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SCHEDULE

THE TEXT OF THE CODE

PART TWO

CHAPTER VI

PROVISIONS AND MACHINERY FOR SETTLEMENT OF DISPUTES

A. GENERAL PROVISIONS

Article 23

1 The provisions of this chapter shall apply whenever there is a dispute relating to the application or operation of the provisions of this Code between the following parties:

- (a) A conference and a shipping line;
- (b) The shipping lines members of a conference;
- (c) A conference or a shipping line member thereof and a shipper's organization or representatives of shippers or shippers; and
- (d) Two or more conferences.

For the purposes of this chapter the term "party" means the original parties to the dispute as well as third parties which have joined the proceedings in accordance with (a) of article 34.

2 Disputes between shipping lines of the same flag, as well as those between organizations belonging to the same country, shall be settled within the framework of the national jurisdiction of that country, unless this creates serious difficulties in the fulfilment of the provisions of this Code.

3 The parties to a dispute shall first attempt to settle it by an exchange of views or direct negotiations with the intention of finding a mutually satisfactory solution.

4 Disputes between the parties referred to in article 23, paragraph 1 relating to:

- (a) Refusal of admission of a national shipping line to a conference serving the foreign trade of the country of that shipping line;
- (b) Refusal of admission of a third-country shipping line to a conference;
- (c) Expulsion from a conference;
- (d) Inconsistency of a conference agreement with this Code;
- (e) A general freight-rate increase;
- (f) Surcharges;
- (g) Changes in freight rates or the imposition of a currency adjustment factor due to exchange rate changes;
- (h) Participation in trade; and
- (i) The form and terms of proposed loyalty arrangements

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which have not been resolved through an exchange of views or direct negotiations shall, at the request of any of the parties to the dispute, be referred to international mandatory conciliation in accordance with the provision of this chapter.

Article 24

1 The conciliation procedure is initiated at the request of one of the parties to the dispute.

2 The request shall be made:

- (a) In disputes relating to membership of conferences: not later than 60 days from the date of receipt by the applicant of the conference decision, including the reasons therefor, in accordance with article 1, paragraph 4 and article 4, paragraph 3;
- (b) In disputes relating to general freight-rate increases: not later than the date of expiry of the period of notice specified in article 14, paragraph 1;
- (c) In disputes relating to surcharges: not later than the date of expiry of the 30-day period specified in article 16, paragraph 4 or, where no notice has been given, not later than 15 days from the date when the surcharge was put into effect; and
- (d) In disputes relating to changes in freight rates or the imposition of a currency adjustment factor due to exchange rate changes: not later than five days after the date of expiry of the period specified in article 17, paragraph 3.

3 The provisions of article 24, paragraph 2 shall not apply to a dispute which is referred to international mandatory conciliation in accordance with article 25, paragraph 3.

4 Requests for conciliation in disputes other than those referred to in article 24, paragraph 2, may be made at any time.

5 The time-limits specified in article 24, paragraph 2 may be extended by agreement between the parties.

6 A request for conciliation shall be considered to have been duly made if it is proved that the request has been sent to the other party by registered letter, telegram or teleprinter or has been served on it within the time-limits specified in article 24, paragraphs 2 or 5.

7 Where no request has been made within the time-limits specified in article 24, paragraphs 2 or 5, the decision of the conference shall be final and no proceedings under this chapter may be brought by any party to the dispute to challenge that decision.

Article 25

1 Where the parties have agreed that disputes referred to in article 23, paragraph 4(a), (b), (c), (d), (h) and (i) shall be resolved through procedures other than those established in that article, or agree on procedures to resolve a particular dispute that has arisen between them, such disputes shall, at the request of any of the parties to the dispute, be resolved as provided for in their agreement.

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- 2 The provisions of article 25, paragraph 1 apply also to the disputes referred to in article 23, paragraph 4(e), (f) and (g), unless national legislation, rules or regulations prevent shippers from having this freedom of choice.
- 3 Where conciliation proceedings have been initiated, such proceedings shall have precedence over remedies available under national law. If a party seeks remedies under national law in respect of a dispute to which this chapter applies without invoking the procedures provided for in this chapter, then, upon the request of a respondent to those proceedings, they shall be stayed and the dispute shall be referred to the procedures defined in this chapter by the court or other authority where the national remedies are sought.

