

**COMMITTEE OF EXPERTS ON THE TRANSPORT OF
DANGEROUS GOODS AND ON THE GLOBALLY
HARMONIZED SYSTEM OF CLASSIFICATION
AND LABELLING OF CHEMICALS**

Sub-Committee of Experts on the Globally
Harmonized System of Classification
and Labelling of Chemicals
(Seventh session, 14-16 July 2004,
agenda item 4)

IMPLEMENTATION OF THE GHS

Note by the secretariat

The secretariat reproduces hereafter two documents (DSC 9/2/1 and DSC 9/2/2) received from the International Maritime Organization (IMO) reporting on the outcome of MEPC 51 and LEG 88.



SUB-COMMITTEE ON DANGEROUS GOODS,
SOLID CARGOES AND CONTAINERS
9th session
Agenda item 2

DSC 9/2/1
25 May 2004
Original: ENGLISH

DECISIONS OF OTHER IMO BODIES

Outcome of MEPC 51

Note by the Secretariat

SUMMARY

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| <i>Executive summary:</i> | This document reports on the outcome of MEPC 51 relevant to the work of the Sub-Committee |
| <i>Action to be taken:</i> | Paragraph 15 |
| <i>Related documents:</i> | MEPC 51/22, paragraphs 10.1 to 10.15; LEG 88/12/1; DSC 8/15 |

Introduction

1 The Marine Environment Protection Committee held its fifty-first session from 29 March to 2 April 2004 and its report on that session is available as a document bearing the symbol MEPC 51/22. The decisions of relevance to the work of the Sub-Committee are given in the ensuing paragraphs.

Review of Annex III of MARPOL 73/74

2 The Committee agreed that the criteria adopted by the UN should also be adopted under MARPOL Annex III and reflected in the IMDG Code to define substances as hazardous to the aquatic (marine) environment.

3 In taking this decision, the Committee noted that the criteria, adopted by the UN TDG Sub-Committee, had been extracted from the GHS for defining products, which are Hazardous to the Aquatic Environment and deemed to be appropriate for the transport of packaged goods by all modes of transport.

4 The Committee agreed that chapter 2.9 of the proposed amendments to the IMDG Code, which were shown in square brackets in annex 6 to DSC 8/3/Add.1, should be deleted at this time, whilst recognizing that the amendments related to GMMOs and GMOs should be included in the text.

5 In this context, it was noted that chapter 2.9 of the proposed amendments to the IMDG Code included various aspects associated with the proposed new criteria for defining marine pollutants, which required consideration by the Committee before they could be included in the IMDG Code, and this was the reason for agreeing that the whole of chapter 2.9, other than the amendments related to GMOs and GMMOs, should be deleted at this time, pending the decisions being made in relation to marine pollutants.

6 The Committee agreed that, until the issues associated with making appropriate amendments to the IMDG Code were resolved, it would be inappropriate to make recommendations for the associated amendments to MARPOL Annex III. In this context it was noted that the Sub-Committee was still working on aspects associated with environmentally hazardous substances including the problem of defining which products should be labelled during transport.

7 The Committee also agreed that there would be no need to identify Severe Marine Pollutants once the criteria adopted by UNCOE on the transport of dangerous goods in compliance with the Globally Harmonized System of Classification and Labelling of Chemicals has also been adopted in the relevant IMO instruments.

8 In this context it was noted that the Sub-Committee had recognized that the application of the GHS criteria to the IMO definition of Marine Pollutants would result in there being no need to distinguish Severe Marine Pollutants from the general definition of Marine Pollutants.

9 It was agreed that the deletion of Severe Marine Pollutants would have an effect on the International Convention relating to Intervention on the High Seas in Cases of Oil Pollution Casualties (1969) and the related Protocol (1973) which, at that time, applied to Severe Marine Pollutants only but, in future would have to be amended to cover all Marine Pollutants. The Committee also noted that this issue would be brought to the attention of LEG 88.

10 It was recognized that the Sub-Committee had noted the view of the Working Group on the Review of Annex III of MARPOL 73/78, established at its eighth session, that the identification of new substances as "Marine Pollutants", under the system adopted by the UNCOE on the transport of dangerous goods and the globally harmonized system of classification and labelling of chemicals in the 13th edition of the UN Recommendations on the transport of dangerous goods should be done by Self-Classification in general which was in line with the original concept of the new GHS system.

