea). The IACCSEA calculation tool recognises that any fuel penalties which arise due to pressure drop across the SCR system could potentially be offset because a fuel optimised engine with an SCR system allows for a fuel efficiency benefit.

Critically, the model incorporates some scaling down of costs over the lifetime of the vessel, as it assumes economies of scale. The following is a breakdown of the input considerations:

Capital Cost of the SCR System – The capital cost of SCR technology is mainly a function of the engine power.

Installation Cost – Installation costs are again a function of the engine power, though much lower for new build installation over so-called retrofit.

Maintenance Cost – A maintenance cost of a minimal percentage of capital cost is assumed.

Operating Costs – Operating costs are a function of the time spent in a NECA. The major operating cost is that of the reducing agent, which in the model is assumed to be Urea - ISO 18611. Other forms of reducing agent such as urea granules or aqueous ammonia are being demonstrated and may offer advantages in certain systems. The cost of replacement catalyst and the fuel penalty due to back pressure exerted by the SCR system can also be considered as operating costs.

Fuel Efficiency – One potential benefit of SCR technology is the fact that engine/SCR systems can potentially be fuel optimised (in the order of a few percent). The calculation tool allows an operator to observe the impact of increased fuel efficiency (accompanied by higher NOx formation in the engine) on the total cost of operation.

Other Costs – Other costs include certification and classification costs. These costs may be significant to begin with but will fall with experience and will become a very small addition to the administration costs, e.g. of certifying the engine.

Output from the model

Table 2 shows two examples of estimated

Table 2

Engine size	10 MW
Vessel weight	20,000 DWT
Time in NECA	1,500 hrs./year
Lifetime ownership cost	EUR 1.3 million or EUR 52k p.a.

Engine size	10 MW
Vessel weight	20,000 DWT
Time in NECA	8,000 hrs./year (whole year)
Lifetime ownership cost	EUR 3.8 million or EUR 155k p.a.

SCR costs derived from the model for a 4T engine with a post turbo SCR. The first is for a vessel that spends 1,500 hours p.a. in a NECA and the second is for a vessel that spends 8,000 hours (the whole year) in a NECA.

Technical capabilities of marine SCR – operation and performance

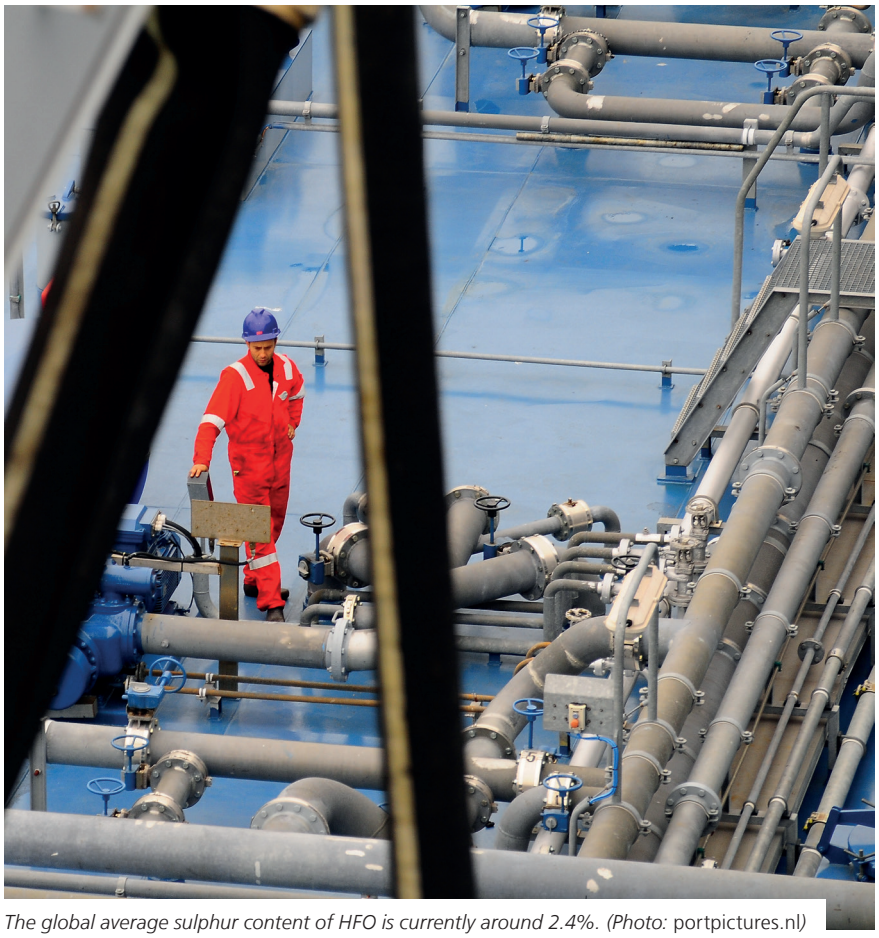
Most perceived problems and uncertainties surrounding the ability of marine SCR to meet Tier III NOx standards are addressed in the design phase of the combined SCR/engine system. These include reservations related to high sulphur marine fuel, operating under low load, ammonia slip and compatibility with SOx scrubbers.

High sulphur fuel

The global average sulphur content of HFO is currently around 2.4%. Understandably, it is often queried that, as is the case with automotive systems, the high sulphur content of marine fuel will poison marine SCR catalysts. This is not the case. Unlike SCR catalysts used in the automotive industry, sulphur is not a poison to marine catalysts (which are most often made of vanadium). The key operational consideration for marine SCR systems in high sulphur environments is that specific operating temperatures are required. Tier III NOx limits only apply to new build vessels constructed on or after 1 January 2016. As such, during the design phase of the vessel, SCR providers and engine OEMs collaborate so that appropriate temperatures will be met when the SCR system is in full operation.

Low loads

The relationship between the SCR technology providers and engine OEMs during the design phase of a vessel has evolved to address several other concerns which have historically been raised in relation to the performance of marine SCR technology. The issue of reaching the SCR operating temperature window during slow steaming has been analysed over a period of several years. In order to achieve the suitable heat, special features to increase exhaust gas temperature have been introduced by engine manufacturers (such as Hitachi Zosen).



The global average sulphur content of HFO is currently around 2.4%. (Photo: portpictures.nl*)*

Ammonia slip

In order to abate NOx, SCR uses ammonia as the reducing agent (ammonia is a decomposition product of the thermolysis of aqueous urea solution). Once again, during the design phase of an engine/SCR system for a new vessel, catalyst suppliers and engine OEMs will collaborate to ensure that the catalyst is properly sized for the exhaust stream and that there is the correct urea dosage. So long as this work has been undertaken to the correct specifications, over the guaranteed period of the SCR catalyst, there should be no issue with overdosing of urea and subsequent ammonia emissions will be extremely low.

SOx regulations

Ship owners and operators often enquire how 2016 NOx regulations will impact on the technology requirements of 2015 SOx regulations. Again, the question of whether SCR technology is compatible with SOx scrubbers is addressed during the design phase of the engine/SCR system. Vessels built beyond 2016 may choose to fit a scrubber to comply with SOx regulations in conjunction with an SCR system used to comply with NOx standards. The common view is that the SCR system should be positioned upstream of the scrubber and that space should not be an issue as the SCR system is part of the engine and will be integrated when new Tier III compliant vessels are manufactured.

Catalysts and urea

The most frequent questions raised by ship owners and operators in relation to the everyday on board operation and maintenance of marine SCR systems, relate to the catalyst and urea.

Manufacturers guarantee the useful lifetime of the catalyst depending upon parameters such as proposed operating conditions and fuel quality. A useful lifetime for SCR catalysts is often given as 16,000 hours of operation. Particulate matter derived from marine fuel is a factor which often causes SCR catalysts to foul. As such, the lifetime can be extended by the use of dust blowers. The use of a high standard of fuel,

lubricants and urea generally ensures that the engine/SCR functions adequately for many years. When a catalyst's performance deteriorates to the extent that Tier III cannot be achieved, the catalyst is removed and replaced. It is anticipated that this will occur during intervals when the engine is being refurbished.

In terms of on board handling and storage of urea, it is classified as non-toxic non-dangerous goods and is utilised in millions of cars around the globe. The only on board requirement is to fit a venting device for the urea solution storage tank. It is handled and stored in designated tanks/lines/fittings/pumps so to ensure required cleanliness requirements.

Considering urea infrastructure, as per information provided by Yara, land-based SCR applications currently require 20 million tonnes of urea solution per year. The total demand for urea solution in marine applications today is approximately 30 thousand tonnes, or less than 1% of the total land-based use (annual consumptions of urea for a vessel are typically be between 30 - 1000 tonnes, 30 tonnes for smaller fishing vessels and 1000 tonnes for large ferries, cruise ships and big deep sea vessels).

When the Tier III NOx standards become effective, the maritime demand for urea is expected to continue to be relatively small and sufficient quantities of urea will be available for marine applications (as urea will only be required by new vessels operating in NECAs). Marine demand is expected to grow slowly over time as more new vessels and major conversions become subject to the requirements. Urea is produced in over 50 countries and is available across most of the globe. Distribution systems are expected to expand to major ports in response to urea demand for use on ships.

Proof of regulatory compliance with Tier III NOx limits

Tier III compliant "engine plus SCR" systems will be certified by classification societies acting as Recognised Organisations on behalf of the respective Flag State. In this role, the Classification Societies will conduct annual surveys of the technical system verifying compliance. It is expected that port state authorities will have a role in verifying and ensuring compliant operation – (DNV GL).

Summary

The 66th meeting of the IMO's Marine Environment Protection Committee agreed a revised course to regulate NOx emissions from shipping.

For the existing North American NOX Emission Control Areas and the United States Caribbean Sea NECA, Tier III NOX emission standards will apply to marine diesel engines installed on new ships constructed on or after 1 January 2016. As such, all eligible vessels built from 2016, when sailing in the North American or Caribbean Sea NECAs, must be Tier III compliant. For any new NECAs which come into force, Tier III NOX emission standards will apply to marine diesel engines installed on vessels constructed on or after the date of adoption of a new NECA by the Marine Environment Protection Committee, or a later date as may be specified in the application for the new NECA.

The information presented in this article by IACCSEA demonstrates how, as the shipping industry approaches the 2016 deadline it can draw reassurance from the experience already gained in meeting the tightest of NOx limits. SCR technology has been installed in over 500 vessels.Issues which have been reported have mainly been part of a learning process. Key operational challenges are now resolved thorough holistic thinking, adherence to good practice a more integrated approach involving the engine and its SCR components. IACCSEA has also modelled the costs of marine SCR, so to provide a clearer indication of the cost of compliance for the shipping industry.

Notes

1 Exemptions - Tier III requirements do not apply to a marine diesel engine installed on a ship constructed prior to 1st January 2021 of less than 500 gross tonnage, of 24 m or over in length, which has been specifically designed and is used solely, for recreational purposes.

2 NOx control requirements apply to installed marine diesel engines of over 130 kW output power, and different levels (Tiers) of control apply based on the ship construction date. Outside emission control areas designated for NOx control, "Tier II" controls, required for marine diesel engines installed on ships constructed on or after 1 January 2011, apply.

3 The resale value of any vessels built after 2016 may be impacted if it does not have Tier III capability.

4 In accordance with Competition Law Compliance, the standard practice for data collection from IACCSEA members was followed: A) An attorney specialising in anti-competition law was present; B) Any sensitive information from individual companies (which was required to be >3 months old) was collected by an independent and passed on to a specialist consultant; C) Five companies had to report data for each model input; D) Any sensitive information was aggregated in a manner so that no company could identify any individual company's submission.

Dr. Johnny Briggs

Editor's Note: The International Association for Catalytic Control of Ship Emissions to Air (IACCSEA) is the leading global authority on marine SCR technology. For further information, please contact: secretary@iaccsea.com.

Dr. Johnny Briggs provides the Secretariat function for IACCSEA. He works as Senior Environmental consultant for the Sustainability Consultancy Sancroft International. He holds a PhD in Environmental Science, which focused on the relationship between the carbon stored in peatland and current trends in global climate change.

The Hong Kong shipping register – reformed and revitalised

This is the latest in a series of articles focusing on worldwide flag states with representation at the International Maritime Organization.

Hong Kong had served as a port of registry under the British Ship Register since 1840s until the establishment of the autonomous Hong Kong Shipping Register (HKSR) in 1990 under the administration of the Hong Kong Marine Department (HKMD).

The autonomous Register started with 6.3 million gross tons (GT) and plunged to a record low of 5.4 million GT in 1997. To tide it over the crisis, the HKMD worked closely with stakeholders in the shipping industry to reform and revitalise the HKSR in 1998. Since then, the HKSR has recorded a continuous upward trend in its registered gross tonnage, which reached 89 million in 2014, making it the fourth largest shipping register in the world.

The reform measures included inviting stakeholders to participate in the formulation of new shipping register strategies, simplification of registration procedures, enhancement of services and re-structuring the mechanism of ship survey. The reform has provided ship owners with a user-friendly registration environment without compromising the effective control of the quality of Hong Kong registered ships. Brief accounts of these measures are at the ensuing paragraphs.

Improving services

The HKMD collects opinions from ship owners through company visits and questionnaires on measures to better assist the operations of Hong Kong registered ships, and develops plans to implement services that are beneficial to ship owners. The measures introduced to enhance the services rendered by the HKSR include:

- Providing ship registration and related services beyond normal office hours to accommodate *ad hoc* service requests on a round-the-clock and year-round basis;
- Providing one-stop service to ship owners to facilitate submission of registration documents;
- Offering technical advice to ship owners through circulars, seminars, communications with ship management companies and company visits; and
- Setting up a Customer Relation Group to collect views of ship owners and management companies.

Reduction of registration cost

Registration cost is one of the major concerns of ship owners and ship managers. Although the registered tonnage on the HKSR keeps growing, the annual tonnage charge has been capped at HKD 77,500 for ships of 24,000 net tons and above since 2008. This is in line with the objective of the HKSR that the levy is not for profit-making but a means to attract more shipping companies and associated business to Hong Kong. Ship owners are no longer charged for other registration services including transfer of mortgage, transfer of bill of sale, mortgage or discharge of mortgage.

Quality Assurance Systems for Hong Kong registered ships

As a responsible flag administration, Hong Kong has an obligation and duty to ensure that the quality of Hong Kong registered ships meets the requirements of the various international maritime conventions.

Flag State Quality Control (FSQC) system

Before 1998, almost all flag states discharged their responsibilities/obligations under international maritime conventions by conducting periodical inspections of ships either using their own surveyors or recognised organisations (ROs) such as classification societies. The inspections mainly concentrated on finding deficiencies on board, usually without revealing the fundamental causes, which might be beyond the jurisdiction of a shipmaster and often involved the management of and support to the ship provided by the shipping company concerned.

In addition to authorising ROs to conduct statutory surveys and issue certificates to Hong Kong registered ships, the HKMD has also implemented the FSQC System since 1999 to further monitor the quality of Hong Kong registered ships and the performance of ROs by focusing on ships of dubious quality. The FSQC System ties in ships with their management companies. The inspection results of Port State Control (PSC) inspection regimes in respect of each Hong Kong registered ship are collected and analysed. Each deficiency found in PSC inspections is appropriately graded for assessing the performance of the ship concerned. Ships under each management company are then grouped for assessing the performance of the management companies.

If the performance of a ship is found below standard, an FSQC inspection will be conducted by surveyors of the HKMD. During the inspection, if the deficiencies are found to be due to poor management by the company, a company audit in accordance with the International Safety Management Code may be arranged. Furthermore, if an RO is found accountable for the deficiencies, appropriate actions will be taken against the RO.

Under the FSQC concept, shipmasters, owners, managers and ROs should work closely with the HKMD to enhance the quality of Hong Kong registered ships.

Table 1: Performance of the HKSR

	Detention rate		No. of deficiencies per inspection		Rate of inspection with no deficiencies detected	
	MoUs + USCG	HK fleet	MoUs + USCG	HK fleet	MoUs + USCG	HK fleet
2011	4.56%	2.13%	2.80	2.10	44.73%	50.91%
2012	4.40%	1.20%	2.81	1.86	44.09%	53.60%
2013	3.77%	1.06%	2.60	1.72	47.01%	55.87%
Average	4.25%	1.46%	2.74	1.89	45.28%	53.46%

Pre-registration Quality Control (PRQC) System

The PRQC System established in 2004 works similarly to the FSQC System, but it is only applicable to ships applying for registration in Hong Kong to prevent the entry of sub-standard ships into the HKSR. The PSC inspection records of these ships are collected from various PSC regimes for assessing their quality. If a ship is found to be of dubious quality, the HKMD will arrange for its surveyors to conduct an on-board inspection. The vessel will only be accepted for registration if the inspection results are satisfactory.

Safety check before port entry

In order to further upgrade the PSC performance of Hong Kong registered ships, Masters of Hong Kong registered ships are advised to conduct a pre-arrival inspection and submit a completed and signed shipboard safety checklist through their management companies to the HKMD for verification/monitoring before their ships enter into certain ports.

Company assessment on quality performance

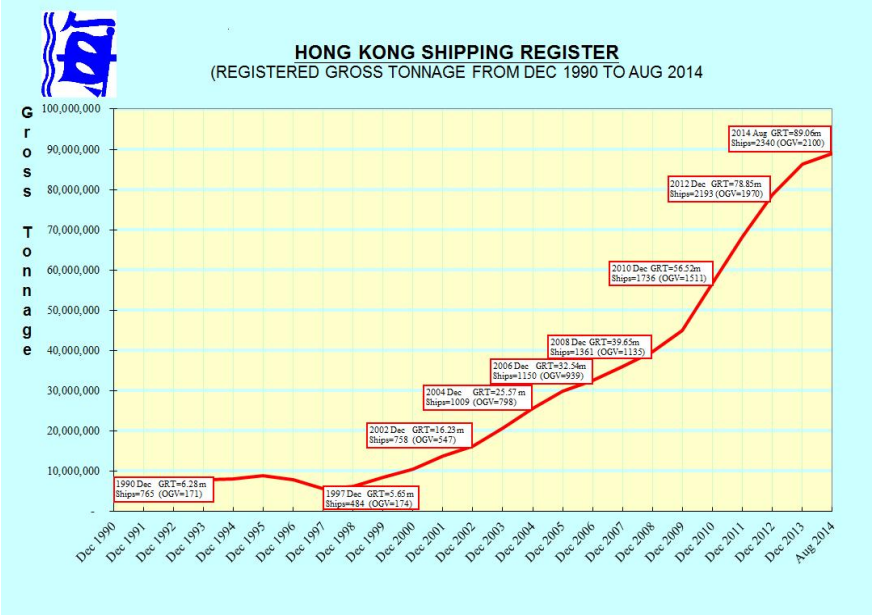
As the HKMD has been dedicated to enhancing the standards of Hong Kong registered ships, the Company Assessment on Quality Performance was introduced in October 2012 to extend the work of quality control to ship management companies. Companies are advised to evaluate the PSC performance of their Hong Kong registered ships and submit the evaluation reports, together with measures to be taken for upgrading the quality of their ships, to the HKMD for assessment every six months. Under this system, ship management companies should establish their own in-house quality assurance system to more effectively monitor the PSC situation of the ships under their management.

Award to quality ship owners

To sustain the quality standards of Hong Kong registered ships, since 2007 the HKMD has granted annual awards to the best five management companies with outstanding PSC performance under the assessment system.

