



Slow steaming and virtual arrival

“It never rains but it pours down for the shipping industry”, The Economist stated in its blog on 1st August 2012. As a result of the financial recession, the introduction of emission control schemes, decreasing values of vessels on the market and increasing fuel prices, “slow steaming” has been adopted by many companies and shipowners in order to save fuel costs.

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Slow steaming means cutting speed in order to reduce fuel consumption, which for a container ship for example is mainly a function of the size of the ship and the cruising speed. For instance, while a container ship of around 8,000 TEU consumes about 225 tons of bunker fuel per day at 24 knots, consumption drops to about 150 tons per day at 21 knots.

But slowing down the vessel does more than only assisting operators to save fuel. The report “Regulated slow steaming in maritime transport” was launched as the IMO opened its 63rd Marine Environment Protection Committee meeting and states that, if global maritime speeds were reduced by 10 per cent, carbon dioxide savings would rise to 19 per cent, even after the cost of building and operating new ships to make up for lost capacity was considered. Slow steaming has therefore been described as “a win-win situation” for both the industry and the environment.

Problems

However, there are some issues which owners/operators need to take into account. Lowering vessels’ speed for long periods may cause damage to engines, as some main engines are designed for continuous operation at a certain load and speed. Adopting slow steaming may therefore require “de-rating” of the main engine to the new speed and new power level, which involves the timing of fuel injection, adjusting exhaust valves and exchanging other mechanical components in the engine, all of which will come at a cost of time and money.

Potential problems and possible solutions have been highlighted from a technical perspective in Gard’s Loss Prevention Circular No. 03-09. All major engine manufacturers have published guidelines for precautionary issues/maintenance linked to slow steaming and owners should follow these guidelines.

Contractual considerations

In the absence of express stipulations to the contrary, under a voyage charterparty or bill of lading contract the owners of a vessel implicitly undertake that the vessel will proceed to the loading or discharge port without unreasonable delay. Thus, the general rule is that the shipowner bears the risk of any such delay unless covered by an exception clause.

If the carrier intentionally proceeds with unreasonable delay by slow steaming the vessel, he may be committing a deviation. Deviation is justified under common law only for saving life at sea and the Hague-Visby Rules extend this somewhat to allow deviations to save life or property at sea. Owners and operators committing an unjustified deviation risk losing the right to rely on exclusions and exceptions as set out for example in the Hague-Visby Rules and consequently lose the benefit of the P&I cover for any liabilities that arise as a result of the deviation.

In some cases a carrier may be able to rely on a deviation/liberty clause, if one is included in the charterparty and/or bill of lading, although this may not provide any protection in certain jurisdictions.

It is, therefore, important for a shipowner and a charterer to incorporate suitable clauses into the applicable contracts if slow steaming is planned, in order to try to avoid the consequences described above. If slow steaming is intended, specific legal advice should be sought when drafting the relevant contracts.

Time charters

Under a time charter the charterers may give the owners instructions to slow steam. The main legal issues related to slow steaming in this case relate to the shipowners’ obligations to follow the charterers’ slow steaming instructions, whilst at the same time ensuring the safety of the

vessel, crew and cargo and also taking into account their obligations towards third parties, such as bill of lading holders.

BIMCO clauses

After long discussions a time charter clause for slow steaming was published by BIMCO in December 2011 (see box below). Having completed the time charter slow steaming clause, BIMCO drafted a clause designated to apply to voyage charters, which was published by BIMCO in July 2012 (see box below). Both versions are suitable for the liner, tanker and dry bulk trades. However, it is important to keep in mind that even where the owners and charterers have an identical interest in slow steaming, the bill of lading holders must be taken into account as well and the relevant contract must be worded appropriately.

Virtual arrival

The inclusion of “virtual arrival” clauses into charterparties seems to be the latest endeavour to cut costs and meet the great pressure to reduce greenhouse gas emissions. A virtual arrival clause permits a charterer to request an owner to adjust the speed of a voyage chartered vessel to arrive at a loading or discharging port at an agreed date and time. In other words, the clause is designed to assist shipowners, charterers and ports to come to a rational agreement regarding sailing speed and arrival time to avoid port congestion. Like the slow steaming clauses, any reduction in the vessel’s speed, with charterers’ agreement, should not be considered a breach of owners’ due dispatch obligations and should therefore not give rise to an unjustified deviation. By reducing speed to meet a mutually agreed arrival time, the vessel can avoid spending time at anchor awaiting a berth, tank space or cargo availability. Virtual arrival can therefore be described as a process that recognises known inefficiencies in the market, such as the need to wait to discharge because the terminal is not ready to handle the cargo, by implementing the possibility to reach a mutually agreed arrival time based on information that reaches the concerned parties under a voyage.

It will normally be the charterer who will first be aware that there is a delay at the port. The cargo receiver or maybe the charterer can then, if such clause is incorporated, suggest to agree a virtual arrival for the voyage. Typically, a weather analysis provider (WAP) acceptable to all involved parties will be engaged to carry out the calculations for the voyage. The intention of the clause is that the commercial benefits that accrue from the mutually agreed virtual arrival are shared between the owner and the charterer. The WAP will provide a report to all involved parties which contains information about the vessel’s actual position, ETA and a provisional virtual ETA and at last, the quantity of bunkers that remained on board the vessel at the time of the decision. When all parties have agreed upon the facts stated in the report they will make a decision to enter into a binding virtual arrival agreement in accordance with what is permitted in the charterparty. The Master of the vessel will thereafter slow down the speed in order to arrive at the jointly agreed arrival time. Once the voyage is completed, the WAP will issue a final report in order to determine speed and consumption. Finally, the value of the savings will be shared between the interested parties. Because of the reduction in emissions and costs, slow steaming and especially virtual arrival are seen as being of mutual benefit to owner, charterers and the environment, but at the same time, and provided the details are agreed between the parties and contracts properly drafted, they should not expose owners and charterers to a major risk. As highlighted above, several different factors must be taken into consideration once it has been decided to reduce the engine load and slow steam the vessel.

