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## Message from the president

# Globalisation in crisis — the rise of populist currents shake up global trade



By Dieter Berg  
IUMI President

Global trade has been growing for decades – but, owing in no small part to faltering economic activity, we saw a significant decrease in 2015 which is likely to be replicated in 2016. Any hope of a quick recovery is doubtful due to a strong increase in protectionist trends in western countries – such as US President Trump's threat to introduce import tariffs. If trading partners were to hit back, the impact on global trade and economies worldwide would be significant. And such difficulties are likely to impact the international marine insurance industry where market volumes have been declining steadily in recent years.

### The increase of protectionism

The International Monetary Fund (IMF) cited last year that – besides the weakening global economy – protectionist measures were a cause of negative trade growth, which includes custom tariffs and export subsidies as tariff-based barriers, and quotas as non-tariff barriers. Since 2009 there has been a continuous increase in protectionist measures, with a rapid upsurge since 2012 when global trading volumes stalled.

More than ever free trade agreements are currently in jeopardy, particularly in Europe and USA, where there is a political trend to blame globalisation for domestic problems, strengthening populist movements and an upsurge of nationalism. Massive protests in

Europe against the Transatlantic Trade and Investment Partnership (TTIP) between the European Union and the United States, the US withdrawal from the Trans-Pacific Partnership (TPP) deal and perhaps the North American Free Trade Agreement (NAFTA) could have significant consequences for the other trading partners involved. If existing or planned liberal trade agreements are scrapped, protectionism could reach alarming levels.

Free trade agreements have created many opportunities for almost all countries over the past few decades. The international division of labour and cross-border production processes have become core to the modern global economic order. Globalisation is by no means a winning situation for everyone, but heightened protectionism is certainly not the answer. When it comes to protectionist measures it is often the developing countries that loose. These countries rightly expect us to develop fair and balanced trade agreements.

### Global trade and marine insurance

Globalisation seems to be in crisis and this is also impacting marine insurance. In parallel with global trading volumes premium income has also been falling in all segments since 2012. Even when adjusted for currency translation effects from the rise in the US dollar, premium volume is stagnant. In 2015 global

premiums of approximately US \$30billion were down to 2010 levels.

Stronger growth in the USA, the probable end to the recession in Brazil and Russia, and a recovery in other commodity exporting countries due to higher prices should accelerate global trade in 2017, but these benefits could be countered by a rising move towards greater protectionism. The USA's current trade policy and its withdrawal from the TPP or the effects of Brexit all have the potential to significantly influence international trade and slow down globalisation. The European Parliament has, after all, approved the trade agreement between Canada and the EU, so parts of the agreement may soon come into force, subject to approval by individual Member States.

Time will show the impact these will have and marine insurers should not bank on a significant increase in the premium volume for the current year.

Free global trade and the global exchange of goods is the foundation for growth and prosperity across the world economy. Going back to nationalistic isolation and protectionism is likely to have a negative impact on all those involved – industrial countries, emerging markets and developing countries – including global marine insurance.

## New identity, website and newsletter

As you are reading our smart new IUMI Eye you will have noticed that we have redesigned the newsletter to match our new branding. After much work by the Executive Committee, the Secretariat, IUMI's PR partner Navigate, and Keller Maurer Design, IUMI has been successfully rebranded with modern colours, a new logo and a refreshed corporate identity. IUMI Eye is now being distributed in a cutting-edge email format with a PDF link for those who would rather read an offline version.

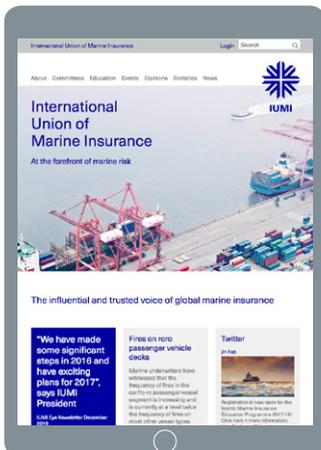
The brand refresh has flowed through into our new website which went live this week. Following a total overhaul, the new site is now a fitting shop window for IUMI as well as a serious tool for those with an interest in marine insurance. Alongside the usual "about us" information, the website contains a searchable archive of all the presentations given at our conferences from 2010 onwards. IUMI statistics are also available to download as well as presentations and recordings of our previous webinars. Position papers and our current issues also feature on the new facility as does our new education database. A news section contains our recent media statements as well as up-to-date general news on the marine insurance market.

For our technical committees, we have created separate pages within the site where committee documents can be stored, archived and downloaded as required.

Many of the documents contained on the new site are password protected. Members and IPPs have received passwords, other users are requested to contact the secretariat for access to these areas.



[www.iumi.com](http://www.iumi.com)



## Political Forum



By Helle Hammer  
Managing Director of Cefor and  
Chair of the IUMI Political Forum

# Turning up the heat on ro-ro fires

Although fires are low in numbers, the potential catastrophic consequences from fires on ro-ro passenger vehicle decks and the alarming over-representation of fires noted by insurers on these vessels have prompted IUMI to issue a Position Paper.

