SPECIAL REPORT

Swedish Shell v The National Tax Board

Translation by RMR

Transfer pricing is one of the major problems facing the nation-state in its relation with the TNCs. In Sweden the National Tax Board has made extensive inquiries into the pricing policies of the trans-national corporations in the oil industry, with special attention given to Mobil, Texaco and Shell. RMR has selected some of the central parts of a judgement on the policies of Swedish Shell for the year 1976.

The judgement was announced by the Inter-municipal Fiscal Court of Appeal in Stockholm, 1983-12-30.

The Tax Superintendent has since brought the case to a higher court, where a final decesion is expected in 1986. If the court decides in favour of the oil companies it is probable that new legislation will be introduced.

Crude oil

The company has given i a the following details concerning the basis for purchasing crude oil from SIPC.

The agreement about oil deliveries (the basic agreement) that the company made with SIPC was the basis for the specific volume and price commitments that were agreed upon from time to time. From this basic agreement the different contracts about quantities of crude oil were concluded. Quantities of crude oil with a low- or medium/high proportion of sulphur which the company wanted to buy on term-contracts were contracted about three months in advance for periods of six months, during the next few years after the oil-crises in 1973-74. Because of changed market conditions agreements were made later on for two periods of six months each – 1 April-30 September and 1 October-31 March (– summer resp winter requirements).

In the beginning of a year the company and SIPC thus agreed on what quantities of low-medium-high sulphur crude oil that should be delivered the next winter period and the first quarter of the next year. On the 1st of July a divergence of 10 per cent upwards or downwards could be stated for lowas well as medium/high sulphur crude oil respectively; similar arrangements applied to the summer half, i e second and third quarters of the year. Basic volumes were concluded three quarters before the beginning of the period (1st of July) with a tolerance of 10 per cent in one direction, which was to be tried before 1st of January.

These volume contracts meant rights as well as obligations for the company (with reservation for force-majeure) to receive agreed quantities. If the company wanted to have additional deliveries from SIPC, these could be contracted outside the basic contract at current market prices (related to spot prices) without obligations or rights from neither SIPC nor the company.

The prices for the contracted volumes as per the basic contract were regularly revised at the beginning of every quarter and remained unchanged until further notice, i e either party could at any time raise a question of the appropriateness of a price. Discussions took place by telex or were held at conferences.

The company's cost for purchases of crude oil in 1976 from SIPC amounted to SEK 1 372 015 000. The Tax Superintendent has, as above mentioned, demanded that of this amount SEK 3 449 740 should be regarded as not deductable. The following methods for calculating have been used by the auditors. When the purchased crude was from an OPEC-country, which was the most frequent way of buying, the GSP were in the first place regarded as the arm's length price. If there was a difference between a price that SIPC has charged, Scheduled Selling Prices (SSP), and GSP, this has been taken into consideration, no matter if this difference was positive or negative. As to North Sea crudes the auditors have stated that they calculated the arm's length price according to price quotations in magazines, normprices and contracted term-prices.

The auditors have stated that the market price for 1976 generally was below the normprice by 1-2 per cent. During 1976 SIPC, on the other hand was usually granted a credit of 60 days for OPEC-oils. SIPC on the other hand had given the company a credit of 45 days. The value of this difference of 15 days has been calculated. The total difference including the value of shorter credit was SEK 5 701 869.

The auditors have considered that the company has saved costs for a middleman because this function was performed by SIPC. These costs have later on been estimated to USD 0.02/barrel or totally SEK 2 252 129.

The company has stated i a that the arm's length price must be calculated by way of crude oil purchase from a

trader or middleman and not from a producing country, that the difference in credit is SIPC:s main trade margin and that the market accepts such a margin and also that the arm's length price cannot be settled exactly to the cent. There is in the market a price range within which a price should be accepted as a fair market price.

In the additional audit report of September 5, 1983 the auditors have, however, – with the motivation that the company has pointed out that they have enough knowledge to purchase crude oils on their own – explained that the estimated costs for the trading function which the company has saved (USD 0.02/barrel) not shall be taken into consideration. The Tax Superintendent has explained that he shares this opinion.

