Port State Control

A guide for Members
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THE GROWING IMPORTANCE OF PORT STATE CONTROL

Port State Control is the process by which a nation exercises authority over foreign ships when those ships are in waters subject to its jurisdiction. The right to do this is derived from both domestic and international law. A nation may enact its own laws, imposing requirements on foreign ships trading in its waters, and nations which are party to certain international conventions are empowered to verify that ships of other nations operating in their waters comply with the obligations set out in those conventions.

The stated purpose of Port State Control in its various forms is to identify and eliminate ships which do not comply with internationally accepted standards as well as the domestic regulations of the state concerned. When ships are not in substantial compliance, the relevant agency of the inspecting state may impose controls to ensure that they are brought into compliance.

Recently, IMO adopted a resolution providing procedures for the uniform exercise of Port State Control, and regional agreements have been adopted by individual countries within Europe, the European Union, and various East Asian and Pacific nations. A number of North African Mediterranean nations have recently expressed their intention to set up a separate regional agreement in their own area of the world. In addition, some countries such as the United States of America have adopted a unilateral approach to the subject, which nevertheless has the same aims.

Shipowners and operators should take measures to reduce the likelihood that their ships will be subjected to intervention or detention, bearing in mind that increasingly efficient databases will enable the maritime authorities who participate in the growing range of international agreements, memoranda and conventions to exchange information. Being inspected by one state and given a clean bill of health will not necessarily prevent further inspections being made by another maritime authority – and, as information is exchanged between various organisations, non-compliant ships will find it increasingly difficult to continue operations.
WHAT IS PORT STATE CONTROL?

Port State Control (PSC) is a method of checking the successful enforcement of the provisions of various international conventions covering safety, working conditions and pollution prevention on merchant ships. Under international law the shipowner has prime responsibility for ensuring compliance, with much of the work involved being carried out by the state whose flag the ship flies. However, not all flag states are able to check their ships on a continuous basis when they are away from their own ports, so PSC provides a back-up for monitoring the implementation of international and domestic shipping regulations. Whilst Port State Control as a concept is not new, the increasing number of inspections and the coordination and exchange of data generated from them is a significant development, as is the stated intention of governments and maritime authorities who see it as an effective means of monitoring and implementing international conventions.

ORIGINS

It is the owner who is ultimately responsible for all compliance with international and national obligations but it is incumbent upon any state which allows the registration of ships under its flag effectively to exercise jurisdiction and control in administrative, technical and social matters. A flag state is required to take such measures as are necessary to ensure safety at sea with regard to construction, maintenance and seaworthiness, manning, labour conditions, crew, training and prevention of collisions of ships flying its flag.

Specifically, ART 94 of UNCLOS (United Nations Convention on the Law of the Sea) imposes a duty upon flag states to take any steps which may be necessary to secure compliance with generally accepted international regulations, procedures and practices. This obligation is repeated at Article 27 in relation to oil pollution. This is achieved in the main by the flag state issuing safety certificates often via the classification societies indicating compliance with the principal international conventions. It is these certificates, together with related manning, crew and environmental requirements, which form the basis of Port State Control.

Historically one of a ship’s most important attributes is the flag which it flies and trades under, but recent developments have highlighted the weaknesses inherent in this system. Some of these developments are as much matters of perception as of reality, but insofar as their impact on the viability of the international maritime regime is appreciable, the effect of these perceptions should not be underestimated. They are:

INTERNATIONAL CONVENTIONS

While there is a growing web of international regulations, its development is dependent upon consensus and agreement. Consequently, it has sometimes been necessary to proceed at the pace of the slowest, which leads to delay in implementation. However, it is acknowledged that IMO has achieved impressive and much speedier results in recent years.

THE FLAG STATES

Some flag states are seen as not fulfilling their function of ensuring that the owner complies with his obligations. In particular, the growth of registers which have no capability and even less intention of monitoring compliance has led to considerable criticism.

THE CLASSIFICATION SOCIETIES

The work of the classification societies has been seen as too easily undermined, although in recent years IACS have done much to improve both perception and reality in this area.

All of this has led to the burgeoning development in Port State Control, not as an alternative to “Flag State Control” but as an additional means of compelling owners to comply with international regulations.

REGIONAL DEVELOPMENT OF PORT STATE CONTROL

Port State Control as a concept is developing worldwide as a means of dealing with the problem of substandard shipping. However, it is important that its development is not viewed in isolation, as it remains one of a series of positive steps which are being taken to ensure that the shipowner trades his ships in a safe and environmentally responsible manner.

The first regional Port State Control agreement, covering Europe and the North Atlantic, was signed in 1982 and is known as the Paris Memorandum of Understanding (Paris MOU). The Latin American Agreement (Acuerdo de Viña del Mar) was signed in 1992; the Asia Pacific Memorandum of Understanding (Tokyo MOU) was signed in 1993.
The Caribbean MOU and the Mediterranean MOU are in the early states of implementation, the latter being signed in July 1997. The Port State Control Committee of the Caribbean MOU, the body charged with implementing the administrative framework necessary to give effect to the agreement, is currently working on the programme needed to collate information, establish a database and technical co-operation programme, as well as train the surveyors and inspectors of the countries involved. The Mediterranean MOU allows for an interim establishment period of two years and the first session of its Port State Control Committee has been scheduled for the end of February 1998.

Earlier this year the Indian Government announced plans to lead a scheme for the Indian Ocean area.

It would appear that the accepted view is that Port State Control works most effectively if implemented on a regional basis. However, there are examples of nations that are not signatories to a regional agreement but who nevertheless pursue the same aims. For example, the USA exercises its Port State Control authority through the US Coast Guard’s long-standing foreign ship boarding programme, which is now referred to as the Port State Control Programme.

**THIS MANUAL**

This is one of two companion manuals specially prepared for UK Club Members to guide ship operators, managers and ships’ officers through the intricacies of the various PSC regimes.

This volume serves to highlight and explain the key provisions of the agreements in some detail, whilst the other (shorter) volume sets out the principal features of each agreement in outline form and is suited to shipboard use.

This publication covers each of the three “mature” regional agreements – the Paris MOU, the Tokyo MOU and the Latin American Agreement – and, given the importance of the USA as a trading nation and that it often leads the world by example – an outline of the key provisions of the Port State Control programme implemented by the US Coast Guard.

It is clear that Port State Control will continue to be strengthened in existing areas and expanded into new ones. Consequently we intend to update this publication as and when necessary by providing supplements so that our Members have available to hand the latest information available for both operational and management purposes on all developments around the world on what is set to be an increasingly important subject.

Each chapter in this Manual has been written as an integral document which may be read separately from the rest, so that those who trade continuously in one area of the world need only read the chapter which deals with that particular area.
THE INTERNATIONAL MANAGEMENT CODE FOR
THE SAFE OPERATION OF SHIPS AND FOR
POLLUTION PREVENTION (“THE ISM CODE”)

Important developments have recently taken place in several international fora which will have a bearing on the operation and implementation of Port State Control.

Under the ISM Code, all passenger ships, oil tankers, chemical carriers, gas tankers, bulk carriers and high speed cargo craft of 500gt and above will have to be certified by 1st July 1998. For other cargo ships and mobile offshore drilling units of 500gt and above, enforcement will take effect on 1st July 2002.

The Code provides for a universal standard of safety and environmental protection which is subject to a formal “audit” procedure which must be conducted by qualified auditors in accordance with internationally agreed criteria.

Under the ISM Code and the Safety Management System a safety and environmental protection policy must be formulated and specific written procedures have to be available aboard each ship. Non-comformity and accident reporting procedures have to be established and management review arrangements developed. Full identification details of the ship’s operator must be communicated to the flag state.

The principal areas in which the ISM Code sets out to apply standards are:

- Operating ships and transporting cargo safely and efficiently.
- Conserving and protecting the environment.
- Avoiding injuries to personnel and loss of life.
- Complying with statutory and rules and requirements, as set out in the applicable International Conventions.
- Continuous development of skills and systems related to safe operation and pollution prevention.
- Preparation of effective emergency response plans.

It is readily apparent from the foregoing that the ISM Code and the ever increasing and coordinated approach to inspections known generically as Port State Control address the same concerns. Since the ISM Code is regarded by maritime authorities as an important additional tool in improving the safety consciousness of both shore based and ship based management, it is to be anticipated that stringent Port State Control will be undertaken to verify compliance with the certification requirements under the ISM Code.

Maritime authorities around the world are defining and refining their approach, and some take a more aggressive stance than others. For example, the secretariat of the European Memorandum of Understanding (the Paris MOU), a regional agreement which encompasses the majority of European maritime authorities, as well as Canada and the Russian Federation, has stated that it is currently preparing a campaign on inspection of ships and crews under the ISM Code. In the first instance, it can be anticipated that ships which have not started their certification process will be issued with a letter of warning, and after 1st July 1998 such ships will be detained for reasons of non-conformity. Such a detention could be lifted for a single voyage if no other deficiencies are found, but the ship will be refused entry in the same port thereafter, (stated in the Annual Report 1996, of the Paris MOU).

In addition, the European Union is taking an interest and has made repeated statements to the effect that it intends to ensure that the ISM Code effective 1st July 1998 will be enforced by means of enhanced Port State Control inspections. The European Commission has already warned that if Port State Control inspections and detentions fail to keep out substandard ships from its jurisdiction then the owners and charterers of substandard ships could face severe financial penalties. In his address to delegates at the Norshipping conference in June 1997, Mr Roberto Salvarani of the Marine Safety Agency of the European Union said shipping had to accept tough policing of existing regulations designed to stamp out what he termed the culture of evasion.

“This is to ensure that quality pays and that the evasion culture does not. This means ensuring a real economic return, at least in the longer term, on operating quality shipping. The role of governments, therefore – to use the example of football – is to give a red card to the bad players. Then and only then will a price be given to quality. If we can succeed in this we will have laid the foundations for industrial self-regulation.”

In 1998 inspections in Europe are expected to tighten, first with intense scrutiny of all ISM certificates after the 1st July deadline, focusing on bulk carriers later in the year. Task forces are being formed to streamline the operation and implementation of Port State Control checks, each with a particular brief.
The Asia Pacific Memorandum on Port State Control (the Tokyo MOU) encompasses a wide geographical area. They take their lead from the Paris group, adopting measures which have been developed by the Paris MOU.

The USA will be particularly vigilant, having intimated already that ships which are not in full compliance by July 1998 will not be permitted to enter US ports. The US Coast Guard has stated that they intend to strictly enforce the ISM Code requirements as part of their Port State Control programme. From January 1998, the US Coast Guard is issuing letters to the masters of foreign ships who visit a US port without ISM Code certification. As of 1st July 1998, for those ships for which the ISM Code is applicable, the US Coast Guard will deny port entry to any ship without it. If a ship without the required ISM Code certification is found in a US port, it will be detained, cargo operations restricted and be subject to a civil penalty action.

STANDARDS OF TRAINING, CERTIFICATION AND WATCHKEEPING CONVENTION – 1995 AMENDMENTS

Of all the recent developments the adoption in 1995 of extensive amendments to the STCW Convention is perhaps the most significant.

The amendments, which came into force on 1st February 1997, add considerably to the role of Port State Control. Prior to the 1995 amendments to the convention, Port State inspections were based upon an interconnecting web of non-mandatory provisions which were at times a challenge to enforce. However, the revised STCW, especially Regulation 4 in the new chapter XI, strengthens the legal basis for Port State inspections and contains very precise control procedures, including specification of clear grounds for believing that appropriate standards are not being maintained.

In addition, the revisions made give IMO, for the first time, the ability and responsibility to verify the capability of training institutions. It will issue a list of countries which are found to be conducting their maritime training and certification in accordance with the new requirements.

Those who are compliant will be put on a “White List”. The implications for countries which do not appear on the “White List” have been commented upon by the Secretary-General of IMO.

“Following publication of the list, certificates issued by countries not included in the list will not be accepted as prima facia evidence that the holders have been trained and meet the standards of competency required by the convention.”

The consequence of this will be that ships on which such seafarers are sailing may suffer costly delays in ports while inspectors verify that they are competent to safely man the ships, and this may in turn lead to an unwillingness by foreign shipowners to employ such seafarers.

These amendments will facilitate the role of the Port State Control inspector as well as provide greater transparency in decision making, which is helpful because an oft cited criticism of port inspections is that decisions sometimes appear to be made in an arbitrary and/or inconsistent manner. The actual or perceived inconsistency between the decisions of different inspectors is amplified when the different jurisdictions and practices appertaining to the hundreds of different maritime authorities are taken into account.