The HKMD has also presented Green Awards to recognise contributions by shipping companies to the environment. Furthermore, since 2006 an incentive scheme has been implemented to encourage ship owners and ship managers to maintain the quality of their Hong Kong registered ships. A ship will be granted a reduction of half of the annual tonnage charge in the third year if it has not been detained under port State control in the previous two years.

Figure 1: Registered GT 1990-2014



Performance of HKSR

Through the great efforts of and co-operation from shipmasters, owners, managers and ROs, the PSC performance of the Hong Kong fleet has been of a very high standard.

The statistics in Table 1 reflect the fruits of these joint efforts, showing the detention rate, deficiency rate and rate of inspection without deficiency detected under the Tokyo Memorandum of Understanding (MoU), Paris MoU and the United States Coast Guard (USCG) PSC inspection regimes for the last three years.

In addition, the Hong Kong fleet has maintained Qualship 21 status under the USCG PSC Programme over the past years.

HKSR Today

The HKSR is ranked the fourth-largest shipping register in the world. As of August 2014, it comprised more than 2,100 seagoing ships with a gross tonnage of 89 million. The record-high figure was about 14 times the gross tonnage at the time of its establishment. The close co-operation between the stakeholders of the industry and the HKMD is definitely a major factor contributing to the change of attitude and culture in customer service and has made the revitalisation a success. (see Figure 1)

At present, any ship that complies with international standards of safety and protection of marine environment meets the requirements for registration in Hong Kong. The HKSR offers:

- Readily available technical support and advice by highly qualified and responsive professional staff;
- One of the lowest tax regimes in the world;
- No profits tax levied on overseas trade;
- Double taxation relief arrangement with 37 trading partners;
- No nationality restrictions on manning;
- A clean, efficient and business friendly civil service;
- Excellent ship management, financial, communication, legal and other support facilities;
- An independent, well-established common law system; and
- A gateway to the mainland of China.

Also, services provided by the HKSR include:

- Provisional and full registration;
- Registration of mortgages on full and provisional registration; and
- Demise charter registration.

Today, the HKSR is ranked the fourth-largest shipping register in the world.

A shining example of quality

The HKSR is a shining example of the efficient service offered to the Hong Kong maritime cluster. Starting with a gross tonnage of six million in 1990, it is now the fourth largest register globally and has passed the 89 million GT mark. Furthermore, ships flying the Hong Kong flag are amongst the best performers worldwide.

The quality of the HKSR is more important than the number of ships registered. To keep up the reputation of the HKSR, the HKMD will continue to work closely with the industry to enhance the standards of Hong Kong ships and to increase the competitiveness of the Register by, *inter alia*, introducing more e-services, expanding the one-stop shop service for ship registration, strengthening quality control inspections, providing technical support and advice, and enhancing co-ordination with relevant mainland authorities to offer better protection for Hong Kong ships when they are in international waters and at foreign ports.

Editor's Note: The above article was supplied by the Marine Department of Hong Kong.

BY MICHAEL GREY

Taking people seriously

The human element, which often seemed to feature as an afterthought in design and operational processes, might be thought of as more centre-stage these days. The contribution which is made by people to the safety and efficiency of maritime transport has achieved wider recognition throughout the industry, with a more focused approach to education and training, skills, human performance and experience.

Much credit for this positive development must go the *Alert!* programme and the international maritime human element bulletin which has taken this name and which has been in operation for nearly eleven years. A project of the Nautical Institute and sponsored throughout its life by the Lloyd's Register Foundation, it has now produced 36 issues covering an enormous range of HE-related topics and is scheduled to conclude in its present form next year.

During its existence it has ranged freely between the various maritime-related professions and disciplines far beyond its immediate sponsors, with contributions from all parts of the wider maritime industry and indeed, from other industrial sectors. It has encouraged more people to think more seriously about the relationships between people and hardware and the contribution that can be made to both safety and efficiency and indeed a more pleasant sea life, in the design and operation of ships.

The ship/people interface was being ignored

The Editor of *Alert!* during its whole published life is Commodore David Squire, who recalls that the project was initiated because of a growing concern that in so many areas, the interface between ships and people and equipment and operators often appeared to be ignored.

The Nautical Institute had been involved with conferences on integrated bridge systems which had revealed a number of real problems, where designers seemed to be producing equipment without any real input from those who would be taking it into service aboard ships. There had been recognition at the International Maritime Organization that its regulatory focus upon structure and machinery, processes and procedures needed to take the human element more into account, emphasised by a useful addition of a Human Element Working Group to examine these matters and ensure that regulations recognised the HE contribution.

David Squire recalls that with crew reductions, technological changes and indeed the multi-national profile of the seafaring workforce, it was felt that more needed to be done to reconnect the human beings to their ships and equipment. "People were forgetting about people!", he suggests. He acknowledges the great support from the Nautical Institute's Director of Projects, David Patraiko, and LR's Jonathan Earthy, both of whom have been closely involved from the beginning of the project, along with the support of LR's Richard Sadler and that of his predecessor.

A vehicle for raising awareness

Alert! was primarily conceived as a vehicle for raising awareness about human element issues – hence its name – and has been produced in four distinct series. The initial series was designed to identify the problems that had arisen and had been specifically analysed. All too often a casualty or incident was categorised as a "human error" without digging any deeper into any causative factors, such as poor design or a difficult working environment.

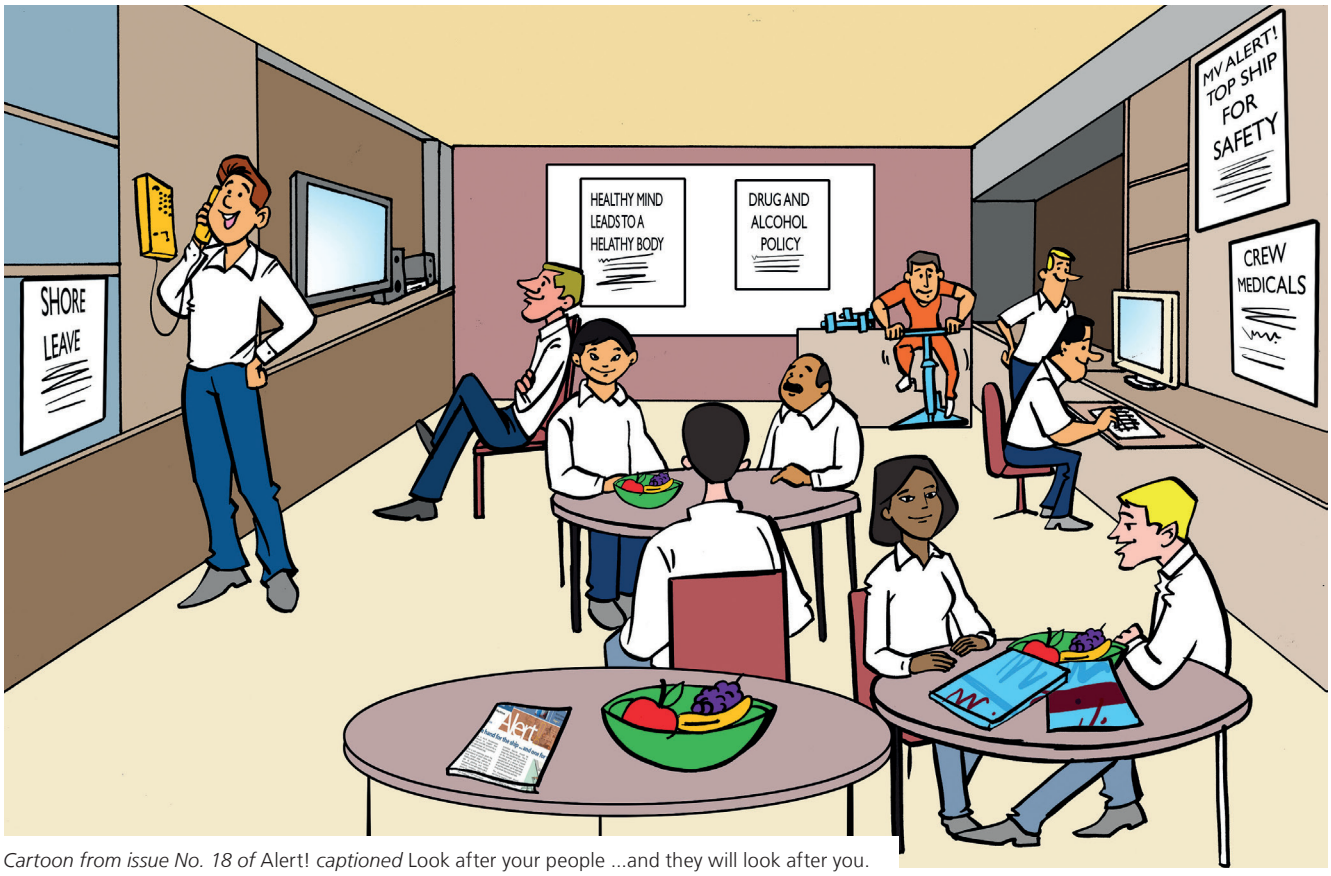
The second series was largely devoted to solutions which had often emerged through careful analysis of problems, and often emerged a study of industry "best practice". The third series of bulletins addressed issues of competency and the need to construct a better junction between skills and the work required, while the current and final series provides the reader with more overall solutions and practical tools to ensure that the human element is embraced from design through to operation.

David Squire

Many generous and supportive contributors

David Squire acknowledges the growing body of work on human factors that has taken place in parallel with the *Alert!* programme, much of this being publicised in the bulletin. One of the most rewarding aspects of his job as editor, he says is the generosity of so many different bodies and individuals in producing articles on such a wide range of topics. His "correspondents" have been enormously encouraging and have almost never refused an invitation to contribute.

Great support has been provided by almost all of the major classification soci-



Cartoon from issue No. 18 of Alert! *captioned* Look after your people ...and they will look after you.

eties, which have ratcheted up their work on human factors greatly during the past decade or more, recognising its importance. The ABS Guide to the Human Element, he suggests, was a major contribution. The P&I clubs have similarly been faithful correspondents to the bulletin, with a better understanding of human factors meshing neatly with their own risk management and claims reduction programmes. Accident investigation bodies, notably the UK's Marine Accident Investigation Branch, have been very supportive, recognising that *Alert!* has been a very good vehicle for spreading its messages.

No longer just academic

The Nautical Institute's David Patraiko believes that the programme has made a major contribution to making more people aware of human factors and the study of HE. It used to be almost an academic pursuit, he remembers, that when *Alert!* started, "the only people talking about HE were PhDs!" The project, he believes has helped to get more operational people involved with this important subject that impinges upon so much of the industry's daily work.

Practical people are increasingly seeing human factors improvements in an operational context. It has been a major contribution to literature and there is some evidence that the various tools and solutions are being widely adopted. Material which has emerged in *Alert!* is increasingly being used as both reference and for training purposes. The fact that HE is being taught in maritime programmes is a recognition of a wider understanding. "As the International Safety Management Code matures", says David Patraiko, "more HE aspects are being picked up".

Involving Asia

Has the bulletin been too "Eurocentric"? Its editor acknowledges that this might be a perception, although there has been encouraging support from Korea and China and efforts have been made to involve the whole of the Asian region. Shipbuilders might have been slow to come to the table – David Patraiko suggests that the absence of a professional body representing shipbuilders might have been in some way responsible. Owners sometimes ruefully admit, says the editor, that the principle that "the customer is always right" may not apply with the builders of ships, who sometimes are reluctant to change what is convenient for them to the convenience of those who will sail in them!

David Squire is encouraged by a more proactive attitude among equipment manufacturers and designers. Major design companies – he cites Rolls Royce which has looked closely into human factors in their design of offshore support vessels – are showing far more interest in this area.

A substantial archive

During its eleven years of existence, *Alert!* has been widely circulated in a whole range of marine publications, some 55,000 copies per issue being sent around the world. Today there are rather fewer, with around 40,000 hard copies and some 3000 circulated electronically. It is clear that it has an effective "retention factor", being spotted aboard ship and design offices.

Next year will see the project conclude and David Squire stand down, but as he points out, there is a substantial archive, with more than 200 written articles and numerous links. There is a great deal of material in its "library" which will remain available and hopefully influential. Editing *Alert!*, says David Squire, former Commodore of the Royal Fleet Auxiliary and an Elder Brother of Trinity House, "has been a privilege".

Editor's Note: Michael Grey is BIMCO's Correspondent in London. He is a former Editor of Lloyd's List and a regular contributor to many maritime publications.

New books

A seamanship sourcebook revised

The year 1905 might be thought of as a good year for seamanship because as well as being the founding year of BIMCO, the first edition of *Nicholls's Seamanship and Nautical Knowledge* was seen by a professional maritime "public". Since then this famous book has been revised several times and this year sees its 29th edition, still published by the Glasgow firm of Brown, Son & Ferguson.

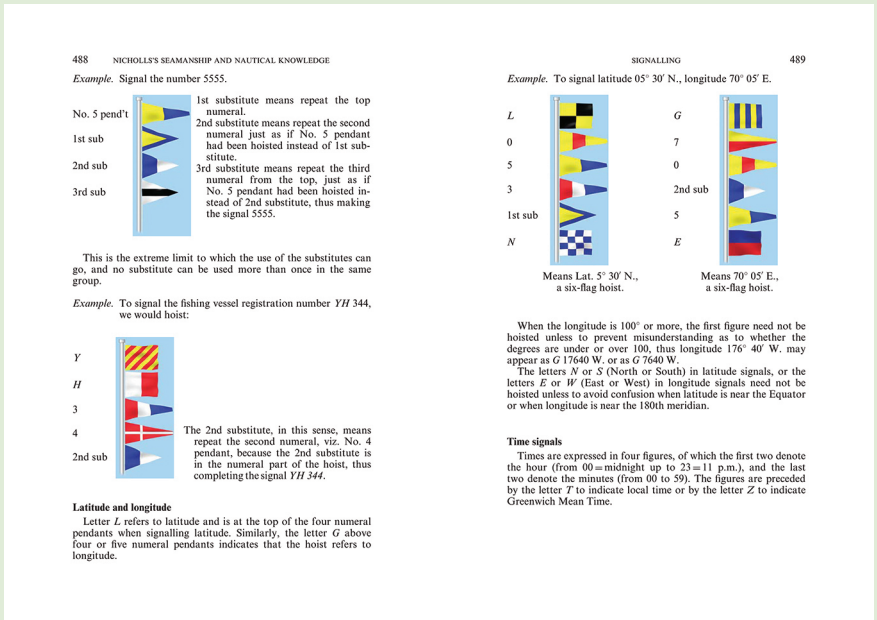
When it was first written, one of its intentions was to address the suggestion that seamanship was something almost instinctive, a practical art and science to be learned through sea-borne experience.

This book demonstrated that in addition to practical experience, there was indeed a body of knowledge with which marine professionals needed to have at their fingertips if they were to function safely and efficiently. Seamanship, in short, was about knowing things and not just doing them.

This latest revision, undertaken by the former Master of the UK based Honourable Company of Master Mariners, Captain GM Pepper, has been extensive and covers the enormous range of subjects in which the 21st century deck officer is expected to be competent. Scale economics and advanced technology are just two areas in which there is almost continuous change, the need to care for the environment intrudes into every regulatory and operational field. Regulation and legislation have both expanded in every dimension, giving effect to these changes.

Very readable text

The book does not pretend to cover everything, but provides good advice as to where additional information might be sought. It is comprehensively illustrated, with excellent drawings, diagrams and photographs throughout a very readable text, which reflects latest thinking on so many different aspects of a mariner's required knowledge. Importantly, in a maritime world which is becoming increasingly specialised, this useful source will provide knowledge about seamanship practices which a mariner sailing in other types of specialist ships may be ignorant. One never knows when the knowledge will be useful, and not just when attending an oral examination for certificates!



488 NICHOLLS'S SEAMANSHIP AND NAUTICAL KNOWLEDGE

Example. Signal the number 5555.

No. 5 pend't
1st sub
2nd sub
3rd sub

1st substitute means repeat the top numeral.
2nd substitute means repeat the second numeral just as if No. 5 pendant had been hoisted instead of 1st substitute.
3rd substitute means repeat the third numeral from the top, just as if No. 5 pendant had been hoisted instead of 2nd substitute, thus making the signal 5555.

This is the extreme limit to which the use of the substitutes can go, and no substitute can be used more than once in the same group.

Example. To signal the fishing vessel registration number *YH* 344, we would hoist:

Y
H
3
4
2nd sub

The 2nd substitute, in this sense, means repeat the second numeral, viz. No. 4 pendant, because the 2nd substitute is in the numeral part of the hoist, thus completing the signal *YH 344*.

Latitude and longitude

Letter *L* refers to latitude and is at the top of the four numeral pendants when signalling latitude. Similarly, the letter *G* above four or five numeral pendants indicates that the hoist refers to longitude.

SIGNALLING 489

Example. To signal latitude 05° 30′ N., longitude 70° 05′ E.

L
0
5
3
1st sub
N

Means Lat. 5° 30′ N., a six-flag hoist.

G
7
0
2nd sub
5
E

Means 70° 05′ E., a six-flag hoist.

When the longitude is 100° or more, the first figure need not be hoisted unless to prevent misunderstanding as to whether the degrees are under or over 100, thus longitude 176° 40′ W. may appear as *G* 17640 W. or as *G* 7640 W.

The letters *N* or *S* (North or South) in latitude signals, or the letters *E* or *W* (East or West) in longitude signals need not be hoisted unless to avoid confusion when latitude is near the Equator or when longitude is near the 180th meridian.

Time signals

Times are expressed in four figures, of which the first two denote the hour (from 00 = midnight up to 23 = 11 p.m.), and the last two denote the minutes (from 00 to 59). The figures are preceded by the letter *T* to indicate local time or by the letter *Z* to indicate Greenwich Mean Time.

Regulation and requirements

The book neatly juxtaposes regulation and statutory requirements with useful hints clearly born of experience. Thus, it is one thing to understand how a windlass works and the basics about anchoring - useful to remember to carefully secure the anchor and regularly check that lashings and brakes are not working loose.

The book is divided into 18 chapters, following the format of earlier editions. One of the marks of the old seaman which has entered the general vocabulary is "knowing the ropes" and it begins with a chapter on this subject which, it is probably worth suggesting, will remain relevant just as long as wire or fibre ropes are part of the ship's equipment. Other practical chapters follow on lifting gear, lifesaving and lifesaving appliances and anchors and cables.

The chapter on bridge watchkeeping con-

tains the complete text of the International Regulations for Preventing Collisions at Sea, together with some useful notes of interpretation, while the modern practices involved in "Bridge Team Management" are explained.

