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**On the use of GAFTA, FOSFA,
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other ADR mechanisms for Land
Freight Transport Disputes**

**O uso de Arbitragem GAFTA,
FOSFA, de Café e Cacau e outros
Mecanismos para Resolução de
Disputas de Transporte Terrestre**

Alejandro García Jiménez

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On the use of GAFTA, FOSFA, Coffee and Cocoa Arbitration and other ADR mechanisms for Land Freight Transport Disputes*

O uso de Arbitragem GAFTA, FOSFA, de Café e Cacau e outros Mecanismos para Resolução de Disputas de Transporte Terrestre

Alejandro García Jiménez**

Abstract

This article analyzes the suitability of trade-in-commodities arbitration, maritime and air arbitration for the resolution of land freight disputes along Europe-China corridors and along the regional routes that link China to other countries in Asia, a topic of increasing practical and theoretical importance as these overland routes consolidate and recently-industrialized nations increase their weight in commodities trade. The greatest advantage of these sorts of arbitration is their adaptability to changes in market structures through changes in model jurisdiction clauses, dispute-resolution clauses, standard contracts, as well as specialized arbitration rules, arbitration associations and ADR institutions. Staple food and agricultural commodities arbitration has sought adaptation primarily through new standard contracts. Cotton trading industries in some recently-industrialized countries have created strong national industry associations, which cooperate with their homologues in other countries to monitor the compliance with arbitral awards. Coffee and cocoa arbitration may be used for the resolution of land freight transport disputes primarily along Asian regional hauls. There is room for the diversification of the profile of arbitrators in coffee and cocoa arbitration. Maritime arbitration has successfully adapted to the structure of freight services industries and constitutes a good option for the resolution of some land freight transport disputes, especially those that occur along Asian regional hauls within “maritime plus” routes. Despite being legally possible, it is rather unlikely to use air arbitration for resolving land transport disputes, due in part to the preponderance of maritime over other modes within multimodal transport routes. The author utilizes legal sciences methodology, including both first and secondary legal sources. The analysis relies upon economic statistics, primarily from the Food and Agriculture Organization (FAO).

Keywords: land (road and rail) freight transport disputes; Grain and Feed Trade Association (GAFTA) arbitration; federation of Oils; Seeds and Fats Association Ltd. (FOSFA) arbitration; coffee and cocoa arbitration; cotton arbitration; maritime and air arbitration.

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Resumo

Este artigo analisa a adequação da arbitragem de disputas de comércio de commodities, da arbitragem marítima e aérea para a resolução de disputas de transporte terrestre ao longo dos corredores Europa-China e das rotas regionais entre China e outros países da Ásia, tema de crescente importância prática e teórica à medida que tais rotas terrestres se consolidam e os países de industrialização mais recente aumentam seu peso nesses mercados. A maior vantagem desses tipos de arbitragem é sua adaptabilidade às mudanças nas estruturas de mercado através de alterações nas cláusulas modelo de jurisdição, cláusulas de resolução de disputas, contratos padrão, regras, associações e instituições de arbitragem. A arbitragem de commodities agrícolas tem sido adaptada através de novos contratos padrão. As indústrias de comércio de algodão em alguns países mais recentemente industrializados criaram fortes associações industriais nacionais, que cooperam com os seus homólogos em outros países para monitorar o cumprimento dos laudos arbitrais. A arbitragem de café e de cacau pode ser utilizada principalmente nos trajetos regionais asiáticos, havendo espaço para diversificação do perfil dos árbitros nesse tipo de arbitragem. A arbitragem marítima adaptou-se com sucesso à estrutura das indústrias de serviços de transporte e constitui opção especialmente adequada para a resolução de disputas de transporte terrestre de carga ocorridas ao longo de percursos regionais asiáticos em rotas multimodais. Apesar de ser legalmente possível, a arbitragem aérea é raramente utilizada para resolver disputas de transporte terrestre, devido em parte à preponderância do transporte marítimo sobre os outros modos nas rotas multimodais. O autor utiliza a metodologia das ciências jurídicas, recorrendo a fontes primárias e secundárias. A análise apoia-se também em estatísticas económicas procedentes, primordialmente, da Organização para a Alimentação e a Agricultura (FAO).

