

### **STB's Security Regulations clause (revised 10 June 2004)**

A. This clause applies to all ports where either of the following security regulations ("Security Regulations") is in effect:

1. International Ship and Port Facility Security (ISPS) Code
2. U.S. Maritime Transportation Security Act of 2002

B. Any delays to the Vessel at ports of loading or discharge due to the failure of the Vessel to comply with the Security Regulations shall be for Owner's account except where such delays are directly attributable to Charterer's failure to timely provide information required by the Security Regulations, in which case, the delays shall count as laytime or, if the Vessel is on demurrage, as time on demurrage.

C. If demurrage is incurred under the Charter and the Vessel has been delayed in berthing, loading and/or discharging for any reason attributable to Security Regulations other than stipulated in Section B, above, such delay shall be deemed a Listed Condition under paragraph 14(b) of the Charter and that span of time on demurrage equal to the period(s) of delay described in this section C shall be paid at half rate.

D. Expenses solely attributable to Security Regulations not otherwise specifically allocated in the Charter and/or WORLDSCALE shall be apportioned between Owner and Charterer consistent with the apportionment of delays set forth in sections B. and C. above.

#### ***INTERTANKO comment:***

This clause is more comprehensive than the original security clause that STB issued and contains some helpful clarifications. The underlying approach is that delays and expenses will be for the account of owners if due to owners' failure to meet their security obligations or for charterers if they fail to provide the required information. Otherwise time and expenses are shared equally. The clause clearly identifies how delays and additional expenses are to be apportioned. However, the clause does not deal with the issue of a vessel not being able to tender a valid notice of readiness, in which case laytime or time on demurrage may not count. For a commentary on ExxonMobil VOY2000 see the INTERTANKO publication: *A Guide to Tanker Charters*.

#### **Chevron ISPS CLAUSE (4-28-04)**

(A) (i) From the date of coming into force of the International Code for the Security of Ships and of Port Facilities and the relevant amendments to Chapter XI of SOLAS (ISPS Code) in relation to the Vessel, the Owners shall procure that both the Vessel and "the Company" (as defined by the ISPS Code) shall comply with the requirements of the ISPS Code relating to the Vessel and "the Company". Upon request the Owners shall provide a copy of the relevant International Ship Security Certificate (or the Interim International Ship Security Certificate) to the Charterers. The Owners shall provide the Charterers with the full style contact details of the Company Security Officer (CSO).

(ii) Except as otherwise provided in this Charter Party, loss, damage, expense or delay, excluding consequential loss, caused by failure on the part of the Owners or "the Company" to comply with the requirements of the ISPS Code or this Clause shall be for the Owners' account.

(B) (i) The Charterers shall provide the CSO and the Ship Security Officer (SSO)/Master with their full style contact details and any other information the Owners require to comply with the ISPS Code.

(ii) Except as otherwise provided in this Charter Party, loss, damage, expense, excluding consequential loss, caused by failure on the part of the Charterers to comply with this Clause shall be for the Charterers' account and any delay caused by such failure shall be compensated at the demurrage rate.

(C) Provided that the delay is not caused by the Owners' failure to comply with their obligations under the ISPS Code, and that the measures imposed by the port facility of relevant authorities applies to all vessels in that port and not solely to the Owner's Vessel, the following shall apply:

(i) Notwithstanding anything to the contrary provided in this Charter Party, the Vessel shall be entitled to tender Notice of Readiness even if not cleared due to applicable security regulations or measures imposed by a port facility or any relevant authority under the ISPS Code.

(ii) Any delay resulting from measures imposed by a port facility or by any relevant authority under the ISPS Code shall count as half-laytime or half-time on demurrage if the Vessel is on laytime or demurrage. If the delay occurs before laytime has started or after laytime or time on demurrage has ceased to count, it shall be compensated by the Charterers at one half the demurrage rate and always in accordance with A(ii).

(D) Notwithstanding anything to the contrary provided in this Charter Party, any additional costs or expenses whatsoever solely arising out of or related to security regulations or measures required by the port facility or any relevant authority in accordance with the ISPS Code including, but not limited to, security guards, launch services, tug escorts, port security fees or taxes and inspections, ~~shall be for the Charterers' account~~, unless such costs or expenses result solely from the Owners' negligence, shall be shared equally between Owner and Charterer. All measures required by the Owners to comply with the Ship Security Plan shall be for the Owners' account.

(E) If either party makes any payment which is for the other party's account according to this Clause, the other party shall indemnify the paying party.

