

# Sub-standard and Unseaworthy Vessels

by Richard Faint, Charter Wise Ltd, Gafta Qualified Arbitrator



It is a requirement of a Gafta contract that vessels should comply with the Shipment and Classification clause of the contract, namely that shipment should be by first class mechanically self-propelled vessel(s) suitable for the carriage of the contract goods, classed in accordance with the Institute Classification Clause of the International Underwriting Association in force at the time of shipment.



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The pictured vessel (m.v. SWANLAND) which sank off North Wales with tragic loss of life was mentioned in a recent Gafta arbitration case as a sister ship to a vessel which was, luckily, stopped by Port State Intervention before it met a similar fate. In the Gafta case the voyage ended when the vessel deviated and attempted to claim General Average at a Safe Port. It was suffering from 83% wastage in the hull and a divers' report, submitted to the tribunal along with the opinion of a naval architect and the Port State Findings, clearly established that there were 2 cracks in the hull on the starboard side and one on the port side.

For the crew on that vessel it was a lucky escape, the crew of the SWANLAND were not so lucky. This was a tragic and avoidable accident that cost the lives of six crew. Just two of her Russian crew were airlifted to safety by an RAF helicopter, co-piloted by the Duke of Cambridge, when she sank off the Llyn peninsula.

**“...the SWANLAND is one of nearly 250 general cargo ships that have foundered in just over 10 years. In this period over 800 seafarers have perished....”**

The Marine Accident Investigation Branch (MAIB) investigation identified major factors contributing to the structural failure. The way the cargo was loaded - putting pressure on her midships section - and lack of repairs were contributing factors including non-compliance with an international maritime code, a lack of effective safety management and the *“financial pressures of operating this type of vessel in the current economic downturn”*.

*The writer covered the introduction of the Gafta Shipment & Classification clause in an article for The Public Ledger [see [www.charterwise.co.uk](http://www.charterwise.co.uk) publications].*

Quote from **“Report on the investigation into the structural failure and foundering of the general cargo ship “Swanland”, Irish Sea, 27th November, 2011, with the loss of six crew”**, MAIB, June 2013

*“..... Swanland was subjected to the standard regulatory framework laid down by the IMO and, at the time of the accident, she was certified as complying with all the applicable statutory requirements. The vessel had recently been inspected by her Flag State, her classification society and her managers, and had undergone numerous PSC inspections; no significant concerns had been raised about her condition or operation.*

*Yet, despite all of the layers of surveys, audits and inspections, Swanland suffered a catastrophic structural failure during a routine voyage while carrying a high density bulk cargo in rough seas. The vessel foundered within about 17 minutes and, although the crew were immediately alerted to the situation and LSA was available, tragically only two of the crew survived.”*

As the MAIB notes, the SWANLAND is one of nearly 250 general cargo ships that have foundered in just over 10 years. In this period over 800 seafarers have perished, often in ageing vessels. The SWANLAND was over 30 years old; it is questionable whether such an old ship should have been trading at all; but as a minimum it needed regular maintenance and structural repairs. This report highlighted the failures in the maintenance of the vessel, and the fact that no structural reviews had taken place since 2009.

The International Transport Workers Federation (ITF) believes that this accident investigation report must now be the catalyst for urgent action – in particular for general cargo ship safety to be made a priority at the International Maritime Organisation (IMO). The ITF also stated that the fact that at the time of the accident the SWANLAND had been certified as being in compliance with all applicable statutory requirements makes a mockery of the existing regulatory framework.

I believe that national governments and the international shipping community can no longer stand on the sidelines as this terrible loss of life continues. The vessel in the Gafta case came very close to being lost in the same way as the SWANLAND. As per the ITF view, there should be a wholesale review of general cargo ship safety by the IMO; stricter enforcement of all existing regulations and additional checks and safeguards to guard against the potential disasters of using older general cargo ships.

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The Shipment and Classification clause of Gafta contracts has to give more protection to buyers. The seller will be in breach of contract where the ship is plainly not “first class” or clearly unsuitable for the carriage of the contract goods. Arbitrators in trade disputes where there is a shipment and classification clause should not accept that a vessel is “first class” and is “suitable for the carriage of the contract goods” simply because the vessel happens to have a “class” certificate.