UNION OF GREEK SHIPOWNERS
FOUNDED IN 1 9 1 6

# MEMO 380/2016

**Piraeus, 11.2.2016**

**US**

## 1. Oil Pollution Act 1990 / Limits of liability for vessels

Using authority contained in the Oil Pollution Act of 1990, the U.S. Coast Guard has finalized a rule increasing the limits of liability for vessels, deepwater ports, and onshore facilities to account for inflation. The *Federal Register* of November 19, 2015, contains the final rule. This is the second time the Coast Guard has adjusted vessel limits of liability. The first occasion was five years ago. The purpose of the periodic adjustment is to "prevent the real value of the OPA 90 statutory limits of liability from depreciating over time as a result of inflation and preserve the 'polluter pays' principle embodied in OPA … [the statute] requires that the OPA limits of liability be adjusted by regulation 'not less than every 3 years … to reflect significant increases in the Consumer Price Index.'" The adjusted limits of liability will take effect on December 21, 2015. For a double-hulled tank vessel of more than 3,000 gross tons, the new limit of liability will be the greater of $2,200 per gross ton or $18,796.800 (the existing limit is the greater of $2,000 per gross ton or $17,088,000); this amounts to an increase of 10 percent. For a nontank vessel, the new limit of liability will be the greater of $1,100 per gross ton or $939,800 (the existing limit is the greater of $1,000 per gross ton or $854,000); this is also an increase of 10 percent.

## 2. Implications of Using US LNG Carriers for Exports – GAO Study

The provisions introduced with respect to U.S. LNG export by the Howard Coble Maritime Transportation Act of 2014 were as follows:

1. A general requirement for the US Secretary of Transportation to develop and implement a programme to promote the export of LNG on U.S. flag vessels (introduced via amendment to the U.S. Coast Guard Maritime Transportation Act of 2006);
2. A requirement for the US Secretary of Transportation to give priority to the processing of licenses for LNG export facilities that utilise U.S. flag vessels (introduced via amendment to the Deepwater Port Act of 1974);

3. A requirement for the conduct of a study, to be submitted to Congress, on the potential job creation if LNG exports were required to be carried on board U.S. flag vessels.

The study was carried out by the Government Accountability Office (GAO) and submitted to Congress in November 2015. The general tone of the study appears to be cautious regarding the potential benefits of a requirement for the use of U.S. LNG carriers. Although recognising that such a requirement would create significant demand for U.S. mariners and shipbuilding yards (due to the domestic build and crewing requirements of the U.S. flag), the report underlines the overall effect this would have on the competitiveness of U.S. LNG export, which in turn could have a negative effect on job creation.

According to the GAO Study, five large-scale U.S. liquefaction facilities—necessary for conversion of natural gas to liquefied natural gas (LNG) —are under construction with a projected capacity to export more than 12 percent of U.S. natural gas production in 2020. According to representatives from these five facilities, their liquefaction capacity has already been sold mainly through 20-year contracts and their customers are responsible for transporting the LNG to export markets. The proposed requirement to transport exports of LNG via U.S.-built-and-flagged carriers could expand employment for U.S. mariners and shipbuilders if it does not reduce the expected demand for U.S. LNG. According to representatives of U.S. mariner groups, between 4,000 and 5,200 mariners would be needed to operate the estimated 100 LNG carriers needed to transport the five U.S. facilities' full capacity of LNG once the five are fully operational. Based on the current capacity of U.S. shipyards building 100 carriers would likely take over 30 years, with employment in U.S. shipyards increasing somewhat or becoming more stable, according to shipyard representatives. Currently operating LNG carriers are nearly all foreign built and operated. LNG carriers have not been built in the US since before 1980, and no LNG carriers are currently registered under the U.S. flag.

Department of Defense (DOD) officials indicated that any policy or requirement that increases and stabilizes jobs in the U.S. maritime industry could support military readiness. According to industry representatives, U.S. carriers would cost about two to three times as much as similar carriers built in Korean shipyards and would be more expensive to operate. Based on GAO analysis, these costs would increase the cost of transporting LNG from the US, decrease the competitiveness of U.S. LNG in the world market, and may, in turn, reduce demand for U.S. LNG.

