



BIMCO

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Laytime Definitions for Charter Parties 2013

Introduction

Laytime and demurrage are fundamental to tramp shipping. Specialist terms which have evolved over the years have been extensively analysed by legal commentators and frequently tested in the courts. This has resulted in subtle distinctions where a choice of term or use of language can advance or delay the commencement of laytime and mean the difference between demurrage starting on Friday afternoon or the following Monday morning.

The *Laytime Definitions for Charter Parties 2013* (Laytime Definitions), copy attached, have been developed to provide practitioners with a set of meanings of commonly-used words and phrases. The objective is to help reduce disputes about party intentions in a market where fixtures are often concluded on the basis of a recap message and listed amendments, without the exchange or return of draft contracts. The Laytime Definitions are available for incorporation into charter parties or possibly used as an agreed reference for dispute resolution. In addition, they can be used as an educational resource to assist industry entrants and others wishing to develop an understanding of the contractual and legal complexities surrounding laytime and demurrage.

Background

In 1976, the Comité Maritime International (CMI), the private international organisation for maritime legal interests, began work on a project to reduce charter party disputes by developing definitions of commonly-used terms, starting with laytime provisions. A Working Group comprising representatives from BIMCO, CMI, the UK Chamber of Shipping and FONASBA, developed the Charter Party Laytime Definitions 1980. However, the Definitions failed to attract support and were rarely incorporated into charter parties. In response to a highly critical report about contractual arrangements in the shipping industry issued by the United Nations Commission on Trade and Development (UNCTAD) in 1990, the Definitions were revised and issued as the *Voyage Charter Party Laytime Interpretation Rules (Voylayrules) 1993*.

In the twenty years since the publication of *Voylayrules*, significant developments and changes have taken place in case law and commercial practice. A review was therefore put in hand to determine whether the content remained relevant together with the need for any changes, including new or additional provisions, required to meet contemporary trading arrangements. Detailed work was undertaken by representatives from the original sponsoring organisations together with a participant from the Baltic Exchange:

Mr Jean-Pierre Laffaye, BIMCO (Chairman)
Mrs Marygrace Collins, FONASBA
Mr Stig Gregersen, CMI
Mr Colm Nolan, Baltic Exchange

The resulting *Laytime Definitions for Charter Parties 2013* were adopted by BIMCO at the Documentary Committee in Paris in May 2013 and have been similarly endorsed by each of the sponsoring organisations. Accordingly, the provisions are issued as a joint document.

Content

(a) Principles

The Laytime Definitions have been restored to the original 1980 concept and developed as definitions. This is an important change from *Voylayrules* 1993 which were issued as a self-standing code of rules and differed in a number of significant respects from generally accepted principles and practice such as the decision to combine three variations of "Weather Working" day into a single Rule.

The sponsoring organisations agreed that the previous radical approach had been a factor contributing to the limited use of *Voylayrules* and that a fresh approach was required in the development of updated provisions which would be used in the markets. It was therefore agreed to revert to definitions, setting out statements of meaning, and that the content should reflect contemporary market needs based on the current state of English law. As a result substantive and editorial amendments have been made to a number of the *Voylayrules* provisions, separate explanations given once again to different forms of "Weather Working" day and new definitions introduced including "Always Accessible" and "Whether in Port or Not".

The term "Strike", which was introduced in *Voylayrules*, has been deleted because the scope and effects are often given their own meaning in the underlying charter party. The term "In Writing" has been removed as unnecessary given that many, particularly BIMCO, charter parties include a clause covering the issue.

The use of abbreviations has, for the most part, been avoided. In many cases, there is no generally accepted meaning and while parties may understand their own exchanges, abbreviations and acronyms can be capable of more than one interpretation. The Laytime Definitions use abbreviations only in respect of Whether in Berth or Not (WIBON) and Whether in Port or Not (WIPON) which are widely understood.

Commentary

The following notes comment on the updated provisions and highlight changes from or amendments to *Voylayrules* 1993.