RESOLUTION A787 (19)

At the 19th Assembly of IMO in November 1995, the amalgamated resolution (A.787(19)) relating to Port State inspection procedures was adopted. The amalgamated resolution includes all substantive provisions of A.466 (XII) as amended, A.542 (13), A.597 (15), MEPC.26 (23) and A.742 (18) and contains comprehensive guidance for the detention of ships, the qualification and training requirements of inspectors and procedural guidelines covering ship safety, pollution prevention and manning requirements. Consequently this resolution will play an increasingly important part in the implementation of Port State Control.
PORT STATE CONTROL
GEOGRAPHICAL OVERVIEW OF REGIONAL DEVELOPMENTS IN PORT STATE CONTROL (as discussed in the manual)

FULL PARTICIPATING MEMBERS OF MOU

- **PARIS MOU**
  - Canada*
  - Belgium
  - Croatia
  - Denmark
  - Finland
  - France
  - Germany
  - Greece
  - Ireland
  - Italy
  - Netherlands
  - Norway
  - Poland
  - Russian Federation*
  - Spain
  - Sweden
  - United Kingdom

- **TOKYO MOU**
  - Australia
  - Canada*
  - China, including Hong Kong Special Administrative Region
  - Fiji
  - Indonesia
  - Japan
  - Republic of Korea
  - Malaysia
  - New Zealand
  - Papua New Guinea
  - Philippines
  - Russian Federation*
  - Singapore
  - Thailand
  - Vanuatu

- **ACUERDO DE VIÑA DEL MAR**
  - Argentina
  - Brazil
  - Chile
  - Cuba
  - Colombia
  - Ecuador
  - Mexico
  - Panama
  - Peru
  - Uruguay
  - Venezuela

- **CARIBBEAN MOU**
  - Antigua & Barbuda
  - Aruba
  - Bahamas
  - Barbados
  - Cayman Islands
  - Grenada
  - Jamaica
  - Trinidad & Tobago

- **USA AND TERRITORIES**

*S Canada and the Russian Federation adhere to both the Paris MOU and the Tokyo Mou.

SIGNING AUTHORITIES – NOT YET FULL PARTICIPATING MEMBERS OF MOU

- **PARIS MOU**
  - Iceland

- **TOKYO MOU**
  - Solomon Islands
  - Vietnam

- **ACUERDO DE VIÑA DEL MAR**

- **CARIBBEAN MOU**
  - Anguilla
  - Dominica
  - Guyana
  - British Virgin Islands
  - Monserrat
  - Netherlands Antilles
  - Surinam
  - Turks & Caicos Islands
<table>
<thead>
<tr>
<th><strong>AUTHORITIES WHICH ADHERE TO THE MOU</strong></th>
<th><strong>PARIS MOU</strong></th>
<th><strong>TOKYO MOU</strong></th>
<th><strong>ACUERDO DE VIÑA DEL MAR</strong></th>
<th><strong>CARIBBEAN MOU</strong></th>
</tr>
</thead>
<tbody>
<tr>
<td>Canada, Belgium, Croatia, Denmark, Finland, France, Germany, Greece, Ireland, Italy, Netherlands, Norway, Poland, Portugal, Russian Federation, Spain, Sweden, UK</td>
<td>Australia, Canada, China, Fiji, Hong Kong, Indonesia, Japan, Republic of Korea, Malaysia, New Zealand, Papua New Guinea, Philippines, Russian Federation, Singapore, Thailand, Vanuatu</td>
<td>Argentina, Brazil, Chile, Cuba, Colombia, Ecuador, Mexico, Panama, Peru, Uruguay, Venezuela</td>
<td>Antigua &amp; Barbuda, Aruba, Bahamas, Barbados, Cayman Islands, Grenada, Jamaica, Trinidad &amp; Tobago</td>
<td></td>
</tr>
</tbody>
</table>

| **AUTHORITIES WHICH HAVE SIGNED BUT NOT YET BECOME FULL PARTICIPATING MEMBERS** | **Iceland** | **Solomon Islands, Vietnam** | **Anguilla, Dominica, Guyana, British Virgin Islands, Monserrat, Netherland Antilles, Surinam, Turks & Caicos Islands** |

| **OBSERVER AUTHORITY** | **IMO, ILO** | **United States (14th District USCG)** | **Anguilla, Monserrat, Turks & Caicos Islands** |

| **OBSERVER ORGANISATION** | **IMO, ILO, ESCAP** | **IMO, ROCRAM** | **Paris MOU, Tokyo MOU, Viña del Mar, Canada, USA, Netherlands, CARCOM, Secretariats, ILO, IMO, IACS** |

| **OFFICIAL LANGUAGE** | **English, French** | **English** | **Spanish, Portuguese** | **English** |

| **SIGNED** | **26 January 1982** | **1 December 1993** | **5 November 1992** | **9 February 1996** |

| **EFFECTIVE DATE** | **1 July 1982** | **1 April 1994** | **-** | **-** |

| **GOVERNING BODY** | **Port State Control Committee** | **Port State Control Committee** | **Committee of the Viña del Mar Agreement** | **Caribbean Port State Control Committee** |

| **SECRETARIAT** | **Provided by the Netherlands Ministry of Transport and Public Works The Hague** | **Tokyo MOU Secretariat (Tokyo)** | **Provided by Prefectura Naval Argentina (Buenos Aires)** | **(Anticipated) Barbados** |

| **DATABASE CENTRE** | **Centre Administration des Affaires Maritimes (CAAM) (St. Malo, France)** | **Asia-Pacific Computerised Information System (APCIS)(Ottawa, Canada)** | **Centre de Informacion del Acuerdo Latinoamericano (CIALA) (Buenos Aires, Argentina)** | **Asia-Pacific Computerised Information System (APCIS)(Ottawa, Canada)** |

| **ADDRESS OF SECRETARIAT** | **Paris MOU Secretariat PO Box 2094 2500 Ex Den Haag The Netherlands Tel: +31 70 351 1508 Fax: +31 70 351 1509 Website: http://www.parismou.org** | **Tokyo (MOU) Secretariat Tonnezacho Annex Bld, Toranomon Minato-ku 6th Floor, 3-8-26 Tokyo 105, Japan Tel: +81 3 3433 0621 Fax: +81 3 3433 0624 Website: http://www.lignet.or.jp/toymou** | **Secretariat del Acuerdo Prefectura Naval Argentina Tel: +541 318 7433/7647 Fax: +541 318 7847/514 0317 Website: http://www.sudnet.com.ar/ciala** | **http://www.parismou.org** |

The US Port State Control programme is not susceptible to the same tabular treatment and is covered on pages 28 to 38.
The information contained in the following section provides an outline of Port State Control procedures under the Paris Memorandum of Understanding, the “Paris MOU”.

**MEMBER STATES**

The current member states of the Paris MOU region are:

- Belgium
- Canada
- Croatia
- Denmark
- Finland
- France
- Germany
- Greece
- Iceland
- Ireland
- Italy
- Netherlands
- Norway
- Poland
- Portugal
- Russian Federation
- Spain
- Sweden
- United Kingdom of Great Britain & Northern Ireland

In 1996 the Maritime Authority of Iceland was granted the status of “Co-operating Maritime Authority” and it is anticipated that this status should allow Iceland to achieve access as a full member of the Paris MOU in due course.

**OUTLINE STRUCTURE**

The executive body of the Paris MOU is the Port State Control Committee. This is composed of the representatives of the 18 participating maritime authorities and meets once a year, or at shorter intervals if necessary.

Representatives of the European Commission, the International Maritime Organisation (IMO) and the International Labour Organisation (ILO) participate as observers in the meetings of the Port State Control Committee, as do representatives of co-operating maritime authorities and other regional agreements (e.g., the Tokyo MOU).

**BASIC PRINCIPLES**

The Paris MOU maintain that the prime responsibility for compliance with the requirements laid down in the international maritime conventions lies with the shipowner/operator and the responsibility for ensuring such compliance remains with the flag state. Port State Control is seen as a safety net, as the language of the recitals indicates:

“Mindful that the principal responsibility for the effective application of standards laid down in international instruments rests upon the authorities of the state whose flag a ship is entitled to fly”, but “recognising nevertheless that effective
action by port states is required to prevent the operation of sub-
standard ships...” but “convinced of the necessity for these...
of an improved and harmonised system of Port State Control”.

THE CONVENTIONS

Internationally accepted conventions are monitored during Port State Control inspections. These conventions are called ‘relevant’ instruments in the Memorandum and are:

- International Convention for the Prevention of Pollution from Ships, 1973, as modified by the Protocol of 1978, as amended (MARPOL 73/78)
- International Convention on Standards of Training, Certification and Watchkeeping for Seafarers 1978, as amended (STCW 78)
- Convention on the International Regulations for Preventing Collisions at Sea 1972, as amended (COLREG 72)
- Merchant Shipping (Minimum Standards) Convention, 1976 (ILO Convention 147)

Since its inception date, the Paris MOU has been amended several times to accommodate new safety and marine environmental requirements stemming from the IMO, as well as other important developments such as the EC Directive referenced below.

EU DEVELOPMENTS

On 1 July 1996 the EU Council Directive 95/21/EC on Port State Control entered into effect and made Port State Control mandatory in those states who are members of the European Union.

During 1996 the Paris Port State Control Committee completed the necessary amendments in order to bring the Paris MOU in line with the EU Directive. Countries who are members of the European Union are consequently obliged to give effect to the Paris MOU, by virtue of the fact that the Directive is enshrined in the Memorandum, and whilst the Directive provisions are not obligatory to non EU members, the fact that they too have to fulfil these obligations if they are to conform to the Paris MOU means that there is in effect a significant raising of inspection standards within all of those countries who are participating members of the Paris MOU.

Consequently, the scope and application of Port State Control is extended by the provision of EC Directive 95/21/EC. For example, the Directive:

i. gives Member States the power to inspect and detain ships anchored off a port or an offshore installation, although most inspections continue to be carried out on ships alongside. It requires that, as a minimum, the inspector checks all relevant certificates and documents and satisfies himself as to the overall condition of the ship including the engine room and crew accommodation.

ii. permits the targeting of certain categories of ship. The Paris MOU now includes general ship selection criteria which enable the inspectors to choose and review certain ships with a view to “priority inspection” (see later comments).

iii. provides that where there are “clear grounds” for a detailed inspection of some ships, the Authorities must ensure that an “expanded inspection” is carried out, (see later comments).

The Paris MOU has recently established an Advisory Board which, among other things, co-ordinates the legal relationship between the EU Directive and the Paris MOU.

TARGET RATE FOR INSPECTION

Under the Paris MOU Member States have agreed to inspect 25% of the estimated number of individual foreign merchant ships which enter their ports.

“Each authority will achieve, within a period of three years from the coming into effect of the Memorandum, an annual total of inspections corresponding to 25% of the estimated number of individual foreign merchant ships, which entered the ports of its state during a recent representative period of 12 months.”

INSPECTIONS THROUGHOUT THE REGION

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<th></th>
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<th></th>
</tr>
</thead>
<tbody>
<tr>
<td>Ships Inspected</td>
<td>9842</td>
<td>10101</td>
<td>10455</td>
<td>11252</td>
<td>10694</td>
<td>10563</td>
<td>10256</td>
</tr>
<tr>
<td>Inspections</td>
<td>13955</td>
<td>14379</td>
<td>14783</td>
<td>17294</td>
<td>16964</td>
<td>16381</td>
<td>16070</td>
</tr>
</tbody>
</table>

Source: Annual Report and Accounts, the Paris Memorandum of Understanding 1996
Interestingly, a review of the inspection efforts of individual Paris MOU Members reveals that some countries exceed the average by a considerable margin while some fall below it.

“NO MORE FAVOURABLE TREATMENT” PRINCIPLE

In applying a relevant instrument, the authorities will ensure that no more favourable treatment is given to ships entitled to fly the flag of a state which is not a party to that Convention. In such a case ships will be subject to a detailed inspection and the port inspectors will follow the same guidelines as if the flag state was a party to the Convention.

SELECTING A SHIP FOR INSPECTION

Every day a number of ships are selected for inspection throughout the region. To facilitate selection, a central computer database, known as SIRENAC is consulted by inspectors for data on ships’ particulars and for the reports of previous inspections carried out within the Paris MOU region which assist the authorities in determining which kinds of ships to target. As this database grows and develops, the targeting of ships is becoming increasingly sophisticated.

FIRST INSPECTION

Port State Control is carried out by properly qualified Port State Control officers (PSCO’s) acting under the responsibility of the member state’s maritime authority. Inspections are generally unannounced and usually begins with verification of certificates and documents, moving on to check crew, manning and various onboard operational requirements. When deficiencies are found or the ship is reportedly not complying with the regulations, a more detailed inspection may be carried out. A ship may be detained and the master instructed to rectify the deficiencies before departure.

On a first inspection, the inspector has to ensure that as a minimum the ship’s certificates and documents are on board and are satisfactory. He must satisfy himself of the overall condition of the ship, including the engine room and accommodation and hygiene conditions. Thereafter, if there are clear grounds for believing that the condition of a ship, its equipment or its crew does not substantially meet the relevant requirements of a convention, a more detailed inspection will be carried out, including further checking of compliance with on board operational requirements.

