

## A Ship That Cannot Sail: The Vessel Owner and Port State Control

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Port State Control (PSC) agreements between maritime nations and the International Maritime Organization give every seaport country the right to make independent inspections of all ships calling their ports. PSC inspectors are usually specialized, although in the United States, the Coast Guard's Marine Safety Office has been given this responsibility.

PSC inspectors have the power to detain a vessel in port whose condition or equipment has been determined to be sub-standard. This detention prevents the vessel from leaving that port until the deficiencies are remediated. Generally, the courts of a port state do not interfere with PSC inspections, so the shipowner's options in freeing a detained ship are limited to those that satisfy the inspector.

In many cases, PSC inspectors defer to the vessel's statutory-certificate surveyor—the class surveyor who originally issued the vessel's certificates—when deciding what repairs will be required. However, PSC inspectors are not bound to do so, and they even have the power to reject even

validly issued statutory certificates.

In some matters, the PSC inspector is bound by international standards like SOLAS, which imposes requirements for safety, navigation, and communication gear. Theoretically, a vessel with all required safety gear onboard may not be detained for lack of such gear. Detentions for lack or expiration of SOLAS equipment are not the shipowner's greatest challenge, however, since they may be remediated by simply purchasing and placing the required gear onboard.

The most difficult detentions are those relating to hull condition. In this area, the safety of the vessel is a matter of opinion—two surveyors may have radically different opinions of a given vessel's hull condition—and if the PSC inspector rejects the ship's certificates, the shipowner has little or no recourse but to bring the ship into compliance with his standards.

It should be remembered that in many ports there is a tacit (and sometimes not so tacit) understanding that the longer a vessel is detained in the

country, and the more extensive the list of required repairs and supplies, the more money will flow into local pockets. This is especially true for ships in the tramp trade: because local officials know the ship may never return, whatever money the locals want to extract out of her will have to come from her present port call. Corrupt PSC inspectors, or those merely seeking to help their neighbors, therefore have every reason to find deficiencies and very little reason not to.

PSC standards wildly vary between countries and regions. Generally, the countries and regions with the strictest standards are, in descending order: (1) United Kingdom; (2) United States; (3) all Scandinavian countries; (4) Holland; (5) Belgium; (6) Germany; (7) the rest of Europe; (8) Mexico; (9) Asia; (10) all Caribbean countries; (11) Latin America; and (12) Africa. Although PSC inspections are rare in most of the countries of Latin America, the Caribbean, and Africa, when they are made, it is typically for the sole purpose of obtaining a payment for clearing the detentions.

# Guidelines for Avoiding PSC Detentions

## ◆ Make a Favorable First Impression

Before a shipowner sends his ship to a port with active PSC regimens, he should ensure that the vessel looks good at first glance. It is well-known that PSC inspectors decide how intensive their inspections will be based upon their first impression of the ship. Many ships with derelict engine rooms and wasted forepeak tanks have escaped serious inspections by having well-painted decks and clean saloons for the inspectors to drink their coffee in.

## ◆ Don't Overlook Minor Certificates

The shipowner should ensure that every certificate and document is valid. Many times the master will have overlooked deficiencies in minor documents like the Deratting Certificate or Garbage Log, but these small deficiencies give the PSC inspector a reason—or at least an excuse—to make an extensive inspection.

## ◆ Make Main Areas Presentable

The first PSC inspection is generally cursory, and includes the deck, accommodations, hold, engine room, and bridge. If all looks satisfactory in these areas, it is extremely unlikely that the inspector will want to go into tanks or other enclosed spaces. The master should therefore ensure that any potential

deficiencies in these areas are corrected *before* the initial visit—which could come as soon as the vessel makes All Fast. Many times, a small deficiency that could have been cleared for a few hundred dollars leads to deficiencies that ultimately cannot be cleared at all.

## ◆ Establish Remediation Procedures

If the shipowner decides to enter a high-PSC-activity port with a ship having condition or equipment issues, he should have resources and procedures in place to clear the most likely deficiencies without delay. For every week that the ship sits under detention, the dangers of other shoreside claims, and even fraudulent seizure, increase dramatically.