11 Having noted the views of the Sub-Committee, the Committee agreed that, at that time, there was no role for GESAMP/EHS to act as an advisory body when disagreements arose under the Self-Classification system. In this context, it was also noted that there had been general agreement between Sub-Committee and BLG, in that there was no role for GESAMP/EHS other than the one it was performing at that time.

12 The Committee also agreed that the points to be made to the UNCOE on the transport of dangerous goods and the globally harmonized system of classification and labelling of chemicals regarding the harmonization with aspects related to the definition of environmentally hazardous substances should include the following:

- .1 IMO wishes to harmonize its criteria for defining Marine Pollutants with the UN TDG definition of environmentally hazardous substances;
- .2 IMO is concerned about the UN TDG regulations under which many products in classes 1 to 9 are also *deemed* to be environmentally hazardous. This would not allow IMO to distinguish products in classes 1 to 9 as being marine pollutants for stowage requirements and reporting to authorities in the event of loss overboard. However, it was noted that the UN TDG Sub-Committee had since agreed that ALL substances, hazardous to the aquatic

environment should be identified with a GHS label, whether they fall into classes 1 to 8 or just class 9; and

- .3 IMO considers that it would be highly desirable for all modes of transport to bring the new criteria into force at the same time.

13 Having recognized the effects that the above changes would have on other IMO instruments, it was agreed that it would be more appropriate to consider such consequential amendments once the IMDG Code amendments had been finalized.

14 The Committee also agreed with the provisional timetable, as shown below, for amending the IMDG Code and MARPOL Annex III, whilst recognizing that this might need to be amended in light of the ongoing discussions on the issue.

**Provisional timetable for the revision of Annex III to MARPOL 73/78
and the IMDG Code**

| Action to be taken | Meeting | Date |
|---|---------|----------------|
| Agree the revised text of the IMDG Code and Annex III of MARPOL 73/78 | DSC 9 | September 2004 |
| Approve the revised text of the IMDG Code and Annex III of MARPOL 73/78 | MEPC 52 | October 2004 |
| Circulation of amendments to the IMDG Code and Annex III of MARPOL 73/78 by the Secretary-General | | November 2004 |
| Adoption of the amendments to the IMDG Code and Annex III of MARPOL 73/78 | MEPC 53 | July 2005 |
| Tacit acceptance of amendments to the IMDG Code and Annex III of MARPOL 73/78 | | April 2006 |
| Entry into force of the amendments to the IMDG Code and Annex III of MARPOL 73/78 | | October 2006* |

* In order to harmonize with other modes of transport, this date could be extended to January 2007.

Action requested of the Sub-Committee

15 The Sub-Committee is invited to note the above information and decide accordingly.



SUB-COMMITTEE ON DANGEROUS GOODS,
SOLID CARGOES AND CONTAINERS
9th session
Agenda item 2

DSC 9/2/2
27 May 2004
Original: ENGLISH

DECISIONS OF OTHER IMO BODIES

Outcome of LEG 88

Note by the Secretariat

SUMMARY

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| <i>Executive summary:</i> | This document reports on the outcome of LEG 88 relevant to the work of the Sub-Committee |
| <i>Action to be taken:</i> | Paragraph 8 |
| <i>Related documents:</i> | LEG 88/13, paragraphs 194 to 197, annex 5; LEG 88/12/1; DSC 8/15 |

INTRODUCTION

1 The Legal Committee held its eighty-eighth session at IMO Headquarters from 19 to 23 April 2004 and its report on that session is available as a document bearing the symbol LEG 88/13.

2 A note by the Secretariat (LEG 88/12/1) brought to the attention of LEG 88 a development concerning Severe Marine Pollutants which could have an effect on the 1973 Intervention Protocol. For ease of reference, LEG 88/12/1 is attached as annex 1.

3 The decisions of relevance of LEG 88 to the work of the Sub-Committee are given in the ensuing paragraphs.

REVIEW OF ANNEX III OF MARPOL 73/74

Severe Marine Pollutants and the 1973 Intervention Protocol

4 The Committee noted the information provided in document LEG 88/12/1 concerning developments taking place in the Sub-Committee affecting the list of substances to which the 1973 Intervention Protocol applies.