Palavras-chave: disputas de transporte terrestre de mercadorias; arbitragem da Associação do Comércio de Grãos e Rações (GAFTA); arbitragem da Federação da Associação de Óleos, Sementes e Gorduras (FOSFA); arbitragem de café e cacau; arbitragem de algodão; arbitragem marítima e aérea.

1 Introduction

Road and rail freight transport infrastructure is being upgraded across Europe and Asia, enabling Europe-China land freight corridors and new Asian regional routes.¹ In the long term, the Convention on the Contract for the International Carriage of Goods by Road (CMR) may extend its geographical scope, notably in Asia and, eventually, a new overarching convention on the rail (or land, or multimodal) freight transport contract may be created.² Meanwhile, in the short term, the resolution of rail freight transport disputes that may arise along these new routes may rely upon legal instruments designed by the rail transport industries.³

Until the CMR increases its geographical scope and in the absence of an overarching convention on the rail freight transport contract that creates private-interna-

¹ GARCÍA-JIMÉNEZ, Alejandro. Land freight transport along the belt and road: state-to-state and investor-state disputes. *Journal of WTO and China*, [s. l.], v. 13, n. 3, p. 82-114, 2023. Available at: <https://journal.uibe.edu.cn/cxfw/gkcx/wtoandchina/Volume13/Volume13Issue3/272fda46f5fd4ac5b8a4444be129e1d8.htm>. Accessed on: 7 Jan. 2025.

The creation of cross-border road and rail infrastructure in the American continent and in Africa is a major challenge for contemporary logistics and for the diversification of global supply chains. The legal regime of cross-border carriage by land in the American continent was the object of academic and institutional debate (notably in the second half of the 20th Century and in the early 21st Century). There have been some recent initiatives to upgrade and refurbish land transport infrastructure in some American nations, but almost everything is still to be done in terms of the development of cross border road and rail routes in the continent.

See: VÁZQUEZ PANDO, F. A. La convención interamericana sobre contrato de transporte internacional de mercadería por carretera. *Revista de Derecho Privado*, [s. l.], n. 7, p. 139-145, 1992.

LARSEN, P. B. 1989 Inter-American Convention on international carriage of goods by road. *The American Journal of Comparative Law*, v. 39, n. 1, p. 121-155, winter 1991.

AGUIRRE, C. F. de. CIDIP-VI: Difficulties and achievements regarding an inter-american uniform through bill of lading for the International Carriage of Goods by Road. *Uniform Law Review*, Oxford, v. 7, n. 3, p. 775-789, aug. 2002. DOI 10.1093/ulr/7.3.775. Available at: <https://academic.oup.com/ulr/article/7/3/775/1685151>. Accessed on: 7 Jan. 2025.

² GARCÍA-JIMÉNEZ, Alejandro. On the present and the future of land freight transport dispute-resolution. *Spanish Yearbook of International Law*, [s. l.], n. 27, p. 95-126, 2023. DOI 10.36151/SYBIL.2024.003. Available at: <https://www.sybil.es/sybil/article/view/2081>. Accessed on: 7 Jan. 2025.

³ See: GARCÍA-JIMÉNEZ, Alejandro. Resolving rail freight transport disputes along Europe-China corridors and asian regional routes. *Journal of WTO and China*, [s. l.], v. 13, n. 4, p. 68-98, 2023. Available at: <https://journal.uibe.edu.cn/cxfw/gkcx/wtoandchina/Volume13/Volume13Issue4/66235f506956410a9ce16e02e837773d.htm>. Accessed on: 7 Jan. 2025.

tional-law instruments that facilitate the resolution of cross-border land freight transport disputes before State courts, arbitration constitutes a suitable option for the resolution of land freight transport disputes along Europe-China land corridors and a large number of Asian regional routes. The major cross-border legal instruments on road and rail freight transport contracts, as well as the instruments designed by the rail transport industries foresee, in different forms and to different degrees, the use of arbitration for the resolution of land freight transport disputes. These instruments refer, *inter alia*, to (COTIF) arbitration and to International Chamber of Commerce (ICC) arbitration.

