

# CMI NOTES

## SECTION 1 – GENERAL

1. There was no support for “abolition” (1.1) of the principles but equally no wish to see those principles extended. Primary concerns related to the cost and complexity of aspects of the general average process.
2. Consideration of any changes to YARs being necessitated by the Rotterdam Rules was generally considered to be either premature or unnecessary.
- 2a. The practical issues were noted but were generally felt to be outside this scope of YARs but specific suggestions were made by:-
  - Argentina
  - Switzerland
  - IUMI
3. The majority considered that the advantages of the definitions section were outweighed by the possible consequences. Those favouring a section for definitions were:-
  - Argentina
  - Norway
  - Switzerland

and others noted instances where re-drafting of individual rules might be desirable to clarify the meaning of certain words and phrases.

4. The majority favoured maintaining the present brevity of the YARs, rather than attempting to produce a more self-contained code, in order to maintain the present flexibility and clarity of the rules.

A more self-contained code was considered to be desirable by:-

- China
  - Switzerland
5. The “tidying up” changes of format adopted by YARs 2004 was unanimously welcomed, subject to the caveat for ICS/BIMCO that other changes to YARs 1944 were agreed to be necessary.

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6. The majority were against including any express provision in YARs relating to dispute resolution, with several replies referring to the existing arrangements provided by AAA and AMD. Those in favour were:-

- Finland
- Slovenia
- Switzerland

7a. The majority were against including any additional express terms in YARs relating to enforcement, with the only exceptions being:-

- Slovenia
- Switzerland

7b. A significant majority favoured the idea of standard wordings for security documents but that majority was divided between those in favour of such wordings being set out as part of the YARs and those who considered they should be made available by other means. The difficulty in agreeing a wording acceptable to all parties and circumstances was noted.

IUMI put forward for discussion two additional suggestions to reduce the time and complexity of collecting security:

- (i) The BIMCO Average Bond Clause
- (ii) Amending policy wordings so that insurers assume a direct liability for GA contributions.

while noting that (ii) faced considerable practical difficulties.

8. It was unanimously agreed that no changes to YARs were required in relation to GA Absorption Clauses in hull policies.

9. The majority considered that no new wording was required in YARs to deal with piracy, with the general principles set out in the lettered rules offering sufficient guidance.

Those disagreeing were:-

- Argentina
- Finland
- Italy
- Slovenia

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Belgium and IUMI suggested that consideration should be given to a new rule to deal specifically with the removal of cargo by pirates.

10a. No recommendations for dealing with adjusters' fees within the YARs were put forward but the following specific comments were made:-

(i) ICS/BIMCO : A widening of expenses admissible at a port of refuge relating to cargo operations might reduce professional fees of all types.

(ii) IUMI : The adjusters' fees should be paid by whomever appointed them.

10b. With regard to the costs of collecting security the following suggestions were made:-

China : Assistance of P&I service and ships agents

Japan : Exclusion of low value cargoes.

Switzerland : Requests for security by rated insurance companies currently increasing costs.

AMD : A single standard security document.

ICS/BIMCO : Use of BIMCO Average Bond Clause; provision of GA security at the port of refuge rather than at destination.

10c. With regard to the format of adjustments IUMI would prefer that adjusters should identify precisely what rules are being relied upon but noted that this would best be dealt with under a Rule of Practice.

10d. It was generally agreed that legal costs should continue to be accepted in relation to GA expenditure, e.g. salvage.

11. The suggestions made under "other matters" included:-

Belgium : Exclusion of low value cargoes.

France : Rights of cargo access to be recognised and ways sought to reduce the time required to issue a GA adjustment.

Israel : Rights of cargo access to be recognised and the right of cargo interests to declare GA to be established.

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- Norway : Low value cargo to be excluded; currency of adjustment to be fixed.
- AMD : Use of SDRs as the currency of adjustment' exclusion of sacrifices.
- IUMI : Exclusion of low value cargo to be formalised within YARs; provision within YARs to establish a single agreed currency for all adjustments.

## CMI NOTES

### SECTION 2

1. There was no support for changing the Rule of Interpretation with the following exceptions:
  - Belgium
  - Slovenia
  - Spain
  - Switzerland
  
2. There was no support for changing the Rule Paramount with the following exceptions:-
  - Slovenia
  - Switzerland
  
3. The majority were not in favour of including a Rule of Application. Those supporting its inclusion were:-
  - Slovenia
  - Switzerland
  - Spain
  - IUMI

A decision on this point was considered to be premature by:-

- UK
- ICS/BIMCO.