Analysis of fires on ro-ro passenger vehicle decks clearly indicate that the main fire risk is not passengers/drivers or stowaways, as previously rumoured. Failure of electrical equipment is by far the most common cause. The single most frequent source of fires are reefer units. Electrical equipment on board, vehicle cabs and vehicle engines have also been identified as the source of several of these casualties. To improve the inherent risk of carrying vehicles on ro-ro tonnage, specifically lorries, time has perhaps now come for regulators, shippers and operators to address the way vehicles presented for carriage can be made safe.

Undeclared or misdeclared cargo is another fire hazard on board. IUMI has long been a supporter of improved screening and securing of cargo not only on these but also in other vessel segments.

And once a fire has started on a passenger vehicle deck, failure to deploy drencher systems has in some cases allowed fires to escalate. Quick response time and immediate action were also recognised as paramount in the Interferry Operation Best Practice Guidance relating to ro-ro deck fire safety that was issued in 2016.

Marine insurers welcome the initiative by the International Maritime Organization (IMO) to further review international regulation in view of minimising the incidence and consequences of fires on ro-ro spaces and special category spaces of ro-ro passenger vessels. An early output of this review is strongly encouraged.

IUMI is dedicated to offering support not only to regulatory bodies but also to all other stakeholders that are working to raise awareness and to mitigate this fire risk. As marine insurers, we recommend that owners and operators adhere to the Interferry best practice guidance, heed advice from classification societies and ensure compliance with regulations already in place to prevent these fires from occurring.



<http://www.iumi.com/opinions/position-papers>



By Nick Gooding FCII  
IUMI Alternate Officer at IMO

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## Maritime Safety Committee Meeting MSC 97 November 2016

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IUMI was represented by Lars Lange and Nick Gooding at the Maritime Safety Committee Meeting (MSC97) at the IMO in November 2016. The main matters of interest to come out of the meeting are as follows.

### **1. Interim recommendations for carriage of liquefied hydrogen in bulk adopted**

The MSC adopted interim recommendations for the carriage of liquefied hydrogen in bulk, which have been developed as the International Gas Carrier (IGC) Code does not specify requirements for the carriage of this bulk cargo.

The recommendations are based on the results of a comparison study of similar cargoes listed in the IGC Code, e.g. liquefied natural gas, and are intended to facilitate the establishment of a tripartite agreement for a pilot ship that will be developed for the research and demonstration of safe long-distance overseas carriage of liquefied hydrogen in bulk.

The interim recommendations contain general requirements and special requirements for the carriage of liquefied hydrogen in bulk by ship, such as the provision of a portable hydrogen detector for each crew member working in the cargo area; a selection of fire detectors for detecting hydrogen fire; and appropriate safety measures to prevent formation of an explosive mixture in case of a leakage of hydrogen.

### **2. Navigation around offshore multiple structures**

The MSC adopted, subject to subsequent confirmation by the IMO Assembly, amendments on a recommendation to governments to take into account safety of navigation when multiple structures at sea, such as wind turbines, are being planned.

The amendment would add a new paragraph in the general provisions on ships' routing, on establishing multiple structures at sea. It recommends that governments take into account, as far as possible, the impact multiple structures at sea, including but not limited to wind turbines, could have on the safety of navigation. This would include considering radar interference, traffic density, the presence of routing measures in the area, and the maneuverability of ships.

### **3. Implementation of the standard of training certification and watchkeeping for seafarers conventions (STCW)**

With the approaching end of the transitional provisions of the 2010 Manila Amendments to the STCW Convention on 31 December 2016, concern was expressed regarding the status of compliance of some parties, given that a number of administrations may not be in a position to issue STCW certificates

in accordance with the requirement of the Convention by 1st January 2017. As this is not the fault of the crew on board, or their company, the Committee agreed to issue a MSC circular providing advice to Port State Control authorities to take a practical approach, for the first six months of 2017, to inspections in cases where seafarers had not been issued with compliant certificates.

### **4. Measures to enhance maritime security**

A paper, submitted by the Islamic Republic of Iran, proposing the development of a mandatory instrument to ensure the consistent application of cyber security measures and procedures on board ships and on shore-based systems interfacing with ships, was discussed. The Committee decided to wait for the Facilitation Committee (FAL 41) to complete its work, in parallel, before considering further, any mandatory guidelines.

### **5. Piracy and armed robbery against ships**

Information received showed that, up until 5 September 2016, there had been a reduction of 35 per cent in piracy and armed robbery cases reported compared with the same period in 2015 off the coast of Somalia. However, an increase in incidents of 96 per cent over the same period had been seen in West Africa. The EU Naval Counter Piracy Force, who operate off the coast of Somalia, has had its mandate extended to the end of 2018.

With regard to the Gulf of Guinea, a new 'Maritime Domain Awareness for Trade (MDAT-GOG)' has been established by the governments of France and the UK, and went live on 20 June 2016 from centres in Brest and Portsmouth respectively.

### **6. Addressing cargoes that may liquefy**

The MSC approved draft amendments to paragraphs 4.5.1 and 4.5.2 of the International Maritime Solid Bulk Cargoes Code (IMSBC Code) to emphasise the responsibility of the shipper for ensuring a test to determine the transportable moisture limit (TML) of a solid bulk cargo, as well as sampling and testing for moisture content, are conducted. The draft amendments will be put forward for subsequent adoption by MSC 98 together with the next set of draft amendments to the IMSBC Code, set to be adopted in 2017 with entry into force in 2020.

