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SEAVIEW

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目錄

4	ICSHK Column - Commercial Aspects of Shipping	Jagmeet Makkar
11	Current Status of Global Shipbuilding Industry and Korea's Global Leadership in Shipbuilding and Offshore Industry (Part I)	Sung Hyuk Hwang
17	Address by the first Chairlady of the Hong Kong Shipowners Association	Sabrina Chao
21	廢物管理計劃	劉銳業
23	香港為什麼沒有有質素的海事科技訓練	林傑
26	Law Column - EU and UN sanctions on Iran lifted	Su Yin Anand / Devandran Karunakaran Michelle Linderman / Kevin Cooper
32	AA TALK A Few Questions on Claims	Raymond T C Wong

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**“Commercial Aspects of Shipping –
Market Dynamics – Part 1”**

Thanks to shipping that more than 90% of the world trade (by volume) is made possible. The demand for shipping is the derived demand i.e. the ships do not exist for their own sake but they are built to serve the world trade. The demand for the goods that the ships carry results in the demand of the ships. Hence before proceeding to understand the demand and supply concept of the ships, it is necessary to grasp the underlying demand for the goods and how it is generated. Increasing trade resulting from globalization requires the goods to be transported thousands of miles. These goods could be raw materials, semi-finished goods and finished goods or the final products. For the goods to be competitive, the elemental steps in the production of the goods and their transportation so as for them to reach the intermediate and the final users must be cost effective. In the case of transportation this means that the economies of scale must play an important role. Transportation by air, though quick, is very expensive as compared to the transportation by sea. With

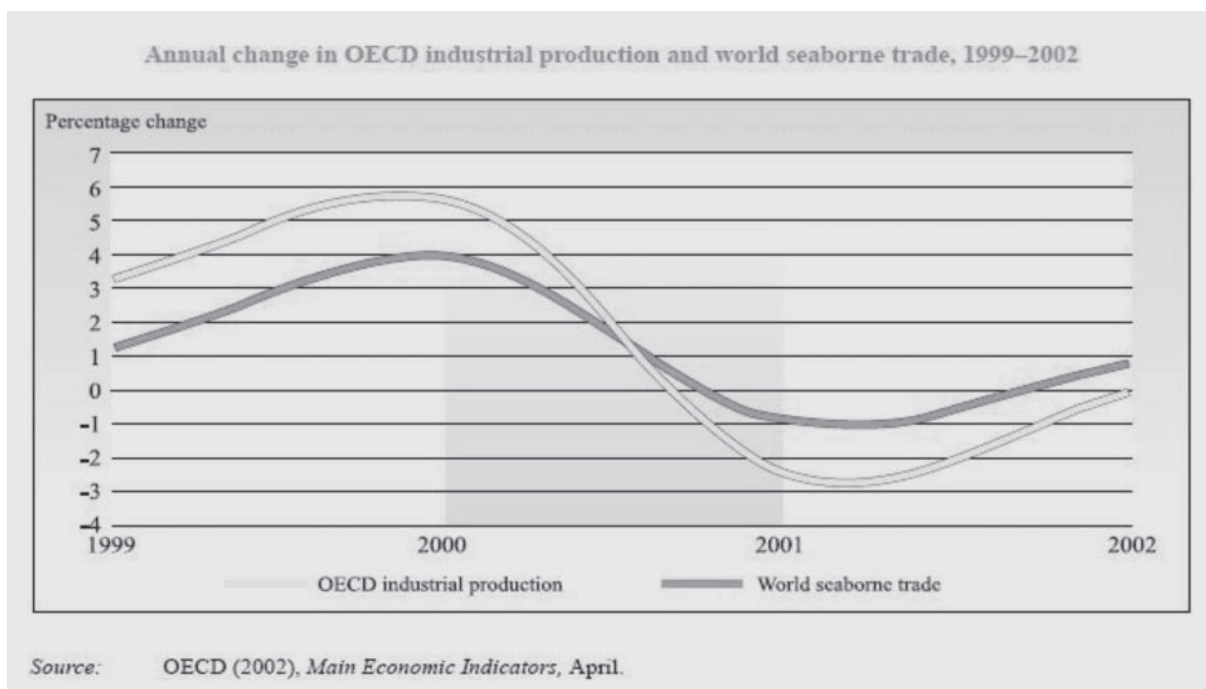
ULCCs, VLCCs, 18,000 teu container vessels and large cape size vessels, the economies of scales and safe delivery can be achieved to sustain the world trade. This is especially true for those goods where the freight cost is a significant portion of the final cost of the product and the transportation parcels are very large. Transportation by air does play an important part for some cargoes that are expensive and the freight cost is a small percentage of the total cost. Just imagine transporting coal, cement, iron ore or such other bulk commodities by air!

THEORY OF TRADE

For any trade to take place there has to be a seller and a buyer. When the trade takes place across the national boundaries, we can call these parties as exporter (or shipper or consignor) and importer (or consignee or receiver) respectively. It does not matter how we address them so far as we understand their role in the trade. However, an important question remains unanswered is why would a party sell and the other buy? Logically, the answer is that the buyer needs or wants what the seller has in its possession, either by virtue of its

existence as a natural resource or a result of production (processing of natural resources or by using cheaper labour to make a product by using imported resources etc.). We all know that the resources across the world are unevenly distributed. Simply speaking, one country may be rich in minerals, the other may have dense forests and the third may have cheap labour. It could also be possible that a country may have large reserves of minerals such as iron or copper ores but it is very expensive to mine these and thus making the process uneconomical at a particular point of time, when there are other countries where such minerals could be mined and transported cheaply. Depending upon many such factors, the trading patterns keep changing. An example of recent years could be Russia and ex-soviet states such as Ukraine that were once net importers of grain are

now exporters. In the year 2003, when Canada and Australia were hit by draught, grain flows from Russia and Ukraine to far and remote areas reversed the trading patterns. Another example is a change in the drive force of economy. Earlier it was the group of OECD countries whose industrial production (IP) drove the world seaborne trade. However, sometime in mid 2000, the impact of the percentage change in OECD countries IP had markedly less impact in the percentage change in the world seaborne trade. This is apparent in the graph below where we can see the traditional relationship between the OECD countries' IP and the World Seaborne Trade has changed over the years. Even in the years when the OECD countries' IP had been in red (or negative) the World Seaborne trade remained in the black (or positive), thanks to the China Factor.



ABSOLUTE ADVANTAGE

The underlying concept comes about from the abundance of a resource or commodity that a country may have and is in a position to export where as another country may not have such an advantage. Some examples are bananas, rubber, coffee etc. where this absolute advantage is a result of climate or weather. Another example of absolute advantage may be by virtue of the minerals reserves that a country may have, e.g. gold, platinum, diamonds etc.