\* **CVX deletions lined-through/additions underlined.**

***INTERTANKO comment:***

This clause is based on BIMCO's ISPS clause, amendments and additions are indicated. The main difference from the BIMCO clause is that there is a half rate provision. Note in particular paragraph C which includes the proviso that the measures imposed by the port authority must be applicable to all vessels and not solely to the owner's vessel. The effect of this provision is that if the restriction is only on the vessel owners will not be able to tender notice of readiness and will be left to shoulder the burden of any delay or expenses even if the vessel is ISPS compliant and the reason for the security restriction is due to events beyond their control. Additional costs are dealt with in paragraph D and are split between owners and charterers.

**Vitol ISPS Clause for Voyage Charter Parties**

(A) (i) **It is a condition of this charter party that**, from the date of coming into force of the International Code for the Security of Ships and of Port Facilities and the relevant amendments to Chapter XI of SOLAS (ISPS Code) in relation to the Vessel, both the Vessel and "the Company" (as defined by the ISPS Code) shall comply with the requirements of the ISPS Code relating to the Vessel and "the Company". Upon request the Owners shall provide a copy of the relevant International Ship Security Certificate (or

the Interim International Ship Security Certificate) to the Charterers. **The original of the ISSC, or interim ISSC, and the original of the Continuous Synopsis Record (mandatory after 1<sup>st</sup> July 2004) must be on board the vessel at all times.** The Owners shall provide the Charterers with the full style contact details of the Company Security Officer (CSO).

(ii) Except as otherwise provided in this Charter Party, loss, damage, expense or delay **(which shall not count as laytime or, if the vessel is on demurrage, as time on demurrage)**, excluding consequential loss, caused by failure on the part of the Owners or "the Company" **or the Vessel and/or its crew** to comply with the requirements of the ISPS Code or this Clause shall be for the Owners' account.

(B) (i) **Upon the specific request of Owner,** the Charterers shall provide the CSO and the Ship Security Officer (SSO)/Master with their full style contact details and any other **available** information the Owners **reasonably** require to comply with the ISPS Code.

(ii) Except as otherwise provided in this Charter Party, loss, damage, expense, excluding consequential loss, caused by failure on the part of the Charterers to comply with this Clause shall be for the Charterers' account and any delay caused by such failure shall **count as laytime or, if the vessel is on demurrage, as time on demurrage.**

(C) Provided that the delay is not caused by the Owners' failure to comply with their obligations under the ISPS Code, **and that the measure imposed by the port facility or by relevant authorities applies to all vessels in that port and not specifically to Owners vessel,** the following shall apply:

(i) Notwithstanding anything to the contrary provided in this Charter Party, the Vessel shall be entitled to tender Notice of Readiness even if not cleared due to applicable security regulations or measures imposed by a port facility or any relevant authority under the ISPS Code.

(ii) Any delay resulting from measures imposed by a port facility or by any relevant authority under the ISPS Code shall count as **half** laytime or **half** time on demurrage if the Vessel is on demurrage. If the delay occurs before laytime has started or after laytime or time on demurrage has ceased to count **as provided for elsewhere within this charter party,** it shall **nevertheless count as half laytime or, if the vessel is on demurrage, as half time on demurrage, and always in accordance with A(ii) and except for any reason directly attributable to the status/circumstances of the Owners and/or Master and/or Crew and/or Vessel.**

**(iii)** Notwithstanding anything to the contrary provided in this Charter Party, any additional costs or expenses whatsoever solely arising out of or related to security regulations or measures required by the port facility or any relevant authority in accordance with the ISPS Code including, but not limited to, security guards, launch services, tug escorts, port security fees or taxes and inspections, unless such costs or expenses result solely from the Owners' negligence **shall be shared equally between owner and charterer.**

**(D)** All measures required by the Owners to comply with the Ship Security Plan shall be for the Owners' account.

(E) If either party makes any payment, which is for the other party's account according to this Clause, the other party shall **reimburse** the paying party **all such reasonable and proven expenses.**

**INTERTANKO comment:**

This clause is again based on the standard BIMCO clause but with amendments that are indicated in blue. Again paragraph C includes the proviso of measures being applicable to all vessels in the port and not due to the particular vessel in question. However, in this version of the clause the qualification applies not just to the counting of time but also to additional expenses incurred. This is perhaps questionable where the vessel's delay at the discharge port is because of charterers' orders to call at an earlier port that is perceived to represent some sort of security threat. The INTERTANKO clause on the other hand puts this responsibility on charterers' shoulders. Both the Chevron and the Vitol clauses make reference to interim ship security certificates.

