Practical guide for the China Ocean Shipping Company on laytime loading

Ming Wei

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The World Maritime University
Malmo Sweden


By

Wei Ming

China

A paper submitted to the Faculty of the World Maritime University in partial satisfaction of the requirements for the award of a

MASTER OF SCIENCE DEGREE

in

GENERAL MARITIME ADMINISTRATION

The contents of this paper reflect my personal views and are not necessarily endorsed by the University.

Signature

Date 20xx/6/xx

Supervised and assessed by:
Professor Aage Os
WMU

Co-assessed by:
Dr. Prof. J Mlynarczyk
Director General Maritime Institute
Gdansk, Poland.
This project is dedicated to my parents and my wife for their everlasting love, and the hardships they have taken during my two years of study here in Malmo, Sweden.

Author.................
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Abstract

This paper is mainly concerned with laytime wording, interpretation and its related operation under voyage charter party. Its aims are to discuss in depth the essential problems within the scope of laytime by way of introduction, analysis and explanation of some relevant important cases, and to demonstrate the author's opinion and some practical methods based both on his previous experience and specific cases.

It will be concluded in this paper that sound organization, good communication, a wide range of knowledge and clearly, precisely designed wording can serve as pillars for smooth and efficient operation of ship.
List of diagrams

1. Present COSCO chartering organization chart
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Introduction

The China Ocean Shipping Company (hereunder called COSCO) has undergone tremendous growth since her formation in April 1961, rising rapidly from an initial 28 vessels totalling only 220,000 dwt to around 600 ships of 14.4 m dwt (breakdown of the fleet by the middle of 1985), calling at more than 400 ports of over 100 countries and regions, and making herself the ninth largest in the world thanks to the great importance attached to the expansion of national fleet by the government. Still, the momentum will be maintained by plans to expand the fleet to 20 m dwt in the next five years and to 30 m dwt by 2000. Simultaneously, great efforts are underway at present to modernize the COSCO fleet even more with the aim of upgrading her operation and services to the greatest extent possible so as to keep in step with foreign trade expansion.

In the future COSCO will be characterized by a highly efficient and competitive position, not only substantially meeting the needs of national sea-borne trade, but also making contributions to the world shipping market as well.

As the COSCO fleet has been composed of different types of vessels, her division of management is consequently various, and the chartering-out section is considered, among other things, a major activity, forming an inseparable part of the large-scale comprehensive fleet’s business.

In order to operate a chartered vessel under voyage charter party more smoothly, both the chartering personnel and the Masters of vessels need to be equipped with not only as
complete knowledge of the implications of different clauses of charter party as possible, but also practical operational know-how. These are essential since any slight misunderstanding of the contents or any minor departure from the original meaning may ultimately lead to substantial financial loss to the shipping company. Therefore, it's quite safe to say that one's correct comprehension of charter party clauses and operational know-how in the execution of duties under charter party pave the way for smooth and successful operation. Consequently, disputes can be avoided and efficiency can be upgraded to a great extent to the advantage of the shipping company. And these are precisely the goals of this paper.

It is also the author's intention here that the discussion is directed specifically towards critical matters related to the laytime wording, interpretation and its allied operations for the following reasons:
1. They are often confusing and disputable.
2. It does not seem possible to deal with all aspects of chartered voyage in this project.

Having focused on a limited area, this project has been arranged in such a way to provide the most detailed account possible and takes an intensive look at some of the controversial points.

With respect to the composition of this project, it has been divided into five chapters with following arrangements:
The first chapter is dedicated to introduction.
The second chapter deals with important definitions of various kinds with relevant cases attached. Views are aired through the elaboration of cases.
The third chapter refers to contract wording; opinions on
The principles of wording under charter party at the initial stage of negotiation are expressed. In addition, the "Feno-jing" case in COSCO, which was successfully settled, is explained. Other points such as custom of the port, claims for demurrage, currency, etc. are deemed to have been made sufficiently clear.

The fourth chapter relates to how chartered voyage can be carried out smoothly, pointing out the necessity of the Masters' knowledge of charter party clauses and the present existence of an unreasonable, less efficient organizational chart with respect to chartering business, and suggestions for improvement.

The fifth chapter is the conclusion of the project.
Chapter II

Definitions and Related Cases
2.1. Arrived Ship

As a general practice, the vessel is considered to be an arrived ship after she has fulfilled the conditions stated below:
1. The vessel must have arrived at the loading or discharging berth or port as stipulated in the charter party,
2. The vessel must be ready to load or to discharge in every respect,
3. Proper notice of readiness must have been given to the charterers' agent or shippers or consignees.

Now let's take a close look at the implication of each condition stated above.
1. If in the charter party a specific berth or dock has been nominated or ordered for the ship, then the vessel must have arrived at the loading or discharging berth or dock before she can be considered to be an "arrived ship". This is known as "berth-charter party". It can be clearly seen that it is the owner's responsibility that has to be discharged to bring the ship to her actual loading or discharging berth or dock.

The case described below will facilitate a clearer understanding of the concept of "berth-charter party".

A dispute arose between Stag Line, Ltd. and the Board of Trade. And it was stipulated that the named vessel was to proceed to "one or two safe ports east Canada or Newfoundland, place or places as ordered by Charterers and/or Shippers". The vessel was directed to the port of Miramichi, where she waited for her turn to the berth as ordered by the Charterers for six days. As a result of the delay, the Shipowners claimed demurrage from the Charterers.
The Court of Appeal held that his particular Charter party expressly indicated that the Charterers had the right to nominate a "place", which meant a berth within the port. Consequently the vessel was not regarded as an "arrived ship" before she actually reached the berth. The Owners had no right to claim demurrage. (1) Very often, "berth charter party" can result in substantial loss to shipowners once they accept such conditions particularly in case of port congestion. It is, therefore, advisable that shipowners as far as possible do not accept that.

If it is stated in charter party that "the said ship shall proceed to a certain port and laytime begins to count after she becomes an arrived ship whether in berth or not", then the said ship is considered to be an arrived ship soon after she has arrived at the named port regardless of whether or not she reaches the berth for loading/discharging operation. This is known as part charter party, from which one can see that wording as such is generally regarded as being more favourable to the shipowners as compared to the wording which appears in berth charter party. Because once a vessel is considered to have been an arrived ship, it is the charterers' whole responsibility to arrange the berth or dock for the loading or discharge of cargo under such circumstances, and any delay which may occur in bringing the ship along the actual loading or discharging berth or dock is calculated into laytime, which usually begins to run after the vessel has become an arrived ship unless otherwise stipulated in the charter party. Apart from the concept of berth charter party, the definition of port charter party does not leave much loophole theoretically. However, in practice it does

give rise to quite a number of disputes on when and where the ship can be considered as an arrived ship due to the fact that different ports around the world have different philosophies with regard to the definition of the port. On top of that, there are some ports which do not even have any officially recognized boundaries of the port. This issue appears to be both very sensitive and controversial as it directly concerns the interests of the parties concerned.

Going through the following case will lead us to a better understanding of what is meant by "an arrived ship". The s.s. "Aello" was chartered under voyage charter party "Centrocon" for shipment of bulk grain from Argentina to Hamburg.

Statement of Fact for ship at loading port has been stated below:

Arrived at Rosario
Waited for turn for berthing and loading until
Completed loading of 5750 m/t
Proceeded from Rosario to Buenos Aires to complete loading
Anchored in the so-called "Free Anchorage" at about 25 miles from the port on
Berthing permit granted on
Berthed at the New Port Elevator in Buenos Aires on
Started loading
Completed loading 4145 m/t on

Oct.11. 6 p.m.
Oct.11. 7.40 p.m.
Oct.12.1.30.p.m.
Oct.29.
Oct.29.2.p.m.
Oct.29.3.15.p.m.
Nov.6.11.30.p.m.

The Charterers claimed the despatch from the Shipowners calculating laytime from October 29 without taking into con-
sideration the delay from October 12 to October 27.

The Owners, on the other hand, calculated laytime as beginning October 12, resulting in huge demurrage sums.

So great was the difference in each calculation that this case was brought to court for judgement. The House of Lords held that:

1. Buenos Aires Roads were not in the commercial area of the port.
2. that the vessel lying there was awaiting access to the commercial area; accordingly, s.s. "Aello" was not an arrived ship.
3. that s.s. "Aello" was delayed between October 12 and October 29 owing to the failure of the Charterers to have the cargo available. The arrangements to have the cargo available were entirely the Charterers' concern and not that of the Shipowners. By failing to provide cargo, the Charterers prevented the s.s. "Aello" from becoming an "arrived ship" in the ordinary way and they were responsible for the consequences, in other words, the Owners of the "Aello" were entitled to demurrage. (2).

If not for the third reason, the Shipowners in this particular case would have lost the case.

From above the case one can see that a ship can not be considered an arrived ship unless she has arrived at the customary place within the limits of the port, usually where other vessels wait for loading/discharging berth. Furthermore, in some cases even if vessel arrives at anchorage, she

(2) The Aello (1961) A.C. 135
can not be regarded as an "arrived ship" unless the contract expressly indicates that cargo can be loaded or discharged at that particular anchorage.

However, there has been a new development in explaining an "arrived ship" in light of a decision made by the House of Lords in the case of the so called "The Jahanna", indicating that as long as a ship has reached a place within the port where she is "at the effective and immediate disposition of Charterers", she can be considered as an "arrived ship". This famous case is outlined as follows:(3).

The vessel named the "Johanna Oldendorff" was on chartered voyage, the destination of which was "the Port of Liverpool/Birkenhead".

She anchored at the Mersey Bar on January 2, tied up at Prince's Landing Stage in the port for customs clearance the next day when N/R was tendered and was then ordered by the port authority to the Bar Light Vessel, where she waited for a discharging berth until January 20. The Bar Light is 17 miles away from the port. Disputes arose as to where and when the chartered ship could be considered as an arrived ship.

This particular case was first brought before the Queen's Bench Division which held that since the vessel had not arrived at the commercial area of the port, she could not be considered as an "arrived ship", and that therefore, time lost in waiting for a berth could not count as laytime.

This case then reached the Court of Appeal which consented____________________

to the judgement of the Queen’s Bench Division. However, based on the case so called "Aello" case, the shipowner appealed the court decision, and this dispute was finally taken to the House of Lords, which reversed the decision of both the Queen’s Bench Division and the Court of Appeal, holding that the ship was an “arrived ship” when she anchored at the Bar Light. Though 17 miles away from the port, this was the place where bulk grain ships customarily waited for a berth within the limits of the port. On any analysis, she was, at that moment, at the effective and immediate disposition of the Charterers.

It is worth mentioning that the court decision of the "Maratha Envoy" (4) later has strict adherence to the "Johanna Oldendorff" and this famous court ruling will probably remain law for at least a decade or two.

Now the definition of an "arrived ship" seems to have been clarified with the introduction of the above case. Nevertheless, there are still areas in need of further specification. It seems to the author that what the owners are not quite certain about is what is meant by the phrase "at the effective and immediate disposition of the charterers". When and where the ship is considered to be within that geographic scope is still a question. There still exists the possibility of disputes in which, firstly, the charterers may argue the certain place is not "at the effective and immediate disposition of the charterers" particularly due to the serious congestion of the port when the vessel has to wait for the loading and discharging berth outside the limits of the port. Secondly, because the vessel is not within the charterers’ effective and immediate reach, they might not

admit the tender of notice of readiness. These arguments tend to give rise to further disputes.

Therefore, BIMCO adopted "Charter Party Laytime Definitions 1980" which gives the port a more detailed account or reading.

PORT means an area within which ships are loaded with and/or discharged of cargo and includes the usual places where ships wait for their turn or are ordered or obliged to wait for their turn no matter the distance from that area.

If the word "PORT" isn't used, but port is (or is to be) identified by its name, this definition shall still apply.

Though this definition, in the author's opinion, does help to do away with some of the uncertainties, it still takes particular cases to prove the implication of the wording "----and includes the usual places where ship wait for their turn or are ordered or obliged to wait for their turn no matter the distance from that area". This definition is in sharp contrast with the court decision on the "Maratha Envoy".

As there are many areas around the world where the ports do not have statutory delineation and are not sure of their boundaries, whether a ship is within or outside the legal limit of a port can sometimes be difficult to determine. It is suggested that owners, therefore, in order to protect their interests and avoid disputes of this sort, should insert a special wording such as "whether in berth/port or not" or "on arrival at or off the port" or "whether in free pratique or not" in the laytime clauses to make it more precise so that even if the vessel has arrived outside the limits of the port and has began to wait for the loading/discharging berth, time spent in waiting after the tender of
notice of readiness will be considered as part of the set laytime.

It is author's intention here that further explanation should be given to the above-mentioned wording:

(1) Waiting for berth

There are two types of wording which we often come across in the voyage charter party we sign with our counterparts, the first one being: "time lost waiting for a berth to count as laytime", and the second being "time lost waiting for a berth to count as loading/discharging time (whichever the case may be)". One additional word can make the meaning essentially different. The House of Lords held in the case of Darrah (1976) (5) that the former wording would mean that in calculating the period lost waiting for a berth, days which ought to have been deducted from laytime (e.g. as there were Sundays, non-working days etc.) should also be deducted from that period. When it comes to the second wording, the House of Lords held in a case of the Finix (6) that all days so lost were to be calculated as lost, regardless of whether they were holidays, or non-working days. This decision seems to be more in favor of shipowners' interests than the charterers'. Therefore, the shipowners are more than encouraged to insist on insertion of such wording into the charter party, which will certainly bring some sort of benefit to the shipowners in case of similar disputes.

(6) The Finix—Shipping Law by Robert P. Grime, B.A., B.C.L.
Furthermore, the second provision would have the following advantages:

(1) Under a port charterparty, when, on account of congestion, the vessel is compelled to wait outside the port limits, that is at a place where a valid notice of readiness could not be tendered because the vessel is not an "arrived ship".

(2) Under a berth or dock charterparty, when a vessel is prevented from reaching the agreed berth or dock, on account of congestion, and is thus not an "arrived ship",

in both situations the "time lost" provision will start to count from the moment of the vessel’s arrival at the waiting place until she is able to tender the notice of readiness when she has later become an "arrived ship" under a port charter party (or has actually reached a berth or dock in the case of a berth or dock charter party).

But, what is the effect of such a clause in the case of a strike during waiting time?

The author would cite a law case again to show how the second provision applies.

This is a dispute which arose between Lonian Navigation Co., Inc. and Atlantic Shipping Co., S.A. (7)

The vessel named Loucas N was chartered under Gencon charter party (revised in 1922) for a voyage from Caen and Ant-

werp to Houston, New Orleans and Tampa.

The charter party provided in clause 5: "at each loading time lost in waiting for berth to count as loading time" and in clause 6: "at first discharging port, time lost in waiting for berth to count as discharging time". Clause 39, a Centrocon strike clause, stated: "if the cargo can not be discharged by reason of a strike of any class of workmen essential to the discharge of the cargo, or by reason of obstructions or stoppages beyond the control of charterers on the barges and/or railways or in dock or other discharging places. The time for discharging shall not count during the continuance of such causes".

The vessel waited outside the commercial areas of Caen for just over a day and of Houston for seven weeks before berths became available. While the vessel was waiting there was a strike of stevedores at the initial part of the period, causing congestion for the rest of the day. The shipowner contended that time had been lost at Houston in waiting for a berth. The charterers argued that no time was lost as long as the strike existed, for even if the ship had been able to go to a berth, she could not have begun to discharge.