By Nick Gooding FCII  
IUMI Alternate Officer at IMO



## PPR4 Report

The Pollution Prevention and Response Sub-Committee met at IMO Headquarters between the 16 and 20 January 2017 under the Chairmanship of Mr Sveinung Oftedal of Norway. The main issues arising are summarised as follows.

### Implementation of the 0.50 % sulphur limit

The Sub-Committee has commenced work to ensure the consistent and effective implementation of the 0.50 % m/m sulphur limit, which comes into effect in 2020.

The proposed work is aimed at exploring what actions may be taken to ensure consistent and effective implementation of the 0.50 % sulphur limit for fuel oil used by ships operating outside designated SOx Emission Control Areas or not making use of an equivalent such as an Exhaust Gas Cleaning System.

The Sub-Committee agreed that consistent and effective implementation of the 0.50 % sulphur limit is critical for commercial considerations and to achieve the environmental benefits sought through regulation 14, which regulates emissions of sulphur oxides (SOx) in MARPOL Annex VI.

Inconsistent and ineffective implementation would increase the uncertainty concerning actual market demand for 0.50 % sulphur marine fuel oil. This in turn would increase the difficulty for the marine fuel oil supply chain to plan effectively to meet global demand and for ship operators to assess the viability of investing in exhaust gas cleaning systems. Importantly, ineffective implementation is likely to lead to more ships using non-compliant fuel oil and having a significant commercial advantage over ships complying, leading to a distortion in the market.

### Ballast Water Management

The Drafting Group on ballast water management submitted a draft publication entitled "Ballast Water Management – How to do it."

This guide will be published by the International Maritime Organization to provide advice on the process of ratification, implementation and enforcement of the International Convention for the Control and Management of Ships' Ballast Water and Sediments, 2004.

The guide will provide practical information to governments, administrations, shipowners, Port State Control authorities, environmental agencies and other stakeholders on the implications of

ratifying, implementing and enforcing the BWM Convention. The aim is to encourage the further ratification and proper implementation and enforcement of the Convention.

### Use of Electronic Record Books

The Sub-Committee had been asked to consider whether or not the forms of record books in MARPOL can be accommodated in electronic formats and to consider the feasibility of using electronic documentation.

There was general support for the use of electronic record books and the need to finalise the draft guidance and associated MARPOL amendments to ensure uniform implementation. It was felt however, that further work is needed to address any potential technical, legal and procedural issues in order to ensure that the level of safety, security, protection and availability is the same as those of the written records.

It was agreed that electronic record books should be presented in the format as specified in relevant MARPOL Annexes in order to assist the smooth transition from hard copy record books to electronic ones while not ruling out the need to further explore the extent of flexibility of the forms in the future.

With regard to using other electronic documentation, it was agreed that in order not to further delay the finalisation of the draft guidance, it should not cover electronic documentation which requires different verification processes. This matter may be revisited in the future, based on the experience gained with the use of electronic record books. The Secretariat were asked to prepare draft amendments to MARPOL together with draft guidance for the use of electronic record books.

By Nick Gooding FCII  
IUMI Alternate Officer at IMO

## Report on the Sub-Committee meeting on Human Element, Training and Watchkeeping

30 January to  
3 February 2017

Nick Gooding attended the Sub-Committee meeting on Human Element, Training and Watchkeeping on behalf of IUMI. The main points of interest are summarised as follows.

### IMO Fatigue Guidelines

Good progress was made with the comprehensive review of the IMO Guidelines on Fatigue annexed to guidance on fatigue mitigation and management, which was issued in a Maritime Safety Committee Circular in 2001.

A working group met during the week and reviewed the draft revised introduction and several updated modules. Because of the amount of work still to do it was agreed that more time was needed to complete the task. The work will continue and will be considered further at the next meeting of the Sub-Committee.

### Comprehensive review of STCW-F continued

The comprehensive review of the 1995 International Convention on Standards of Training, Certification and Watchkeeping for Fishing Vessel Personnel (STCW-F), which provides training requirements for crews on board fishing vessels over 24 metres in length, continued. The review aims to update and revise the treaty, taking into account the unique nature of the fishing industry, the fishing working environment and the need to prevent damage to the marine environment.

A correspondence group was established to further the work ahead of HTW 5.

The review of the STCW-F Convention is especially important since this is the only IMO instrument currently in force for the fishing industry. The review is expected to encourage wider support for ratification of the Convention.

### Interim Guidance for STCW implementation approved

The Sub-Committee approved a circular giving advice related to the implementation of the 2010 Manila amendments to the International Convention on Standards of Training, Certification and Watchkeeping for Seafarers (STCW). The circular clarifies the requirements related to the provision of documentary evidence for Port State Control officers and other third-party inspection regimes as well as clarifying the training requirements for Electronic Chart Display and Information Systems (ECDIS), required under the STCW Convention.



## IUMI to become member of EU Stakeholders Group on Maritime Security

By Eric De Smet  
Manager Marine & Transport

Baloise Insurance and IUMI Political  
Forum Member

Following up on our introductory meeting with DG Move's Security Unit in October 2016, IUMI has become a member of the European Commission's Stakeholders Advisory Group on Maritime Security (SAGMAS). The SAGMAS meetings provide a platform for interested stakeholders to express their views on ongoing regulatory work as well as emerging issues relevant to the maritime industry.