The auditors have furthermore stated that they now have been able to compare the prices of the company with estimated listprices (IRS) and that such a comparison shows that the listprices coincide with the company's. Because of this the auditors are now of the opinion that the prices paid by the company for crude oils in 1976 should be accepted.

The Tax Superintendent has stated that he is not of the same opinion as the auditors regarding their statement that the arm's length price should be settled by way of the US listprices and that he instead insists that the method of calculating – except the remuneration to the central trader of USD 0.02/bl – should be the one which has been used in the original audit report (GSP and term contract prices).

From § 15 in the OECD-report i a the following could be read:

> "Morever, as a general principle, tax authorities should base their search for an arm's length price on actual transactions and should not substitute hypothetical transactions for them, thus seeming to substitute their own commercial judgenebt for that of the enterprice at the time when the transactions were concluded".

The Tax Court finds that the above statement should be regarded as an expression of a fundamental principle and it should be well worth striving to follow this principle when comparing of "arm's length". When calculating the most likely arm's length price, the commercial choice of the company to purchase from a specific trader shoud therefore be taken into consideration. There has not come out any factor that indicates that this commercial judgement itself should mean a deviation from the arm's length principle. In other words the arm's length price in this case should be decided from judging which price the company would have paid to an independent trader. Taking this condition into consideration the Tax Court makes the following judgements.

As the spot prices reflect the daily prices for a separate business transaction and thus not the prices that are paid on long-term contracts, these quotations can be a quidance for arm's length prices only for spot purchases from SIPC.

The market can interpret a GSP quotation as legitimate or advantageous or disadvantageous.

The auditors have also explained that the market price can exceed as well as be below GSP. Thus GSP cannot be regarded as identical with a probable arm's length price but well as a general price-indicator.

As the normprices are settled by the Norwegian Tax Authorities they could not be regarded to reflect the market prices for the crude in question (Ekofisk).

The term contract prices for North Sea crudes, on the other hand, seem to coincide with market prices for long-term purchases.

The US list-prices and the term contract prices seem to be those which best reflect the arm's length prices, which shall be compared with the prices actually paid by the company. Thus the last remaining doubt, whatsoever, concerning the appropriateness of GSP as an arm's length prices settled mainly on the basis of GSP could not be accepted. Those proposed by the auditors (list and term prices) are not available for the Tax Court. The auditor's statement that the difference for 1976, when comparing with the list and term prices, is not significant enough for a disallowance, should therefore be accepted by the Court.

As described in the introduction it is a very difficult task to settle a market price for a specific type of crude oil at any given time. As can be seen from above the Court cannot either on the basis of the facts presented in this case find a deviation from the crude oil prices that the company has given and "the generally valid prices". At the same time it should be pointed out that this kind of a price comparison is a very rough instrument from the view of taxation.

Freight

In 1976 the company's costs for freight charged by SIPC amounted to SEK 113 368 000. The Tax Superintendent has claimed that of this amount SEK 49 000 000 should not be deductable. This judgement is based on a comparison between prices paid by the company and arm's length prices calculated on spot-rates.

According to the auditors the deviation from arm's length prices has however not amounted to more than SEK 7 972 346. They have based this upon AFRA (actual voyage/vessel) and i a stated that foreign tax authorities regard such a price level to be the best available principle for determining arm's length prices. The prices paid by the company to SIPC are settled on the basis of AFRA. The Tax Superintendent as well as the auditors have however declared that AFRA has not been applied correctly and that SIPC because of that has received an overcompensation.

In this case there is of natural reasons not available any investigation regarding market prices for the freight pattern which was effectuated by SIPC. Because of the special character of this pattern one would not be able to calculate any directly corresponding prices. Nevertheless the Court must examine whether the price settlement between the company and SIPC has meant a deviation from the arm's length principle. The question in this case is therefore, which of those two in the case referred alternatives spot or AFRA could best be regarded to reflect arm's length prices. (. . .)

The company imports substantial quantities of crude oil (3.5 Mt in 1976). The spot market is only a complement to the big oil companies when their own ships not are available. The risks that could have arisen if the company did not put out its total freight need on the spotmarket cannot be estimated. To consider spot chartering as an alternative for the company is therefore quite unrealistic.

SIPC has not used an AFRA-price settlement based on actual facts regarding i a actually used ship, port calls and routes. Instead a standard method (notional) has been used. (. . .)