## ◆ Tow the Ship to International Waters

The owner of a ship under detention should investigate the possibility of using a tug to tow her to international waters. Certification requirements for a vessel under tow—particularly if unmanned—are greatly relaxed, and most PSC authorities will allow a detained vessel to be towed out. Sometimes, especially in the United States, the Coast Guard will issue a clearance under tow only to a shipyard where the deficiency will be remediated. The shipowner may then find that his best recourse is to obtain clearance to the nearest foreign shipyard. After the

vessel reaches international waters, the shipowner may make his own decision as to his best interests in the matter. A master of a vessel with valid certificates may cancel a tow at any time, for any or no reason, and the vessel may not be stopped on the high seas for reasons of condition of hull or equipment except by her own flag state. However, in most cases where the vessel is seaworthy but still can't clear her detentions—a wonderful irony not lost on shipowners—PSC will usually approve a tow to international waters, where the vessel will be free to proceed foreign under her own power.

## ◆ Set Limits on What You Will Spend

The shipowner should always be aware of the actual, real-market value of his detained vessel. Many owners spend far in excess of their vessels' real values in trying to remediate PSC detentions, sometimes without ever freeing the vessel. This problem is especially acute in countries where PSC inspectors act in *de facto* alliance with shoreside suppliers and repairmen: the inspector will first detain the vessel for smaller items to get the owner to commit to the repairs, then he will impose new and increasingly expensive repairs on every re-inspection. This is done under the often-validated theory that the more the owner invests in the vessel

now, the more reluctant he will be to abandon her later. To avoid this, the shipowner should decide immediately whether present and foreseeable detention items can be remediated within his budget. If they cannot, he should decide whether to attempt an alternate resolution such as towing or to abandon the vessel immediately.

◆ **Obtain Assistance From the Vessel's Class Surveyor**

In questions of vessel hull or deck condition, the shipowner may be well-advised to fly the vessel's class surveyor—the one who personally issued her certificates—into the PSC port. He may be able to reassure the PSC inspector that the certificates were validly issued and that the vessel is actually seaworthy. Often, as a fellow-surveyor, he can negotiate on a personal basis with the PSC inspector for more reasonable requirements. Many times, the first thing the PSC will do upon detaining a vessel is to require a visit from her local class surveyor.

Unfortunately, in some countries, the PSC inspector

and the class surveyor may both be receiving kickbacks from local repair interests, so it is even more important to fly in the vessel's certificate surveyor. Since the vessel's certificate surveyor and the local surveyor both work for the same entity, theoretically they must enforce the same standards. In other words, the class society cannot have two surveyors requiring different things of the same ship. Since the certificate surveyor will have to stand behind his survey (he cannot afford to admit that he certificated a sub-standard vessel), he will do his best to obtain the cooperation of the local class surveyor. Plus, of course, he is being paid for his time by the shipowner.

**CONCLUSION**

The key to avoiding Port State Control problems is knowing Port State Control standards (and, by corollary, class standards) and knowing the vessel's actual condition. Owners who are actively involved in their vessels' maintenance are seldom surprised by PSC detentions. And although there *are* unjustifiable detentions, especially in England and

Northern Europe, the great majority of detentions worldwide relate to actual vessel deficiencies.

A smart owner knows what countries his vessel can trade. Many owners of vessels in the Caribbean market advertise them as "non-US traders" to alert potential charterers that they will not allow their vessels to call US ports. Conversely, owners who are confident that their vessels can pass Coast Guard inspections advertise them as "US traders" and charge higher rates.

There is no question that the Port State Control initiative has resulted in higher standards for vessels in international trade, with correspondingly higher costs for shippers and consumers. For the shipowner, however, Port State Control does not just mean a higher cost of doing business. It may well mean ruin. It is imperative, then, that he anticipate PSC inspections, prepare for them, and be ready to deal with their results. If he does not, he will soon be out of business, for a ship that can't leave harbor is no ship at all.