Very useful definitions and explanation is being reproduced here from the tutorship material of the Institute of Chartered Shipbrokers for better understanding:

“...this is sometimes called Ricardian Trade, after David Ricardo, the first economist to develop the theory. The theory basically argues that a country will export those commodities which it produces more cheaply than any other country, and in exchange, import those products which it produces less cheaply than elsewhere. The obvious examples of ‘absolute advantage’ would be a country’s natural endowments of raw materials and natural resources. In Saudi Arabia’s case, as mentioned above, an absolute advantage exists in oil production, as it does in other Middle East economies which are similarly blessed. Brazil and Australia are endowed

with iron ore, Japan has none. A natural trade is for Japan to import these essential manufacturing raw materials as it has no such materials itself.

One question that arises in this theory is this. Suppose an economy say economy A, was absolutely more efficient in production in all goods, compared to another economy B. If Ricardo’s doctrine is correct, it would appear that economy A should never trade with B, since it is capable of producing both products more cheaply than B. Since, in real life, it is often argued that Japan, say, or the US, is capable of producing all goods more cheaply than the UK say, then why should these two economies trade?

It turns out that Ricardo’s theory is flawed. Absolute advantage is not required to generate trading opportunities. The major traditional theory of international trade is known as the theory of comparative advantage, which is discussed in detail below.

COMPARATIVE ADVANTAGE

The doctrine of comparative advantage is the most widely known theory of trade flows. The idea behind it is best understood with the aid of an example. Suppose that you are a computer whiz, and also good at decorating and painting. In fact, you are better at these two activities than your neighbor, Fred. Fred is not

too good at computing, but very good at decorating and painting, though not as good as you.

Initially, both you and Fred spend equal amounts of time in both activities. But if you trade, both can gain. This is because Fred is comparatively good at painting and decorating; if he concentrates on that activity, while you concentrate on computing, you can trade the service to each other and both would be better off. This gain arises from the fact that resources have been reallocated towards their most efficient uses; as a result, more total output (computer services and paint/decorating) is produced, to be reallocated between the two people. In reality, comparative advantage is nothing more than the extension of Adam Smith's principle of the division of labour to trade between countries. Each country will tend to specialise in producing those products which it is relatively good at producing, and trade some of the increased output from the expanded sector for imports which replace the output lost from the shrinking, less productive sector....."¹

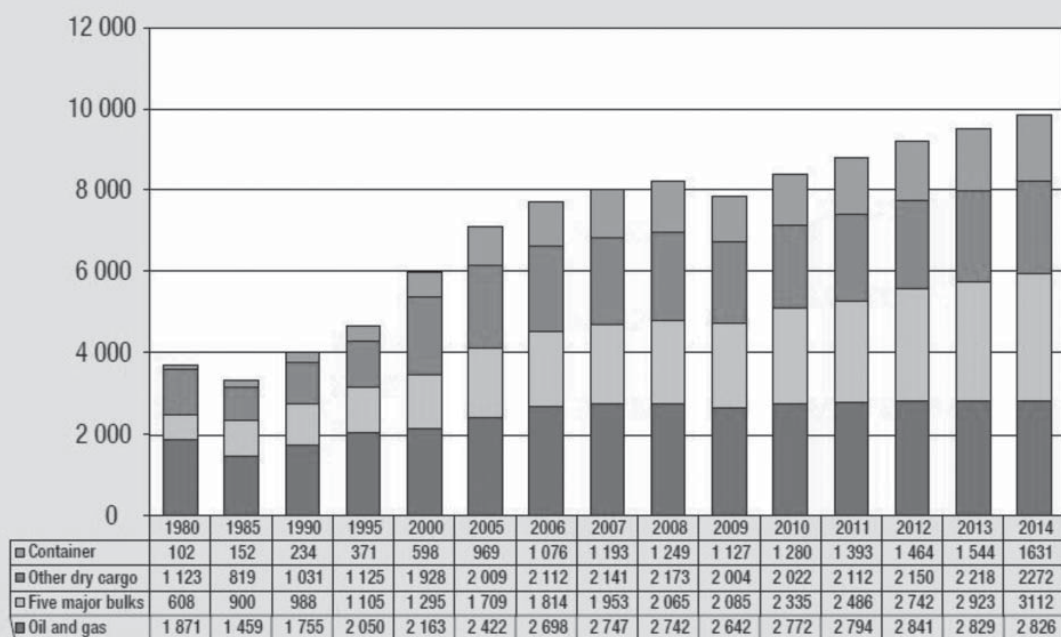
DEMAND FOR SHIPPING SERVICES

Over the years, the world seaborne trade and the supply of the ships have grown to cater for the increased movement of the finished, unfinished products and raw materials across the globe. In very simple terms, this increased trade is based

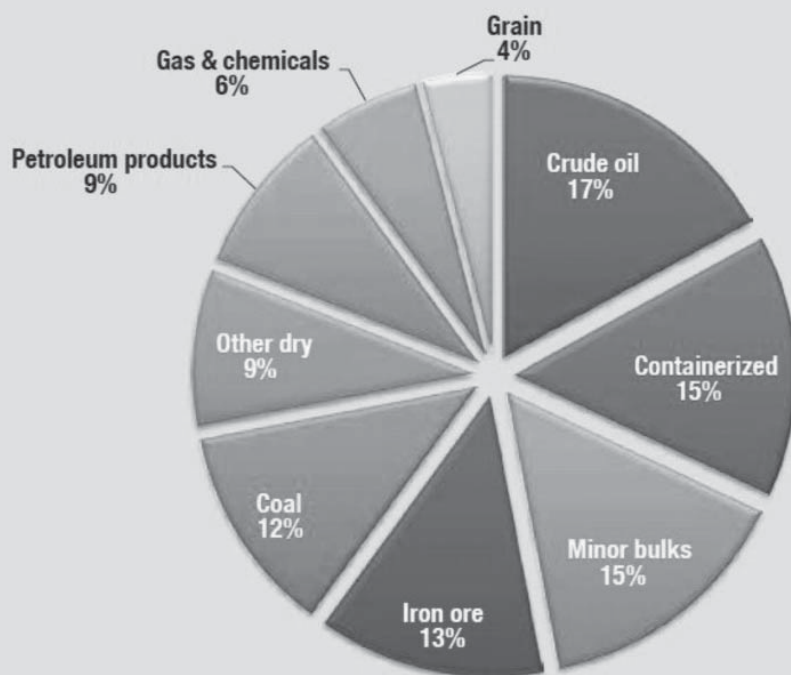
on the comparative advantage theory. Going by the cause and effect relationship, an increase in trade, which increases at a faster rate than the GDP, helps a country's GDP to increase. The direct impact is then on the seaborne trade that accounts for a large part of this total trade.