Article 26

- 1 The Contracting Parties shall confer upon conferences and shippers' organizations such capacity as is necessary for the application of the provisions of this chapter. In particular:
- (a) A conference or a shippers' organization may institute proceedings as a party or be named as a party to proceedings in its collective capacity;
 - (b) Any notification to a conference or shippers' organization in its collective capacity shall also constitute a notification to each member of such conference or shippers' organization;
 - (c) A notification to a conference or shippers' organization shall be transmitted to the address of the head office of the conference or shippers' organization. Each conference or shippers' organization shall register the address of its head office with the Registrar appointed in accordance with article 46, paragraph 1. In the event that a conference or a shippers' organization fails to register or has no head office, a notification to any member in the name of the conference or shippers' organization shall be deemed to be a notification to such conference or organization.
- 2 Acceptance or rejection by a conference or shippers' organization of a recommendation by conciliators shall be deemed to be acceptance or rejection of such a recommendation by each member thereof.

Article 27

Unless the parties agree otherwise, the conciliators may decide to make a recommendation on the basis of written submissions without oral proceedings.

B. INTERNATIONAL MANDATORY CONCILIATION

Article 28

In international mandatory conciliation the appropriate authorities of a Contracting Party shall, if they so request, participate in the conciliation proceedings in support of a party being a national of that Contracting Party, or in support of a party having a dispute arising in the context of the foreign trade of that Contracting Party. The appropriate authority may alternatively act as an observer in such conciliation proceedings.

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Article 29

- 1 In international mandatory conciliation the proceedings shall be held in the place unanimously agreed to by the parties or, failing such agreement, in the place decided upon by the conciliators.
- 2 In determining the place of conciliation proceedings the parties and the conciliators shall take into account, *inter alia*, countries which are closely connected with the dispute, bearing in mind the country of the shipping line concerned and, especially when the dispute is related to cargo, the country where the cargo originates.

Article 30

- 1 For the purposes of this chapter an international panel of conciliators shall be established, consisting of experts of high repute or experience in the fields of law, economics of sea transport, or foreign trade and finance, as determined by the Contracting Parties selecting them, who shall serve in an independent capacity.
- 2 Each Contracting Party may at any time nominate members of the panel up to a total of 12, and shall communicate their names to the Registrar. The nominations shall be for periods of six years each and may be renewed. In the event of the death, incapacity or resignation of a member of the panel, the Contracting Party which nominated such person shall nominate a replacement for the remainder of his term of office. A nomination takes effect from the date on which the communication of the nomination is received by the Registrar.
- 3 The Registrar shall maintain the panel list and shall regularly inform the Contracting Parties of the composition of the panel.

Article 31

- 1 The purpose of conciliation is to reach an amicable settlement of the dispute through recommendations formulated by independent conciliators.
- 2 The conciliators shall identify and clarify the issues in dispute, seek for this purpose any information from the parties, and on the basis thereof, submit to the parties a recommendation for the settlement of the dispute.
- 3 The parties shall co-operate in good faith with the conciliators in order to enable them to carry out their functions.
- 4 Subject to the provisions of article 25, paragraph 2, the parties to the dispute may at any time during the conciliation proceedings decide in agreement to have recourse to a different procedure for the settlement of their dispute. The parties to a dispute which has been made subject to proceedings other than those provided for in this chapter may decide by mutual agreement to have recourse to international mandatory conciliation.

Article 32

- 1 The conciliation proceedings shall be conducted either by one conciliator or by an uneven number of conciliators agreed upon or designated by the parties.
- 2 Where the parties cannot agree on the number or the appointment of the conciliators as provided in article 32, paragraph 1, the conciliation proceedings shall be conducted by three conciliators, one appointed by each party in the statement(s) of

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claim and reply respectively, and the third by the two conciliators thus appointed, who shall act as chairman.

- 3 If the reply does not name a conciliator to be appointed in cases where article 32, paragraph 2 would apply, the second conciliator shall, within 30 days following the receipt of the statement of claim, be chosen by lot by the conciliator appointed in the statement of claim from among the members of the panel nominated by the Contracting Party or Parties of which the respondent(s) is(are) a national(s).
- 4 Where the conciliators appointed in accordance with article 32, paragraphs 2 or 3 cannot agree on the appointment of the third conciliator within 15 days following the date of the appointment of the second conciliator, he shall, within the following 5 days, be chosen by lot by the appointed conciliators. Prior to the drawing by lot:
- (a) No member of the panel of conciliators having the same nationality as either of the two appointed conciliators shall be eligible for selection by lot;
 - (b) Each of the two appointed conciliators may exclude from the list of the panel of conciliators an equal number of them subject to the requirement that at least 30 members of the panel shall remain eligible for selection by lot.