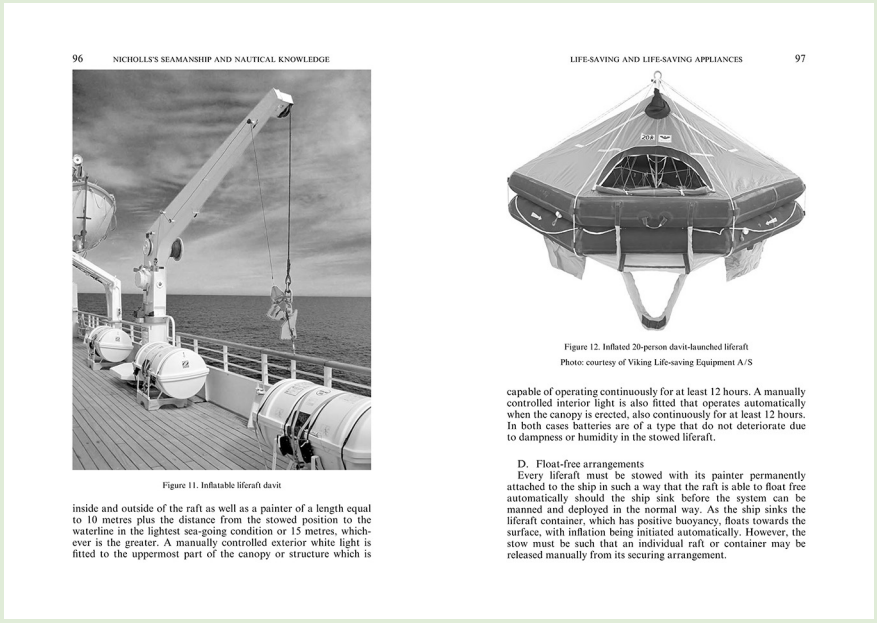
After a review of the IALA maritime buoyage system, there are useful chapters on safety and regulatory information, with appropriate links, distress and rescue procedures and practices, fire-fighting and the principles of ship-handling. A chapter on exceptional circumstances covers matters that the mariner might expect to meet, such as heavy weather, and those less familiar emergencies such as being called upon to undertake a tow, or to save a ship taking in water.

Ship types and cargo operations

Chapters follow on ship types and cargo operations, maintenance and basic ship construction and stability, with a new section on environmental matters, with a useful section on many of the matters which mariners need to know, but which tend to defy categorisation. Passage planning, personal safety and pest control might seem curious bedfellows, but are usefully and alphabetically sourced.

This is a book which ought to be in the personal library of every professional mariner. It replicates a timely injunction from 1915, in which seamanship was defined as "the application of common sense to the everyday happenings of maritime existence". The ideal seaman, it was said in an earlier edition is he (they were mostly men in those unreconstructed days) "who has developed sea sense and nautical sagacity". This book will clearly make a useful contribution to both.

Nicholls's Seamanship and Nautical Knowledge (29th edition), Revised by Captain G.M. Pepper, is published by Brown, Son & Ferguson, Glasgow *www.skipper.co.uk*



96 NICHOLLS'S SEAMANSHIP AND NAUTICAL KNOWLEDGE

Figure 11. Inflatable liferaft davit

inside and outside of the raft as well as a painter of a length equal to 10 metres plus the distance from the stowed position to the waterline in the lightest sea-going condition or 15 metres, whichever is the greater. A manually controlled exterior white light is fitted to the uppermost part of the canopy or structure which is

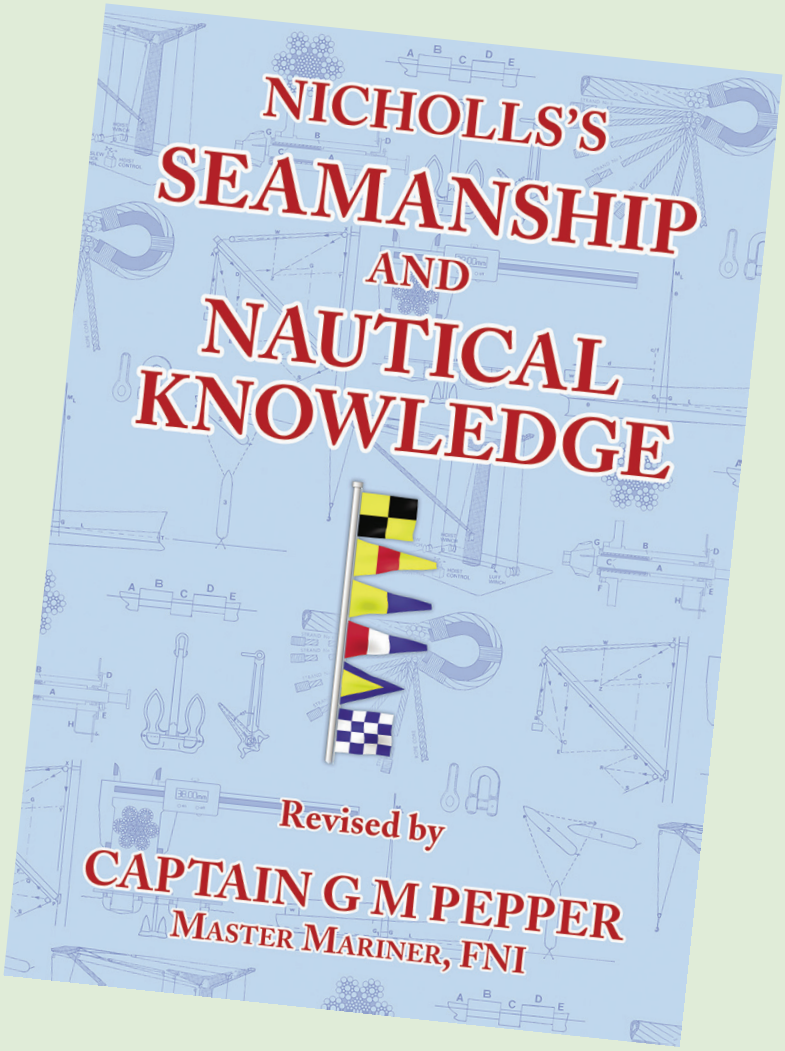
LIFE-SAVING AND LIFE-SAVING APPLIANCES 97

Figure 12. Inflated 20-person davit-launched liferaft
Photo: courtesy of Viking Life-saving Equipment A/S

capable of operating continuously for at least 12 hours. A manually controlled interior light is also fitted that operates automatically when the canopy is erected, also continuously for at least 12 hours. In both cases batteries are of a type that do not deteriorate due to dampness or humidity in the stowed liferaft.

D. Float-free arrangements

Every liferaft must be stowed with its painter permanently attached to the ship in such a way that the raft is able to float free automatically should the ship sink before the system can be manned and deployed in the normal way. As the ship sinks the liferaft container, which has positive buoyancy, floats towards the surface, with inflation being initiated automatically. However, the stow must be such that an individual raft or container may be released manually from its securing arrangement.



Macro Economics

Shipping demand remains subdued by slow global economic activity

Global economy

After lower than expected growth in the first half of 2014, the International Monetary Fund (IMF) has once more lowered its forecast for 2014. The IMF expects world growth to come in at 3.3%; down 0.1 points from its previous estimate in July. The downgrade happened despite improving US growth figures, as these were not able to offset the weakened development in the Eurozone and a number of key emerging markets. The news breaks less than three months after the last IMF update that lowered the 2014 growth projection from 3.7% to 3.4%.

The IMF has also lowered its growth estimation for 2015 from 4.0% in July to 3.8% now. This is in part due to the level of global investments, which have been low for some time now, putting a damper on higher growth in the near future. The IMF also warns of increased downside risks, in the main that the financial markets have been overly optimistic about the future and the fact that tensions are still brewing in the Middle East and between Russia and Ukraine.

The IMF also points out that with the current developments and with future risks in mind, stronger growth might take place but could also fall below expectations once again. The economic recovery is becoming more country-specific, driving the need for more country-specific reforms. The battle is against high debt and unemployment leftover from the crisis, as well as a low growth in future.

US

The US has come a long way since that first quarter where GDP dropped by 2.1% and is now the glimmer of hope in the latest report from the IMF. The world's largest economy is set to grow 2.2% in 2014, 0.5 points higher than the July estimate. The increase is partly contributed to by the improved labour market, where 248.000 jobs were created in September, exceeding the economists' expected 215.000. Unemployment now stands at 5.9%, down from 6.1% in August, the lowest figure in six years.

The 2.2% forecast of the IMF is now on a par with that of the Federal Reserve (FED).

The IMF expects the FED to start raising interest rates in mid-2015. Interest rates that have been near zero for the last six years. The Federal Open Market Committee (FOMC), the committee under the FED in charge of overseeing the nation's open market operations, however, plans to keep interest rates low for a "considerable time". It remains important that the financial markets understand the market assessments coming from the FED and the FOMC and interpret them correctly in order to avoid unnecessary turbulence that may endanger the overall mission of bringing around a sustainable economy. How long "a considerable time" turns out to be depends on the economic facts.

The level of inflation is still substantially below the 2% target and the labour market is not completely recovered, as too many people are seeking jobs they cannot find.

Asia

In China, they are still trying to recapture the former growth momentum. Various GDP growth estimates for 2014 are hovering around 7.0 to 7.4%. This reflects the uncertainty related to a gradual slowing of the Chinese economy. The country is coming down from past peaks with double-digit growth rates to a "new normal" lower growth level in the future, according to the People's Bank of China (PBOC is the central bank of China). It remains true that a lower level of growth in China would still be substantially higher than growth levels in any of the advanced economies.

As reported by BIMCO in mid-September, the PBOC initiated an economic counter-strike as the number of weak macro-economic indicators mounted. The PBOC issued 500 billion Yuan (USD 81 billion) worth of loans to the county's five largest banks. If judged by the Manufacturing PMI for September released at the closing of the month, the operation went well, as both measurement of the PMI were unchanged from the previous months. This indicated a stop to the sliding trend – at least for now.

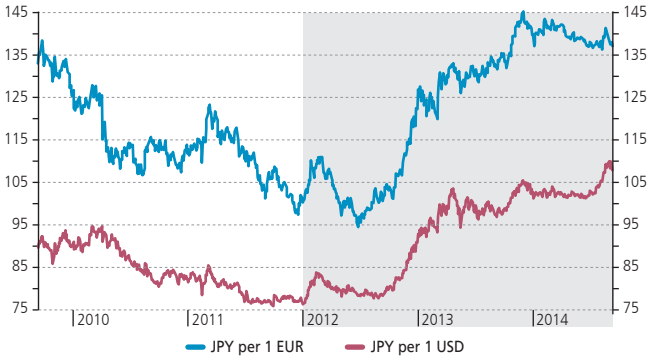
Chinese imports dropped by 2.4% year-on-year to USD 158.6 billion in August. Meanwhile, exports grew by 9.4%. Falling commodity prices are one

Source: Wulffmorgenthaler

of the reasons for the drop in imports, since imports are measured in value not quantity. That development left China with a new all-time-high trade surplus with the rest of the world of USD 49.8 billion in August.

In Japan, the ongoing work to increase inflation expectations and expand the monetary base to make that vital economic turnaround continues. Moreover, the subsequent weakening of the exchange rate against the USD and EUR should lead to more exports. Unfortunately, it also means the consumer pays more for their goods in the store. The latter is at the epicenter of the Q2 contraction of GDP in Japan that was down by an annualized 7.1%, as the April tax hike made consumer goods even more expensive. The poor performance in Q2 prompted the IMF to slash its forecast for 2014 GDP growth in Japan to just 0.9%, from the previously expected level of 1.6% in July.

Cross-Exchange Rates for JPY
2010-2014



Source: BIMCO, XE.com

EU

The Euro Area still has a long way to go before the sustainable recovery arrives. Doing too little too late seems to haunt growth and employment in the wider European Union too. When compared to the unprecedented "kamikaze" monetary expansion carried out by the US FED and now embraced by Japan too, the initiatives taken by the ECB and individual member states of the Union to present markets with a convincing turnaround story seem tame.

It is thus fair to conclude that Europe has failed to deliver on key economic indicators and real economic progress. Moreover, the already low inflation rates (0.4% in August) and inflation rate expectations continues to challenge the Euro Area.

The three economic giants in the OECD-world: Japan, Europe and US, are at very different stages in their economic cycles. This is not really helping any one of them as poor performance in one end of the world limits the upside to the well performing at the other end in an interconnected trading environment.

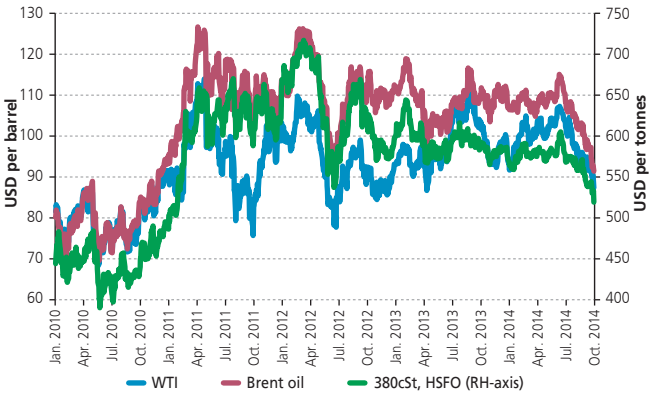
Outlook

In our last report, BIMCO expressed the hope of avoiding a photo finish at the end of the year to make the call whether 2014 would actually turn out to be better than 2013 in GDP terms. Now we know better, a photo finish is unavoidable.

Twenty-two months after projecting World GDP to reach 4.1% in 2014, the IMF now aims to hit bull's-eye with its recent 3.3%. Who is to blame then? No one can hide here. The advanced economies are revised down from 2.2% to 1.8% and the emerging and developing economies are downward revised too from 5.9% to 4.4%.

The only positive thing to take away from this seems to be the lower oil prices arising from weaker demand and higher domestic production in the US. Lower prices are good news for the stalling economies of the world seeking lower input costs to their economies.

Oil Prices
2010-2014



Source: BIMCO, MABUX.com

According to Marine Bunker Exchange (MABUX), oil prices have been in a steadily declining trend since late June. This is also good news for the shipping industry, which is now experiencing the lowest bunker prices for 3½ years.

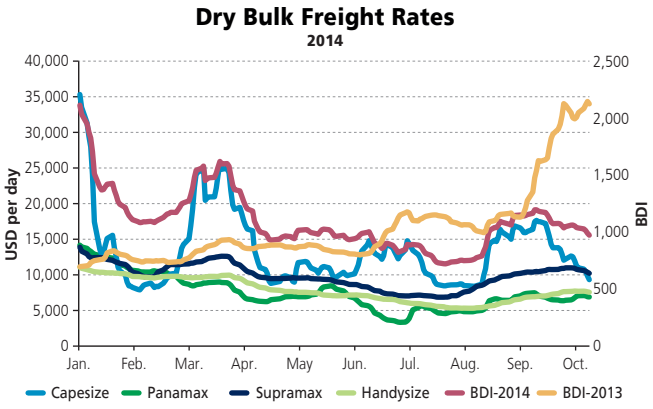
Global seaborne trade is dependent on global growth, thus it is vital if general shipping demand is to go forward that a smooth transition from a sustained recovery to normalized demand become successful. The article was finalised on 10 October 2014. Read about the impact on shipping on the following pages...

Dry Bulk Shipping

Rate improvements arrived as forecast, but uncertainty mounts for 2015 demand

Demand

While we await the long-anticipated rebound in Capesize freight rates centred on Brazilian exports, let's focus on the brighter spots elsewhere in dry bulk shipping.



Source: BIMCO, Clarksons

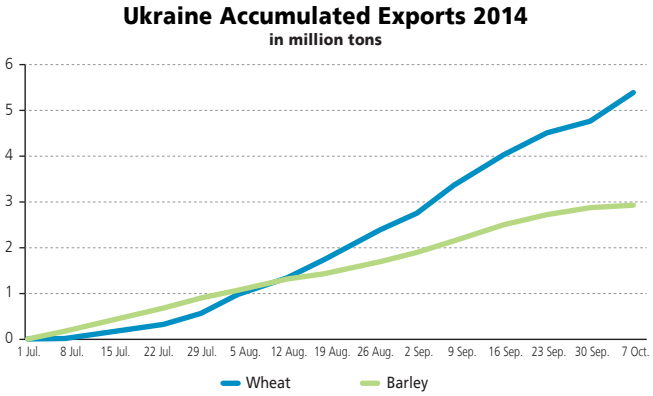
Panamax freight rates are dragging along, as the oversupply is still clearly felt in the freight market. Fortunately, the erratic movements have now been mostly upward since the bottom-out on 27 June at USD 3,362 per day. Since then, freight rates have more than doubled to USD 7,101 per day, but this is still very different from delivering healthy earnings to owners and operators as the present ones are barely covering OPEX.

Supramaxes and Handysizes live a less volatile life than their larger peers do, and the rebound is clearly felt and seen, moving from the lower end of BIMCO's forecast freight rate interval to the top for Handysizes, with Supramaxes still firming to close the gap completely.

Freight rates for all four segments have performed as forecast in our last report; a positive development without fireworks. The only disappointment was the fact that Capesize freight rates only reached USD 17,670 per day on 10 September and have since then slid down to USD 11,000 per day.

The development in the sub-Capesize ship sizes mirrors very well what we have experienced in terms of demand. The weak development of coal cargoes into China has given some softness to the Panamax market, with Indian imports failing to make up for all the lost demand. In the meantime, the Supras and Handies have both benefitted from the strong demand for minor bulks. On top of that, we have surging Indian coal imports up by 19% year-on-year to 16 million tonnes in September, as busy power companies went on a buying spree at low international prices.

The grain export season is also up and running now across the northern hemisphere. Even the exports of wheat and barley from Ukraine have contributed positively to the market, despite the difficult situation Ukraine is facing due to the stand-off with Russia. Russia's exports of the same commodities are also very high and projected to hit record levels this year as the season progresses. Russian exports in August were at a record high of 4.2 MT according to USDA, as seasonality spikes exports. In Ukraine, exports are strong too at 3.3 MT in both August and September, according to BIMCO data.



Source: BIMCO, Ministry of Agrarian Policy and Food of Ukraine

Supply

The dry bulk carrier fleet has grown by 3.6% in the first nine months of the year – 37.8 million DWT (486 units) have been delivered, offset by 11.5 million DWT (213 units) being demolished. One-third of the total added capacity came in the form of 66 Capesizes and 1 Valemax. In addition to that, 144 Panamaxes, 150 Supra-/Handymax and 125 Handysizes entered the active fleet.

BIMCO forecast the total level of newbuilt deliveries for 2014 to reach 55 million DWT, with the current forecast for 2015 heading

QUICK FACTS

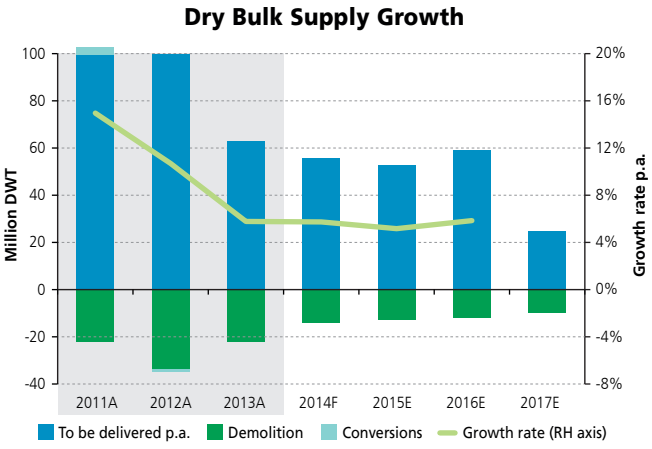
10 October

Total fleet size (change since 1 January)
DWT million: 750.40 (+3.6%)

Rate indices (change since 8 August)
BDI: 963 (+24%)
BCI: 1,544 (+32%) • BPI: 865 (+39%)
BSI: 970 (+21%) • BHSI: 516 (+42%)

Latest update on Baltic Indices available at www.bimco.org

for a slightly lower level than that. Since our last report, the order-book for 2016 has built up to reach 60 million DWT. With demolition expected to remain somewhat unchanged, this will again increase the pressure on the fundamental supply-demand balance as the fleet could expand by almost 6% again, up from 5.2% projected for 2015.