5 The Committee recalled that the 1973 Protocol refers to a list of substances which is established by the appropriate body of the Organization and that the Assembly had determined that the MEPC would perform that function on behalf of the Organization. In 2002, the MEPC adopted amendments to the list which made reference to “Severe Marine Pollutants” as one of the categories of substance. However, the Committee was informed that, more recently, the UN Committee of Experts on the transport of dangerous goods and on the globally harmonized System of clarification and labelling of chemicals had been developing new criteria which could mean that the term “Severe Marine Pollutants” would no longer be used. No final decision had been taken, but it seemed likely that in due course, an amendment would be made to the list of substances associated with the 1973 Intervention Protocol.

6 The Committee also noted in this connection that the HNS Convention defines “Hazardous and Noxious Substances” by making reference to “harmful substances... in packaged form covered by the IMDG Code”. Therefore, there may be potential implications for the HNS Convention in this work on severe marine pollutants which the HNS Correspondence Group might want to consider in due course i.e., when a final decision is taken with regard to the IMDG Code.

7 One delegation, whose statement is attached at annex 2, said it was important, from the point of view of ensuring that substances which are potential marine pollutants were safely transported, for the Committee to be kept informed when new criteria were adopted which might affect the definition of such substances. The representative of the CMI agreed that it was important to have clear criteria given the range of technical names given to hazardous substances.

ACTION REQUESTED OF THE SUB-COMMITTEE

8The Sub-Committee is invited to note the above information and decide accordingly.

ANNEX 1

ANY OTHER BUSINESS

Severe Marine Pollutants and the 1973 Intervention Protocol

Note by the Secretariat

SUMMARY

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|----------------------------|---|
| <i>Executive summary:</i> | This note brings to the Committee's attention a development concerning Severe Marine Pollutants which could have an effect on the 1973 Intervention Protocol. |
| <i>Action to be taken:</i> | Paragraph 4 |
| <i>Related documents:</i> | DSC 8/15 and MEPC 48/21, annex 4 |

1 The Sub-Committee on Dangerous Goods, Solid Cargoes and Containers (DSC) at its eighth session in September 2003 agreed to bring to the attention of LEG that the deletion of "Severe Marine Pollutants" will have an effect on the International Convention relating to Intervention on the High Seas in Cases of Oil Pollution Casualties, 1969 and the related Protocol, 1973. No final decision has been taken, but the Sub-Committee is in the process of examining whether proposed changes in criteria for identifying substances as hazardous to the aquatic (marine) environment, including deletion of the term "Severe Marine Pollutants," should be taken into account in amendments to IMO instruments including Annex III of MARPOL 73/78 and the IMDG Code. Potentially, such a step would also have implications for the 1973 Intervention Protocol because the list of substances to which the Protocol applies, as prescribed in an amendment to the list which was adopted by MEPC in 2002 (resolution MEPC.100(48)), makes explicit reference to "Severe Marine Pollutants." The technical effect of the change is not expected to be substantial; however, the Sub-Committee is continuing to review this issue and may in due course propose amendments to the list of substances associated with the 1973 Intervention Convention.

Background

2 Article I, paragraph 2(a) of the Protocol Relating to Intervention on the High Seas in Cases of Pollution by Substance Other than Oil, 1973, provides that the phrase "substances other than oil" shall be "those substances enumerated in a list which shall be established by an appropriate body designated by the Organization and which shall be annexed to the present Protocol." By means of Resolution A.296(VIII) the Assembly designated the MEPC as the appropriate body referred to in this article. This list was originally established by the MEPC in 1974 and was amended in 1991 and 1996. In 2002, MEPC adopted another amendment to restructure the list, and this amendment was circulated to Parties to the 1973 Intervention Protocol by means of a Note Verbale dated 22 September 2003. The amendment will be deemed to be accepted at the end of the period of six months following its circulation (i.e., on 22 March 2004), unless, within that period an objection to the amendment has been communicated to the Organization by not less than one-third of the Parties. The amended list will enter into force three months after it has been deemed to be accepted (i.e., 22 June 2004). The amendment includes the following as one of its categories:

"Any of the following products are subject to the 1973 Intervention Protocol if they are either carried on board a ship as cargo or are residues of such products previously carried:**Harmful substances**, in packaged form, as defined in Annex III to MARPOL 73/78, as amended, and which have been identified as Severe Marine Pollutants (PP) in the International Maritime Dangerous Goods Code (IMDG Code) or which meet the criteria for such as defined in the IMDG Code...". (The complete text is provided at annex).