Shell have also introduced a clause which is as follows:

**SHELLVOY5 - ISPS Clause for Voyage Charter Parties - 19/05/2004**

(A) (i) From the date of coming into force of the International Code for the Security of Ships and of Port Facilities and the relevant amendments to Chapter XI of SOLAS (ISPS Code) and the US Maritime Transportation Security Act 2002 (MTSA) in relation to the Vessel, and thereafter during the currency of this charter, Owners shall procure that both the Vessel and "the Company" (as defined by the ISPS Code) and the "Owner" (as defined by the MTSA) shall comply with the requirements of the ISPS Code relating to the Vessel and "the Company" and the requirements of MTSA relating to the Vessel and the "Owner". Upon request Owners shall provide a copy of the relevant International Ship Security Certificate to Charterers. Owners shall provide documentary evidence of compliance with this Clause [ ] (A) (i).

(ii) Except as otherwise provided in this charter, loss, damage, expense or delay caused by failure on the part of Owners or "the Company"/"Owner" to comply with the requirements of the ISPS Code/MTSA or this Clause shall be for Owners' account.

(B) (i) Charterers shall provide the Owners with their full style contact details and other relevant information reasonably required by Owners to comply with the requirements of the ISPS Code/MTSA. Additionally, Charterers shall ensure that the contact details of any sub-charterers are likewise provided to Owners. Furthermore, Charterers shall ensure that all sub-charter parties they enter into shall contain the following provision:

"The Charterers shall provide the Owners with their full style contact details and, where sub-letting is permitted under the terms of the charter party, shall ensure that contact details of all sub-charterers are likewise provided to the Owners".

(ii) Except as otherwise provided in this charter, loss, damage, expense or delay caused by failure on the part of Charterers to comply with this sub Clause (B) shall be for Charterers' account."

(C) (i) Without prejudice to the foregoing, Owners right to tender notice of readiness and Charterers' liability for demurrage in respect of any time delays caused by breaches of this Clause shall be dealt with in accordance with Clauses 13, (Notice of readiness/Running time),14, (Suspension of Time), and 15,(Demurrage), of the charter.

(C) (ii) Except where the delay is caused by Owners' and/or Charterers' failure to comply, respectively, with clauses [ ] (A) and [ ] (B) of this Clause [ ], then any delay arising or resulting from measures imposed by a port facility or by any relevant authority, under the ISPS Code/MTSA, shall count as half rate demurrage, or, if the vessel is on demurrage, half rate demurrage.

- (D) Except where the same are imposed as a cause of Owners' and/or Charterers' failure to comply, respectively, with clauses [ ] (A) and [ ] (B) of this Clause [ ], then any costs or expenses related to security regulations or measures required by the port facility or any relevant authority in accordance with the ISPS Code/MTSA including, but not limited to, security guards, launch services, tug escorts, port security fees or taxes and inspections, shall be shared equally between Owners and Charterers. All measures required by the Owners to comply with the Ship Security Plan shall be for Owners' account.
- (E) If either party makes any payment which is for the other party's account according to this Clause, the other party shall indemnify the paying party.

***INTERTANKO comment:***

In this clause the costs of measures imposed by the relevant authority shall be borne equally between Owners and Charterers. Sub-clause C is rather confusing due to the duplication regarding time on demurrage. As regards laytime the clause makes reference to the general provision in the Shellvoy form. Clause 14 of Shellvoy 5 provides that time shall not count when lost as a result of any cause attributable to the vessel. So in the case of a vessel being delayed because of a previous port call at a non-compliant port it is questionable whether this would fall under this provision. At best the matter is unclear but arguably owners will have to shoulder the burden of the delay.

**BP ISPS Clause for Voyage Charter Parties**

(A) (i) From the date of coming into force of the International Code for the Security of Ships and of Port Facilities and the relevant amendments to Chapter XI of SOLAS (ISPS Code) and the US Maritime Transportation Act 2002 (MTSA) in relation to the Vessel, the Owners shall procure that both the Vessel and "the Company" (as defined by the ISPS Code) and the "Owner" (as defined by the MTSA) shall comply with the requirements of the ISPS Code relating to the Vessel and "the Company" and the requirements of the MTSA relating to the Vessel and the "Owner". Upon request the Owners shall provide a copy of the relevant International Ship Security Certificate (or the Interim International Ship Security Certificate) to the Charterers. The Owners shall provide the Charterers with the full style contact details of the Company Security Officer (CSO).

(ii) Except as otherwise provided in this Charter Party, loss, damage, expense or delay, excluding consequential loss, caused by failure on the part of the Owners or "the Company" to comply with the requirements of the ISPS Code or the MTSA or this Clause shall be for the Owners' account.

