



## News

### **BIMCO - AMS Charter Party Clauses**

BIMCO has published voyage and time charter party clauses relating to the new US Automated Manifest System (AMS) requirements.

#### **U.S. Customs Advance Notification/AMS Clause for Voyage Charter Parties**

(a) If the Vessel loads or carries cargo destined for the US or passing through US ports in transit, the Owners shall comply with the current US Customs regulations (19 CFR 4.7) or any subsequent amendments thereto and shall undertake the role of carrier for the purposes of such regulations and shall, in their own name, time and expense:

- i) Have in place a SCAC (Standard Carrier Alpha Code);
- ii) Have in place an ICB (International Carrier Bond); and
- iii) Submit a cargo declaration by AMS (Automated Manifest System) to the US Customs.

(b) The Charterers shall provide all necessary information to the Owners and/or their agents to enable the Owners to submit a timely and accurate cargo declaration.

The Charterers shall assume liability for and shall indemnify, defend and hold harmless the Owners against any loss and/or damage whatsoever (including consequential loss and/or damage) and/or any expenses, fines, penalties and all other claims of whatsoever nature, including but not limited to legal costs, arising from the Charterers' failure to comply with any of the provisions of this sub-clause. Should such failure result in any delay then, notwithstanding any provision in this Charter Party to the contrary, all time used or lost shall count as laytime or, if the Vessel is already on demurrage, time on demurrage.

(c) The Owners shall assume liability for and shall indemnify, defend and hold harmless the Charterers against any loss and/or damage whatsoever (including consequential loss and/or damage) and any expenses, fines, penalties and all other claims of whatsoever nature, including but not limited to legal costs, arising from the Owners' failure to comply with any of the provisions of sub-clause (a). Should such failure result in any delay then, notwithstanding any provision in this Charter Party to the contrary, all time used or lost shall not count as laytime or, if the Vessel is already on demurrage, time on demurrage.

(d) The assumption of the role of carrier by the Owners pursuant to this Clause and for the purpose of the US Customs Regulations (19 CFR 4.7) shall be without prejudice to the identity of carrier under any bill of lading, other contract, law or regulation.

#### **Explanatory notes to the clause**

#### **US Customs Advance Notification/AMS Clause for Voyage Charter Parties**

##### **Introduction**

The AMS Clauses have been produced by BIMCO to meet the requirements of US Customs regulations (19 CFR 4.7) under the Maritime Transportation Security Act of 2002. The AMS regulations relate to the automated filing of cargo manifests for all vessels loading or carrying cargoes destined for or passing through US ports. The regulations require one of the contract parties to assume the role of carrier for the purpose of submitting cargo information. That party must also obtain a SCAC (Standard Carrier Alpha Code) and, subsequently, an ICB (International Carrier Bond). The ICB is intended, primarily, as security for any fines relating to non-compliance with the rules.

**It is IMPORTANT to note that because of the way in which the CBP rules may be interpreted in the context of a voyage charter party, the role of the owners as carriers may, in some circumstances, be reversed. Commercial practice or preference may favour the charterers assuming the role of carrier for individual voyages under a voyage charter. In such cases BIMCO recommends that the parties amend the voyage charter party clause to reflect the changed responsibilities.**



### **Background**

On Friday December 5, 2003 the Bureau of Customs and Border Protection (CBP), under the US Department of Homeland Security published new rules requiring the electronic submission of cargo manifest information in advance of a vessel's arrival at a US port. The new rules became effective for all vessels that have loaded cargo destined for US ports on or after 4 March 2004. However, due to the short implementation period a number of non-US bulk and break-bulk operators were unable to obtain the required ICB and it was agreed to extend the deadline for those types of vessel until 2 April 2004.

The provision of advance electronic cargo manifest information allows the CBP to screen cargo information through an automated targeting system. This enables the CBP to review shipment data against information stored in law enforcement and commercial databases in order to identify potentially high-risk shipments before they arrive at US ports.

Although the CBP rules define clearly the carriers' responsibilities, they are less clear in when it comes to establishing which of the commercial parties should assume the role of carrier. The CBP has stated that *"due to the complexity of the various contractual agreements and after meeting with vessel agent representatives, it was decided that the industry is in the best position to determine who the carrier is for automation purposes"*. The CBP has indicated that the carrier should be the entity who controls the vessel, which includes:

Determining the ports of call;

- Controlling the loading and discharging of cargo;
- Knowledge of cargo information;
- Issuing bills of lading;
- The entity that has typically provided the CF 1302 cargo declaration or the cargo information to prepare the CF 1302 to the vessel agent.