The Court of Appeal, rejecting the appeal by the charterers, made an overruling that "time lost" provisions were independent of the Centrocon Strike Clause. In this regard, Lord Denning said: "I think that we should hold that clause 39, the strike clause, in dealing with a situation after the ship has arrived and is ready to load or to discharge, as the case may be. The charterers can rely on the clause to exempt themselves from responsibility for strikes or obstructions and so on after she is an "arrived ship"."
In conclusion, the author would say that there are two phases for the application of the "time lost" provision and Centrocon Strike Clause. Phase 1: the "time lost" provision can apply in such a period as from the moment of the vessel's arrival at the waiting place until she has later become an "arrived ship". Phase 2: Centrocon Strike Clause can be used to release the charterers from liability for the strike, etc. after the vessel has become an "arrived ship".

(2) Whether in berth or not

Under the port charter party, the insertion of such wording means that despite the fact that the vessel is not in berth because of the reasons beyond the control of either charterers or shipowners after she has become an "arrived ship", the master can still tender notice of readiness, notifying the parties concerned that the ship is in every respect ready for loading or discharge of cargo, and since the tender of notice of readiness is a prerequisite for the commencement of laytime. The laytime can start to run as per the laytime clause stated in charterparty. It must be noted that the essential condition for such a wording to take effect is that the ship has to become an "arrived ship" being within the port area where the charterers can have effective and immediate disposition of the vessel.

(3) On arrival at or off the port

This wording bears similar implication of "weather in port or not".

(4) Whether in free pratique or not, enter custom house/-
The owners can encounter difficulties if they negligently permit "free pratigue" and "entering of custom house" as a specific requirement in the charter party before the ability to tender the notice of readiness.

In many ports around the world, the above terms are mere formality. However, some particular ports, such as Constanza will grant "free pratigue" only after the vessel has actually berthed. Supposing a vessel is asked to wait at the anchorage due to congestion. Even though the vessel is in a perfectly ready state to load or unload the cargo carried, she may still be denied her ability to tender a valid notice of readiness, thus delaying the commencement of laytime for the simple reason that there is no free pratigue.

So, it is of great importance especially in the above-mentioned ports to note the necessity to stipulate the clause "whether in free pratigue or not" into charter party, the insertion of which would certainly protect the owners' interests.

However, generally speaking, if there is no express clause to that effect, it has been held by the court that there is no requirement for the ship to be granted pratigue before cargo operations commence on the conditions that non-issuance of pratigue will not cause delay to cargo operations and failure to obtain pratigue in this respect does not prevent the ship from becoming an "arrived ship".

With reference to the terms "entering of customs house/customs clearance", BIMCO, in 1964, already warned owners about the dangers in accepting the clause "vessel also has been entered at the customs house". BIMCO explained that this
stipulation was dangerous to owners at ports where Customs House entry could not be obtained until after entering port or even berth, thus preventing laytime from commencing. Similarly, the owners when negotiating should insist on the insertion of "whether entered at Customs or not". And to serve as a reminder, if the Baltimore Form C is used, the printed stipulation "entered at the Customs House" should be given adequate attention so that it can be crossed out or the words "whether or not " can be added.

It is of no use exerting great effort on the insertion of obviously favorable clause like "whether in port or not " or "whether in free pratique or not " only, while simultaneously neglecting the stipulation of "whether or not entered at the Customs House". The above three terms should be jointly applied in practice. Missing any one of the three terms would seem superficially perfect, yet it always leaves one essential condition to be satisfied in enabling the vessel to tender the notice of readiness and trigger the laytime clock.

The author wishes to add in this connection some explanations on the wordings "turn time", or "the vessel is to be loaded in turn" or "in regular turn". These are the wordings often proposed by the charterers to prevent laytime commencing soon after the tender of "good" notice of readiness. These wordings if put into the charterparty undoubtedly create a dangerous situation for owners in cases where a port is heavily congested. As a result, all the time lost in waiting for the turn would not count as laytime even if the vessel has arrived and is ready in every respect. The owners have got to be cautious about such wordings either in the printed form of some of the charter parties or in charterers' pro-forma. However, in some trades it is customary for
such a wording to be entered into the charterparty, but in this case, a compromise must be reached to limit turn time to say 24 hours, for example. So, soon after the elapse of this 24 hours, laytime commences irrespective of the fact that the vessel is still in turn. This 24 hours turn, in the absence of expressly wording to the contrary to that effect, will be regarded as running hours and have nothing to do with laytime exceptions.

Having touched upon the above set of wordings, the author would like to move on to the introduction of a rather complete wording recommendable to shipowners, which the author personally considers as being adaptable to different chartered voyages with some minor adjustments if necessary under a number of charterparties on the one hand and being more beneficial to the interests of the owners on the other. The said wording is quoted as follows:

If on arrival at the port of loading/discharge the vessel is unable to enter port due to congestion, the vessel will be allowed to tender notice of readiness upon arrival off the port at the place appointed by the Harbour Master and time to commence as per charterparty, whether the vessel is in berth or not, whether in port or not, whether in free pratique or not, whether entered at Customs or not. Time used in shifting from anchorage to berth not count as laytime. (8).

The above-stated wording is no doubt what the shipowners are looking forward to as it takes into account, to a great extent, the situation of serious port congestion, which the shipowners might underestimate at the time the contract is negotiated. Such a wording protects shipowners’ interests in

(8) Chartering and Shipping Terms by J.Bes.
that firstly the Master can tender notice of readiness even if the vessel has arrived at the position off the port area and can not get in due to congestion, thus allowing the lay-time to start to run, shifting the burden of arrangement of the berth to the charterers. Secondly, it does not leave any grounds for charterers' argument regarding whether or not the vessel is considered an "arrived ship" and regarding the question of time for the commencement of laytime as the wording has been expressly made out.

So far, there has been much discussion of the concept of arrival of ship either at the loading or discharging port, however, what has been dealt with above is solely related to the ships' arrival at the first loading or discharging port. There are some circumstances under which a ship is ordered to be loaded or discharged at two different ports usually at the charterers' options in accordance with charter party clauses. What will the owners do in this situation with respect to the arrival at the second port?

Some detailed points are deemed more than necessary to be expressly clarified based on the following case:

The vessel "Seafort" was chartered for a full consignment of cargo of grain from Vancouver to London and Hull.

It was stipulated in clause 9 of a Baltimore Berth Grain Charter Party that "charterers have the option of ordering the vessel to discharge at two ports-----

Time at the second port is to count from arrival of the vessel at second port, whether in berth or not".

(9) Chartering and Shipping Terms by J.Bes.
The vessel anchored at Spurn Head Anchorage on January 30 and it was not until February 9 that the vessel began to proceed to Hull Dock from the Anchorage. The shipowners, therefore, claimed demurrage for 8 days 11 hours 6 minutes at £300 per day. The charterers, on the other hand, argued that as Spurn Head Anchorage was not within the limits of the port of Hull, the vessel was not an "arrived ship", and they claimed that laytime should start to run on February 9 when the vessel proceeded to Hull Docks, resulting in dispatch money of £197.16. So wide a gap was in each calculation that disputes arose. Whether demurrage paid to the owners or dispatch money due to the charterers depended wholly on the philosophy of an "arrived ship". At the second discharging port, did the definition of an "arrived ship" still apply to this situation in which the vessel was ordered to be discharged at second discharging port, particularly when there was wording "whether in berth or not" in clause 9?

The judgement given by the court was in favor of the charterers, for the following reasons:

(1) The ship's arrival at Spurn Head was not considered to be an "arrived ship", as it is not within the legal, administrative or fiscal limits of the port of Hull.

(2) The effect of the wording "time at second port to count from arrival of vessel at second port, whether in berth or not" meant that the time at Hull started to run again after arrival. The words "whether in berth or not" were inserted to emphasize the continuity of the laytime and to ensure that at both the first and second port of discharge laytime shall count whether the vessel is in berth or not after she has arrived at the port on the condition of the tender of
notice of readiness.

In this case the interesting point is that though "whether in berth or not" was inserted, it did not have any effect unless the vessel actually arrived at the position within the limits of the port and tendered the notice of readiness. This is, of course, true for the ship arriving at the first loading/discharging port. On top of that, the same goes for the ship ordered to arrive at the second loading/discharging port (with the exception that there is no need, normally, to tender notice of readiness) where the concept of an "arrived ship" is exactly the same.

The question is what shipowners can do to protect the vessel from being delayed in light of the above case especially when it is within the charterers' discretion to choose the second port with which the owners are not quite familiar in terms of the limits of the port and congestion. The effective way, in the author's opinion, is to try to insert a kind of wording into the clause, taking into consideration the possible congestion, delay, and unfamiliarity with the port limits.

The insertion should read:

Charterers have the right to order the vessel to be loaded/discharged (as the case may be) at a second port. Laytime begins to run soon after the ship's arrival, whether in berth or not, whether at or off port. Time lost in shifting from anchorage to berth not count as laytime.

This wording implies that even if the vessel arrives at anchorage outside the port and can not proceed to the port area due to congestion etc., time can be allowed to run,
thus effectively protecting the interests of the shipowners.

Nevertheless, as a contract is made by the two opposite parties, representing contrary interests, reflecting the individual stand of each side, one side can not be in a position to force its preference successfully onto the other. This goes for the negotiating process of completing a charterparty throughout. Therefore, owners might not find it easy for their original intent is to be realized. Inserting a sensitive wording does need not only negotiating skill but negotiating position as well. However, it is always the owners' duty pay adequate attention to the maximum insertion of such a clause, which means so much to the shipowners that its function can not be neglected.

2. The vessel must be ready to load or to discharge in every respect.

Readiness to load or to discharge cargo in every respect means that the ship is up to the loading or discharging conditions both physically and legally, including the preparation of cargo holds, gear for cargo handling, and proper customs clearance.

Assuming that we do not take into this discussion two other aspects for an "arrived ship", and focus on the point of readiness of the ship only, we may say that because of these requirements the ship is supposed to meet, laytime can not be expected to run according to the earliest date for commencement of laydays though sometimes initially set in charterparty, unless the ship fully complies with the mentioned requirements. Therefore, commencement of laytime should be considered in line with other provisions regarding readiness of the ship for the particular voyage.
The Master of the ship should be well aware of the implications of the wording "ready in all respects".

Take one case as an example:

The chartered vessel was contemplated for shipment of maize from Varna.

Regarding the notice of readiness, it was stipulated in the charterparty:

(1) At the port of loading, laytime is to commence at 2 p.m. if written notice is given at usual local office hours before noon, and at 8 a.m. next working day if notice is given at official office hours after noon, whether the vessel is in berth or not, whether in free pratique or not, whether in port or not, the Master is allowed to give notice of readiness by telegram when the ship has arrived in the roads of the port of loading.

(2) Before tendering notice of readiness, the master has to take the necessary measures to ensure that the holds are clean, dry, without smell and in every way suitable to load grain to shipper's / charterers' satisfaction.

Statement of Fact 1970
The vessel arrived in the Roads of Varna on Sunday 22.11.
She anchored 0500.22.11.
NOR tendered 1000.22.11.
The vessel inspected 27.11.
Remarks: Bad weather from 22 to 26 delayed inspection of the ship. After inspection, it turned that fumigation on account of pests in the holds was necessary.)
Fumigation 30.11
Acceptance of NOR 1.12
The vessel berthed 7.12.
Loading commenced 1100. 7.12.
Loading completed 1000.13.12

In the shipowner's presented time sheet, laytime was taken to begin from 2 p.m. 23.11. based on the earliest date on which the NOR was tendered, and to continue to run, including the time lost waiting for the inspection.

However, the Court of Appeal held that it was the absolute responsibility of the shipowners to keep the holds clean, dry, free of smell and in every way suitable for loading the grain, which was the pre-requisite for the validity of the NOR and any necessity of fumigating the holds because of pests made the NOR invalid. Therefore, laytime should be considered to begin on December 1.

From this case, we can learn that as far as the shipowners' benefits are concerned, there are two elements involved in avoiding this dispute or more precisely, in protecting the shipowners' interests.

Firstly, the original wording leaves some room for further elaboration. It may be appropriate to add to the above (1), another wording "in case of delay for inspection, for the reason beyond control, time lost in waiting to count as loading laytime". With this wording as protection, in the author's opinion, the shipowners will not suffer financially from a long wait for inspection if assumingly the vessel happens to fail to pass inspection. If possible, there is also the need to specify that time lost in waiting for fumigation, if necessary, is to be counted in laytime. By doing
so, the shipowners' interests are well protected and the loss can be reduced to a minimum.

Secondly, the Masters should be well aware of the fact that they are required to discharge absolute undertaking to make the holds fit for the service in light of charterparty clauses. In the above cited case, had their Master taken the necessary precautions regarding the state of the holds, and notified the parties concerned of the necessary fumigation as soon as possible after arrival, the vessel would not have been delayed for so long. Therefore, the Masters' duties for making a chartered ship ready in every respect for the shipment of cargo are key to the smooth operation of the contemplated voyage and thus, can never be overemphasized.

Finally, the author would like to mention that making a chartered vessel ready for loading or discharging is not only responsibility of the shipowners themselves, but also that of the charterers in that they should take from concerned Authority concerned the necessary documents or permission. If any delay occurs to the ship because of the charterers' failure to have the related documents ready in advance of the ship's arrival at the port, then the charterers are to be held responsible for any such delay.

The following case (10) further demonstrates the above-stated point. It was a dispute that arose between Sunbeam Shipping Co. Ltd. and the President of India, with respect to the charterers' failure to obtain the necessary document when the chartered vessel arrived at the port.

For the sake of explanation, it should be pointed out that

in accordance with the ordinary practice of the port of Calcutta, the vessel can not become an "arrived ship" even if she has arrived at the port of Calcutta unless the so called a "prior entry" is obtained by the shipowners and a document called a "Jetty Challan" is taken by the charterers from the port commissioners.

The "Atlantic Sunbeam" arrived at Calcutta, after which the shipowners obtained prior entry. However, it was not until four days later that when the Charterers obtained the "Jetty Challan".

The question was who would be held liable for the 4 day delay in enabling the ship to become an "arrived ship". It was held by the Queen's Bench Division (Commercial Court) that the charterers were responsible because of their delay in obtaining the necessary documents.

(3) Proper notice of readiness should have been given to the charterers' agent, or shippers or consignees.

In order to enable the notice of readiness to be tendered, owners are supposed to fulfill two conditions, which are none other than those previously stated (1), (2).

Since the tendering of the notice of readiness marks the moment from which laytime agreed upon starts, unless otherwise stipulated to the contrary in the charterparty, it has become a rather sensitive issue both to the charterers and the shipowners. It is the author's intention, therefore, that certain points need to be dealt with in depth, so as to have a clearer comprehension of what is proper notice of readiness.

(1) Valid notice of readiness indicating readiness of the
vessel to load at the time at which it is given. The practical case (11) carries clear implications.

At 0900 hrs on October 28, 1967, the Master tendered notice of readiness, notifying that the vessel would be ready on Oct. 29. It was held by the Queen's Bench Division that the notice was invalid even if the vessel was, in fact, ready at the time at which it was given, for it indicated the ship's readiness at a future time and implicitly reported to the charterers that she was not yet ready.

(2) Valid notice of readiness to load in writing.

It is important for the Masters to pay due attention that notice of readiness is given in written form and in case the vessel is chartered to load grain or things of that sort in bulk, the NOR should be accompanied by the necessary certificates issued by a competent authority to the effect that the holds are fit for the loading of cargo. Any other form, may it be by telegram or by telephone, will not be regarded as a valid way of tendering notice of readiness unless otherwise stipulated to the contrary in the charterparty.