The Court makes the following judgement. AFRA includes more than half of the tanker tonnage of the world. Time-charter contracts are dominating. The statement from the company that spot freights are used only to a limited extent by comparable competitors is therefore supported by the investigation. As a full dependence on the spot market not has been a realistic alternative, the method, proposed by the Tax Superintendent cannot be a ground for judgement if the company deviated from the arm's length principle. The fact that the company and SIPC have applied an AFRA by way of standards does not justify, which the Tax Superintendent has claimed, another judgement. The method of pricing is in itself of no importance and of interest is only how this pricing is in relation to the arm's length price.

According to what above has been stated an AFRA-pricing reflects the freight costs which would have incurred for the company if it had a mixture of time-charter contracts – which had been concluded many years ago – and consecutive and spot contracts. AFRA must therefore be regarded to give a substantially better guidance than the spot-prices when doing the arm's length test. The Court thus finds that the Tax Superintendent's claim on a comparison with spot-prices for freight cannot be accepted. After this the Court will examine the base for comparison which the auditors have proposed.

At this test SIPC's standardize pricing will be compared with an AFRA pricing based on actual conditions. The auditors as well as the company have shown detailed information to make this comparison possible. The Tax Superintendent may in the second hand be regarded to have claimed that the arm's judgement. From the detailed statements in the case can be seen that the parties are of different opinions how AFRA ought to be used, i a regarding which different cost-elements should be taken into consideration at an AFRA-pricing. These different cost-elements are "penalties" (SEK 230 855), "lightering in ports" (2 821 016), "lightering at sea" (2 138 535), "costs for the route Lyme Bay-Rotterdam" (SEK 2 378 485), "deadfreight" (SEK 3 442 271), "VLCC-vessels" (865 655), "reserve-tonnage etc" (5 164 593) and "slowsteaming". The amounts in brackets refer to the difference between the viewpoints of each party (the auditors – the company). Below the Court will give further details on the different cost-elements which are in question in the case.

The Court has to take position to the following questions of general nature. When i a a lightering operation has been made – has it caused costs for the shipowner which have not been considered at an AFRA-pricing? If this is the case, are those costs caused by the importer in the sense that the shipowner can charge the importer for these expenses? Finally, even if this is the case, with which amount can the importer be charged without leaving the principle of an arm's length price, i e what is the market willing to pay for the service in question?

Penalties

From the audit report i a the following can be read. As per the contract between the company and SIPC the company had on December 1, 1975 to state its tonnage requirements (expelled in tondays) for the year of 1976. The company had further to give up their requirements into quarters. The company did not completely use the ordered tonnage and had therefore to pay penalties. (. . .)

The company has declared that the overestimation of the tonnage need was caused by a stagnation and even a declination in the demand for oil products in combination with a change from long haul crudes (Persian Gulf and Africa) to short haul crudes (North Sea).

Considering what above has been mentioned regarding the AFRA-questions and the calculation basis of these, it is evident, that AFRA does not include the remuneration considered which a shipowner may claim because of the fact that the importer did not fully use the tonnage contracted. The question is then whether a separate charge for such penalties besides AFRA should mean a deviation from the arm's length principle or not.

The fact that the company in advance, i e on the 1st of December 1975, had to contract its need cannot in itself mean a deviation from the arm's length principle, or in other words, this obligation cannot have arisen by the fact that SIPC

is a related company. The statements of the company regarding a stagnation in demand and regarding increased purchases of North Sea crudes is justified by the report.

Because of this the condition that the company has contracted more tonnage than having been able to utilize, cannot either be expected to mean that the arm's length principle has been set aside. Also the method of calculation for penalties seems to be valid between third parties. (. . .)

Lightering in ports

In the audit report there are i a the following statements. Of the crude oil purchased from SIPC the greater part has been transported with VLCC-vessels from producing countries mainly to Rotterdam or to Lyme Bay in the English Channel. In Rotterdam the oil has been pumped into a smaller vessel (LR 2 or LR 1) with no temporary storing (ship to ship). The company has, which earlier has been mentioned, not been charged for transhipment costs but these have been included in the costs which the AFRA-premiums of 10 resp 15 points were intended to cover. (. . .)