Source: BIMCO, Clarksons

A is actual. F is forecast. E is estimate which will change if new orders are placed. The supply growth for 2014-2017 contains existing orders only and is estimated under the assumptions that the scheduled deliveries fall short by 10% due to various reasons and 30% of the remaining vessels on order are delayed/postponed.

Fortunately, the newbuilding contracting activity has been more subdued in 2014 as compared to the rush of 2013, where 102 million DWT of new orders were placed. At the beginning of October 2014, the year-to-date contracting volumes stood at exactly half that of the full year 2013. 2014 is therefore heading for a significant slowdown from 2013, but still a level that does not support an improved market balance going forward unless it is combined with a strong demolition activity, which BIMCO does not expect to happen.

Outlook

The poor state of the freight market has naturally also affected asset values in a negative way. At the beginning of October 2014, Capesize ships made most of the gains from the early parts of the year, while the three smaller segments are in the red by 7% to 20% – the older the ship the bigger the lost value as assessed by Vesselvalue.com.

Uncertainty mounts around the future imports of coal into India. This follows the ruling by India's Supreme Court to deem illegal 214 out of 218 coal-block licences allocated to various companies from 1994-2010, of which 42 are being worked. Following a six-month grace period given prior to the closing of the mines, only four could potentially continue operations. Should this become reality, significant seaborne imports will follow once the stockpiles have been run down. Nevertheless, it is too early to know if only four mines will continue to operate beyond 24 March 2015. Imports are likely to come from South Africa, as India favours the higher quality to the higher ash content (23%) coal imports from Australia, which is seeking new buyers, with China potentially shying away from imports of thermal coal with an ash content higher than 16% from 1 January 2015. These are two wild cards for the seaborne coal trade next year if implemented as described.

The oversupply of iron ore into the market has dragged prices to the floor. In September 2014, iron ore prices reached a five-year-low for 62% Fe content delivered at Qingdao, China, as it went below USD 80 per tonnes. This low level does not reflect poor demand conditions for iron ore or lower steel production in China, which is up by 5% in the first eight months of 2014. However, the lower iron ore prices may push forward a higher Chinese import level, as domestic production can be squeezed out because of higher production costs, as well as lower commodity prices tending to spur increased seaborne demand.

To sum up, our forecast for October/November: BIMCO assesses that the level of Capesize TC average rates will rise from the current level below the USD 10,000 per day mark. Once the belated, but still anticipated, rush of Brazilian iron ore spot cargoes enter the market, freight rates should be volatile around USD 8,000-23,000 per day. Panamax TC average rates will remain around USD 5,000-10,000 per day. For the Supramax segment, BIMCO forecasts freight rates in the USD 8,500-13,500 per day range, whereas Handysize freight rates are expected around USD 6,500-9,500 per day. ❚❚

More shipping market analysis on www.bimco.org

Tanker Shipping

Crude oil tankers buoyed by low supply growth, as Winter season approaches

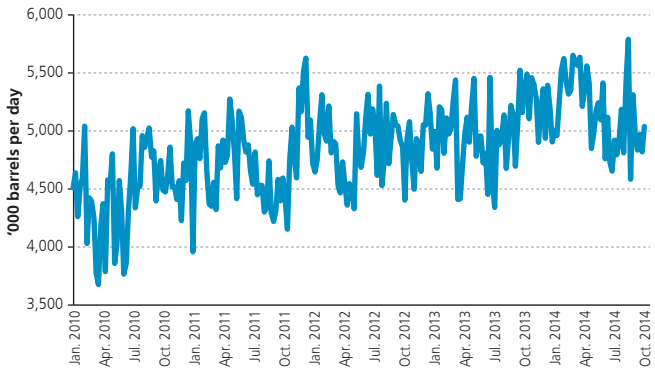
Demand

The world seems to be awash with oil these days, to an extent that no geo-political tensions in the oil-rich producing nations can make us "scared enough" to hike oil prices. We seem to have become accustomed to a world where such tension is the norm. This is very good news for the world economy, as it brings down the cost of energy – despite a number of ongoing major conflicts and the challenges related to Ebola in West Africa. Moreover, it could spur demand for oil, which will be good for oil tankers. An example of this unusual situation is the continuing surge in southern Iraq's exports, despite the fighting in the North of the country.

One more reason for oil prices to be at a four-year-low is the fact that net energy imports as share of consumption in the US are at their lowest level in 29 years. Demand is currently going up in the US, but domestic production is rising at a faster rate. Record-setting liquid fuels production growth in the US dwarfs the oil supply disruptions elsewhere, increases supply, and lowers prices.

It is also very positive to note that the West African producers are being successful in selling the oil they used to ship to the US to new customers in the Far East. Reports hint at record high export levels to China from Angola primarily, but also from Nigeria and neighbouring oil exporting countries. A lower price has stimulated demand.

Weekly Total US Exports and Imports of Oil Product

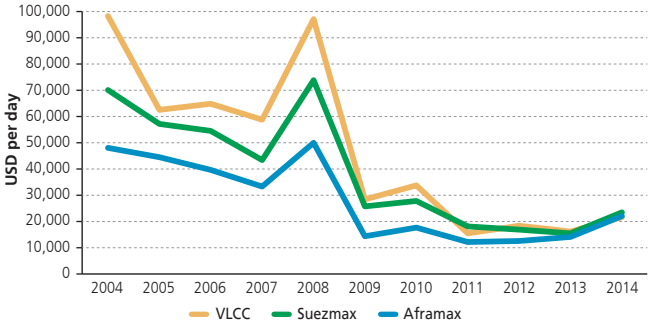


Source: BIMCO, US Energy Information Administration

For crude oil tankers, the exchange of short US-bound hauls with longer Asia-bound hauls provides a much-needed boost of ton-miles, as more tankers are employed to transport the same amount of cargo when the sailing distance is longer.

Concerning the product tanker market, freight rates have performed pretty badly for the Handysizes and MRs during Q2 and Q3. A lot of that has to do with more European imports coming from Russia, but it is also due to US oil product exports coming down sharply in April and being slow to recover. US oil product imports, too, have retreated since April. This slowdown has broken the steadily rising trend somewhat, but it remains true that the combined transport work of imports and exports that have lifted demand in recent years are heading for a slower rise and possibly a plateau in coming years.

Crude Oil Tanker Earnings
2004-2014



Source: BIMCO, Clarksons

Supply

The order-book for tankers has risen in the past two months and it is all about crude oil tankers. Four VLCCs and six Suezmaxes made the headlines, as the order book for product tankers dropped from 26.2 million DWT to 24.4 million DWT. The new orders have lifted the level of crude oil tanker capacity for delivery in 2016 by 16% – bringing the expected fleet growth up to an uncomfortable four-year-high – the expected growth will represent 3.0% of the active fleet at that time.

Before we reach 2016, the year before that gives reasons for optimism, as we have seen glimmers of hope in improving crude oil

QUICK FACTS

10 October

Fleet sizes (change since 1 January)
Crude (DWT million): 374.49 (+0.3%)
Product (DWT million): 131.91 (+2.7%)

Rate indices (change since 8 August)
BDTI: 674 (-17%) • BCTI: 576 (+4%)

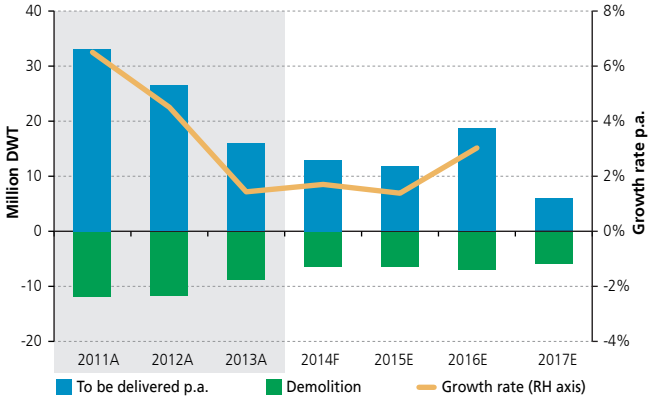
Latest update on Baltic Indices available at www.bimco.org

tanker freight rates in 2014. Following three devastating years from 2011-2013, with average crude oil tanker freight rates of USD 15,500 per day, 2014 has delivered USD 22,400 per day so far. What we still need to see is a premium rate for the larger sizes, as we see it in a "normal" market. 2014 has been extreme in that sense as all vessel sizes have earned the pretty much the same, with Aframax earning USD 22,053 per day, Suezmax USD 23,523 per day and VLCCs USD 21,642 per day.

4.9 million DWT of new product tanker capacity has been delivered year-to-date. Taking demolition of 1.2 million DWT into consideration, it brings the fleet growth up by 2.7%. This is equal to the full year supply growth of last year. BIMCO forecast product tanker supply growth at 4.5% for 2014 as a whole.

The limited fleet growth below 2% in the crude oil tanker segment is a very positive story in 2014 and 2015. This is pivotal to bring about better sentiment, as well as improvements to the fundamental supply-demand balance.

Crude Tanker Supply Growth



Source: BIMCO, Clarksons

A is actual. F is forecast. E is estimate which will change if new orders are placed. The supply growth for 2014-2017 contains existing orders only and is estimated under the assumptions that the scheduled deliveries fall short by 10% due to various reasons and 20% of the remaining vessels on order are delayed/postponed.

Current demolition prices are high, but as we have seen so many times before, it does not necessarily mean that owners are attracted by the improved prices. According to GMS, demolition prices offered for tankers in Pakistan, Bangladesh and India are around USD 480-490 per ldt. There are some reports of a 23 years old Suezmax tanker sold at USD 525 per ldt at the end of August 2014.

Outlook

Going forward, the coming year seems brightest for crude oil tankers, as the pressure from the supply side is low. For oil product tankers, BIMCO expects 2014 and 2015 to bring about increased supply side pressure, but also to provide improved demand side opportunities.

However, the subdued economic growth is also weighing heavily on overall oil demand. IEA expects growth of 1% in 2014 and just 1.3% in 2015. A weaker outlook for Europe and China underpins the downward revision published 11 September.

In the short term, we are expecting the seasonally strong oil demand also to support tanker freight rates over the course of the Winter.

For October/November, BIMCO expects earnings for the three crude oil tanker segments to react positively to the slow supply growth as we enter the Winter season. VLCCs are expected to firm around USD 18,500-37,500 per day, Suezmax crude oil tankers at around USD 20,000-40,000 per day and Aframaxes could be reaching USD 35,000 per day at the high end and USD 15,000 per day at the low end of our interval in a volatile market.

In the product tanker segment, BIMCO expects earnings on the benchmark routes from AG to Japan for LR1s to remain around USD 14,000-22,000 per day. LR2 ships are likewise enjoying a stronger market, with earning set to stay around USD 18,000-28,000 per day. Handysize rates are seen holding more upside and thus improve steadily in the USD 7,500-15,000 per day, with MR average rates already enjoying a lift and thus forecast to be in the interval of USD 10,000-16,000 per day.

More shipping market analysis on www.bimco.org

Container Shipping

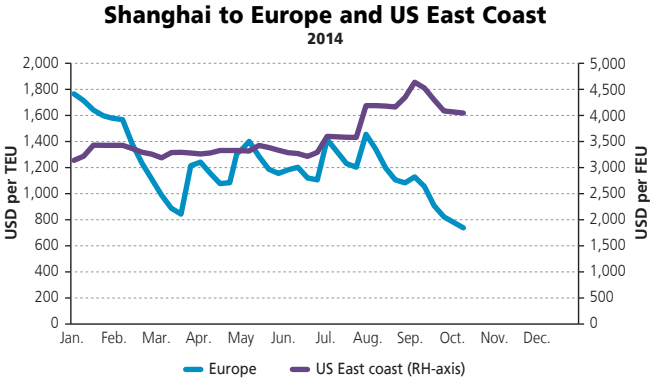
Is the strong level of demand sustainable going forward?

Demand

Two key trading lanes attract attention these days: one being the major battlefield today – the other being the potential battlefield of tomorrow.

Today's main battlefield is the Far East to Europe trading lane, which recorded a demand growth of 8.0% in the first seven months of the year as compared to the same period last year according to CTS. August contributed further to a strong year, coming in 8.6% higher than August 2013. Knowing the sad state of the European economies, unfortunately, such a strong increase in demand appears to originate more from inventory restocking than anything else.

Regardless of the reason, the strong demand side has brought down the number of idle ships and eased the integration of newbuilt Ultra Large Containerships (ULCS) into the Far East to Europe trading lane. At the same time, freight rates have been firm until the start of the peak season. At the busiest time of the year in container shipping it appears as though the market has been awash with tonnage. This has brought freight rates down. The recent Golden Week holiday in China has caused supply to contract to meet the new level of demand. It remains to been seen whether the next round of General Rates Increases can turn the tables once more and bring about higher freight rates.



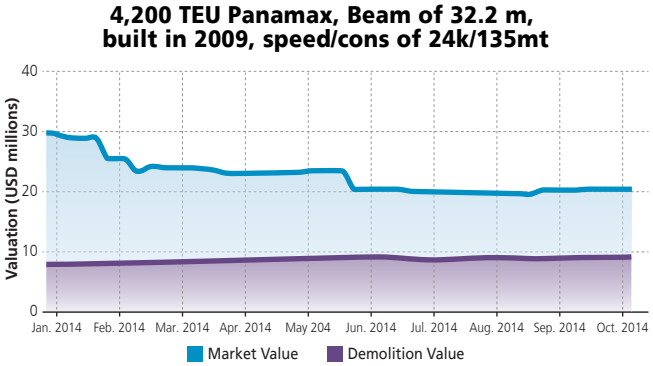
Source: BIMCO, Shanghai Shipping Exchange

Regarding the battlefield of the future – the Far East to US East Coast trading lane – we have seen a very steady freight rate level improve going into the peak season. Hitting a new record high level on 1 August USD 4,187 per FEU, rates peaked at USD 4,636 per FEU a month later. BIMCO data shows a demand growth of 8,7% for the first eight months leading the rally.

Why might the Far East to US East Coast lane become the battlefield of the future? For several reasons. A) The expansion of the Panama Canal to service container ships up to 13,000 TEU from 2016. B) The enlargement of Suez Canal started only a couple of months ago. C) The heightening of the Bayonne Bridge to allow ULCS to call New York/New Jersey. D) The ongoing delivery of ULCS is likely to introduce some of the cost-effective ULCSs on this long-haul trade to reap the economics of scale, beyond the preferred trade for them which is Far East to Europe. E) The expansion of other US East Coast ports that allow them to receive the giant vessels in future, by dredging and introducing larger "Super-Post-Panamax" cranes. The volume growth is already there with much room for expansion. Time will tell how that trade will develop.

Extremely poor demand for second-hand Panamax ships of 4,000 TEU has brought asset prices to the floor for that ship type and size. According to vesselsvalue.com, second-hand prices are down by 26% to 38% since the beginning of the year. This can be compared to positive developments in prices for all ships of a larger size.

The graph show the development in valuation of a 4,200 TEU Panamax ship built in 2009 with a beam of 32.2 metres and a speed consumption specification of 24 knots at 135 tonnes.



Source: BIMCO, Vesselsvalue.com

Supply

We have seen a strong individual "commitment" to mitigate the supply side impact from the liner companies during the last 2-3 years. Nevertheless, developments during the past two months have derailed this somewhat. The fleet has grown by 4.9% in the year so far, and is on track to grow faster this year than in 2013 on an annualized basis. The demolition of non-competitive ships, which has been brisk in the first seven months, has cooled down promptly in August/September from a monthly average of 43,618 TEU in the months of January to July to

QUICK FACTS

10 October

Total fleet size (change since 1 January)
TEU million: 17,953.20 (+4.9%)

Rate Index (change since 8 August)
CCFI: 1,058.76 (-5%) • SCFI: 911.03 (-22%)

a monthly average of just 14,569 TEU in the most recent two months. This indicates that demolition going forward may not be as strong as it has been this year and the year before. Year-to-date scrapping now amounts to 335,000 TEU.

Moreover, investors have lost their cool, as ships with a combined capacity of 254,000 TEU have been ordered in the past six weeks. Of these, 15 are ultra large container ships in the region of 13,780-19,200 TEU and 12 are small feeders, with an average size of 1,327 TEU. The size trend in orderings has become even more explicit and it continues what we have seen throughout the year. In spite of the recent ordering flurry, year-to-date contracting activity amounts to 828,000 TEU; a significant improvement to the full year new orderings of 2013 at 2.1 million TEU.

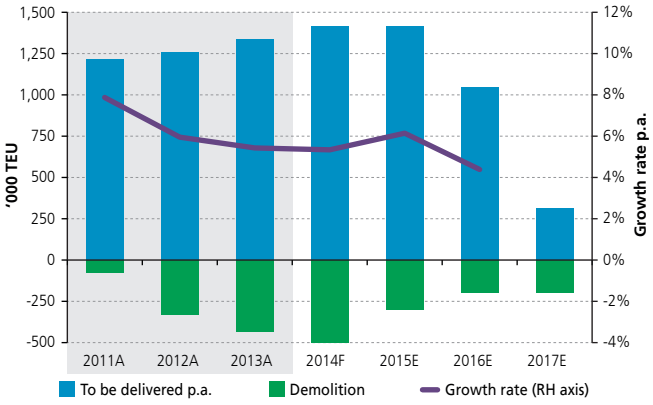
Postponements during in recent months provide a beacon of hope. Amongst other ships, 10 ULCS originally scheduled for delivery in 2014 have been postponed to 2015. This has reduced the market pressure from newbuildings delivered this year further – still high, but eased by the impressive demolition activity. This hectic postponement activity has caused us to adjust our postponement assumptions from 10% to 15%, as owners and investors realise that too many orders delivered too soon cannot be absorbed by the market without a considerable negative impact. Looking ahead, BIMCO estimates a four-year-high fleet growth level for 2015, as long as the delivery of newbuildings keeps surging while demolition is set to ease off.

Outlook

The past two months have once again proved that freight rates on container trades move in mysterious ways. What seems like a trend turns out to be anything but, and what seems to be industry knowing exactly how much supply is needed to make the best out of a strong demand side, pushes it too far.

The market is now past the peak season and supply management is as high as ever on the agenda for an industry being characterised by a full focus on cost cutting initiatives as it strives to restore profitability. The companies toughest on costs and the ones with the most efficient ways to operate their business networks and exploit the economies of scale offered by the market, will come out on top.

Container Supply Growth



Source: BIMCO, Clarksons

A is actual. F is forecast. E is estimate which will change if new orders are placed. The supply growth for 2014-2017 contains existing orders only and is estimated under the assumptions that the scheduled deliveries fall short by 10% due to various reasons and 15% of the remaining vessels on order are delayed/postponed.

Alliances and extensive vessel sharing agreements are now completely dominating all trades in the industry. No single liner company can reach the next level of operational excellence on its own. Time will tell if all the initiatives and subsequent money saved will end up in the Profit/Loss statements of the liner companies. Or whether their customers are able to negotiate their share of the savings.

A factor in the future market that may not seem that significant today can have a large impact on the future exports of manufactured goods. The market today is dominated by China, a nation which will still be the dominant player going forward – but not undisputedly. Higher wage costs in China that producers are unable to pass on to consumers are set to bring to life other and cheaper manufacturing centres. Pushing that development forward is also the 30% rise in the Chinese Renminbi against the USD over the past decade, as Beijing slowly allows the Renminbi to appreciate. Indonesia, Bangladesh and Myanmar are on the rise and China may lend them an unexpected hand. ❚❚

Small drop in 2013 operating costs and in 2014 confidence

This commentary on current shipping matters is supplied by Moore Stephens, the leading accountant and shipping industry adviser. Moore Stephens LLP is a member firm of Moore Stephens International Limited, with 667 offices of independent member firms in 105 countries.