The non-mandatory guidelines which assist the inspectors can be found at Annex 1 of the Paris MOU. See in particular

APPROXIMATE INSPECTION EFFORTS BY INDIVIDUAL PARIS MOU MEMBERS (1996)

<table>
<thead>
<tr>
<th>Country</th>
<th>% of Ships Calling Inspected</th>
</tr>
</thead>
<tbody>
<tr>
<td>Belgium</td>
<td>4%</td>
</tr>
<tr>
<td>Canada</td>
<td>24%</td>
</tr>
<tr>
<td>Denmark</td>
<td>19%</td>
</tr>
<tr>
<td>Finland</td>
<td>23.5%</td>
</tr>
<tr>
<td>France</td>
<td>25.5%</td>
</tr>
<tr>
<td>Germany</td>
<td>29%</td>
</tr>
<tr>
<td>Greece</td>
<td>29%</td>
</tr>
<tr>
<td>Ireland</td>
<td>7.5%</td>
</tr>
<tr>
<td>Italy</td>
<td>26%</td>
</tr>
<tr>
<td>Netherlands</td>
<td>37%</td>
</tr>
<tr>
<td>Norway</td>
<td>36%</td>
</tr>
<tr>
<td>Poland</td>
<td>36%</td>
</tr>
<tr>
<td>Portugal</td>
<td>36%</td>
</tr>
<tr>
<td>Russian Federation</td>
<td>27%</td>
</tr>
<tr>
<td>Spain</td>
<td>11%</td>
</tr>
<tr>
<td>Sweden</td>
<td>14%</td>
</tr>
<tr>
<td>UK</td>
<td>27%</td>
</tr>
<tr>
<td>Iceland</td>
<td>25.5%</td>
</tr>
<tr>
<td>Lithuania</td>
<td>29%</td>
</tr>
<tr>
<td>Luxembourg</td>
<td>26%</td>
</tr>
</tbody>
</table>

Adapted from data in the Annual Report and Accounts, the Paris Memorandum of Understanding 1996

Section 2 – Examination of Certificates and Documents – and Section 3 – Items of General Importance.

In addition, the Paris MOU, stipulates the first inspection requirements for the STCW 78 and the ILO 147, stating, at Sections 5 and 6 respectively of Annex 1, that inspection requirements for these important conventions shall be as follows:

CONTROL UNDER THE PROVISIONS OF STCW 78

The inspector shall look for:

- verification that all seafarers serving on board, who are required to be certificated, hold an appropriate certificate or a valid dispensation, or provide documentary proof that an application for an endorsement has been submitted to the flag state administration;
• verification that the numbers and certificates of the seafarers on board are in conformity with the applicable safe manning requirements of the flag state administration; and,

• assess the ability of the seafarers of the ship to maintain watchkeeping standards as required by the Convention if there are clear grounds for believing that such standards are not being maintained because any of the following have occurred:

  a. the ship has been involved in a collision, grounding or stranding, or

  b. there has been a discharge of substances from the ship when underway, at anchor or at berth which is illegal under any international convention, or

  c. the ship has been manoeuvred in an erratic or unsafe manner whereby routing measures adopted by the IMO or safe navigation practices and procedures have not been followed, or

  d. the ship is otherwise being operated in such a manner as to pose a danger to persons, property or the environment.

CONTROL UNDER THE PROVISION OF THE MERCHANT SHIPPING (MINIMUM STANDARDS) CONVENTION 1976, (NO. 147)

The inspectors shall be guided by:

• the Minimum Age Convention 1973 (No.138); or

• the Minimum Age (Sea) Convention (Revised 1938 (No.58): or

• the Minimum Age (Sea) Convention 1920 (No.7);

• the Medical Examination (Seafarers) Convention 1946 (No.73);

• the Prevention of Accidents (Seafarers) Convention, 1970 (No.134) (Articles 4 and 7):

• the Accommodation of Crews Convention (Revised), 1949 (No.92);

• the Food and Catering (Ships’ Crews) Convention, 1946 (No.68) (Article 5);

• the Officers’ Competency Certificates Convention, 1956 (No.53)(Articles 3 and 4).

When carrying out an inspection the inspectors are asked to take into account the considerations given in the ILO publication “Inspection of Labour Conditions on board Ship: Guidelines for procedures”.

In addition to the above, any participating member, upon request by another participating member, will endeavour to secure evidence relating to suspected violations of the requirements on operational matters of Rule 10 of COLREG 72 and MARPOL 73/78. The procedures for investigation into contravention of discharge provisions are listed in Annex I of the Memorandum.

“BELOW CONVENTION SIZE” SHIPS

In the case of ships below 500 gross tonnage, ie., below “convention size”, the Paris MOU states that the inspectors will apply those requirements of the relevant instruments as are applicable and will, to the extent that a relevant instrument does apply,

"take such action as may be necessary to ensure that those ships are not clearly hazardous to safety, health or the environment”

Therefore, below convention size ships are subject to port state inspections under the Paris MOU and the inspectors follow the same inspection procedures set out at Annex I.

<table>
<thead>
<tr>
<th></th>
<th></th>
<th></th>
<th></th>
<th></th>
<th></th>
<th></th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td>NUMBER OF SHIPS INSPECTED</td>
<td>441</td>
<td>525</td>
<td>588</td>
<td>926</td>
<td>1597</td>
<td>1837</td>
<td>1719</td>
</tr>
<tr>
<td>DETENTION AS A PERCENTAGE OF SHIPS INSPECTED</td>
<td>4.48</td>
<td>5.2</td>
<td>5.62</td>
<td>8.23</td>
<td>14.93</td>
<td>17.34</td>
<td>16.76*</td>
</tr>
</tbody>
</table>

*AVGARAGE DETENTION PERCENTAGE 1994-1996 = 16.35%
Source: Annual Report and Accounts, the Paris Memorandum of Understanding 1996

PRIORITY INSPECTIONS

If a ship has been inspected within the Paris MOU region during the previous six months and on that occasion was found to comply, the ship will in principle be exempt from further inspection unless, on a subsequent inspection, there are clear grounds to warrant more detailed investigations, or if deficiencies have been reported from a previous inspection. However, the Paris MOU provides that the following ships will be subject to “priority inspections”.

• Ships visiting a port of a state, the Authority of which is a signatory to the Memorandum, for the first time after an absence of 12 months or more.

• Ships flying the flag of a state appearing in the 3 year rolling average table of above-average detention and delays.

• Ships which have been permitted to leave the port of a state, the Authority of which is a signatory on the condition that the deficiencies noted must be rectified within a specified period, on expiry of such period.
Ships which have been reported by pilots or port authorities as having deficiencies which may prejudice their safe navigation. (93/75/EU Directive).

Ships whose statutory certificates on the ship’s construction and equipment, have been issued by an organisation which is not recognised by the Maritime Authority concerned.

Ships carrying dangerous or polluting goods, which have failed to report all relevant information to the Authority of the port and coastal state.

Ships which are in a category for which expanded inspection has been decided.

Ships which have been suspended from their class for safety reasons in the course of the preceding six months.

**CONCENTRATED INSPECTION CAMPAIGNS**

The participating maritime authorities of the Paris MOU have recently adopted, on an experimental basis, the idea of concentrating on a particular aspect of inspection and control, using the developing SIRENAC database.

Such campaigns, announced in the professional press and through other relevant channels, concentrate for a period of usually three months on inspection of a limited number of items during all inspections. Selection of items for concentrated inspection campaigns is either based on the frequency of deficiencies noted in the subject areas, or on the recent entry into force of new international requirements. For example, during 1996, a concentrated inspection campaign was carried out on compliance with the requirements of MARPOL 73/78 to keep an accurate Oil Record Book.

**A “CLEAN” INSPECTION REPORT**

If a ship is found to comply, the inspector will issue a “clean” inspection report (Form A) to the Master of the ship. Relevant ship data, ship and the inspection result will be recorded on the central computer database, SIRENAC located in Saint Malo, France. The “Inspection A” Report must be retained on board for a period of two years and be available for examination by Port State Control officers at all times.

**GROUNDS FOR “MORE DETAILED INSPECTION”**

If valid certificates or documents are not on board, or if there are “clear grounds” to believe that the condition of a ship, its equipment, its on board operational procedures and compliance, or its crew does not substantially meet the requirements of a relevant Convention, a more detailed inspection will be carried out. Clear grounds for a more detailed inspection are set out at Annex 1, Section 4 and include:

1. a report or notification by another Maritime Authority
2. a report or complaint by the Master, a crew member, or any person or organisation with a legitimate interest in the safe operation of the ship, shipboard living and working conditions or the prevention of pollution, unless the Authority concerned deems the report or complaint to be manifestly unfounded. The identify of the person lodging the report or the complaint must not be revealed to the Master or the shipowner of the ship concerned
3. the ship has been accused of an alleged violation of the provisions on discharge of harmful substances or effluents
4. the ship has been involved in a collision, grounding or stranding on its way to the port

---

**FLAG STATES WITH DETENTION PERCENTAGES EXCEEDING THREE-YEAR ROLLING AVERAGE PERCENTAGE, TO BE CATEGORISED AS PRIORITY CASES IN 1997-1998**

<table>
<thead>
<tr>
<th></th>
<th></th>
<th></th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td>SYRIAN ARAB REPUBLIC</td>
<td>129</td>
<td>79</td>
<td>61.24</td>
</tr>
<tr>
<td>ROMANIA</td>
<td>287</td>
<td>158</td>
<td>55.05</td>
</tr>
<tr>
<td>HONDURAS</td>
<td>378</td>
<td>203</td>
<td>53.70</td>
</tr>
<tr>
<td>BELIZE</td>
<td>83</td>
<td>59</td>
<td>46.99</td>
</tr>
<tr>
<td>TURKEY</td>
<td>855</td>
<td>385</td>
<td>45.03</td>
</tr>
<tr>
<td>CUBA</td>
<td>73</td>
<td>32</td>
<td>43.84</td>
</tr>
<tr>
<td>MOROCCO</td>
<td>99</td>
<td>43</td>
<td>43.43</td>
</tr>
<tr>
<td>LEBANON</td>
<td>77</td>
<td>29</td>
<td>37.66</td>
</tr>
<tr>
<td>EGYPT</td>
<td>134</td>
<td>46</td>
<td>34.35</td>
</tr>
<tr>
<td>ALGERIA</td>
<td>130</td>
<td>42</td>
<td>32.31</td>
</tr>
<tr>
<td>ST VINCENT &amp; GRENADINES</td>
<td>796</td>
<td>235</td>
<td>31.78</td>
</tr>
<tr>
<td>MALTA</td>
<td>1695</td>
<td>469</td>
<td>27.67</td>
</tr>
<tr>
<td>IRAN</td>
<td>68</td>
<td>17</td>
<td>25.00</td>
</tr>
<tr>
<td>PORTUGAL</td>
<td>117</td>
<td>25</td>
<td>21.37</td>
</tr>
<tr>
<td>CYPRUS</td>
<td>2625</td>
<td>541</td>
<td>20.61</td>
</tr>
<tr>
<td>BULGARIA</td>
<td>170</td>
<td>34</td>
<td>20.59</td>
</tr>
<tr>
<td>ESTONIA</td>
<td>252</td>
<td>50</td>
<td>19.84</td>
</tr>
<tr>
<td>CROATIA</td>
<td>92</td>
<td>18</td>
<td>19.57</td>
</tr>
<tr>
<td>BARBADOS</td>
<td>77</td>
<td>15</td>
<td>19.48</td>
</tr>
<tr>
<td>PANAMA</td>
<td>3412</td>
<td>464</td>
<td>19.24</td>
</tr>
<tr>
<td>CHINA PEOPLE’S REPUBLIC</td>
<td>344</td>
<td>61</td>
<td>17.33</td>
</tr>
<tr>
<td>LITHUANIA</td>
<td>247</td>
<td>43</td>
<td>17.41</td>
</tr>
<tr>
<td>GREECE</td>
<td>1363</td>
<td>228</td>
<td>16.73</td>
</tr>
<tr>
<td>UKRAINE</td>
<td>673</td>
<td>112</td>
<td>14.64</td>
</tr>
</tbody>
</table>

Average Detention Percentage 1994-96 = 16.55%

Source: Annual Report and Accounts, the Paris Memorandum of Understanding 1996
5. the emission of false distress alerts not followed by proper cancellation procedures
6. the ship has been identified as a priority case for inspection
7. the ship is flying the flag of a non-party to a relevant instrument
8. inaccuracies and other inadequacies have been revealed in the ship’s documents
9. the absence of principal equipment or arrangements required by the conventions
10. evidence from the Port State Control officer’s general impressions and observations that serious hull or structural deterioration or deficiencies exist that may place at risk the structural, watertight or weathertight integrity of the ship
11. excessively unsanitary conditions on board the ship:
12. information or evidence that the Master or crew is not familiar with essential shipboard operations relating to the safety of ships or the prevention of pollution, or that such operations have not been carried out
13. indications that the relevant crew members are unable to communicate appropriately with each other, or with other persons on board, or that the ship is unable to communicate with the shore-based authorities either in a common language or in the language of those authorities
14. evidence of cargo and other operations not being conducted safely or in accordance with IMO guidelines
15. clear grounds under the provision of STCW 78, as set out above.

The above list is not exhaustive. If an inspector decides that a more detailed inspection is called for, he may:

- conduct a more detailed inspection in the area where “clear grounds” have been established;
- carry out a more detailed inspection on other areas at random;
- include further checking of compliance with on board operational equipment.

“EXPANDED INSPECTIONS”

Certain categories of ships are automatically subject to an “expanded inspection” if they do not “pass” the first inspection. The types of ships which fall into this category are:

- oil tankers
- bulk carriers older than 12 years of age
- passenger ships
- gas/chemical tankers older than 10 years of age all as set out at Annex 1, Section 8 of Paris MOU.

DEFICIENCIES, SUSPENSION OF INSPECTION AND RECTIFICATION

When deficiencies are found during an inspection, the nature of the deficiencies and the corresponding action taken are filled in on the inspection report.