The following case (12) can be useful as an example of how to construct the validity of notice of readiness.

The dispute arose between Calm Seas Shipping Ltd. as shipowners and Seaboard Allied Trading Corporation as charterers regarding the validity of notice of readiness.

Based on the North American Grain Charter Party 1973 form,

the bulk carrier "Ocean Merchant" was chartered on a con­
templated shipment of wheat from New Orleans to Sapele,
Nigeria. According to the charterparty, laydays began at
0800 hours on June 30,1981 and cancellation date and time
was July 10,1981 at 1200 hours.

At 0126 hours on July 10, the vessel "Ocean Merchant" arri­
ved at the 12 mile anchorage, which is within the commercial
limits of the port.

It was during the afternoon of July 9 that Calmseas’ agents
ordered inspection of the cargo holds which was subseq­
untly conducted by the National Bureau and U.S. Department of
Agriculture in the early morning of July 10. The holds tur­
ned out to be clean, dry and up to the inspectors’ satisfac­
tion, thus all required passes were issued at 1130 hrs on
July 10. Considering that time was running out, Calmseas’
agents telephoned at 1135 to the Seaboard’s agents, noti­
fying that the vessel had passed NCB and USDA inspection,and
that the passes were being sent immediately after this. The
Calmseas’ agent had the written notice of readiness accom­
panied by the passes delivered to Seaboard’s agents’s office
at 1347 hrs on July 10. However, it was finally rejected and
furthermore, the contract was cancelled by Seaboard. For
this, Calmseas lodged a claim amounting to USD273,642.−.

The particular case was eventually brought to arbitration.
But, before outlining the conclusion, the author considers
it necessary to quote some of the relevant clauses:

Clause 4 of the charterparty provided:"----laytime / cancel­
ing---laytime for loading ---- not to commence before 0800
hours on June 30. Should the vessel’s notice of readiness
not be tendered and accepted as per clause 17 before 1200
hours on the 10th day of July—the charterers—shall at any time thereafter, but not later than one hour after the notice of readiness is tendered, as per clause 17, have the option of cancelling this charterparty. Clause 17(a) stipulated:

"---time counting---notification of vessel’s readiness to load---at the loading port shall be delivered in writing at the office of charterers/receivers or their agents between the hours of 0800—1600 on all days---"

Clause 17(d) provided: "---inspection---at the loading ports, Master’s notice of readiness shall be accompanied by the pass of the NCB / Port Warden and Grain Inspector’s certificate of vessel’s readiness in all compartments to be loaded---".

The shipowners argued that the tender of NOR by telephone to Seaboard’s agents at 1135 hrs on July 10 was timely, and in accordance with clause 17(a) and further pointed out the fact that Seaboard’s failure to reject this notice within an hour after NOR was tendered constituted acceptance of such notice as per clause 4. The shipowners added that since the written tender was not specifically required in the charter when the vessel was at a lay berth or anchorage, the notice was in fact properly tendered by telephone and could not be rejected by Seaboard since the vessel was ready in every respect at the time notice was given.

On the contrary, Seaboard argued that they had absolute right to cancel contract according to clause 4.7(a), 7(b).

It was held by the Panel that the shipowners had failed to tender NOR as per charterparty clauses expressly worded. Consequently, the judgement was given in favour of the char-
The conclusion is that had the owners tendered notice of readiness in writing, accompanied by certificates, which is normally common practice in grain trades, just before 1200 hours on the 10th day of July, the charterers would not have the right to cancel the charterparty at all.

In a word, the requirement to tender NOR is that the Master should act exactly in accordance with explicit clauses with a clear understanding of and without any deviation from the original sense of the clauses. In most cases, the tender of written NOR is a prerequisite for counting laytime, however, with one exception that when a ship arrives off a port, and can not enter the port due to congestion, the tendering of NOR is performed by cable. But, this is only applicable when the corresponding words are stated explicitly in the clause. It goes without saying that from the owners' point of view, it is more preferable to have NOR tendered by cable especially in case of congestion, so the clause should be constructed accordingly.

(3) Notice of readiness to discharge

In common practice, the NOR to discharge is not specifically required as there is little responsibility to be discharged on the part of the shipowners unless otherwise stipulated to the contrary in charter party or local requirement which specifies the need for it.

However, it is the author's opinion that it is still necessary for Masters to tender NOR regardless of common practices whenever possible for the sake of smooth operations and avoidance of dispute which might arise in certain situa-
In conjunction with the matter of tendering of the NOR, the author would like to call the readers' attention to the following points:

(1) It is of paramount importance to an owner that his Masters do all they can to tender NOR as early as possible. They are encouraged to do so even at the start of a waiting period. The owners' golden rule is "if in doubt---tender!"

(2) If the Master is notified that the first NOR has been challenged on its maturity and validity, he should keep on tendering and re-tendering NOR, but mark the re-tendered NOR as "without prejudice" to the earlier one.

(3) The Master should tender NOR in all ports if there is a vague clause such as "NOR to be tendered at loading ports/discharge ports".

(4) NOR must be tendered to the right party specified in the C/P, if any. But normally it should be tendered to the charterers' agent or shippers/consignees (at the discharge port) unless otherwise agreed.

(5) NOR can not be tendered unless it is mature which means a non-conditional readiness of the vessel. However, once the charterers' agent accepts it unconditionally and later finds it premature, the NOR still stands in the absence of fraud on the part of the owners.

(6) If the charterers refuse to accept NOR in good faith without valid reason, the charterers are breach when the C/P implies that acceptance of NOR is a condition for the commencement of laytime.
2.2. Demurrage

Demurrage is a kind of liquidation the owners are entitled to as a result of delay caused to the ship beyond the agreed time for loading and unloading.

When we talk about demurrage, we would naturally come to think of the principle "Once on demurrage, always on demurrage". This term simply means that as soon as the charterers have used up all the time available for the loading and discharging, demurrage should start to run continuously until such operation has been completed.

During the demurrage period, the time excluded from laytime does not generally interrupt continuation of demurrage. However, this might not be invariably true if delay is caused either by default of the shipowners for their sole purposes or by an expressly worded exception clause in charterparty.

Take the following two examples.

(1) A dispute arose between In Ne Kipner Shipping Co. Ltd. and Cleeves Western Valleys Anthracite Collieries Ltd. (13). When chartered vessel was loaded, the shipowners ordered her to another position in the dock in order to take bunker during which she could not be available to the charterers for the purpose of loading. Demurrage resulted. Who was held liable for such a period?

It was held by the Court of Appeal that this period should be excluded in calculating demurrage since the ship had been

(13) (1927) 1 K.B. 879.
moved for the convenience of the shipowner. The charterers were excused from liability for delay as it was caused by the fault of the shipowners.

(2) Demurrage interrupted by express words.

Express words can be used as well to interrupt demurrage.

One clause read: "the cargo to be loaded in 72 hours (from 5 p.m. Saturday to 7 a.m. Monday, colliery holidays, play days, and general holidays excepted)----if longer detained, charterers to pay 16s per like hours demurrage." Other clauses may use such words as "per like day". Whenever the clause has been worded in such a way the charterers can exempt themselves from any liability for interruptions which occurred during demurrage the period.

Under charter party there are a number of events of various nature which have led people to even more detailed discussions. The author would rather focus on the following three points in conjunction with the principle "Once on demurrage, always on demurrage."

(1) Fumigation during the demurrage period.

Let us see how we can handle this disputable situation by citing a famous law case (14), which the author regards rather illustrative.

This was a dispute between Dias Compania Naviera S.A. and Louis Dreyfus Corporation as to whether or not time lost in fumigation after expiry of laytime was to be counted as

demurrage in conjunction with corresponding C/P clauses.

The vessel named Dias was chartered to Louis Dreyfus Corporation to carry wheat under voyage charter party on the Baltimore Form C from Philadelphia to Hsingkang, China.

Charter Party clause 15 provided: "at discharging, charterers have the option at any time to create at their expense ship's cargo and time so used to not count." She arrived at Hsingkang roads on October 3, 1973, and waited throughout the allowed laytime. The laytime expired on Friday, October 26, however, the vessel was still kept waiting in the roads. Between November 9 and 25 the Chinese receivers had the cargo fumigated and on December 6 she berthed and completed discharging on December 10.

Now the point lies in how calculation of laytime should be done. The shipowners contended that the ship was on demurrage from the moment that laytime expired on October 26 to the time when she finished discharging on December 10. The charterers, on the other hand, claimed to deduct the time for the fumigation. So the difference is about USD150,000. Such a large amount, whether payable or not, depends on the true construction of the above-mentioned clause.

The dispute was referred to arbitration and the learned umpire, Mr Michael Summer Skill held in favour of the owners, but he asked the court for an opinion by way of a special case. Mocatta, J. in Commercial Court held that:

(A) It was clear law that in a charterparty providing for a fixed time within which to discharge, if the laydays expired before discharge was completed the charterers would be in breach of contract;
(B) As a matter of construction, the words "time so used not count" in clause 15, were more apt in applying to laytime than to demurrage, the time so used was not to count against a period of time allowed, this being laytime and the fact that the words "at any time" admittedly permitted fumigation during a period when laytime had expired and the fact that there was no further allowance of time did not prevent this from being the true meaning.

(C) The last seven words in the first sentence of clause 15 were ambiguous and were no protection to the charterers against their liability to pay demurrage after expiry of the permitted laytime and the question of law would be answered in favour of the owners.

On appeal by the charterers it was held by a majority of the Court of Appeal that:

(A) The receivers of the cargo had the option "at any time" to fumigate and that meant at any time whether during laytime or during days on demurrage.

(B) The "time so used to not count" in clause 15 related back to the earlier words "at any time" and provided relief for the charterers not only during laytime but also during days on demurrage.

If the parties had intended that time employed on fumigation ought to count for demurrage notwithstanding the words "at any time", then an express provision to this effect would have been required. Thus, a law decision was held to be in favour of the charterers.

On appeal by the owners, the House of Lords reversed the de-
cision by the majority of the Court of Appeal and upheld a judgement by Mocatta. J. in the Commercial Court. (15)
Through introduction of the case, it can be concluded that:

(1) As soon as the vessel is on demurrage, no exceptions will operate, as they do within a period of laytime, to prevent continuance of demurrage unless the exception clause is clearly worded to that effect. This was expressed by Mocatta. J. in a statement (3) that the last seven words in the first sentence of clause 15 were so ambiguous that they could not serve as exceptions to the charterers’ liability.

(2) It always does more good than harm to write out the true intention of contracting parties. Had clause 15 been designed in such a way as "time so used (in fumigation) to count in calculating laytime" from the owners’ point of view or "time so used (in fumigation) not to count in calculating either laytime or days on demurrage" from the charterers’ interest, there would have been no dispute and subsequent arbitration, and the Commercial Court, the Court of Appeal and lastly, the House of Lords for a final judgement.

(3) It is essential for the chartering people to take note that similar vague wording should be avoided as much as possible.

(2) Strike during demurrage period.

In practice what often happens is that loading/discharging is affected by strikes after the expiration of laytime. The

question is should the principle "once on demurrage, always on demurrage" still apply? Should such stoppage be counted as laytime while there is a clause such as "loss of time due to any strikes affecting loading/discharging operation should not be calculated in loading/discharging time"

Before reaching a conclusion, let us study a case under Baltimore Grain Charterparty. (16)

The vessel carried a whole consignment of grain to Bombay, and laytime allowed for this particular ship ended at 1356 hours on July 2. It happened that only a part of the cargo had been discharged by expiration of laytime, and there was a strike three days thereafter, delaying discharging for 8 days 10 hours (from 7 a.m. July 5 to 5 p.m. July 13).

In charterparty, the whole strike clause in Barlarte River Charter Party was introduced, briefly meaning:

If there is a strike affecting loading/discharging, time so lost shall not be counted as laytime. For any delay occurring due to the above reasons, the charterers, receivers and owners are not entitled to claim for damage of detention or demurrage.

The owners argued that demurrage should run continuously despite the strike, whereas the charterers said that strike time should be discounted in accordance with the strike clause though they admitted that the strike occurred after the expiration of laytime. Therefore, the charterers refused to pay demurrage.

(16) From reference material in Shanghai Institute of Marine Transport.
This case was taken before court and the final judgement was given in favour of the owners. The conclusion was that the strike clause applies to the strikes which occur, if any, before expiration of laytime. On the contrary, if the strike occurs after laytime has expired, obviously it is the charterers that have to be responsible for the delay, as is quoted from the work of SCRUTTON, L.J. (viz. when once a vessel is on demurrage, no exceptions will operate to prevent demurrage continuing to be payable unless the exception clause is clearly worded so as to have that effect). (17). Thus, the principle “once on demurrage, always on demurrage” applies to this case unless otherwise mutually agreed upon expressly to have that effect.

(3) Bad weather during both waiting time and demurrage period.

This is a rather controversial issue. It is obvious that the duration of bad weather affecting the operation should be discounted from laytime. However, the disputable point lies in whether or not similar weather during waiting time after laytime begins should be considered as "bad weather", so that it will be discounted and whether or not the duration of "bad weather" should be calculated into the demurrage period.

Generally speaking, under the term "weather working day", so long as the loading or discharging operation is stopped on account of strong wind, heavy rain, fog, current and snow, etc. the corresponding time should be deducted from laytime allowed; the same is true for the situation in which the

vessel awaits the berth allocation after laytime begins. If the weather is not bad enough to affect the port operation however, the bad weather should not be taken into consideration.

This conclusion can be drawn from one case dealt with by Arbitration in the China Foreign Trade Promotion Committee.

"Jakmi" shipped a consignment of 25,588 m/t of fertilizer from the United States to Dalian China in 1979. On 24th March, she was berthed and was finally discharged on 15th April.

In calculating demurrage, the charterers deducted 95 hrs 5 minutes as a result of what they considered "bad weather" affecting operation during waiting and discharging time.

The reason and time period the charterers discounted is stated as follows:

1. March 8th 1100hrs—March 9th 2400hrs
   Heavy fog

2. March 10th 0420hrs—March 11th 1200hrs
   Strong wind

3. March 23rd 0720hrs—March 23rd 1940hrs
   Snow

4. April 7th 0340hrs—April 7th 2400hrs
   Snow

5. April 8th 0000hrs—April 8th 1000hrs
   Sweeping water

6. April 12th 1945hrs—April 13th 0330hrs
   Snow

The owners disagreed with the charterers’ method of calcula-
tion, pointing out the charterers could not deduct relevant time, as there was evidence to show that during the period stated in items (1),(2), the normal operation was being carried out on the vessels along the quay, and furthermore, the time period in item (4),(5),(6) was actually demurrage time. Accordingly, the owners claimed demurrage from the charterers amounting to 16,377.60 USD.

It was finally held that as port operation was not stopped in bad weather even during item (1) waiting period, it was unreasonable to deduct it from laytime. But, as item (2) period affected the normal operation, the same period of time should be deducted, and laytime allowed should end at 1625hrs on 2nd of April accordingly.

As mentioned above, the charterers discounted some period as non-weather working time even after laytime expired. It was explained that after expiration of laytime any period for any kind of weather, whether or not affecting the port operation, should be calculated into demurrage unless an exception clause was clearly worded to that effect.

Consequently, the charterers should pay USD14,860.34 as demurrage to the owners.