Total annual operating costs in the shipping industry fell by an average of 0.3% in 2013, according to the latest findings from Moore Stephens' unique ship operating costs benchmarking tool, OpCost. This compares with the 1.8% average fall in costs recorded for the previous year. Crew costs was the only category to show an increase over the 12-month period.

OpCost 2014 reveals that total operating costs for the tanker sector were up in 2013, the financial year covered by the survey, but down in the bulker and container ship sectors. The tanker index was up by 2 points, or 1.1%, while both the bulker index and the container ship index were down by 2 points, or 1.2%, on a year-on-year basis.

There was a 0.2% overall average rise in 2013 crew costs compared to the 2012 figure, which itself was 0.2% down on 2011. (By way of comparison, the 2008 report revealed a 21% increase in this category.) Tankers overall experienced an increase in crew costs of 1.8% on average, compared to the 2.3% fall recorded in 2012. The only tanker category to show a fall in crew costs was VLCCs, down by 0.9%.

For bulkers, meanwhile, the overall average fall in crew costs was 0.5%, the same as in the previous year. The operators of Panamax bulkers paid 2.3% less in crew costs than in 2012, but there was a 1.2% increase in this respect for Handysize bulkers. Expenditure on crew costs remained unchanged over the 12-month period in the container ship sector, although operators of vessels of between 100 and 1,000 TEU did record a 1.7% increase in such costs for 2013.

There was an overall fall in repair and maintenance costs of 0.4%, compared to the 1.9% reduction recorded for 2012. The most significant cost reduction here was that recorded for bulkers of between 10,000 and 20,000 DWT (7.2%), while the highest recorded increase was that for 40,000-to-50,000 cbm chemical tankers (3.6%).

Expenditure on stores was down this time by 1.9% overall, compared to the fall of 2.1% in 2012. The biggest fall in such costs was the 5.5% recorded by VLCCs. For bulk carriers overall, stores costs fell by an average of 4.1%, while in the tanker and container ship sectors the overall reductions in costs were 2.1% and 3.4% respectively. The most significant increase in stores expenditure was that recorded by the operators of tankers in the 5,000-to-10,000 DWT range (6.0%).

The overall drop in costs of 0.3% recorded in respect of insurance compares to the 6.2% fall recorded for 2012 and was the lowest in this category for a number of years. The operators of all categories of bulkers paid less for their insurance in 2013 than they did in 2012, in the case of Handysize bulkers to the tune of 4.1%. In the tanker category, all but two types of vessel – 5,000-to-10,000 DWT tankers and Handysize product tankers – paid less than in 2012, while operators of 100-to-1,000 TEU container ships paid 2.7% more in 2013 than in 2012.

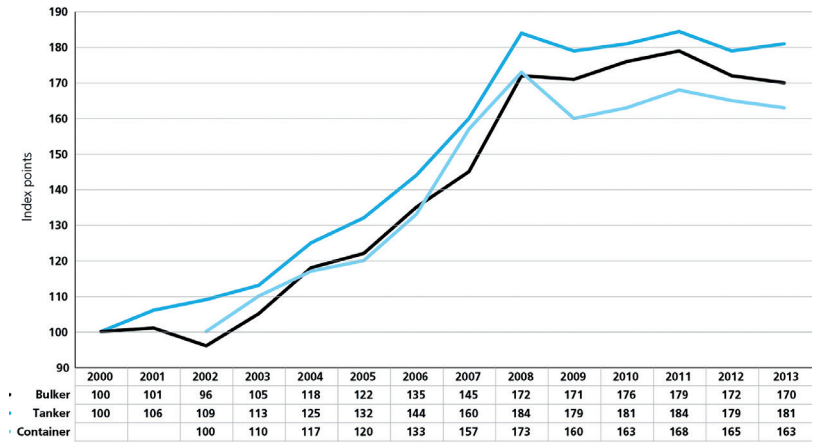
Reduced operating costs

This is the second successive year-on-year reduction in operating costs. The fall in costs for 2013, however, is 1.5% below that recorded for 2012. The fact that crew costs were the only category to show an increase for 2013 is perhaps a reflection of a diminution in the number of owners and operators exiting the industry and a reminder that investment in good people is a must.

The fall in expenditure on repairs and maintenance and on stores was less than in 2012 which suggests that owners and operators are continuing to pursue the sort of sound husbandry which competition and regulation demand. Meanwhile, the decline in insurance costs indicates that hull underwriters are taking a harder line.

Revenues earned in the freight markets

2014 OpCost indices



	2000	2001	2002	2003	2004	2005	2006	2007	2008	2009	2010	2011	2012	2013
Bulker	100	101	96	105	118	122	135	145	172	171	176	179	172	170
Tanker	100	106	109	113	125	132	144	160	184	179	181	184	179	181
Container			100	110	117	120	133	157	173	160	163	168	165	163

must ultimately be sufficient not only to cover operating costs but also to generate a reasonable return. While slowly emerging from an extended global economic downturn, the shipping industry remains under pressure to manage and reduce operating costs wherever possible, whilst making suitable budgetary provision for achieving forthcoming regulatory compliance.

A slight fall in confidence levels

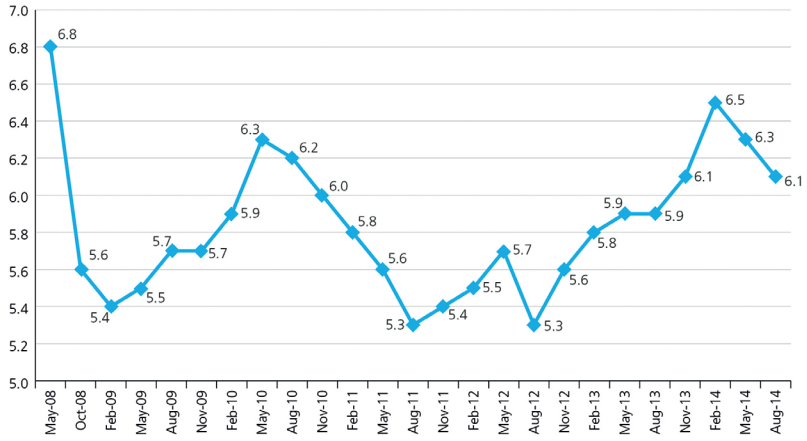
Meanwhile, overall confidence levels in the shipping industry fell slightly during the three months to August 2014, according to the latest Moore Stephens Shipping Confidence Survey. The dominating concern among respondents was the perceived adverse effect on the market of an excessive amount of tonnage.

In August 2014, the average confidence level expressed by respondents in the markets in which they operate was 6.1 on a scale of 1 (low) to 10 (high), down from the 6.3 recorded in May 2014. This compares to the 5.9 recorded in August 2013, and to the record high of 6.8 when the survey was launched in May 2008. Charterers expressed a significant increase in confidence this time, and owners were also more confident. But confidence on the part of managers and brokers was down. Geographically, confidence was down in all main areas canvassed by the survey.

The likelihood of respondents making a major investment or significant development over the next twelve months was down on the previous survey, on a scale of 1 to 10, from 5.8 to 5.4, the lowest figure recorded in this respect since November 2012. The figures for all categories of respondent were down, most notably in the case of charterers, who rated the prospect of new investment at just 5.5, as opposed to 6.4 three months ago. Geographically, expectation levels of major investments were down in Asia, Europe, and North America.

Demand trends, competition and finance costs, in that order, once again featured as the top three factors cited by respondents overall as those likely to influence performance most significantly over the coming twelve months. The overall numbers for demand trends and competition were unchanged from last time at 23% and 20% respectively, while the number of respondents citing finance costs fell slightly to 14%. Tonnage supply featured in equal third place, at 14%, while operating costs (10%) and fuel costs (9%) featured in fifth and sixth places respectively.

Average confidence



Demand trends vital to owners

Demand trends remained the number one performance-affecting factor for owners, with tonnage supply and competition in equal second place. For managers, competition remained in first place, followed by finance costs and demand trends. For charterers, demand trends stayed in first place, ahead of competition and tonnage supply.

Geographically, demand trends were the most significant factor for respondents in Europe and North America, but in Asia it was competition which topped the list, ahead of demand trends. Competition was the second most significant performance-affecting factor in Europe and in North America. In both Europe and Asia, tonnage supply featured in third position, while in North America it was finance costs which occupied third place.

The number of respondents overall who expected finance costs to increase over the next twelve months was down by 2 percentage points to 39%, its lowest figure since May 2013. All main categories of respondent recorded a fall in numbers in this regard, in the case of charterers by 19 percentage points. The number of respondents in Asia anticipating an increase in the cost of finance was down, while in both Europe and North America the numbers were up.

Higher rates or not?

The number of respondents overall expecting higher rates in the tanker sector over the next twelve months was unchanged at 41%, its second-highest figure since May 2011. Managers were the only category of respondent to record a fall in numbers anticipating higher rates. Geographically, the prospects for increased tanker rates were deemed significantly lower this time in North America, slightly higher in Europe, and unchanged in Asia.

In the dry bulk sector, meanwhile, the overall number of those anticipating rate increases over the next twelve months was down by 6 percentage points to 47%. Charterers were the only category of respondent to record an increased expectation. Geographically, expectations were up in Asia but down in Europe and in North America.

In the container ship market, the number of respondents expecting rates to increase over the coming twelve months was down by 3 percentage points to 31%, with owners the only category of respondent more confident of rate increases this time than they were three months ago. Geographically, expectations of improved container ship rates were down in Asia, but up in Europe.

The slight decrease in confidence recorded over the three-month period covered by the survey coincides with a deterioration in the political situation in areas of the Middle East and Ukraine. Overall, confidence in shipping is nevertheless higher than it was twelve months ago. Shipping continues to attract investors both from within and outside the industry. Moreover, both charterers and owners, the prime movers who make the industry go round, are more confident now than they were three months previously. The peaks reached by the freight markets in the mid-2000s may not be achievable for the foreseeable future, but today's industry has moved out of foothill territory and has reason to be looking up, rather than down.

China: Income tax regulations, VLOCs and a shipyard White List

Tighter income tax regulations for non-resident enterprises

The China State Authority of Taxation's *Notice on provisional Measures on the Collection of Tax on Non-Resident Taxpayers Engaged in International Transportation Business* (2014 No. 37 Notice, hereafter referred to as "the notice") came into effect on 1 August 2014.

In general, the notice is designed to quantify working procedures regarding income tax management for non-resident taxpayers engaged in international shipping in China. It defines who is obliged to report income tax; how to register and apply; what items would be considered as taxable income and so on.

Who are "non-resident taxpayers"

Pursuant to Clause 2 of the notice, it applies to all foreign enterprises carrying out international transportation business via vessels, aircraft or space slots (either owned or hired), which includes the transportation of passengers, cargo or post in and out of Chinese ports, together with other cargo-handling and warehousing activities. It further clarifies that all voyage chartering or time chartering will be considered as international transportation regulated by this notice, whilst demise chartering is excluded.

As such, all foreign shipping companies who received income originating from China in terms of carrying passengers or cargo in and out of Chinese ports would be considered non-resident taxpayers (NRT). The key criterion is the carriage service in/out Chinese ports rather than the nationality of the parties involved. Kindly note that this definition is aligned with the *China Enterprise Tax Law* which defines the NRT as "Enterprises that are set up in accordance with the law of the foreign country (region) whose actual administration institution is outside China, but they have set up institutions or establishments in China or they have income originating from China without setting up institutions or establishments in China".

Objective

The objective of the notice is to regulate the enterprise income tax for NRT within the modernising Chinese taxation reform. It is understood that foreign shipping companies and their Chinese counterparts are on a level-playing field in this respect. Most importantly, all income tax rates applicable thereto are entirely within the existing tariff regime rather than part of a new regime solely for foreign shippers.

It is worth noting that the *Circular of the State Administration of Taxation on Issues concerning the Calculation and Collection of Enterprise Income Tax on Shipping and Aviation Transportation Incomes of Non-resident Enterprises* (Guo Shui Han [2008] No. 952) was repealed as of 1 August 2014. The 2008 notice was too generic and ambiguous for implementation and as a result, the Chinese tax authority turned a blind eye to foreign shipping companies who did not have any physical presence in China for enterprise income tax. But now, they have decided to tighten things up.

According to the current Chinese tax regime, the enterprise income tax rates are as follows for:

Demise Chartering

10% of the gross profits earned for non-residential ship owners and/or operators who do not have any offices or working venues in China; or for non-residential ship owners and/or operators who have offices in China but their earnings are irrelevant to their offices or working sites

25% of the gross profit earned for non-residential ship owners and/or operators who have offices in China

Time Chartering/Voyage Chartering

- 10% of the gross profits earned for non-residential ship owners and/or operators who do not have any offices or working sites in China; or for non-residential ship owners and/or operators who have offices in China but their earnings are irrelevant to their offices or working sites
- 25% of the gross profit earned for non-residential ship owners and/or operators who have offices in China

Meanwhile, the Value Added Tax rate for demise chartering in China is 17% of the total hire, whilst for time chartering/voyage chartering it is 11% of the total hire/voyage earning.

Enterprise Income Tax Withholder

It is understood that the notice *de facto* stipulates NRT to declare their income tax by calculating earnings as well as expense. In addition, the tax authority places an obligation on the local payer as a withholding agent, with a view to plugging the legal loopholes.

Clause 9 of the notice reiterates that the Chinese business partners (for instance, the Chinese charterers) assume an obligation to withhold income tax in the event that a foreign enterprise fails to duly register with the tax authority. It includes: (1) any organisation or individual who is supposed to pay to a foreign enterprise or their branches, affiliates or representative office in China, or who is entitled to collect amounts on behalf of foreign enterprises; (2) any organisation or individual who effects payment through their related parties abroad or the third parties they designated; (3) any other organisa-

tion or individual as defined by Enterprise Income Tax Law.

However, it would not be surprising that the withholding agent may have little information or documentation about the earnings and expense of NRT, let alone be able to submit those supporting documents. In other words, it would be difficult, if not impossible, for the withholder to calculate incomes and expenses accurately. If that is the case, they may apply an "Assessment Collection Mechanism" by declaring a profit rate not less than 15%, to calculate Taxable Income. Assuming the withholding agent is a Chinese charterer and an applicable tax rate of 10%, the tax will be no less than 1.5% (i.e., profit rate 15% × tax rate 10%) of the charter hire. Given the fact that withholding agents may be subject to different income tax tariffs, it is difficult to say whether NRT would benefit or not if they allow their Chinese counterpart to withhold the tax.

Suggestions

(1) Self-declare or appoint a local agency to file with tax authorities

Foreign enterprises in the international transportation business in China are obliged to register with the local tax authority within 30 days either from the date the business license is issued by the regulator, or from when the transportation agreement is signed.

Foreign enterprises are permitted to appoint local agents to handle their tax registration. They can choose one port to register with by submitting their business license, operational documents, contracts and their local contact. If foreign enterprises provide transportation service at different ports in China, they may need to submit photocopies of their tax registration to different tax authorities at different ports.

(2) Apply for tax exemption if NRT home nation has signed a tax treaty with China

Foreign enterprises are eligible to apply for an official confirmation from the Chinese tax authority through which they may benefit from reduced or waived enterprise income tax due to a double taxation treaty between their home nation and China. BIMCO has complied an up-to-date list of all the Tax Treaties that China has signed so far.

Applicants may need to submit an *Application Form for Non-Resident Tax Agreement Treatment* coupled with (1) a copy of the enterprise registry certificate issued by their nation; (2) ID or legal entity supporting documents issued by their home tax authority or shipping department; (3) a copy of any transportation agreements entered into with a Chinese partner; (4) statements of sailing routes, passenger or post carriage, including a Chinese port call plan; (5) others items as may be required by the tax authorities. One application will be valid for three years.

Any foreign enterprises failing to follow the application procedure but benefitting from the tax treaty will be assessed as per tax authority's order within a given period. This may result in them being required to pay back any tax due that they have received. Any foreign enterprises who inadvertently missed out on any tax treaty benefit are entitled to apply for a tax refund within three years of their over-payment.

Summary

As explained, this notice has inevitably impacted the international shipping industry. BIMCO is monitoring the whole situation very closely. We suggests that members check with their local agents or business connections in order to ensure that they are fully compliant with their tax obligations in China.

Prelude to the lifting of China's ban on VLOCs

COSCO reached a landmark deal with Vale over a 25 year COA this September which involves 14 VOLCs (Valemaxes). The deal seems to be that Vale would transfer ownership of four Valemaxes to COSCO, which would then be leased back for 25 years.

As a part of this deal, COSCO plans to build another 10 VLOCs "of a similar deadweight" for COA with Vale. Meanwhile, Vale has recently signed a similar agreement with China Merchants Group, where a strategic co-operation will take place between Vale and China Merchants by concluding a 25 year COA to be serviced by ten VLOCs built by China Merchants solely for the transportation of Vale's iron ore from Brazil to China.

It is expected that Beijing's costly two-year ban on docking Valemaxes at Chinese ports will be lifted shortly.

A "White List" for shipyards

China's Ministry of Industry and Information Technology, the regulator in charge of national shipbuilding, recently announced a Chinese shipyard "White List" of 51 shipyards that have been deemed worthy of favourable policy support. However, whether the wider aims of the "White List" will solve the problem of excessive yard capacity is as yet unknown. Questions also remain over the selection and assessment process which require greater transparency regarding "White List" policy. (ZW)

Editor's Note: This report has been produced in co-operation with Reuters and Seatrade.

Asia renews focus on shipping policy initiatives

Co-operative Mechanism

In September BIMCO participated at Cooperative Mechanism Meetings hosted by Singapore and Malaysia respectively. BIMCO attended the Aids to Navigation Fund Committee (ANF) in Singapore and the Cooperative Forum (CF) and Project Coordination (PCC) meetings in Malaysia.

There are 51 critical aids to navigation (AtoNs) along the Traffic Separation Scheme (TSS) in the Straits of Malaysia and Singapore (SOMS). The ANF has proposed

In early October, BIMCO spoke with Mr. Hary Kwang-Ho Shin, Secretary General of the Asian Shipowners' Forum (ASF). Having taken the helm at the ASF in July, after three months as Secretary General, he shares his views on his new role.

As the third Secretary General of the ASF, what are your key goals for the Forum as it moves forward?

The ASF represents the interest of the Asian ship owners and the Asian voice is the most important value for our members. As the third Secretary General of the ASF, I will continue to ensure the Asian voice remains strong and heard at the international level. I believe that I can still build upon the relationships between the ASF and international organisations in order to further elevate the profile and voice of the ASF.

The shipping industry faces regulatory challenges aimed at protecting the environment, improving navigational safety, and ensuring a safe workplace on board ships. How is the ASF addressing the concerns of Asian ship owners in these areas?

The shipping industry is a very dynamic international industry and coping with the regulatory challenges on all fronts is a major challenge for all shipping companies, and this is exactly where the Shipping Association value-adds its membership. The five Standing Committees of the ASF look into the different aspects of shipping and monitor the key developments and issues. The issues of concern are discussed and appropriate positions are developed and representative of the views of ship owners in Asia.

There have been efforts made by the ASF to become engaged directly with the regulators, for instance with the IMO and UN regarding Somali pirates and with the Panama Canal Authorities to address canal toll increases. Do you see such direct engagement on these and other issues continuing in the future?

