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SUB-COMMITTEE ON CARRIAGE OF
CARGOES AND CONTAINERS
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Agenda item 6

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AMENDMENTS TO THE IMDG CODE AND SUPPLEMENTS

Non-Declared and Misdeclared Dangerous Goods

Submitted by International Chamber of Shipping (ICS)

SUMMARY

Executive summary: Following the invitation of DSC 18, this document proposes amendments to MSC.1/Circ.1442 in order to improve the ability of States and industry to address the problem of non-declared and misdeclared dangerous goods cargoes worldwide.

Strategic direction: 5.2

High-level action: 5.2.3

Planned output: 5.2.3.4

Action to be taken: Paragraph 11

Related documents: DSC 17/3/13; DSC 18/7/12; DSC 18/13

Introduction

1 During DSC 18 the Sub-Committee considered the ICS paper DSC 18/7/12, recommending amendments to MSC.1/Circ.1442 to enhance the ability of States and industry to address the problem of non-declared and misdeclared dangerous goods cargoes worldwide. Many States supported the paper in principle; the Sub-Committee consequently invited ICS to submit concrete proposals to a future session for consideration.

2 It is well recognised that non-declared and misdeclared dangerous goods imperil the entire transport chain and are a particular hazard for seagoing vessels, their crew, other cargo on board and the marine environment. Incorrect declarations may arise through deliberate misrepresentation or to ignorance of the relevant requirements by consignors. Whilst some individual shipping companies have implemented additional investigative measures to identify potentially problematic containerized cargoes, and pooling of industry information about incidents exists online, the most effective means to inhibit the movement of misdeclared dangerous goods remains targeted inspection procedures by Contracting Governments prior to loading.

3 A significant difficulty in addressing instances of non-declaration and misdeclaration of dangerous goods lies in the international profile of the supply chain. At the point at which a non-compliant cargo can be identified and stopped, it may be thousands of miles removed from the responsible party, which may well be in a different jurisdiction to that of the inspecting State. Therefore, a mechanism is required to ensure that States are aware of the need to report offending stakeholders to the appropriate authorities so that appropriate corrective action can be taken.

4 Existing measures to address the problem of non-declared and misdeclared dangerous goods are found in section 1.1.1.8 of the IMDG Code and MSC.1/Circ.1442. However, whilst the provision and supporting guidance are unquestionably of value, it is felt that they could align more closely to ensure that non-compliances are identified throughout the supply chain and persistent offenders are dealt with appropriately, particularly through authority-to-authority communication.

Proposed amendments to MSC.1/Circ.1442

5 To strengthen the existing guidance and in particular to emphasise the need to notify the competent authority of the State in which a non-compliant enterprise is domiciled, the following amendments are proposed to MSC.1/Circ.1442, in accordance with the invitation of DSC 18. It is believed that the recommended additional text drawn from the IMDG Code will stress the importance of identifying non-declared and mis-declared dangerous goods cargoes, and ensure that persistent offenders are identified and dealt with as a matter of course. Proposed amendments to the original text of the circular and its annex are indicated by italics as follows.

6 It is proposed to amend the final sentence of paragraph 3 in order to align the paragraph with the provisions of 1.1.1.8 of the IMDG Code:

"3 To avoid the diverting of dangerous goods to ports where inspections are not carried out, a regional approach should be taken. *In cases where the safety of the transport of dangerous goods is compromised as a result of serious or repeated infringements by an enterprise which has its headquarters on the territory of another competent authority, that competent authority should be notified of such infringements in order to investigate and take actions against those responsible.*"

7 It is proposed that a new paragraph 2.2.3 be added to Annex 1 to ensure that the reporting element of provision 1.1.1.8 of the IMDG Code is accounted for in the Guidance:

"2.2.3 Reporting between competent authorities in cases where the safety of the transport of dangerous goods is compromised as a result of serious or repeated infringements by an enterprise which has its headquarters on the territory of another competent authority is strongly encouraged."

8 It is noted that paragraph 2.3 of Annex 1 does not explicitly cover the reporting of non-compliances to the appropriate competent authorities at present, and therefore additional text is proposed in order to cover this apparent discrepancy:

"2.3 Actions undertaken upon discovery of a CTU with a deficiency may include placing the cargo on hold, or putting the CTU out of service, and/or providing appropriate penalty actions against those responsible under the IMDG Code, CSC and/or applicable national legislation, including, but not limited to

reporting the non-compliance to the competent authority of the State in which the infringing enterprise has its headquarters, as appropriate.”

9 For the reporting element of provision 1.1.1.8 of the IMDG Code to be accounted for in the guidance, it is proposed that a new paragraph 5.11.4 be included in Annex 1 to the circular :

“5.11.4 Reporting deficiencies to the relevant competent authority in cases where the safety of the transport of dangerous goods is compromised as a result of serious or repeated infringements by an enterprise which has its headquarters on the territory of another competent authority.”

10 Whilst paragraph 5.11.8 of Annex 1 implicitly covers non-declarations and misdeclarations, it is felt that explicitly identifying this malpractice will emphasise the seriousness of the threat that such non-compliances present and distinguish them from lesser infringements which would also fall under irregularities in the packaging, labelling, etc. It is therefore proposed to amend paragraph 5.11.8 as follows:

“5.11.8 If a discrepancy involves the non-declaration or misdeclaration of cargo, the cargo’s package, label or other specification when the shipment was originally offered and accepted for transportation, the original shipper or freight forwarder shall be held accountable. The inspector should avoid taking action against the vessel, carrier, or waterfront facility simply because they are the most accessible party.”

Action requested of the Sub-Committee

11 The Sub-Committee is invited to further consider the proposed amendments and take action as appropriate.
