FMC Agreement No.: 011223-011 Effective Date: Friday, October 20, 1995
Downloaded from WWW.FMC.GOV on Thursday, April 27, 2017

ARTICLE 5 - AUTHORITY

5.1 The Parties hereby agree to establish a Maximum Allowed Capacity in the ~~Trade~~ Far East origin trade for each Party in accordance with this Agreement, and in implementation of such Maximum Allowed Capacity to agree upon various procedures for the maintenance and enforcement thereof. Each Party agrees to abide by its Maximum Allowed Capacity. A Maximum Allowed Capacity shall not be established in the Indian Sub-continent origin trade. ~~The Parties may collect, exchange and disseminate statistics and other information relevant to the Trade. The Parties may also discuss and evaluate all aspects of the Trade, including but not limited to general revenue recovery and restoration, other rate and cargo adjustments and service matters, containership capacity structure and adjustment of the Maximum Allowed Capacity for any or all Parties in anticipation of cargo demands.~~ [Moved to 5.9]

5.2 The Maximum Allowed Capacity for each Party is calculated as set forth in Appendix B to this Agreement and shall be in effect for one year (i.e., ~~for at least~~ four consecutive Accounting Periods) ~~following the Effective Date of this Agreement~~ or such other term as the Parties agree pursuant to subarticle 5.3 hereof. The Maximum Allowed Capacity for any Party may be increased or decreased by action of the Parties at

FMC Agreement No.: 011223-011 Effective Date: Friday, October 20, 1995
Downloaded from WWW.FMC.GOV on Thursday, April 27, 2017

[Revised Headers Omitted for Page Nos. 8, 9 and 10]

any time, provided that the total of all Parties' Maximum Allowed Capacities for any Accounting Period may not be reduced to less than 82 percent of the total of all Parties' actual cargo capacities in the ~~Trade~~ Far East origin trade during such Accounting Period, prior to reduction pursuant to this Agreement, unless and until an appropriate amendment of this Agreement has become effective in accordance with the regulations of the FMC; and, provided further, that the Chairman, Secretariat, counsel to the Agreement or other designee of the Parties will notify the FMC in writing, in the form of an updated Appendix B hereto, on or before 30 days following any other action by the Parties that does not require the filing of an amendment, as aforesaid, to increase or decrease a Party's Maximum Allowed Capacity.

5.3 Unless otherwise agreed, action by the Parties to extend and recalculate the Maximum Allowed Capacity of each Party for an additional term or terms is required no later than ~~three months~~ 30 days before the expiration of the year or other term that is then in progress. Written notice will be given to the FMC on behalf of the Parties (as in subarticle 5.2 above) on or before 30 days following any action by the Parties to extend and recalculate the Maximum Allowed Capacity of each Party, including any related action taken pursuant to subarticle 7.4. Such notice may be given as part of the minutes of a meeting of the Parties

FMC Agreement No.: 011223-011 Effective Date: Friday, October 20, 1995
Downloaded from WWW.FMC.GOV on Thursday, April 27, 2017

hereunder, filed pursuant to the FMC's regulations. If the Parties fail to reach agreement as to the extension ~~or renewal of the initial term or of any succeeding term~~ and recalculation of the Maximum Allowed Capacity of each Party within the agreed time, this Agreement shall terminate as of the expiration of the term that is then in progress.

5.4 The Market Survey Committee will meet, review, analyze and discuss cargo market conditions in the Trade from time to time, and will review and recommend any adjustments in the Maximum Allowed Capacity of any Party or Parties for action by the Parties. The Market Survey Committee may establish procedures and guidelines for its activities.

5.5 Should one or more Parties desire to change the Maximum Allowed Capacity during or before any Accounting Period, that Party or Parties shall provide the Chairman ~~and the Market Survey Committee~~ with written notice of its proposal, whereupon the Chairman shall take appropriate steps to place the matter before the Parties for decision.

5.6 If a Party should exceed its Maximum Allowed Capacity for any Accounting Period, it will be assessed a penalty of US$500 per TEU of cargo carriage or fraction thereof by which the Party's Maximum Allowed Capacity was exceeded during that Accounting Period. The penalty shall be assessed and collected by the Secretariat in accordance with the procedures designated in subarticle 5.8. The Secretariat's assessment against any Party shall be final, subject only to appeal by Arbitration under

FMC Agreement No.: 011223-011 Effective Date: Friday, October 20, 1995
Downloaded from www.FMC.GOV on Thursday, April 27, 2017

Article 13. The Secretariat shall invest and take action with respect to the Fund in accordance with Article 11.

5.7 A Party that fails to reach its Maximum Allowed Capacity during a particular Accounting Period shall not be entitled to offset, transfer or reallocate such undercarriage.