Through the introduction of the above case, we can see that: firstly, bad weather means weather which is so bad that it affects the normal operation, the period of which should be discounted from laytime allowed. If weather conditions permit normal operation it cannot be discounted. Secondly, the same applies to the period when a ship is waiting for a berth after the commencement of laytime. Finally, once on demurrage, any period of any kind of weather should be calculated into demurrage unless otherwise expressly agreed.
2.2.1. Precise time.

It is important for the owners to know precisely at what time the operation ends in actual calculation both at loading and discharge ports in order to calculate correct lay-time to claim demurrage.

It has been a general rule that in most cases, the mere reception or dumping down of the cargo on the ship does not involve completion of loading, because...the operation of loading involves all that is required to put the cargo in a condition in which it can be carried.

The case Argonaut Navigation Co. Ltd. v. Ministry of Food clearly illustrates this point.(18)

For the safety of the ship and in compliance with regulations in force at the loading port, it became necessary to have grain carried in the "tween decks" to be stowed in bags, but the bagging operation was not carried out before the expiration of laytime. The point in question was whether time spent in bagging should be regarded as part of demurrage claimed. It was held by the Court of Appeal that loading was not completed until the grain had been bagged and stowed and that consequently the charterers were held liable to pay demurrage in respect of time spent in bagging.

In this case bagging was a part of loading operation as it was stipulated in the charter party that "all other grain in the tween deck must be in bags", therefore, the chartered ship could not sail unless the cargo had been bagged, as Bucknill Lj (the Court of Appeal) summed up in this case

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(18) (1949) 1 Alle. R. 160.
"...loading is not complete until the cargo is so placed in the ship that the ship can proceed on her voyage in safety".

In actual calculation of laytime at loading port, it is necessary to pay due notice to associated operation activities which should be considered as a part of operation such as securing and trimming (whether the owners or the charterers are performing the job). It also includes removal of bull-dozers or vacuators or loading spouts or grabs etc. In other words, the cargo operation in the wide sense must be completed in a way that the vessel can sail if she wants to. Afterwards, any further delay to the sailing of vessel will be for the owners’ account as in the case of waiting for tide, for pilot or tug, or for port clearance.

With reference to laytime at discharge port, there is inevitable a certain amount of sweeping up and rebagging loose cargo for delivery to the receivers and it is the normal practice for the time taken in doing so to count as laytime or demurrage, if the vessel is on demurrage.

However, cases on Lloyd's Report have shown that if, on completion of discharge of partial cargo at the first discharge port, it is necessary to put the vessel back into a seaworthy trim for passage to a second discharge port, time thus taken in doing so does not count as laytime or for demurrage if the vessel is on demurrage. Laytime at the first discharge port ends when all the cargo destined for that port has been discharged, as Moctta. J concluded in one relevant case "...when all the cargo to be unloaded at a first or lightening port has been landed on the quay, or into lighters when these are used, discharge at such port has, in my opinion, ended and laytime does not continue to
2.2.2. Determination of the Rate of Demurrage

The demurrage clause of a charter party being among the most important is usually the focus of much attention between the contracting parties and therefore deserves adequate emphasis.

Demurrage is applied in charterparty solely for the purpose of compensating shipowners for the damage for detention, if any, as a result of loading/discharging operations. Whether there is demurrage rate high enough for compensation or not certainly directly concerns the interests of the owners. In other words, a low rate may enable the shipowners to face potentially financial loss especially at the ports where long delays may occur.

In order to obtain a fair and favourable rate of demurrage, we must first of all find out what the bases are and what elements should be taken into consideration when estimating such a rate.

As we all know the total costs of a ship are classified into following categories:

(1) Capital charges, namely interest and depreciation;

(2) Operating costs which include crew wages, victualling, stores, insurances, club calls, wireless, repairs, docking, survey provisions and administration;

(3) Voyage expenses, fuel, loading and discharging costs,
agency and ports costs, commission, costs of tugs and pilots, etc.

It can be seen from the above cost structure that operating costs and capital charges remain unchanged during a ship's stay in port, whereas some items in voyage expenses may be reduced.

The elements, therefore, for compensation for detention of the vessel should be operating cost and capital charges shared on a ton/day basis and some bunker costs, port dues (related to ship's stay) during the demurrage period. Furthermore, shipowners should not only be liquidated for expenses mentioned above, but also compensated for loss of a certain amount of income since their vessel is not kept in service especially when market is well up.

The basis for the calculation of demurrage rate should be

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\text{voyage income/ dwt / day } = \frac{\text{voyage income}}{(\text{dwt} \times \text{voyage days})} + \frac{\text{expenditure}}{(\text{dwt} \times \text{voyage days})}
\]

This result worked out should be considered as the true and fair demurrage rate.

What should be further explained is that voyage income discounts voyage cost but not operating costs and capital charges, the purpose of which is that based on the assumption of the presence of demurrage, the demurrage should cover both voyage income and running expenditure during delay and ope-
rating cost and capital charges shared on such a voyage.

The following sources can be utilized to estimate voyage income dwt/day.

(1) vessel's particulars: dwt, speed, consumption, etc.

(2) voyage references: voyage distance, voyage days, rate of loading and discharging, bunker costs on voyage and in port, time for ship's delay in port, port dues and regulations. Some of them can be obtained from agents or from the volume "Ports of the World" published by Shipping World.

It goes without saying that the final, mutually accepted rate depends not only on the calculation, but also on the negotiating position of each side, market situation and port conditions among other things.
2.2.3. Damage for detention

Damage for detention (where demurrage is not provided for) becomes payable either:

(1) on the expiration of the specified laydays, if any; or

(2) on the expiration of a reasonable time for loading or unloading when no laydays are specified; or

(3) on the expiration of the fixed number of days for which demurrage has been stipulated.

It is important to have claim for damage for detention in cases stated above especially in a booming market.

As a long-established practice, demurrage rate and proven "damage for detention" is always the same except for longer term voyage charter. So we can use the same method of determining the rate of demurrage to calculate the rate for damage for detention.
2.3. Laytime calculating.

(1) Whether the Notice of Readiness can be tendered before first layday permissible

There was a case in which a vessel arrived at the loading port early on June 8 and the Master immediately tendered the NOR. The charter party provided "laydays not to commence before June 10" and that "time for loading to count at 2 p.m. if written notice of vessel's readiness..... is given during office hours before noon and 8 a.m. on the next working day if notice is given during office hours afternoon". In the court, the owners contended that laytime should start to count at 0000 hours on June 10, whilst the charterers maintained that the counting of laytime was initiated at 0800 hours on June 10. The umpire held that when not prohibited in the charter party the notice of readiness may be tendered at any time before formal laydays begin and laytime should commence to run at 0000 hours on June 10.

In American arbitration award, the panel reached on identical judgement with reference to what has been stated above.

(2) Whether laytime can commence before routine inspection.

This is a dispute which often occurs in deciding whether or not the counting of laytime can be initiated before routine inspection of the vessel is carried out.

The following case is self-explanatory.(19).

The dispute dealt with the commencement of laytime. The

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(19) Lloyd's Maritime Law newsletter no. 35 of 5 March, 1981.
owners pleaded that laytime commenced at 0800 on May 10, while the charterers argued that it commenced at 1445 on May 13. The difference between the parties concerned the effect of the vessel's inspection by the Chinese harbour authorities on May 12. The charterers contended that such was a condition precedent to the commencement of laytime while the owners took the view that the inspection was a mere formality which should have no effect on the commencement of laytime. The inspection itself took 40 minutes and there was no evidence to show that this was other than the approximate usual time for this operation. This inspection did not find anything untoward with the vessel and was not causative of any delay to the ship; after the inspection the vessel waited for a discharge berth for about a week.

The vessel arrived at the port at 0145 on May 8, NOR being tendered at 0800 on that day (Sat.). If it had not been for the charterers' contention, laytime would have commenced at 0800 on May 10 (Mon.), 24 hours after receipt of written NOR (Sun. May 9 was exempt). In support of their argument, the owners militated for a broad approach to be taken with respect to the inspection, similar to the approach taken by the Court of Appeal in The Delian Spirit, (1971) 1 Lloyd's Rep.506 vis-a-vis the obtaining of pratique; the owners also relied upon the older case of Armement Adolf Deppe v. Robinson, (1917) 2 KB 204, and the fairly recent case of The Tres Flores, (1973) 2 Lloyd's Rep.247.

The arbitrator decided the case in favour of the owners; he considered that a fairly broad approach should be taken to preliminaries which have to be carried out when vessels arrive at a port and such preliminaries cannot be carried out for some time after the vessel has arrived, assuming no failure by those on the vessel in presenting the vessel for
the preliminaries. He accepted the owners' plea that a routine inspection is a mere formality which can be ignored for the purpose of commencement of laytime and that it is not a condition precedent or something of such substance that it prevents the triggering off of the laytime clock.

In support of this decision the arbitrator relied upon part of Lord Denning's judgement in Tres Flores, as follows:

"---NOR can be given even though there are some further preliminaries to be done, or routine matters to be carried on, or formalities observed. If those things are not such as to give any reason to suppose that they will cause any delay, and it is apparent that the ship will be ready when the appropriate time arrives, then NOR can be given".

What can be seen is that so long as there is a routine inspection and no failure is found on board to prevent the vessel from being ready, laytime is supposed to commence after elapse of some stipulated time following the tender of NOR even though such inspection is performed after the tender.

(3) Sundays and Holidays.

Normally, it is expressly stated that Sundays and Holidays are not to count as laytime, unless used, or even if used, half the time so used to count as laytime, as the case may be. In addition, a certain period of time both before Sundays, holidays and after such days is usually specified in clauses so as not to be counted as laytime. But, what we often come across is that the laytime clause has not been designed to mention whether or not the specified period should be counted as laytime. In absence of such clearly worded stipulation and custom of the port that day or a part
of the day should be considered a holiday, laytime is deemed to continue until midnight on Saturday or a day preceding a holiday and restart at 0001 hours on the day soon after the interruption.

(4) "Weather working days of 24 consecutive (or running) hours" and "working days of 24 consective hours, weather permitting."

Defining the exact difference between the two wordings is essential so as to clarify under which wording owners' interest is more protected.

When the first wording is inserted, it is taken to mean that laytime does not count during interruptions of actual cargo working time, nor does it count during what would have been interruptions had work been intended or contemplated in case of bad weather occurring after laytime has commenced.

Thus, if six hours of bad weather are severe enough to halt cargo operations, or to halt such operations had they been intended or contemplated, whether the bad weather occurs in normal working hours or in normal idle time (mealtime), interrupting laytime, then only 18 hours of laytime has been used on that day.

When "-----,weather permitting" is applied, only laytime for actual cargo working is interrupted owing to the bad weather. Unless bad weather interrupts actual cargo operations, laytime will continue to run as if the weather were fine.

In a decision rendered by the Chambre Arbitrale, Paris, the Chambre decided that "the clause "weather permitting" does
not apply when rain occurs at night since it does not hamper operation which at any rate would not have taken place at that time. These hours of rain should not, therefore, be deducted from the laytime."

From the above, it follows that the charterers can not invoke this exception if there are periods of bad weather during which no cargo operations would anyhow have taken place.

The above explanation can as well apply to the situation in which there was bad weather before the vessel was actually berthed; there should not be a deduction made from laytime as she could not under any circumstances load during any period of rain.

The shipowners are strongly recommended, whenever possible, to insist on the term "weather permitting", as it offers owners better position than the term "weather working day" regarding the periods after berthing and better protection with respect to the period before berthing.
2.4. Strike (gencon)

Before elaborating the general strike clause in depth, the author deems it necessary to define the word "strike" for the sake of explicitness.

A strike is a concerted action which delays or prevents the loading or discharging of the vessel, taken either by stevedores, crane drivers, or by crew, pilots or tugmen usually to demand more money and better conditions of their employees.

Generally speaking, work stoppages which occur due to political and social unrest prevailing in the area at the time and which have nothing to do with commercial motivation or origin whatsoever, namely, political boycott, commemoration activities, demonstrations cannot be considered a strike. In such cases the charterers can not invoke a strike exception clause in their favor.

The gencon clause follows with some explanation.

General strike clause

Neither charterers nor owners shall be responsible for the consequences of any strikes or lock-outs preventing or delaying the fulfilment of any obligation under the contract.

If there is a strike or lock-out affecting the loading of the cargo, or any part of it, when a vessel is ready to proceed from her last port or at any time during the voyage to the port or ports of loading or after her arrival there, captain or owners may ask charterers to declare that they
agree to reckon the laydays as if there were no strike or lock-out. Unless charterers have given such declaration in writing (by telegram, if necessary) within 24 hours, owners shall have the option of cancelling this contract. If part cargo has already been loaded, owners must proceed with same (freight, payable on loaded quantity only) having liberty to complete with other cargo on the way for their own account.

If there is a strike or lock-out affecting the discharge of the cargo on or after vessel's arrival at or off port of discharge and same has not been settled within 48 hours, Receivers shall have the option of keeping vessel waiting until such strike or lock-out is at an end against paying half demurrage after expiration of the time provided for discharging, or of ordering the vessel to a safe port, where she can safely discharge without risk of being detained by strike or lock-out. Such orders to be given within 48 hours after captain or owners have given notice to charterers of the strike or lock-out affecting the discharge. On delivery of the cargo at such port, all conditions of this charter-party and of the bill of lading shall apply and vessel shall receive the same freight as if she had discharged at the original port of destination, except that if the distance of the substituted port exceeds 100 nautical miles, the freight on the cargo delivered at the substituted port to be increased in proportion.

In the first paragraph, the clause is designed to mean something general and the reference to "consequences" means such consequences as, for instance, loss suffered by the charterers owing to a drop in the market price of the goods caused by the delayed arrival of the goods at the discharging port or, for example, loss to shipowners because of the missing of the cancelling date of a subsequent charter party.
caused by delay through strikes and not remote consequences such as strikes at the charterers'/shippers' factory preventing or delaying manufacturing and transportation of the goods to the loading port. The charterers, in order to enable themselves to have clause exceptions, must the establish following conditions:

1) Delay or prevention in loading or discharging must be directly caused by strikes;

2) The charterers should take reasonable measures to prevent or minimize the strikes or its consequences;

The second paragraph deals with strikes at the port of loading before the chartered vessel is ready to proceed to that particular port or on her way there or after arrival. It must be emphasized here that in such a situation, it is always the responsibility of the masters or owners to seek a declaration of agreement by the charterers that he will reckon the laydays as if there were no strikes or lock-out. Failing to do that will no doubt leave the chance for the charterers to exempt themselves, relying on the exception clause in the first paragraph. Thus, owners will be in a very passive situation.

On the other hand, if a declaration has been sought and the Charterers have agreed to the counting of laytime, this would take effect from the vessel’s arrival or the commencement of the strike as appropriate with full demurrage as soon as laytime expires. If, however, there is no Charterers’ reply to the request for a declaration or simply a refusal, then there will be three following possibilities:

Firstly, Owners can wait until the end of the strike with no
laytime counting by virtue of the first paragraph.

Secondly, Owners can have option to cancel the contract, but this option must be exercised within 24 hours of the Charterers' refusal or failure to respond.

Thirdly, when some cargo has already been loaded on board, and when there is no response from the Charterers to the declaration, the Owners must order the vessel to sail with whatever quantity of cargo on board the ship.

The third paragraph seemingly leave no loopholes at all. However, when this clause is further scrutinized, certain doubts may arise as to (1) whether a strike of less than 48 hours should be counted as laytime if it happens incidentally after a vessel has become an arrived ship and laytime has began to run, (2) whether the half-rate provision still applies in case of expiration of laytime before the discharge of the cargo is affected by the strike or lock-out, and (3) whether full demurrage must be paid for the time it takes to complete the discharging as soon as the strike or lock-out is at an end.