<table>
<thead>
<tr>
<th>DETENTION PER SHIP TYPE</th>
<th>1995</th>
<th>1996</th>
</tr>
</thead>
<tbody>
<tr>
<td>General dry cargo ships</td>
<td>24.54%</td>
<td>24.84%</td>
</tr>
<tr>
<td>Bulk carriers</td>
<td>17.92%</td>
<td>17.45%</td>
</tr>
<tr>
<td>Tankers/combination carriers</td>
<td>14.68%</td>
<td>11.84%</td>
</tr>
<tr>
<td>Gas carriers</td>
<td>4.78%</td>
<td>2.22%</td>
</tr>
<tr>
<td>Chemical tankers</td>
<td>15.22%</td>
<td>13.17%</td>
</tr>
<tr>
<td>Passenger ships/ferries</td>
<td>6.77%</td>
<td>9.57%</td>
</tr>
<tr>
<td>Refrigerated cargo ships</td>
<td>13.87%</td>
<td>15.45%</td>
</tr>
<tr>
<td>Re-ro/container ships</td>
<td>6.56%</td>
<td>9.19%</td>
</tr>
<tr>
<td>Other types</td>
<td>12.56%</td>
<td>12.69%</td>
</tr>
</tbody>
</table>

Source: Annual Report and Accounts, the Paris Memorandum of Understanding 1996

Action which may be requested by the inspector can be found on the reverse side of Form B of the inspection report and are:

00 no action taken
10 deficiency rectified
12 all deficiencies rectified
15 rectify deficiency at next port
16 rectify deficiency within 14 days
17 Master instructed to rectify deficiency before departure
20 grounds for delay
25 ship allowed to sail after delay
30 grounds for detention
35 ship allowed to sail after detention
36 ship allowed to sail after follow-up detention
40 next port informed
45 next port informed to re-detain
50 flag state/consul informed
In principle all deficiencies must be rectified before departure of the ship and the above list is not restrictive. Note the general catch-all at Clause 3.2.

"Nothing in these procedures will be construed as restricting the power of the Authorities to take measures within its jurisdiction in respect of any matter..."
COST/GUARANTEE FOR COSTS/APPEAL PROCESS
When a ship has been detained all costs accrued by the port state in inspecting the ship will be charged to the owner or the operator of the ship or to his representative in the port state. The detention will not be lifted until full payment has been made or a sufficient guarantee has been given for the reimbursement of the costs (Clause 3.12).

The owner or the operator of a ship has a right of appeal against a detention taken by the port state authority. An appeal will not however result in the detention being lifted immediately (Clause 3.13).

INSPECTION/DETENTION INFORMATION
AND BLACKLISTING
Under the Paris MOU each Authority agrees, as a minimum, to publish quarterly information concerning ships detained during the previous 3-month period and which have been detained more than once during the past 24 months. The information published includes the following:

1. name of the ship
2. name of the shipowner or the operator of the ship
3. IMO number
4. flag state
5. classification society, where relevant, and, if applicable, any other party which has issued certificates to such ship in accordance with the relevant instruments
6. reason for detention
7. port and date of detention

In the case of deficiencies not fully rectified or only provisionally repaired, a message will be sent to the competent Authority of the state where the next port of call of the ship is situated. Each message must contain the following information:

1. Date
2. From (country)
3. Port
4. To (country)
5. Port
6. A statement reading deficiencies to be rectified
7. Name of ship
8. IMO identification number (if available)
9. Type of ship
10. Flag of ship
11. Call sign
12. Gross tonnage
13. Year built
14. Issuing authority of relevant certificate(s)
15. Date of departure
16. Estimated place and time of arrival
17. Nature of deficiencies
18. Action taken
19. Suggested action
20. Suggested action at next port of call
21. Name and facsimile number of sender

In the event of detention, the Report from Inspectors is sent to:
- Next port
- Owners
- Flag state, or its Consul
- Classification society
- Other MOU

**DEFICIENCIES**

<table>
<thead>
<tr>
<th>Year</th>
<th>Number of Deficiencies</th>
<th>Ratio of Deficiencies to Inspections</th>
<th>Ratio of Deficiencies to Number of Individual Ships Involved</th>
</tr>
</thead>
<tbody>
<tr>
<td>1994</td>
<td>53,120</td>
<td>3.14</td>
<td></td>
</tr>
<tr>
<td>1995</td>
<td>54,451</td>
<td>3.32</td>
<td></td>
</tr>
<tr>
<td>1996</td>
<td>53,967</td>
<td>3.36</td>
<td></td>
</tr>
</tbody>
</table>

Source: Annual Report and Accounts, the Paris Memorandum of Understanding 1996

GENERAL PUBLICITY AND DISSEMINATION OF INSPECTION INFORMATION TO OTHER REGIONAL GROUPS AND INTERNATIONAL ORGANISATIONS
Each Authority reports on all of its activities, including inspections and their results in accordance with procedures specified in the Memorandum, at Annex 3 (form A). Arrangements have been made for the exchange this information with other regional MOU, as well as flag states and the various international organisations such as the IMO, and the EU.
The success of the Paris MOU has led to a similar arrangement being established for the Asia-Pacific region. In December 1993 sixteen maritime authorities met in Tokyo to sign the Asia-Pacific Memorandum of Understanding on Port State Control, (the “Tokyo MOU”). The Tokyo MOU came into effect from 1 April 1994. This MOU is not as developed as the Paris MOU, but it is making rapid progress.

At its most recent Annual Meeting in Auckland the Port State Control Committee agreed a revised Agreement, brining the Tokyo MOU up-to-date with the latest Paris MOU, incorporating a broader and more exacting regime of inspections, follow up procedures and publications etc. It is anticipated that this will be published shortly and at that time we shall incorporate the amendments into this manual.

For the time being the information in this section provides an outline of Port State Control procedures currently in force under the Tokyo MOU.

MEMBER STATES

The current member states of the Tokyo MOU are:

- Australia
- Canada
- China, including Hong Kong Special Administrative Region
- Fiji
- Indonesia
- Japan
- Republic of Korea
- Malaysia
- New Zealand
- Papua New Guinea
- Philippines
- Russia
- Singapore
- Thailand
- Vanuatu
- Vietnam

The following states are already signatories to the agreement and it is anticipated that in time they will become full participating members:

- Solomon Islands
OUTLINE STRUCTURE

The executive body of the Tokyo MOU is the Port State Control Committee, which became operational in April 1994. This is composed of the representatives of the participating maritime authorities and meets once a year, or at more frequent intervals if necessary. Representatives of the International Maritime Organisation (IMO) and the International Labour Organisation (ILO) participate as observers at the meetings of the Port State Control Committee, as do representatives of the Paris MOU. The fourteenth Coast Guard District (Hawaii) of the United States Coast Guard acts as Observer Authority.

BASIC PRINCIPLES

As with the Paris MOU, the Tokyo MOU states in its recitals that the ultimate responsibility for implementing international conventions rests with owners and the flag states, but it is recognised that effective action by port states is required to prevent the operation of sub-standard ships.

THE CONVENTIONS

For the purpose of the Tokyo MOU, the following are the “Relevant Instruments” on which regional Port State Control is based:

- The International Convention on Load Lines, 1996, as amended
- The International Convention for the Prevention of Pollution from Ships 1973, as modified by the Protocol of 1978, as amended (MARPOL 73/78)
- The International Convention on Standards of Training, Certification and Watchkeeping for Seafarers, 1978, as amended (STCW 78)
- The Convention on the International Regulations for Preventing Collisions at Sea, as amended (COLREG 72)
- The Merchant Shipping (Minimum Standards) Convention, 1976 (ILO Convention No. 147)

Note that, unlike the other regional agreements, the Tonnage Convention is not listed, but it is understood that this is incorporated into the revised Agreement.

TARGET RATE FOR INSPECTION

Each participating member of the Tokyo MOU must determine an appropriate annual average percentage of individual foreign merchant ships to be inspected. As a preliminary target the Committee has requested that they “endeavour to attain” a regional annual inspection rate of 50% of the total number of ships operating in the region by the year 2000 (Clause 1.4). The percentage is based on the number of ships which entered regional ports during a base period observed by the Committee. According to the latest Annual Report and Accounts published by the Port State Control Committee in 1994 the overall regional inspection rate was 52% and the inspection rate of individual authorities was as follows:

- Australia 23.7%
- Canada 3.18%
- China 10.04%
- Hong Kong 2.04%
- Japan 25.41%
- Indonesia 15.21%
- Republic of Korea 6.12%
- Malaysia 0.38%
- New Zealand 9.42%
- Papua New Guinea 0.02%
- Russian Federation 2.85%
- Singapore 1.62%
- Thailand 0.02%
- Singapore 1.62%
- Thailand 0.02%

Figures taken from the Annual Report, Tokyo MOU 1996

SUMMARY OF PORT STATE CONTROL RESULTS

INSPECTIONS AS A % OF SHIPS VISITED

<table>
<thead>
<tr>
<th>Year</th>
<th>Inspections</th>
</tr>
</thead>
<tbody>
<tr>
<td>1994</td>
<td>8000</td>
</tr>
<tr>
<td>1995</td>
<td>8854</td>
</tr>
<tr>
<td>1996</td>
<td>12,243</td>
</tr>
</tbody>
</table>

Detentions

3 Year Rolling Average 5.25%

Source: Annual Report of the Tokyo MOU 1996

“NO MORE FAVOURABLE TREATMENT” PRINCIPLE

In implementing a convention standard the authorities have to ensure that no more favourable treatment is given to ships entitled to fly the flag of a state which is not party to that convention. Such ships are subject to the same inspections and the port inspectors follow the same guidelines.
FIRST INSPECTION

Under the Tokyo MOU Port State Control is carried out by inspectors acting under the responsibility of the participating Maritime Authority to whom they report. The professional requirements and training of the surveyors are not so extensively set out as in the Paris MOU, simply stating at Clause 3.5 that “Inspections will be carried out by properly qualified persons...”. However, after more than two years of preparations, the Tokyo PSC Manual has recently been published for use by inspectors in the region. The manual is intended to provide guidance and information that will assist the inspectors in carrying out their duties in a harmonised manner.

Inspections are generally unannounced and usually begin with verification of certificates and documents. When deficiencies are found or the ship is reportedly not complying with regulations, a more detailed inspection may be carried out. As with the Paris MOU when serious deficiencies are found, a ship may be detained and the Master ordered to rectify the deficiencies before departure.

More specifically, Clause 3.1 states that the inspector will visit on board a ship in order to check the certificates and documents relevant for the purposes of the Tokyo MOU. In the absence of valid certificates or documents, or if there are clear grounds for believing that the condition of a ship or its equipment or its crew does not substantially meet the requirements of a relevant instrument, a more detailed inspection will be carried out. In addition, the inspectors conduct an inspection of several areas on board, to verify that the overall condition of the ship (including the engine room and accommodation, and including hygienic conditions, tests, drills, musters etc) complies with the standards required by various certificates. The Tokyo MOU sets out general inspection criteria in Annex 1, and also specifically references and incorporates the ILO 147 and the ILO publication “Inspection of Labour Conditions on board Ship: Guidelines for Procedure”.

In addition to the above, the document informs us that any participating member will, when requested to do so by another participating member, endeavour to secure evidence relating to suspected violations of the requirements on operational matters of Rule 10 of COLREG 72 and MARPOL 73/78.

SHIP SELECTION CRITERIA

The participating members of the Tokyo MOU seek to avoid inspecting ships which have been inspected by any other participating member within the previous six months, unless they have clear grounds for inspection or they fall into the categories of ships listed at Clause 3.3 to which they are asked to pay special attention to, namely:

- passenger ships, roll-on/roll-off ships and bulk carriers;
- ships which may present a special hazard, including oil tankers, gas carriers, chemical tankers and ships carrying harmful substances in package form;
- groups of ships appearing in the three-year rolling average table of above average delays and detentions in the annual report of the Memorandum;
- ships which have had several recent deficiencies;
- ships which, according to the exchanged information, have not been inspected by any authorities within a previous period of six months.

The revised Tokyo MOU has adopted the ship selection criteria currently in force under the Paris MOU, but as stated previously, the revised Agreement is not available at the date of publication of this manual.

Concentrated inspection campaigns, currently undertaken by the Paris MOU on an experimental basis, will be considered by the Tokyo PSC Committee at its next meeting in 1998.
A “CLEAN” INSPECTION REPORT

If a ship is found to comply with all matters, it is issued with a “clean” inspection report (Form A) to the Master of the ship. It is advisable that this Report is kept onboard for a minimum of six months. Relevant ship data and the inspection results are recorded on the central computer base at Ottawa.

GROUNDS FOR “MORE DETAILED INSPECTIONS”

If valid certificates or documents are not onboard, or if there are “clear grounds” to believe that the condition of a ship, its equipment, its onboard operational procedures and compliance or its crew does not substantially meet the requirements of a relevant convention, a more detailed inspection will be carried out.

Clear grounds for a more detailed inspection are, amongst others;

1. Report or notification by another Authority.

2. Evidence of cargo and other operations not being conducted safely or in accordance with IMO guidelines.

3. Involvement of the ship in incidents due to failure to comply with operational requirements.

4. Evidence, from the witnessing of a fire and abandon ship drill, that the crew are not familiar with essential procedures.

5. Absence of an up-to-date muster list.

6. Indications that key crew members may not be able to communicate with each other or with other persons onboard.

As with the Paris MOU, however, note at Clause 3.2.3, the general catch-all,

"Nothing in these procedures will be construed as restricting the power of the Authorities to take measures within its jurisdiction in respect of any matter..."