5.8 In the event that the Secretariat determines that any penalty or late charge provided for under this Agreement is to be assessed, consistent with the direction of the Parties, he shall notify the Party to be assessed by telex and registered mail with copies to all other Parties. The penalty or late charge assessment shall be paid by the Party within 15 days after it receives notice of such assessment, without regard to whether the Party chooses to exercise its right of appeal by Arbitration under Article 13, after which time the penalty or late charge shall be levied directly against the Party's security instrument; provided, however, that should the penalty or late charge assessment be overturned in whole or in part by the Arbitrator, the excess amount of the penalty or late charges shall be refunded promptly to the Party.

5.9 [Moved from 5.1] The Parties may collect, exchange and disseminate statistics and other information relevant to the Trade. The Parties may also discuss and evaluate all aspects of the Trade, including but not limited to general revenue recovery and restoration, other rate and ~~cargo~~ charge adjustments and service matters, containership capacity structure and adjustment of the Maximum Allowed Capacity for any or all Parties in

FMC Agreement No.: 011223-011 Effective Date: Friday, October 20, 1995
Downloaded from WWW.FMC.GOV on Thursday, April 27, 2017

anticipation of cargo demands. Consistent with the purpose stated in subarticle 2.1 hereof, it is the intention of the Parties to pursue an overall revenue policy objective in the Trade, as described in Appendix C hereto. Such a revenue policy objective ~~has been established initially by the Parties under the aegis of the "Transpacific Discussion Agreement," FMC No. 203-011211, as amended, and will be maintained thereunder until the Effective Date of this Agreement, at which time it~~ shall be maintained hereunder pursuant to subarticle 5.10 and other

FMC Agreement No.: 011223-011 Effective Date: Friday, October 20, 1995
Downloaded from WWW.FMC.GOV on Thursday, April 27, 2017

ARTICLE 4 - GEOGRAPHIC SCOPE OF AGREEMENT

The Agreement covers the trades and various subtrades (collectively, the "Trade") from ports and points in the Far East and Indian Sub-continent to ports in the United States and to interior and coastal points in the United States via such ports. For purposes of the Agreement, "Far East" means Japan, Siberia Russia, Korea, People's Republic of China, Taiwan, Hong Kong, Macao, Thailand, Democratic Kampuchea (Cambodia), Vietnam, Singapore, Malaysia, Laos, Myanmar, Brunei, Philippines and Indonesia; and, "Indian Sub-continent" means India, Pakistan, Bangladesh and Sri Lanka. "United States" means the continental United States, Alaska, Puerto Rico and the U.S. Virgin Islands.

ARTICLE 5 - AUTHORITY

The containership capacity management program described in subarticles 5.1 through 5.8 of this Article 5 and in other provisions of the Agreement (see subarticles 7.3, 7.4, 11.2, 11.3, Article 14 and Appendices B and D) is suspended indefinitely as of September 2, 1995, and any Maximum Allowed Capacity determined under that program is inoperative and of no effect with regard to the Accounting Period in progress on that date and all such Accounting Periods thenceforward, unless and until an appropriate amendment of the Agreement has become effective in accordance with the regulations of the FMC.

FMC Agreement No.: 011223-011 Effective Date: Friday, October 20, 1995
Downloaded from WWW.FMC.GOV on Thursday, April 27, 2017

5.1 The Parties hereby agree to establish a Maximum Allowed Capacity in the Far East origin trade for each Party in accordance with this Agreement, and in implementation of such Maximum Allowed Capacity to agree upon various procedures for the maintenance and enforcement thereof. Each Party agrees to abide by its Maximum Allowed Capacity. A Maximum Allowed Capacity shall not be established in the Indian Sub-continent origin trade.

5.2 The Maximum Allowed Capacity for each Party is calculated as set forth in Appendix B to this Agreement and shall be in effect for one year (i.e., four consecutive Accounting Periods) or such other term as the Parties agree pursuant to subarticle 5.3 hereof. The Maximum Allowed Capacity for any Party may be increased or decreased by action of the Parties at any time, provided that the total of all Parties' Maximum Allowed Capacities for any Accounting Period may not be reduced to less than 82 percent of the total of all Parties' actual cargo capacities in the Far East origin trade during such Accounting Period, prior to reduction pursuant to this Agreement, unless and until an appropriate amendment of this Agreement has become effective in accordance with the regulations of the FMC; and, provided further, that the Chairman, Secretariat, counsel to the Agreement or other designee of the Parties will notify the FMC in

FMC Agreement No.: 011223-011 Effective Date: Friday, October 20, 1995
Downloaded from WWW.FMC.GOV on Thursday, April 27, 2017

APPENDIX B

MAXIMUM ALLOWED CARGO CAPACITY

[This space is intentionally blank.]