

Laycan

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Laycan – general information

‘Laycan’ is a period of time within which the vessel should arrive at loading port and tender ready for loading without risk of being rejected by the charterers. As indicated in the name itself, ‘laycan’ is an agreed time range at the end of which comes the date when the charterers are entitled to exercise their option and cancel the charterparty for non-arrival of the owners’ vessel. Importance of laycan provision is evident when one recognises that otherwise the charterers would have to wait for the delaying shipowners’ vessel unless such delay becomes unreasonable.

In recent case which reached the Court of Appeal, *Tidebrook Maritime Corporation v Vitol SA of Geneva (The Front Commander)* [2006] EWCA Civ 944, Rix LJ defined laycan at para 38, as:

*(a) the earliest day upon which an owner can expect his charterer to load and (b) the latest day upon which the vessel can arrive at its appointed loading place without being at risk of being cancelled.*¹

Laycan is not, however, specific feature of voyage charters only. As Clarke J. noted in *SHV Gas Supply and Trading SAS v Naftomar Shipping and Trading Co Ltd Inc* [2005] EWHC 2528 (Comm) at para 9:

The term "laycan" is habitually used in the negotiation of charterparties, to refer to the earliest date at which the laydays can commence and the date after which the charter can be cancelled if the vessel has not by then arrived. By extension the term is to be found in FOB sales, so as to provide that the seller can cancel the contract if the vessel, which it is the buyer's duty to procure, does not arrive at the port by the cancellation date. The expression does not fit so easily into the confines of a CIF contract where it is the seller's obligation to make a contract of carriage, ship the goods on board and tender the customary documents.

The charterers can, but are not obliged to exercise cancellation option. It is not unusual for the parties to come to solution and extend laycan for a day or so, considering market condition and availability of

¹ *Tidebrook Maritime Corporation v Vitol SA of Geneva (The Front Commander)* [2006] EWCA Civ 944, per Rix LJ at para 38

substitute tonnage in the area. Some standard forms of voyage charters, such as SHELLVOY5 and SHELLVOY6², specifically define procedure for laycan extension. Unless expressly stated otherwise³, the charterers have only one thing to do, namely, to give a notice of cancellation to the shipowners. In some cases such extension may not answer the purpose serve its purpose and put the charterers in quite difficult situation with many concomitant legal issues as case of *Progress Bulk Carriers Ltd v TUBE CITY IMS LLC* [2012] EWHC 273 shows.

It is manifest that the right of cancellation could not be validly exercised until the arrival of the cancellation date and any premature notice purporting to cancel the contract constitutes an anticipatory breach and repudiation of the charter-party⁴.

Canceling Clause

Canceling clause stipulates a date and time which is a deadline for the shipowner to present his vessel in required state of readiness. The charterer has a right but not duty to exercise an option to cancel the charter should the vessel not be ready to load on nominated date and time⁵, see Gencon 94 form below.

9. Cancelling Clause	137
(a) Should the Vessel not be ready to load (whether in berth or not) on the cancelling date indicated in Box 21, the Charterers shall have the option of cancelling this Charter Party.	138 139 140
(b) Should the Owners anticipate that, despite the exercise of due diligence, the Vessel will not be ready to load by the cancelling date, they shall notify the Charterers thereof without delay stating the expected date of the Vessel's readiness to load and asking whether the Charterers will exercise their option of cancelling the Charter Party, or agree to a new cancelling date.	141 142 143 144 145
Such option must be declared by the Charterers within 48 running hours after the receipt of the Owners' notice. If the Charterers do not exercise their option of cancelling, then this Charter Party shall be deemed to be amended such that	146 147 148
the seventh day after the new readiness date stated in the Owners' notification to the Charterers shall be the new cancelling date.	149 150
The provisions of sub-clause (b) of this Clause shall operate only once, and in case of the Vessel's further delay, the Charterers shall have the option of cancelling the Charter Party as per sub-clause (a) of this Clause.	151 152 153

Read this article in full her: http://www.lawandsea.net/CP_Voy/Charterparty_Voyage_Laycan.html

² Clause. 11

³ As for example in Gencon 94 form.

⁴ *Fercometal S.A.R.L. v MSC Mediterranean Shipping Co (The Simona)* [1988] 2 Lloyd's Rep 199

⁵ As for example in Asbatankvoy cl.5 "Should the Vessel not be ready to load by 4:00 o'clock P.M. (local time) on the cancelling date stipulated in Part I, the Charterer shall have the option of cancelling this Charter by giving Owner notice of such cancellation within twenty-four (24) hours after such cancellation date; otherwise this Charter to remain in full force and effect" and Norgrain cl.4 "Should the Vessel's notice of readiness not be tendered and accepted before 1200 ...the Charterer shall have the option of cancelling this Charter any time thereafter." Usually, however, laycan ends by 2359 on the last day in the range.