Members of the group need to be either European or international organisations with a professional interest in the subject of maritime security. As a member of IUMI's Political Forum and Manager for Marine & Transport at Baloise Insurance, I represent IUMI at the meetings. In November 2016, the agenda included a debrief on the ongoing work at the IMO Maritime Safety Committee's 97th session, as well as a discussion about the security of cruise ships.

The second meeting attended by IUMI took place on 1 February 2017. On this occasion the ICC International Maritime Bureau's annual report on piracy, security concerns in the Red Sea as well as security of cruise ships were discussed. IUMI members are invited to share with the secretariat specific topics which they would like to raise in the meeting.

# Electronic Charts are not enough



By Paul Whyte MBE AFNI  
Associate Master Mariner

LOC (London Offshore Consultants)  
IUMI Professional Partner  
[www.loc-group.com](http://www.loc-group.com)

The International Maritime Organization (IMO) has made the carriage of ECDIS (Electronic Chart Display and Information System) mandatory under SOLAS V (Safety of Navigation) for most large vessels, although entry into force has been staggered between 1 July 2012 and 1 July 2018.

ECDIS is a valuable addition to any ship's bridge, providing a range of real-time automated information, and continuously determining the vessel's position in relation to the land, charted objects, navigation aids and any unseen hazards. But it is not a replacement for navigational skills, and there are many reasons why the bridge crew should continuously double check the information against other sources.

It is now possible to buy a jamming device (overpowers the GPS) or a spoofing device (creates a false position) relatively cheaply from the internet. There have been reports of criminals using these devices to prevent a hijacked truck from being tracked or delivery drivers using it to 'hide' their exact GPS position as they go off route. The electromagnetic radiation used in such devices can disrupt a massive area which could easily include ships. As a result, it is really important that the ship's navigational crew is not relying too heavily on the GPS input to ECDIS.

The ECDIS display is smaller than any paper chart. The small footprint screen is filled with sharp vectorised images of sometimes old hydrographic information, and so it is far too easy to become over-reliant on what you see and to assume that the technology is correct.

It is still important to look out of the window, an officer on watch can spot the loom of a light from a lighthouse much further out than the radar image overlay within ECDIS.

It is still important to conduct voyage planning checks too. There should be route validation and a one to one scale manual check for the entire voyage, berth to berth, to ensure that every hazard has been identified.

Last but not least it is essential that all of the ECDIS users have completed the IMO approved training and familiarisation courses as it is highly likely that Port State Control will want evidence that the crew are competently using the technology. The third officer or the master could be tested, and asked questions about system settings to demonstrate their proficiency in using all the safety features.

Passive navigation involves simply 'monitoring' technology but 'active navigation' means cross-checking with all navigation sources such as with visual marks, radar and echo sounders. It is vital that despite increasingly sophisticated technology, ships' crews do not lose touch with the rest of the navigational information available to them.

 The LOC logo is positioned in the top left corner of the graphic. The graphic itself is a stylized, abstract representation of a building or structure, composed of various geometric shapes and colors including blue, green, orange, and white. The overall aesthetic is modern and professional.
 

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# Marine insurance aspects in the context of unmanned ships



By Prof. Dr. Dieter Schwampe, Dr. Maximilian Guth and Dr. Carolin Schilling-Schulz

Dabelstein & Passehl  
IUMI Professional Partner  
[www.da-pa.com](http://www.da-pa.com)

Unmanned ships and how the maritime legal framework should deal with this new development is a topic coming more and more into focus. At a recent German congress of traffic law the view was expressed that German rules on contractual liability of a carrier are essentially applicable to unmanned ships, whereas in respect of the liability of the ship owner in tort or the manufacturer of the ship according to product liability rules, it was suggested that the liability should be a strict "no fault" liability. Furthermore it was stated that it should be considered whether the strict non-contractual liability of the owner and the manufacturer of the ship should be coupled with a requirement for mandatory insurance with the right of direct actions against the insurer. However, there was also the view that a German unilateral go-ahead should be omitted in favour of a joint endeavour, preferably in the framework of the IMO.

The CMI has recently implemented a Working Group on "Maritime law for unmanned craft" to become involved and consider how international conventions and regulations can be adapted to provide for the operation of unmanned ships on the high seas. Additionally, IUMI's Political Forum recently included this topic to its' list for monitoring to be part of the review discussion. Although the discussions are just starting it is already foreseeable that unmanned vessels will change the landscape of the maritime insurance industry.

The marine insurance sector has already reacted to cyber risks. The English market for example has introduced the Institute Cyber Attack Exclusion clause CL 380 which is today generally incorporated into policies. The German DTV-ADS contain a cyber risk exclusion clause in clause 36. Accordingly, the market solution is to exclude this risk in H&M policies. As with unmanned vessels, cyber risks will become even more important and further risks like, for example, the loss of an essential data link to the land based remote controller arise. It is, therefore, debatable whether in future the solution will still be as simple as excluding these risks.

