The Baltic and International Maritime Council (BIMCO) Cargo Fumigation clause (the BIMCO clause), introduced on 15 September 2015, provides clear allocation as to the responsibilities, risks and costs arising from cargo fumigation operations on board ships. The introduction of the BIMCO clause is particularly welcomed since no international regulation or model clause has, until now, addressed these issues. A further reason to welcome the introduction of the BIMCO clause is its adoption of the non-binding recommendations of the International Maritime Organization (IMO), which set out the best practices and procedures for safe cargo fumigation operations. This can mitigate the risk of fire and explosion that accompany cargo fumigation, such as the explosion in on board the MV Theofylaktos at Rio Grande Outer Anchorage, Brazil, in December 2012.

The BIMCO clause is tailored to the dry bulk sector (both bagged and free-flowing agricultural cargoes) and is confined to issues of cargo fumigation only. It can be adapted for both voyage and time charter-parties.

Most charterparties do not specifically address the risks and costs arising from cargo fumigation operations. It is unsurprising, therefore, that from time to time, following cargo fumigation, the charterer and owner are forced to confront the issue as to who is responsible for the time, cost and other liabilities that arise. A new BIMCO clause has thankfully clarified the issue.

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BIMCO clause
The Baltic and International Maritime Council (BIMCO) Cargo Fumigation clause (the BIMCO clause), introduced on 15 September 2015, provides clear allocation as to the responsibilities, risks and costs arising from cargo fumigation operations on board ships.

The onus is on the charterer to declare to the owner whether it wishes to exercise its option to fumigate the cargo. The fumigation may be carried out in port or while the ship is in transit. The cargo fumigation operations shall be performed pursuant to the IMO Recommendations. In the event that local regulations are in conflict with the IMO Recommendations, the BIMCO Special Circular suggests that the IMO Recommendations should take precedence, except where the local regulations apply a stricter regime.

Throughout the fumigation operations, the master’s right to intervene where he considers that the vessel’s safety...
The charterer is responsible for the removal and disposal of fumigant remains, residues and fumigation equipment.

**Loss of time**

Under paragraph (e), loss of time resulting from cargo fumigation would typically be for the charterer’s account. Paragraph (e)(i) is tailored for time charter parties whilst paragraph (e) (ii) applies to voyage charter parties.

**Time charterparty:**

*(i) All time lost to the Owners in connection with or as a result of fumigation performed in accordance with sub-clause (a) shall be for Charterers’ account and the vessel shall not be off-hire.*

According to paragraph (e)(i), the ship remains on hire during fumigation operations.

**Voyage charterparty:**

*(ii) All time lost to the Owners in connection with or as a result of fumigation performed in accordance with sub-clause (a) prior to commencement of laytime and/or after cessation of laytime or time on demurrage shall be considered as detention and shall be compensated by Charterers at the demurrage rate stipulated in the Charter Party. Any unused laytime shall be deducted from such detention, in which case any despatch payable shall be reduced accordingly.*

*Sub-clauses (i) and (ii) shall apply to time charter parties and voyage charter parties, respectively.*

In the voyage charterparty scenario, paragraph (e)(ii) provides that if fumigation is performed prior to the commencement and/or after cessation of laytime or time on demurrage, time lost to the owner is to be treated as detention and compensated for by the charterer at the applicable demurrage rate.
Evidence as to the condition of cargo

(f) The exercise by the Charterers of the option to fumigate the cargo under this Clause shall not be construed as evidence as to the condition of the cargo at the time of shipment, and the Master or the Owners are not to clause bills of lading by reason of fumigation only.

By this clause, the owner agrees not to clause bills of lading simply by reason of the fact that fumigation is to be/has been carried out.

Conflict of provisions

(g) In the event of a conflict between the provisions of this Clause and any implied or express provision of the Charter Party, this Clause shall prevail to the extent of such conflict, but no further.

This provision prevents conflicts with other provisions within the subject charterparty, by giving precedence to the BIMCO clause.

Conclusion

Returning to the scenario on the previous page, it would seem that, if the BIMCO clause were incorporated into the (voyage) charterparty, the issue may be resolved as follows:

- Five days are allowed for loading (laytime)
- Four days and four hours are used, i.e. 20 hours saved (despatch)
- 12 hours are used for fumigation

The 12 hours for fumigation will ‘count’ and therefore the despatch (payable by the owner to the charterer, depending on the terms of the charter) will be reduced from 20 hours to only 8 hours.

The adoption of the BIMCO clause is to be welcomed. Its adoption will bring about greater certainty in the allocation of risks and obligations between charterers and owners in the hope of reducing the number of disputes that arise from fumigation operations.