For the purpose of control on compliance with onboard operational requirements specific “clear grounds” are:

1. Evidence of operational shortcomings revealed during Port State Control procedures in accordance with SOLAS 74, MARPOL 73/78 and STCW 1978.
DEFICIENCIES, SUSPENSION OF INSPECTION
AND RECTIFICATION

If deficiencies are found, then, per Clause 3.6, each Authority is asked to endeavour to secure the rectification of deficiencies detected. The nature of the deficiencies and the corresponding action taken are filled in on the inspection report. Action which may be requested by the inspector can be found on the reverse side of Form B of the inspection report and are:

Codes

<table>
<thead>
<tr>
<th>Code</th>
<th>Description</th>
</tr>
</thead>
<tbody>
<tr>
<td>00</td>
<td>no action taken</td>
</tr>
<tr>
<td>10</td>
<td>deficiencies rectified</td>
</tr>
<tr>
<td>15</td>
<td>rectify deficiency at next port</td>
</tr>
<tr>
<td>16</td>
<td>rectify deficiency within 14 days</td>
</tr>
<tr>
<td>17</td>
<td>master instructed to rectify deficiency before departure</td>
</tr>
<tr>
<td>30</td>
<td>ship detained</td>
</tr>
<tr>
<td>35</td>
<td>detention raised</td>
</tr>
<tr>
<td>40</td>
<td>next port informed</td>
</tr>
<tr>
<td>50</td>
<td>flag administration/consul/flag maritime authority informed</td>
</tr>
<tr>
<td>55</td>
<td>flag administration/maritime authority consulted</td>
</tr>
<tr>
<td>60</td>
<td>region authority informed</td>
</tr>
<tr>
<td>70</td>
<td>classification society informed</td>
</tr>
<tr>
<td>80</td>
<td>temporary substitution of equipment</td>
</tr>
<tr>
<td>85</td>
<td>investigation of contravention of discharge provisions (MARPOL)</td>
</tr>
<tr>
<td>99</td>
<td>other (specify in clear text)</td>
</tr>
</tbody>
</table>

In principle all deficiencies must be rectified prior to departure of the ship, and the above list is not restrictive.

DETENTION

The following are the main criteria for the detention of a ship, per Clause 3.7,

“In the case of deficiencies which are clearly hazardous to safety, health or the environment, the Authority will, except as provided in paragraph 3.8, ensure that the hazard is removed before the ship is allowed to proceed to sea and for this purpose will take appropriate action, which may include detention. The Authority will, as soon as possible, notify the flag Administration through its counsel or, in their absence, its nearest diplomatic representative or its maritime authority of the action taken. Where the certifying authority is an organisation other than a maritime administration, the former will also be advised.”

Clause 3.8 states that, if deficiencies cannot be remedied in the port of inspection, the inspector may allow the ship to

<table>
<thead>
<tr>
<th>DETENTIONS FOR FLAG IN RESPECT OF FLAGS WITH DETENTION PERCENTAGES EXCEEDING 3-YEAR ROLLING AVERAGE DETENTION PERCENTAGE</th>
</tr>
</thead>
<tbody>
<tr>
<td>------</td>
</tr>
<tr>
<td>VIETNAM</td>
</tr>
<tr>
<td>INDONESIA</td>
</tr>
<tr>
<td>BELIZE</td>
</tr>
<tr>
<td>CHINA, PEOPLE’S REP. OF</td>
</tr>
<tr>
<td>TURKEY</td>
</tr>
<tr>
<td>UKRAINE</td>
</tr>
<tr>
<td>THAILAND</td>
</tr>
<tr>
<td>HONDURAS</td>
</tr>
<tr>
<td>CYPRUS</td>
</tr>
<tr>
<td>INDA</td>
</tr>
<tr>
<td>MALTA</td>
</tr>
<tr>
<td>ST VINCENT &amp; GRENADINES</td>
</tr>
<tr>
<td>IRAN</td>
</tr>
<tr>
<td>TAIWAN, CHINA</td>
</tr>
<tr>
<td>EGYPT</td>
</tr>
<tr>
<td>KOREA, REPUBLIC OF</td>
</tr>
<tr>
<td>GREECE</td>
</tr>
</tbody>
</table>

3-year rolling average detention percentage 1994-1996 = 5.25


<table>
<thead>
<tr>
<th>DETENTION PER SHIP TYPE</th>
</tr>
</thead>
<tbody>
<tr>
<td>Bulk carrier</td>
</tr>
<tr>
<td>General cargo</td>
</tr>
<tr>
<td>General cargo (twin Screw)</td>
</tr>
<tr>
<td>Gas carrier</td>
</tr>
<tr>
<td>Container</td>
</tr>
<tr>
<td>Oil tanker</td>
</tr>
<tr>
<td>Chemical tanker</td>
</tr>
<tr>
<td>Reefer/cargo</td>
</tr>
<tr>
<td>Passenger ferry</td>
</tr>
</tbody>
</table>

Average Detention percentage = 5.63%

proceed to another port, as determined by the Master and the inspector, subject to any appropriate conditions determined by the maritime authority of the port of departure, with a view to ensuring that the ship can so proceed without unreasonable danger to safety, health or the environment. In this case a follow up inspection will normally be carried out in the respective “follow up” port.

In addition the inspectors and/or the repair yard will alert all other authorities nearby, thereby ensuring that the ship is denied entry throughout the region of the Tokyo MOU. Before denying entry, the Authority in whose state the repair yard lies may request consultations with the flag administration of the ship concerned.

9. Type of ship;
10. Flag of ship;
11. Call sign;
12. Gross tonnage;
13. Year of build;
14. Issuing authority of relevant certificate(s);
15. Date of departure;
16. Estimated place and time of arrival;
17. Nature of deficiencies;
18. Action taken;
19. Suggested action;
20. Suggested action at next port of call;
21. Name and facsimile number of sender.

### COMPARISON OF NUMBER OF DEFICIENCIES BY MAIN CATEGORIES

<table>
<thead>
<tr>
<th>CATEGORY</th>
<th>1994</th>
<th>1995</th>
<th>1996</th>
</tr>
</thead>
<tbody>
<tr>
<td>Life saving appliances</td>
<td>8290</td>
<td>5185</td>
<td>5248</td>
</tr>
<tr>
<td>Firefighting appliances</td>
<td>4601</td>
<td>3769</td>
<td>3160</td>
</tr>
<tr>
<td>Safety in general</td>
<td>2517</td>
<td>1704</td>
<td>1046</td>
</tr>
<tr>
<td>Load lines</td>
<td>3441</td>
<td>1996</td>
<td>1429</td>
</tr>
<tr>
<td>Navigation</td>
<td>2616</td>
<td>1475</td>
<td>968</td>
</tr>
<tr>
<td>Others</td>
<td>4384</td>
<td>3142</td>
<td>4584</td>
</tr>
</tbody>
</table>


### INSPECTION/DETENTION INFORMATION AND BLACKLISTING

Each Authority undertakes to report on its inspections under the Tokyo MOU and their results, in accordance with the procedures specified in the Memorandum.

In the case of deficiencies not fully rectified or only provisionally repaired, a message will be sent to the Authority of the ship’s next port of call. Each message must contain the following information:

1. Date;
2. From (country or region);
3. Port;
4. To (country or region);
5. Port;
6. A statement reading: deficiencies to be rectified;
7. Name of ship;
8. IMO identification number (if available);

As for the publication of a quarterly detention list, the Tokyo PSC Committee decided at its most recent meeting to introduce this in the near future and to encourage individual participating members to publish their own statistics as well.

### GENERAL PUBLICITY AND DISSEMINATION OF INSPECTION INFORMATION TO OTHER REGIONAL GROUPS AND INTERNATIONAL ORGANISATIONS

Arrangements have been made for the exchange of inspection information with other regional organisations working under a similar Memorandum of Undertaking. For reporting and storing Port State inspection results and facilitating exchange of information in the region, a computerised database system, APCIS, has been established in Ottawa under the auspices of Transport Canada.
The information contained in the following section provides an outline of Port State Control procedures under the Latin American Agreement on Port State Control (the “Viña Del Mar Agreement”).

**MEMBER STATES**

The current member states are:

- Argentina
- Brazil
- Chile
- Colombia
- Cuba
- Ecuador
- Mexico
- Panama
- Peru
- Uruguay
- Venezuela

**OUTLINE OF THE STRUCTURE OF THE VIÑA DEL MAR AGREEMENT**

The executive body of the Latin American Agreement on Port State Control is the Port State Control Committee. This is composed of representatives of the Member states which meets once a year, or at shorter intervals if necessary. Administrative procedures, co-ordination and publication of statistics as well as the development of a regional database have been arranged under the auspices of the Argentinian Coast Guard based in Buenos Aires.

**BASIC PRINCIPLES**

The recitals of the Latin American Agreement emphasises that the main responsibility for effective enforcement of international conventions lies with the owners and the flag states, but as with the other regional agreements it recognises the “need for effective action of Port States in order to prevent the operation of deficient ships.”

The recitals also acknowledge the objectives of ROCRAM and other South American regional resolutions and herald a harmonisation role for the Agreement when it states “is necessary to avoid differences in the treatment given to ships by the different courts and that said practices may distort competition between ports”. As with the other regional agreements it regards its primary role as one of “back up” to the roles of the flag states and coordination, as it states in the recitals.
“to implement an efficient harmonic control system by port states and to strengthen co-operation and interchange of information.”

PERTINENT INSTRUMENTS

For the purposes of the Agreement, the internationally accepted Conventions monitored by the Agreement are called “Pertinent Instruments” and are:

- International convention for the Safety of Life at Sea, 1974 (SOLAS 1974)
- 1972 Collision Regulations (COLREG 72)
- International Convention on Tonnage Measurement of Ships (TONNAGE 1969)

TARGET RATE FOR INSPECTION

Each participating maritime authority is asked to make efforts to reach, within a maximum three-year term as from date of enforcement of this Agreement, a survey minimum of 15% of foreign ships that may have entered the ports of its state during a recent representative period of 12 months. As with the other regional agreements, some individual countries are exceeding this target, others are falling below it.

“NO MORE FAVOURABLE TREATMENT” PRINCIPLE

When applying the provisions of pertinent instruments, the participating maritime authorities are asked to enforce the provisions in such a manner that the ships authorised to fly the flag of a state that is not a party to the Convention concerned shall not be granted more favourable treatment than ships which are not.

Source: Acuerdo Latin American Sobre Control de Burques para el Estando Rector del Puerto, Estadísticas, 1996 and 1997

INSPECTIONS

![Inspection Chart]

Source: Acuerdo Latin American Sobre Control de Burques para el Estando Rector del Puerto, Estadísticas, 1996 and 1997
“BELOW CONVENTION SIZE” SHIPS

In the case of ships under 500 gross registered tons, participating maritime authorities are asked to use the applicable provisions of the pertinent instruments and, to the extent they are not applicable, to take the measures necessary to ensure that the ships concerned are not an obvious hazard to the safety or the marine environment.

In addition Annex 1 has the following specific guidelines:

“Although a pertinent instrument is not applied to vessels under 500 registered tons, it is the surveyor’s task to determine whether a vessel has an acceptable level as regards safety or the marine environment. When considering this, the surveyor should take into account factors such as length and nature of the intended trip or service, size and type of vessel, its equipment and the characteristics of the cargo.

When performing the functions established in paragraph 4.2, the surveyor shall take as a guide any of the certificates and other documents issued by the vessel’s flag state. From the analysis of the said certificates and documents and from his general impression of the vessel, the surveyor shall use his professional judgment to determine whether the vessel should be subjected to a more detailed survey and in which aspects, taking into account factors mentioned in paragraph 4.2. Should a more detailed survey be carried out, the surveyor should, as far as he deems it necessary, take into account the aspects set forth in paragraph 4.4. Although such enumeration is not complete, it can be used as an example of the most relevant aspects.”

SELECTING A SHIP FOR INSPECTION

Clause 3.4 states that the Maritime Authorities should try to avoid surveying ships inspected by any of the other participating Maritime Authorities during the preceding 6 months, “unless there exist clear indications of the need for surveying them” or if the ships are of the type mentioned in Clause 3.3 of the Memorandum, in which case the inspectors “shall carry out surveys as may deem proper”.

Clause 3.3 provides that when selecting ships for survey, the inspectors should pay special attention to:

- Passenger ships, ro-ro ships, and bulk grain carriers.
- Ships which may have recently suffered repeated deficiencies.
- Ships which may pose a special risk, such as oil tankers, gas carriers, chemical tankers and ships carrying dangerous and/or harmful substances and goods in packages.

FIRST INSPECTION

Clause 3.1 states that in fulfilling their obligations, the inspectors initially carry out a survey which consists of a visit onboard the ship in order to check the validity of the pertinent certificates and documents, as well as the general condition of the ship, its equipment and crew. In these initial reviews and control procedures, the inspectors include compliance with onboard operational requirements. In the absence of valid certificates or documents, or should there exist clear indications to consider that the ship, its equipment or crew do not meet the provisions of a pertinent instrument, a more detailed survey is then carried out.

The initial surveys are carried out in accordance with the procedures set out in Annex 1, which provides detailed guidelines for the surveyors. In particular at Clause 1.2 the guidelines state:

“When taking the decision to correct a deficiency or detain a vessel, the surveyor shall take into account the results of the more detailed survey performed pursuant to the provision of Section 3. The surveyor shall use his professional judgement to determine whether it is convenient to detain the vessel until the deficiencies be corrected, or authorise the vessel to sail with certain deficiencies, should this not pose an excessive hazard to safety or the marine environment, taking into account the special circumstances of the intended trip. As regards minimum manning criteria, the special procedures set forth in Section 3 shall be taken into account.”