3 Without going into technical details, it may be noted that a Working Group at DSC 8 recognized that the criteria adopted by the UN to define substances and mixtures as “hazardous to the aquatic (marine) environment” differed from those included in the current Annex III to MARPOL 73/78 and it was anticipated that the application of such criteria would result in some products, indicated in the index to the IMDG Code as Marine Pollutants, being added whilst some others might be removed. The Sub-Committee agreed that there will be no need to identify “Severe Marine Pollutants” once the UN Committee of Experts on the Transport of Dangerous Goods and the globally harmonized system of classification and labelling of chemicals criteria have been adopted in the relevant IMO instruments. DSC 8 also agreed that it would be more appropriate to consider the consequential amendments to other IMO instruments resulting from amendments to the IMDG Code once the latter has been finalized.

Action requested of the Legal Committee

4 The Legal Committee is invited to take note of the above information, discuss and decide as appropriate.

ANNEX

(From MEPC 48/21, annex 4)

**LIST OF SUBSTANCES REFERRED TO IN PARAGRAPH 2(a) OF ARTICLE I
OF THE 1973 INTERVENTION PROTOCOL**

Any of the following products are subject to the 1973 Intervention Protocol if they are either carried on board a ship as cargo or are residues of such products previously carried:

- 1 **Oils**, as defined in Annex I to the International Convention for the Prevention of Pollution from Ships, 1973, as modified by the Protocol of 1978 relating thereto (MARPOL 73/78), as amended, when carried in bulk, including those listed in Appendix I with the exception of crude oil, fuel oil, diesel oil and lubricating oil which are covered by the 1969 Intervention Convention;
- 2 **Noxious Liquid Substances**, as defined in Annex II to MARPOL 73/78, as amended, when carried in bulk, and identified:
 - .1 as Pollution Category A or B, in:
 - .1 Chapter 17 of the International Bulk Chemical Code (IBC Code); or
 - .2 Lists 1 to 4 of MEPC.2/Circulars, issued annually in December; or
 - .2 in the composite list of GESAMP Hazard Profiles, issued periodically as BLG Circulars, with either:
 - .1 a '2' in column B and 'XX' in column E; or
 - .2 'XXX' in column E;
- 3 **Harmful substances**, in packaged form, as defined in Annex III to MARPOL 73/78, as amended, and which have been identified as Severe Marine Pollutants (PP) in the International Maritime Dangerous Goods Code (IMDG Code) or which meet the criteria for such as defined in the IMDG Code;
- 4 **Radioactive material**, transported in type B or type C packages, or as fissile material, or under special arrangements, as covered by the provisions of class 7 of the IMDG Code; and
- 5 **Liquefied gases**, identified in chapter 19 of the International Code for the Construction and Equipment of Ships Carrying Liquefied Gases in Bulk, 1983 (IGC Code), as amended, when carried in bulk, and the products for which preliminary suitable conditions for the carriage have been prescribed by the Administration and port administrations involved in accordance with paragraph 1.1.6 of the IGC Code.

ANNEX 2

STATEMENT BY THE DELEGATION OF ITALY CONCERNING SEVERE MARINE POLLUTANTS AND THE 1973 INTERVENTION PROTOCOL

The Italian delegation, cannot, at this stage, hide its concern regarding the measures that the Committee is invited to take in document LEG 88/12/1. It is being requested of the Legal Committee that, in an effort to achieve harmonization with the GHS system, the definition of Severe Marine Pollutants (PP) as indicated in the Convention should be abandoned. But it seems to us that it is precisely in the case of the Convention that one cannot speak simply of a question of terminology. On the contrary, in our view, the identification of PP is a way of guaranteeing the highest level of environmental protection that is required by the International Convention relating to Intervention on the High Seas and its Protocol.

Again, the indication of PP for severe marine pollutants allows better stowage on ships and, in the case of incidents, a more specific notification to the coastal authorities of the substances involved.

This is why we request LEG 88 to defer this decision until such time as new criteria for indicating substances harmful to the aquatic environment are adopted in other IMO instruments. In this way it will be possible to have the same marine environment protection guarantees as indicated previously.