The focus on the core competencies by the businesses and procurement of raw materials cost effectively from all over the world, cause the movement of goods. Reduction in trade barriers, thanks to the role of the WTO, has further helped. Global supply chains have evolved through fading away of the geographical and ideological barriers. In the economic context, if the differential between the prices of merchandise in two countries is larger than the total transaction cost, trade will take place. Shipping, as an important part of the supply chain, is one of the major components of this transaction and a cornerstone of globalization, playing an important role in maintaining the competitiveness of the firms in the business.

This spectacular growth in world trade has generated a corresponding growth in the demand for transportation services, particularly shipping. The volume of cargoes moved, both in tonne mile and tons of cargo generated per year, has grown in line with the growth in world trade volumes.



Sources: UNCTAD, *Review of Maritime Transport*, various issues. For 2006–2014, the breakdown by type of cargo is based on Clarksons Research, *Shipping Review and Outlook*, various issues.



Source: UNCTAD secretariat, based on Clarksons Research, *Seaborne Trade Monitor*, 2(5), May 2015.

MARKET DYNAMICS

While we will closely look at the supply and demand models in the next issue of Seaview.

References:

¹*Tutorship Material, as necessary, adapted from the Tutorship Material (different editions) with kind permission from Director*

General, ICS, UK for promoting Shipping Education and the Institute of Chartered Shipbrokers;

Graphs from UNCTAD online publications Review of Maritime Transport, Page 6, and 7.

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Current Status of Global Shipbuilding Industry and Korea's Global Leadership in Shipbuilding and Offshore Industry (Part I)

Sung Hyuk Hwang

For several years, I have written columns on the shipbuilding industry under the name of "Tales of Three Shipbuilding Nations". It is the story of Korea, China and Japan that takes up 90% share of the total global shipbuilding industry. While writing the columns, I kept thinking of Yanagi Muneyoshi's literary criticism on Korea, China and Japan during the early 20th Century. He defined the art of the three states as lines, form and color. China's vast volume, Japan's ecstatic colors and Korea's simple line across the whole canvas did not merely define the history and traditional life of the three states, but also can be applied as the characteristics of the shipbuilding industries today as they are. Especially, Korea's curve shines in a delicate manner in our ink-and-wash painting. A single blade of orchid across the canvas fills the space and forms the balance of whole picture. Korea's shipbuilding industry started and grew in the same way. Entry into the unlimited global market was the way to survive from the limited demand in domestic markets. Global market's balance was aligned and the necessary space of the global market was filled. Today's story will

be unfolded by comparing the three states, Korea, China and Japan.

There are many concerns over the Korean shipbuilding industry. In recent days, as local shipyards' deficit is being exposed, there are extreme questions raised on whether the Korean shipyards are now bound to close their doors. It may be only natural that there would be concerns for the future since significant investment was made for the facilities and shipyards hire many people. I summarize the situations that were discussed via my interviews, columns, reports until now, as follows.

Currently, numerous concerns were reported on Korean shipbuilding industry. Particularly, there are some open discussions that the entire Korean Shipbuilding and Offshore industry will be closed and absorbed by China and Japan since Korea's standing becomes narrow. There are criticism that Korea has lost its superb technical superiority and competitiveness which was second to none for 20 years from the mid-1990s. Korean industry maybe a has-been industry and

be forced to the back seat. In fact, these opinions are rather realistically convincing since they cite a number of actual cases. Firstly, they claim that the future outlook of the industry itself is unclear due to a number of uncertainties. Secondly, they cite the fact that the Big 3 shipyards in Korea posted record deficit during the past two years and it seems difficult for them to recover from the damage incurred. Thirdly, stagnation of the offshore industry, especially deep sea oil development business is aggravating the outlook of the Korea shipyards drastically.

First, I want to talk about the uncertainty of the global market. Uncertainty towards the shipbuilding industry focuses mostly on the plummeting oil price, distrust of the Chinese economy and imbalance of the supply and demand in shipping. These uncertainties became all widespread talk of town.

The first uncertainty is the unstable oil price. Every Oil Shock that started during the early 1970s has always increased the oil price. Oil price continued to rise and reached up to the \$110 level during the 2000s. Then, suddenly, it dropped to \$40 level during the end of 2014, an inverse Oil Shock. Although the fall in the oil price reduced unit price for the production, contributing to the increased comfort of

the consumers' life, it had its downside, to reduce industries' motivation to produce in general. In particular, deep sea oil field development that was carried out actively in the North Sea was stopped and the Middle East's social overhead capital (SOC) facilities development plans have been drastically shrunken. Their direct impact hit the global shipbuilding and offshore industry hard, and the shipyards in Korea got overwhelmed by the sudden shock.

The second uncertainty is the slowing down of China's economy growth. The 21st Century was called as the century for China. Fast economic growth of the immensely large country absorbed worldwide energy and natural resources to the fullest. Iron ores and coals worldwide were transported to China and they were used for the expansion of the steel factories for the construction of China's SOC facilities. China also consumed the coals and oil for the power generation facilities that are vital for the industrialization. Price of steel plate which was \$300 per ton in 1999 increased drastically to \$1,160 level in 2007. However, as China's economy growth slowed down, the gauge panel that used to climb up, fast stopped and began to move reversely. Steel plate price fell to \$518 level per ton and the steel industry got stalled all of sudden. This in turn severely affected the shipping industry which transports raw

materials. Ship's freight for iron ore which hit the pinnacle in 2007 is now recording lowest level ever, while the ship's prices were almost halved. The ships were idling since they cannot find secured cargoes. Newbuilding orders for bulk carriers that led the bullish growth of the shipbuilding industry from 2003 to 2008 has disappeared in 2015. Although the Chinese government is adhering to the "Transport cargoes with Chinese built ships" policy and is encouraging the construction of bulkers in domestic shipyard, these are not yielding particular help.

The third uncertainty is the imbalance between ships' demand and supply. The shipbuilding economy enjoyed unprecedented boom in its history from 2003 to 2008. The uncontrollable explosive boom resulted from the swelling of the demand by China for raw materials, along with the Chinese government's policy to expand the shipbuilding industry as well as the additional involvement of the global-class speculation funds. 170,000DWT Bulker which had price tag of \$50 million per ship, was contracted at \$110 million. Price of 300,000 DWT VLCC which was sold at \$80 million level climbed up to \$150 million. Shipping companies jumped with joy due to the charter rate that continued to climb up every day. They chartered in a ship for \$10,000 per day and chartered out

for \$20,000 the next day, and this ship was re-chartered for \$30,000. While everyone could foresee that this was like a game of time bomb changing hands that could explode any time, this was continued on. Shipowners and speculation fund investors lined up in front of the shipyards, even those small ones with merely a sign post, demanding the construction of new ships. Normally, shipbuilding market manifested a cycle in the boom that lasts less than one year is followed by 2 or 3 year-long recession. But during the early 2000s, seven year-long unprecedented boom lasted. On August 2008, the Leman Brothers' financial crisis broke out. That was the end of the bomb circulation. Everyone suddenly found that all too many ships were contracted for excessively high price. Ships lost their destination all of sudden. This crisis had even impacted the traditional ship owners to fall into despair. Korea Line Corporation, one of the most reliable shipping companies in Korea went bankrupt, and many smaller shipowners disappeared from the scene. Traditional shipowners managed to survive since their basic cargoes were secured. However, the ships that were built with the speculation funds at a much higher price level have been bound to be moored since it was not possible to operate with low freight rate. Eventually, the banks that were linked with the speculation funds were shaken. The door to the shipping finance was closed down tight worldwide.