As mentioned in the introduction, in addition to the automated transmission of cargo manifest information, it is also the carriers' responsibility to establish an ICB.

**It should be noted that according to the CBP rules, penalties, duties, tax or any other charge provided by law or regulation can be drawn on the bond. This means that the use of the ICB is not restricted solely to AMS related events.**

Based on the advice from the CBP that the contractual parties should determine the identity of the carrier and in order to meet commercial demand for standard charter party wording, BIMCO has developed a set of clauses allocating responsibility for the various obligations under the AMS rules.

The BIMCO U.S. Customs Advance Notification/AMS Clauses were drafted with the assistance and co-operation of a number of P&I Clubs in the International Group. The AMS Clauses incorporate the provisions of the 24 Hour Rule Clauses published by BIMCO on 5 March 2003 and reflect the most recent regulatory changes regarding the filing of notices by various vessel types. As a result, the BIMCO 24 Hour Rule Clauses are now officially withdrawn.

### **AMS Clause for Voyage Charter Parties**

This clause is similar to the AMS Clause for time charter parties except for a few minor amendments as highlighted below.

Sub-clause (a) identifies the owners as the carrier for the purpose of US customs regulation (19 CFR 4.7). The reasoning behind assigning the obligation to the owners is mainly commercial. A number of owners trading to the US on a regular basis will already have a SCAC and an ICB in place and P&I Clubs have actively encouraged their members to obtain a SCAC and ICB. Thus, it is commercially viable to let the owners assume the role of carrier for the purpose of the AMS rules. Furthermore, it is often the owners who issue bills of lading and control the discharging operation. It must, however, be emphasized that if the parties decide that they would prefer the roles to be reversed to suit their own commercial arrangements, then they should feel free to amend the clause accordingly.



Since the owners assume the role of carrier and have in place the ICB, SCAC and supply all the necessary cargo information to the US-customs, it was felt necessary to include in sub-clause (b), a provision whereby the charterers are obliged to provide all the necessary cargo information enabling owners to submit the cargo declaration in a timely fashion. Furthermore, an indemnity provision was included to hold the owners harmless against any loss or damage whatsoever arising out of the non-compliance by the charterers with the obligations in sub-clause (a).

Sub-clause (c) indemnifies the charterers for loss and/or damage arising from the owner's failure to comply with the regulation as it has been outlined in sub-clause (a). The sub-clause further outlines that any delay which may arise as a consequence of failure to comply, shall not count as laytime or, if the vessel is already on demurrage, as time on demurrage.

Finally, consistent with the Time Charter Clause, sub-clause (d) expressly provides that the owners assuming the role of carrier, will not prejudice the identity of carrier under any bill of lading, other contract or regulation.

If you require any further explanation of the AMS Clauses, please contact Grant Hunter, Senior Manager, Documentary Department (e-mail: [documentary@bimco.dk](mailto:documentary@bimco.dk)).

#### **US Customs Advance Notification/AMS Clause for Time Charter Parties**

(a) If the Vessel loads or carries cargo destined for the US or passing through US ports in transit, the Charterers shall comply with the current US Customs regulations (19 CFR 4.7) or any subsequent amendments thereto and shall undertake the role of carrier for the purposes of such regulations and shall, in their own name, time and expense:

- i) Have in place a SCAC (Standard Carrier Alpha Code);
- ii) Have in place an ICB (International Carrier Bond);
- iii) Provide the Owners with a timely confirmation of i) and ii) above; and
- iv) Submit a cargo declaration by AMS (Automated Manifest System) to the US Customs and provide the Owners at the same time with a copy thereof.

(b) The Charterers assume liability for and shall indemnify, defend and hold harmless the Owners against any loss and/or damage whatsoever (including consequential loss and/or damage) and/or any expenses, fines, penalties and all other claims of whatsoever nature, including but not limited to legal costs, arising from the Charterers' failure to comply with any of the provisions of sub-clause (a). Should such failure result in any delay then, notwithstanding any provision in this Charter Party to the contrary, the Vessel shall remain on hire.

(c) If the Charterers' ICB is used to meet any penalties, duties, taxes or other charges which are solely the responsibility of the Owners, the Owners shall promptly reimburse the Charterers for those amounts.