The existing conditions will need to be reviewed not only from the perils covered perspective but also whether they work in the context of unmanned vessels. As long as the human factor is involved the rules on alteration of risk, willful misconduct as well as unseaworthiness might still be operable. But what will a policy look like that covers fully autonomous ships that are not even navigated by remote control? A further question is how the claims handling will be influenced by the fact that there is no crew that can report on what happened onboard of the vessel?

The questions raised here and further issues will be discussed at a lunch seminar organised by Dabelstein & Passehl Rechtsanwälte PartGmbH on March 28, 2017 starting at 12:00 in the Hamburg Office (Grosse Elbstrasse 36, 22767 Hamburg). The seminar will be followed by drinks and a lunch buffet. If you and/or interested colleagues wish to attend you are very welcome.

Please register by sending an e-mail to:



[events@da-pa.com](mailto:events@da-pa.com)

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# Inspection of commodities: theory and practice



By Fabrice Levesque Ing.  
Managing Director

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## **The theory: Trade contractual loading inspections should be a guarantee of quality. A guarantee of quality should be a guarantee against claims.**

A large part of the commodities trade, with regard to inspections, is subject to a strict framework of applicable rules. Trade associations such as the Grain and Feed Trade Association (GAFTA), the Federation of Oils, Seeds and Fats Association (FOSFA), the Federation of Cocoa Commerce (FCC), the Sugar Association,<sup>1</sup> are strictly supervising the accreditation of superintendents. These associations issue stringent codes of practice to their inspections that must be applied. Sampling rules are very strict (i.e. the Gafta rules 124, i.e. the FCC rules 1.5.2015), meaning there should be no space for inherent quality issues being the cause of a transport claim.

## **The reality: Trade contractual loading inspections are not preventing transport claims**

Despite inspections performed by first class international inspection companies, cocoa beans are still being delivered mouldy with condensation and this has continued over the years in importing countries. Some oil seed cargoes are still being delivered in a self-heating state following sea voyage, grains are still being rejected for sanitary reasons after sea transport due to fungus contamination, and the list goes on.

## **Where is it going wrong?**

Trade contractual loading inspections govern the relationship between the seller and the buyer at a determined stage of the commodity transaction. But general quality issues evolve and alter throughout the transport chain depending on the environment they encounter during transit (i.e. alteration of water activity involving 8% moisture for cocoa bean is not a risk in the Ivory Coast whereas it is becoming a risk in Hamburg).

Analysing the quality for trade is a very different process to carrying it out for transport. Confusing these two approaches would be the same as confusing an annual account spreadsheet (static appreciation) and operating accounts (dynamic operation).

On top of this, trade arbitration works on the concept of "quality in average" whereas "average" is the enemy of risk assessment in terms of transport. Prevention risk assessments for transport should be performed in the context of absolute min./max. values (for example: range of 13% – 16% moisture in wheat consignment may involve a normal trade contractual level in terms of standard quality whereas it involves a high risk of claims with regard to the transport contract).

Last but not least: "Quality is simple. People are complicated".

<sup>1</sup> Inspection of a number of commodities are not strictly ruled by international trade organisations such as the above mentioned: fruit & vegetable trade for example are inspected by some national organisation system of norms or local regulations.



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# Legal Alert: Increased Exposure for Maritime Claims Statutory Instrument 2016 No. 1061



By Michael Ritter  
Associate

Holman Fenwick Willan  
IUMI Professional Partner  
[www.hfw.com](http://www.hfw.com)

As from 30 November 2016, the limits of liability for maritime claims under Section 185 of the Merchant Shipping Act 1995 increased by 51%. Statutory Instrument 2016 No. 1061 enacted an agreement reached by the IMO in April 2012 to amend the limits applicable under the 1996 Protocol to the Convention on Limitation of Liability for Maritime Claims 1976. The increase applies under English law to all merchant vessels, save for those with a gross tonnage less than 300GT.

The increase applies only to incidents occurring after 30 November 2016 (Section 185(2)(e) MSA 1995), but may lead to an increased exposure, in particular for collision liability underwriters. In real terms, using the example of a kamsarmax (82,000DWT / 45,000 GT), the change in the law has the following impact:

Physical Damage Fund (old limits):  
US\$22,626,496.00

Physical Damage Fund (new limits):  
US\$34,166,008.96 (basis IMF SDR rates on 17/02/2017)

Conversely, for those property underwriters who suffer losses as a result of a fire, collision, grounding or similar maritime incidents, the increase offers them the opportunity to make a more substantial recovery of their losses from those parties at fault.

Any further increase will be automatic, and will no longer require enabling domestic legislation, although any increase will not be discussed at IMO level until 2020 at the earliest. However, those involved in such incidents should note that there remains a wide divergence of limitation regimes across the globe, and that opportunities remain for those involved in marine casualties and claims to seize jurisdiction in a favourable State to minimise their exposure or maximise their recovery, provided they take swift proactive steps to do so.

For further background and discussion of this increase, please see:



<http://www.hfw.com/UK-Government-to-enact-Order-increasing-the-limits-of-liability-November-2016>

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# Liability of pilots and compulsory insurance



By Faz Peermohamed  
Global Head of Shipping

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Masters, ship owners and their insurers will be familiar with the often frustrating situation where pilot error has played a significant role in an incident, and yet it is the owners and insurers who end up paying the price.