The auditors have, however, in an additional report stated that they now are of the opinion that no costs at all for transhipment should be accepted. (. . .)

The company's crude oil deliveries have often been too small for VLCC-vessels. By sharing a part of the loading capacity with other group-companies, the company has received the benefit of a lower VLCC-tarif (cargo sharing has caused either lightering or substantial deadfreight). The lightering operations have been made to the benefit of the company (costs for lightering are less than deadfreight). The costs for the transhipments shall therefore be taken into consideration when comparing the SIPC-pricing and AFRA-pricing. This viewpoint would in itself be indisputable in the case.

The Tax Court finds no reason to doubt the declaration of the company that SIPC, besides lightering costs, has had to pay port charges that are reflected in an AFRA pricing. In the Worldscale basic rate calculated total port time of 96 hours refers to a standard vessel of 19 500 DWT. Also when calculating the AFRA-quotations for a ship of this size (GP) this port time will be used. There has not come out any fact which would imply that the judgement of the AFRA panel to calculate a longer port time for greater ships (7 days for VLCC-ships) not would be in line with the real conditions. It seems furthermore to be reasonable to assume that a transhipment, which required the presence of two ships at the same time, as a rule needs longer periods of waiting in port for at least one of the ships in question than at a "normal" unloading of a VLCC-ship or loading of a LR1/LR2-ship. SIPC has thus incurred costs that only partly have been considered in AFRA. As the transhipments have been a benefit for the company, SIPC has good reason to charge the company for these costs, besides AFRA, no matter if the average period of waiting-time can be assumed to have been caused by SIPC's operational considerations. It is however required that the charged costs to be accepted must be at arm's length.

Lightering ship to ship means a shorter delivery time compared with temporary storage. Normally it must therefore be considered to be of greater importance for an importer when the transhipment takes place in the first mentioned way. The claim of the company that higher transhipment costs normally are charged at the type of transhipment in this case therefore seems to be likely. (. . .)

From the above-mentioned it is evident partly that the transhipments have caused costs for SIPC which not are compensated in AFRA and partly that SIPC in an arm's length situation would have been able to charge the company for these transhipment costs in addition to AFRA.

It is quite obvious that it is impossible to settle an exact market price (arm's length price) for the transhipments. Considering the Tax Court's judgements on port waiting times and transhipment costs the estimation made by the company (0.85 USD longton) seems however not to deviate from a plausible arm's length price. The amount of SEK 2 821 016 should therefore be considered to be a further deductable cost for the company, besides the freight costs that have been estimated by the auditors.

Lightering at sea

For lightering at sea the auditors have in their AFRA calculations used special Worldscale basic rates for the route to and from the transhipment area (Lyme Bay). These basic rates include partly the deviation from the route, which the transhipment has caused, partly the port time for the transhipment which has been calculated to 24 hours and finally has the port cost-element for loading included in AFRA been deducted. (. . .)

Above ("Deviation from arm's lingth price") the Tax Court has found that AFRA reflects the costs for transporting crude with a vessel in that size group for that specific AFRA-rate in relation to the cost for transporting crude oil with Worldscale's standard vessel.

The mentioned fact follows by the fact that the AFRA-quotation – for every size group – refers to the relation between the weighted average of freight costs (in terms of dollar per long ton crude oil) and the Worldscale basic rate for the AFRA "standard voyage" also in dollar per long ton crude oil. (. . .)

The extra costs (0.75 USD), estimated by the company, besides the freight costs that the auditors have calculated, are based on a study made within the Shell-group. The auditors have declared

that the study indicates that the lay-time, besides the port time in the basic rates of 24 hours, can be calculated to an average of 70 hours for VLCC – as well as the lightering vessel. The company has not questioned the stated average time. Because of this and as other lay-time has not been given, the statement of 70 hours is to be accepted. (. . .)

Of the port-times included in AFRA 50 per cent must be related to the loading- respective unloading port or 2,5, 3 respective 3,5 days. By using a basic rate with a port time reduced to 50 per cent can therefore only a lay-time corresponding to the half of those in AFRA included port times be considered, i e 1,25, 1,5 resp 1,75 days or 30, 36 resp 42 hours. In the transhipments VLCC, LR 1/LR 2-ships have been used. Those through the auditors' calculation considered lay-times can therefore be estimated on an average of hours.