Article 33

- 1 Where several parties request conciliation with the same respondent in respect of the same issue, or of issues which are closely connected, that respondent may request the consolidation of those cases.
- 2 The request for consolidation shall be considered and decided upon by majority vote by the chairmen of the conciliators so far chosen. If such request is allowed, the chairmen will designate the conciliators to consider the consolidated cases from among the conciliators so far appointed or chosen, provided that an uneven number of conciliators is chosen and that the conciliator first appointed by each party shall be one of the conciliators considering the consolidated cases.

Article 34

Any party, other than an appropriate authority referred to in article 28, if conciliation has been initiated, may join in the proceedings:

either

(a) As a party, in case of a direct economic interest;

or

(b) As a supporting party to one of the original parties, in case of an indirect economic interest, unless either of the original parties objects to such joinder.

Article 35

- 1 The recommendations of the conciliators shall be made in accordance with the provisions of this Code.
- 2 When the Code is silent upon any point, the conciliators shall apply the law which the parties agree at the time the conciliation proceedings commence or thereafter, but not later than the time of submission of evidence to the conciliators. Failing

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such agreement, the law which in the opinion of the conciliators is most closely connected with the dispute shall be applicable.

3 The conciliators shall not decide *ex aequo et bono* upon the dispute unless the parties so agree after the dispute has arisen.

4 The conciliators shall not bring a finding of *non liquet* on the ground of obscurity of the law.

5 The conciliators may recommend those remedies and reliefs which are provided in the law applicable to the dispute.

Article 36

The recommendations of the conciliators shall include reasons.

Article 37

1 Unless the parties have agreed before, during or after the conciliation procedure that the recommendation of the conciliators shall be binding, the recommendation shall become binding by acceptance by the parties. A recommendation which has been accepted by some parties to a dispute shall be binding as between those parties only.

2 Acceptance of the recommendation must be communicated by the parties to the conciliators, at an address specified by them, not later than 30 days after receipt of the notification of the recommendation; otherwise, it shall be considered that the recommendation has not been accepted.

3 Any party which does not accept the recommendation shall notify the conciliators and the other parties, within 30 days following the period specified in article 37, paragraph 2 of its grounds for rejection of the recommendation, comprehensively and in writing.

4 When the recommendation has been accepted by the parties, the conciliators shall immediately draw up and sign a record of settlement, at which time the recommendation shall become binding upon those parties. If the recommendation has not been accepted by all parties, the conciliators shall draw up a report with respect to those parties rejecting the recommendation, noting the dispute and the failure of those parties to settle the dispute.

5 A recommendation which has become binding upon the parties shall be implemented by them immediately or at such later time as is specified in the recommendation.

6 Any party may make its acceptance conditional upon acceptance by all or any of the other parties to the dispute.

Article 38

1 A recommendation shall constitute a final determination of a dispute as between the parties which accept it, except to the extent that the recommendation is not recognized and enforced in accordance with the provisions of article 39.

2 “Recommendation” includes an interpretation, clarification or revision of the recommendation made by the conciliators before the recommendation has been accepted.

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Article 39

- 1 Each Contracting Party shall recognize a recommendation as binding between the parties which have accepted it and shall, subject to the provisions of article 39, paragraphs 2 and 3, enforce, at the request of any such party, all obligations imposed by the recommendation as if it were a final judgment of a court of that Contracting Party.
- 2 A recommendation shall not be recognized and enforced at the request of a party referred to in article 39, paragraph 1 only if the court or other competent authority of the country where recognition and enforcement is sought is satisfied that:
 - (a) Any party which accepted the recommendation was, under the law applicable to it, under some legal incapacity at the time of acceptance;
 - (b) Fraud or coercion has been used in the making of the recommendations;
 - (c) The recommendation is contrary to public policy (ordre public) in the country of enforcement; or
 - (d) The composition of the conciliators, or the conciliation procedure, was not in accordance with the provisions of this Code.
- 3 Any part of the recommendation shall not be enforced and recognized if the court or other competent authority is satisfied that such part comes within any of the subparagraphs of article 39, paragraph 2 and can be separated from other parts of the recommendation. If such part cannot be separated, the entire recommendation shall not be enforced and recognized.

Article 40

- 1 Where the recommendation has been accepted by all the parties, the recommendation and the reasons therefor may be published with the consent of all the parties.
- 2 Where the recommendation has been rejected by one or more of the parties but has been accepted by one or more of the parties:
 - (a) The party or parties rejecting the recommendation shall publish its or their grounds for rejection, given pursuant to article 37, paragraph 3, and may at the same time publish the recommendation and the reasons therefor;
 - (b) A party which has accepted the recommendation may publish the recommendation and the reasons therefor; it may also publish the grounds for rejection given by any other party unless such other party has already published its rejection and the grounds therefor in accordance with article 40, paragraph 2(a).
- 3 Where the recommendation has not been accepted by any of the parties, each party may publish the recommendation and the reasons therefor and also its own rejection and the grounds therefor.

