



## Weighing up change in China

**T**HE Far East continues to be an area of spectacular growth for shipping and international trade. Nowhere is this more true than in China, where increasing levels of global investment and bilateral trade are likely to increase demands on the legal system. In the marine sector, progress is already being made with plans for a new appeal court in Beijing.

In the meantime, the Club continues to see examples of practices in China that can lead to claims. Particularly with bulk cargo discharge, the Chinese courts place heavy reliance on inspection certificates issued by surveyors acting for the state-run Entry-Exit Inspection and Quarantine organisation (CIQ) attesting to, among other things, cargo discharge weights. Very often, these certificates rely on the recording of individual truck weights over a weighbridge which is said to be 'tested', and yet it is not usually possible for vessel interests to verify for themselves the accuracy and calibration of the machinery used, despite the considerable scope which exists for error.

In the Club's experience, in addition to undertaking a draft survey at the load port, the



*Discharging soyabean*

vessel's position can be markedly improved if the crew carry out assessments of the quantity of cargo remaining on board by taking a full set of all-round drafts at least once a day, whenever practicable.

When the CIQ wants to rely on a draft survey for the purposes of the inspection certificate, this should take place in the

## Chief engineer jailed

**I**N *StopLoss 26*, it was reported that a master and two chief engineers had been arrested in the United States on charges of keeping false logbooks in order to conceal the dumping of waste oil. Now comes further evidence of the tough line being adopted by

In this issue...

- ISM reminder
- US maritime security
- Draft survey checklist

presence of a senior ship's officer, and surveyors should be asked to confirm their identity in writing and the reason for their presence on board.

The Club has recently been alerted to a case where a draft survey showed the vessel to have arrived with a cargo weight in excess of the bill of lading figure. The CIQ surveyor reportedly refused to sign the draft survey, and a shortage claim was later received, based on readings from a weighbridge. Members who are faced with difficulties of this nature are advised to lodge an immediate protest to the appropriate parties, reporting the outcome of the draft surveys.

the authorities in the US with the news that a chief engineer has pleaded guilty to presenting a falsified oil record book to the Coast Guard in Oregon. He has been sentenced to three months' imprisonment, after which he will be deported. The first assistant engineer faces charges for the same offence.

### Maritime security update

**M**EMBERS may already be aware of initiatives by IMO, and particularly by the US Government, to implement substantially increased maritime security measures following the



*US developments must be monitored*

tragic events in New York and Washington DC on September 11 last year. IMO is due to decide on new security measures at the end of this year, while the US may implement its own measures even earlier than that.

It seems likely that these developments will have an effect on members' ability to trade to ports and territorial waters to which any new measures apply, so particular attention needs to be paid to the progress of any new regulations. Although many details of the requirements remain uncertain, it seems likely that they will require proof that proper risk assessments have taken place in accordance with ship/company security plans, involving designated ship and company security officers.

In the US, security plans may even need to be lodged with the authorities for approval

before the end of 2002. There may also be requirements for enhanced onboard equipment, such as means of broadcasting ship identification.

Limitations on ports of loading of cargoes destined for the US may be introduced, determined by the degree of security they can demonstrate.

#### ISM obligations

MEMBERS will be aware of the obligations placed on them by the ISM Code. But a report from The Kleberg Law Firm serves to highlight the potentially serious consequences, in the wake of a new US Coast Guard ISM enforcement initiative, of failing to implement and enforce the Code and to have an effectively operating Safety Management System when trading to the US.

In a recent incident, the US Coast Guard ordered a

It may be necessary to show that containerised cargo has been properly screened. A requirement is likely to be introduced for cargo manifests to be submitted to US Customs even before sailing from the loadport. Non-compliance penalties will usually be imposed on the shipowner, rather than on the charterer.

The entry into force of new requirements may involve short time-scales. Members should be circumspect when fixing vessels for long periods involving US trade, and are advised to consider designating a member of staff to follow developments at the IMO and in the US. Further information can also be accessed at the IMO website at: [www.imo.org](http://www.imo.org)

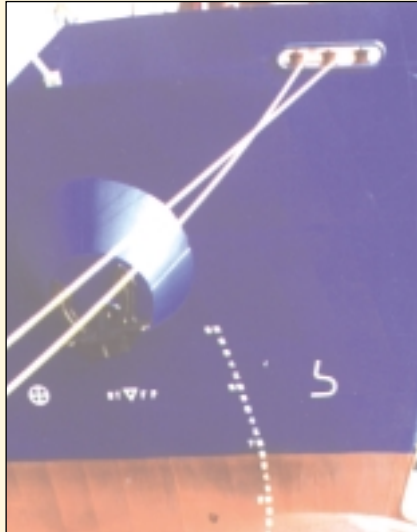
partially discharged tanker to immediately depart the US for a minimum of ninety days, until proof of ISM compliance was provided by objective evidence which demonstrated that the vessel's SMS had been operating effectively for at least three months.

The order to depart was made despite an external audit concluding that the vessel's SMS paperwork was in order and there was no threat to the safety of the vessel, its crew or the environment.