## Can the Pilot be held liable?

In the UK, even if a ship is navigated in an area of compulsory pilotage, a negligent error of a pilot on board is still generally considered a negligent act by the ship owner or Master. However, the liability of a pilot does vary vastly depending on where in the world the incident occurs; whilst in some areas the test for liability is intentional or reckless behaviour, in other jurisdictions there is liability for negligence.

## If the Pilot is liable, is there money to satisfy the claim?

Claims against pilots have often been stymied because, even if a claim is viable on the merits in the relevant jurisdiction and the abovementioned challenges can be overcome, the pilot may simply not have funds available to pay and/or the amount recoverable may be limited by statute.

There have been some moves to update legal regimes concerning compulsory insurance. Recently, Italy introduced a limitation figure of one million Euros (with compulsory insurance) for pilot liability where it is shown that there was inaccurate information or advice given by the pilot. Unlimited liability may also be available in some cases.

## Looking to the Future

There have been some high-profile incidents where pilot error has been a significant contributing factor (the Aegean Sea and Sea Empress to name a couple) and this topic remains important to owners and insurers. Masters should remain acutely aware of their responsibility to navigate safely.

The potential in certain jurisdictions for increased claims against pilots for incidents caused by their errors will be of interest to insurers both from a placing and a recourse perspective. In the interest of improving safety at sea, the shipping industry would benefit from adopting the Italian approach more widely.

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## Low temperature regime standards during refrigerated road transportation of fresh fruits and vegetables



By Jan Rietberg  
Regional Loss Control Manager

Marine Europe West & South Zone,  
AIG Europe Limited and IUMI Member

By Jacques Petit  
Manager Marine and West Zone Head

AIG Europe Limited & IUMI Loss Prevention  
Committee Member

There are many risks and challenges for people involved, whether directly or indirectly, with refrigerated road transportation. We have found through experience that many claims relating to goods damaged during transit in refrigerated road transportation units are a result of bad and injudicious transit temperature regime and management.

### The challenge

Trailer operators have the option of running their trailer refrigeration units in two modes:

1. 'Continuous mode' or,
2. 'Start-stop mode'.

The 'start-stop mode' is a more environmentally friendly and cost saving way of operating as it demands less fuel, and the carriers often prefer this option. However, it is known that the cooling capacity inside the cargo compartment in this mode is significantly reduced and as such can damage temperature-sensitive loads. Operating in 'start stop mode' poses a significant risk of freezing damage to products that must be carried at temperatures just above the freezing point.

To ensure that such temperature-sensitive loads are kept at the optimum temperature it should, in our opinion, be warranted that the refrigeration units run in 'continuous mode'.

### Recommendations

We recommend the following regime standards when considering refrigerated road transportation of fresh fruits and vegetables:

- Avoid multi-temp loads unless using trailers designed for this type of operation;
- Properly train drivers on the use of the refrigeration unit. They need to understand when 'continuous mode' or 'start/stop mode' should be used, based on the commodity being hauled and the outside temperature;
- Be aware of trailers over five years old, the insulation in refrigeration trailers will break down over time making them less effective;
- Proper packaging is a must – it should be crush proof, solid-side for frozen products, and vented side for fresh products;
- The cargo and the trailer should be pre-cooled to desired temperature or remove residual heat;
- The refrigeration unit should be turned 'OFF' when loading to minimise heat and humidity entering the trailer;
- Ensure there is proper airflow in the trailer;
- Provide the driver with written temperature instructions for the intended voyage;
- Instruct the driver to operate the unit in 'continuous mode' if the product is liable to damage when exposed to lower/elevated temperatures;
- Instruct the driver to monitor the supply and return air temperatures at regular intervals;
- Drivers must alert the client immediately and ask for instructions once deviating and/or uncontrollable temperatures are noted.

## Technical committee



By Nick Derrick  
Senior Cargo Underwriter, Travelers  
and IUMI Cargo Committee Chair

## Static CAT Cargo Modelling

The IUMI Cargo Committee has embarked on a new initiative and formed a working group with Risk Management Solutions (RMS), an IUMI Professional Partner, to work jointly on static CAT cargo modelling. Ports are getting bigger which means larger amounts of cargo are being stored resulting in vast accumulations of risk. An exposure management tool is vital in assessing the risks to marine insurers.

This new working group comes together, via video conferencing, once a quarter and includes underwriters from New Zealand, Japan, Germany, France, USA and the UK. IUMI cargo committee secretary, Mikaela Tamm provides legal guidance to the group, keeping us on the "straight and narrow".

The key variables under discussion include:

### Vulnerability

Up until recently the industry norm "best practice" was to model cargo & specie as "warehouse contents" in property models. The vulnerability variable however varies widely depending on the commodity (i.e. foodstuff, pharmaceutical, soft/hard commodities, clothing, etc.); and on its storage method/build quality (container, warehouse, open lot, etc.).

### Exposure management

Cargo exposures change over time, the exposure can move and the locations are frequently unknown prior to being bound, values change over time and static exposures face a wide range of CAT perils as cargo is moved around the world. "Best practice" for marine CAT risk management dictates a better understanding of cargo CAT risk and its correlation with property CAT risk.