(B) (i) The Charterers shall provide the Owner with their full style contact details and any other information the Owners require to comply with the ISPS Code and the MTSA. Additionally, Charterers shall ensure that the contact details of any sub-charterers are likewise provided and that all sub-charters they enter into contain the following provision:

"The Charterers shall provide Owners with their full style contract details and, where sub-chartering is permitted under the terms of the Charter Party, shall ensure that contract details of all sub-charterers are likewise provided to Owners."

(ii) Except as otherwise provided in this Charter Party, loss, damage, expense, excluding consequential loss, caused by failure on the part of the Charterers to comply with this sub-clause (B) shall be for the Charterers' account and any delay caused by such failure shall be compensated at the demurrage rate.

(C) (i) Without prejudice to the foregoing, Owners right to tender notice of readiness and Charterers liability for demurrage in respect of any time delays caused by breaches of this Clause shall be dealt with in accordance with Clauses 6 (Notice of readiness), 7 (Laytime/Demurrage) and 18 (Suspension of Laytime/Demurrage), of the charter.

(C) (ii) Except where the delay is caused by Owners and/or Charterers failure to comply, with sub-clauses (A) and (B) respectively of this Clause [ ], then any delay arising or resulting from measures imposed by a port facility or by any relevant authority, under the ISPS Code/MTSA, shall count as half rate demurrage, or, if the vessel is on demurrage, half rate demurrage.

(D) Except where the same are imposed as a cause of Owners and/or Charterers failure to comply with sub-clauses (A) and (B) respectively of this Clause [ ], then any costs or expenses related to security regulations or measures required by the port facility or any relevant authority in accordance with the ISPS Code/MTSA including, but not limited to, security guards, launch services, tug escorts, port security fees or taxes and inspections, shall be shared equally between Owners and Charterers. All measures required by the Owners to comply with the Ship Security Plan shall be for Owners' account.

(E) If either party makes any payment which is for the other party's account according to this Clause, the other party shall indemnify the paying party.

(F)(i) [Other than calling at on ] Owners warrant that all of the previous ten ports at which the vessel has called, or will have called at, prior to tendering Notice of Readiness at the first load port hereunder:

- (a) had an approved security plan; and
- (b) were (and remain) registered with the IMO as ISPS Compliant Ports; and
- (c) had a security level no higher than Level 1 (Normal) or MARSEC Level 1; and
- (d) were not, nor have subsequently been, deemed unacceptable by the US authorities under their security regime.

(ii) Owners further warrant that, other than as expressly disclosed to Charterers in writing, the vessel has not loaded goods or supplies (nor embarked any individuals) from, nor engaged in any Ship to Ship transfer of cargo with, another vessel.

(iii) Except as otherwise provided in this Charter Party, loss, damage, expense or delay caused by breach by Owners of the warranties contained in this Sub-clause (F) shall be for the Owners' account.

***INTERTANKO comment:***

This newly released clause covers both the ISPS Code and the US regulations despite its title and is designed to be used with BPVOY4. There are fairly standard provisions covering owners' and charterers' obligations regarding certification and provision of the requisite information. As regards the tendering of notice of readiness [C (i)] the clause refers back to clause 6 of BPVOY4. However, this does not deal with the situation where a vessel is not allowed to enter port limits and therefore cannot tender a valid notice of readiness. Contrast the provision contained in the INTERTANKO clause. The provision concerning additional expenses incurred is clear. Owners should pay particular attention to sub-clause F, which contains a warranty by owners that the 10 previous port calls of the vessel have not been to non-compliant ports. Given that only the minority of ports around the world are ISPS compliant the application of this warranty may cause some difficulty. It is important to note that at the start of this provision there are a couple of

blanks which can be used to list ports which will in effect be an exception to the 10 port rule. Owners will need to ensure that this part of the clause is correctly filled in with any ports in the last 10 calls that have not been compliant. Given the obligation on owners it may be that some consideration should also be given to charterers taking responsibility for ordering the vessel only to ISPS compliant ports. Furthermore since so few ports will be ISPS compliant on 1 July the practical application of this provision does give rise to difficulties.

Sub-clause F also contains a warranty by owners that the vessel, unless previously disclosed to charterers, has not loaded goods or supplies nor embarked any individuals or carried out ship-to-ship transfer operations. It is not clear from this provision just how far back the disclosure of this information must go. It would appear not to be just concerned with the loaded voyage under the fixture. Care will need to be taken to comply with this provision.

BIMCO has also released security clauses and has divided them up for ISPS and US trade whereas the INTERTANKO maritime security clause is designed for both ISPS and Maritime Transportation Security Act compliance. The multiplicity of clauses will give rise to concerns and owners will need to exercise caution when dealing with this important issue.