

## Summary of the Detention Case 13-02-2010

### General

#### Ground for detention

The vessel was detained due to the following detainable deficiencies:

- Safety Management Certificate (SMC) – invalid because ship type has been identified as “other cargo ship” on the SMC, but the ship is a bulk carrier as defined in SOLAS IX/1.6. According to the DOC, the Company cannot manage bulk carriers;
- Document of Compliance (DOC) – invalid for ship’s management because the DOC has not certified for management of bulk carrier.

#### Dispute

The flag State did not agree with the detention by the port State Authority and expressed views that:

1. based on paragraph 7.24.4 of FSI18 report of the proposed amendments to Resolution A.787(19), as amended, concerning the designation of bulk carriers, the Japanese PSCO should be guided by the vessel’s certificates issued by the flag State, which clearly states that it is a “General Cargo” vessel and he has to accept it as a general cargo vessel and not a bulk carrier. Even though the vessel is structurally a bulk carrier by definition, we have downgraded the vessel to a general cargo vessel due to the reason that it cannot comply with the stringent requirements of a bulk carrier;
2. when the vessel has been downgraded to a general cargo vessel, similar as any other general cargo vessel, it can still carry bulk cargoes provided it satisfies the requirements for the carriage of bulk cargoes;
3. Since the vessel’s keel laid date is 12 October 2007, the old definition “bulk carrier” in SOLAS 74 Chapter IX Regulation 1.6 is not applicable, and instead the following new definition in the amended SOLAS 74 Chapter XII Regulation 1.1 is applicable for vessels constructed after 1 July 2006. Therefore, the old definition “a ship which is constructed generally with single deck, top-side tanks and hopper side tanks in cargo spaces” is not applicable to this vessel;
4. regardless of which bulk carrier definitions that the vessel is subjected to, the critical criterion in both definitions for bulk carrier is that the vessel is "**intended primarily to carry dry cargo in bulk**"; According to ship's history of voyages since it was registered with the registry on 13 May 2009, the ship has conducted 10 bulk cargoes voyages out of a total of 55 voyages, showing that the ship only carries bulk cargoes on 18% of the total voyages, which affirms the reason why we **do not** consider that the ship carries primarily dry cargoes in bulk and as such does not qualify as a bulk carrier in the definition mentioned in SOLAS 74 Chapter IX Regulation 1.6 or Chapter XII Regulation 1.1;
5. Ever since the vessel was with our registry, it had been sailing as a General Cargo to

numerous ports in the Tokyo MOU region without any problem. Therefore, we disagree with the PSC Authority's decision that it is a bulk carrier when other ports, including their own ports, have accepted the vessel as a general cargo vessel;

6. if the PSC Authority's decision is accepted and implemented, the similar type of vessels sailing around the world should be detained, and such would cause confusion and problems throughout the ports; and
7. if the PSC Authority's decision is accepted and implemented, all the affected vessels are to have their top-side tanks converted to void spaces, what will be the consequences of the vessels sailing without the capacity to ballast the top-side tanks, what are the effects on their safety and stability, their future ability to occasionally carry bulk cargoes, etc.?

Based on the above, the flag State is of the opinion that the detention was not justified.

The port State Authority is of the opinion that:

1. the vessel was detained during 17th to 20th September 2010 because that it should be treated as a bulk carrier in accordance with the Chapter IX of the SOLAS Convention. Construction and practical operation of the vessel fell under the definition of bulk carrier of the Chapter IX. Construction was single deck, top-side tanks and hopper side tanks in cargo spaces as defined in the Chapter IX. Concerning practical operation, the vessel had carried bulk four times in last ten voyages. Therefore, the certificates, which had been issued for the vessel as ship type of other cargo ships under the Chapter IX of the SOLAS, were invalid.

Moreover, during the period of detention, the flag State had explained conditions of certificates for the vessel by the letter dated on 17th September, which said "(the) vessel has been restricted to carry only non-bulk cargoes" and "the ship type of the vessel --- "General Cargo" on condition that the vessel shall only carry non-bulk cargoes." The vessel had violated the conditions of the certificates, repeatedly. This was also obvious evidence that the certificates were invalid.

