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Sugar rush: Laytime and demurrage under sugar contract rules

Sugar's rally shows no sign of souring. In early August, we wrote about the impact of the El Niño phenomenon on the upcoming sugar harvest.¹ Since then, extreme heat and low rainfall due to climate change have also contributed to low yields in Asia.² For example, India's sugar production is likely to fall by 8% this season and, with sugar also being diverted for ethanol production, the government has introduced an export ban.³ Global inventories are at their lowest level in 13 years, leaving the world craving sugar supplies from its top producer: Brazil⁴.

However, logistics are being stretched and logjams are afflicting Brazilian ports. We offer guidance on the demurrage provisions in the Refined Sugar Association Rules and Regulations (the "**RSA Rules**"),⁵ the Sugar Association of London Rules and Regulations (the "**SAL Rules**"),⁶ and the ICE Futures U.S. Inc. Sugar No. 11 Rules (the "**No. 11 Rules**")⁷ as demurrage is of the main ways this congestion is likely to impact traders buying and selling Brazilian crop.

What are laytime and demurrage?

Laytime is the time allowed for loading or discharging the cargo. Demurrage signifies a time-bound expense (akin to liquidated damages) that kicks in when the agreed upon laytime for loading or discharging the goods exceeds that which was agreed under the contract. Generally, the seller is liable for demurrage in an FOB sale whereas the buyer is liable for demurrage in a CIF/CFR sale. This

reflects the corresponding liability that the buyer/seller will have to shipowners under the associated charterparty.

Laytime will usually commence a specified number of hours either after a valid notice of readiness (NOR) has been tendered or on the commencement of loading or discharging.

There is no general right to demurrage or to rely on provisions governing laytime under English law. These rights and obligations therefore form part of the contractual regimes between the parties, and it is up to them which rules, if any, they incorporate. In our previous article, we touched on the importance of identifying which industry terms are incorporated into the contract with regards to *force majeure*, and those comments apply equally to the laytime and demurrage regime.⁸

Analysis of laytime and demurrage provisions

We consider first the NOR requirements under each of the industry rules (as tender of NOR is often the trigger for the commencement of laytime), and then the specific terms relating to laytime and demurrage.

NOR requirements

The No. 11 Rules are the most prescriptive in relation to NOR requirements, and state under Rule 11.05 that the receiver shall nominate written details (such as the name, vessel characteristics, estimated time of arrival, total quantity to be loaded and demurrage rates) prior to 11:00am New York time at least 7 calendar days before the expected readiness

¹ [cif-weekly-40.pdf \(shlegal.com\)](#)

² [Financial Times, 'Extreme weather hits lovers of sweet treats in the pocket' \(30 September 2023\)](#); [Financial Times, 'Sugar: rain pain ensure price will cane it for a while' \(9 November 2023\)](#)

³ [Reuters, 'India braces for 8% sugar output dip as cane crop suffers-trade body' \(1 November 2023\)](#)

⁴ [Bloomberg, 'A World Desperate for Sugar Sees It Pile Up in Brazilian Ports' \(1 November 2023\)](#)

⁵ Effective 2 March 2021.

⁶ Effective 31 July 2019.

⁷ Effective 26 April 2021.

⁸ See FN 1.

of the vessel at the loading port.⁹ Where an NOR is presented earlier than 7 days after the receiver has provided its nomination in writing, the NOR will become effective and laytime will commence from the beginning of the first local working period after expiry of the notice period.¹⁰ Where the NOR is tendered after 7 days, the NOR will become effective and laytime will commence from the beginning of the next local working period.¹¹

The RSA Rules do not stipulate nomination or NOR requirements but (only in the case of FAS, FOB and FOB and stowed contracts) state that where the seller requests details of the vessel's demurrage rate, the buyer must provide these details before tendering the NOR.¹²

Similarly, the SAL Rules for FOB and stowed and FAS contracts provide that the buyer must give notice of the vessel name and ETA, but also that further details including the demurrage rate may be requested by the seller and, if so, provided by the buyer prior to tendering NOR.¹³

In addition, the SAL Rules read: "*Unless otherwise stated in the Contract laytime at discharge shall commence in accordance with the Sugar Charter-party 1999*"¹⁴. An identical provision applies in relation to CIFFO and CFRFO contracts.¹⁵

The Sugar Charter-Party 1999 has a standard NOR provision requiring NOR to be tendered to agents in ordinary office hours, Saturday afternoon, Sundays and holidays excepted whether in berth or not.¹⁶



Laytime calculations and demurrage rates

Rule 11.08 of the No. 11 Rules governs the laytime provisions and stipulates that once NOR becomes effective (as per rule 11.05 above), the vessel shall be berthed (or anchored) and the seller shall commence loading. Where port congestion prevents the vessel from berthing or anchoring, the berthing priority will be determined based on an effective NOR.¹⁷

Once the laytime for the vessel has expired, the deliverer is obliged to pay a daily fee to the receiver in addition to demurrage, which constitutes a percentage of the demurrage rate under the charterparty whilst the vessel remains on demurrage. The percentages are applied as follows:

- the 1st period of 15 days: 0% of the daily demurrage rate;
- the 2nd period of 15 days: 50% of the daily demurrage rate; and
- for all days thereafter: 100% of the daily demurrage rate.¹⁸

The No. 11 Rules also provide for a pro-rated laytime calculation where there is more than one shipper, and there is no obvious delay attributable to one shipper and not the other. Where this is the case, the laytime calculation is shared on a pro-rated basis in proportion to the tonnage shipped by each vessel as a fraction of the overall tonnage. However, where it can be shown that one or more parties was more responsible for the loss of time than others, then those parties shall be responsible for costs arising out of the delay. This will only happen where there is reliable evidence (such as reference to the official Statement of Facts) that certain shippers were disproportionately responsible for the delay.¹⁹

Unlike the No.11 Rules, neither the SAL Rules nor the RSA Rules allow for pro-rating of laytime or demurrage. As above, the SAL Rules refer to the Sugar Charter-Party 1999 under which laytime is determined by an average rate agreed between the parties "*based on a minimum of four hatches being available*".²⁰ Under the Sugar Charter-Party 1999, laytime is non-reversible between loading and discharge ports, save for at the charterer's option.

The RSA Rules give similarly wide contractual freedom to the parties and do not prescribe terms in relation to laytime or demurrage.

⁹ Rule 11.05(a)(i)

¹⁰ Rule 11.05(a)(iii)

¹¹ Rule 11.05(a)(iv)

¹² Rule 7(i)

¹³ Rule 210(b)

¹⁴ Rule 210(e)

¹⁵ Rule 116

¹⁶ Clause 19

¹⁷ Rule 11.08(2)(a)(ii)

¹⁸ Rule 11.08(2)(a)(iv)

¹⁹ Ibid.

²⁰ Clauses 18 and 19

Implications for traders

Each set of industry terms provide a unique lens through which trading parties manage the implications of delays in sugar cargo operations. Parties should consider carefully the laytime and demurrage provisions incorporated into their contracts, including how these align (or not) with the provisions in the associated charterparty and the sale contract chain, as the financial implications of each set of rules may differ, and this may impact pricing strategies, risk management, and decision making.

Contact us

We hope that you find this update both useful and interesting. If you have any comments or would like to learn more about this topic, please get in touch with either your usual SH contact or any member of our commodities team by clicking [here](#).

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