### Port specific industry exposure databases (IEDs)

Looking at and incorporating important information on "dwell time", or how long cargo spends at a location. This variable, which is critical in determining port accumulations, can be highly influenced by variables such as weather, port automation, import/export ratios, and labour relations.

Marine underwriters are now beginning to embrace modelling and the IUMI cargo committee is working closely with RMS to accelerate and improve the use of catastrophe models in the marine industry in an effort to better manage the risk to cargo from natural catastrophes. We look forward to bringing you more information in due course.



## IUMI Education Programme: Full speed ahead in 2017

Following the successful launch of our webinar programme in 2016, IUMI's Education Forum will meet at the IUMI Spring Meeting in March to move forward with our online courses strategy. These courses will be in the form of self-paced online learning with several interactive modules and tests. The first programmes are likely to address hull and cargo insurance. In the future additional topics will be added.

The webinars are continuing this year with a very interesting line up. The first webinar of the year, which took place on 21 February 2017, looked at risks associated with the liquefaction of certain cargo types. The slides and recording are available here:



<http://iumi.com/education/education-database/webinar-archive>

Further webinars are being scheduled throughout the year and will include sessions on general average, piracy, and offshore energy. Please check our webinar schedule and registration page to learn more:



<https://events-emea1.adobeconnect.com/content/connect/c1/2138575476/en/events/catalog.html>

People at IUMI

## Frédéric Denèfle

Legal & Claims Manager at GAREX, France, and  
IUMI Legal & Liability Committee Chair



### How long have you been associated with IUMI?

It all began in Japan in 2006, where I first attended the IUMI Annual Conference. Now it is just over a decade that I have been a part of IUMI and this year's conference in Tokyo means a lot to me.

### What is your IUMI role today and what does it involve?

After being a member of the highly technical Legal & Liability Committee, I became chairman two years ago, beginning my tenure at the Berlin IUMI conference in 2015. My main role as chairman is to follow up on all IUMI initiatives and hard work, and support these through communication and proposals.

### And what is your day job?

I have a legal background and have spent all my career looking into legal issues linked to transport insurance, marine risks and claims. I am presently the Legal & Claims Manager at GAREX and follow up on all claim issues related to war risks all around the world.

### What benefits do you get from being associated with IUMI?

IUMI is a unique professional organisation which focuses intensively, not only on shipping risks, but also on insurance matters. This is the place where marine risks and insurance issues are considered by the most dedicated international team of professionals you can find in the world, all in one place. You learn every time you attend.

### If you could change anything at IUMI what would it be?

I would share more information on IUMI's considered shipping risks with non-marine insurers to highlight all of IUMI's, its dedicated members and partners hard work and efforts.

### How did you reach your current position in marine insurance?

When I was a child I was fascinated by vessels, oceans and maritime adventures. There was never any doubt that I would join the marine insurance industry.

### And what do you do away from the office?

Read poetry and collect old coins... the best way to escape from day to day issues.

### Anything else you would like to add?

2017 will be a year of uncertainty for all of us and this is the best time for the insurance industry as risk is an insurer's garden! So the time has come for us to show and demonstrate that we understand the world we live in and that we are equipped to face the challenges. IUMI is a good place to do this.

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## ICC International Maritime Bureau's annual piracy report 2016

By Hendrike Kühl  
Policy Director, IUMI

In early January, the ICC International Maritime Bureau's (IMB) released their annual piracy report for 2016. On a positive note, the report outlines an encouraging development indicating that piracy has reached its lowest level since 1998. This translates into 191 incidents reported around the world last year.

On the downside, the number of crew kidnapped was significantly higher than in any of the previous 10 years. 62 people were kidnapped for ransom in 15 separate incidents. Just over half were captured off West Africa; while pirates kidnapped 28 persons from tugs, barges, fishing boats, and merchant ships around Malaysia and Indonesia. This is a threefold increase compared to 2015. Areas with comparatively high numbers of incidents include the Sulu Sea, Nigeria, and Somalia. Some countries have seen sudden surges from no incidents in 2015 to 15 last year.

The IMB recommends to be particularly vigilant or avoid, all together, certain high-risk areas. To ensure the transparency and quality of the periodic reports, and allow for an optimal allocation of resources to combat armed robbery and piracy around the world, shipmasters are called on to report any incident to the IMB.

If you would like to download the full report please visit:



<https://www.icc-ccs.org/piracy-reporting-centre/request-piracy-report>

**INCE & CO** | INTERNATIONAL  
LAW FIRM

## IUMI welcomes new Professional Partner Ince & Co

IUMI is pleased to announce that the international commercial law firm Ince & Co has joined IUMI as a Professional Partner. Founded in 1979 in Hong Kong, the majority of Ince & Co's work is focused on the five global sectors of aviation, energy, insurance, international trade and shipping.

Ince & Co has more than 600 employees, including over 90 partners and more than 190 other lawyers worldwide, practising English, French, German, Greek, Hong Kong, PRC and UAE law. It is a global organisation with offices in Beijing, Cologne, Dubai, Hamburg, Hong Kong, Le Havre, London, Marseille, Monaco, Paris, Piraeus, Shanghai and Singapore.