The difference between this time and the time on which the company has based their report is (36 – 24 =) 12 hours. By the company stated costs of 0.75 USD long ton should therefore be reduced by 12/70 or be rounded off to 0.60/ long ton.

There seems not to be any reason to assume that a shipowner not would be compensated for actual lightering costs by an independent freight customer. As a consequence of this the Tax Court finds that the arm's length price for lightering shall be decided to reasonable 0.60 USD longton. (. . .)

The costs for the route Lyme Bay-Rotterdam

After lightering in Lyme Bay the VLCC-ships have, in most cases, called at Rotterdam. The costs for the route Lyme Bay – Rotterdam have not been considered in the freight calculations made by the auditors.

The auditors have supported their judgement by i a the following. The company has no interest to know where the ship sails after the lightering operation, as the remaining cargo is not to be delivered to the company. In certain cases it can be a matter of several port calls for the large ship after the lightering operation. In other words, the company has paid for their cargo only for actual route and actual vessel. It seems to be evident that this pattern of shipping has been decided from the wishes and preferences of the shipowner. With good reason you could state that the larger ship should have lightered to one ship in Lyme Bay, which then would have sailed to e g Rotterdam whereupon the larger ship never would have needed to call at Rotterdam but could have sailed directly to another loading port. The pattern of shipping has evidently been chosen as it is of economic advantage for both the shipowner, and in the mentioned example, also for the importer in Rotterdam.

The company has claimed that the opinion of the auditors contradicts practice on the tanker freight market and that the costs for the route in question therefore will be considered at the calculation of the company's freight costs as per an AFRA-pricing based on real conditions. (. . .)

Above (Lightering at sea) the Tax Court has found that the transhipments in question, because of having had the benefit of a lower freight tarif, have meant such a benefit for the company, that the arm's length price for these is a deductable cost for the company. The judgement of the auditors brings that the question who shall pay the costs for the deadfreight that arises after having transhipped the crude must be answered. It would be out of the question to charge the other freight customers, who have utilized the part cargo trading, for these costs. If a shipowner would not be remunerated for the costs it is not sure if part cargo trading at all would have been effected in actual cases. (. . .)

Deadfreight

Deadfreight means the difference between the carrying capacity and the actual cargo of a ship, i e not used cargo space. The auditors have in their freight calculations used an AFRA-quotation which not always belonged to the AFRA-category (size) to which the actually used ship is to be classified. When the actual cargo has belonged to an AFRA-category which includes smaller ships than the actually used ship, the AFRA-quotation has been applied to the first mentioned category. If a ship of 100 000 DWT (LR 1) has transported a cargo of 75 000 ton the AFRA-quotation of LR 1-ships has been used.

Through this way of calculating costs the company has claimed that at the calculation of the freight costs of the company as per AFRA, based on actual conditions, costs for deadfreight shall be considered. (. . .)

The situation is somewhat complicated for big oil companies that supply their customers with vessels from a central pool. There is a physical impossibility always to adjust the size of the vessel to the needs of one single customer and when several customers share a vessel in favour of all of them, who shall then decide which customer caused the deadfreight? One can furthermore say that if customers wish to have a part cargo on a big vessel and thereby will get his benefit of a lower freight, all charterers should be mutually responsible for deadfreight. As to the ships that are used at the transhipment (for the purpose of which SIPC had put aside two vessels of 70 000 DWT and two vessels of DWT 115 000 in Europe especially reserved for this purpose) our company would be responsible for the deadfreight that arises for the two smaller vessels while the deadfreight that arises for the two bigger ships is a rather open question. (. . .)

From what is informed about AFRA in this case, the Tax Court cannot find

that this has resulted in a general rise in the AFRA-quotations. The AFRA-price thus does not lead to that a shipowner receives compensation for deadfreight.