The ASF will certainly continue to engage the relevant bodies on behalf of our members to address their concerns. Besides direct engagement, I believe the ASF will also actively work with other organisations, where possible and needed, in order to project a concerted voice of the industry.

Which skills from your career in the business do you think can be advantageous as you now take the helm at an industry association?

I had been heavily involved in making negotiations and contracts with the global and multinational companies in container business industry during my last 28-year service with Hanjin Shipping Company in Korea. I believe that a global mind-set, negotiation skill, networking ability and social adaptability are skills I possess that would be essential for my new job in an industry association.

Your career has seen you stationed in many parts of the world. What do you enjoy most about your new assignment in Singapore?

My new assignment is challenging and it will be a good opportunity for me to broaden my horizon. I always look forward to exploring new opportunities which are always a good new learning experience. The Eastern and Western cultures coexist in this country and Singapore is a cosmopolitan and dynamic city that bridges the various different cultures. The variety of culture, food and events are very much enjoyable to me.

the initiation of a comprehensive review of the 51 AtoNs including a factual assessment of adequacy, necessity, and other pertinent factors such as location. Related and relevant benchmarks could include international guidelines, and comparisons with AtoNs deployed in other comparable areas (i.e. other major waterways used for international maritime transport). The review could also include feedback from users of the SOMS, in particular the international maritime community.

Once the review is completed, the ANF would like to see or a publicity initiative launched, to raise and reinforce awareness of the benefits of vital AtoNs. The ANF recommended that the publicity project be undertaken after the results of the study are known, so that the ANF Committee can maximise the use of the study results for publicity. The publicity project should span publicity and outreach efforts in the three littoral States and user States.

Following the ANF meeting in Singapore was the CF in Malaysia, the largest of the three gatherings involving more than 113 participants from the 3 littoral States, 10 user States, 7 organisations and 12 stakeholders from shipping industry.

BIMCO was asked to provide the CF with an update on the *Safe Passage* pamphlet that was launched at the IMO in May. The pamphlet, aimed at raising awareness amongst seafarers navigating through the SOMS regarding chokepoints, crossing traffic, unique weather conditions and other considerations, received a great deal of media attention when launched. Since the launch the Marine and Port Authority (MPA) of Singapore has distributed the pamphlet at several safety at sea events, and some ship owners have distributed the pamphlet to their ships operating on the SOMS. Singapore Harbour Pilots have taken the initiative to distribute the pamphlet on board ships they board.

A proposal during the third Cooperative Mechanism meeting, namely the Tripartite Technical Experts Group (TTEG), for Singapore to work with BIMCO in developing a video for seafarers based on the content of the *Safe Passage* pamphlet was supported.

The committees also considered places of refuge, voluntary pilotage services and emergency towing vessel services. Of particular note was the position of the CF by which it affirmed that it is imperative to place Marine Electronic Highway (MEH) as the Tripartite Technical Experts Group (TTEG) permanent working group as it serves as a tool of decision-making and a discussion platform between littoral states. In line with the technology changes, the next phase of MEH is to integrate the system with the IMO's e-navigation initiative to facilitate the safety of navigation and environmental protection in the SOMS, as stated by Maritime and Port Authority of Singapore (MPA).

ECDIS training initiative launched

In September Singapore's Maritime and Port Authority (MPA) launched the inaugural train-the-trainer Electronic Chart Display and Information System (ECDIS) workshop. The workshop is jointly-organised with the International Maritime Organization (IMO) and Ministry of Foreign Affairs (MFA), under the Singapore-IMO Memorandum of Understanding (MoU) on Third Country Training Programme.

The five-day workshop conducted by MPA Academy, the training arm of MPA, will educate 18 participants from 11 countries in the effective use of ECDIS simulators as a training tool and methods of training deck officers on ships on the proper and safe use of ECDIS.

ECDIS is an integrated navigational aid developed with the intention to reduce navigational accidents caused by human error. As ECDIS is a relatively new equipment, there are wide variations in standards of training in various parts of the world. The intention of the workshop is to build capacity in the region and provide ECDIS trainers with the necessary skill-sets to enhance their training capabilities and ensure that seafarers in their respective countries are trained to high levels of proficiency to operate ECDIS.

"Singapore is one of the world's busiest ports and waterways with about 1,000 vessels in the port at any one time. With continued growth in global trade and its reliance on the maritime industry, sea lanes will only become busier with larger ships. It is therefore critical that we continue to adopt new technologies and are able to use them effectively to help ensure greater safety. As a member of the international maritime community and an IMO Council member, we will continue to share our expertise and provide technical assistance to improve navigational safety and training standards of our fellow IMO Member States globally," says Mr Andrew Tan, Chief Executive of MPA.

MPA has consistently encouraged innovation and supported the use of new technology in the industry to improve efficiency and safety. Singapore was one of the first countries in the world to commercially release large-scale ENCs covering its port waters and approaches for use by the global shipping community. (TT)

EU: Sustainable shipping, ship recycling, sanctions, port policy and CETA

EU MRV legislation proposal

Following the elections in the European Parliament (EP), José Inacio Faria (ALDE, Portugal) has been appointed the new Rapporteur on the emissions Monitoring, Reporting and Verification (MRV) proposal. However, no further developments are expected in the EP until the Council agrees on its own compromise position.

In the Council, under the Italian Presidency of the EU, the Environment Working Party has resumed its work, taking into consideration the non-binding progress report as prepared by the Greek presidency and working on the remaining political/horizontal issues. The positions of both legislatures are very similar, which potentially paves the way for a speedy agreement before the end of the Italian Presidency (end 2014).

The inclusion of the transport work and the publication of sensitive commercial data has been intensively discussed in the Council and the possible outcome remains unclear at this stage, even though BIMCO understands that support for its inclusion is from a very limited number of member states. The Council is expected to discuss the topic at the next Environment Council, which will take place in October.

Regarding the developments in the European Commission, DG CLIMA, the Directorate responsible for the proposal, is currently organising bilateral stakeholders' meetings with the purpose of further discussing the implementation of an EU MRV system. A new call for tenders for a study on the implementation of the MRV proposal has been published recently. Beginning of next year, the European Commission is planning to organise a meeting with all the stakeholders for the same purpose.

In July, the Commission released a call for tenders for a study "on the feasibility of a financial instrument to facilitate safe and sound ship recycling".

European Sustainable Shipping Forum (ESSF)

The ESSF was established last September with the aim of assessing the compliance requirement of the MARPOL Annex VI 0.1% sulphur content in marine fuel (as translated into EU law through the Sulphur Directive), which is due to enter into force as from 1 January 2015 in the Sulphur Emission Control Areas (SECAs). The Forum is chaired by the Commission and operates with a plenary session and six non-permanent Technical Subgroups.

The various ESSF technical sub-groups are already on their third round of meetings. The meetings essentially focused on specific recommendations by the various Technical Sub-groups.

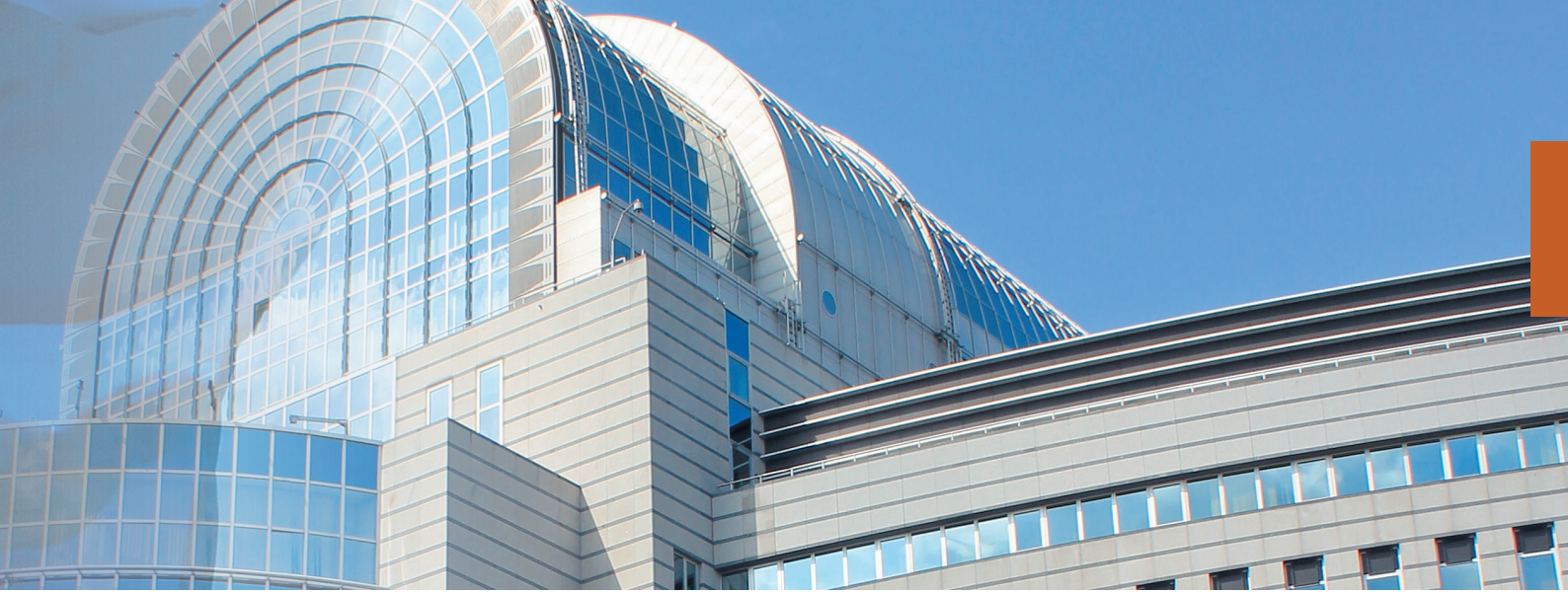
Whilst the ESSF has identified the needs and ways forward for solving the issues in order to enable smoother compliance/implementation with the requirements of the EU Sulphur Directive for both ship owners and Member States, it has become clear that on 1 January 2015, the majority of issues will still be pending. This should also be related to the various levels of implementation and transposition of the Sulphur Directive requirements in Member States' national laws. This is a concern for BIMCO, as a level playing field for all owners is crucial in this area because of the huge price difference from 1 January 2015 between compliant and non-compliant fuel.

Ship recycling

The EU Ship Recycling Regulation was published on 10 December 2013 in the Official Journal of the EU. The Regulation entered in force on 30 December 2013, while its various articles will apply at different stages, as detailed in Article 32 of the Regulation.

The objective of the Regulation is to reduce the negative impacts linked to the recycling of EU-flagged ships, especially in Southern Asia, without creating unnecessary economic burdens. It brings into force an early implementation of the requirements of the 2009 Hong Kong Convention for the Safe and Environmentally Sound Recycling of Ships, therefore contributing to its global entry into force.

In July, the European Commission released a call for tenders for a study "on the feasibility of a financial instrument to facilitate safe and sound ship recycling" as required by Article 29 ('Financial incentive') of the EU Ship Recycling Regulation.



The contractor will be tasked with investigating this feasibility, analysing earlier studies and advising on potential ways forward. The implementation phase of the EU Ship Recycling Regulation consists in establishing EU Guidelines on some elements of the Regulation (i.e. set up of the EU list of approved recycling facilities) and the study (under Article 29) on the feasibility of a financial incentive instrument.

EU sanctions against Russia

On 12 September, new sanctions against Russia entered into force. They include strengthened restrictions on Russia's access to EU capital markets, a ban on EU nationals and companies providing loans to five major Russian state-owned banks, and new restrictions on trade in bonds, equity or similar financial instruments, issued by the same banks, with restrictions extended to some major Russian defence and energy companies. Twenty-four persons have been added to the list of those subject to a travel ban and an asset freeze, bringing the total to 119 persons as well as 23 entities.

The EU's restrictive measures are directly linked with the illegal annexation of Crimea and destabilisation of Ukraine. According to a statement by the President of the European Council, the EU's measures are scalable and reversible: in the light of the review and if the situation on the ground so warrants, the Commission and the European External Action Service (EEAS) will put forward proposals to amend, suspend or repeal the set of sanctions in force, in all or in part.

EU ports policy

In March, MEP Knut Fleckenstein, the Rapporteur on the European Commission's proposal for a Regulation on Market access to port services and financial transparency of ports, announced that the legislative procedure for this particular file would be suspended until the new European Parliament would be in place following the European elections in May.

Since then, EU Member States have been discussing the Commission's proposal for a Port Regulation in the Council of Ministers. The Italian Presidency of the Council aims at striking a deal with the European Parliament at first reading and discussions are moving fast in that direction.

Unfortunately, in order to achieve this, the text currently under consideration by the Council is slowly inching towards the initial position of the Parliament, which was itself a watered down version of the Commission's proposal. Member States are contemplating excluding cargo handling and passenger services from the Regulation while the exclusion of pilotage remains uncertain. Council deliberations are also focusing on whether the Regulation should only apply to major EU ports (TEN-T core network ports). In the light of these developments, the scope of the Regulation could be drastically reduced, turning the EU ports reform into little more than an empty shell.

In addition to reducing the scope, EU Member States are also contemplating a weaker consultation procedure of port users for all matters related to port charging policy, connections with hinterland, efficiency of the administrative procedures, and environmental issues.

What is more, Member States are further diluting the Commission's initial proposal by backtracking on the issue of the need for an independent authority that would monitor and supervise the correct application of the Regulation.

Trans-Atlantic Trade and Investment Partnership (TTIP)

In mid-July, the 6th round of TTIP negotiations took place in Brussels. Both sides have raised several questions regarding maritime transport and required clarification about existing legislation and practices. The Jones Act has been explicitly mentioned by the EU negotiators as being a major stumbling block for access to the US market, but any adjustment to it remains of course politically very sensitive.

The 7th round of negotiations took place from 29 September to 3 October in Washington. At the time of writing, it is expected that this round will be a continuation of the 6th round and that in the following rounds a more firm position on maritime transport will be taken by the negotiators.

Canada-EU Free Trade Agreement (CETA)

Canadian and EU negotiators have agreed on the text of a Free Trade Agreement. The EU Member States and the Canadian Parliament still need to approve the agreement and therefore the official text of the agreement has not yet been made public.

According to the agreement, part of the Canadian market will be, under certain restrictions, liberalised for services such as feedering (supposedly between Halifax and Montreal), repositioning of empty containers, and dredging. (CH)

Editor's Note: This report has been produced in co-operation with the European Community Shipowners' Associations (ECSA).

US: Ballast water, container scanning, ECA and Ebola

Proposal to change ballast water rules in the US

The Chairman of the House Coast Guard and Maritime Transportation Subcommittee introduced a bill entitled HR 5609 in mid-September addressing the US ballast water situation.

The bill is substantively identical to S 2094, one that was introduced in the Senate in March 2014. The new initiative suggests that the US House of Representatives is ready to act on this issue providing S 2094 is agreed, passed out of the Senate and sent to the House.

Having both bills in play would streamline the process in the House if the Senate is able to pass their bill (which has already been reviewed and reported out of the Senate Commerce Committee and is ready for a floor vote once the Senate leadership agrees to add it to the floor calendar).

While the introduction of the House bill is a positive step, it is important to note the current Congress is on election recess and upon their return in early November, have a relatively few number of session days until the Congress adjourns for the holidays.

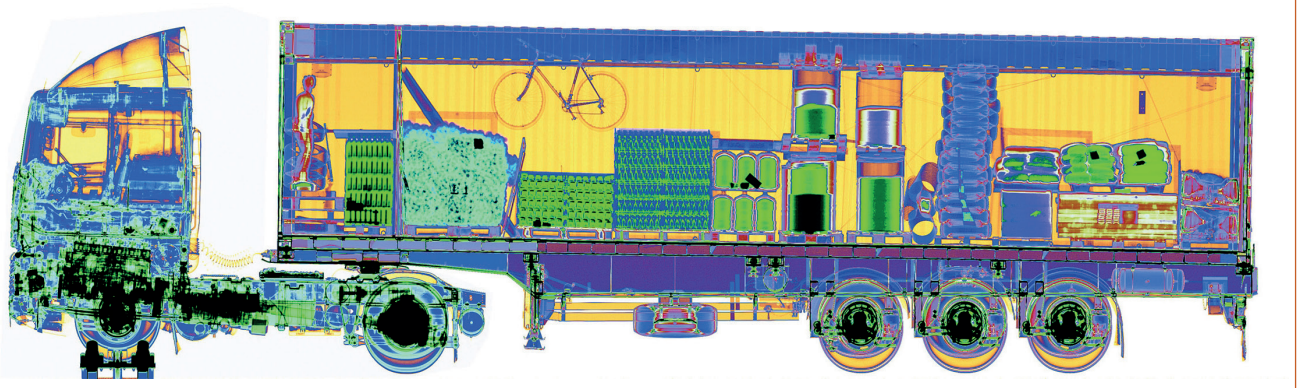
While the industry coalition continues to advocate for passage of both bills, it is unclear (and in fact unlikely) whether there is sufficient political will to move these bills given other issues that Congress is expected to address upon its return to Washington in November. Time is a scarce resource in the US system and some opposition from known quarters like California is also expected.

One more go at 100% scanning in the US

In yet another attempt on addressing the security situation in the US, bill HR 5455 has been introduced which would establish a pilot programme for a 100% scanning of cargo containers in two yet to be named US domestic ports. HR 5455 has been named the Scan Containers Absolutely Now Act (SCAN).

The proposal is an improvement over past bills that would have required 100% scanning in all US ports. This bill takes a more deliberate strategy towards evaluation of the capability to conduct 100% scanning of containers and its potential impacts on commerce. The programme would be conducted by the Secretary of Homeland Security, who would then be required to report back to Congress no later than one year after completion of the one year pilot project.

The report is to include the results of the pilot project including the process employed to meet the 100% scanning requirement and recommendations of how to carry out 100% scanning at all domestic ports. For the reasons noted in the above item relating to the remaining work days for this Congress, it is unlikely that this bill would be enacted during the current Congress.



Bill HR 5455 would establish a pilot programme for a 100% scanning of cargo containers in two yet to be named US domestic ports.

North American ECA in California

Special circumstances regarding the implementation of the North American ECA in California

The California Air Resources Board (CARB) regulations addressing air emissions from ocean-going ships have been in place for a number of years and specifically mandate use of 1% sulphur fuel at present, which will be replaced by a mandate for the use of 0.1% sulphur fuel on/after 1 January 2015.

It is also important to note that the California regulations include a sunset provision, which allows California to sunset their regulations if they find that the emissions control area (ECA) provisions provide emissions reductions equivalent to or in excess of the California provisions. This sunset review is underway, but is not expect to be completed until April 2015, over 3 months after the 1 January 2015 implementation date of the 0.1% sulphur fuel.

While the 1 January 2015 implementation date for the 0.1% sulphur fuel aligns in both the California and US ECA regulations, two differences in the regulations require publication of this guidance document:

- The ECA regulations allow the use of alternative emissions control technologies such as scrubbers, in lieu of use of low sulphur fuel. The California regulations contain no provisions permitting the use of these alternative control technologies.
- The ECA regulations only mandate that a fuel meet the specified percent sulphur requirements (1% now, 0.1% as of 1 January 2015). The California regulations require that in addition to the maximum sulphur levels, the fuels must meet the specifications for distillate grades (MGO or MDO).