This was a tremendous shock. The view towards the shipbuilding market was in despair. However, I see the concerns over these uncertainties to be too one-sided and artificial. Was there ever a time in the history when an industry was managed on certainty? Because an industry is like a living animal, it always feeds on uncertainty, survives amidst uncertainty and grows upon it. The recession that is experienced along with the uncertainty can be considered as a part of the "up and down" which a market attributes when seen from the long-term perspective. One step down can be considered as a stage for preparing the next stage up.

The visibility of the global shipbuilding and offshore industry is completely blocked by the above mentioned three uncertainties. Amidst this situation, the global eyes are bound to pay attention to every move of Korea's Big 3, Hyundai, Samsung and Daewoo that have led the global market in all aspects. Since 2008, the shipbuilding industry looked hopeless when the global market collapsed. However, markets always prepare a niche. Demand for the offshore oil development equipment, super large container ship and gas transport ship that require sophisticated technological know-how on high unit price was created. The Big 3 dominated this niche, earning the praise, "The Big3 are there, as expected."

However, this peace of the mind was short-lived. The market reactions were varied when the news went out that the Hyundai and Samsung recorded huge deficit in 2014 due to the offshore orders that gave that much needed space to breath for the shipbuilding industry. They said, "This was expected. Even they cannot help it," "What will happen to the global shipbuilding and offshore industry when the Big 3 cannot cope with it?" and "Will the Big 3 also kneel down before this crisis?" The Big 3's credit standing fell and negative outlook towards the future comprised the majority. We have always been at the market front and talked with all the markets since last year to today with the outlook on the Big 3. We soothed them with the following comment. "There is one issue that you are missing out on. Korean shipbuilding industry made tremendous amount of profit during unprecedented boom from 2003 to 2008. The real beneficiary of that boom was the Korean shipbuilding industry. While undergoing that period, the shipbuilding in Korea consolidated enough basic physical strength by itself. I got the feeling that the Big 3 companies have rather highlighted their last one or two years of deficits. Our impression is that they seem to use the deficit as an excuse to restructure their corporate culture and organization that became too loose as a side-effect of the boom. In fact, China made expansion

during the boom period, but failed to be actually benefited. Japan was unable to take advantage from shipbuilding boom until A be regime came into power and alleviated the currency and lowered the FOREX rate. Only Korea's stamina was enhanced.

Lastly, I want to talk about the offshore project. Deficit of the Big 3 during the last two years derived mostly from the offshore project. This is the last dark shadow that was cast on the market. Price of the crude oil which continued to rise, reached up to \$125 per barrel in 2011. The major oil companies in the world started to move their crude oil exploration field into the deep ocean since that was the only field left to develop. This did not merely mean moving just the oil field. This was a move to the field in severest working condition on earth. This in turn demanded strong steel structure that can withstand the worst natural environment, equipment that can withstand extreme wind and cold, which can protect the workers at the same time. World's best technologies were mobilized altogether. Drilling ship that costs \$1 billion emerged. This was like heaven-endowed rain to the shipyards that were almost withered after the 2008 financial crisis. But, the number of beneficiaries who

can benefit from this much-needed rain was limited. They were the Big 3 in Korea.

(to be continued)

(Mr. Sung Hyuk Hwang:

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The Hon Professor Anthony Cheung Bing-Leung GBS, JP  
Secretary for Transport and Housing,  
Central Government Offices,  
East Wing, Tim Mei Avenue,  
Tamar, Hong Kong

Our Ref: IS/0103/2016  
1 March 2016

Dear Professor Cheung,

**Measures to Alleviate the Difficult Situation confronting the Hong Kong Maritime Industry**

1. The Institute of Seatriansport has been most appreciative of the Hong Kong SAR Government's efforts over the years in endeavouring to position Hong Kong as an aviation and maritime centre. Indeed, in its latest Policy Address, the Government has fully recognized the importance of the maritime services and the logistics industry which accounted for 3.3% of GDP in 2013 and around 190,000 jobs.
2. The maritime industry is currently facing unprecedented difficulties in their core business. The Baltic Dry Index (BDI) collapsed for almost 90% in less than 14 months. BDI was at 2,330 on 13 December 2014 and plummeted to 290 on 11 February 2016. Generally speaking, ship operators/owners can only manage to earn profit in shipping when BDI is at 1,800 or above. In light of the global economic downturn, it is anticipated that the situation is the worst in the shipping history of the past thirty years. It would take the maritime industry a long period of time to recover.
3. Although the 2016 – 2017 Budget provides a number of measures to boost the economy, it neither addresses the difficulties confronting the maritime industry nor offers any measures to alleviate the difficult situation of the Hong Kong maritime industry which is likely to last for, at least, two more years. On behalf of the maritime industry, we would be most grateful if the Government would favourably consider the following relief measures to encourage the industry to tide over the prevailing challenging situations in the coming years:-
  - (a) Waive the annual tonnage charge for all Hong Kong registered ships for at least two years;
  - (b) Waive the charges imposed by the Marine Department for the Post-Detention Flag State Quality Control inspections. The shipowner concerned would only bear the travelling and accommodation cost of the surveyor incurred in relation to the inspection; and
  - (c) Urge the banks and/or financial institutions to consider allowing the Hong Kong shipowners to repay the interest but not the principal of the mortgage repayment of the mortgaged vessel(s) for at least two years.
4. Whilst the amount to be waived from (a) and (b) above would be relatively insignificant to the Hong Kong Government, it would be extremely meaningful to the Hong Kong maritime industry at this moment of time. We strongly believe that these proposed relief measures would be much appreciated by the Hong Kong maritime industry during this difficult time. Furthermore, it should demonstrate the Government's consistent policy in supporting the industry and its determination in maintaining Hong Kong as an International Maritime Centre.
5. We look forward to your favourable reply and stand ready to discuss with you, if necessary.

Yours faithfully

(P.C. So)  
Chairman,  
Institute of Seatriansport

cc. The Hon Mr. Leung Chun Ying GBM, GBS, JP, Chief Executive

Member Associations of the Hong Kong Maritime Forum

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## Address by the first Chairlady of the Hong Kong Shipowners Association

*Sabrina Chao*

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Ladies and Gentlemen, good evening and thank you for granting me the honour to be your guest here tonight and giving me the opportunity to address you.