2. the detainable deficiencies were about Safety Management Certificate and Document of Compliance of the ISM Code. Ship's construction and practical operations fell under the definition of bulk carrier of the Chapter IX of the SOLAS Convention. So that SMC and DoC should comply with relevant requirements of the Chapter IX of SOLAS as bulk carrier. For the purpose of ISM Code requirements, only Chapter IX of SOLAS should be applied, therefore the understanding/interpretation by the flag State that Chapter IX was not applicable to the vessel based on its year of keel laid is not relevant;
3. the paragraph 7.24.4 of FSI18 is about amendments of A.787(19) and such amendments are still under consideration of correspondence group of FSI as stated in paragraph 7.36 of FSI 18/20. So that the paragraph 7.24.4 has no mean of concluding status;
4. in the paragraph 7.24.4 of FSI 18/20, MSC.277(85) was referred to but it should not be applied to the vessel. Because, MSC.277(85) applies ships constructed on or after 1 January 2009 or on or after 1 July 2010 as described in its paragraphs 1.1 and 1.2.

But keel lay of the vessel was 2007. If the flag State would apply MSC.277(85) for its vessel, neither that flag State nor the vessel in question showed and/or explained us a Statement Attesting to the Application described in paragraph 1.10 of MSC.277(85) about carriage of bulk cargoes described in 1. above. So that MSC.277(85) was not applied for the vessel; and

5. concerning practical operation of loading of cargoes, the vessel had carried bulk four times during last ten voyages. These repeated operations were far from occasional carriage of bulk and were violations of conditions of certificates described in 1. above. PSCOs were surely guided by determinations of Flag State, such as conditions of the certificates which had prohibited carriage of bulk entirely. Further, the details of all voyages provided by the flag State in its request for review had not been indicated for the port State Authority.

Therefore the detention was considered correct.

### **Opinions of the panel**

The panel members reviewed the relevant information and materials received. As the result of evaluation, panel members reached general opinions as follows:

1. From ship construction point of view, the ship's structure is with single deck, top-side tanks and hopper side tanks in cargo spaces. From ship operation point of view, she has been deployed to carry bulk cargoes. Bearing the above evidences in mind, it is found that the ship is designed and intended to carry bulk cargoes as for their business. Consequently, the ship should possess the statutory certificates in bulk carrier to meet their operational needs;
2. For the purpose of ISM Code requirements, the definition contained in Regulation 1.6 of Chapter IX of SOLAS should be applied and therefore the view by the flag State of Kiribati that only Regulation 1.1 of Chapter XII of SOLAS is applicable to the vessel is considered not appropriate;
3. In Resolution MSC.277 (85) 1.4 "...bulk carriers may carry cargoes which are not loaded or discharged in bulk, and remain bulk carriers which so doing;" indicates that bulk carriers can carry non bulk cargoes. On the contrary, If general cargo ships do not have the top-side tanks and hopper side tanks in cargo spaces, it would not meet the requirements in operation, structure and stability for carrying bulk cargoes;
4. Based on information received from both the flag State and the port State, the vessel's type was downgraded from bulk carrier to other cargo ship with the condition that she shall only carry non-bulk cargoes. However she had carried bulk cargo four times in last ten voyages (totally ten times of fifty-five voyages). Therefore, the actual operation of the vessel violated the condition set by the flag State;
5. If the flag State would allow its registered general cargo ship to carry dry bulk cargoes, it shall clearly identify in respective certificate the type of bulk cargo and valid reason in the form of statement to allow such cargo to be carried; and
6. Though the flag State has the responsibility for interpretation and application of appropriate SOLAS requirements, it should ensure the implementation of the SOLAS

requirements in a consistent and uniform manner.

**Conclusion**

The panel members unanimously agreed that the decision of detention for this specific case is justified. Therefore, the port State Authority does not need to reconsider its decision of the detention.