It is the author's intention here to illustrate the above points based on two specific legal cases.

As to the first question, there was a dispute between Gereal Proteine Rome, the time-chartered owners of the "Gina Juliano" and Steelment Export Company, the charterers, regarding the computation of strike hours.(20)

The voyage was from Rhode Island to Genoa, with a shipment

(20) Fairplay 28th July 1983.
of 22,233 tons of steel scrap. While she was at the anchorage in Genoa waiting for discharge, work stopped three times (the first two times are left undiscussed simply for the sake of explanation), the last of which took the full day of February 1, and according to CPR, the vessel began to be on demurrage from 0556 hrs on February 2. Both sides agreed that the February 1 stoppage was a strike. However, the point which needed to be clarified is whether or not such a strike lasting less than 48 hrs should be calculated into laytime. Even though the third paragraph of the gencon strike clause provides that charterers should be responsible for half demurrage after expiration of time provided for discharge if they choose to keep the vessel waiting, it does not mention at all whether strikes of less than 48 hrs should be computed.

The majority of the Panel finally held that this clause merely reduces Steelment’s responsibility for the payment of demurrage in case of 48 hour strikes or longer to one-half the normal rate after expiration of the time agreed for discharging, as it does not provide for the stopping of laytime for any strikes. Consequently, the decision was given in favor of the Owners.

With respect to the second question, there is another case reflecting the inclination of the High Court. (21).

A dispute arose between Superfos Chartering A/S as Owners and N.B.R. (London) Ltd. as Charterers. The vessel was chartered on Gencon Charterparty dated March 10, 1982 for the carriage of a cargo of sugar plus some general cargo from Antwerp to Lagos. It happened that demurrage began to run

(21) Fairplay 17th Jan. 1985

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after the vessel's arrival at Lagos, as agreed by both sides. And coincidentally, a number of strikes occurred thereafter. The shipowner calculated whole periods of strikes into demurrage, resulting in a huge amount of demurrage claim on the grounds that the strike clause was of no effect as demurrage had begun before the commencement of the strikes. On the contrary, the charterers referred to half-rate provision in the strike clause, stating the owners were only entitled to demurrage at a half-rate. It was finally held by the High Court in this case that the charterers could not protect himself by invoking the half-rate provision where the demurrage had already begun to run before the commencement of the strike or lock-out affecting the discharge of the cargo. This might be regarded as being contrary to the first paragraph of the Gencon Strike Clause. For this reason the Court supplemented that "obligations" in the first paragraph must be read as excluding the charterers' obligation to pay demurrage where that obligation has already accrued before expiry of laytime and further that the detailed provisions of the third paragraph do not mitigate or relieve charterers from the obligation. As a result, the judgement was given in the Owners' favor.

With reference to the third issue, which is whether full demurrage must be paid for the time it takes to complete the discharging as soon as the strike or lock-out is at an end, the answer is no. This was confirmed in an English judgement rendered by the Court of Appeal, London, 1971 in the case of Salamis Shipping (Panama) S.A.V. Edm. van Meerbeek & Co. S.A. (the "onisilos" case) when the court reversed the judgement of the Queen's Bench Division by deciding that: "in case of strike after the laytime expires the charterers are to pay half demurrage for all the periods in port until the discharge is completed at the last discharge port".

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If, on the other hand, the Charterers have ordered vessel to sail to another discharge port where there is no strike, then laytime will run in normal way upon vessel's arrival. However, if the vessel was already on demurrage or comes on demurrage at the alternative port, then full rate demurrage will be payable.
2.5. Shifting time

As a general rule, shifting time from one place to another should count as laytime even if such a shift is ordered by the Port Authority unless custom of the port or an express clause stipulates to the contrary. However, in practice, there should be such a clause which states that whether or not shifting time is counted.

In the case of calculation of shifting time, the problem arises as to when the ship is considered to start her shifting.

The disputes under a charterparty dated October 16, 1978 between Fade Shipping Co Sa as owners and Amoco Transport C. as charterers gave rise to the same issue. Though the chartered voyage was completed, it was necessary to clarify whether or not the period from 0700 to 0735 hours on December 6, 1978 was deductible from laytime/demurrage as shifting time.

This case was finally brought to arbitration. It was Fade's argument that the vessel did not start shifting until 0735 hours with the arrival of pilot on board, while Amoco insisted that the period should be deducted from 0700 hours as the vessel "weighed anchor" at that time.

The Panel held the opinion in favor of Amoco, pointing out that although the term "weighed anchor" is not synonymous with "underway", nevertheless, the implication is that the anchor was raised for the purpose of imminent movement of the vessel.

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(22) Fairplay 28th June 1984.
2.6. Reachable on her arrival.

The insertion of the above term is merely meant to put charterers under an obligation to procure and nominate a "reachable place" for a vessel to berth to load or to discharge, the failure of the contractual obligation would constitute a breach. Obviously, such a stipulation favours owners. This conclusion came up following the case of the Angelos Lusis in 1964, in which the chartered vessel was not permitted to enter the port to become an "arrived ship" and caused several days’ delay due to the charterers’ inability to nominate a berth because of congestion. Mr. Justice Magna held that the words "on arrival" in clause* referred more to the physical arrival of the vessel in the popular sense, wherever it might be, whether within or outside the fiscal or commercial limits of the port, where the inclination or nomination of a particular loading place would become relevant if the vessel were to be able to proceed without being held up.

More concretely, so long as there is a clause "reachable on her arrival", the charterers cannot escape the liability to nominate a berth even in case of congestion during which the vessel may be kept outside port limits and would not be able to proceed into the port, and responsibility for the delay thus occurred should fall on the charterers from the moment of the vessel’s arrival outside the limits of the port or inside, as the case may be, to the time when NOR is given.

* The original clause was "the vessel shall load and discharge at a place or at a dock alongside lighters reachable on her arrival, which shall be indicated by charterers and where she can always lie afloat-----".

Another case involving the Greek vessel President Brand in 1967 also demonstrates the above-mentioned point. In this
case, the vessel could not arrive at the "commercial area" of the port to become an "arrived ship", because there was a lack of sufficient water over the bar, causing 4 days' delay. Mr. Justice Roskill held that the charterers were liable under the clause "reachable on her arrival". Mr Justice Roskill also held that many reasons, for whatever they may be, render a particular berth or place unreachable on arrival and the charterers would still be in breach of the obligation.

The advantage of insertion of such a clause lies in the fact the laytime would still begin to be counted on a ship's arrival outside the physical and commercial area of the port in spite of any of a variety of reasons that the charterers are unable to nominate a berth.

The meaning of "reachable on her arrival", though established, was however explained a bit further when used in conjunction with clause 6 in the EXXONVOY 1969 when the Laura Prima case (1982) was handled.

The seemingly two opposite clauses are cited as follows:

(6) Notice of Readiness

---However, where delay is caused to vessel getting into berth after giving NOR, for any reason over which charterers have no control, such delay shall not count as used laytime.

(9) Safe Berth

The vessel shall load and discharge at any safe place or wharf, or alongside vessel or lighters reachable on her arrival which shall be designated and procured by the charterers---
It was held by Mr. Justice Mocatta in the Court of the first instance that the last sentence of clause 6 only applies and prevents laytime from running if the charterers, pursuant to clause 9, had designated and procured a safe place for the vessel on lighters, "reachable on the vessel's arrival". Then if after the charterers fulfilled clause 9, and some intervening event occurred causing delay over which the "the charterers have no control", such as the imposition of an embargo, or insufficient water or a vessel suddenly grounded, thus blocking the fairway, then the last sentence of clause 6 will apply. The charterers cannot rely on the last sentence of clause 6 to abrogate the primary duty imposed on them under clause 9.

However, the explanation was denied before the Court of Appeal, but by the end of 1981, the House of Lords reversed the decision made by the Court of Appeal, and restored the judgement by Mr. Justice Mocatta.

Generally speaking, such an explanation is still acceptable to the majority of the owners.
Chapter III

Contract Wording
3.1. Principle of Wording

It deserves to be mentioned that clear, accurate, precise wording in the clauses is so important that it should be given adequate attention. It is of no exaggeration that, in most circumstances, the exact wording provides for one of the best, original and reliable basic fact on which the Court decisions are made in case of disputes out of performance of contract signed between the two parties. On the contrary, ambiguous wording in the clauses may well give rise to the disputes on the explanation and its related operation. The disputes, if serious enough will be taken to arbitration or court for the settlement, which takes both time and money, thus hindering smooth operation.

The court decision is faithful to the wording, which, at the time of signing the contract, represents the interest of the contracting parties. If the wording is left unclear, ambiguous, or inaccurate, then it is largely up to the discretion of the court or the arbitrators to interprete the implication of the original clauses objectively. In most cases, one ambiguous key word which can be understood to mean something else could have great value, representing potential loss to a contracting party.

It is one of the purposes of this paper to call for enough stress on the wording of the contract, owing to the widely various conditions involved in the voyage performance of each contract. Clearly there will be clause best adaptable to the specified characteristics, even though there are originally well-defined clauses. Therefore, constant changes in wording have to take place. However, the principle of wording remains unchanged, in that the wording should be worked out with maximum accuracy, explicitness and clarity, to the
greatest advantage of both successful discharge of obligation set in the contract on the part of responsible parties and the interest of the same. The simple reason for this is that ambiguous wording will ultimately create problems. The simple case below illustrates how important it is to have clearly defined wording.

In an amendment to one charterparty with regard to the commencement of laytime, it was stated that "at load port and discharge port, laytime to commence 2400 hrs after NOR accepted, NOR to be accepted on vessel's arrival at the port---". The reader will note immediately that no mention has been made of whether or not time used before commencement of laytime is counted as laytime. This is a great loophole. What happened in this case was that time before commencement of laytime was actually used both at the loading and discharging ports. Consequently, arguments ensued between the contracting parties as a result of ambiguous wording.
3.2. Currency

It should be noted that the money of account (currency in which an obligation is measured, which tells the debtor how much he has to pay) should be consistent with the money of payment (currency in which the obligation has to be discharged, which tells the debtor by what means he has to pay) when expressed in currency. The fixed currency for payment of demurrage/despatch should be set regardless of wherever it may appear in the contract, so that it might not present problems as to what currency should be used for payment of debts. In case the discharge of obligation of either party to the contract to be measured varies between the money of payment and money of account, as sometimes happens (hopefully not), it is suggested that agreed rate of exchange be inserted in the charterparty, taking into account the prevailing rate of exchange on the date of charterparty and future possible fluctuating rate, and which currency is more stable. Without such considerations, it can be disputable as to which currency should be used for the payment of demurrage or despatch, if any.

As a general practice, it is the money of account that takes control. However, as long as the rate of exchange is involved, the money of payment has priority as illustrated in the following case of disputes between the President of India and Taygetos Shipping Co. Sa (23). The vessel called "Agenor" was on voyage charter for a shipment of urea in bulk from Europe to India. She arrived on June 11, 1980, but the discharge was not completed until August 20, 1980. Consequently, a huge sum of demurrage incurred owing to the different wording in clauses regarding the currency for the

calculation of the demurrage. Clause 9 of charterparty stipulated that "if the vessel is detained longer than the time allowed for loading or discharge, demurrage shall be paid at USD6,000 per running day or pro rata", however, clause 30 provided for "freight to be paid in sterling and demurrage also to be paid in sterling". Question arose as to which currency should be adopted for the payment of demurrage, USD or sterling. What happened was that both parties chose the date of the bill of lading as the date for the rate of exchange instead of the date of charterparty.

This typical case was finally brought up to the court, which held that as both contracting parties agreed on the rate of exchange between the money of account and the money of payment, there should be a new approach; the money of payment, namely pound sterling, should take control, as this was the currency which expressed the owners' loss.
3.3. Claim For Demurrage

It is suggested that the clause regarding interest on the demurrage should be expressly inserted whenever possible in case of the charterers' failure to pay immediately after the completion of the chartered voyage. It often happens that charterers are reluctant to do what the owners require when it comes to the payment of demurrage since there is not an effective clause legally binding them. Particularly if a huge sum of demurrage is involved, it means a lot to the shipowners and such an insertion would, to some extent, remind the charterers to keep thinking of their own interests likely to be affected when they fail to pay the owners. It is noteworthy as well that insertion of such wording as "demurrage is payable day by day" should make it possible for owners to exercise a lien over the cargo before it is delivered for payment of demurrage. The owners should work out the amount of demurrage from laytime calculation as soon as possible after the termination of the voyage for the charterers' approval. In a word, every effort should be made to finalize the matter without delay.

There is also a time limitation for the recovery of demurrage due, and it varies from country to country, so the owners must be also aware of different practices or rules with respect to the time-bar for such claims. Some of the related rules in some countries are listed below:

Argentina: for a charterparty, one year from the termination of the voyage
Belgium: three years from the date when the voyage was completed
Brazil: one year from the termination of the voyage
Canada: six years from the date the claim arises
Chile: four years from the day the claim occurred
Denmark: five years from the day when the amount falls due
Finland: the general period of time bars, 10 years.
France: for a voyage charterparty, one year from the day of discharge. For a time charterparty, one year from the termination of contract
Germany (Democratic Republic): one year counted from the first day of the month following the date the claim becomes due
Germany (Federal Republic): two years counted from the end of the year when the claim becomes due
Great Britain: six years from the end of the year within which the cause of action accrues
Greece: one year counted from the end of the year within which the claim arises
India: for a charterparty, three years from the date when "the cause of action arises"
Ireland: six years from the date on which the cause of action accrued
Italy: six months or one year depending on whether the place of loading or destination is outside Europe or not
Japan: one year from the day the amount falls due
Mexico: one year after the amount falls due
The Netherlands: one year after the end of the voyage
Norway: three years from the day the amount falls due
Poland: two years from the day the claim becomes exigible
Portugal: the general period of time bars, 20 years
Spain: six months from the day of delivery
Sweden: the general period of time bars, 10 years
Switzerland: one year from the termination of the contract
U.S.A. the "laches" rule applies

U.S.S.R.: no special rule, but claim time-barred after one
year

Venezuela: five years from the day when the demurrage becomes due

Yugoslavia: one year from the day the amount falls due.
3.4. Custom of the Port

Through daily operations many ports around the world have gradually established custom related to the loading/discharging of cargo among other things.

Normally, these custom and practices are employed for protection of the interest of both charterers and ports themselves rather than for the shipowners. If adopted for the ship's operation in port, then, it is the local custom and practices that play a decisive role in determining the time allowed for loading/discharging operations. Here, the point worth mentioning is that a great part of the customs might not be quite familiar to the shipowners. Furthermore information may not be available at the time of negotiating the contract and for the sake of convenience, shipowners tend to accept the conditions put forward by the charterers without having enough knowledge of port custom regarding the rate of loading/discharging cargo and any other important related matters which will put owners into a difficult situation in defending themselves in case the vessels have stayed in port much longer than estimated. Great loss could be caused to the shipowners. As time stipulated for loading/discharge is governed by the custom of the port, the shipowners are not in a favourable position to claim the demurrage or damages for detention. Disputes may arise. Since such a clause as "according to the custom of port" has been inserted into the contract, the shipowners may likely find themselves defenceless in the face of interpretation of local practices. In such a case it is not in favor of shipowners at all.