### Draft surveys

**D**RAFT surveys are a useful means of establishing cargo quantities, so the Club is grateful to Brookes Bell Jarrett Kirman for the following example of suggested best practice. A draft survey is used to ascertain the vessel's 'constant' weight and to calculate the quantity of cargo loaded or discharged. The following guidelines should be observed **at the port prior to loading**:

- Read the forward (F), aft (A) and amidships (Mid) draft marks on both sides.
- Correct these drafts to the appropriate perpendiculars.
- Obtain the density of the water at the three offshore draft marks.
- Establish the weights of ballast and other deductibles.
- Calculate the mean of mean drafts to correct for hog and sag (Mean Mid multiplied by 6 plus Mean F plus Mean A divided by 8).
- Correct the displacement for trim and heel (although heel should be avoided) and for the density of the water.
- Find the 'constant' by deducting the weights of



ballast, other deductibles and lightweight of the ship.

**At the loadport after loading**, the above procedure is repeated using the 'constant' calculated before loading and revised figures for ballast and other deductibles allowing for changes during the load to give the weight of cargo on board.

**At the discharge port**, the same procedure is followed on arrival using the same 'constant' and all other known weights as deductibles to give the provisional weight of cargo on board. After discharge, the 'constant' is verified in the same manner as that described prior to loading. If the vessel is only part-discharging, the 'constant' cannot be verified and the final outturn figures confirmed until completion at the final discharge port.

### Oh Happy Day

THE Court of Appeal in London has overturned the high court decision in the *Happy Day* (see *StopLoss 22*). The high court had held that the absence of a valid notice of readiness (NoR) meant laytime had not been triggered, so that the vessel earned no demurrage during three months of discharge, but despatch was payable to the charterers. Supported by the Club, the owners appealed. The appeal court held that, in the following circumstances, charterers could be deemed to have waived reliance on the invalidity of a NoR to prevent laytime starting: (1) where a NoR valid in form is served on the charterer or receiver before the vessel's arrival; (2) the vessel then arrives and is ready to discharge, to the charterer's knowledge; and (3) where discharge then starts to the order of the charterer or the receiver, without either intimating any NoR rejection.

Despite this welcome decision, the scope for dispute remains. Owners should try to agree terms which enable laytime to be started by events other than the tendering of NoRs, and to re-tender NoRs, without prejudice to the original, in case of uncertainty.

## US cracks down on crew visas

THE Immigration and Naturalisation Service (INS) in the United States recently implemented a number of changes designed to enhance security at US seaports, airports and land borders.

One of the initiatives involves a requirement that all crew members not in possession of valid entry documents, *i.e.*,

individual visas issued by the Dept of State, should be detained on board the vessel.

Further, the owners and agents of such vessels will be required to post security guards at the gangways to prevent such crew members from 'absconding'. And if the owner, master or agent cannot satisfy INS security concerns, the

authorities can deny the vessel entrance to the port.

As already noted on Page 2, members are asked to bear in mind current increased sensitivity in connection with security issues, when trading to the US, and are advised to take the necessary steps to ensure that all crew on board their vessels have the appropriate visas.

## Lifeboat accidents causing concern

STOPLOSS 26 included a reminder to shipowners of the need for regular crew familiarisation and lifeboat maintenance programmes, and of the dangers of complacency in this regard.

Since then, authorities in both the UK and Australia have reported accidents which have occurred during the performance of lifeboat drills.

The Australian Transport Safety Bureau released a safety bulletin following an incident in which a seaman was killed and two others seriously injured when a lifeboat fell twenty metres



into the water after the wire falls parted during a drill.

The limit switches did not operate, and the falls parted when the davits came up to their stops with the winch motor running.

The Marine Accident Investigation Branch of the UK Department of Transport, meanwhile, has published a report of its investigation into an incident on board a vessel in Liverpool which was in the process of changing owner, flag and crew. As a lifeboat drill was being completed and the lifeboat returned to its davits, the boat suddenly released and fell into the water. Three crew members on board were injured, one seriously.

The MAIB found the primary cause to be that the person in charge of the operation had not thoroughly reviewed the manual.

### PUBLISHED

on behalf of The London Steam-Ship Owners' Mutual Insurance Association by A. Bilbrough & Co. Ltd., 50 Leman Street, London. E1 8HQ, UK.  
Tel: +44 (0) 20 7772 8000  
Fax: +44 (0) 20 7772 8200  
E-mail: [comms@a-bilbrough.co.uk](mailto:comms@a-bilbrough.co.uk)  
[www.lso.com](http://www.lso.com)

### EDITED BY

Chris Hewer,  
Merlin Corporate Communications,  
11 Kingsland Court,  
Three Bridges Road,  
Crawley, RH10 1HL, UK  
Tel: +44 (0) 1293 55 00 44  
Fax: +44 (0) 1293 55 04 04  
E-mail: [wizard@merlinco.com](mailto:wizard@merlinco.com)

### PRINTED BY

Stuart Vaux Associates,  
Chiltern Lodge,  
38 Clifton Road, Amersham,  
Buckinghamshire,  
HP6 5PP, UK.  
Tel: +44 (0) 1494 726593  
Fax: +44 (0) 1494 727380  
E-mail: [sales@svaux.com](mailto:sales@svaux.com)