To be able to judge whether a shipowner, without abandoning the principle of arm's length price, can charge the importer for deadfreight, the Tax Court holds that it is fo vital importance to find out sho has had the advantage of the arisen deadfreight. This judgement is supported by the US manual which is referred to in the case. Part cargo trading has not taken place in case of the lightering vessels (LR1/LR2). These vessels have been able to call at the port of Gothenburg with full cargo. The statement of the auditcrs that the company has not been able to influence the choice of ships has not been opposed by the company and is therefore to be accepted. Considering this and what the company has stated, the deadfreight has not been to the benefit of the company, the deadfreight costs for lightering vessels are therefore not deductable for the company. (. . .)

If the deadfreight is believed to have been caused by the part cargo trading the cost therefore must be regarded as deductable freight costs for the importer. As SIPC alone has decided the choice of VLCC-vessel the Tax Court finds that it is inconsistent with the principle of arm's lenght price, if SIPC has charged the importers for all deadfreight.

As there is no basis for a market related sharing of the deadfreight costs on the importer/shipowner, the Tax Court finds that SIPC must be, from view of taxation, entitled to charge half of the deadfreight.

The opinion of the company that the costs are to be shared according to the cargo size of each freight customer, seems to be reasonable. (. . .)

ULCC-vessels

AFRA-quotations for ULCC-vessels (DWT 320000-549999) are available only from July 1979. The company has on two occasions during 1976 received crude oil that has been transported by such vessels. The auditors have declared that the freight costs of the company (as per AFRA) for these cargoes should to be calculated to VLCC-AFRA reduced with WS5. (. . .)

The auditors have supported their viewpoint by the following. A comparison between the AFRA-quotations for VLCC- and ULCC-tonnage during the period between 1979-01-07 - 1981-12-31 implies that the last mentioned quotations on an average have been about WS 7 less than the first mentioned. From published (Shipping Statistics and Economics) market prices is to be seen that the average difference between VLCC- and ULCC-tonnage for spotfreights as well as on time-charter during the period between 1977-01-01 - 1979-06-30 has been about 13 per cent.

The company has claimed that application of AFRA for VLCC-vessels on ULCC-vessels for transports with such vessels before 1st of July 1979 has not meant a deviation from the arm's length principle. (. . .)

The opinion of the auditors that the VLCC-quotations in this case should be reduced by WS 5 seems to be well-founded and is accepted by the Tax Court.

Reserve tonnage etc

In order to achieve security in delivery, i e to be able to change ordered quantity or quality of crude oil at short notice, the supplier must furnish the crude oil as well as the transport. Otherwise the company itself would have to set up as an oil trader and arrange a freight on its own.

Flexibility means a possibility to improve the result. The charter pattern of SIPC has had such a flexibility. This flexibility implies reserve tonnage, i e tonnage that is needed in excess of the "theoretic" tonnage. The difference between reserve- and theoretic tonnage is due to i a the following. The company must protect itself against delays. The company may have to load oil when it is available. The company may not get a full cargo and must then call at a further loading port.

The company, perhaps for price reasons, prefers to change deliverer of crude oil, or may have to do it at short notice, because of sudden variations in the supply of oil. If the company instead of buying from SIPC had chosen to make its own freight arrangements the company would have needed reserve tonnage.

A freight contract in which the supplier undertakes to comply with the wishes of the importer concerning date and volume in loading and unloading ports has of course a higher freight tariff than in a contract in which the deliverer decides the time for every single transport. (. . .)

AFRA does not reflect the costs for reserve tonnage. The reason for this is that AFRA is a statistic average which presumes optimal conditions. This presumes that a maximal cargo-carrying capacity continiously is used during the time that has been agreed to in the charter agreement which forms the basis for the AFRA-calculations. (. . .)

The standpoints of the Tax Court in this question are declared below under the headline "Summary of freight".

Slowsteaming

The auditors have declared that chartering which have been performed with reduced speed (slowsteaming) has meant an economic advantage – which the AFRA-price does not mirror (before 1982) – to the shipowner, above all by way of reduced bunker use. They have further declared that they do not have any proposal for taxation of slowsteaming, but claim that the "market-price-reducing effects of slowsteaming" is another argument supporting the view that an AFRA-pricing based on real conditions does not give too low a market price.

(. . .)
The decision of the Tax Court in this question is presented below under the headline "Summary of freight".

Summary of freight

The Tax Court has found that the arm's length price for the freight is to be calculated on the basis of AFRA.