Here, the author does not mean that such a wording should not be used at all under any circumstances. In fact, one sometimes comes across the wording like "according to the
custom of the port". The point is that unless the shipowners are fully sure that damage of unreasonable detention to the vessel due to poor port facilities etc. does not exist at all and the non-existence of potential congestion, the shipowners should not insert as far as possible clauses with wording such as "Custom of the Port", "customary", "with all the despatch", "as fast as steamer can load or discharge", or "C.Q.D."

However, in practice, it is not always the owners alone who decide the insertion or deletion of this or that clause. Agreement itself is composed of many different clauses agreed upon by the contracting parties. It is actually the combination of opinions reflecting the intention of parties. Whether insertion of certain terms or not largely depends on the bargaining strength, of a party or the skill involved in the entire process.

When the charterers are in better positions, the owners might intentionally accept some of what are considered as unfavorable conditions, particularly nowadays in the depressed shipping market. But the principle is that one can not accept, to any extent, any terms involving a substantial potential loss to the owners.

While in case that upon the charterers insistence, owners may accept such terms as "customary despatch" among other similar terms. But, the owners may try as well to put "average rate of ------- tons" into the amendments as a basic means of insuring the owner's interest. This may read: "the cargo to be loaded/discharged into/from vessel with customary despatch, but at not less than the average rate of ---- per running working days ----".
It is important to note also that whenever "according to custom of the port" or any above-mentioned wordings are used in the charterparty, the owners should also insist on the insertion of a specific clause as to when laytime should begin to count after the vessel has become an "arrived ship". The reason for this is that the Court once held that "the Custom of the Port" applies to the period beginning after the vessel has been regarded as an "arrived vessel" upon the receipt of NOR on the part of the charterers or consignees. Without explicitly mentioning the beginning of laytime under "the custom of the port", the charterers or consignees would quite naturally put off the beginning of laytime as late as possible by referring to the "practice of the port" in order to protect themselves in case of serious delay.

Now the question may arise as to whether it is practical to put into contract such a clause as "laytime should begin to count 12 hours after the vessel has become an "arrived ship", while, at the same time, "according to the custom of port" has been stated in the charterparty. In fact, as long as the contract is precisely worded, it is a wording that deserves priority regardless of whatever stipulation may be in the port, for it represents the intent of both contracting parties and the contract is governed by the terms mutually agreed upon. Moreover, the mere intention on the part of the owners is nothing else but to protect themselves rightfully from charterers' or consignees' abuse of the terms of the "custom of the port", related to the beginning of the laytime.
The case of some years ago stated in the following will prove what has been written above (24):
The dispute arose between Cerrigina Maritime Ltd. as contractors and Cove Carriers Inc. as owners of Cove Spirit under agreement dated Sept 23rd, 1981 for discharge at Karaki of a shipment of wheat from the U.S.A.

Owing to alleged discrepancies between the verbal and written fixture terms prepared by Cove, the discharge agreement was never signed by Cerrigina prior to the vessel’s arrival at Karaki. Each side still held a different opinion particularly as to when laytime should begin to count.

However, on Aug. 21, Cerrigina’s agent telexed Cove confirming the details of the agreement, which included, amongst other things, a reference to “discharging cost USD 6 per metric ton, all inclusive. Discharging rate 3,000 m/t SHINC. Laytime to commence when vessel berthed and vacuvators placed on board.------- demurrage USD8,000, dispatch USD4,000 -----”.

On Sept. 23rd, Cove notified Cerrigina’s agents that the following discharge agreement had been reached for the Cove Spirit in Karachi, "-------- USD 7 per m/t all inclusive. Laytime 3,000 m/t per running day SHINC. Laytime to commence 12 hours after Cove Spirit’s arrival at or off discharge berth Karachi any time day/night SHINC. It is understood should Cove Spirit arrive after 1700 hours, time not to count until 0700 hours the following day. Demurrage USD10,000 per day or pro-rata. Despatch USD5,000 per day or pro-rata. Cove Spirit, 23,694 m/t. Payment on completion of discharge cargo otherwise subdetails. We will draw appro-


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priate contract and forward". (Please note that this wording is quite different from the previous one in that the former one indicates that laytime should not start until the vessel is actually berthed at the discharge pier and not only that, that vacuators should be placed on board, which is not in favor of the owners, whereas, the latter implies that laytime should begin to count even if the vessel arrives off the discharge berth. It is clear and precise wording and still set up decisive background for the Court decision.

The said vessel arrived at the Karachi outer anchorage at 1715 hours on Oct. 21, NOR was tendered on Oct. 22 at 0900 hours and accepted at 1000 hours the same day. The vessel berthed on Oct. 29 at 0130 hours and discharge started at 1230 hours that day. The discharge was completed on Nov. 5 at 2300 hours. The discharge equipment was removed from the vessel at 0200 hours the following day; the vessel left Karachi at 0330 hours. Cove calculated the total demurrage as amounting to USD47,667. Furthermore, they deducted it from the sum then due to Cerrigina. On the contrary, Cerrigina claimed the despatch. When laytime should begin to count in this case appears to be the key issue in deciding either demurrage or despatch.

This case was finally brought to arbitration, and Cove contended that the agreements were explicit and also that the terms agreed supported their position, whilst Cerrigina argued that Cove’s contentions were contrary to the practicalities of the business. It was the Panel’s opinion that the contracts are governed by the terms agreed by the parties and the agreement provided for laytime to start 12 hours after the vessel’s arrival at or off the discharge berth and that the "at or off the discharge berth" provision must include customary anchorage in the event that the berth...
beside the actual berth at the discharge pier was congested.

It was noted that in Cerriginas' agent's telex dated Aug. 21, the meaning of the term "laytime to commence when vessel berthed and vacuators placed on board "-----" was quite different from the terms in Cove's advice to Cerrigina's agents. "Laytime to commence 12 hours after Cove Spirit's arrival at or off discharge berth Karachi----". The latter implied that both parties had in fact agreed to laytime counting prior to the vessel's actual berthing at the discharge pier.

However, one member on the Panel reminded both parties that according to the custom of the port of Karachi, the term "off discharge berth" indicates the vessel having been moored alongside another vessel at a berth, a port operation known as "double-banking", which is a well-known practice in Karachi. Nevertheless, the majority still held that the "custom of the port" concept could not be applied here because the respective clause of agreement was clear and unambiguous (If applied, laytime should not begin to count until the vessel is double-banked, which means several days later. As a result, there should be despatch taking place of demurrage in this case). Thus, the majority agreed with Cove's calculation of time used and determination of demurrage earned.

In this case, the conclusion which can be made is that the unambiguous and explicit wording overrules the long-established custom of the port. Whether the wording in the contract or agreement is made in a precise way or not will ultimately result in either a gain of tens of thousands of U.S. dollars or the loss of the same. Therefore, the wording is such an important matter that it can never be emphasized enough.
3.5. Fengjin Case

The purpose of introducing this case, in which the author was personally involved, is to show how important it is to have clearly defined, suitable wording, and to have the knowledge of what is going on in port area where the chartered vessel is expected to arrive and to predict correctly the consequences thereafter.

Shanghai Ocean Shipping Co. chartered the vessel, "Fengjin", to Atlantic Carriers (Liberia) Inc. for a shipment of steel billets from Nampo in North Korea to Bandar Abbas in Iran under the Gencon form revised in 1922 and 1976, and the contract was signed on January 27th 1983.

Before the contract was signed, it had already been realized that severe congestion might occur at the port of discharge. This situation was taken into consideration accordingly when this contract was negotiated. In amendments regarding commencement of laytime (loading and discharging), it was clearly stated that:

"vessel to tender NOR by usual practice to charterers or their agents at the port of discharge within official office hours during working day of week, laytime to commence to count next working day 0930 hours whether in berth or not/whether in free pratique or not/whether entered customs house or not, whether in port or not.

In case of congestion, master may tender NOR by cable whether in port or not/whether in free pratique or not/whether entered customs house or not/whether in berth or not."
A) Laytime for loading

1,000 metric ton per weather working day, Saturday afternoon, Sundays, Holidays excepted unless used.

B) Laytime for discharging

1,000 metric ton per weather working day Thursday afternoon, Fridays, Holidays excepted even if used."

The Statement of Fact made at the port of Bandar Abbas, Iran was as follows:

0830hrs 6.3.83. vessel arrived and anchored
0930hrs 6.3.83. NOR tendered
0815hrs 14.3.83. received port clearance from P.S.O. Chah Bahar
1400hrs 14.3.83. heaved up anchor
1413hrs 14.3.83. vessel sailed from Chah Bahar
1354hrs 15.3.83. vessel arrived at B.Abbas Road
0830hrs 16.3.83. cable sent to Harbour Master
1200hrs 1.5.83. free pratigue granted
1642hrs 1.6.83. pilot on board the vessel
1858hrs 1.6.83. vessel anchored in new port
2135hrs 1.6.83. vessel alongside with m.v. "Good Transporter"
0800hrs 2.6.83. crew commenced opening the hatches
0913hrs 2.6.83. crew completed opening the hatches
1113hrs 2.6.83. gangs on board
1100hrs 3.6.83. commenced discharging
1730hrs 19.6.83. completed discharging
1230hrs 19.6.83. pilot on board the vessel
1750hrs 19.6.83. heaved up anchor
1925hrs 19.6.83. pilot left the vessel
1925hrs 19.6.83. vessel sailed

The agreed calculation of demurrage is as follow:

1. Laytime allowed 9 days 17 hours 11 minutes;
2. NOR tendered at 0930 hours on 6.3.83;
3. ---Laytime commenced on 8.3.83 from 0930—2400 hours (as per charterparty, 24 hrs after tendering NOR upon arrival).

---9.3.83.—13.3.83. (Thursday half day 12 hrs/Friday Holiday).

---on 14.3.83. at 1400 hrs vessel sailed from Chahbahar to B. Abbas

---arrived B. Abbas on 15.3.83 at 1354hrs

---16.3.83 ---19.3.83 (Friday not included/Thursday 12 hrs)

---20.3.83. Sunday---Holiday

---21.3.83.—25.3.83 New Year Holiday

---26.3.83.—27.3.83.

---28.3.83. Mon. 0235—2400hrs on dem

---29.3.83.—18.6.83. Sat.

---19.6.83. at 1730 completed discharging

---hence total time allowed

---total time used

---total time on dem

which at the rate of USD 3000 per day pro rata for any part of the day equals USD 250,864.58 due to the owners.

This successful case has illustrated that first of all,
clearly and expressly designed wording lays a solid foundation for the smooth operation and undisputed calculation of laytime; secondly, the success lies in the fact that the wording is based on the real situation, which can be changeable from time to time, hence, owners' knowledge of port conditions is vital; thirdly, wording should serve as a protective umbrella under which the owners' interest is ensured.
3.6. Proper terms applied in calculation.

There are different ways of calculating laytime. The outcome will be quite various. Let us first define all these complicated terms and see how they are applied in the practical calculation, and then clarify the advantages of using special terms from the owners' point of view.

"All purpose" means that time allowed for loading and discharge can be aggregated.

The major problem lies in when demurrage should start to count at the discharging port once there has been demurrage at the loading port. The correct approach to this is that as soon as the chartered vessel arrives at the discharging port, demurrage should continue to run up to the time when discharging is completed. This, by the way, follows the principle of "once on demurrage, always on demurrage".

"Reversible" means that the loading and discharging periods can be pooled.

The above term appears to be the same by definition. However, the slight difference between "all purpose" and "reversible" lies in that after the demurrage occurs at the loading port, the charterers can still deduct time for the tender of NOR at the discharging port under the term "reversible", whereas the charterers cannot do the same under the term "all purpose". For the purpose of illustration, the following can be taken as an example. (25)

(25) From reference material in Shanghai Institute of Marine Transport.

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At the loading port, the vessel was already on demurrage for 28 hours 30 minutes. The calculation of laytime for the discharging port under the two terms reveals a large difference:

All purpose

<table>
<thead>
<tr>
<th>Date</th>
<th>Time</th>
<th>Port Name</th>
<th>Description</th>
</tr>
</thead>
<tbody>
<tr>
<td>Sat. 6th</td>
<td>1200</td>
<td>Discharging</td>
<td>Arrival</td>
</tr>
<tr>
<td>Sun. 7th</td>
<td></td>
<td>Discharging</td>
<td>Tender of NOR</td>
</tr>
<tr>
<td>Mon. 8th</td>
<td></td>
<td>Discharging</td>
<td>Laytime began to count at 1300</td>
</tr>
<tr>
<td>Tue. 9th</td>
<td>0145</td>
<td>Discharging</td>
<td>Completion of discharge</td>
</tr>
</tbody>
</table>

Demurrage

<table>
<thead>
<tr>
<th>Date</th>
<th>Time</th>
<th>Port Name</th>
<th>Description</th>
</tr>
</thead>
<tbody>
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</tr>
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<td></td>
<td>Discharging</td>
<td>Tender of NOR</td>
</tr>
<tr>
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<td></td>
<td>Discharging</td>
<td>Laytime began to count at 1300</td>
</tr>
<tr>
<td>Tue. 9th</td>
<td>0145</td>
<td>Discharging</td>
<td>Completion of discharge</td>
</tr>
</tbody>
</table>

Total demurrage (including demurrage at the loading port) is 90 H 15 M.

Reversible

<table>
<thead>
<tr>
<th>Date</th>
<th>Time</th>
<th>Port Name</th>
<th>Description</th>
</tr>
</thead>
<tbody>
<tr>
<td>Sat. 6th</td>
<td>1200</td>
<td>Discharging</td>
<td>Arrival</td>
</tr>
<tr>
<td>Sun. 7th</td>
<td></td>
<td>Discharging</td>
<td>Tender of NOR</td>
</tr>
<tr>
<td>Mon. 8th</td>
<td></td>
<td>Discharging</td>
<td>Laytime began to count at 1300</td>
</tr>
<tr>
<td>Tue. 12th</td>
<td>0145</td>
<td>Discharging</td>
<td>Completion of discharge</td>
</tr>
</tbody>
</table>

Demurrage

<table>
<thead>
<tr>
<th>Date</th>
<th>Time</th>
<th>Port Name</th>
<th>Description</th>
</tr>
</thead>
<tbody>
<tr>
<td>Sat. 6th</td>
<td>1200</td>
<td>Discharging</td>
<td>Arrival</td>
</tr>
<tr>
<td>Sun. 7th</td>
<td></td>
<td>Discharging</td>
<td>Tender of NOR</td>
</tr>
<tr>
<td>Mon. 8th</td>
<td></td>
<td>Discharging</td>
<td>Laytime began to count at 1300</td>
</tr>
<tr>
<td>Tue. 12th</td>
<td>0145</td>
<td>Discharging</td>
<td>Completion of discharge</td>
</tr>
</tbody>
</table>

- 12 45
Total demurrage (including demurrage at the loading port) is 41 H 15 M.

Obviously, the term "all purpose", in contrast to the "reversible", can be relatively more favourable to the owners in cases in which demurrage already occurred at the loading port.

It can be noted as well the disadvantage of applying "reversible" to calculation in comparison with "average".

Both averaging and reversing have as their object the pooling of loading and discharging time, so that the total laytime used for loading and discharging is contrasted with total laytime allowed. However, the methods of achieving the object are different.

Where time is reversible, and the charterers take advantage of the permission to reverse, there is pooling or aggregation of the days which in the charterparty count as lay days. Where the charterers choose to average, the total times on demurrage and dispatch are calculated, in accordance with the demurrage clause and the despatch clause, which may refer to all time saved or to all working time saved. The times are then set off against each other.