As a result of these differences, CARB is establishing a process whereby a vessel can establish compliance with the California regulations via the use of scrubbers or 0.1% fuel that does not meet MGO or MDO specifications for the period during which the sunset review is being conducted and finalised. The guidance document and its attachment (*Notification of the Use of the Temporary Experimental or Research Exemption in the California OGV Fuel Regulation*) contains the process by which these alternate forms of compliance can be established to the satisfaction of CARB.

From the language contained in the guidance document, it would appear that filing of this document with the required information will result in a temporary exemption from the California fuel provisions for the duration of the sunset review period providing this notification is made prior to the vessel entering California Regulated Waters.

It is not clear from this document what (or when) CARB will do after the review is finalised particularly with those vessels which have duly filed the notice but are found at a later date to employ emissions control strategies that are not equal to or better than the emissions which would have resulted if the vessel had utilised 0.1% sulphur fuel.

Ship owners intending to utilise the alternative compliance options noted above are urged to promptly file the notification document attached as an annex to the guidance document and in no case later than 1 January 2015 or prior to its first California port call, whichever is earlier.

Access to the guidance document is available on the CARB website at: *http://www.arb.ca.gov/ports/marinevess/ogv.htm*

Ebola virus precautions and reporting

Ebola virus precautions and reporting protocols for vessels inbound to US ports

Adding to the already numerous advisories related to the ongoing Ebola virus outbreak (see for example on the BIMCO website *www.bimco.org*), the US Coast Guard has issued a maritime safety information bulletin (MSIB) on Ebola Virus precautions, which includes a reminder to shipmasters to report sick or deceased crew members of passengers to the US Centers for Disease Control (CDC) as required by 42 CFR 71.72.

The US Coast Guard is also reminding owners, operators, agents, and Masters to immediately notify the nearest Coast Guard sector office or group office of the existence of hazardous conditions on their vessels as required (by 33 CFR 160.215).

The US Coast Guard considers crew members infected with or deceased from Ebola, a hazardous condition as defined by the referenced section.

The US Coast Guard will check all advance notices of arrival to determine whether a vessel has visited a country impacted by the Ebola virus outbreak within the previous five port calls.

The above referenced MSIB is accessible at *https://www.uscg.mil/msib/docs/012_14_8-7-2014.pdf* (MLU)

Editor's Note: This report has been produced in co-operation with the Chamber of Shipping of America (CSA).

BIMCO

SERVICECON

STANDARD SERVICE CONTRACT

PART I

1. Service Contract Number:	2. Date of Contract:
3. Carrier (Name and full style address)	4. Shipper (Name and full style address)
5. Commencement Date:	6. Expiration Date or Period:
7. Liquidated Damages (Cl. 5)	8.Minimum Quantity Commitment (MQC) TEUS (state number of TEUS, if left blank then contract shall be null and void).
9. Additional clauses, if agreed	

It is mutually agreed between the party named in Box 2 and the party named in Box 3 that this Contract consisting of PART I including additional clauses, if any agreed and stated in Box 9, and PART II as well as Annexes A (FMC), B (Scope of Contract and Rates) and C (Shippers – Members and Affiliates) attached hereto, insofar as they are applicable, shall be performed subject to the conditions contained herein. In the event of a conflict of conditions, the provisions of PART I and Annexes A, B and C shall prevail over those of PART II to the extent of such conflict but no further.

Signature (Carrier)	Signature (Shipper)

BIMCO STANDARD SERVICE CONTRACT
PART II

Preamble

This Standard Service Contract (hereinafter "Contract") dated as stated Box 2 has been entered into by the Carrier named in Box 3 and the Shipper named in Box 4 (including all those companies named in Appendix C (Shippers – associated companies)) whereby the Carrier and Shipper (hereinafter the "Parties") mutually agree as follows:

Definitions

"Contract of Carriage" means the Carrier's bill of lading or sea waybill, as the case may be together with any booking note or confirmation, as may be amended from time to time.

"Contract Period" means the period stated in Box 5 or the period from the date of commencement stated in Box 4 until the date of expiry stated in Box 5.

"Group" means any company in the same or common control of either party.

"MQC" means the Minimum Quantity Commitment of TEUS stated in Annex B (Scope of Contract and Rates) or such MQC reduced in accordance with Sub-clause 5(b).

"Cargo tendered" means cargo when given into the control of the Carrier.

1. Scope of Contract and Rates

This Contract covers the carriage of the cargo within the geographic scope at the rates and charges stated in Annex B (Scope of Contract and Rates) hereof.

2. Carrier's Commitment

(a) The Carrier agrees to make available during the Contract Period equipment (unless otherwise agreed and stated in Annex D (Equipment)) and vessel space adequate to carry:

(i) the MQC of cargo; and

(ii) at the Carrier's option, any additional cargo tendered by the Shipper during the Contract Period.

(b) The Carrier shall provide the Shipper with access to the Carrier's container tracking service [and scheduling information].

(c) The Carrier will ensure its personnel receive adequate training as necessary to fulfill their duties under this Contract and that such duties shall be performed with due care, consistent with generally accepted industry standards.

(d) The Carrier shall, at its own expense, maintain in effect during the Contract Period full insurance cover in respect of loss of or damage to the cargo by a Protection and Indemnity Club that is a member of the International Group of P&I Clubs.

3. Shipper's Commitment

(a) The Shipper agrees to tender to the Carrier no less than the MQC and shall endeavour to provide cargo evenly distributed throughout the Contract Period, or as otherwise agreed. In the event the Shipper is unable to tender the cargo evenly it shall give adequate notice to the Carrier of the variations in its requirements. Any significant variations in Shipper's requirements shall be by mutual agreement.

(b) No cargo shipped under this Contract shall qualify for any discounts or apply toward any time/revenue or time/volume requirement of any freight tariff or other service contract published by or on behalf of the Carrier.

(c) The Shipper agrees to give no less than the number of days' notice stated in Annex B (Scope of Contract and Rates) to the Carrier for the carriage of its cargo. If Annex B does not state notice periods then 15 days shall apply.

4. Verification of Contract Carryings

(a) For the purpose of determining whether or not a cargo movement occurs during the Contract Period, the pertinent date shall be the date of receipt of the cargo by the Carrier.

(b) In order for cargo to qualify for rates and terms set forth in this Contract and to count towards the MQC the following shall apply:

(i) each contract of carriage governing shipments under this Contract shall bear the Service Contract Number stated in Box 1;

(ii) the Shipper must notify the Carrier at the time of booking that the cargo is to move under this Contract, specifying the Service Contract Number. Contracts of Carriage that do not have the Service Contract Number referenced shall not count towards the MQC, unless the Shipper produce evidence clearly indicating an error or omission, and proof sufficient to justify inclusion under the Contract;

(iii) the Shipper must appear as shipper or consignee on the Carrier's Contract of Carriage; and

(iv) the cargo must be subject to a rate quoted in Annex B (Scope of Contract and Rates).

(c) For the purpose of satisfying the MQC the following shall apply:

Container description	**Twenty-foot Equivalent Unit (TEU)**
20 foot container	1 TEU
40 foot (8'6") container	2 TEU
40 foot (9'6") non-operating reefer container	2 TEU
40 foot (9'6") container	2.x TEU
45 foot container	2.25 TEU
53 foot container	2.65 TEU

5. Non-performance

The parties' sole and exclusive remedy in the event of a breach of the commitment by the other party shall be as set out below:

(a) Shippers - If the Shipper fails to tender the MQC, it will pay liquidated damages measured as the difference between the TEUs actually shipped and the MQC at the rate stated in Box 6 per TEU. Such liquidated damages shall be paid to the Carrier within thirty (30) days following written notification to the Shipper by the Carrier.

(b) Carriers - If the Carrier fails to carry cargo tendered by the Shipper within the MQC, the Shipper has the option to reduce the MQC by the quantity of cargo tendered but not carried, or in the event of

repeated breaches by the Carrier, to terminate this Contract in accordance with Clause 9(b) (Termination).

(c) Carriers - If the Carrier fails to carry the cargo tendered (provided the Shipper has complied with Sub-clause 3(a)) by the end of the Contract Period, it will pay proven damages directly arising from such failure which for each container shall not exceed the rate per TEU stated in Box 6.

6. Force Majeure

Neither the Carrier nor the Shipper shall be responsible for any failure to perform its obligations (save for payment obligations) under this Contract caused by any event whatsoever beyond its reasonable control ("Force Majeure") including, but not limited to acts of God, government restrictions, wars, insurrections, acts or threats of terrorism, natural disasters, and the effects thereof, save that commercial contingencies, for example changing markets and business declines, shall not be included. The party invoking this Clause shall make all reasonable efforts to avoid, minimize or prevent the effect of such events and/or conditions.

Upon cessation of Force Majeure events, the remaining Contract obligations shall resume for the balance of the Contract Period and the MQC shall be adjusted accordingly on a pro rata basis. If the Contract Period expires before the cessation of Force Majeure events or if the events last for more than thirty (30) days from the date the party invoked this Clause, either party shall have the right to terminate the affected parts of this Contract by giving notice to the other party.

7. Contracts of Carriage

All terms and conditions, liberties and exceptions of the Contract of Carriage covering shipments under this Contract, including the dispute resolution provisions, are herewith incorporated by reference. To the extent that such Contract of Carriage may be in conflict with this Contract, this Contract shall prevail.

8. Assignment

This Contract may be assigned by either party in whole or in part within its Group, but outside its Group assignment is subject to the prior written consent of the other party. In the event of an assignment the original contracting parties shall remain fully responsible for the due performance of their obligations under this Contract.

9. Termination

(a) Either party may, at any time after the MQC has been met, terminate this Contract with immediate effect.

(b) If there is a material breach or repeated non-material breach (which taken as a whole constitutes a material breach) by either party under this Contract, the party not in breach may give notice to the other party requiring that party to remedy the breach within thirty (30) days. If that party fails to remedy the breach within thirty (30) days, the other party shall be entitled to terminate this Contract with immediate effect by notice in writing.

(c) This Contract shall terminate forthwith in the event of an order being made or resolution passed for the winding up, dissolution, liquidation, reconstruction, amalgamation or bankruptcy of either party or if a receiver is appointed, or if it suspends payment, ceases to carry on business or makes any special arrangement or composition with its creditors.

(d) The termination of this Contract shall be without prejudice to all rights accrued due between the parties during its performance.

10. Dispute Resolution Clause

Disputes arising under this Contract shall be resolved in accordance with the dispute resolution provisions of the Contract of Carriage.

11. Confidentiality

In respect of confidential information disclosed during pre-contractual discussions and the terms and conditions of this Contract, except upon written consent of either party, or to the extent required by law, or by request of a Government or agency thereof, neither party shall disclose such information to third parties. Either party may relay to a third party the terms and conditions of this Contract for the purposes of enforcement hereof and may relay anonymised information to third parties for statistical data purposes. Disclosure of confidential information by persons formerly employed by either party, after their employment has ceased, shall not constitute a breach of the confidentiality obligations. This confidentiality clause shall cease to apply twelve (12) months after the date of termination of this Contract for any reason.

12. Entire Contract

This Contract constitutes the entire agreement between the parties and no promise, undertaking, representation, warranty or statement by either party prior to the date stated in Box 2 shall affect this Contract. Any modification of this Contract shall not be of any effect unless in writing signed by or on behalf of the parties.

13. Notices

Any party giving notice hereunder shall ensure that it is effectively given and such notice shall be treated as received during the recipients' office hours. If such notice is sent outside the recipients' office hours it shall be treated as received during the recipients' next working day.

BIMCO STANDARD SERVICE CONTRACT
PART II

ANNEX A (FMC REQUIREMENTS)
TO THE BIMCO STANDARD SERVICE CONTRACT
CODE NAME: SERVICECON

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1. Shipper Certification (if applicable)

Pursuant to FMC regulation 46 C.F.R. 530.6, the Shipper, by execution of this contract, certifies its status and that of all its affiliates authorised to utilise this contract as:

(a) The owner of the cargo.
(b) A member of a Shipper's Association
(c) A Non-Vessel Operating Common Carrier (NVOCC)
(d) Other (Specify: _____)

If the status is (b) above, the Shipper certifies that any named members in this contract who are NVOCC's are so identified and that they have tariff(s) and bond(s) on file with the FMC as required by law and regulation.

If the status is (c) above, the Shipper certifies that any such NVOCC's have tariff(s) and bond(s) on file with the FMC in full compliance with FMC regulations and that copies of tariff pages reflecting same have been provided to the Carrier.

Notwithstanding the Commencement Date stated in Box 1, if the Contract is filed with the FMC at a later date then the date on which it is fully executed and filed with the FMC shall be the effective date of contract.

2. Shipment Records (if applicable)

The Carrier's Contract of Carriage, the Shipper's statements of cargo shipped under this Contract, written communications issued by the Carrier regarding such statements, and Force Majeure correspondence and notices, shall constitute the records supporting performance under this Contract, and shall be maintained by the Carrier or his designated agent.

BIMCO STANDARD SERVICE CONTRACT
PART II

ANNEX B (SCOPE OF CONTRACT AND RATES)
TO THE BIMCO STANDARD SERVICE CONTRACT
CODE NAME: SERVICECON

Note: The Carrier should attach its standard form rate sheet, including the geographic scope, commodities and equipment as agreed with the Shipper. The rate sheet should state that any rate not agreed is subject to the governing tariff.

Notices (Cl. 3(c)	Port	Days

BIMCO STANDARD SERVICE CONTRACT
PART II

ANNEX C (SHIPPERS - associated companies)
TO THE BIMCO STANDARD SERVICE CONTRACT
CODE NAME: SERVICECON

Name of associated company	Full style address

BIMCO STANDARD SERVICE CONTRACT
PART II

Oil-Future-Based Prices

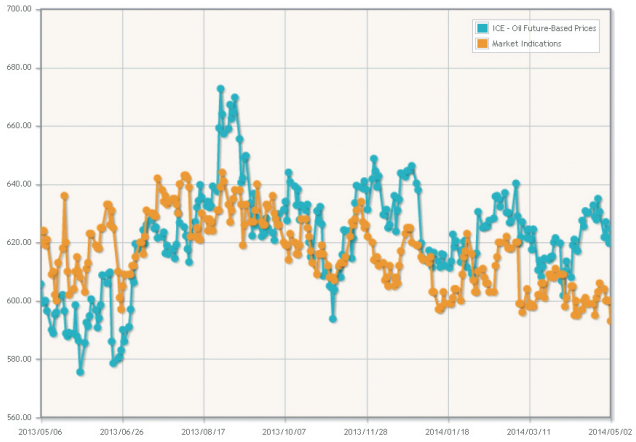
Showing 38 major ports/hubs connected to Oil Futures
which give an updated price every 30 seconds

Oil-Future-Based Prices Connected to ICE and Market Indications

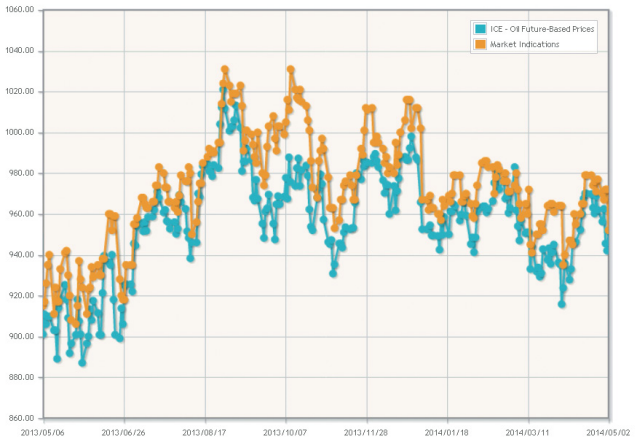
Compare	Ports	380 cSt	180 cSt	MDO:DMB (d)	MGO:DMA	Date
☐	Genoa (IT) Market Indications LSFO < 1,0 % / MDO:DMB (c+b)	593 665	625 s/e	-	952	02 May
Updated every 30 sec. ICE - Connected Price - Alert ☐	Genoa (IT) Oil-Future-Based Prices LSFO < 1,0 %	624.75 696.75	- -		951.75	May 02

Comparison Chart for Genoa between Market Indications and Oil-Future-Based Prices for Fuel Oil 380cSt HSFO and MGO:DMA

380cSt HSFO
1 year



MGO:DMA
1 year



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BY CRISTAN EVANS

Oil major approvals

The term "oil major approval" is now part of the everyday language of the tanker industry and is used as shorthand for the vetting of ships undertaken by many charterers and terminals (to whom we shall refer generically as "oil majors").

Under English law, a ship owner is unlikely to have any obligations in relation to oil major approvals in the absence of an express term in his charter party.

Firstly, the Courts have held that commercial approvals do not fall within the general obligation to obtain the certificates necessary for the trading of the vessel[1].

Secondly, an obligation to obtain approvals is unlikely to be implied unless both the owner and the charterer knew at the time the charter party was concluded that the vessel was intended to be used for a specific piece of business for which a particular approval was required. The precise scope of the owners' obligation is therefore defined by, and does not exist outside, the vetting clause.

It is therefore surprising that many of the vetting clauses commonly used in charter parties are poorly drafted and/or fail to reflect current industry practice. For example, many of the commonly used clauses envisage that oil majors are willing to grant approvals for specified periods of time, when this has not been their practice since the casualties involving the *Erika* and the *Prestige*.

The Courts have shown that they are willing to construe such clauses in accordance with current approvals practice (e.g. it has been held that letters from oil majors which expressly stated that they were not approvals were in fact approvals for the purposes of the vetting clause[2]), but it would undoubtedly reduce the scope for disputes if vetting clauses did reflect current industry practice.

Tankers discharging at Rotterdam's Vopak terminal. (Photo: portpictures.nl*)*

Effective vetting clauses

An effective vetting clause will set out (1) the precise scope of the owners' obligations; and (2) the consequences if the ship is rejected by one or more oil majors. When framing the owners' obligations, it is helpful to draw a distinction between the concepts of "inspection", "vetting" and "approval", which can be summarised as follows:

- "Inspection" is the physical inspection of the vessel under the SIRE/CDI programme by an accredited inspector, following which a standard form inspection report is prepared. Many vetting clauses effectively treat inspection as the only stage in the vetting process but, whilst vessels may be rejected solely on the basis of a physical inspection, they are no approved by oil majors solely on that basis.
- "Vetting" is the process by which the oil majors decide whether or not to use a particular vessel for a specific piece of business. Each oil major has its own vetting process and, whilst the key factors will be broadly similar, the importance which is attributed to those factors may differ. The key factors will invariably include (a) the physical inspection; (b) the owners' performance across their entire fleet in relation to matters such as TMSA, compliance with the ISM code and incident and environmental performance; (c) PSC inspections/detentions and incident/casualty reports (again across the whole fleet); and (d) feedback from terminals. Oil majors will also take into account entirely subjective commercial criteria, such as the strength of their commercial relationship with the owners.
- "Approval" is where a particular vessel is accepted by an oil major for a specific piece of business (although whether or not the vessel is then fixed will depend

on whether the commercial terms can be agreed in the usual way).