The auditors have claimed that a comparison between this and the pricing of SIPC gives the result that the company should be denied deduction for freight costs by 7 972 346 SEK.

The judgements of the Tax Court based on the condition that the most realistic alternative for the company to the freight purchases from SIPC has been to conclude mixed time-charter agreements – which have been concluded many years back – together with consecutive and spot agreements. According to this the company shall have deductable costs besides those by the auditors calculated with SEK 230 855 ("Penalties"), SEK 2 821 016 ("Lightering in port") SEK 1 710 000 ("Lieghtering at sea") SEK 2 378 485, ("Costs for the route Lyme Bay-Rotterdam") 141 057 SEK ("Dead-freight") or together SEK 7 281 413.

The company has stated in form of incorrect AFRA/Worldscale quotations and that these resulted in lower freight costs of 110 051. The Tax Superintendent has claimed that opinions can differ, at least partially, as to the stated incorrectness. The amount of 110 051 SEK seems mainly to be due to the fact that the company, when choosing an AFRA-quotation, has based it on the loading day whilst the auditors – when lightering – have based their figures on the day of lightering. The viewpoint of the company is supported by the US manual for AFRA. The statement of the company should therefore be accepted. The amount of SEK 7 281 413 should therefore be calculated by a higher amount of SEK 100 051 or to 7 391 464.

As regards "Reserve tonnage etc" the Tax Court makes the following judgement. The dominating category of freight agreements in the basis of calculating AFRA is time-charter agreements. On the basis of what above has been said (compare above under the headline "Deviation from the arm's length price") about the method of conversion of freight tariffs in the mentioned agreement at a cost-term expressed in dollar/long ton, remuneration for reserve tonnage cannot – as regards time-charter agreements, be reflected in AFRA.

Because of this a shipowner cannot have any remarkable remuneration for mentioned costs at an AFRA-pricing. If the company had chosen itself to take care of the transport of the crude oil, the company would have had costs for reserve tonnage. The size of this tonnage would thereby have been in relation to i a the ability of the company, on every occasion, at short notice, to reach the desired loading port.

The question in this case is not to estimate the costs coming to the company that SIPC has had for reserve tonnage, but to what extent the market (independent importer) has been willing to pay for such a flexibility providing reserve tonnage.

The Tax Court considers it probable that an independent importer would have been willing to remunerate a shipowner for this. To estimate the size of these remunerations is not possible on the basis of the presented information. This condition, however, does not mean that mentioned remunerations after an examination shall not be considered "at an arm's length". The difference between the auditors' (the second claim of the Tax Superintendent) and the judgements of the Tax Court amounts to (SEK 7 972 346 - 7 391 464 =) 580 882 SEK. This amount is about 0.51 per cent of the total freight cost. The Tax Court finds that on such an occasion the standard additionals of WS 2.5 in every case an amount of 580 882 should be acceptable. The judgement of the Tax Court does not need not go any further.

As regards "Slowsteaming" the Tax Court makes the following judgement. The investigation in the case do not demonstrate how the freight tariffs referring to slowsteaming have been considered, when calculating the AFRA-quotations for this year. Because of this, and considering what is stated in the letter from the AFRA-panel, there is not sufficient reason for holding that AFRA overcompensated the shipowner when slowsteaming.

In the mentioned manual for AFRA cargo, space sharing is described. In such cases the manual recommends that a shipowner's sharing of "the AFRA-price" with his customers shall be based i a on the AFRA-category to which the cargo size of each customer is related. Thus, if two customers each have part cargoes and one cargo is a LR 2-cargo and the other a LR 1, the AFRA-price according to the recommended method, should not be shared proportionally. In the present case the possibilities to use this method – which seem to give a reasonable result – seems to have been present in many freights. The recommendation has not been considered by the auditors in their calculations. As far as can be seen from the audit report, such a consideration would have resulted in a higher AFRA-price than the price that would have been calculated by the auditors.

As a consequence of the above judgements the Tax Court decides that, on the basis of the audit report, one cannot see any deviation from freight prices paid by the company and "the generally valid prices". Hence it follows, on the basis of what above has been declared under the headline "Penalties" that charged penalties do not seem to be too high.

The Tax Superintendent's request cannot be granted. ■