



BIMCO

SPECIAL CIRCULAR

No. 3 – March 2010

161 Bagsvaerdvej
DK - 2880 Bagsvaerd
Tel: +45 4436 6800
Fax: +45 4436 6868
Email: mailbox@bimco.org
www.bimco.org

Revised US Customs Advance Notification/AMS Clauses for Voyage and Time Charter Parties

BIMCO first produced its AMS (Automated Manifest System) Clauses in 2004 in response to US Customs regulations (19 CFR 4.7) of the Maritime Transportation Security Act of 2002 (see Special Circular No. 2, 28 April 2004).

A recent review of the Clauses has shown that their provisions still meet the requirements necessary to comply with 19 CFR 4.7 including the submission of crew manifests which was introduced after the Clauses were issued in 2004. However, BIMCO has been approached by a number of members suggesting that the Clauses should be expanded so that they also encompass the equivalent Canadian customs scheme, ACI (Advance Commercial Information). The result is a revised edition of the two AMS Clauses which are designed to cover both the US and Canadian systems. The two new Clauses have been named BIMCO North American Advanced Cargo Notification Clause for Voyage Charter Parties and Time Charter Parties respectively.

The US and Canadian customs requirements are to a great extent harmonised and therefore little in the way of modification was required to encompass the Canadian system in the Clauses. Two key differences between the Canadian import system (ACI) and the US import system (AMS) is that (i) the Canadian system does not require the carrier to have in place a bond unless the carrier intends to forward the cargo overland; and (ii) there are no financial penalties in place for failure to comply with the advanced notice requirements. However, it should be noted that despite the absence of financial penalties under the Canadian system, the consequences of failure to comply are likely to be significant delays to the vessel on arrival at Canadian ports.

The North American Advance Cargo Notification Clauses are a direct replacement for the US Customs Advanced Notification/AMS Clauses. The AMS Clauses will officially be withdrawn on publication of the new North American editions.

Notes

The following is a summary of the differences between the original US Customs AMS Clauses and the new North American editions:

In Sub-clause (a) references to Canada, Canadian ports and the Canada Border Services Agency regulations (Memorandum D3-5-2) have been added.

In Sub-clause (a)(i) reference is made to the Canadian equivalent of the Standard Carrier Alpha Code (SCAC), the so-called "Carrier Code".

In Sub-clause (a)(ii) the requirement to have in place an International Carrier Bond is qualified by referring to US trade (as a bond is not required in Canada unless transshipment is involved).

In Sub-clause (a)(iii) reference is made to the submission of a cargo declaration using the US or Canadian customs system as appropriate.

The remaining provisions of Sub-clauses (b) to (d) remain unchanged from the original AMS Clauses.

Availability

The full text of the North American Advance Cargo Notification Clauses for Voyage Charter Parties and Time Charter Parties are set out below. The two Clauses may also be downloaded free of charge from the BIMCO web site at www.bimco.org and are also available as an additional clause to subscribers of BIMCO's online charter party editing system, **idea**.

* * * * *

BIMCO North American Advance Cargo Notification Clause for Voyage Charter Parties

- (a) If the Vessel loads or carries cargo destined for the US or Canada or passing through US or Canadian ports in transit, the Owners shall comply with the current US Customs regulations (19 CFR 4.7) or the Canada Border Services Agency regulations (Memorandum D3-5-2) 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)/Canadian Customs Carrier Code;
 - (ii) For US trade, have in place an ICB (International Carrier Bond); and
 - (iii) Submit a cargo declaration by AMS (Automated Manifest System) to the US Customs or by ACI (Automated Commercial Information) to the Canadian 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.

BIMCO North American Advanced Cargo Notification Clause for Time Charter Parties

- (a) If the Vessel loads or carries cargo destined for the US or Canada or passing through US or Canadian ports in transit, the Charterers shall comply with the current US Customs regulations (19 CFR 4.7) or the Canada Border Services Agency regulations (Memorandum D3-5-2) 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)/Canadian Customs Carrier Code;
 - (ii) For US trade, have in place an ICB (International Carrier Bond);
 - (iii) Provide the Owners with a timely confirmation of (i) and (ii) above as appropriate; and
 - (iv) Submit a cargo declaration by AMS (Automated Manifest System) to the US Customs or by ACI (Automated Commercial Information) to the Canadian 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.