Look at the following example:

One charterparty stipulated that 3 weather working days were laytime allowed for loading and 4 days and 10 hours for discharging. Sunday, Holidays, Saturday afternoon and before eight o'clock Monday morning excluded. Demurrage rate 1000 USD per day. Despatch half the demurrage. If NOR was tendered before 12, laytime started to count at 1 p.m.. If NOR was tendered before 6 p.m., laytime started to count at
8 o'clock the next working day.

The following laytime was calculated as per "reversible" (26):

<table>
<thead>
<tr>
<th>Date</th>
<th>Description</th>
<th>Laytime allowed</th>
<th>Working time saved</th>
</tr>
</thead>
<tbody>
<tr>
<td>1600.2.4.Tue.</td>
<td>vsl arrived</td>
<td>-</td>
<td>-</td>
</tr>
<tr>
<td>1640.2.4.Tue.</td>
<td>NOR tendered</td>
<td>-</td>
<td>-</td>
</tr>
<tr>
<td>0800.3.4.Wed.</td>
<td>laytime began</td>
<td>- 16</td>
<td>-</td>
</tr>
<tr>
<td>4.4.Thurs</td>
<td>rain for 4 hrs</td>
<td>- 20</td>
<td>-</td>
</tr>
<tr>
<td>5.4.Fri.</td>
<td>working</td>
<td>1</td>
<td>-</td>
</tr>
<tr>
<td>6.4.Sat.</td>
<td>-ditto-</td>
<td>- 12</td>
<td>-</td>
</tr>
<tr>
<td>7.4.Sun.</td>
<td>time not countd</td>
<td>-</td>
<td>-</td>
</tr>
<tr>
<td>8.4.Mon.</td>
<td>working</td>
<td>- 12</td>
<td>-</td>
</tr>
<tr>
<td>9.4.Tue.</td>
<td>completion of</td>
<td>- 12</td>
<td>-</td>
</tr>
<tr>
<td></td>
<td>loading at 1200</td>
<td></td>
<td></td>
</tr>
<tr>
<td>1000.17.4.Wed.</td>
<td>NOR tendered</td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td>Laytime began to</td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td>count at 1300</td>
<td>- 13</td>
<td>-</td>
</tr>
<tr>
<td>18.4.Thurs</td>
<td>2 hrs' breakdown</td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td>of equipment</td>
<td></td>
<td></td>
</tr>
<tr>
<td>1100.19.4.Fri.</td>
<td>completion of</td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td>discharge</td>
<td>1</td>
<td>- 13</td>
</tr>
<tr>
<td>20.4.Sat.</td>
<td>despatch</td>
<td>- 12</td>
<td>- 12</td>
</tr>
<tr>
<td>21.4.Sun.</td>
<td>-ditto-</td>
<td>-</td>
<td>-</td>
</tr>
<tr>
<td>0900.22.4.Mon.</td>
<td>laytime expired</td>
<td>- 9</td>
<td>- 9</td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td></td>
<td>7</td>
<td>10</td>
</tr>
</tbody>
</table>

The despatch money \(500 \times \frac{1}{10/24} = 708.3 \text{USD}\).
Laytime calculated as per average (25)

<table>
<thead>
<tr>
<th>Date</th>
<th>Description</th>
<th>Laytime allowed</th>
<th>Demurrage</th>
</tr>
</thead>
<tbody>
<tr>
<td>1600. 2.4.Tue.</td>
<td>vsl arrived</td>
<td>-</td>
<td>-</td>
</tr>
<tr>
<td>1640. 2.4.Tue.</td>
<td>NOR tendered</td>
<td>-</td>
<td>-</td>
</tr>
<tr>
<td>0800. 3.4.Wed.</td>
<td>laytime began</td>
<td>-</td>
<td>-</td>
</tr>
</tbody>
</table>

Date | Description | Laytime allowed | Demurrage |
<table>
<thead>
<tr>
<th></th>
<th></th>
<th></th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td>4.4.Thurs.</td>
<td>4 hrs' rain</td>
<td>16</td>
<td>-</td>
</tr>
<tr>
<td>5.4.Fri.</td>
<td>working</td>
<td>20</td>
<td>-</td>
</tr>
<tr>
<td>1200. 6.4.Sat.</td>
<td>laytime expired</td>
<td>12</td>
<td>- 12</td>
</tr>
<tr>
<td>7.4.Sun.</td>
<td>working</td>
<td>-</td>
<td>1</td>
</tr>
<tr>
<td>8.4.Mon.</td>
<td>-ditto-</td>
<td>-</td>
<td>12</td>
</tr>
<tr>
<td>1200. 9.4.Tue.</td>
<td>completion of discharge</td>
<td>- 12</td>
<td>-</td>
</tr>
</tbody>
</table>

Laytime allowed Working time saved

<table>
<thead>
<tr>
<th>Date</th>
<th>Description</th>
<th>Laytime allowed</th>
<th>Demurrage</th>
</tr>
</thead>
<tbody>
<tr>
<td>0800.17.4.Wed.</td>
<td>vsl arrived</td>
<td>-</td>
<td>-</td>
</tr>
<tr>
<td>1000.17.4.Wed.</td>
<td>NOR tendered</td>
<td>-</td>
<td>-</td>
</tr>
<tr>
<td>18.4.Thurs.</td>
<td>2 hours breakdown of equipment</td>
<td>11</td>
<td>-</td>
</tr>
<tr>
<td>1100.19.4.Fri.</td>
<td>completion of discharge</td>
<td>22</td>
<td>-</td>
</tr>
<tr>
<td>20.4.Sat.</td>
<td>laytime counted</td>
<td>12</td>
<td>12</td>
</tr>
</tbody>
</table>

(25) From reference material in Shanghai Institute of Maritime Transport.
21.4.Sun. Sunday excluded – – – – – –
22.4.Mon. laytime counted – 16 – – 16 –
2100. 23.4.Tue. completion of
discharge – 21 – – 21 –

Demurrage at loading port and despatch at discharging port is set off, the remaining demurrage is to be 1000 USD x 10/24 =426.6USD due to owners.
One can see quite clearly that by comparison, the owners can benefit 1134.9USD more as a result of applying "average" to the actual calculation rather than "reversible".

However, if we take the further step to compare "average" to "noe-reversible" in the above-mentioned case, the outcome will be even more beneficial to the owners. See the following example:

Demurrage at the loading port 3 days with a demurrage rate of 1,000USD, or a total demurrage of 3,000USD.
Despatch at the discharging port of 2 days 14 hours with a despatch rate of 500USD, the total despatch being 500USD x 2 (14/24) =1,291.5USD.

The charterers should pay 1,281.90USD more than the demurrage worked out according to "average".

Through a comparison of several different terms under which calculation is done accordingly, one can easily pick up the appropriate term, i.e. "noe-reversible", which should be applied in actual calculation of laytime to the best advantage of the shipowners.
For the reader's information, the author would like to briefly mention that "once on demurrage, always on demurrage" should be inserted into the charterparty instead of "as per like day". Furthermore, "all working time saved" should be applied rather than "all time saved". As a matter of fact, the use of the above terms in the clause has become an accepted common practice to safeguard owners' interest.
Chapter IV

How The Chartered Voyages Can Be Performed More Smoothly
4.1. Unambiguous Wording

During the initial stage of the negotiation process, it often happens that due to the shortage of time or some other reasons without contemplation of contracting parties, the wording of a contract is left incomplete or rather ambiguous. The phenomenon may not be recognized until the time has come when both parties settle down to calculate laytime against a statement of facts based on the clauses formerly drawn up. Modern communication is used forthwith between company and general company in order to obtain original implications of the relevant clauses. Even so, the idea carried by the contract negotiator may not fully correspond to what the opposite side means. Thus, there exists the likelihood of potential disputes.

All this would be avoided if previous care were taken to make sure that clauses have been laid down in a most complete and explicit way. The author has already stressed in the principle of wording the importance of having clearly-worded clauses. But why the author is tempted to open the topic and emphasize once more is because of the fact that the making of clauses is regarded as such that it stands for the pre-requisite for the smooth operation of a contemplated charter voyage.

Needless to say, making a clause of that sort in order to ensure the efficient and successful fulfillment of responsibilities without leaving loopholes is not easy. It definitely requires substantial knowledge, extensive experience and practical know-how in the chartering business. It takes time and effort. Anyhow, personnel engaged in the chartering business are expected to be well equipped with clause-explicit-consciousness among other things. With that in mind, they
are more likely to have clearly worded clauses laid down in such a way that they can be easily understood and executed not only by their subordinates doing the laytime calculation, but also, more importantly, by masters of chartered ships to the benefit of both contracting parties.

The author might add that this applies to other aspects of charterparty as well.
4.2. Recommendation to present organizational chart

The contents under this heading might go a bit out of the scope of the project, however, as matters related to the laytime and its allied operation are an important part of chartering business, it is deemed necessary to make a few remarks about the present COSCO chartering organizational chart, which, whether reasonably established in a proper manner or not, exerts a great impact on the day-to-day chartering operation due to the reason that formal information should be communicated through well-ordered channels and the effectiveness of structural chart has much to do with efficient work being carried out; it helps people resolve problems and evaluate performance.

As illustrated in Diagram 1.2, traditionally, the process of negotiation of contracts has been carried out between charterers and the shipping department in the Head Office of COSCO or alternatively, between shipbrokers and the shipping department and execution of charterparties is carried out by such shipping companies as COSCO Guangzhou, COSCO Shanghai, COSCO Tianjin, COSCO Dalian, COSCO Qingdao respectively. At that state, all communication regarding the operation of chartered voyages is sometimes directly between charterers or brokers and the respective company or through the shipping department in the Head Office. In most cases, freight or demurrage from charterers or brokers is remitted to the financial department of COSCO which in turn puts the received freight or demurrage on the account of the company in question.

In the author's opinion, such a functional chart as it exists presently may not be completely in consistency with the principle of modern management characterized by the con-
cept of what is called centralized policy-making and de-centralized administration. In other words, the managing responsibility should be delegated to the body directly involved in the operation at a relatively lower level while the leading body above fulfills the function of making the strategic plans in addition to coordinating the overall work among other things. If so, the body entrusted with managing responsibilities will be well aware of the full tasks that ought to be carried out, will make decisions on the priorities best suited, and will operate properly with adequate first-hand information for maintaining operational efficiency.

Coming back to the present chart, there are a number of disadvantages roughly stated as follows:

1. Because there is a only centralized shipping department only dealing with negotiation of contracts, that naturally gives operation personnel in the individual company down below less of an incentive to explore the potential market. Since they are not delegated with managing responsibilities, they are not well motivated, but dependant to great extent on the key negotiators at the top, as a result, human resources cannot be brought into full play. and exploration of market will be limited.

2. There is no direct communication between persons involved in the contract making and masters working on board the ships. The modern communication flow requires fewer links in a chain for transferring information, making it quicker and easier for persons in control to have as much as possible knowledge of what is going on. Many transactions may ultimately result in slowing down information flow to the disadvantage of the efficiency of the organization.
3. Contracting persons not personally involved in the daily operation may not follow up on the exact performance of chartered ships and similarly, may not have much practical experience regarding all detailed aspects of chartered voyage. As the chartering business is a very practical one, experience drawn from the everyday operation can be of great help and value to those heavily engaged in the negotiation.

4. As in most cases, freight or fire or demurrage are remitted directly to the financial department in the Head Office, and the financial department in the individual company may not immediately know whether payment has actually been made or not because of the internal transactions. In such circumstances, the acquisition of this information is vital.

5. Substantial communication has been involved in the internal organization; even minor adjustment to operation is reported to the the Head Office and operation persons are informed of any decision taken by the Head Office in order to take consistent action. If the cost of communication is calculated on an annual basis, the amount in monetary terms must be huge.

From what has been stated above, it may be easily concluded that the organizational chart has some of the potential disadvantages not favourable for the efficient operation of such a big fleet. But the question is how this present chart can be converted in such a way that is best suitable for overall efficient function, thus eliminating the disadvantages mentioned earlier.

It is at this stage that the author intends to recommend the
chart illustrated in Diagram 3. In accordance with the suggested chart, the boxes for the individual company have been placed in the front, the purpose of which is to establish direct dealings with their counterparts rather than merely receive instructions from above. The shipping department of the Head Office the function of which is to, first of all, establish a reporting system, then co-ordinate and adjust the overall chartering activities is placed behind. A financial reporting system should also be established between individual company and the Financial Department, whose main function is to supervise the financial performance regarding the freight, hire and demurrage rather than directly receive payment from charterers or brokers. Such a recommended chart carries more advantages in the author’s judgement, namely:

1. As more responsibilities are delegated, operation persons can be more motivated and generated to be engaged in the chartering business.

2. Actual contracting persons directly involved in the day-to-day operations can be well equipped with updated information regarding ships’ performance, which is of value to them especially at the stage of negotiation.

3. As managing responsibilities are broadly spread, there is a high possibility that new potential markets can be explored. Further, business links with the outside can be established, and as a result, the scope of business can widened.

4. Payment transactions can be well evaluated by the financial department in each company.

5. The individual company will be in a better and stronger
position to claim demurrage due in case of late payment by the charterers.

6. Less communication is needed as operation persons can reach decisions decide on their own in most cases.

7. The overall managing capability can be enhanced to the benefit of the organization.
Managing Director

Financial Dept.

Shipping Dept.

Technical Dept.

COSCO Guangzhou  COSCO Shanghai  COSCO Tianjin  COSCO Dalian  COSCO Qingdao

Present COSCO Chartersing Organization Chart

Diagram 1.
Chart of Business Transaction

Diagram 2.
Suggested Chart of Business Transaction

Diagram 3.
4.3. Masters' knowledge

It is quite essential that Masters of the chartered ship's are required to understand as well as possible a variety of different definitions used in the contracts: how laytime should start, where the vessel should arrive, when NOR should be tendered, how much cargo should be loaded/discharged onto/from the vessel, to name a few. These are the minimum requirements for the Masters. This is, of course, far from being enough. In order to obtain smooth performance of the contemplated voyage under charterparty, the following steps should be taken:

1. The shipowners should make sure that the Master is fully aware of the nature of the voyage and the contents of the contract, more essentially, the legal implications of the important clauses. Usually, the Master should be provided with a contract for the specific voyage and relevant documents well in advance of the intended voyage so that the Master can scrutinize all the essential parts of the contract.

2. If possible, experienced chartering people should go on board the ship to explain to the Master in detail what implications the relevant clauses contain and what consequences the shipowners are expected to face if some obligations on the part of owners fail to be met.

3. If the chartered vessel starts her voyage far away from her home port, modern communication channels should be kept open for the company to pass necessary information to the Master so as to have appropriate execution of the obligations stated in charterparty.
4. In the long run, constant short term training programs related to the chartering business should be conducted and be made available to the Masters. Such programs are geared to provide as systematic information and complete know-how as possible, aiming at enhancing performing level as a whole in this particular field. Due to the fact that the Masters play a key role in the execution of the voyages, the aspect of their well-developed knowledge, high-standard performance and solid training background should be given adequate consideration.

All the efforts made in the area may, to a great extent, help the Masters act properly to adapt to the ever changing circumstances and find themselves in a better position to tackle uncertainties.

On the contrary, if the Masters do not have adequate comprehension of important clauses, due to the lack of training and attention, and if they do not possess enough experience gained through long years of practice, both of which are necessary for the appropriate response to the various situation, they will end up being at a loss for what ought to be done and may, quite likely, make the wrong decision, ultimately resulting in substantially financial loss to the shipowners. The following case best illustrates the author's statement.