Preamble

The provisions relate only to laytime and demurrage issues and apply when any or all are expressly incorporated into a charter party or other contract of affreightment. It is for parties to determine the scope of application either limited to certain agreed and identified provisions or by incorporation *in extenso*.

List of Definitions

1. PORT has been amended to reflect the wider concept of port area explained in *The Johanna Oldendorff* (1973) with reference now made to "places outside the legal, fiscal or

administrative area". The term "offshore facilities" has been added to the illustrative, but non-exhaustive, list of cargo handling areas.

2. BERTH consistent with the amendment to PORT, the restrictive reference to "place within a port" has been replaced by an open-ended list of cargo handling locations.
3. REACHABLE ON ARRIVAL this term has been the subject of considerable litigation over the years. The revised text is based on the current position that delay due to bad weather or congestion or both is a breach of charterers' obligations. The potentially disputatious qualification "in the absence of an abnormal occurrence", included in *Voylayrules*, has been deleted.
4. ALWAYS ACCESSIBLE the provision has been treated by the authorities as synonymous with "Reachable on Arrival" in the context of getting into a berth but the position on departure has been less clear. The term has therefore been set out separately with the second sentence covering the position on departure requiring charterers to enable the vessel to leave safely and without delay.
5. LAYTIME this is unchanged.
6. PER HATCH PER DAY *and*
7. PER WORKING HATCH PER DAY or PER WORKABLE HATCH PER DAY

Laytime counting by reference to hatch calculations continues to be used, albeit to a limited extent, in some parts of the world. The provisions have been retained unchanged.

8. DAY in contrast to Definitions No 9 and 10, an unqualified DAY is now described as a period of twenty-four consecutive hours.
9. CALENDAR DAY is new and covers a period of twenty-four consecutive hours running from 0000 to 2400 hours.
10. CONVENTIONAL DAY is new and has been included in recognition of the fact that a period of twenty-four hours in relation to laytime counting is likely to start at any point during a Calendar Day.
11. WORKING DAY the meaning has been brought into line with English law.
12. RUNNING DAYS or CONSECUTIVE DAYS the provision is unchanged.
13. RUNNING HOURS or CONSECUTIVE HOURS this is new and reflects practical usage, particularly in tanker charter parties.
14. HOLIDAY this is the (unchanged) mirror image of Definition No 11 WORKING DAY.

15-18 WEATHER WORKING in contrast to the single provision in *Voylayrules* covering three alternative forms of Weather Working provisions, separate meanings have been restored in line with English law decisions.

15. WEATHER WORKING DAY deductions for bad weather are calculated by reference to the length an interruption during a vessel's normal (or notional if waiting on turn) working hours bears to a period of 24 hours. Thus, a two hour stoppage during an eight hour working day is pro-rated to six hours (or four hours in the case of a twelve hour working day) and the time

then added to the end of laytime. No deductions are made for rain occurring outside normal working hours.