As we approach mid December, we are coming to the end of the 'high season' for shipping social events. Many of us will have seen each other at one or more events over the past few weeks as part of the frantic round of company cocktail parties, awards ceremonies and association gatherings which fill our diaries at this time of year.

There has not been much to celebrate as far as the shipping industry, particularly for those involved with bulk carriers, is concerned at this year's round of pre-Christmas gatherings, and as I said to the members of the Hong Kong Shipowners Association when I was elected their Chairman last month, shipping markets are not something I can personally do much about.

Whilst there may be a fair bit of gloom around our industry, this is just one of the cycles we regularly go through—we will come through it and there will be opportunities that arise for many, but in the meantime, there is much to be positive about for the future of both our industry and the opportunities that exist for Hong Kong.

When the Institute of Seatrtransport was founded in 1984, the shipping industry was entering a downturn much more severe than what we are experiencing today and it was a downturn which had a profound impact on the Hong Kong shipping industry. Whilst our shipping industry eventually came through that recession, there were hard lessons learned and sadly, many companies disappeared.

What was our industry's biggest loss, however, was the lost generation of people who should have been attracted to our industry or who were forced to find a new career elsewhere. This was a global phenomenon and one which we are still feeling the effects of today. In the depths of a recession, it was clearly not possible for shipping companies to be investing in ships, and that slowdown in new capacity coming on in the second half of the 80's certainly helped the shipping industry to re-balance.

The failure to invest in our human capital in the 80's, however, is a mistake we must not make again and ensuring we develop and broaden our talent pool is pivotal to ensuring the longer term future of Hong Kong as a global maritime centre. The Institute of Seatrtransport has a vital role to play in this.

When the Institute was established, it was the initiative of two of Hong Kong's leading maritime academics who laid out the aims and ambitions of the Institute. The aim of Captain L.C. Ngai and Captain Peter Chu together with a group of like minded shipping professionals was to promote the exchange of professional knowledge across the diverse Hong Kong maritime industry and to recognize the role that the shipping industry plays in the life of Hong Kong.

The Institute can be proud of its achievements in broadening the knowledge of its membership and particularly in its co-operation with other shipping associations to take the collective expertise of its talented membership to a wider audience.

Not only are the activities of the Institute important from an education point of view, but your organization plays a pivotal role in creating the 'sense of belonging' for our maritime sector which allows individuals to share knowledge, experience and problems and build the collective strength that is Hong Kong shipping.

At a time when Innovation and Technology are the fashionable buzzwords in Hong Kong, it is easy to think that shipping is a sunset industry and has little attraction for either new talent or investment. Nothing could be further from the truth, but it is our responsibility as

today's industry leaders to ensure that our industry remains in the forefront of public attention.

We are fortunate in that awareness of shipping is currently running at a high level in Government. Our Chief Executive certainly 'gets' the importance of the shipping industry and we remain one of the pillar industries of Hong Kong. The industry has great expectations of our new Director of Marine, Ms. Maisie Cheng and I myself am looking forward to working with her to further the interests of the shipping industry as a whole.

Our government has recognized the need for investment in human capital with the Maritime and Aviation Training Fund, which over the two years it has been in operation has introduced many young people to the shipping industry, some of who will hopefully enjoy a long and fruitful career in the maritime sector when they complete their studies.

Whilst this recognition of the importance of Hong Kong's shipping industry by the government both here in Hong Kong and in Beijing is welcome, Hong Kong's success has always been down to commitment, I hope that we will see an increased flow of new entrants looking not just for a job, but a career with real purpose.



It is down to those of us who are already working in our industry to market shipping to the next generation. We are already making progress in that area with initiatives such as Hong Kong Maritime Week and during my time as Chairman of the HKSOA, I am committed to extend further our outreach to the broader community to show just what an exciting and rewarding business the shipping industry can be.

We can all contribute to this on an individual level, and I ask you all to pass on your experience, wisdom and enthusiasm at every opportunity. For example, over the Christmas holidays, try and take some family members or friends to our Maritime Museum and give them a personal tour. I know this works- a colleague of mine recently took a relative to the museum and after a couple of hours of being personally guided through our industry by an enthusiastic participant, that relative, who had no experience or knowledge of shipping, said 'Now I know why you love your job so much.'

All of us can be proud to call Hong Kong home and all of us can be proud to be part of the Hong Kong shipping community. We are all heirs to the legacy of the founding fathers of the Hong Kong shipping industry, many of whom, like my own family, came here from China over

six decades ago. As heirs to that legacy, we all have an obligation to ensure that at whatever level we work at, we continue to prove to the world that Hong Kong remains the best place in the world to run a shipping company from.

The evidence that this is the case is compelling. Our shipowners are respected globally and are the preferred choice for many of the global commodity companies who need safe, dependable transportation of their cargoes from shipowners who are in the business for the long haul, through good times and bad and are not just looking for the short term return before moving on to another investment. The Hong Kong shipowners provide that service and have decades of experience doing just that.

Our world class shipmanagers are entrusted by shipowners across the globe for the safe, efficient and cost effective management of their assets, whilst our broad range of maritime services from legal, finance, broking and insurance are recognized as best in class throughout Asia.

We have a great story to tell, and this is evidenced by an increasing number of companies who are establishing themselves here, including a number of new shipowners set up by people who have made Hong Kong their home and see the unrivalled opportunities which exist here.

Don't let the negativity of a bad market get to you- these are exciting times when each and every one of us can make a contribution which will benefit the companies we work for, Hong Kong in general and the future generations who will follow us.

It has been a great pleasure to join you this evening, see many old friends and meet many new people. I am sure we will meet again regularly through the numerous opportunities our vibrant shipping community provides us with. I would like to wish the Institute of Seatrtransport all good wishes for your continued endeavours and would like to thank you for the significant contribution you have and continue to make to the Hong Kong shipping community. My best wishes to you all for the forthcoming Christmas holidays and may 2017 see better markets for the shipping industry. Thank you.