Against this background, it is suggested that an effective clause should therefore:

- Specify the companies by whom the ship owner should try to have the vessel inspected (or alternatively define the term "oil major" if such a term is used instead of specific companies being named).
- Differentiate between the concepts of "inspection", "vetting" and "approval", as much of the confusion which has arisen has resulted from physical inspections under SIRE/CDI being conflated with vetting.
- Impose obligations which reflect the different nature of the different stages of the approvals process. For example, an owner cannot compel an oil major to inspect his vessel nor does he have any real influence over the subjective commercial criteria which might be used as part of a particular oil major's vetting process, but he does have control over the physical condition of his vessel.
- Reflect the fact that vetting extends beyond the physical inspection of the vessel. For example, the owners' participation in TMSA is often a pre-requisite for approval but is rarely, if ever, mentioned expressly in vetting clauses.
- Expressly specify the consequences if the owner acts in breach of his obligations in relation to each stage of the approvals process and the steps, if any, which must be taken to remedy that breach.
- Impose realistic obligations on the owner in relation to having the vessel accepted again by oil majors by whom she has been rejected. For example, there are clauses in use which oblige the owner to reinstate approvals within a matter of weeks when it is the policy of some oil majors not to re-inspect vessels until 6 months has passed. The limited availability of accredited inspectors is another factor which needs to be taken into account in this regard.

Vetting disputes

It is often relatively straightforward to establish that an owner is in breach of a vetting clause, as the most common cause of such disputes is the vessel being rejected by an oil major to whom the clause provides that the vessel must be acceptable. It can be more difficult to show that the owner has complied with his obligation to have the vessel accepted again by that oil major and the most complex question of all is whether the loss of an approval has actually caused the charterer a financial loss for which he can be compensated in damages.

As regards the reinstatement of approvals, given that the decision is ultimately in the hands of a third party over whom the owner has no control the obligation should be framed as being a duty to exercise reasonable or best endeavours to have the vessel accepted again rather than an absolute obligation. In these circumstances, the key for the owner is to ensure that his attempts to have the vessel re-inspected are fully documented so that he can show that any delays in this regard are due to factors which are beyond his control – for instance, the oil major in question may not have a commercial interest in inspecting the vessel at the relevant time, there may be no accredited inspectors available or the vessel may be trading at ports where the oil majors are unwilling to undertake inspections.

As to the issue of whether the charterer has actually suffered a loss, the easiest way of showing this is by pointing to a fixture which has been lost because the vessel was not acceptable to a particular oil major and a less profitable alternative fixture which was performed as a result. However, even this can have complications. For example, if the charterer is operating a fleet of vessels then he will also need to show that none of those other vessels could have performed the fixture said to have been lost (assuming that one of those vessels would have been acceptable to the oil major). Showing that a fixture has in fact been lost can also be difficult, because the charterer is unlikely to offer a vessel to an oil major which he knows has been rejected.

Another way of demonstrating that a loss has been suffered is to compare the vessel's financial performance against the market before and after she was rejected. For example, if a vessel has consistently earned USD 1,000 per day better than the market when she was acceptable to the oil major and consistently USD 1,000 per day worse

Cristan Evans

than the market after she has been rejected then this arguably demonstrates that a loss has been suffered. However, it is appreciated that there can be many reasons for such changes and that proving that the decline in performance was caused by the loss of the approval will be difficult.

In either case, once again the key is likely to be the quality of the documentary evidence that the charterer can produce in support of his argument that he has suffered a loss.

Conclusion

In conclusion, oil major approvals are an important factor in the marketability of a vessel in the tanker trade. It is therefore crucial that tanker charter parties contain effective vetting clauses which impose realistic obligations on owners and reflect current industry practice, as this is the best way of minimising the possibility of complex and time consuming disputes.

Notes

1 *The Silver Constellation*
2 *The Rowan*

Editor's Note: Cristan Evans is a Partner in the Marine and International Trade team at Stephenson Harwood LLP. Cristan acts on behalf of many of the pre-eminent owners and charterers in the tanker industry, and he has acted in a number of multi-million dollar vetting disputes. Cristan is also the author of the vetting module of Lloyd's Maritime Academy's Foundation Diploma in Tanker Charterparties.

No cargo loaded – Time bar for submitting claims

Arbitration – Time bar – Voyage charter arbitration clause providing that any claims had to be made in writing within three months of final discharge – No cargo in fact loaded – Owners not making claim in writing until more than three months after termination of charter – Whether claim time-barred.

In November 2009 the vessel was chartered for the carriage of a cargo from the Mediterranean to the United Kingdom.

Clause 11 of the charter provided:

"Any dispute arising from and in respect of this Charter Party shall be referred to and settled by arbitration in London ... Any claims must be made in writing within 3 (three) months of final discharge and where this is not complied with, the claim shall be deemed to be waived and absolutely barred."

In the event, no cargo was loaded. The charterers took the view that the ship was not in every way fitted for the voyage and terminated the charter on 24 November 2009. The owners contended that the charterers were themselves in repudiatory breach, which they accepted on 27 November 2009.

On 8 February 2010 the owners appointed their arbitrator under clause 11 of the charter and gave notice of that appointment to the charterers. On 26 February the charterers appointed their own arbitrator, whilst taking the position that the owners' claim was time-barred.

The owners replied on 1 March, denying that their claim was time-barred, but indicating for the first time the nature of their claim. The owners accepted that they did not make any claim in writing within the meaning of clause 11 until 1 March 2010 but they said that the time-bar provision in clause 11 could not apply since there had been no final discharge. Alternatively they said that any time had to run from the date on which discharge would notionally have been completed if the charter had been performed.

The charterers accepted that in the normal run of things "final discharge" referred to final discharge of cargo; but they said that in the context of clause 11 the words "final discharge" had to be given some other meaning if such an event never occurred.

Held, that the charterers had contended that the clear commercial intention of the parties was that both of them would know with certainty, three months "after the charter party ended", whether or not the other intended to make any claim. However, that was not what the clause, in its express terms, said. It referred to "within 3 (three) months of final discharge" rather than within three months after the charter ending. Whilst those events would, very often, coincide, it was not necessarily the case that that would be so.

The charterers had gone so far as to say that if the clause had referred to "final discharge of the cargo" their argument should still prevail, and that some broader meaning – encompassing discharge of the contract – should be given to the words, notwithstanding that on that hypothesis the apparently limited meaning of the words would have been clear beyond discussion. In the tribunal's view that could not be right. Since, in the context of a contract of carriage, the words "final discharge" alone plainly – and commercially – meant final discharge "of the cargo", it could not be the case that a meaning such as that contended for by the charterers could be given to the words used.

It was difficult to see how it could be said, whether as a matter of construction or the implication of a term, that the parties intended time to run from the completion of the charter, however that might come about, when they used express words that on a plain reading meant something different. Equally there was no reason to think that the parties did not intend there to be anything other than the usual six-year limit if there was never any discharge of cargo: such a conclusion was very far from being so absurd as to drive a tribunal to conclude that the parties could not have intended what their clear words would suggest they meant.

The owners had argued, in the alternative, that the relevant date was the hypothetical date of discharge completing. The charterers had contended that that was inconsistent with the purpose of the clause and was entirely uncertain as being liable only to generate further argument. The owners said that tribunals often had to decide on whether claims had been brought within one year of the date when goods should have been delivered because of the Hague and Hague-Visby Rules time limits which referred to "delivery of the goods or the date when the goods should have been delivered", and that they did so without that causing any real problems.

That, of course, was correct: but it rather missed the point which was that in the present case the reference was to "final discharge" not "final discharge or the date when final discharge should have taken place" as in the Hague and Hague-Visby Rules. If the parties had wanted to have such a regime, they could easily have added the extra words to the clause.

Moreover, the matter was not free from authority. In *Denny, Mott & Dickson Ltd. v Lynn Shipping Co. Ltd.* [1963] 1 Lloyd's Rep. 339 cargo owners sought to bring cargo claims against ship owners in respect of a cargo of timber which had been lost when, during the voyage, the ship sank. The bills of lading incorporated a clause from the applicable voyage charter which provided:

"All claims must be made in writing and the Claimant's Arbitrator must be appointed within twelve months of the date of final discharge otherwise the claim shall be deemed waived and absolutely barred."

In that case the owners of the ship had argued that "final discharge" should be construed broadly so as to read, *inter alia*, "the date when for any reason further performance of the contract is discharged". Megaw J, however, held that clause 32 meant what it said: "final discharge" meant just that, and since there was no discharge, the time bar did not operate.

Whilst there were minor differences between the wording of clause 32 in that case and clause 11 in the present case, they were immaterial so that, effectively, the two cases were indistinguishable. The charterers, however, had argued that because, in *The Evje* [1974] 2 Lloyd's Rep. 57; [1975] AC 797 the House of Lords had held that the words "all claims" in a provision such as that meant all claims, then, reading the clause as a whole, the conclusion had somehow to be that *Denny, Mott & Dickson* did not apply. However, the difficulty with that argument was that although it addressed the meaning of the words "any claims", it failed to address the meaning of the words "final discharge" which were at the heart of the dispute. The argument also overlooked the fact that, as was frequently the case, a contract could have one or more time limits which applied in different circumstances.

The Evje was solely concerned with the question what type of claims were covered by the clause: in particular, whether a general average claim was caught by it. No consideration was given to the question that arose in the present case and which arose in *Denny, Mott & Dickson* because the question did not arise. That, no doubt, was why the latter case was not even cited in argument before the House. It was right that the House of Lords stressed that the clause had to be read as a whole, but that consideration was not relevant to the tribunal's approach to the present case, and the decision did not in any way affect the matter with which the tribunal had to deal.

As the owners had argued, there was no good reason why clause 11 should be read as saying anything different from what its express wording appeared to say, and no basis for implying a term: it worked perfectly well without any such implication. The drastic nature of the time bar the clause sought to impose militated in favour of the wording being read very strictly. As to the charterers' arguments based on what they said the parties must have intended, very clear wording had been used; there was nothing absurd in the result reached by applying it literally, and no reason to suppose that the parties intended anything other than such a result.

Insofar as it might be said that any ambiguity arose because final discharge did not in fact take place, the owners had argued – rightly in the tribunal's view – that any such ambiguity had to be resolved against the person seeking to rely on the provision, i.e. the charterers. In any event, the point did not arise since there was no ambiguity in the perfectly clear wording of the clause itself.

Accordingly, the tribunal had no hesitation in concluding that the claim was in time. ❚❚

Editor's Note: The above is a summary of a London Arbitration Award (No. 10/14) which appeared in Lloyd's Maritime Law Newsletter No. 897 of 18 April 2014 and which is reproduced by the kind permission of the publishers, Informa Law.

Asbatankvoy – Contamination claim

Asbatankvoy – Cargo contamination claim – *Prima facie* case – Motion to vacate award – "Manifest disregard of the law" – "Corruption" of arbitrator – FAA and SMA Rules

This article discuses a motion to vacate an arbitration award and raises some interesting points in arbitration proceedings. Zurich American Insurance and Vinmar International, Claimants ("Claimants" or "Petitioners") sought recovery from Team Tankers, (Owners" or "Respondents"), for damage to a shipment of acrylonitrile ("ACN") carried on board the *Siteam Explorer* from Houston to Ulsan.

The charter was on the Asbatankvoy form. The shipment was discharged and delivered to the receivers in the ordinary course of events. About sixty days later, Claimants gave notice of claim asserting that upon retesting of samples, the cargo was found to be off spec and the cargo was eventually resold at a distinct discount in a rapidly falling market.

Claimants alleged that the contamination occurred aboard the vessel during the voyage and prior to delivery. Respondents denied the Claimants had proved that the contamination, if any, had occurred aboard the vessel and that the tests of the samples taken before and after discharge at Ulsan established that there was no contamination at the time of discharge.

Pursuant to the terms of the charter, a panel of three arbitrators was formed to hear the disputes and make an award.

After extensive hearings and the testimony of fact and expert witnesses, the panel majority found that the Petitioners had failed to establish a *prima facie* case and dismissed the cargo claim. There was a very vigorous dissent. In the dissenting arbitrator's view, there was ample evidence that the contamination had occurred aboard the vessel during the voyage and Respondents had the burden to state how the contamination occurred and establish any "due diligence" defence.

The award has been published by the Society of Maritime Arbitrators and was the subject of an article in the previous issue of the Society's Bulletin.

Dissatisfied with the majority award, Petitioners filed a motion in the federal district court in New York, to vacate the award. They asserted that in fact, there was sufficient evidence to find liability if the panel majority had only followed the correct law as set forth in COGSA. Thus, Petitioners claimed the award was made in manifest disregard of established law and that the majority arbitrators chose to disregard that law in dismissing the cargo claim.

Petitioners' second argument was that the Chairman was "corrupted" because he failed to inform the parties during the pendency of the proceedings and prior to the issuance of the award that he had been diagnosed with an inoperable brain tumour. He died within months of the issuance of the award. The Claimants asserted that his failure to disclose his grave medical amounted to misconduct requiring that the award be vacated.

Prima facie case

The court examined the evidence as set forth in the award and reviewed the applicable law. The district court judge determined that based on the evidence, the Claimants had failed to sustain their burden of proof of establishing that the alleged contamination occurred on board the vessel most likely by comingling with the residue of a prior cargo of pygas, as alleged in the arbitration proceeding. The court concluded:

"Petitioners have not met their extraordinary burden of showing that the majority manifestly disregarded the law in finding that the Petitioners did not establish a prima facie *case."*

Manifest disregard

The statutory grounds to vacate awards are very limited and are set forth in the Federal Arbitration Act, ("FAA") Section 10 as follows:

"In any of the following cases the …court … may make an order vacating an award …

(1) Where the award was procured by corruption, fraud or undue means

(2) Where there was evident partiality or corruption in the arbitrators, or either of them

(3) Where the arbitrators were guilty of misconduct in refusing to postpone the hearing, upon sufficient cause showing, or in refusing to hear evidence pertinent and material to the controversy, or of any other misbehavior by which the rights of any party may have been prejudiced.

(4) Where the arbitrators exceeded their powers…."

The concept of vacating an award on the basis that the arbitrators made the award in manifest disregard of the established law has a shaky history in the courts. The concept is not an explicit ground for vacating an award under Section 10. It originally appeared in dictum by the United States Supreme Court over sixty years ago in *Wilko v. Swan*, 346 U.S. 427 (1953), where the Court said:

"… [T]he interpretations of the law by the arbitrators in contrast to manifest disregard are not subject, in the federal courts, to judicial review for error in interpretation…."

It has had its continued existence questioned by various courts, including the Supreme Court itself in *Hall Street v. Mattel, Inc.*, 552 U.S. 576, 128 S. Ct. 1396 (2008). However, in spite of the criticism, manifest disregard of the law remains a valid ground for vacating an arbitration award in the Second Circuit in New York (*T. Co. Metals LLC v. Dempsey Pipe*

& Supply, Inc., 592 F.3d 329 (2d Cir. 2010)). A sampling of the case law follows.

Manifest Disregard is *"a doctrine of last resort – its use is limited only to those exceedingly rare instances where some egregious impropriety on the part of the arbitrators is apparent, but where none of the provisions of the FAA apply." Duferco Int'l Steel Trading v. T. Klaveness Shipping A/S*, 333 F.3d 383, 388 (2d Cir. 2003). As the Second Circuit has described it:

[a]lthough the bounds of this ground have never been defined, it clearly means more than error or misunderstanding with respect to the law. The error must have been obvious and capable of being readily and instantly perceived by the average person qualified to serve as an arbitrator. Moreover, the term "disregard" implies that the arbitrator appreciates the existence of a clearly governing legal principle but decides to ignore or pay no attention to it.

Merrill Lynch, Pierce, Fenner & Smith, Inc. v. Bobker, 808 F.2d 930, 933 (2d Cir. 1986) (internal citations omitted).

An arbitral award may be vacated for manifest disregard of the law *"only if 'a reviewing court … find[s] both that (1) the arbitrators knew of a governing legal principle yet refused to apply it or ignored it altogether, and (2) the law ignored by the arbitrators was well defined, explicit, and clearly applicable to the case.'" Wallace v. Buttar*, 378 F.3d 182, 189 (2d Cir. 2004) (quoting *Banco de Seguros del Estado v. Mut. Marine Office, Inc.*, 344 F.3d 255, 263 (2d Cir. 2003)) (omission and alteration in original).

An arbitrator is not expected to apply legal principles *"with the sophistication of a highly skilled attorney." Wallace*, 378 F.3d at 190. *"[A]rbitrators often are chosen for reasons other than their knowledge of applicable law." Duferco*, 333 F.3d at 390. *"[A]n arbitrator 'under the test of manifest disregard is ordinarily assumed to be a blank slate unless educated in the law by the parties.' " Wallace*, 378 F.3d at 90 (quoting *Goldman v. Architectural Iron Co.*, 306 F.3d 1214, 1216 (2d Cir. 2002)).

"Judicial inquiry under the 'manifest disregard' standard is therefore extremely limited." Merrill Lynch, 808 F.3d at 934. An arbitration award "should be enforced, despite a court's disagreement of it on the merits if there is a barely colourable justification for the outcome reached.

The district court then reviewed in detail the facts and law cited in the majority award. It found that they simply applied their understanding of the law to the evidence in the case. The Petitioners argued that the dissenting arbitrator's dissent set forth the "correct" legal standard that the majority should have applied. The court disregarded with this premise. It is not enough to show that the award was "wrong". To succeed, a petitioner must meet the extraordinary burden that the majority knew what the law was and knowingly refused to apply it.

In this case, the Petitioners failed to meet this standard and this aspect of the motion to vacate the award failed.

"Corruption" of the Chairman

The court then turned its attention to the Petitioners' second argument – one not previously considered by the courts, i.e., whether an arbitrator's medical condition should or must be disclosed to the parties. The Petitioners based their argument primarily on Rule 9 of the Society of Maritime Arbitrators which states:

"Prior to the first hearing or initial submission, all Arbitrators are required to disclose any circumstances which could impair their ability to render an unbiased award based solely upon an objective and impartial consideration of the evidence presented to the Panel".

Petitioners asserted that the Chairman's failure to disclose his terminal illness was in violation of the SMA Rules and constituted corruption under FAA §10(a)(3) or misconduct under §10(a)(4). The Court rejected this premise. The judge said he doubted that SMA §9 of the Arbitration rule requires disclosure of an arbitrator's medical condition. Even if the Chairman was in violation of §9, the court noted that does not require that the award be vacated. Such rules cannot expand the limited reasons for vacating an award under §10. In other words, the FAA, being federal law, is paramount. Arbitration rules do not have the force of law and cannot expand the only statutory reasons set forth in the FAA.

The Court then examined Petitioners' arguments under §10. The fact that the Chairman continued to serve when he may have had reasonable doubt that he could discharge his duties is not corruption or misconduct. Further, there was no evidence or even suggestion that the Petitioners were in any way prejudiced by his failure to disclose.

The motion to vacate was denied. Respondents' motion to confirm the award was granted.

The court was emphatic that:

"Under the FAA, an arbitrator is under no duty to disclose medical conditions. There is no guaranty that an arbitrator is free from conditions which might affect his abilities. Any number of matters -- brain tumors, substance issues, marital problems, lack of sleep -- might affect an arbitrator's concentration or abilities. Parties are entitled to unbiased and uncorrupted arbitrators, see 9 U.S.C. §10(a)(2), not perfect arbitrators."

Thus, at the end of the day the district court decision confirming the SITEAM EXPLORER award affirmed the strong presumption in United States law that arbitration awards may be upended only under the rarest and most extreme circumstances.

Parties

Zurich American Insurance Company, *et anno*, Petitioners against Team Tankers A.S., *et al,* Respondents

Appearances

Kennedy Lillis Schmidt & Englis, Attorneys for Petitioner by: John Thomas Lillis Jr., Nathan T. Williams, Thomas M. Fedeli

Holland & Knight LLP, Attorneys for Respondent, by: Michael J. Frevola, Francis Robert Denig

Editor's Note: This summary has been prepared by Patrick V. Martin Esq., counsel for the Society of Maritime Arbitrators of New York (SMA)

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