- 16.** WEATHER WORKING DAY OF 24 CONSECUTIVE HOURS the actual duration of an interruption for bad weather at any time on a working day during or outside normal working hours and including periods on turn, is added to the end of laytime.
- 17.** WEATHER WORKING DAY OF 24 HOURS this is an artificial day made up of twenty-four working hours. An eight hour working day is equal to three calendar days' laytime but with laytime suspended for stoppages due to bad weather in working hours or in working hours when work was contemplated.
- 18.** (WORKING DAY) WEATHER PERMITTING this has the same meaning and interpretation as Definition No 16 Weather Working Day of 24 Consecutive Hours.
- 19.** EXCEPTED or EXCLUDED the content is unchanged
- 20.** UNLESS SOONER COMMENCED has the effect of bringing forward the commencement of laytime if work begins prior to the contractual start of laytime.
- 21.** UNLESS SOONER COMMENCED, IN WHICH CASE ACTUAL TIME USED TO COUNT the commencement of laytime remains in accordance with charter party provisions but time actually used in any prior period will count against laytime.
- 22.** UNLESS USED time used during excepted periods is set against laytime.
- 23.** TO AVERAGE LAYTIME the provision is unchanged.
- 24.** REVERSIBLE LAYTIME the provision is unchanged. Reversibility applies between loading ports and discharging ports but not between loading ports or between discharging ports.
- 25.** NOTICE OF READINESS this is unchanged.
- 26.** TIME LOST WAITING FOR BERTH TO COUNT AS LOADING OR DISCHARGING TIME or AS LAYTIME the basis is unchanged in principle, subject to minor editorial improvements. Where a vessel is unable to berth but cannot tender Notice of Readiness at a waiting place, time lost will count against laytime or, on expiry, as demurrage. Once a berth is available, laytime or demurrage ceases to count until the vessel is at a place where Notice of Readiness can be given and resumes in accordance with charter party provisions.
- 27.** WHETHER IN BERTH OR NOT (WIBON) or BERTH OR NO BERTH relates to delays due to congestion (but not on account of weather). A change has been made. Under *Voylayrules*, laytime or demurrage ceased once a berth became available and would not resume until the vessel was at the berth. This meant that the owner would have to bear the risk of any intervening delay, even if not otherwise contractually responsible. An adjustment has therefore been made so that time will always run in accordance with the underlying charter party provisions.
- 28.** WHETHER IN PORT OR NOT (WIPON) this is new. It will enable an owner to give Notice of Readiness from any recognised waiting place "off the Port" if unable to proceed to the usual waiting place.
- 29.** VESSEL BEING IN FREE PRATIQUE has been amended to address the position in *Voylayrules* potentially restricting time counting arrangements and possibly conflicting with underlying charter party terms. The content has been streamlined with the reference to

Custom House entry removed as formalities vary considerably from one state to another. The provision now relates only to compliance with port health requirements.

30. DEMURRAGE in order to avoid conflict with the position in many charter parties, the *Voylayrules* provision that "Demurrage shall not be subject to laytime exceptions" has been qualified by "unless specifically stated in the Charter Party".
31. DESPATCH MONEY or DESPATCH this is unchanged.
32. DESPATCH ON ALL WORKING TIME SAVED or ON ALL LAYTIME SAVED this is unchanged.
33. DESPATCH ON ALL TIME SAVED this is unchanged.

Recommended methods of incorporation

As explained above, the provisions have been developed for incorporation into charter parties. There are several possible means of achieving this objective depending on the type of contractual arrangements (for example single or consecutive voyage charters or a contract of affreightment) and whether the intention is to apply the provisions in full or only those selected by the parties. While other methods might be equally effective, the following alternatives are suggested:

(i) clause for incorporation by reference:

"The Laytime Definitions for Charter Parties 2013 (Laytime Definitions) are incorporated into this contract in full. In the event of any conflict between this contract and the Laytime Definitions, the provisions of the Laytime Definitions shall prevail to the extent of such conflict."

If it is agreed to incorporate only certain of the Definitions, the text can be modified to read:

"Definition Numbers [*identify selected provisions*] in the Laytime Definitions for Charter Parties 2013 (Laytime Definitions) are incorporated into this contract. In the event of any conflict between this contract and the Laytime Definitions, the provisions of the Laytime Definitions shall prevail to the extent of such conflict."

(ii) incorporation using a "cut and paste" addendum setting out the full text of all or of those selected Definitions which the parties have agreed to apply. The incorporation clause should clearly state that the agreed Laytime Definitions prevail in the event of any conflict with the underlying charter party provisions.

(iii) application to individual words or phrases in the body of the charter party where the intention is to remove any doubt about the parties' intended interpretation of one or more specific terms. In such event, the text of the relevant Laytime Definition(s) can be inserted as the agreed meaning.

The full text of the Laytime Definitions for Charter Parties 2013 is available to download free of charge from the Chartering/Clauses section of the BIMCO website (www.bimco.org) and is also set out below:



LAYTIME DEFINITIONS FOR CHARTER PARTIES 2013

PREAMBLE

Words, phrases, acronyms and abbreviations ("Words and Phrases") used in a Charter Party shall be defined, for the purposes of Laytime only, in accordance with the corresponding Words and Phrases set out below, when any or all such definitions are expressly incorporated into the Charter Party.