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## SECTION 3

1. No changes to Rule A were suggested.
  
- 2.1 The majority considered the provisions to Rule B to be satisfactory but the following suggested changes, or that further discussion was necessary:-
  - Norway
  - Switzerland
  - AAA
  - IUMI (in relation to the casting off of a tow being considered to be a GA act.)
  
- 2.2 The majority responding did not consider further provisions were required regarding Rule X and XI allowances in a tug and tow situation. Those favouring changes or further discussions were:-
  - Argentina
  - Canada (with regard to integrated tug and large units)
  - AMD
  
- 3.1 A significant majority were against re-visiting the issue of “loss of market” in Rule C. Those in favour of further consideration of this point were:-
  - Canada
  - Spain
  
- 3.2a A small majority were against including express reference to the exclusion of liabilities in Rule C, but the following favoured a clarifying amendment:-
  - Argentina
  - Netherlands
  - Slovenia
  - Spain
  - Switzerland
  - AAA
  - AMD

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3.2b Responses were roughly evenly divided with regard to a clarifying amendment regarding preventive measures. Those in favour included:-

- Argentina
- Belgium
- Brazil
- Slovenia
- Spain
- Switzerland
- AAA
- AMD
- IUMI

4. There were no general support for amendments to Rule D but the following specific points were raised.

Argentina : The contributing interests should pay the contribution in every case.

Netherlands : Considered that the wording was vague and could be improved.

AAA : An express provision relating to the treatment of recoveries.

AMD : A return to the “pay first, sue later” that already applies to LOF salvage.

5.1 The majority considered the present time limits to be sufficient, however:-

Netherlands : Proposed a specific amendment to the wording.

Switzerland, AMD : Considered the existing periods may be too generous.

5.2 It appeared to be generally agreed that the time limit should run from the casualty date but the responses with regard to the need for a clarifying amendment varied.

6.1 It was unanimously agreed that the words “without regard to the savings to other interests” should be retained in Rule C.

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6.2 A significant majority were against adding the words “or loss” to Rule F. Those in favour of the change were:-

- Brazil
- Spain

Similarly the majority felt there was no pressing need to clarify the limits of what constitutes an expense.

6.3 The question should perhaps have made it clearer than any Rule F allowance is for “extra” expense and therefore assumes a credit for voyage savings etc. The “savings” referred to in the question are the notional GA costs that have been avoided.

The proposition was therefore that costs of towage to destination and forwarding should be allowed as GA on a substantive rather than substituted basis, as supported by ICS/BIMCO. The issue probably need to be re-visited with this clarification in mind.

7.1 The difficulties surrounding frustration of a voyage by delay were noted but no solutions within the framework of the YARs were put forward or considered to be possible.

7.2 The majority considered that the cut-off point for NSA/Rule G allowances should be left to the discretion of the adjuster. The following felt that the point should be considered further:-

- Croatia
- Spain
- Switzerland
- AMD
- IUMI

7.3 It was unanimously agreed that the requirement for notification in Rule G should be retained.

7.4 A variety of responses were given as to whether, when the voyage is frustrated by delay, the NSA allowances should continue up to the point at which the situation became apparent or up to the date when the delay became sufficient to induce frustration. The replies appear to be inconsistent in some cases and further discussion is required to clarify and develop respondents view.



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7.5 All respondents noted the uncertainties surrounding what was “justifiable under the contract of affreightment” but no obvious solution within the YARs framework was suggested.

7. (Additional)

AAA suggested a clarifying amendment to Rule G to ensure that it reflected the perceived intention of its “Bigham” provisions and the judgment in the “City of Colombo”.

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### SECTION 4

1/5 The principles set out in these Rules were considered to remain important and no significant issues were raised. There was limited support for up-dating archaic wording.

Other specific comments were made as follows:-

Netherlands : Rule 1 may now be superfluous.

AMD, ICS/BIMCO, Denmark : "Custom of trade" in Rule 1 should perhaps be re-visited.

6.1 (a) The (v) options put forward in relation to Rule VI were supported as follows (options (i), (iv) and (v) are not mutually exclusive).

(i) Argentina, Brazil, Croatia, Denmark, Finland, Norway, ICS/BIMCO.

(ii) Belgium, Canada, France, Italy, Japan, Spain, Ukraine.

