

September 1989

TO ALL MEMBERS OF THE ASSOCIATION

The Britannia Steam Ship
Insurance Association Limited

US Anti-Drug Abuse Act 1986

We refer to our earlier Circular of September 1988 and wish to bring you up to date on certain aspects of this legislation which have now been clarified by the US Customs Service.

1. The Sea Carrier Initiative Agreement (SCIA)

The wording of this agreement has now been agreed and no further changes will be permitted. The final version is Number 2/89 and it contains a feasibility clause which reads as follows:

“This Agreement cannot, by law, exempt the Carrier from statutory sanctions in the event that illegal drugs are discovered by Customs on board the Carrier’s vessels. However, the extent to which the Carrier has shown compliance with those terms of this Agreement which are feasible and establishes to the satisfaction of Customs that only those terms of the Agreement were, in fact, feasible, will reflect favourably on any Customs’ decision or recommendation on final case disposition.”

The US Customs have indicated that they will regard such a clause as incorporated into any earlier SCIA which has been signed by a carrier. This should remove a major objection which has prevented some owners from signing an Agreement and Members are now urged to sign one if they have not already done so. A form is obtainable from US Customs. Nearly four hundred Agreements have been signed, some of them by charterers who are joining with owners in taking all possible steps to prevent drugs being put on board their ships. The International Longshoremen’s Association has threatened to boycott cargo where the carrier has not signed an SCIA.

Where a shipowner or charterer has signed an SCIA then any problems arising from the finding of drugs on board the ship or in possession of crewmembers will be referred to Washington rather than be dealt with at local level. This should guarantee greater consistency of treatment. However the penalties for breach of the Act are severe and in extreme cases can result in the detention of the ship involved to secure a penalty or even the forfeiture of the ship.

2. The Super Carrier Initiative Agreement

This new kind of Agreement has received some publicity but it should be emphasised that it is designed only for those regular carriers in high risk areas who already have a history of drug smuggling on their ships. It calls for stringent and expensive measures to be taken by a carrier.

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3. **Sea Carrier Security Manual**

Assistance from the US Customs in the form of detailed advice on the prevention of drug smuggling has now been set out in a Security Manual. For those Members who have ships trading or likely to trade to the United States a copy of that Manual is sent with this Circular. Any Member who requires a copy but has not got one or who requires further copies should apply to the Managers.

We would like to emphasise strongly the need for senior management to read the Manual carefully and to consider how best to advise all who are on board their ships at any time and in particular the Masters of the importance of carrying out the procedures set out in the Manual. Every Master and each ship should have a copy with instructions from management on the action to be taken on each voyage to a United States port.

You are reminded that there is still a "zero tolerance" on the part of the US Customs when it comes to the measures to be taken to prevent drugs being placed on board ships. There is a heavy burden of proof on the shipowner or carrier to show that he has exercised the highest degree of care and diligence to prevent the ship being used as a vehicle for the carriage of drugs. The demonstration of compliance with the provisions of the Manual is the key to the mitigation of any fine imposed.

4. **Provision of Security**

We would like to remind you of the third and sixth paragraphs in particular on the first page of our Circular of September 1988; these were as follows:

"The Committee wishes us to emphasise that there is a duty on shipowners to behave responsibly and to take all possible steps to prevent the smuggling of drugs on board their ships particularly those trading to the United States.

The Committee has also instructed us to advise you that, in the event of a fine being imposed or the ship confiscated in connection with the smuggling of drugs, security will only be given by the Association when we have been provided with satisfactory information on the action you have taken as a prudent and responsible shipowner either generally or in the implementation of the specific provisions of the Sea Carrier Initiative Agreement you have signed."

5. **Charterparty Clause**

BIMCO are considering a clause to be inserted in charterparties in an attempt to clarify in advance the responsibilities of owner and charterer if drugs are found on board a chartered ship. Such a clause could be of assistance in persuading charterers to adopt a responsible attitude towards the smuggling of drugs in cargo but it would not be binding on the Customs Service who can, of course, penalise whom they see fit depending upon the facts as they find them.