"Charter Party" shall include any form of contract of carriage or affreightment including contracts evidenced by bills of lading.

Singular/Plural

The singular includes the plural and vice versa as the context admits or requires.

List of Definitions

1. PORT shall mean any area where vessels load or discharge cargo and shall include, but not be limited to, berths, wharves, anchorages, buoys and offshore facilities as well as places outside the legal, fiscal or administrative area where vessels are ordered to wait for their turn no matter the distance from that area.
2. BERTH shall mean the specific place where the Vessel is to load or discharge and shall include, but not be limited to, any wharf, anchorage, offshore facility or other location used for that purpose.
3. REACHABLE ON ARRIVAL shall mean that the charterer undertakes that an available loading or discharging Berth be provided to the Vessel on arrival at the Port which the Vessel can reach safely without delay.
4. ALWAYS ACCESSIBLE shall mean that the charterer undertakes that an available loading or discharging Berth be provided to the Vessel on arrival at the Port which the Vessel can reach safely without delay. The charterer additionally undertakes that the Vessel will be able to depart safely from the Berth and without delay at any time before, during or on completion of loading or discharging.
5. LAYTIME shall mean the period of time agreed between the parties during which the owner will make and keep the Vessel available for loading or discharging without payment additional to the freight.
6. PER HATCH PER DAY shall mean that the Laytime is to be calculated by dividing the quantity of cargo by the result of multiplying the agreed daily rate per hatch by the number of the Vessel's hatches. Thus:

$$Laytime = \frac{\text{Quantity of cargo}}{\text{Daily rate} \times \text{Number of hatches}} = \text{Days}$$

Each pair of parallel twin hatches shall count as one hatch. Nevertheless, a hatch that is capable of being worked by two gangs simultaneously shall be counted as two hatches.

7. PER WORKING HATCH PER DAY or PER WORKABLE HATCH PER DAY shall mean that the Laytime is to be calculated by dividing the quantity of cargo in the hold with the largest quantity by the result of multiplying the agreed daily rate per working or workable hatch by the number of hatches serving that hold. Thus:

$$\text{Laytime} = \frac{\text{Largest quantity in one hold}}{\text{Daily rate per hatch} \times \text{Number of hatches serving that hold}} = \text{Days}$$

Each pair of parallel twin hatches shall count as one hatch. Nevertheless, a hatch that is capable of being worked by two gangs simultaneously shall be counted as two hatches.

8. DAY shall mean a period of twenty-four (24) consecutive hours. Any part of a Day shall be counted pro rata.
9. CALENDAR DAY shall mean a period of twenty-four (24) consecutive hours running from 0000 hours to 2400 hours. Any part of a Calendar Day shall be counted pro rata.
10. CONVENTIONAL DAY shall mean a period of twenty-four (24) consecutive hours running from any identified time. Any part of a Conventional Day shall be counted pro rata.
11. WORKING DAY shall mean a Day when by local law or practice work is normally carried out.
12. RUNNING DAYS or CONSECUTIVE DAYS shall mean Days which follow one immediately after the other.
13. RUNNING HOURS or CONSECUTIVE HOURS shall mean hours which follow one immediately after the other.
14. HOLIDAY shall mean a Day other than the normal weekly Day(s) of rest, or part thereof, when by local law or practice work during what would otherwise be ordinary working hours is not normally carried out.
15. WEATHER WORKING DAY shall mean a Working Day or part of a Working Day during which it is or, if the Vessel is still waiting for her turn, it would be possible to load/discharge the cargo without interruption due to the weather. If such interruption occurs (or would have occurred if work had been in progress), there shall be excluded from the Laytime a period calculated by reference to the ratio which the duration of the interruption bears to the time which would have or could have been worked but for the interruption.
16. WEATHER WORKING DAY OF 24 CONSECUTIVE HOURS shall mean a Working Day or part of a Working Day of 24 consecutive hours during which it is or, if the vessel is still waiting for her turn, it would be possible to load/discharge the cargo without interruption due to the weather. If such interruption occurs (or would have occurred if work had been in progress) there shall be excluded from the Laytime the period during which the weather interrupted or would have interrupted work.
17. WEATHER WORKING DAY OF 24 HOURS shall mean a period of 24 hours made up of one or more Working Days during which it is or, if the Vessel is still waiting for her turn, it would be possible to load/discharge the cargo without interruption due to the weather. If such

interruption occurs (or would have occurred if work had been in progress), there shall be excluded from Laytime the actual period of such interruption.

