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Shaping the Future of Shipping

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Mr Amitabh Kumar  
Director General of Shipping  
Ministry of Ports, Shipping and Waterways  
Mumbai  
Maharashtra 400042  
India

27 March 2023

Dear Mr Kumar,

## **DGS ORDER NO. 06 OF 2023 – AGE NORMS AND OTHER QUALITATIVE PARAMETERS W.R.T. VESSELS**

### **Introduction**

The International Chamber of Shipping (ICS) is the global trade association for shipowners and operators, representing 41 national shipowners' associations and over 80 per cent of world merchant fleet. ICS represents all sectors and trades within the global industry and enjoys consultative status with the UN International Maritime Organization (IMO).

### **Background**

We are writing regarding the recent announcement by the Ministry of Ports, Shipping and Waterways which introduces age limits for certain vessel types calling at Indian ports, taking effect from 24 February 2023.

If our understanding is correct, Order No. 06 of 2023 appears to revoke trading licences (awarded under Sections 406 and 407 of the India Merchant Shipping Act, 1958) of foreign flagged vessels operating in India's Exclusive Economic Zone (EEZ) if they are deemed to be non-compliant with these age limits. This would include (inter alia) oil tankers, bulk carriers, general cargo vessels and sections of the offshore vessel fleet over 25 years of age, as well as containerships, gas carriers and chemical tankers over the age of 30 years, irrespective of their flag State.

ICS respectfully suggests that this Order and its impact on trading licences awarded under Sections 406 and 407 of the Merchant Shipping Act 1958, seems to be at variance to the SOLAS and MARPOL Conventions, to which the Government of India is a Party, and which do not stipulate any limits for the age of ships which may

engage in international trade. ICS also suggests that the regulation of vessels with respect to their age would appear to exceed the scope of coastal state jurisdiction as set out in Article 56 and Article 211 of the UN Convention of the Law of the Sea (UNCLOS).

**ICS notes there was an extensive discussion with stakeholders prior to the implementation of the Order and we wonder if this consultation was extended to other States, through the IMO, pursuant to Articles 211(3) and 211(6) of UNCLOS? If so, would it be possible to provide ICS with details of the consultation process undertaken, or, if the information is publicly available, can DGS please advise us where this may be located?**

### **Industry concerns with application of mandatory age limits on vessels**

The global shipping industry holds a number of concerns about the potential unintended consequences of this Order for safety of life at sea and pollution prevention; as well as for the maintenance of a uniform international regulatory framework, providing global rules for a global industry, which the Government of India has previously sought to defend.

### ***Unilateral regulation has safety and trade implications***

As a matter of principle, ICS is opposed to the introduction of unilateral requirements applicable to visiting ships which are at variance with IMO requirements. ICS is especially opposed to mandatory age limits for ships because they can act as a significant disincentive to the proper maintenance and upkeep of vessels in the years preceding any age limits which may apply. This has implications for the maintenance of the highest standards of safety and environmental protection. Moreover, many foreign shipping companies that have invested heavily in maintaining the quality of their tonnage, in the expectation, so long as they comply with IMO standards, that they could continue to operate these ships beyond the age limits which India has imposed, will also be severely penalised.

There is also a danger that India's introduction of unilateral age limits may be emulated by other countries around the world, including India's trading partners, but with requirements at variance to those introduced by India (as well as the regulatory framework at IMO) leading to a patchwork of piecemeal regulation. The measures taken by India may also give encouragement to governments that may be contemplating the imposition of other unilateral shipping regulations on unrelated issues, including protectionist measures affecting maritime services.

### ***Age of Vessel is an unreliable proxy for environmental efficiency***

ICS appreciates that this Order is intended to increase the environmental efficiency of those vessels which operate within India's EEZ, in particular with respect to the intensity of their CO<sub>2</sub> emissions. However, the age of a ship is not a reliable proxy for carbon intensity. Indeed, many foreign flag ships over the age of 25 years will be operating with a carbon intensity below the limits required by the new IMO carbon intensity framework, which came into effect globally following the entry into force in November 2022 of the 2021 amendments to MARPOL Annex VI. It was also agreed

at IMO that visiting ships should not be penalised by port States with respect to the carbon intensity standard attained until after the review of the CII framework to be completed by IMO by 2026. The introduction of age limits appears to fall outside the spirit of this understanding at IMO, which India helped to negotiate.

Until alternative fuels become widely available, which will probably not be the case until the 2030s and is a topic under discussion at IMO with regard to the revision of its GHG Strategy, ICS is not convinced that the phase-out of fossil fuel ships and the use of low carbon energy efficient ships will be assisted by this measure. Furthermore, the energy required to construct large numbers of new ships to replace those which, as a consequence of this Order, will be withdrawn from service prematurely, will also lead to additional GHG emissions during the 2020s than would otherwise have been the case.

### **Global Shipping Industry request for further clarification of the Order**

In addition to the above concerns, we would be grateful for further clarification on the scope of the application of the Order. We understand that the Order applies to all vessels operating within the Indian EEZ, and non-compliance would result in the revocation of a trade licence. However, as the requirement for trading licences under Sections 406 and 407 appears to apply specifically to “Indian ship[s] and [...] ship[s] chartered by a citizen of India or a company”, there remains some confusion as to whether this regulation would apply to all foreign shipping companies operating in the Indian EEZ.

**Could DG Shipping please advise as to whether the regulation would also apply to foreign flag vessels owned and operated by non-Indian nationals/companies based outside of India? Could DG Shipping also please advise whether the age limits will apply only to those vessels calling at Indian ports or is the scope of the Order intended to have wider application and apply to all ships in transit through India’s EEZ, exercising their right of innocent passage under UNCLOS?**

**Furthermore, ICS assumes that this Order does not extend to vessels calling at Indian ports with the intention of getting to ship breaking yards and with the purpose of being recycled. However, we would appreciate confirmation that our interpretation is indeed correct.**

ICS also notes that the Annexure to the Order requires that bulk carriers and general cargo ships above 20 years of age which trade to India must be inspected by RightShip. However, RightShip is a commercial vetting body which uses assessment criteria at variance to IMO (and ILO) requirements, and this does not seem to be appropriate as a mandatory requirement to be applied to visiting ships which have been issued with statutory certificates by their flag State to attest full compliance with applicable IMO (and ILO) regulations. We further note that the annexure also states that a ship might be evaluated “*by an RO under an equivalent rating methodology developed by DGS*”.

**Could you please kindly provide information about this methodology to be developed by DGS, and the extent to which this will be consistent with regulatory requirements as agreed at IMO (and ILO)?**

## **Conclusion**

ICS recalls India's impressive efforts at IMO, as a leading player in the *Indian Ocean MOU on Port State Control*, to promote a harmonized approach to PSC procedures. We also recall document MEPC 77/7/8, which India submitted to IMO in 2021 – co-sponsored by Bangladesh, China and Panama – which highlights *“the need for continued maintenance of a comprehensive global maritime regulatory framework for the development of GHG reduction measures under IMO, free of any regional extraterritorial regulatory patchwork that undermines efficient maritime transport”*.

ICS further notes that the Order states that *“The Director General of Shipping reserves the right to dispense with any requirement of this Order on a case to case basis, after considering inputs from INSA, or of any other organisation, as may be deemed appropriate in the prevailing circumstances, in public interest.”*

In addition to responding to the questions above, ICS therefore kindly requests that DGS gives further consideration to the issues raised in this letter, with a view to making adjustments to the Order as might be appropriate.

Thank you for your kind consideration.

Yours sincerely,



Guy Platten  
Secretary General  
International Chamber of Shipping