



Check your charterparty if trading to the US

Trading to or from the United States involves specific reporting requirements that may give rise to additional costs for shipowners and charterers. As different rules apply to U.S. imports and exports, parties should ensure their charterparties clearly allocate responsibility for compliance.

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More specifically, parties should be familiar with both the US Customs Advance Manifest System and the US Census Bureau Mandatory Automated Export System, as well as with their respective BIMCO clauses. At Gard, we have seen several cases where only one of the BIMCO clauses has been incorporated, giving way to both uncertainty and disputes over who should bear the relevant responsibilities.

US Customs Advance Manifest System

The U.S. Maritime Transportation Security Act (MTSA) came into effect in 2004 together with the implementing U.S. Customs Automated Manifest System (AMS) regulations. The MTSA was designed to strengthen the security of cargo entering or leaving the United States. It requires that “carriers” loading cargo on a vessel bound for the United States (including transshipment cargo) must electronically file advance cargo manifest data and maintain, among other things, a Standard Carrier Alpha Code (SCAC) and an International Carrier Bond (ICB). The AMS regulations apply only to cargo imported into or passing through the U.S. from abroad.

Due to initial uncertainty regarding which party qualified as the “carrier” for AMS purposes, many shipowners and charterers began incorporating clauses into their charter parties to expressly allocate AMS responsibilities. One such clause is the [BIMCO North American Advance Cargo Notification Clause for Time Charter Parties 2016](#) (“BIMCO AMS Clause”). Sub-clause 1 addresses the U.S. AMS requirements while sub-clause 2 addresses the Canadian equivalent.

Notably, because sub-clause 1 of the BIMCO AMS Clause is tied to U.S. AMS regulations, it applies only where cargo is loaded *outside* the U.S. for discharge into or passage through a U.S. port. It does *not* apply to cargo loaded in a U.S. port for export.

US Census Bureau Mandatory Automated Export System

In November 2008, the U.S. Census Bureau Mandatory Automated Export System (AES) came into force pursuant to U.S. export and foreign trade regulations. While it imposes similar obligations on the “carrier” to those under the AMS regulations, it is primarily aimed at controlling U.S. exports, i.e. cargo loaded in the US. it

In response to these requirements, BIMCO published the [BIMCO U.S. Census Bureau Mandatory Automated Export System \(AES\) Clause for Time Charter Parties 2010](#) (“AES Clause”). This clause mirrors the AMS Clause but includes the adjustments necessary to reflect the specific requirements of the AES. Importantly, the AES Clause applies when a vessel is loading cargo at any U.S. port or place.

Key takeaway

When a vessel is permitted under the charter party to trade to the United States, shipowners and charterers should consider incorporating clauses that clearly allocate responsibility for AMS and AES compliance in light of the lack of clarity in the relevant AMS and AES regulations. The clause(s) should minimise the risk of a dispute arising over which party is responsible under the regulations, as there can be some costs to compliance.

We have seen several cases where only one of the BIMCO clauses has been incorporated into a charterparty, which raises the question if the parties intended one to be responsible for arrangements for US imports and a different party for US exports. If the parties are considering incorporating the BIMCO clauses, and they want to make it clear that Charterers are responsible for dealing with both US imports and exports, we therefore recommend that they should ensure that **both** the AMS Clause **and** the AES Clause are incorporated. Alternatively, the parties may choose to amend the AMS Clause so that it covers both inbound and outbound U.S. cargo movements.

Please contact your usual defence claims handler if you have questions or need assistance on this topic.

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