The conclusions of the GAO study may well cause U.S. legislators to think carefully before taking further the general provisions introduced under the Howard Coble Act, although they are unlikely to stop proponents of the export restrictions from pushing ahead with their recommendations.

**EU**

1. **<u>Maritime Priorities of Upcoming Presidencies</u>**

The Council endorsed its 18-month programme, the so-called "Trio Presidency Programme" drawn up by the incoming three Council Presidencies (the Netherlands, Slovakia, Malta). This programme sets out the Council activities for the next 1.5

years, covering the period from January 2016 to June 2017. The priority areas of maritime interest include:

- The Revision of the Port Reception Facilities Directive.
- The conclusion of negotiations on the National Emission Ceilings Directive.
- The European Agenda on Migration.
- The adoption of the Port Services Regulation.
- The reinforcement of FRONTEX, including discussions over the development of a European Border and Coast Guard System.
- A Liquefied Natural Gas and Storage Strategy.
- A Labour mobility package, including the revision of the Posting of Workers Directive (which might include seafarers).
- Continuation of discussions on the revision of the Visa Code.

The programme also states that the EU should deal with emerging threats such as maritime cyber-attacks as well as existing ones such as maritime piracy. It advocates *"increased cooperation with partner organizations, greater complementarity and mutual exchange of information with the UN, NATO and the African Union in areas such as hybrid threats, maritime security, rapid reaction and cyber security."*

## 2. <u>UK / Insurance Act 2015</u>

The UK Insurance Act 2015 (the "new Act") will come into force on 12/8/2016 (during the 2016/17 Policy Year). The new Act seeks to provide further protection to both consumer and non-consumer buyers of insurance. As such it will change English insurance contract law currently codified in the Marine Insurance Act 1906 ("MIA 1906"). When being drafted it was recognized that the new Act might not be required in sophisticated markets, with the marine insurance sector named as one such market. Rather, it was anticipated that some insurers would contract out of (i.e. not apply) many of the new Act's provisions.

P&I is a sophisticated insurance market, with well-established practices that benefit both Members (the insured) and the P&I Club (the insurer). Eight of the Clubs in the International Group ("the IG") are affected by the new Act because their Rules are subject to English law, including the MIA 1906. In the interest of continuity across the International Group, the consensus amongst the eight IG Clubs is to contract out of certain aspects of the new Act. Nevertheless, those eight IG Clubs recognize that some provisions of the new Act should be adopted as they clarify certain aspects of the law which are presently uncertain.

The eight affected IG Clubs will be making changes to their Rules with effect from 20/2/2016. P&I Club Members will be notified of these Rule changes by their Clubs in the normal manner. Those Clubs will also revise their internal quotation procedures in respect of (a) new Members or tonnage entered with the Club from 12/8/2016 onwards and (b) all renewing Members from that date. The Rule changes and revisions to internal procedures will reflect the following changes in statutory and/or contractual rights and duties.

## 3. Denmark / New Action Plan on Sulphur Enforcement

An Action Plan was launched in Denmark in June 2014 to ensure efficient enforcement of the 0.1% sulphur limit on ship's fuel operating in the European Sulphur Emissions Control Areas as from the 1/1/2015. The Plan was developed by the Environmental Protection Agency and the Danish Maritime Authority in close dialogue with the Danish Shipowners Association (DSA). An updated Danish Action plan has been developed based on the experiences gained during the first year of enforcement of the low sulphur requirement. The Danish Action plan 2016 was published in the beginning of 2016 and is focusing on four main areas:
1 – International cooperation
2 – New technology
3 – Data sharing and focusing the control
4 – Policies, procedures and sanctions in Denmark
The ECSA Air Emissions Working Group agreed that an ECSA strategy should be developped in view of the 0.5% sulphur global requirement in 2020/2025. This strategy should be based on the good results from the current enforcement of the 0.1% requirement in EU SECAs. Such strategy could 'borrow' elements from the successfully implemented Danish action plan.
It should be reminded that on 1/1/2015, new stricter requirements for ships' emission of sulphur took effect in the EU SECAs. Efficient and homogeneous enforcement in all SECA countries is a condition for the regulations to have the desired impact in practice and for ensuring a level playing field. This has led to a considerable pressure on the authorities to secure robust enforcement with strict sanctions for infringements.