Section 3 provides guidelines as to manning and certification criteria which, in an interesting variant to the other regional agreements, states:

“The basic principle for the survey of a foreign vessel crew conducted by a port state shall take into account the minimum manning requirements of the vessel flag state. Detainment, as a port state measure shall be decided solely upon the grounds set forth in the pertinent instruments and used in conjunction with the opinion of the flag state. Should a prompt answer be difficult to obtain, and should the deficiency be of such a nature as to render the vessel obviously unsafe for the intended trip or service, detention shall be applied.”
This interrelationship between flag state and Port State Control is evidenced further at Clause 3.2 (Manning Control) and Clause 3.3 (Certification Control), of Annex I:

3.2. Manning Controls
3.2.1. Should the ship be manned in accordance with the minimum manning document or an equivalent one issued by the ship Flag state, the inspector should accept that the ship is manned safely unless the document has been issued without taking into account the principles contained in the Pertinent Instruments and in IMO guidelines for the application of Minimum Manning Principles. If this is so, the inspector must consult with the Flag state.

3.2.2. Should the crew number or composition not comply with the provisions of the minimum manning document, the Port state should request the ship Flag state its opinion whether the ship may or may not sail with its current crew number and composition. The request should be made as soon as possible. Should the crew number and composition differ from the minimum manning document, or should the ship Flag state not confirm that it may sail under such condition, the ship may be detained.

3.2.3. Should the ship not have a minimum manning document or an equivalent one, the Port state should request the Flag state to specify the number of crew members required and their composition, and to issue a document in this respect as soon as possible.

Should the crew number and composition not comply with the directions received from the Flag state, action should be taken pursuant to paragraph 3.2.2. Should the Flag state not answer the request, this should be construed as a clear indication to conduct a more detailed survey of the ship. The ship may be authorised to sail only if it can do it safely, taking into account the detainment criterium set out in the Agreement.

The minimum rules to be applied should not be more stringent than those applied to ships flying the flag of the Port state. In case of lack of a minimum manning document this should be reported as a deficiency.

3.3. Certification Controls
3.3.1. The general control of ship certification should be made pursuant to the procedures set forth in Articles X and Regulation J/4 of the STCW Convention, 1978.

3.3.2. In ships engaged in the transport of liquid dangerous cargo in bulk, certification control should be more stringent. The inspector should ensure that officers responsible for cargo handling and operation have a valid document certifying that they have received an adequate training and have the proper experience. No exemptions are accepted. Should a deficiency be detected, the Master is informed and the deficiency should be corrected.

A “CLEAN” INSPECTION REPORT
If a ship is found to comply, the inspector will issue a “clean” inspection report (Form A) to the Master of the ship. Relevant ship data and the inspection result will be recorded on the central computer database located in Buenos Aires. The “Inspection A” Report must be retained and be made available for examination by Port State Control officers at all times.

<table>
<thead>
<tr>
<th>COUNTRY</th>
<th>INSPECTIONS</th>
<th>NO. OF INSPECTIONS WHERE DEFICIENCIES WERE FOUND</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>1996</td>
<td>1997 (FIRST QUARTER)</td>
</tr>
<tr>
<td>ARGENTINA</td>
<td>237</td>
<td>93</td>
</tr>
<tr>
<td>BRAZIL</td>
<td>733</td>
<td>564</td>
</tr>
<tr>
<td>CHILE</td>
<td>79</td>
<td>53</td>
</tr>
<tr>
<td>COLOMBIA</td>
<td>0</td>
<td>39</td>
</tr>
<tr>
<td>CUBA</td>
<td>117</td>
<td>58</td>
</tr>
<tr>
<td>ECUADOR</td>
<td>1</td>
<td>24</td>
</tr>
<tr>
<td>PANAMA</td>
<td>35</td>
<td>14</td>
</tr>
<tr>
<td>PERU</td>
<td>0</td>
<td>34</td>
</tr>
<tr>
<td>URUGUAY</td>
<td>37</td>
<td>14</td>
</tr>
<tr>
<td>TOTAL</td>
<td>1239</td>
<td>893</td>
</tr>
</tbody>
</table>

Source: Acuerdo Latin American Sobre Control de Burques pour el Estando Rector del Puerto, Estadisticas 1996 and 1997

REASONS AND PROCEDURES FOR MORE DETAILED SURVEYS
If valid certificates or documents are not on board, or if there are “clear grounds” to believe that the condition of a ship, its equipment, its on board operational procedures and compliance, or its crew does not substantially meet the requirements of a relevant Convention, a more detailed inspection will be carried out.
Clauses 3.2.1 and 3.2.2 provide that the inspectors shall consider “clear indications” for a more detailed survey to be among others, the following:

- A report or notification from another Maritime Authority;
- A report or complaint from the Master of the ship, a member of the crew or any other person or organisation interested in maintaining the safety operations in the ship or in preventing marine pollution, unless the respective Maritime Authority considers that the report or the complaint are evidently groundless;
- Other signs of serious deficiencies (taking Annex 1 into special account).
- For the purpose of verifying compliance with operational requirements on board, “clear indications” may be the following:
  - Evidence of operational failures verified during Port State Control procedures of ships, pursuant to SOLAS 74, MARPOL 73/78 and STCW 78.
  - Evidence that the loading and other operations were not made safely or according to IMO guidelines.
  - Ship involvement in incidents arising from non-compliance with operational requirements.
  - Ascertained evidence, during fire fighting drills and/or ship deserting drills, that the crew is not familiar with basic procedures.
  - Lack of an updated muster plan.
  - Indications that it is impossible for the key members of the crew to communicate among themselves or with other persons on board.

Note, also, the general catch all at Clause 3.3.3, stating that “none of the above provisions shall be construed as a limitation to the Maritime Authorities’ power to take measures within their jurisdiction as regards any case connect to the pertinent instruments.”

**SUSPENSION OF INSPECTION, DETENTION AND RECTION**

When deficiencies are found during an inspection, the nature of the deficiencies and the corresponding action taken are filled in on the inspection report.

Action which may be requested by the inspector can be found on the reverse side of Form B of the inspection report. Clause 3.6 states that “each and every Maritime Authority shall make efforts to ensure that deficiencies are corrected.”

Clauses 3.7 and 3.8 set out the detention criteria. In the case of deficiencies posing a clear risk to safety or the marine environment the inspectors have to ensure that the risk is eliminated before authorising the ship to sail.

“...and to such ends, it will take the necessary steps, which may include the ships detainment. However, should it not be possible to remedy the defects at the survey port, the vessel may be authorised to sail to another port subject to any adequate condition, stated by that Maritime Authority, so that
the vessel may continue its trip without posing an excessive risk to safety or to the environment. In such cases, the Maritime Authority shall notify the competent Maritime Authority of the region where the next port of call of the vessel is located, the parties mentioned in paragraph 3.7 and any other authority it may deem proper.”

In accordance with Section 3.4 of Annex 1, when deciding whether to detain, the inspectors are asked to consider:

- Length and nature of the intended services or trip
- Whether or not deficiencies pose a risk for the ship, people on board or the marine environment
- Whether adequate rest periods for crew members can be determined or not
- Size and type of ship and its equipment
- Characteristics of the cargo

The absence of a deck officer or an engine room officer whose certification be a requirement should not constitute a reason to justify the ship detainment, when this be in agreement with any provisions accepted as an exception by the ship flag state.

INFORMATION/DETENTION INFORMATION AND BLACKLISTING

In the case of deficiencies not fully rectified or only provisionally repaired, a message will be sent to the competent Authority of the region state where the next port of call of the ship is situated.

Each message must contain the following information:

1. Date
2. From (country)
3. Port
4. To (country)
5. Port
6. A statement reading deficiencies to be rectified
7. Name of ship
8. IMO identification number (if available)
9. Type of ship
10. Flag of ship
11. Call sign
12. Gross tonnage
13. Year built
14. Issuing authority of relevant certificate(s)
15. Date of departure
16. Estimated place and time of arrival
17. Nature of deficiencies
18. Action taken
19. Suggested action
20. Suggested action at next port of call
21. Name and facsimile number of sender

In the event of detention, the Report from Inspectors is sent to:

- Next port
- Owners
- Flag state, or its Consul
- Classification society
- Other MOU

GENERAL PUBLICITY AND DISSEMINATION OF INSPECTION INFORMATION TO OTHER REGIONAL GROUPS AND INTERNATIONAL ORGANISATIONS

Arrangements have been made for the exchange of information with other regional MOU’s, as well as the flag states and various international organisations such as the IMO and the ILO.
The information contained in this section is taken from the US Coast Guard’s web site and provides an overview of Port State Control within the territorial waters of the United States of America.

The USA is not a participating member of any of the regional agreements currently in force, but it does take a pro-active unilateral stance on the subject of the monitoring and enforcement of international conventions and regards it as an increasingly important component in the policing and enforcement of maritime regulations.

**OUTLINE STRUCTURE**

Since the Coast Guard’s Port State Control programme is largely non-regulatory, it is not generally reflected in the Code of Federal Regulations. Instead, the programme is set out in the Coast Guard’s Marine Safety Manual (“the MSM”) which contains seven chapters devoted to different aspects of the Port State Control programme. These chapters deal with

- the general concept of foreign ship examinations
- procedures applicable to different types of ships
- the procedures utilised to target foreign ships for boarding, for exercising control over foreign ships, and procedures to ensure accountability.

**DEVELOPMENT**

Until 1994, boardings to ensure compliance with US regulations for tank ships, passenger ships, navigation safety and pollution prevention constituted the US Coast Guard’s main involvement with non-US ships and only in the most extreme or obvious cases did the Coast Guard intervene under the international Conventions (eg., SOLAS, MARPOL, Loadline) to detain non-US ships.

However, in 1994, the US Congress recognised that there existed a number of substandard ships amongst the 8000 non-USA ships arriving in the USA every year and directed the Coast Guard to develop a programme to eliminate them from the nation’s waters, and to submit annual reports on the status of this mandated programme which has come to be called the Port State Control Programme.

**BASIC PRINCIPLES**

The USA Government maintains that the prime responsibility for compliance with the requirements laid down in the international maritime conventions lies with the shipowner/operator. It also continues to maintain that the responsibility for ensuring such compliance lies with the flag states, but the language contained in the various statements, papers etc issued by the USCG indicates that while Port State Control is seen as a safety net, it is to be
regarded as a proactive one and the USCG has recently begun to
demonstrate, both by statements and by action, that it intends to
enforce international standards stringently.

**JURISDICTION**

Foreign ships operating in US waters are subject to inspection
under Title 46 United State Code (USC) Chapter 33.
Reciprocity is accorded to ships of countries that are parties
to the International Convention for the Safety of Life at Sea
(SOLAS)(46 USC 3303(a)). In addition, certain provisions of
the pollution prevention and navigation safety regulations
respectively) apply to foreign ships operating in US waters.

As there is no Agreement or Memorandum specifically
dedicated to Port State Control, there is no conclusive list of the
conventions enforced by the USCG under their Port State Control
regime. However, it can be said that detentions and interventions
may be undertaken by the USCG under the authority of:

**APPLICABLE DOMESTIC STATUTES**

requirements for foreign ships.
- 46 USC 2101 (12) 3306(a)(5) and 49 USC 1801-1812. Safety
requirements for carriage of dangerous articles and
substances aboard foreign ships.
- 46 USC 2101 (12) (21) and (35), 3504 and 3505. Safety
requirements for foreign ships carrying passengers
from any US port to any other place or country.
- 46 USC 2101 (12), (21), (22) and (35), and Chapter 35. Inspection
and certification requirements for all foreign
passenger ships which embark passengers at and carry
them from a US port. (These statutes are also relevant for
ships having valid SOLAS 74/78 Certificates or Canadian
Certificates of Inspection, that must be examined to verify
compliance with the flag administration’s safety verification
requirements.)
- 46 USC 2101 (12) and (39), 3301 (10) and Chapter 37. Safety
requirements that apply, with certain stipulations, to
all foreign ships regardless of tonnage, size, or manner of
propulsion, whether or not carrying freight or passengers
for hire, that enter US navigable waters while carrying liquid
bulk cargoes that are:
  a. Flammable or combustible
  b. Oil of any type or in any form, including petroleum, fuel
     oil, sludge, oil refuse and oil mixed with wastes, except
     dredged spoil
  c. Designated as a hazardous substance under Section
     311(b) of the Federal Water Pollution Control Act (FWPCA)
     (33 USC 1321); or
  d. Designated as hazardous materials under Section 104
     of the Hazardous Materials Transportation Act (HMTA)
     (49 USC 1803)
- 46 USC 2101 (21) and 3304. Permission for US ships
transporting cargo to carry a limited number of individuals
without being considered a “passenger ship” for most
inspection purposes, and extension of this privilege to cargo
ships of those nations that accord reciprocal treatment.
- 46 USC 2101 (33) and 3301 (7). Directs that safety
requirements of 46 USC Chapter 33 are applicable to
seagoing motor ships of 300 or more gross tons.
- 46 USC 2101 (35) and 3301 (8). Safety requirements for
foreign small passenger ships carrying more than six
passengers from a US port.
- 50 USC 191. Requirements for security of ships, harbours
and waterfront facilities, and provision for control of the
movement of foreign ships in US waters by the local
OCMI/COTP.
- 33 USC 1221-1232. Statutes for advance notice of arrival
and navigation safety regulations.