BIMCO finalised drafting a virtual arrival clause in September 2012. The new clause will be reviewed by BIMCO, and if the Committee is satisfied, the BIMCO virtual arrival clause will be published at the end of 2012.

BIMCO Slow Steaming Clause for Time Charter Parties (a) The Charterers may at their discretion provide, in writing to the Master, instructions to reduce speed or RPM (main engine

Revolutions Per Minute) and/or instructions to adjust the Vessel's speed to meet a specified time of arrival at a particular destination.

(i) *Slow Steaming – Where the Charterers give instructions to the Master to adjust the speed or RPM, the Master shall, subject always to the Master's obligations in respect of the safety of the Vessel, crew and cargo and the protection of the marine environment, comply with such written instructions, provided that the engine(s) continue(s) to operate above the cut-out point of the Vessel's engine(s) auxiliary blower(s) and that such instructions will not result in the Vessel's engine(s) and/or equipment operating outside the manufacturers'/designers' recommendations as published from time to time.

(ii) *Ultra-Slow Steaming – Where the Charterers give instructions to the Master to adjust the speed or RPM, regardless of whether this results in the engine(s) operating above or below the cut-out point of the Vessel's engine(s) auxiliary blower(s), the Master shall, subject always to the Master's obligations in respect of the safety of the Vessel, crew and cargo and the protection of the marine environment, comply with such written instructions, provided that such instructions will not result in the Vessel's engine(s) and/or equipment operating outside the manufacturers'/designers' recommendations as published from time to time. If the manufacturers'/designers' recommendations issued subsequent to the date of this Charter Party require additional physical modifications to the engine or related equipment or require the purchase of additional spares or equipment, the Master shall not be obliged to comply with these instructions.

* Sub-clauses (a)(i) and (a)(ii) are alternatives; delete whichever is not applicable. In the absence of deletions, alternative (a)(i) shall apply.

(b) At all speeds the Owners shall exercise due diligence to ensure that the Vessel is operated in a manner which minimises fuel consumption, always taking into account and subject to the following:

(i) The Owners' warranties under this Charter Party relating to the Vessel's speed and consumption;

(ii) The Charterers' instructions as to the Vessel's speed and/or RPM and/or specified time of arrival at a particular destination;

(iii) The safety of the Vessel, crew and cargo and the protection of the marine environment; and

(iv) The Owners' obligations under any bills of lading, waybills or other documents evidencing contracts of carriage issued by them or on their behalf.

(c) For the purposes of Sub-clause (b), the Owners shall exercise due diligence to minimise fuel consumption:

(i) when planning voyages, adjusting the Vessel's trim and operating main engine(s) and auxiliary engine(s);

(ii) by making optimal use of the Vessel's navigation equipment and any additional aids provided by the Charterers, such as weather routing, voyage optimization and performance monitoring systems; and

(iii) by directing the Master to report any data that the Charterers may reasonably request to further improve the energy efficiency of the Vessel.

(d) The Owners and the Charterers shall share any findings and best practices that they may have identified on potential improvements to the Vessel's energy efficiency.

(e) **For the avoidance of doubt, where the Vessel proceeds at a reduced speed or with reduced RPM pursuant to Sub-clause (a), then provided that the Master has exercised due diligence to

comply with such instructions, this shall constitute compliance with, and there shall be no breach of, any obligation requiring the Vessel to proceed with utmost and/or due despatch (or any other such similar/equivalent expression).

(f) **The Charterers shall ensure that the terms of the bills of lading, waybills or other documents evidencing contracts of carriage issued by or on behalf of the Owners provide that compliance by Owners with this Clause does not constitute a breach of the contract of carriage. The Charterers shall indemnify the Owners against all consequences and liabilities that may arise from bills of lading, waybills or other documents evidencing contracts of carriage being issued as presented to the extent that the terms of such bills of lading, waybills or other documents evidencing contracts of carriage impose or result in breach of the Owners' obligation to proceed with due despatch or are to be held to be a deviation or the imposition of more onerous liabilities upon the Owners than those assumed by the Owners pursuant to this Clause.

** Sub-clauses (e) and (f) not applicable in the liner trade.

BIMCO Slow Steaming Clause for Voyage Charter Parties (a) The Owners shall be entitled to give instructions to the Master to reduce speed or RPM (main engine Revolutions Per Minute) provided that the Vessel's speed, basis good weather conditions, shall not fall below knots.

(b) Where the Vessel proceeds at a reduced speed pursuant to Sub-clause (a), this shall constitute compliance with, and there shall be no breach of, any obligation requiring the Vessel to proceed with utmost and/or due despatch (or any other such similar/equivalent expression).

(c) The Charterers shall ensure that the terms of the bills of lading, waybills or other documents evidencing contracts of carriage issued by or on behalf of the Owners provide that the exercise by Owners of their rights under this Clause does not constitute a breach of the contract of carriage. The Charterers shall indemnify the Owners against all consequences and liabilities that may arise from bills of lading, waybills or other documents evidencing contracts of carriage being issued as presented to the extent that the terms of such bills of lading, waybills or other documents evidencing contracts of carriage impose or result in the imposition of more onerous liabilities upon the Owners than those assumed by the Owners pursuant to this Clause.

(d) This Clause shall be without prejudice to any other express or implied rights under this Charter party entitling the Vessel to proceed at speeds below the minimum speed stated in Sub-clause (a).

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