**ICS**

## 1. India / Cargo Reservation

In late 2015 media articles reported on proposals for Indian state-owned oil, steel, coal and fertilizer importers to reserve at least half of their cargoes for Indian-flagged ships. The proposal suggests that these importers should be required to sign five year contracts with local shipping firms for the carriage of subject cargoes as a mechanism for boosting the domestic fleet. The proposals were due to be discussed by the Indian Cabinet imminently. The Indian National Shipowners' Association (INSA) has confirmed that the issue is under debate and that no formal proposal is due to be discussed by the Cabinet.
According to statistics of the Indian Ministry of Commerce and Industry, it is estimated that imports of oil, steel, coal and fertilizers accounted for roughly 30-35% of India's imports in 2015. The percentage of these which were imported by state-owned companies, and the amount carried by ship, is less clear. It is reasonable to infer that were such a measure adopted the economic impact could be significant. However, it would probably be difficult to argue that such a proposal was contrary to India's commitments under the WTO process. Maritime transport services are not covered under the existing General Agreement on Trade in Services (GATS), and India is not a party to the 'Model Maritime Schedule' of commitments made by

governments in the absence of a binding global agreement. Even if India were party to a GATS that covered maritime transport, the Indian Government might still try to argue that the activity of state-owned companies is exempted from the general requirement of non-discrimination under GATS Article XIII on 'government procurement'. The issue is followed by the UGS in the context of ICS.

## 2. South Africa / Cabotage and Cargo Reservation

The South African Government has announced an aspiration to introduce a cabotage regime and requirements for the carriage of 40% of exported and imported cargo on South African-flagged ships. The proposals have been introduced as part of a broader 'oceans economic programme' entitled Operation Phakisa.

Notwithstanding the fact that South Africa has virtually no internationally trading ships, the use of the 40% figure is still potentially dangerous in principle, as it suggests other African countries may be following the example set by an existing Sierra Leonean regulation. According to one report, the new South African strategy also recognizes 'the right of other countries in the African continent to similarly reserve 40% of all cargo carried out of or into those countries for carriage on their national lines'. Moreover, a presentation outlining the proposal has cited the African Union's Maritime Transport Charter adopted in 2009. In the absence of actual shipping capacity, the '40% of cargo' proposal could be used as an excuse to exact commission from foreign operators. The potential imposition of such a commission is concerning given the significance of South Africa as a market for international shipping services.

Of all the initiatives put forward under Operation Phakisa, the support of the South African registry through measures to 'incentivize use of SA-flagged ships' has been identified as a 'medium term' output, on which the first actions should be taken by March 2019.

The Norwegian Shipowners' Association (NSA) has already expressed its concern to South African officials and is in contact with the African Shipowners' Association regarding a bilateral meeting. The UGS follows closely developments through ICS. The latter is strengthening its relationship with representative bodies of African shipowners to reach more understanding on free trade principles.

## 3. TTIP / TPP Negotiations – State of play

Negotiators of Trans-Atlantic Trade and Investment Partnership (TTIP) between the EU / US met in Washington DC in December 2016 for inter-sessional talks on transport. The EU negotiators continue to push for the codification of liberalized international transport and the consideration of Jones Act related issues such as feedering and the movement of empty containers. However, U.S. negotiators remain unwilling to entertain substantive discussions on maritime transport. A tough stance was adopted on Jones Act issues and on binding existing levels of liberalization for international maritime transport. The U.S. negotiators have argued that such commitments would require regulatory changes (and subsequently the involvement of the U.S. Congress) which is beyond their mandate at this stage.

The Trans-Pacific Partnership (TPP) was concluded and agreed on 5/10/2015. The TPP covers the following 12 Pacific Rim countries: Australia, Brunei Darussalam, Canada, Chile, Japan, Malaysia, Mexico, New Zealand, Peru, Singapore, United States, and Vietnam. Although maritime transportation services are not explicitly addressed within the 30 chapters of the TPP, Chapter 5 on 'Customs Administration and Trade Facilitation' should, in encouraging smooth and expeditious procedures between parties, have a positive long term impact on the Customs requirements for ships operating in the Pacific region.