**APPLICABLE INTERNATIONAL CONVENTIONS**

Most US regulations applicable to US and foreign ships may
be found in Titles 33, 46 and 49 Code of Federal Regulations.

**APPLICABLE INTERNATIONAL CONVENTIONS**

- International Convention on Load Lines 1966, as amended,
- International Convention for the Safety of Life at Sea
  (SOLAS), 1974, its Protocol of 1978, as amended, and the
- International Convention for the Prevention of Pollution
  from Ships, 1973, as modified by the Protocol of 1978, as
  amended (MARPOL 73/78).
PORT STATE CONTROL AND THE USA

- Convention on the International Regulations for Preventing Collisions at Sea 1972, as amended (COLREG 72).

PORT STATE CONTROL EXAMINATIONS

Foreign ship examinations may be initiated by the USCG, requested by another flag state administration on the basis of information regarding a potential substandard ship, or based on information regarding a substandard ship provided by a member or members of a ship’s crew, a professional body, an association, a trade union or any other involved individual. The USCG, on their website, go on to explain:

"Port State Control examinations are not intended to be analogous to an inspection for certification of a US flagged vessel. Rather, they are intended to be of sufficient breadth and depth to satisfy a boarding team that a ship’s major systems are in compliance with applicable international standards and domestic requirements, and that the crew possesses sufficient proficiency to safely operate the vessel."

The initial examination is designed to verify whether the required certificates are aboard and valid, and whether the ship conforms to the conditions required for issuing the required certificates. This is accomplished by a walk through examination and visual assessment of a ship’s relevant components, certificates and documents, and may be accompanied by limited testing of systems and the crew. If this examination reveals questionable equipment, systems, or crew incompetence, the boarding team may conduct further operational tests and examinations.

BOARDING TEAMS

Boarding teams usually consist of a marine inspector and one or more boarding officers. As a minimum, a marine inspector must have completed the Marine Safety Training & Qualification Booklets covering hull or machinery qualifications. In addition, marine inspectors and/or boarding officers must have completed the appropriate Marine Safety Training & Qualification Booklets for the type of ship being examined.

Boarding teams conducting Priority I boardings, annual freight, tanker and passenger ship examinations, biennial Certificate of Compliance examinations and quarterly passenger ship re-examinations must include a marine inspector. At a minimum, such boarding teams should consist of at least two Coast Guard members, at least one of whom must be a qualified Port Safety Boarding Officer (E1), or a qualified Assistant Marine Inspector (FA or FB).

When conducting at-sea boardings in cooperation with Area or Group commands outside of the Marine Safety Programme, boarding teams will be provided by the Marine Safety Office, or jointly by the Captain of the Port and Marine Inspection Office. However, operational commanders have the discretion to make up the boarding teams to meet operational situations, including the use of law enforcement qualified personnel, as necessary, to ensure the safety of the boarding team.

SELECTING A SHIP FOR INSPECTION – THE BOARDING PRIORITY MATRIX

Until 1994, the USCG’s ship boarding programme was largely ad hoc, but they now have developed a Boarding Priority Matrix as part of their effort to systematically determine the probable risk posed by non-US ships calling at US ports. This Matrix is used to decide which ships Port State Control inspectors should board on any given day, in any given port. Ships are assessed in each category and then summed for a total point score. This numerical score, along with other performance based factors, determines a ship’s boarding priority from Priority I through IV.

In developing this points system, the US Coast Guard has identified five features which directly influence a ship’s operational condition and compliance with international safety and environmental protection standards. These are,

1. Flag states
2. Classification societies
3. Owner and Operators List
4. Ship Type, and
5. History

The first three are particularly significant and are dealt with as explained below:
FLAG STATES

- The flag list is composed of those flag states whose detention ratios exceed the average detention ratios for all flag states whose ships call at US ports.

- A flag state’s detention ratio is ascertained by dividing the number of its ships which have been detained in the last three years by the total number of its ships which have called at US ports within the same period. For example, if a flag has had three of its ships detained during the last three years, and a total of 60 of its ships have had US port calls in the same period, the detention ratio would be: 3/60 x 100% = 5%. The average detention ratio is ascertained by dividing the total number of detentions by the total number of arrivals for all flag states.

- The flag list is updated annually on 1 April and remains in effect for twelve months and is sent to all Coast Guard Marine Safety Offices. The 1997 flag list is set out at page 37. A flag state may be removed from the list when its detention average drops below the overall average flag state detention average or when it is associated with less than two detentions within a twelve month period.

CLASSIFICATION SOCIETIES

- Beginning in 1998 this consists of a two-tier process whereby any classification societies with less than ten arrivals in the previous year are eliminated from the process.

- Then, classification societies with more than ten distinct arrivals in the previous year are evaluated on their performance over the previous two years. Their performance is based on their detention ratio (number of detentions divided by number of distinct arrivals). This ratio is then compared to the average detention ratio (total number of detentions divided by the total number of distinct arrivals). Classification societies are then assigned points according to where their detention ratios fall in relation to the average detention ratio.

- The points are added up for a total point score and the ship’s Boarding priority determined as follows:

<table>
<thead>
<tr>
<th>OWNER/OPERATOR LIST</th>
</tr>
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</table>
| The US Coast Guard Headquarters Ship Compliance Division (G-MOC-21) compiles a list of owners and operators associated with ships that have had more than one ship detained by the Coast Guard under the authority of an international Convention within the last twelve month period. An ship making a US port call that is owned or operated by a person or entity that has had that ship, or a different ship, subject to more than one intervention action within the last twelve months is accorded high priority status.

- The owners’ list is updated monthly and is published on the USCG website and sent to all Coast Guard Marine Safety Offices.

BOARDING PRIORITY MATRIX – PRIORITIES I-IV AND EFFECTS THEREOF

The points are added up for a total point score and the ship’s Boarding priority determined as follows:

<table>
<thead>
<tr>
<th>PRIORITY I SHIPS:</th>
</tr>
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<tbody>
<tr>
<td>17 or more points on the Matrix, or</td>
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<tr>
<td>ships involved in a marine casualty, or</td>
</tr>
<tr>
<td>USCG Captain of the Port determines a ship to be a potential hazard to the port or the environment, or</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>POINT SCORE SUMMARY</th>
</tr>
</thead>
<tbody>
<tr>
<td>OWNER</td>
</tr>
<tr>
<td>-------</td>
</tr>
<tr>
<td>FLAG</td>
</tr>
<tr>
<td>CLASS</td>
</tr>
<tr>
<td>HISTORY</td>
</tr>
<tr>
<td>SHIP TYPE</td>
</tr>
</tbody>
</table>

Below the Average Detention Ratio = 0 points
Between the average and 2 times the average = 1 point
Between 2 times and 3 times the average = 3 points
Between 3 times and 4 times the average = 5 points
More than 4 times the average = Priority 1

This list is sent to all Coast Guard Marine Safety offices and the 1997 Priority I classification list is set out at page 37.
Ships whose classification society has ten or more arrivals the previous year and a detention ratio more than four times the average, or

Ships whose classification society has less than ten arrivals the previous year and have been associated with at least one detention.

Port entry may be restricted until ship is examined by the Coast Guard. Priority I ships are targeted for examination prior to entry into US ports. Where feasible, these ships are boarded prior to port entry to ensure deficiencies are corrected. Otherwise, they are boarded upon entry and prior to commencement of cargo transfer operations or passenger embarkation.

PRIORITY II SHIPS:

- 7 to 16 points on the Matrix, or
- outstanding requirements from a previous boarding in this or another US port, or the ship is overdue for an annual tank or passenger exam.

Cargo operations may be restricted until ship is examined by the Coast Guard. Priority II ships are targeted for boarding prior to commencement of cargo transfer operations or passenger embarkation. An exemption to the requirement for boarding prior to commencement of cargo transfer operations or passenger embarkation may be granted if there are clear indications that the ship is in substantial compliance with applicable standards.

PRIORITY III SHIPS:

- 4 to 6 points on the Matrix, or
- alleged deficiencies reported, or
- the ship is overdue for an annual freight examination.

Priority III ships may be targeted for boarding after entry into port, but no operational restrictions are imposed.

PRIORITY IV SHIPS:

- 3 or fewer points on the Matrix.

Priority IV ships are not targeted for boarding, but may be boarded and examined by the US Coast Guard at the discretion of the local Captain of the Port or the Officer in Charge, Marine Inspection.

SHIP INSPECTION PRINCIPLES

In addition to the Boarding Priority Matrix the USCG has also published the 12 “principles” employed as guidance for its ship inspections. These are:

- Detentions are conducted only when a ship is unfit to proceed to sea or poses a threat to the marine environment.
- Voyage damage will not be associated with a classification society non-conformity unless other class-related deficiencies are noted during the course of the survey.
- Class non-conformities will only be associated with equipment covered by a survey, conducted by class, or in which class issued the certificate on behalf of the flag state.
- When multiple deficiencies are noted, only those deficiencies serious enough to justify detention will be evaluated to determine class non-conformities.
- Outdated equipment, when the cause of an intervention, will not be associated with a class non-conformity unless the equipment was outdated at the time of the last survey conducted by the class society on behalf of the flag state.
- The absence of easily stolen equipment, such as fire hose nozzles are extinguishers, will generally not be listed as a class society non-conformity unless a large number are missing and the inspection takes place within 90 days of the last survey by the class society for the flag state.
- Expired certificates will not be associated with a class non-conformity unless the certificates were not endorsed or were improperly issued by the class society when it conducted the last survey for the flag state.
- Interventions based on manning issues will not be listed as class non-conformities.
- A time limit of 90 days will generally be placed on associating non-conformities with equipment failures, such as non-operational fire pumps and emergency generators, unless it is apparent that the deficiency is long standing.
- Failure of human-factor-related testing – such as fire drills and abandon ship drills – will be associated with a classification society non-conformity only when the class society issued the relevant certificate on behalf of the flag State within 30 days of inspection.
Serious wastage or other structural deficiencies not caused by voyage damage will be listed as a class society non-conformity. 

Note: The class society will be notified in writing in all cases of society non-conformities.

**TYPE OF PORT STATE CONTROL EXAMINATIONS**

USCG Port State Control examinations consist of annual examinations, and then re-examinations or deficiency follow-up examinations. These examinations may be broadened in scope or depth if clear grounds exist that lead a boarding team to believe that the condition of the ship or its equipment does not correspond with the certificates or the ship does not comply with applicable laws or conventions.

**ANNUAL EXAMINATIONS**

An annual examination consists of the specific procedures outlined in the freight, tank, or passenger ship examination chapters of the Marine Safety Manual. It includes an examination of the ship’s certificates, licences and documents followed by a general examination, i.e. “walk through” of the ship to develop an impression of shell maintenance and the general state of the deck and side shell of the ship to determine its seaworthiness. It will also include examination and testing of specific equipment as well as the conduct of operational testing and emergency drills to ensure the crew’s proficiency at carrying out critical tasks. As a minimum, the following items are part of each annual examination and are taken from the MSM Volume 1, Chapter 19, which sets out the requirements listed below in greater detail:

**Certificates, Licences and Documents**

2. Passenger Ship Safety Certificate
3. Cargo Ship Safety Construction Certificate
4. Cargo Ship Safety Equipment Certificate
5. Cargo Ship Safety Radiotelegraphy Certificate
6. Cargo Ship Safety Radiotelephony Certificate
7. Cargo Ship Safety Radio Certificate
8. Exemption Certificates
9. International Certificate of Fitness for Carriage of Liquified Gases in Bulk
10. Certificate of Fitness for the Carriage of Liquified Gases in Bulk
11. International Certificate of Fitness for the Carriage of Dangerous Chemicals in Bulk
12. Certificate of Fitness for the Carriage of Dangerous Chemicals in Bulk
13. International Oil Pollution Prevention Certificate
15. International Load Line Exemption Certificate
16. Oil Record Book part 1 and II
17. Cargo Record Book
18. Minimum Safe Manning Document
19. Crew Licenses or Certificate of Competency, Medical Certificates, of ILO Convention No. 73 concerning Medical Examination of Seafarers
20. Stability information

**Areas/Items/Operations**

1. Deck Portion
2. Hull Portion
3. Ballast Tank Entry
4. Load Lines
5. Seaworthiness
6. Voyage Damage
7. Machinery Spaces
8. Operation
9. Maintenance
10. Tests and Trials
11. Oil and Oil, Mixtures
12. Sufficient Power
13. Lifesaving Equipment
14. Fire Safety Equipment
15. Fire Doors
16. Ventilation Systems
17. Escape Routes
18. Navigation Safety
19. Cargo Ship Safety Construction Items
20. Cargo Ship Safety Radio Operation
21. Equipment in Excess of Convention or Flag state Requirements
22. Garbage
23. Manuals and Instructions
24. Items to be Examined or Tested
25. Operational Tests
26. Muster List
27. Communication
28. Fire and Abandon Ship Drills
29. Damage Control Plan
30. Bridge Operation
31. Cargo Operation
32. Loading, Unloading, and Cleaning Procedures for Cargo Spaces of Tankers
33. Dangerous Goods and Harmful Substances in Packaged Form

**RE-EXAMINATIONS**

A re-examination is an examination to ensure that a ship remains in compliance with appropriate US laws or international conventions between annual examinations.
with the annual examination, it usually consists of an
examination of the ship’s certificates, licences and documents,
and a general examination conducted by walking through the
ship. Except aboard passenger ships, a re-examination will not
normally include operational testing or drills, but in the case of
foreign passenger ship re-examinations, the re-examination will
include the witnessing of fire and abandon ship drills to ensure
that the ship’s crew can adequately ensure the safety of the
passengers in an emergency.

