

SUB-COMMITTEE ON SHIP DESIGN AND  
CONSTRUCTION  
1st session  
Agenda item 4

SDC 1/4/3  
29 November 2013  
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**DEVELOPMENT OF PROVISIONS TO ENSURE THE INTEGRITY AND UNIFORM  
IMPLEMENTATION OF THE 1969 TM CONVENTION**

**Comments on the report of the correspondence group**

**Submitted by the United States**

**SUMMARY**

<i>Executive summary:</i>	This document comments on the report of the correspondence group, and, in particular, on interpretations related to alterations deemed to be a substantial variation in existing gross tonnage
<i>Strategic direction:</i>	2
<i>High-level action:</i>	2.0.1
<i>Planned output:</i>	2.0.1.5
<i>Action to be taken:</i>	Paragraph 6
<i>Related documents:</i>	SDC 1/4, SDC 1/INF.4; SLF 38/10/1; SLF 54/INF.11; SLF 55/9/4 and TM.5/Circ.5

**Introduction**

1 This document is submitted in accordance with the provisions of paragraph 6.12.5 of the *Guidelines on the organization and method of work of the Maritime Safety Committee and the Marine Environment Protection Committee and their subsidiary bodies* (MSC-MEPC.1/Circ.4/Rev.2), and provides comments on the report of the TM Convention Correspondence Group (SDC 1/4) and, in particular, on the text within square brackets (Interpretation A.3(2)(d)-1 of annex 1 to the report), regarding the 1% criterion for alterations and modifications deemed to be a substantial variation in a ship's gross tonnage.

2 Overall, the United States endorses the outcome of the group's work, and supports the updated interpretations as agreed to by this group, which if agreed to at this upcoming session could, in our view, enable the Sub-Committee to complete its work under this planned output. The United States proposes that the 1% criterion be deleted.

## Background

3 As discussed in our earlier documents to the SLF Sub-Committee on this subject (SLF 55/9/4 and SLF 54/INF.11), the issue of how ship alterations or modifications affect the certification of a ship's gross and net tonnage is extremely complex, with profound implications for both flag States and shipowners and operators. At the 1969 Tonnage Conference that developed the TM Convention, there was much discussion but little agreement on two principal areas regarding tonnage recertification: 1) the ability to retain pre-existing national tonnages for the purposes of applying provisions of International Conventions (so-called GRT tonnage grandfathering privileges); and 2) the need to recertify a ship's tonnages following any change that could potentially affect the tonnage assignment. In the end, the Conference agreed to the term "substantial" (as deemed by the flag Administration) in describing changes that would cause loss of tonnage grandfathering (articles 3(2)(b) and (d)), with the less specific term "necessitate an increase" used to describe changes which would require cancellation of the International Tonnage Certificate (1969) (ITC69) (article 10(1)). In 1994, TM.5/Circ.5 included a 1% criterion for loss of GRT tonnage grandfathering privileges, but did not address other tonnage certification impacts resulting from ship alterations or modifications.

## Discussion

4 With regards to the work on the 1% criterion that carried forward from SLF 55, as documented in the correspondence group's report and associated document SDC 1/INF.4, the United States noted the following:

- .1 The United States remains unconvinced that a tonnage change as small as 1% tonnage constitutes a "substantial" change in a ship's tonnage. The TM Convention uses the terms "major character" and "substantial" interchangeably\*, and the examples of "major" changes given within this and other instruments (e.g. removing a superstructure, installing a mid-body section) are inconsistent with a criterion as small as 1%. Further, while some flag States currently apply a criterion of one tonnage unit ("unity") for evaluating minor changes (i.e. small changes requiring recertification of tonnages), the majority of flag States represented by questionnaire respondents currently apply a criterion of 1%, or higher, for this purpose.
- .2 There was, and remains, confusion about the origin and significance of the 1% criterion of TM.5/Circ.5, stemming from a lack of clarity in the TM Convention over recertification of GRT tonnages following minor changes. For example, it is not clear from the record whether the 1% criterion of TM.5/Circ.5 was developed for use in evaluating "substantial" changes, or instead for evaluating minor changes that require GRT or GT tonnages to be recertified. Consequently, we caution the Sub-Committee against assuming there was prior agreement for a 1% tonnage change as constituting a "substantial" or "major" change. In fact, according to document SLF 38/10/1 and discussions at the 1969 TM Convention (see document SLF 54/INF.11), a change on the order of 10% had previously been assumed for this purpose, with a 1% change viewed by some, including the United States, as within the limits of calculation accuracy.

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\* See the 1969 TM Convention, article 3(2)(b) and the asterisked note on the ITC69 form in annex II.

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- .3 There appears to be little consensus on the issue of how non-structural changes, and/or the addition or removal of temporary deck equipment such as portable quarters units, affect tonnage recertification, which should be resolved before deciding on magnitudes of changes affecting tonnage recertification. For example, unlike some flag States, the United States accounts for non-structural enclosures and temporary deck equipment, but uses a more generous allowance for tonnage recertification, while having instituted measures to ensure a ship's certified tonnages remain within 5% of their actual values. Retaining a 1% criterion as constituting a "substantial" or "major" change before harmonizing international interpretations regarding treatment of such changes is premature at best. At worst, it could jeopardize flag State approaches, like those used in the United States, that help avoid costly and unnecessary tonnage recertifications, while maintaining the overall integrity of tonnage assignments.
- .4 The establishment of a single 1% volumetric criterion in TM.5/Circ.5 for loss of GRT tonnage grandfathering privileges has left open a potential loophole that could allow the redesign and reconstruction of an older ship, with completely different principal dimensions and other characteristics, that nonetheless retains GRT tonnage grandfathering privileges. We favour the approach agreed to at the 1969 Tonnage Conference, embodied in the language of the TM Convention and used in other international instruments, of allowing each Administration to make determinations of "substantial" or "major" changes on a case-by-case basis in this limited context, taking into account the individual circumstances of the ship. The numerical value of the aggregate tonnage change should be only one of many considerations.
- .5 The United States retained its national measurement system for domestic purposes, and has a large number of ships under its flag that are eligible for GRT tonnage grandfathering privileges, as reported in document SDC 1/INF.4 (see especially table 1-1 of annex 2 to document SDC 1/INF.4). As a result, we have robust measures in place to recertify GRT tonnages of qualifying older grandfathered ships, which was a concern cited among those involved with the work that resulted in the adoption of the current 1% criterion. Considering the relatively small numbers of grandfathered ships reported for other flag States, it is unclear why any interpretation is needed regarding this complex matter, which the TM Convention explicitly leaves to each flag Administration.

## **Conclusion**

5 In the view of the United States, the correspondence group's work has called into question the need for, and appropriateness of, the square-bracketed interpretation of A.3(2)(d) in annex 1 to document SDC 1/4 concerning what constitutes "alterations or modifications which the Administration deems to be a substantial variation in ... existing gross tonnage". Accordingly, it is proposed to delete interpretation A.3(2)(d) in its entirety. Otherwise, the United States fully supports the Unified interpretations of annex 1, and urges their acceptance by SDC 1.

## **Action requested of the Committee**

6 The Sub-Committee is invited to consider the information presented in this document, and take action as appropriate.