Ince & Co is one of the leading law firms specialising in insurance and reinsurance, and IUMI is looking forward to working together and collaborating on key market issues in the future. The company will be represented by its partner and Global Head of Shipping, Faz Peermohamed.



[www.incelaw.com](http://www.incelaw.com)

## EU Insurance Block Exemption Regulation (IBER) to expire on 31 March 2017

By Hendrike Kühl  
Policy Director, IUMI

The European Commission (EC) decided in December 2016 not to renew the Insurance Block Exemption Regulation (IBER), which will expire on 31 March 2017. IBER permits certain types of cooperation between insurers as long as the preconditions of the IBER are fulfilled. Exceptions include the exchange and/or aggregation of data in statistics and studies, as well as the joint insurance and/or reinsurance of risks in pools.

While such collaboration is likely to improve the more precise pricing of insurance products, it may at the same time lead to reduced competition. The need for IBER has been under consideration by the European Commission on a regular basis for several years. The EC now finds the new "Guidelines on horizontal cooperation", that were introduced in 2011, sufficient to address issues related to the conformity of joint compilations, tables and studies within the antitrust rules.

An additional factor contributing to the expiry of IBER was stakeholder feedback, which indicated that the exemptions were no longer frequently in use. Notably, the end of IBER does not imply that certain forms of cooperation become unlawful from 1 April 2017 onwards. Instead, insurers are required to evaluate their cooperation with market participants in view of their business environment to assess whether it is in line with antitrust rules.

For more information about the European Commission's work on competition in the financial services sector please visit:



[http://ec.europa.eu/competition/sectors/financial\\_services/overview\\_en.html](http://ec.europa.eu/competition/sectors/financial_services/overview_en.html)



Save the Date  
**IUMI 2017**  
**Annual Conference**  
**in Tokyo**  
**17—20 September**  
**2017**

The highly anticipated 2017 IUMI Annual Conference will take place 17–20 September in Tokyo this year. This will be the fifth occasion for the conference to be held in Tokyo, the last time being in 2006, and will be hosted by the General Insurance Association of Japan (GIAJ). This is a very special year for the GIAJ as 2017 marks the 100th Anniversary since its establishment. The event will be held at the Grand Nikko Tokyo Daiba, located in the Daiba area of Tokyo.

The common theme for the conference is: "Disruptive times – opportunity or threat for marine insurers?". The theme encompasses the current difficult market conditions and unsettled political environment through which marine insurers must navigate if they are to continue to provide high quality underwriting provision for their clients.

Global premiums have decreased to levels seen in 2010, of around US \$30 billion, and there is a continuing oversupply tonnage, an abundance of capital in the market, and extremely competitive rate renewals with ongoing rate reductions.

There are however signs of emerging opportunities in 2017. Global economic growth is expected to grow this year, with activity predicted to pick up pace in 2017 and 2018, particularly in emerging and developing countries. There has been a boost in exports thanks to the current strong US dollar that is helping struggling economies in Europe and Japan. Simultaneously energy prices stabilized in 2016, with normalization continuing into 2017, and a number of mobile units that had been laid up are now returning to service and employment in the energy sector is starting to grow, albeit slowly.

Tokyo, a city with deep rooted marine insurance history, is the perfect backdrop for IUMI President Dieter Berg, and the Technical Committee Chairs to discuss these imminent issues and potential opportunities for marine insurers. We look forward to welcoming our IUMI associates at the next conference.

Registration will be open in early spring.



[www.iumi2017.com](http://www.iumi2017.com)

# Polar Code comes into force



By Michael Kingston

Managing Director, Michael Kingston Associates, Lawyer  
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The Polar Code (the Code) is a new mandatory code with specific requirements to enhance maritime safety, training and environmental protection in the Polar Regions. It came into effect 1 January 2017. The code consists of two parts, each of which includes both mandatory and recommendatory sections. Part I addresses safe design, construction and operation. Part II addresses environmental protection.

The Code requirements consider the unique risks associated with operating in the Polar Regions including: ice, low temperatures, high latitude, remoteness, severe weather, limited charting and the pristine environment.

The Polar Regions are incredibly diverse; as such it is impossible to develop a one-size-fits-all solution for ship design and construction. Accordingly, the Code was developed as a goal-based code; the standards for ice-strengthening and safe design differ depending on the risks associated with the activities.

## Polar Operations Manual

One of the key elements of the Code is the requirement for a Polar Waters Operational Manual (PWOM). The purpose of this manual is to outline the following: the design standards that the ship was built to, the operational assumptions that go into those design standards and the operational limitations that will be put on the Polar Ship Certificate which will be issued by the Flag State. Central to an understanding of a ship's limitation is the inclusion of the Polar Operational Limitation Assessment Risk Indexing System (POLARIS).

## Safety equipment. Navigation / Communication / Environment

Given the risks associated with operations in the Polar Regions, the Code also includes measures to protect vital safety equipment and ensure increased ability to respond to emergencies. It also requires additional navigation equipment and communication equipment to ensure operability, and there are detailed environmental provisions to adhere to including limitations on operational discharges, such as zero discharge of oil and oily mixtures, and noxious liquid substances, and restrictions on the discharge of sewage and garbage. There are also additional design and construction restrictions such as added tank protection and increased resistance to damage to reduce the chance for spilling oil or noxious liquid substances.