18. (WORKING DAY) WEATHER PERMITTING shall have the same meaning as WEATHER WORKING DAY OF 24 CONSECUTIVE HOURS.
19. EXCEPTED or EXCLUDED shall mean that the Days specified do not count as Laytime even if loading or discharging is carried out on them.
20. UNLESS SOONER COMMENCED shall mean that if turn-time has not expired but loading or discharging is carried out, Laytime shall commence.
21. UNLESS SOONER COMMENCED, IN WHICH CASE ACTUAL TIME USED TO COUNT shall mean that actual time used during turn-time shall count as Laytime.
22. UNLESS USED shall mean that if Laytime has commenced but loading or discharging is carried out during excepted periods, actual time used shall count as Laytime.
23. TO AVERAGE LAYTIME shall mean that separate calculations are to be made for loading and discharging and that any time saved in one operation is to be set off against any excess time used in the other.
24. REVERSIBLE LAYTIME shall mean an option given to the charterer to add together the time allowed for loading and discharging. Where the option is exercised the effect is the same as a total time being specified to cover both operations.
25. NOTICE OF READINESS shall mean the notice to the charterer, shipper, receiver or other person as required by the Charter Party that the Vessel has arrived at the Port or Berth, as the case may be, and is ready to load or discharge.
26. TIME LOST WAITING FOR BERTH TO COUNT AS LOADING OR DISCHARGING TIME or AS LAYTIME shall mean that if no loading or discharging Berth is available and the Vessel is unable to tender Notice of Readiness at the waiting-place then any time lost to the Vessel is counted as if Laytime were running, or as time on Demurrage if Laytime has expired. Such time ceases to count once the Berth becomes available. When the Vessel reaches a place where she is able to tender Notice of Readiness, Laytime or time on Demurrage resumes after such tender and, in respect of Laytime, on expiry of any notice time provided in the CharterParty.
27. WHETHER IN BERTH OR NOT (WIBON) or BERTH OR NO BERTH shall mean that if the designated loading or discharging Berth is not available on arrival, the Vessel on reaching any usual waiting place at the Port, shall be entitled to tender Notice of Readiness from it and Laytime shall commence in accordance with the Charter Party.
28. WHETHER IN PORT OR NOT (WIPON) shall mean that if the designated loading or discharging Berth and the usual waiting place at the Port are not available on arrival, the Vessel shall be entitled to tender Notice of Readiness from any recognised waiting place off the Port and Laytime shall commence in accordance with the Charter Party.

29. VESSEL BEING IN FREE PRATIQUE shall mean that the Vessel complies with port health requirements.
30. DEMURRAGE shall mean an agreed amount payable to the owner in respect of delay to the Vessel once the Laytime has expired, for which the owner is not responsible. Demurrage shall not be subject to exceptions which apply to Laytime unless specifically stated in the Charter Party.
31. DESPATCH MONEY or DESPATCH shall mean an agreed amount payable by the owner if the Vessel completes loading or discharging before the Laytime has expired.
32. DESPATCH ON ALL WORKING TIME SAVED or ON ALL LAYTIME SAVED shall mean that Despatch Money shall be payable for the time from the completion of loading or discharging until the expiry of the Laytime excluding any periods excepted from the Laytime.
33. DESPATCH ON ALL TIME SAVED shall mean that Despatch Money shall be payable for the time from the completion of loading or discharging to the expiry of the Laytime including periods excepted from the Laytime.