(d) The assumption of the role of carrier by the Charterers pursuant to this Clause and for the purpose of the US Customs Regulations (19 CFR 4.7) shall be without prejudice to the identity of carrier under any bill of lading, other contract, law or regulation.

Explanatory notes to the clause

#### **U. S. Customs Advance Notification/AMS Clause for Time Charter Parties**

##### **Introduction**

The AMS Clauses have been produced by BIMCO to meet the requirements of US Customs regulations (19 CFR 4.7) under the Maritime Transportation Security Act of 2002. The AMS regulations relate to the automated filing of cargo manifests for all vessels loading or carrying cargoes destined for or passing through US ports. The regulations require one of the contract parties to assume the role of carrier for the purpose of submitting cargo information. That party must also obtain a SCAC (Standard Carrier Alpha Code) and, subsequently, an ICB (International Carrier Bond). The ICB is intended, primarily, as security for any fines relating to non-compliance with the rules.



**It is IMPORTANT to note that because of the way in which the CBP rules may be interpreted in the context of a voyage charter party, the role of the owners as carriers may, in some circumstances, be reversed. Commercial practice or preference may favour the charterers assuming the role of carrier for individual voyages under a voyage charter. In such cases BIMCO recommends that the parties amend the voyage charter party clause to reflect the changed responsibilities.**

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On Friday December 5, 2003 the Bureau of Customs and Border Protection (CBP), under the US Department of Homeland Security published new rules requiring the electronic submission of cargo manifest information in advance of a vessel's arrival at a US port. The new rules became effective for all vessels that have loaded cargo destined for US ports on or after 4 March 2004. However, due to the short implementation period a number of non-US bulk and break-bulk operators were unable to obtain the required ICB and it was agreed to extend the deadline for those types of vessel until 2 April 2004.

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- Determining the ports of call;
- Controlling the loading and discharging of cargo;
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As mentioned in the introduction, in addition to the automated transmission of cargo manifest information, it is also the carriers' responsibility to establish an ICB.

**It should be noted that according to the CBP rules, penalties, duties, tax or any other charge provided by law or regulation can be drawn on the bond. This means that the use of the ICB is not restricted solely to AMS related events.**

Based on the advice from the CBP that the contractual parties should determine the identity of the carrier and in order to meet commercial demand for standard charter party wording, BIMCO has developed a set of clauses allocating responsibility for the various obligations under the AMS rules.

The BIMCO U.S. Customs Advance Notification/AMS Clauses were drafted with the assistance and co-operation of a number of P&I Clubs in the International Group. The AMS Clauses incorporate the provisions of the 24 Hour Rule Clauses published by BIMCO on 5 March 2003 and reflect the most recent regulatory changes regarding the filing of notices by various vessel types. As a result, the BIMCO 24 Hour Rule Clauses are now officially withdrawn.

#### **AMS Clause for Time Charter Parties**

Sub-clause (a) defines the charterers as the carrier for the purpose of US customs regulation (19 CFR 4.7). Furthermore, the sub-clause assigns the responsibility for compliance with the regulation to the charterers and, as a precaution, it requires the charterers to provide the owners with timely confirmation that the ICB and SCAC are in place.

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Sub-clause (b) indemnifies the owners for any loss or damage arising as a consequence of the charterers' non-compliance with the rules. A special provision has been inserted to deal with the question of hire during periods when delay occurs as a result of the charterers' failure to comply with the regulation as outlined in sub-clause (a); in these instances the vessel will remain on hire.

According to the AMS rules, and as mentioned earlier other charges than those relating to the AMS regulation under the particular charter party can be drawn on the ICB. Sub-clause (c) provides that the charterers will be reimbursed for charges drawn on the ICB, when these charges are solely the responsibility of the owners.

Sub-clause (d) expressly provides that, the charterers assuming the role of carrier, does not prejudice the identity of carrier under any bill of lading, other contract or regulation.

If you require any further explanation of the AMS Clauses, please contact Grant Hunter, Senior Manager, Documentary Department (e-mail: [documentary@bimco.dk](mailto:documentary@bimco.dk)).

The clauses may be accessed at: [BIMCO](#)

<http://www.bimco.dk/Corporate%20Area/Misc%20Documents/Advance%20NotificationAMS%20Clauses%20for%20Time%20and%20Voyage%20Charter%20Parties.aspx>

Yours faithfully  
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