The Maratha Envoy was chartered on the voyage for shipment of grain from the Great Lakes to Europe. It was clearly stipulated in the charterparty that laytime was to run "whether in berth or not", after the vessels' arrival. It simply meant that unless the vessel became an "arrived ship" at the
position in the port, laytime was not expected to run. It happened that the vessel was directed to Brake and had to wait at the Weser Light, 25 miles from the mouth of the River Weser. The interesting point here is that the vessel made two voyages into the port and it was only after the second voyage (having returned to her anchorage at the Weser Light) that the Master tendered NOR. (He ought to have, first of all, anchored at Weser Light, asking the agent for the early arrangement of ship's entrance into the port area and then as soon as the vessel arrived at the port area, he should have tendered the NOR if she was actually ready for the discharging). Discharge commenced some 18 days later. Disputes arose. Whether demurrage earned by the owners or despatch paid to the charterers depended on when laytime should be considered to start to count. The House of Lords held that she was not an arrived ship until she was at a position in the port where she was at the effective disposition of the charterers. This could not be said of her at the Weser Light and her voyages into the port before NOR was given could be discounted, since they were not voyages which terminated in the port as evidenced by the tendering of NOR.

In this case, the Master did not seem to be aware of when and where NOR should be tendered. Moreover, instead of seeking the necessary information from ship's agent in order to have early entrance, the Master made two useless voyages without giving the NOR, consequently, causing 18 days' loss for the shipowners, which ought to have been counted as a part of laytime if the Master had acted properly.
4.4. Keeping a statement of fact

The statement of fact or time sheet is a kind of form to be filled in to express ship's performance in port in relation to information of the days and hours worked, stoppages, exceptions and their duration, when the vessel arrives, when laytime starts and when the vessel is on demurrage.

Generally speaking, it is worked out by the charterers' agent, duly signed by the Masters and then submitted to the shipowners or charterers for calculation of either demurrage or despatch, if any.

Due to the fact that it is normally done by the charterers' agent, it cannot be neglected that agents as such are naturally more inclined to their principles, especially when it comes to some controversial points, so to speak. In some cases, they might state that some stoppages during operation exist, which ultimately leads to the discount of some time from laytime, or they might mistakenly put the beginning of shifting time, loading/discharging time, etc.

In view of what has been stated above, it is vital for ship officers to keep a statement of fact, in which ships movements during the entire period in port are accurately recorded. Someone may argue that it is overlapping since the charterers' agents do the same. In the author's point of view, it is not quite so; on the contrary, accurate and detailed statement of fact can serve as a basic ground and beneficial source to the persons doing the calculation of laytime as they can make comparisons between the two which represent quite different interest, and differences, if any, can be easily picked up and studied. Thus, the interest of the owners can be to some extent protected through reason-
able argument.

Therefore, any voyage chartered ship should be required to keep an accurate and detailed statement of fact during loading and discharge operations. Attention should be stressed on some disputable points, taking into account the time of the arrival of the ship, the time for shifting, loading/or discharging stoppage because of the rain or breakdown of machinery among other things, and the time of completion of loading or discharging. What is more, such a statement, after having been made, should be as well promptly handed over to the charterers' agents for confirmation by signature. Thereafter it should be sent to the owners as an important document relevant to that particular voyage.
4.5. Checking the statement of facts

For the chartering personnel, it is extremely important to know how to check seriously the statement of facts in daily work once it is handed over to the office as it is only document from which demurrage or despatch can be calculated.

In checking, the following elements need to be duly noticed:

1. The chartering personnel should be quite familiar with all the clauses in charterparty in relation to the calculation of laytime.

2. The chartering personnel should pay due attention to the relevant contents in the statement of facts

   A. Tons of cargo------this can determine laytime allowed in accordance with loading/discharging rate.

   B. Gross metric/long tons------It is necessary to confirm that figures stated in the statement of fact are the same as those either in manifest or B/L.

   C. BMFS, cubic feet hoppus and cubic meters------It is similarly important to know the relations among them when dealing with, for example, a shipment of wood from South East Asia so that laytime can be calculated according to various units, as the case may be.

5. The number of hatches is another important ground for the calculation of laytime allowed, if so stated in the char-
terparty. There are a number of clauses such as "based on five hatches", "based on gangs", "every actually workable hatch". It is essential to check that the number of hatches has been correctly stated in the statement of fact.

4. Checking waiting time

After the vessel has arrived at its loading/discharge port, she might be asked to wait for tide, pilot, lightening, joint inspection, fumigation of her cargo hold, berthing, fine weather etc. In this case, the chartering personnel should clarify the responsibility of parties concerned.

A. Awaiting tide entry/lightening.

A heavily loaded vessel might spend some time at anchorage, waiting for high tide before entry. Sometimes lightening is needed. Time incurred in these two cases has to be examined in conjunction firstly with clauses regarding arrival of the ship such as "whether in berth or not", "whether in port or not", "whether in free pratique or not", and secondly, clauses related to "safe port, always afloat", and thirdly, clauses with reference to lightening.

If a vessel cannot reach the port to discharge upon her arrival because of the limitation of the tide, and has to wait at anchorage for the high tide, commencement of laytime depends upon conditions of the tender of the NOR and the stipulation of clauses like "WIBON","WIPON","WIFPON" into the charter party.

As to the lightening, the ship's arrival at the port is the most relevant criterion. If the vessel is considered as an "arrived ship", and the charter party provides the term "WI-
BON", "WIPON", and "safe port, always afloat", laytime must begin and continue to run even if she is lightened.

Normally it should be decided whether laytime begins at the lightening place if the ship has to lighten in order to reach the place where the rest of the cargo has to be discharged. If so, whether it continues or is interrupted while the ship is moving from the lightening place to the final discharging port should be agreed upon and checked accordingly.

B. Awaiting cargo, stevedores, etc.

If it is stated in the statement of fact that time was lost because of waiting for cargo, stevedores, normally, it should be the responsibility of the other party, and therefore, it should be considered as a part of laytime.

C. Fumigation

Attention should also be directed towards time spent in waiting for fumigation, when fumigation starts and ends either before loading or after loading in order to clarify the responsibility of the different parties.

5. Proceeding, Shifting, Moving.

Proceeding, shifting and moving are three different concepts often stated in the statement of fact.

Proceeding is an inseparable part of the whole sea-going voyage, and owners should be responsible for time spent in this regard.
Shifting is a shift from one berth/buoy to another berth/buoy, and which party should be responsible for that shifting time depends on what is stipulated in the charterparty.

Moving is regarded as the part of the loading or discharging operation as the vessel moves in one berth forward and backward for the purpose of operation.


Checking Sundays, and Holidays during the loading and discharging operation appears to be quite essential. Different countries have various kinds of holidays. The purpose of such checking is to see whether or not such holidays have been mistakenly put to deduct some time from laytime allowed.

7. Checking what has happened during operation.

A. Checking in detail the duration of stoppage of operation due to rain, strong wind, heavy fog, etc.

B. Checking in detail the stoppage of work on account of breakdown of equipment, lightening facilities, or other incidents.

C. Checking whether due notice is given to first opening and last closing time, and whether or not it is counted as a part of laytime depends on charterparty clauses.

8. Checking remarks.

It is necessary to check whether there are remarks such as "under protest", "in dispute" or "subject to owners' appro-
val", etc. If there are such remarks, further investigation should be made in order to clarify the matter.

Now, much discussion has been made on checking, but what materials should chartering personnel have access to in checking? Normally, they need charterparty clauses, a manifest or B/L, statement of facts made by agent, and one by the Master. Some reference books concerning holiday stipulation in different countries are also needed. Last but not least, never forget to contact the Master of the chartered ship whenever necessary.
4.6. Working list

So long as the clauses related to the arrival of the ship, laytime for loading/discharging of cargo, demurrage and despatch etc. are concerned, lots of details needed to be taken into consideration during the entire negotiation process of the contract for the contemplated voyages. It is true that one cannot possibly remember all of these by heart and has all necessary ones put in the contract without overlooking some rather important points. Besides, as the situation regarding the port operation, port area, ship, and cargo, etc. under each contract must vary, so must the contents in a corresponding manner. So, there is no fixed pattern, so to speak, adaptable to all circumstances. One must be fully aware of ever changing elements. But how can one successfully adapt oneself to that phenomenon and make sure that nothing is missing in that rather complicated matter?

As an effective approach, the author recommends that chartering persons should be well equipped with a sort of working list gradually built up based on the day-to-day operation and supplemented with new experience wherever possible. A list as such usually contains nothing else but what are considered as essential points ranging from actual wording of contract to the information about the port as a whole, which ought to be dealt with with adequate care.

As the focus of this paper is on the laytime and related matters, the author would consider the following list of elements as crucial:

1. Contents of clauses

A. arrived ship
B. conditions for tendering NOR

-----whether NOR in writing to be tendered at charterer's agent/shippers'/consignees' office, whether by cable
-----whether entered "free pratique".
-----whether in writing entered "custom house".
-----whether passed certain specific survey.
-----whether holds are to be inspected.

C. time for the NOR to be tendered

D. calculation of laytime

-----when laytime should begin to count
-----whether time lost in waiting for berth is to be counted as laytime or not
-----whether time lost in shifting in port is to be counted as laytime or not
-----whether time lost waiting for barges is to be counted or not
-----whether time spent in lightening is to be counted or not
-----whether time lost in seaworthy trimming is to be counted or not
-----whether time lost in waiting for tide is to be counted or not
-----whether half Saturday or half day before holidays is to be counted as laytime or not, if worked.
-----whether time lost due to the scarcity of wagons or labour is to be counted or not
-----whether Sundays, and Holidays are excluded unless used or even if used
-----whether time lost in congestion of the port is to be counted or not

E. rate of loading/discharge of cargo

F. if cargo in bulk, what percent of the cargo more or less,
whether in the owner's option or the charterers' option

G. demurrage and despatch money

-----the money of account and the money of payment

H. if delay in payment of demurrage, how long is a period of

grace before interest is imposed on the unpaid demurrage

and the agreed interest rate

I. if the vessel is ordered to load/discharge cargo at more

than one port, whether further NOR is required, and time

incurred thereof

J. weather conditions

K. other related matters

2. Information about the port

A. efficiency of the port, whether congestion often occurs

B. geographic area of the port, limits of the port

C. tide condition of the port

D. port practices

E. port regulation

F. necessary documentation of the port

G. other related matters.
4.7. Knowledge of trade and law

It is particularly essential for the chartering personnel to acquire as much as possible knowledge in the field of trade and relevant law. Of course, there is no limit for that. The more that is acquired, the more fruitful it will be. When we are talking about trade, we mean:

1. geographic boundaries of port areas.
2. customary practice of ports
3. congestion of ports
4. tide conditions of ports
5. weather conditions
6. ship herself
7. other related aspects.

Just take the following example. If owners know a certain port is heavily congested, they should insist on the insertion of terms like WIBON, WIPON, time lost waiting for berth to count, berth reachable on arrival, or have a rider clause making clear the intention to count as laytime for the delay such as: "in the event of congestion or other reasons preventing the vessel from berth, time shall count for such delay. The vessel can tender NOR by cable." They will certainly take into consideration the unfavorable consequence when accepting such exception clauses to cease laytime counting as "obstruction" (the Centrocon Strike Clause in the Amstel Molen 1961) or "delay beyond the charterers' control" (the Laura Prima 1982).

When it comes to the law cases, the chartering people should study carefully important and conflicting cases as well, so as to enrich the chartering experience.

In this regard, the author would like to mention again the
In this typical case, there is no waiting area indeed within the port of Brake other than the Weser Lightship anchorage, which is a place outside the legal port limit as conclusively determined in a German Court case in 1962. Therefore, for vessels knowingly trading in the Weser Ports (which comprises the four ports of Bremerhaven, Nordenham, Brake and Bremen), it is no use stipulating "WIBON", but instead, it may have a so called tailor-made Weser Lightship clause reading as follows:

"If vessel is ordered to anchor at Weser Lightship by Port Authorities, since a vacant berth is not available, she may tender NOR upon arriving at anchorage near Weser Lightship, as if she would have arrived at her final loading/discharging port. Steaming time for shifting from Weser Lightship to final discharging port, however, are not to count."

Unfortunately in the case of the Maratha Envoy, this tailor-made clause was not included.

It is obvious that the knowledge of related laws and trade plus corresponding clause stipulated play a key role. Had that clause regarding arrival of ship been designed in a similar way, the owners would not have suffered financially. "The Maratha Envoy (1877)" is only one of the cases. Similar incidents things are likely to occur if adequate knowledge is not obtained.

Certain knowledge can be obtained in three ways:

1. Practical chartering work
Chartering people should note down bit by bit the important
elements whenever necessary and if possible contact the bro-
er or agents for the necessary information.

2. Related publication

They should be provided with related shipping magazines with
up-to-date information.

3. On board familiarization.

They should be given frequent chances to be on board sailing
ships so that they can familiarize themselves with the prac-
tical situation in ports where vessels are trading.
4.8. Close cooperation with the chartered ship

One of the fundamental undertakings for the shipowners is to establish a close relation between the Head Office and the vessel. In a chartering business, things are always changing and uncertainties may ultimately arise. Accordingly, many problems may be very hard to tackle if there is no close contact between the Masters and the Head Office. Therefore, sound communication channel is a very basic means whereby quick transmission of instruction and feedback can be established.

Usually, it is the case that while the charterparty is being completed, the would-be chartered vessel is still somewhere on the high sea. However, the Master of the ship should be duly informed of the important clauses in the charterparty and relevant instruction necessary to carry out the voyage. All information transmitted through modern communication channels should be precise, understandable and simple.

While the vessel happens to be in port before she starts her chartered voyage, the chartering personnel should go on board the ship, explaining essential matter in detail to the Master to make sure that information is actually received, and discussing potential problems and ways of tackling them with the Master.

Such an approach, once adopted, may to a great extent enhance efficiency of operation.

Once the voyage starts, unexpected problems of different nature may arise, and the modern communication channel should therefore always be kept open for the transmission of
the office's instruction and of feedback from the ship in order to solve problems successfully once they arise.

In chartering operations, much importance should be given to the cooperation between shoreside chartering personnel and the Master of the chartered vessel. Both parties should act as one with the ultimate aim of achieving smooth operations.
Chapter V

Conclusion
Conclusion

To conclude the project, the author wishes to emphasize that firstly, it is essential to call for study at maximum depth and a great degree of attention on the part of people within the scope of the chartering business due to the fact that laytime wording, if not designed and interpreted properly, can give rise to many disputes, resulting in substantial financial losses to the shipowners. Consequently, they must be equipped with fairly good, up-to-date knowledge in this respect in order to be certain about all the relevant terms and the consequences thereof. In this study, the author has found that many disputes, if dealt with cautiously and properly, can be avoidable to the benefits of both contracting parties. This phenomenon leads the author to think that men’s skill and knowledge are the prerequisites needed to prevent the disputes happening and mistakes being repeated.

Secondly, it’s not an exaggeration to say that clearly, explicitly worded laytime clauses lay a solid foundation for smooth and efficient operation, and this can apply to other performance as well under charterparty.

Finally, modern communication channels in well ordered organization should be such that they provide favourable conditions for the quick flow of information, not only between ships and shore within the organization itself, but also among owners, owners’ agent, charterers, charterers’ agent, shippers, etc.

If these three important elements in addition to a well organized fleet are given due attention, there will be fewer disputes and more efficiency accordingly.
It is the author’s sincere wish that this project can serve as useful reference material in specific laytime matters for shipmasters as well as for those actively engaged in the day-to-day chartering business in COSCO.
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