EXPANDED EXAMINATIONS
An expanded examination is a more detailed examination or
testing conducted when an annual examination, re-
examination, or deficiency follow-up establishes “clear
grounds” for believing that the condition of a ship, its
equipment, or crew are not in compliance with applicable US
laws or international conventions. Expanded examinations
focus on those areas where “clear grounds” have been
established and should not include other areas or systems
unless the general impressions or observations of the boarding
team support such examination.

DEFICIENCY FOLLOW-UP
A deficiency follow-up is an examination to ensure that previously
identified deficiencies have been corrected. A follow-up
examination should be limited in scope to an examination of
the specific items identified as deficiencies during a previous
boarding. If more than 30 days have passed since deficiencies
were detected, or evidence of additional deficiencies is observed
during the boarding, a re-examination will be conducted.

“CLEAR GROUNDS” FOR AN
EXPANDED EXAMINATION
To assist the boarding team, a list of deficiencies that establish
“clear grounds” to expand an examination has been developed.
The following deficiencies, grouped under the relevant
conventions and/or codes, are considered of such a serious
nature that they may warrant the detention of the ship
involved. This list is not exhaustive.

GENERAL
Absent or invalid certificates required under applicable
conventions.

SOLAS
- Failure of proper operation of propulsion and other
  essential machinery as well as electrical installations
- Insufficient cleanliness of engine room; excess amount of
  oil-water mixture in the bilges; insulation of piping including
  exhaust pipes in engine room contaminated by oil; and
  improper operation of bilge pumping arrangements.
- Failure of the proper operation of emergency generator,
  lighting, batteries and switches.
- Failure of the proper operation of the main and auxiliary
  steering gear.
- Absence, insufficient capacity, or serious deterioration of
  personal lifesaving appliances, survival craft and launching
  arrangements.
- Absence, noncompliance, or substantial deterioration to the
  extent that it can not comply with its intended use of fire
detection system, fire alarms, fire fighting equipment, fixed
fire extinguishing installation, ventilation valves, fire
dampers and quick-closing devices.
- Absence, substantial deterioration, or failure of proper
  operation of the cargo deck area fire protection on tankers.
- Absence, noncompliance, or serious deterioration of lights,
  shapes, or sound signals.
- Absence, or failure of the proper operation, of the radio
  equipment for distress and safety communication.
- Absence, or failure of the proper operation of navigation
  equipment, taking the relevant provisions of SOLAS
  Chapter V/12(0) into account.
- Absence of navigation charts and/or all other relevant
  nautical publications necessary for the intended voyage,
taking into account that electronic charts may be used as a
substitute for the charts.
- Absence of non-sparking exhaust ventilation for cargo
  pump rooms (59.3.1).
- Serious noncompliance with procedures stipulated under
  the Certified Safety Management System on ships required
to comply with SOLAS Chapter IX.
AREAS UNDER THE IBC CODE
- Transport of a substance not mentioned in the Certificate of Fitness of missing cargo information.
- Missing or damaged high pressure safety devices.
- Electrical installations not intrinsically safe or not corresponding to the code requirements.
- Sources of ignition in hazardous locations.
- Contravention of special requirements.
- Exceeding of maximum allowable cargo quantity per tank.

AREAS UNDER THE IGC CODE
- Transport of a substance not mentioned in the Certificate of Fitness or missing cargo information.
- Missing closing devices for accommodations or service spaces.
- Bulkhead not gastight.
- Defective air locks.
- Missing or defective quick closing valves.
- Electrical installations not intrinsically safe or not corresponding to the code requirements.
- Ventilators in cargo area not operable.
- Pressure alarms for cargo tanks not operable.
- Gas detection plant and/or toxic gas detection plant defective.
- Transport of substances to be inhibited without valid inhibitor certificate.

AREAS UNDER ICLL
- Significant areas of damage or corrosion, or pitting of plating and associated stiffening, in decks and hull affecting seaworthiness or strength to take local loads. However, this is waived if authorised temporary repairs for a voyage to a port for permanent repairs have been carried out.
- A recognised case of insufficient stability.
- The absence of sufficient and reliable information in an approved form, which by rapid and simple means, enables the master to arrange for the loading and ballasting of the ship in such a way that a safe margin of stability is maintained at all stages and at varying conditions of the voyage, and that the creation of any unacceptable stresses in the ship’s structure is avoided.
- Absence, substantial deterioration, or defective closing devices, hatch closing arrangements and watertight/weathertight doors.
- Overloading.
- Absent or improper draft and/or Load Line Marks.

AREAS UNDER MARPOL ANNEX I
- Absence, serious deterioration, or failure of proper operation of the oily-water filtering equipment, the oil discharge monitoring and control system, or the 15 ppm alarm arrangements.
- Remaining capacity of slop and/or sludge tank insufficient for the intended voyage.
- Oil record book not available.
- Unauthorised discharge bypass fitted.

AREAS UNDER MARPOL ANNEX II
- Cargo not categorised.
- No cargo record book available.
- Transport of oil-like substances without satisfying the requirements or without an appropriately amended certificate.
- Unauthorised discharge bypass fitted.

AREAS UNDER STCW
- Number, composition, or certification of crew not corresponding with Safe Manning Document.

AREAS UNDER ILO 147
- Insufficient food for voyage to next port.
- Insufficient potable water for voyage to next port.
- Excessively unsanitary conditions on board.
- No heating in accommodation of a ship operating in areas where temperatures may be excessively low.

For further details on the above points, consult MSM Volume 1, Chapter 19 at the USCG web site.
DEFINITIONS AND TERMS OF REFERENCE
APPLICABLE TO THE US COAST GUARD PORT STATE CONTROL PROGRAMME

The following definitions are some of those employed by the USCG in the implementation of its Port State Control Programme and are taken from the MSM Volume I, chapter 19.

Clear Grounds. Evidence that the ship, its equipment, or its crew do not correspond substantially to the requirements of the relevant conventions or that the master or crew members are not familiar with essential shipboard procedures relating to the safety of ships or the prevention of pollution.

Contravention. An act, procedure, or occurrence that is not in accordance with a convention or other mandatory instrument, or its operational annex.

Control. The process of imposing a port state’s or flag state’s authority over a ship to ensure that its structure, equipment, operation and crew meet applicable standards. The process is effected by any verbal or written directives of the Officer in Charge Marine Inspection (OCMI) or Captain of the Port (COTP) or their representatives which requires action or compliance by the crew or other persons responsible for a ship. Control may take several forms including requiring corrective action prior to returning to the US, requiring a ship to proceed elsewhere for repairs, denying entry into port, or detaining a ship in port.

Deficiency. A condition found not to be in compliance with the conditions of the relevant convention, law and regulation.

Detention. A control action which restricts a ship’s right of free movement. The imposition of a restriction on the movement of a ship constitutes a detention regardless of whether or not a delay from a ship’s normal or expected itinerary occurs. Detentions may be carried out under the authority of SOLAS 1974 as amended, Regulation 19, ICLL Article 21; MARPOL Article 5; STCW Article X and Regulation 1/4; ILO 147 Article 4, the Ports and Waterways Safety Act; or a US Customs hold.

Examination. The process of assessing a ship’s compliance with the relevant provisions of applicable international conventions, domestic laws and regulations. The scope of an examination shall be to the extent necessary to verify the validity of the relevant certificates and other documents, and to ensure no unsafe conditions exist. An examination may include, but is not limited to, checks of documents, certificates, manuals, the ship’s structural integrity, machinery, navigation, pollution prevention, engineering and safety systems, maintenance programmes and crew proficiency.

Intervention. A control action taken by a port state in order to bring a foreign flag ship into compliance with applicable international convention standards. Interventions are undertaken by a port state when a ship’s flag state has not, can not, or will not exercise its obligations under an international convention to which it is a party. This may include requesting appropriate information, requiring the immediate or future rectification of deficiencies, detaining the ship, or allowing the ship to proceed to another port for repairs.

Nonconforming Ship. Any ship failing to comply with one or more applicable requirements of US law or international conventions is a nonconforming ship. A nonconforming ship is not necessarily a substandard ship unless the discrepancies endanger the ship, persons on board, or present an unreasonable risk to the marine environment.

Substandard Ship. In general, a ship is regarded as substandard if the hull, machinery, or equipment, such as lifesaving, firefighting

<table>
<thead>
<tr>
<th>CLASSIFICATION SOCIETY</th>
<th>1995 DETENTION RATIO %</th>
<th>1996 DETENTION RATIO %</th>
<th>AVERAGE %</th>
</tr>
</thead>
<tbody>
<tr>
<td>DET NORSKE VERITAS</td>
<td>0.53</td>
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<td>ROMANIAN REGISTER OF SHIPPING</td>
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<td>39.39</td>
</tr>
</tbody>
</table>

Source: USGC Web site (July 1997)
and pollution prevention, are substantially below the standards required by US laws or international conventions, owing to:

a. The absence of required principal equipment or arrangement;
b. Gross noncompliance of equipment or arrangement with required specifications;
c. Substantial deterioration of the ship structure or its essential equipment;
d. Noncompliance with applicable operational and/or manning standards; or
e. Clear lack of appropriate certification, or demonstrated lack of competence on the part of the crew.

If these evident factors as a whole or individually endanger the ship, persons on board, or present an unreasonable risk to the marine environment, the ship should be regarded as a substandard ship.

Valid Certificates. A certificate that has been issued directly by a contracting government or party to a convention, or on the behalf of the government or party by a recognised organisation, and contains accurate and effective dates, meets the provisions of the relevant convention, and corresponds to the particulars of the ship and its equipment.

INTERVENTIONS AND DETENTION

Interventions of the USCG may involve

- allowing the ship to sail with the deficiency uncorrected (e.g., a warning),
- corrective action prior to returning to a US port
- allowing the ship to proceed to a specific port for repairs
- denying port entry
- detaining the ship in port until deficiencies are corrected.

Detention is the severest form of intervention and it is to be noted that detention (regardless of duration or effect on the ship’s schedule) will adversely affect the points assigned to the ship under Boarding Priority Matrix (see later comments). As points accumulate, the likelihood of future boarding rises. As the likelihood of future boarding rises, so to does the possibility of still more deficiencies being discovered, thereby creating a downward spiral.

APPEALS PROCEDURE

A detention decision may be appealed under the provisions of Title 46, Code of Federal regulations (CFR), Park 1.03-20 of Title 33, CFR, Part 160.7. The appeal must be in writing within 30 days after the decision is made or action is taken, and should give reasons as to why the decision or action should be set aside or revised. It should be addressed to the Coast Guard officer in command where the decision was made or action was taken, generally the Officer in Charge, Marine Inspection (OCMI), Captain of the Port (COTP), or Commanding Officer, Marine Safety Office (CO, MSO).

If the initial appeal is unsuccessful, a formal appeal may be made to the District Commander. A further formal appeal may be made to Coast Guard Headquarters.

Note: While a request for reconsideration or a formal appeal is pending, the original decision or action remains in effect, unless specifically stayed the District Commander or Headquarters.

DETENTIONS – DISSEMINATION OF INFORMATION

If a USCG inspector takes an intervention action against a ship, the flag state must be notified of all the circumstances, as well as to the classification society and the International
Maritime Organisation (IMO). If the ship is allowed to depart without all identified deficiencies being corrected, the USCG must also notify the authorities of the next port of call of the uncorrected deficiencies.

The Ship Compliance Division produces a List of Ships Detained. Under the authority of Titles 14, 33, and 46, United States Code.

This List of Ships Detained includes the ship name, IMO number, date of detention, ship type, port, flag, classification society and deficiency summary. The list is subject to change without notice based on appeals made by the owner, operator, and/or classification society.

GENERAL PUBLICITY AND INFORMATION

There is a lot of helpful information as to the criteria employed by the USCG published by the United States Coast Guard and available on the internet at:

http://www.uscg.mil/hq/g-m/psc/psc.htm

The US Coast Guard Headquarters’ Port State Control Branch may be reached at the following address:

Commandant (G-MOC-2)
US Coast Guard
2100 Second Street S.W
Washington DC 20593-0001
ACKNOWLEDGEMENTS AND BIBLIOGRAPHY

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Secretary, Paris Memorandum of Understanding, Wilem Wilzenplein 6, PO Box 2094. The Hague, The Netherlands.

Secretary, Asia-Pacific Memorandum of Understanding, Tokyo MOU Secretariat, Tomoecho 6th Floor, Annex Bldg 3-8-26 Toranomon, Minato-ku, Tokyo, Japan 105.

Secretary del Acuerdo de Viña del Mar, Prefectura Naval Argentina, Av.E Madero 235, P Baja, Buenos Aires, Argentina.

US Coast Guard, US Coast Guard Headquarters, US Port State Control Program, Washington D.C.

The author wishes to acknowledge the help of Thomas Miller’s Business Intelligence Centre in researching this manual.

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