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*(Ms. Sabrina Chao delivered the speech at the 31st Anniversary Dinner Party of Institute of Seatrtransport on 10 Dec., 2015)*

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香港特別行政區政府環境保護署公佈了香港廢物處理及處置最近的統計數字。2014 年，家居廢物為每日 6,418 公噸、工商業廢物為每日 3,364 公噸、特殊廢物為每日 1,135 公噸、建築廢物為每日 6,418 公噸。總數廢物為每日 14,859 公噸。現在，我們每日處理大量廢物只能依靠堆填區或焚化爐。香港總共有 16 個堆填區，當中 13 個堆填區已經關閉，而其餘 3 個堆填區仍在運作，分別為新界西堆填區、新界東南堆填區及新界東北堆填區。為公眾提供廢物處置服務。但是，焚化爐僅能有限度地處置某些廢物。由於香港人口不斷增加，廢物管理已經是迫切推行解決的方案。

從海運而言，船上的運作會排放大量的廢物。因此，根據〈商船防止廢物污染規例〉第 413 章的規定。每艘噸位為 100 總噸或者以上的本地船隻或每艘運載 15 人或者以上的本地船隻，必須在船上附有一份廢物管理計劃。

對船上運作來說，船長負責管理及執行廢物管理計劃。同時，船長會為船員指揮及訓練有關廢物管理的知識，例如：收集廢物、貯存廢物、接收港口設施排放廢物等等。船員接受船長的指令及遵守廢物管理計劃的要項。

船員必須將廢物貯存在船上，便於港口處理廢物。當船隻進入香港水域範圍內，禁止將廢物和洗滌水等排放入海。除非洗滌水所含之添加劑或清潔劑不含損害海洋環境的物質。

為方便處理廢物，船上可以將放置廢物容器分類，張貼標示或者將廢物容器顏色分類。例如：食物廢棄物、塑膠廢棄物、非塑膠廢棄物等等。

在大專海事或者海員課程中，可以考慮將廢物管理設為新的教學內容，這樣將有助於海運可持續性發展。

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(劉銳業先生：

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國際海事組織 (IMO) 秘書長講過，全球欠缺十多萬名高級船員；香港註冊船已超過一億總噸，香港為什麼不作出配合來訓練海員。

現在世界上最好的海事訓練應在印度，而印度又曾是英國管理過的地方。香港回歸後，所有私人的海員訓練班，包括船公司開辦的，均已結束。另外，香港理工大學院，也結束了航海系。全香港，現在只剩下一間位於大纜涌的海員訓練學院。

香港遠洋航海海員 (seafarers) 行業，現時已非常低迷。靠這行吃飯的人，部分已上岸了，部分已轉行，部分已退休，部分或去了另一個「遙遠的地方」。那麼，航海業：

1. 沒有人入行；
2. 那有遠航經驗？
3. 那有師資？

香港的輪船靠什麼人操作？據我所知，有些香港船隻上，根本一個香港籍遠航海員都沒有。因此，香港船隻最初曾被稱為方便旗船（船舶獨立註冊開始時，沒有立法要船東優先僱用香港船員）。我們應讓本地船員 (local seamen) 規範化，提供訓練給他們，然後晉升他們為遠航海員。用什麼誘因令到他們願意轉為遠航海員？這是政府和船公司老闆需要思考的問題。

船東甲：「我們很難僱用到一些有遠洋航海經驗的香港人。職級是總船長 (Port Captain) 和機務總管 (Superintendent)。」

行內人乙：「為什麼？香港旗幟的船舶不愁沒有海員在船上工作，他們是全球性供應的；最大兩個海員供應的國家是中國大陸（不包括臺灣）和印度，有遠洋航海經驗的海員多的是。」

船東甲：「他們不是香港人，放心不下。」

行內人乙：「……………」

香港遠航海員其實已斷層卅多年，青黃不接，沒有年青人入行，有人認為：-

- (1) 香港是個國際航運中心，只要有輪船到達、出入境，便可無需本港海員；
- (2) 海員是航運業的下游者，我們需要的是航運業的上游者，例如海事律師、船舶經紀等等；
- (3) 香港特區政府不曾全力推動遠航海員業；
- (4) 香港的年青人已沒有像四五十年前的人那般刻苦耐勞，他們只想用最快的方法搵快錢、炒股炒樓；
- (5) 香港年青人不喜歡離鄉別井，又無女可泡，在船上工作太寂寞了。

政府要催谷海員行業，包括本地 (local)、內河 (river trade) 和遠航 (sea going) 的。必要時，規定香港船東要僱用 50% 以上的香港海員在香港籍船上工作。其次，可考慮對遠航海員全額豁免薪俸稅來吸引他們入行。海員資格考試要直接與 IMO 公約相同，不要搞花巧、刁轉、留難考生。

船公司老闆應給與多些機會，優先僱用本地人，不要只僱用其他國籍工資最平的船員。在這方面，如果政府願意配合更佳。

海事科技是物理學科，需要實際操作和經驗才可以順利完成工作。因此，學校的師資很重要。如果沒有人入行，遠航師

資又何來呢？我們不可能閉門訓練，便會有遠航師資。遠航師資必須擁有豐富的航海經驗才可，樹上是不可能長出老師的。

---

( 林傑船長 : *Master Mariner, M.I.S., MH.* )



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## Law Column - EU and UN sanctions on Iran lifted

*Su Yin Anand / Devandran Karunakaran  
Michelle Linderman / Kevin Cooper*

On 16 January 2016 the EU and UN nuclear-related economic and financial sanctions against Iran were terminated in line with the Joint Comprehensive Plan of Action (JCPOA) agreed between Iran, the EU, and the “P5+1” (permanent UN Security Council members France, China, Russia, the UK and the US ‘plus’ Germany) in July 2015.

This included the delisting of many UN and EU entities and individuals. US secondary legislation imposing nuclear-related economic sanctions have also been suspended.

### What does this mean for you?

Now that these sanctions have been lifted EU entities may begin trading and working with Iranian entities as the majority of EU sanctions and most of the US extra-territorial sanctions will be lifted. Some EU restrictive measures remain in place (but these relate largely to military goods; weapons; and, items that might be used for internal repression) and some entities and individuals remain listed, however, this “opening up” presents a wealth of opportunities for, amongst others, those keen to take advantage of opportunities in Iran’s oil, gas, shipping, trade and aviation sectors.

The major sectors that will be affected by this initial phase of sanctions relief include:

- > Financial, Banking and Insurance
- > Oil, Gas and Petrochemicals
- > Shipping, Shipbuilding and Transport

But what does this mean for Singapore and Hong Kong?

### The US angle

While the lifting of UN and EU sanctions represents a huge step forward, a number of challenges to doing business in Iran will remain. In particular, those looking to commence or recommence business with Iran need to bear in mind that many US primary sanctions i.e. those which affect US persons and entities will not be lifted. Should a business have a US nexus, it may still not be able to trade with Iran. In addition, parties need to be aware of the restrictions relating to US origin goods. US Dollar transactions with Iran will still be prohibited and some entities will still be listed as Specially Designated Nationals.



## **"Snap back" provisions**

For those who have determined that they are able to trade with Iran and are keen to sign contracts, it is also important to bear in mind that the JCPOA contains "snap back" provisions which will re-introduce restrictions if Iran breaches its side of the deal. It may therefore be worthwhile including clauses in any contracts that are signed that take this risk into account.

## **Continued need for vigilance**

As we have said, some entities and individuals are still subject to US designations and/or remain subject to EU restrictions and certain other restrictive measures remain in place. As such, those considering conducting business with Iran should remain vigilant and continue to carry out appropriate due diligence on proposed counterparties and seek legal advice in order to ensure that they comply with any remaining restrictions and to ensure that their contracts provide the necessary protections. They should also ensure that there are no restrictions in their insurance or finance arrangements that preclude conducting business in or with Iran or Iranian entities.