(iii) Switzerland.

(iv) China, Croatia, Denmark, Netherlands, Norway, AMD, AAA.

(v) Netherlands.

UK and Germany were unable to establish a consensus within their Associations.

6.1 (b) With regard to other options for dealing with the issue, AMD put forward three specific situations in which re-apportionment should take place, thus proceeding by express inclusion rather than exclusion.

6.1 (c) There was relatively little comment on the possibility of amending Rule XVII, if option (ii) was adopted, to avoid the need for deduction of salvage payments. AAA and AMD considered this a logical step if that route is pursued.

6.2 There was general support for the continuing allowance of legal costs in connection with salvage. Some felt a need for clarifying amendments but to some extent these can only be considered fully when the issues under 6.1 above are resolved.

7/8 There were no issues with the principals involved and some support for updating the wording in places.

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9. No issues were reported.
- 10.1 A majority supported the inclusion of the additional wording but significant concerns were expressed by UK, ICS/BIMCO and others that this might be counter-productive. Further discussions would appear necessary to clarify views.
- 10.2 Views on the need to clarify allowances under X(b) when repairs were not effected were mixed, with some respondents taking a neutral position.
- Canada suggested an unrelated amendment to XI(b)(i) and XI(c)(iii) whereby the words “without any accident...etc.,” should be deleted (see 11.4 below).
- Netherlands suggested that the costs of re-stowage should be allowed as General Average.
- 11.1 The issue of allowance of crew wages while detained at a port of refuge was responded to as follows:-
- Retain 1994 position:  
Argentina, Belgium, Brazil, China, Croatia, Denmark, Finland, Italy, Netherlands, Norway, Switzerland, Ukraine, AAA (with a suggested clarifying amendment) AMD, ICS/BIMCO.
- Retain 2004 position:  
Canada, France, Japan, Slovenia, Spain, IUMI.
- UK and Germany were unable to reach a consensus.
- 11.2 A variety of views were expressed as to whether clarifying amendments were needed following the “Trade Green” decision. Overall clarification was felt by the majority to be desirable subject to suitable wording being found.
- 11.3 The majority considered that no change was necessary and/or the matter could be left to the discretion of adjusters.
- On a separate point, IUMI suggested that consideration should be given to the lack of uniformity regarding allowance of detention expenses while salvage security is provided.
- 11.4 The majority considered that the proviso to X(b) and XI(b) regarding discovery of damage at a port of call was fulfilling its purpose.

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Canada have recommend the deletion of these words which Switzerland also consider to be “superfluous.”

11.5 The majority considered that there was no need to change the overall basis of Rule XI(d) and there were no reported difficulties with its application or wording.

There was mixed support for clarifying wording relating to “actual escape or release” and “bunkers”. AAA suggested an amended wording of XI(d)(iv) to make it more consistent with the approach taken in Rule X.

12. No issues identified.

13. No issues identified other than:-

Canada : Provisions relating to blasting and painting are redundant.

AMD : Modification of this rule should be considered.

14.1 Support for the two current versions of this Rule in relation to temporary repairs to accidental damage was largely in favour of the 2004 version.

Those supporting the 1994 version were:-

- Argentina
- China
- Netherlands
- Norway
- ICS/BIMCO

14.2 It was not considered that any changes were necessary in the light of the “Bijela” decision.

15. No issues noted.

16. The practical difficulties were noted by respondents who offered a variety of solutions, including specific amendments proposed by Japan, Switzerland and AAA (see also 17.)

17.1 The majority favoured leaving the exclusion of low value cargo to the discretion of the adjuster.

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17.2 The effect of loss of market (Christmas decorations arriving in February) on Contributory values was not responded to in any great details.

AAA considered the existing rule provided sufficient room for discretion. AMD put forward a suggested wording if an express exclusion was felt to be necessary.

18. No issues reported, although AMD referred to a possible lack of uniformity in the treatment of dry-dock dues.

19. No reported issues.

20. The majority favoured removal of the allowance for Commission and it was suggested that this needed to be considered together with interest as part of the overall picture.

21. There appeared to be a broad consensus in favour of adopting flexible interest rates on the 2004 model, but different views were expressed regarding the method/basis for choosing the flexible rate.

22. There was general support for a revision of this rule in line with current banking realities.

23. The majority considered time bar provisions to be a useful addition, while acknowledging their limitations in certain jurisdictions.

IUMI have proposed a specific amendment to the 2004 wording.