

## **LP 09/2025 Analysis of Recent Hot Issues in Transportation Contracts**

The Association has recently received enquiries regarding two major issues: the USTR's April 17, 2025, Section 301 investigations on China's maritime, logistics, and shipbuilding sectors, and the EU Fuel EU Maritime Regulation effective January 1, 2025. These policies bring potential challenges to transport contracts. This article introduces related legal risks based on real cases. For more background information, media reports and online resources can be referred to.

### **I. Section 301 Investigations**

The USTR announced service fees on eligible Chinese vessel operators, vessel owners, and Chinese-built vessels on April 17, with further hearings to come.

In this regard, the primary concern of the charterers and the shipowners is probably who to pay the fees under the charter party.

Under a voyage charter party, it is difficult for shipowners to transfer this cost to charterers, unless otherwise agreed, for example as in Article 12 of ASBATANKVOY "The Charterer shall also pay... and any unusual taxes, assessments and governmental charges which are not presently in effect, but which may be imposed in the future on the Vessel or freight."

Under a time charter party, the following standard clauses are noteworthy (taking NYPE 93 as an example):

Clause 7. Charterers to Provide: The Charterers, while the Vessel is on hire, shall provide and pay for... port charges...

Clause 37. Taxes: Charterers to pay all local, State, National taxes and/or dues assessed on the Vessel or the Owners resulting from the Charterers' orders herein, whether assessed during or after the currency of this Charter Party including any taxes and/or dues on cargo and/or freights and/or sub - freights and/or hire (excluding taxes levied by the country of the flag of the Vessel or the Owners).

It is generally believed that this service fee may be regarded as "port charges" and should be paid by the charterers under the time charter party. Article 37 of the NYPE 93 form also supports the shipowners' claim for reimbursement. However, the tax clauses in practice vary widely, and some even provide that all taxes shall be borne by the shipowner, which may make it difficult for shipowners to claim this cost from charterers. Therefore, in the context

of the Section 301 investigations, it is recommended that both parties of the charter party pay attention to the tax clauses.

It is further discussed that whether the party to pay the fees has the right to terminate or modify the contract. Generally, it is difficult to terminate a contract just because of the additional costs. However, the force majeure clause, the sanction clause, and the change of law clause in the contract should be considered.

The force majeure clause provides remedies for the affected party under agreed circumstances; the sanction clause might be invoked if the payment of service fees falls within the definition of sanctions in the contract; the change of law clause allows modification and termination of contract in case of major legal changes – all need to be evaluated on a case-by-case basis depending on the specific wording.

## **II. FuelEU Maritime**

Most shipowners have adopted a clause in charter parties to specifically address the FuelEU regulations, and some have used Pooling to share their compliance balances. However, the wording of the FuelEU clauses varies greatly. The following are some problems encountered in practice.

To address different decarbonization initiatives, at least three clauses should be included – the ETS clause, the CII clause, and the FuelEU clause. ETS sets requirements on emissions (one allowance giving the right to emit one tonne of CO<sub>2</sub> eq), CII on emission intensity (gCO<sub>2</sub>/(dwt.nmile)), and FuelEU on well-to-wake greenhouse gas emission intensity (GHG emissions per megajoule (MJ)). Only the CII involves ratings. BIMCO has published three different clauses to address these regulations. However, the Association has seen contracts where these clauses were confused, leading to disputes in following calculation. Therefore, it is recommended that both parties carefully review the clauses and draft each clause to meet requirements of different regulations.

Fuel quality can be crucial to FuelEU compliance. Most FuelEU clauses provide that the charterer has the right to use different fuels including biofuels, to meet the requirements. Shipowners are advised to check the fuel quality clauses in the charter party to ensure that agreements are made on all types of fuels.

Calculation of the FuelEU penalty can be another problem. For shipowners, the calculation is based on the energy used onboard. However, the charter party can agree otherwise, like to

calculate penalty based on a specific fuel that the ship has never used within the scope of FuelEU Maritime.

*The above content is for Members' reference only. The Association will follow up on the development of the above issues and provide updates where necessary.*