Article 41

- 1 Documents and statements containing factual information supplied by any party to the conciliators shall be made public unless that party or a majority of the conciliators agrees otherwise.
- 2 Such documents and statements supplied by a party may be tendered by that party in support of its case in subsequent proceedings arising from the same dispute and between the same parties.

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Article 42

Where the recommendation has not become binding upon the parties, no views expressed or reasons given by the conciliators, or concessions or offers made by the parties for the purpose of the conciliation procedures, shall affect the legal rights and obligations of any of the parties.

Article 43

- 1 (a) The costs of the conciliators and all costs of the administration of the conciliation proceedings shall be borne equally by the parties to the proceedings, unless they agree otherwise.
- 1 (b) When the conciliation proceedings have been initiated, the conciliators shall be entitled to require an advance or security for the costs referred to in article 43, paragraph 1(a).
- 2 Each party shall bear all expenses it incurs in connexion with the proceedings, unless the parties agree otherwise.
- 3 Notwithstanding the provisions of article 43, paragraphs 1 and 2, the conciliators may, having decided unanimously that a party has brought a claim vexatiously or frivolously, assess against that party any or all of the costs of other parties to the proceedings. Such decision shall be final and binding on all the parties.

Article 44

- 1 Failure of a party to appear or to present its case at any stage of the proceedings shall not be deemed an admission of the other party's assertions. In that event, the other party may, at its choice, request the conciliators to close the proceedings or to deal with the questions presented to them and submit a recommendation in accordance with the provisions for making recommendations set out in this Code.
- 2 Before closing the proceedings, the conciliators shall grant the party failing to appear or to present its case a period of grace, not exceeding 10 days, unless they are satisfied that the party does not intend to appear or to present its case.
- 3 Failure to observe procedural time-limits laid down in this Code or determined by the conciliators, in particular time-limits relating to the submission of statements or information, shall be considered a failure to appear in the proceedings.
- 4 Where the proceedings have been closed owing to one party's failure to appear or to present its case, the conciliators shall draw up a report noting that party's failure.

Article 45

- 1 The conciliators shall follow the procedures stipulated in this Code.
- 2 The rules of procedure annexed to the present Convention shall be considered as model rules for the guidance of conciliators. The conciliators may, by mutual consent, use, supplement or amend the rules contained in the annex or formulate their own rules of procedure to the extent that such supplementary, amended or other rules are not inconsistent with the provisions of this Code.
- 3 If the parties agree that it may be in the interest of achieving an expeditious and inexpensive solution of the conciliation proceedings, they may mutually agree to rules of procedure which are not inconsistent with the provisions of this Code.

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- 4 The conciliators shall formulate their recommendation by consensus or failing that shall decide by majority vote.
- 5 The conciliation proceedings shall finish and the recommendation of the conciliators shall be delivered not later than six months from the date on which the conciliators are appointed, except in the cases referred to in article 23, paragraph 4(e), (f), and (g), for which the time limits in article 14, paragraph 1 and article 16, paragraph 4 shall be valid. The period of six months may be extended by agreement of the parties.

C. INSTITUTIONAL MACHINERY

Article 46

- 1 Six months before the entry into force of the present Convention, the Secretary-General of the United Nations shall, subject to the approval of the General Assembly of the United Nations, and taking into account the views expressed by the Contracting Parties, appoint a Registrar, who may be assisted by such additional staff as may be necessary for the performance of the functions listed in article 46, paragraph 2. Administrative services for the Registrar and his assistants shall be provided by the United Nations Office at Geneva.
- 2 The Registrar shall perform the following functions in consultation with the Contracting Parties as appropriate:
- (a) Maintain the list of conciliators of the international panel of conciliators and regularly inform the Contracting Parties of the composition of the panel;
 - (b) Provide the names and addresses of the conciliators to the parties concerned on request;
 - (c) Receive and maintain copies of requests for conciliation, replies, recommendation, acceptances, or rejections, including reasons therefor;
 - (d) Furnish on request, and at their cost, copies of recommendations and reasons for rejection the shippers' organizations, conferences and Governments, subjects to the provisions of article 40;
 - (e) Make available information of a non-confidential nature on completed conciliation cases, and without attribution to the parties concerned, for the purposes of preparation of material for the Review Conference referred to in article 52; and
 - (f) The other functions prescribed for the Registrar in article 26, paragraph 1(c) and article 30, paragraphs 2 and 3.

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