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August 9, 2007

Professor Erik Røsæg,
LNG Correspondence Group Leader
Scandinavian Institute of Maritime Law,
University of Oslo
Oslo, Norway

Dear Erik:

RE: Collection on levies in respect of LNG to the HNS Fund

As a result of the June 2007 meeting of the IOPC Funds in Montreal, an informal correspondence group has been established to further examine non-collectable levies to the LNG Account of the HNS Fund. This is our initial response to the request for comments on the non-collectable levies, and we would like to start out by thanking those states who have already contributed to the discussion and to Prof. Røsæg for getting the work started.

Historically, Canada has relied on indigenous natural gas supplies and exporting a significant percentage of this production to the United States. Today, there is a growing demand across North America for new sources of natural gas and that is expected to be partially met by the approximately 60-plus proposed LNG import projects on the continent. Canada currently has 8 proposed projects at various stages of the pre-approval review and construction process and it is expected that the majority of the LNG imported will supply the United States market.

It should also be noted that we agree with other interested parties that a solution must be presented regarding the contributions to the LNG account before ratifying the HNS Convention and that such a solution should be equitable for all and focus on measures that can be undertaken in contracting states.

Avoiding the LNG Sector

It is in view, along with other involved States, that a separate account should be created and maintained to avoid the cross-subsidization of contributing cargo in the General Fund. As was expressed by the Canadian delegation at the IOPC Funds meeting in Montreal, it would be unacceptable for other industries to pay for LNG claims in the absence contributions to the LNG Account. It would likely be for the first HNS Assembly to determine the extent of the situation and act accordingly in order to avoid such subsidization of LNG claims by other HNS receivers.

Receiver

In general, Canada agrees that the recommendation you make in your letter of June 19, 2007, of holding the physical receiver of LNG cargoes jointly and severally liable with the titleholder immediately prior to discharge is the simplest and most practical option for ensuring payment of levies if the titleholder is in a non-contracting state. This would not have to involve some form of financial security from banks or insurance companies, which represents an additional cost for the parties involved. The reporting requirement would still lie with titleholders in contracting states (or receivers if titleholder is in a non-contracting state) and this approach to the receiver would be used only as an alternate means for obtaining otherwise non-collectable levies. This would diminish the likelihood of arrears causing the suspension of the LNG account, which will likely have the required amount of contributing cargo to operate a separate account upon co-ratification.

Canada proposed a similar solution in our 'Maritime Law Reform' Discussion Paper of May 2005 (http://www.tc.gc.ca/pol/en/Report/tp14370/1-0.htm), which was presented to stakeholders in Canada[1]. However, stakeholders representing the owners of the LNG terminals have expressed concerns over the fact that this would be outside the scope of the current HNS Convention and that may put them at a competitive disadvantage vis-à-vis LNG terminals in non-contracting states. Furthermore, as others have pointed out, such a solution is not in line with the intent of the HNS Convention and could be challenged in national courts by receivers of LNG. It is thus apparent, that while it is the most practical solution, we do recognize that would not be widely acceptable to states and the industry.

Another potential solution would be to investigate if it is possible to have in the implementation legislation, a requirement for the titleholder to transfer the title to the receiver immediately before discharging LNG in the contracting-state. This could be triggered upon entering into a contractual agreement, such as a sale and purchase agreement that exists between the LNG supplier (seller) and the receiving terminal (buyer). It could be done in such a way that the title is transferred to the receiver upon signature of a sale and purchase agreement, but that the contract is not fulfilled until delivery (discharge) is completed. This would render the receiver as the person liable to report to the state, which in turn, would report to the Fund. It should be noted that the existence of spot trading, the uncertainty of when the transfer of ownership takes place in contract, as well as, a number of other contractual provisions, could make this solution troublesome.

Perhaps the representatives of the International Group of Liquefied Natural Gas Importers (GIIGNL), who recently joined the IOPC Funds as observers to comment on the idea of transferring title and the LNG market as well as those presented by Professor Røsæg and other states.

[1] See page 29 of the Discussion Paper. **[Direct link added]**

We are participating in this correspondence group to present solutions and we respectfully submit our letter with this in mind. Please accept our sincerest apologies for responding after the submission deadline.

Best Regards,

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