## **Anti-corruption and bribery**

Finally, although the lifting of sanctions offers huge potential for EU businesses, it is also worth bearing in mind that Iran is not an easy place to do business and it scores high on the Corruption Perception Index. There is therefore a

high risk of bribery and corruption. It is important therefore to ensure that, as well as ensuring sanctions compliance, suitable anti-bribery and corruption policies are put in place to help to mitigate those risks.

## **HONG KONG SANCTIONS LAW**

Hong Kong enforces the UN sanctions against Iran pursuant to the United Nations Sanctions (Iran) Regulation (Cap. 537AF) (the 'Regulation'). On 12 January 2016, the Chief Executive issued L.N. 8 of 2016, which implements the easing of UN sanctions under the Joint Comprehensive Plan of Action (the "JCPOA").

It is important to note that Hong Kong sanctions apply to all persons within Hong Kong territory, and have extra-territorial effect on all Hong Kong-incorporated companies and individuals who hold both Hong Kong permanent residency and Chinese citizenship, as well as aircraft and ships registered in Hong Kong. Directors of Hong Kong-incorporated companies or foreign companies doing business in Hong Kong are also at risk of personal liability for any corporate breaches of Hong Kong sanctions, irrespective of the nationality or domicile of the director.

Companies and individuals connected with Hong Kong now considering business opportunities with an Iran nexus will still need to consider whether the transaction falls within any of the new exceptions inserted into the Regulation, or in the appropriate case, whether it is necessary to apply for the relevant license from the Hong Kong Government.

## **SINGAPORE SANCTIONS LAW**

Similarly, Singapore enforces the UN sanctions regime against Iran under the United Nations (Sanctions – Iran) Regulations 2014 and the Monetary Authority of Singapore Act. These apply to all persons in Singapore and have extraterritorial effect on Singapore citizens, Singapore-incorporated companies, foreign companies registered in Singapore, as well as aircraft and ships registered in Hong Kong.

It is anticipated that Singapore will shortly amend its sanctions law to reflect the termination of the UN nuclear-related economic and financial sanctions against Iran. However, many restrictions on transactions connected with Iran will likely continue to apply. Companies and individuals connected with Singapore should continue to bear in mind the need to comply with their statutory duty of vigilance in respect of all dealings with Iran-related entities.

## **THE PRC POSITION**

As a member of the UN Security Council, China officially implemented the UN sanctions into PRC Law under Announcement No. 32 [2008] of the Ministry of Commerce. Chinese export operators are prohibited from dealing with sanctioned Iranian individuals as designated by the UN. An exemption permit is available upon application to the Ministry of Commerce in limited circumstances. The delisting of various entities and individuals as sanctioned persons or entities under the JCPOA should broaden the opportunities for Chinese entities to trade with Iran.

However, it is important to note that China has only ever adhered to the letter of the UN sanctions in respect of trade connected to nuclear proliferation and missile systems. It has declined to participate in the international embargo on the Iranian oil and petrochemical industry. Evidence of enforcement remains opaque, as the enforcement policies set by the Ministry of Commerce are not publicly available. Therefore, the recent changes to the international sanctions regime is unlikely to have a significant impact on the PRC regime. On the contrary, China has been one of Iran's biggest trading partners. However, the lifting of sanctions by the EU and the easing of sanctions by the US will present China with competition in Iran and the Middle East. China is trying to combat this by promoting its One Belt One Road policy aggressively in this region, through the use of initiatives including the US\$40 billion Silk Road Fund. This could present business opportunities in the region.

## **DETAILS OF THE UN SANCTIONS**

In broad terms, the amendments to the UN Sanctions as implemented in Hong Kong mean that there are now a number of new exceptions concerning nuclear and arms-related material; transportation of nuclear and arms-related material; commercial and financial activity related to uranium mining; and the transit of sanctioned individuals through Hong Kong. In addition, the licensing requirements have been relaxed in relation to the carriage of nuclear or military material; provision of services and training relating to Iran's nuclear programme; financing or economic resources to sanctioned entities; ballistic missile technology; and certain services to ships with an Iran nexus.

It is important to understand that the new exceptions are conditional. Prohibitions in respect of the above list continue to apply unless the activity is in accordance with the terms of the JCPOA and, in the appropriate case, certain IAEA guidelines are satisfied. There is also scope for the UN Security Council to approve activities in advance on an ad hoc basis if it considers the activity to be consistent with the implementation or objectives of the JCPOA and Resolution 2231.

These above conditions also apply to any applications to the Chief Executive of Hong Kong for licenses to supply prohibited items or training, services or assistance in respect of prohibited items. The list of prohibited items includes conventional arms and those items on IAEA and UN lists which are considered to be linked to Iran's proliferation sensitive nuclear activities.

### **WHAT DOES THIS MEAN FOR YOU?**

Now that these sanctions have been lifted Hong Kong entities may begin trading and working with Iranian entities. Some Hong Kong restrictive measures remain in place (but these relate largely to military goods; weapons; and, items that might be used for internal repression), and some entities and individuals remain listed.

However, as with the lifting of the EU sanctions against Iran, this "*opening up*" of restrictions in Hong Kong presents a wealth of opportunities for, amongst others, those Hong Kong entities that are keen to take advantage of opportunities in Iran's oil, gas, shipping, trade and aviation

sectors. For companies involved in the LNG trade, the opening up of Iran presents significant opportunities as some reports have predicted that Iran's trade in LNG has the potential to become one of the world's biggest.

### **THE LONG ARM OF THE US CANNOT BE IGNORED**

Although the lifting of sanctions represents a significant step forward, the situation with Iran remains tense and is liable to change. For example, the US announced on 17 January 2016 that it was adding eleven (11) individuals and companies to the Specially Designated Nationals List (the 'SDN List') in response to the ballistic missile test conducted by Iran on 10 October 2015 in breach of UN sanctions. The SDN List names individuals and companies which US citizens and businesses are prohibited from transacting with. Among the new additions to the SDN List is one Chinese national and one Hong Kong company, which highlights the ongoing need for businesses in Asia to evaluate whether their conduct risks breaching US sanctions. In this regard, it is important to bear in mind that the US maintains very broad definitions of 'US persons'. Where a Hong Kong or Singapore based company is incorporated in the US, it will be treated as a 'US' person for the purposes of the Iran sanctions regime. This is the same if a Hong Kong or Singapore organisation is a subsidiary of a US company or owned by US persons. Accordingly, the long arm of US law has the potential to reach Hong Kong and Singapore organisations, despite the changes in local law.

## CONCLUSION

It is important that anyone considering conducting business with Iran remains vigilant and continues to carry out appropriate due diligence on proposed counterparties, and seeks legal advice to ensure that they comply with any remaining restrictions and are suitably protected in their contracts. Furthermore, it is also vital to check insurance and finance arrangements to ensure that there are no restrictions that preclude conducting business in or with Iran or Iranian entities.

