

SUB-COMMITTEE ON STABILITY AND
LOAD LINES AND ON FISHING VESSELS
SAFETY
55th session
Agenda item 9

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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 criteria for applying national (GRT) tonnage grandfathering provisions
<i>Strategic direction:</i>	2
<i>High-level action:</i>	2.1.1
<i>Planned output:</i>	2.1.1.2
<i>Action to be taken:</i>	Paragraph 6
<i>Related documents:</i>	TM.5/Circ.5; SLF 38/10/1; SLF 54. INF.11; SLF 55/9 and SLF 55/INF.2

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 (SLF 55/9) and, in particular, on issue 8.a, Criterion for use of "existing" tonnage, as identified in the report and the associated information document (SLF 55/INF.2).

2 Overall, the United States supports the outcome of the group as reflected in its report. We endorse the group's conclusions that no amendments to the TM Convention are necessary or appropriate under this planned output, along with its recommendations to use a working group to further develop revised interpretations and the related draft Assembly resolution on use of national tonnage (annexes 2 and 3, respectively, to document SLF 55/9). In this regard, we note the work of the correspondence group in seeking to identify those issues for which discussions in plenary were deemed necessary, and the results that there was insufficient support for such discussions (see paragraph 6.5 of document SLF 55/9). This document addresses issue 8.a, for which we are of the view that a decision from the Sub-Committee is required before further development and finalization of the revised interpretations.

Background

3 Issue 8.a concerns provisions of the TM Convention that allow owners of qualifying "existing" (older) ships to apply older tonnage breakpoints in international conventions using the ships' pre-existing national gross tonnages, often expressed in terms of "gross register tons" or "GRT" (see document SLF 55/INF.2 for more details). These so-called "grandfathering" provisions are found in article 3(2)(b) and (d) of the Convention, and are effectively revoked for "ships which undergo alterations or modifications which the Administration deems to be a substantial variation in their existing gross tonnage." As described in document SLF 38/10/1, in 1993 a correspondence group developed a 1 per cent criteria for what constitutes a "substantial" alteration, although concern was expressed that a tonnage change of 1 per cent was effectively within the limit of calculational accuracy and that a criterion of 10 per cent or greater was more appropriate. Without record of further discussion of this criterion, SLF 38 recommended establishing the 1 per cent criterion for "substantial" alterations, and hence the breakpoint for loss of GRT grandfathering privileges, which was agreed to by MSC 63 for inclusion in the current interpretations of the TM Convention (TM.5/Circ.5).

Discussion

4 Information has come to light in conjunction with the work on this planned output that, when coupled with our experience in applying this one per cent criterion to the United States' flag ships, calls into question its appropriateness, specifically:

- .1 relationship to remeasurement criterion: As discussed in document SLF 54/INF.11, remeasurement and adjustment of tonnages following ship alterations or modifications has historically presented challenges with all measurement systems, due in part to the potentially far-reaching consequences of any change to a ship's assigned tonnage. While article 10(1) of the TM Convention refers to tonnage certification cancellation if certain alterations would "necessitate an increase in gross tonnage or net tonnage", there have been no interpretations of this language, which is fundamentally related to the one per cent grandfathering criterion. In its Round 1 work on issue 7.a (Remeasurement following alterations), the correspondence group evaluated nine different proposals on establishing a remeasurement criterion, ranging from tonnage changes of unity to two per cent, with little agreement (e.g. see annex 2 to document SLF 55/INF.2). In view of the information offered by members of the group during both the Rounds 1 and 2 work, and the lack of agreement on a threshold for remeasurement after alterations, the use of a 1 per cent criterion as constituting a "substantial" alteration (as opposed to one merely requiring remeasurement) appears to be inappropriate;
- .2 discussions at the 1969 Tonnage Conference: As contained in document SLF 54/INF.11, the establishment of criteria for both remeasurement and loss of grandfathering privileges was the subject of discussions at the 1969 Tonnage Conference that developed the TM Convention. On multiple occasions, the Conference addressed proposals to establish a specific "substantial" alteration criterion, all involving a 10 per cent change in tonnage. While there was no disagreement as to the magnitude of this 10 per cent value, concern was expressed over the need to leave latitude to individual Administrations. In the end, the Conference agreed that determinations as to what constitutes a substantial alteration should be left up to each Administration, recognizing that a one per cent change was within measurement tolerances; and

- .3 the United States experience: The United States adheres to the 1 per cent criterion of TM.5/Circ.5 for "existing" ships, but beginning in 1996, the United States has applied a 5 per cent criterion for GRT tonnage grandfathering of ships covered by the Interim Schemes for Tonnage Measurement. Under the United States national measurement system, which remains in effect and may be applied to any United States flag ship, even a relatively minor alteration to hull framing, ballast spaces, or certain superstructure spaces can cause a substantive change in GRT tonnage. Accordingly, enforcement of the 1 per cent criterion has been problematic. United States shipowners are often unaware of the implications of such changes, and have been subjected to costly delays in instances where non-compliance was detected. We additionally note that measurement errors found through our auditing programme are typically on the order of 1 per cent, and in our experience, acceptable measurement tolerances yield variations of tonnages of a similar magnitude. Our experience has also shown that owners are much more likely to be aware of, and report, tonnage changes on the order of 5 per cent or greater.

Conclusion

5 In view of the information provided in paragraph 4 above, the United States concludes that the Unified interpretations document being developed under this planned output should not include a specific substantial alteration criterion in terms of a percentage of change in tonnage. The delegation of the United States would not object to development of generalized guidance on this subject to assist Administrations in making substantial alteration determinations. However, in our view, the finalization of such guidance would be difficult to achieve at this session as a practical matter, based on the lack of consensus on this issue within the correspondence group, and the challenges inherent in taking into account the many differences between national measurement systems.

Action requested of the Sub-Committee

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

- .1 decide whether a specific criterion for "substantial" alterations should be included in the Unified interpretations document being developed; and
 - .2 if the Sub-Committee decides in favour of retaining a specific criterion, replace the existing 1 per cent criterion with one that is more consistent with measurement tolerances (e.g. a criterion 5% or greater).
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