

SCHEDULE

THE TEXT OF THE CODE

PART ONE

CHAPTER III

RELATIONS WITH SHIPPERS

Article 7 Loyalty Arrangements

- 1 The shipping lines members of a conference are entitled to institute and maintain loyalty arrangements with shippers, the form and terms of which are matters for consultation between the conference and shippers' organizations or representatives of shippers. These loyalty arrangements shall provide safeguards making explicit the rights of shippers and conference members. These arrangements shall be based on the contract system or any other system which is also lawful.
- 2 Whatever loyalty arrangements are made, the freight rate applicable to loyal shippers shall be determined within a fixed range of percentages of the freight rate applicable to other shippers. Where a change in the differential causes an increase in the rates charged to shippers, the change can be implemented only after 150 days' notice to those shippers or according to regional practice and/or agreement. Disputes in connexion with a change of the differential shall be settled as provided in the loyalty agreement.
- 3 The terms of loyalty arrangements shall provide safeguards making explicit the rights and obligations of shippers and of shipping lines members of the conference in accordance with the following provisions,*inter alia*:
 - (a) The shipper shall be bound in respect of cargo whose shipment is controlled by him or his affiliated or subsidiary company or his forwarding agent in accordance with the contract of sale of the goods concerned, provided that the shipper shall not, by evasion, subterfuge, or intermediary, attempt to divert cargo in violation of his loyalty commitment;
 - (b) Where there is a loyalty contract, the extent of actual or liquidated damages and/or penalty shall be specified in the contract. The member lines of the conference may, however, decide to assess lower liquidated damages or to waive the claim to liquidated damages. In any event, the liquidated damages under the contract to be paid to the shipper shall not exceed the freight charges on the particular shipment, computed at the rate provided under the contract;
 - (c) The shipper shall be entitled to resume full loyalty status, subject to the fulfilment of conditions established by the conference which shall be specified in the loyalty arrangement;
 - (d) The loyalty arrangement shall set out:
 - (i) A list of cargo, which may include bulk cargo shipped without mark or count, which is specifically excluded from the scope of the loyalty arrangement;

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- (ii) A definition of the circumstances in which cargo other than cargo covered by (i) above is considered to be excluded from the scope of the loyalty arrangement;
 - (iii) The method of settlement of disputes arising under the loyalty arrangement;
 - (iv) Provision for termination of the loyalty arrangement on request by either a shipper or a conference without penalty, after expiry of a stipulated period of notice, such notice to be given in writing; and
 - (i) The terms for granting dispensation.
- 4 If there is a dispute between a conference and a shippers' organization, representatives of shippers and/or shippers about the form or terms of a proposed loyalty arrangement, either party may refer the matter for resolution under appropriate procedures as set out in this Code.

Article 8 Dispensation

- 1 Conferences shall provide, within the terms of the loyalty arrangements, that requests by shippers for dispensation shall be examined and a decision given quickly and, if requested, the reasons given in writing where dispensation is withheld. Should a conference fail to confirm, within a period specified in the loyalty arrangement, sufficient space to accommodate a shipper's cargo within a period also specified in the loyalty arrangement, the shipper shall have the right, without being penalized, to utilize any vessel for the cargo in question.
- (2) In ports where conference services are arranged subject to the availability of a specified minimum of cargo (i.e. on inducement), but either the shipping line does not call, despite due notice by shippers, or the shipping line does not reply within an agreed time to the notice given by shippers, shippers shall automatically have the right, without prejudicing their loyalty status, to use any available vessel for the carriage of their cargo.

Article 9 Availability of Tariffs and Related Conditions and/or Regulations

Tariffs, related conditions, regulations, and any amendments thereto shall be made available on request to shippers, shippers' organizations and other parties concerned at reasonable cost, and they shall be available for examination at offices of shipping lines and their agents. They shall spell out all conditions concerning the application of freight rates and the carriage of any cargo covered by them.

Article 10 Annual Reports

Conferences shall provide annually to shippers' organizations, or to representatives of shippers, reports on their activities designed to provide general information of interest to them, including relevant information about consultations held with shippers and shippers' organizations, action taken regarding complaints, changes in membership, and significant changes in service, tariffs and conditions of carriage. Such annual reports shall be submitted, on request, to the appropriate authorities of the countries whose trade is served by the conference concerned.

Article 11 Consultation Machinery

- 1 There shall be consultations on matters of common interest between a conference, shippers' organizations, representatives of shippers and, where practicable,

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shippers, which may be designated for that purpose by the appropriate authority if it so desires. These consultations shall take place whenever requested by any of the above-mentioned parties. Appropriate authorities shall have the right, upon request, to participate fully in the consultations, but this does not mean that they play a decision-making role.

- 2 The following matters,*inter alia*, may be the subject of consultation:
 - (a) Changes in general tariff conditions and related regulations;
 - (b) Changes in the general level of tariff rates and rates for major commodities;
 - (c) Promotional and/or special freight rates;
 - (d) Imposition of, and related changes in, surcharges;
 - (e) Loyalty arrangements, their establishment or changes in their form and general conditions;
 - (f) Changes in the tariff classification of ports;
 - (g) Procedure for the supply of necessary information by shippers concerning the expected volume and nature of their cargoes: and
 - (h) Presentation of cargo for shipment and the requirements regarding notice of cargo availability.
- 3 To the extent that they fall within the scope of activity of a conference, the following matters may also be the subject of consultation:
 - (a) Operation of cargo inspection services;
 - (b) Changes in the pattern of services;
 - (c) Effects of the introduction of new technology in the carriage of cargo, in particular unitization, with consequent reduction of conventional service or loss of direct services; and
 - (d) Adequacy and quality of shipping services, including the impact of pooling, berthing or sailing arrangements on the availability of shipping services and freight rates at which shipping services are provided; changes in the areas served and in the regularity of calls by conference vessels.
- 4 Consultations shall be held before final decisions are taken, unless otherwise provided in this Code. Advance notice shall be given of the intention to take decisions on matters referred to in article 11, paragraphs 2 and 3. Where this is impossible, urgent decisions may be taken pending the holding of consultations.
- 5 Consultations shall begin without undue delay and in any event within a maximum period specified in the conference agreement, or in the absence of such a provision in the agreement, not later than 30 days after receipt of the proposal for consultations, unless different periods of time are provided in this Code.
- 6 When holding consultations, the parties shall use their best efforts to provide relevant information, to hold timely discussions and to clarify matters for the purpose of seeking solutions of the issues concerned. The parties involved shall take account of each other's views and problems and strive to reach agreement consistent with their commercial viability.

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