Finally, as Iran scores highly on the Corruption Perception Index, it is important to ensure that suitable anti-bribery and corruption policies are put in place to help to mitigate risks.

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## AA TALK

### A Few Questions on Claims

**Raymond T C Wong**

#### **Question 1**

*A vessel with bulk cargo on board under one bill of lading grounded and tugs were engaged to refloat her but then the limited information available would be sufficient to substantiate that the vessel and the cargo were in position of peril and it was suggested that the vessel could have been refloated under her own power after a period of time. What would you suggest I (the Ship-owners) can do to protect my interests?*

For the expenditure to be considered as general average all the properties in the adventure must be at risk and not merely one interest. It does not appear that the facts as known at that time were sufficient to help make a judgment as to whether the expenditure would fall to be general average (to be shared by all the properties in the adventure) or sue and labour charges (to be paid by Hull & Machinery Underwriters subject to the cover). It is certainly a border-line case. I would suggest that firstly check the terms and cover of the insurance on the ship to see if there is a General Average Absorption Clause that may adequately

cover the expenditure involved. In absence of such cover and if time allows, you should approach the Hull & Machinery Underwriters (through Brokers) with a view to persuading the Underwriters to accept liability for the relevant costs on the basis of them being Sue & Labour. The last resort would be to proceed with the collection of general average security from the concerned in cargo in view of the fact that only one bill of lading is involved – preferably with the agreement of Hull Underwriters in the circumstances to bear the cost of collecting security (which would unlikely be much) if at the end of the day when the full facts of the casualty proves that this is a case of Sue & Labour.

#### **Question 2**

*What obligations as to seaworthiness does a ship-owner have under a time policy on ship subject to Institute of Time Clauses – Hulls 1/10/83?*

The ITC-Hulls 1/10/83 (which specifies that the insurance is subject to English law and practice) do not mention the word “seaworthiness” / unseaworthiness and Section 39(5) provides as follows:

“In a time policy there is no implied warranty that the ship shall be seaworthy at any stage of the adventure, but where, with the privity of the assured, the ship is sent to sea in an unseaworthy state, the insurer is not liable for any loss attributable to unseaworthiness.”

So, the law does not imply that the vessel, at any particular time, shall be seaworthy. However, where the vessel was unseaworthy, and the unseaworthiness contributed to the loss/damage, and the Assured was aware of the unseaworthiness, the Underwriters are not responsible for the loss/damage.

Hence, if the vessel was unseaworthy and the Assured was aware of that unseaworthiness which did not contribute to the loss/damage caused by a peril insured, the Underwriters still have to pay the claim. On the other hand, if the seaworthiness contributed to the loss/damage proximately caused by a peril insured but the Assured was not aware of that unseaworthiness, the Underwriters again will have to pay the claim.

“Privity” means that the Assured must know or should have known the defect and such knowledge includes so-called “turning a blind eye” and it is submitted that this will extend to the Assured being

required to ask questions, keep a good record of maintenance and inspection. The burden of proving unseaworthiness rests with the Underwriters but the Assured will have to first of all prove a loss proximately caused by a peril insured against.

### **Question 3**

*Damage to main engine bearings, etc., attributed to negligence of crew was repaired at Port A early last year but after 12 months damage to main engine idle gears became apparent at sea and the vessel had to put into Port B where permanent repairs were effected. The repairs involved re-metalling bearings and was agreed to have been resulted from negligence of the repairers in re-metalling of the bearings at Port A last year.*

*The vessel was insured subject to Institute of Time Clauses – Hulls 1/10/83. The Assured has put forward the claim for the Port B repairs as being a supplementary claim for the Port A repairs, i.e. same crew negligence claim applying one single deductible for both. Underwriters however contend that the second repair is a separate claim attributable to negligence of the repairers at Port A on the first occasion and is subject to a separate deductible in terms of Clause 12 of the ITC-Hulls 1/10/83. Whose contention is correct?*

Section 69 of the Marine Insurance Act 1906 provides for the measure of indemnity being the reasonable cost of repairs. What is reasonable is a question of fact. Section 88 of the MIA specifically states that this is so as regards reasonable time, reasonable premium and reasonable diligence and it would seem logical to apply the same principle to reasonable cost and reasonable repairs. Understandably, the Assured, having acted reasonably and bona fide in carrying out the reinstatement of his loss he is entitled to call these repairs the reasonable repairs and cost incurred the reasonable cost of repairs. However, it is submitted that there is a clear distinction between the situation where repairs, effected and in good faith considered to be permanent, subsequently transpired to have been insufficient and the situation where repairs would have been entirely satisfactory but for the negligence of repairers in the effecting of the repairs (whether the negligence results in a duplication of the original damage or not). The facts of this case seem to suggest that the latter situation exists. We would agree with the Underwriters that the damage repaired at Port B is a result of an entirely new and separate accident, negligence of repairers at Port A.

The Editor would share with readers the following old notes by his former partner, who was an outstanding average adjuster:

1. Underwriters are liable for reasonable cost of repairs but are not guarantors to Assured for workmanship of repairers.
2. If repairs are entrusted to repairers of repute with appropriate facilities the cost of that work normally represents reasonable cost of repairs.
3. If such repairers do a bad job and damage results, the damage is a separate claim for repairers' negligence if covered.
4. If such repairers do a bad job, whether damage is sustained or not, the cost of re-doing properly the work which had been done badly, is not part of the reasonable cost of repairs either of the original damage, or of the new damage.
5. If, with general agreement, a calculated risk is taken with a method of repair which might succeed or not (e.g. metal locking, or welding on propeller blade tips) and it fails in ordinary service, I would allow the cost of that work, and the cost of the new bedplate etc. or propeller, as part of the reasonable cost of repairing the original damage.



#### Question 4

*Clause 10.4 of Clause 10 – Notice of Claim and Tenders of the ITC-Hulls 1/10/83 states: “In the event of failure to comply with the conditions of this Clause 10 a deduction of 15% shall be made from the amount of the ascertained claim. Does “ascertained claim” refer to the gross claim?*

There used to be argument that the “ascertained claim” refers to the gross claim, i.e. before the application of the policy deductible. However, in practice, we often saw adjusters apply the 15% penalty to “net” claim, i.e. after applying the deductible. In their book on the Institute Time Clauses, Messrs. N.G. Hudson and J.C. Allen, both former chairmen of the Association of Average Adjusters write: “There is a fixed penalty for non-compliance with the conditions of this clause and this is specified as a 15 per cent deduction from the ascertained claim (the ascertained claim being the net claim after the policy deductible).”

*(Do you have a specific problem on a marine insurance claim? Then, write to “AA Talk” – email: [info@seatransport.org](mailto:info@seatransport.org))*

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*(Mr. Raymond T C Wong: Average Adjuster)*

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