The present article explores the suitability of different sorts of arbitration for the resolution of land freight transport disputes along Europe-China corridors and along the regional routes that link China to other countries in Asia. First, the appropriateness of specialized kinds of arbitration utilized by different commodities trading associations in order to resolve land freight transport disputes along Europe-China corridors and Asian regional routes will be addressed. Following, the suitability of kinds of arbitration developed within other modes of transport (such as maritime arbitration) for the resolution of land freight transport disputes along the aforementioned land routes is to be analyzed.

2 Trade-in-commodities Arbitration for Land Transport Disputes?

Commodities freight is often of a transcontinental nature and carriage may be executed through a single land-maritime-land multimodal transport contract or through separate transport contracts for each transport haul. Road and rail transport contracts are usually utilized for transportation from the place of production to an ocean port and, after arrival to the ocean port of destination, land transport is also used to reach the place of destination. The modal structure of each sort of commodities freight is different, depending on where these are produced and where are these going to be processed.

A number of trade-in-commodities industry associations have developed specialized forms of arbitration, which are used for resolving commercial disputes arising out of or in relation with the commercial contracts most frequently used among the members of the-

se industries, such as freight transport contracts. Specialized forms of arbitration are part of the sectorial *lege mercatoriae* of these commodities, that is, the mercantile usages and practices of a given market. These specialized forms of arbitration are the result of the utilization of model jurisdiction clauses, model dispute-resolution clauses, arbitration clauses, standard contracts, as well as the creation of specialized arbitration rules and arbitration associations within a given trade-in-commodities industry.

These special kinds of arbitration are often of an *ad hoc* nature, as opposed to institutional arbitration.⁴ This may be (at least potentially) a disadvantage for the resolution of trade-in-commodities disputes that involve Chinese parties. Despite the trends towards the progressive easing to utilize of *ad hoc* arbitration in mainland China, Chinese parties may still feel more comfortable using institutional arbitration. However, specialized forms of arbitration developed by trade-in-commodities associations also present a number of advantages for the resolution of land freight transport disputes along Europe-China corridors and Asian regional routes.

A major virtue of these specialized arbitration mechanisms lies on their ability to adapt to changes in the structure of markets. As newly industrialized countries increase their presence in the cross-border trade of certain commodities, the dispute-resolution mechanisms utilized within these industries can adapt rapidly. Specialized forms of arbitration meet the needs of each industry, since these are designed under the auspices of industry associations in particular fields, leading to tailor-made proceedings and to highly specialized umpires and decisions. Furthermore, these *lege mercatoriae* developed within certain industries (including specialized forms of arbitration) tend to favor efficiency within a given market.

⁴ Institutional arbitration is characterized by the fact that arbitration proceedings are overseen by an arbitration institution that receives administration fees and those proceedings are administered under the arbitration rules of that particular institution (such as the International Chamber of Commerce). Throughout this article, it is understood that an arbitration is of an *ad hoc* nature when there is neither administrative oversight of the proceedings nor an institution exercising the scrutiny of the award. The fact that an association keeps a list of arbitrators among which the parties may choose the arbitrators or the fact that that association recommends the use of a particular set of rules do not characterize by any means institutional arbitration. It is not within the scope of this article to analyze the advantages and disadvantages of *ad hoc* versus institutional arbitration, which is a wide subject open to debate.

Specialized forms of arbitration in trade-in-commodities markets were developed along with the consolidation of cross-border trade of goods such as grains, seeds and oils, coffee, cocoa and cotton. The industries in early-industrialized countries shaped these arbitration mechanisms. Trade and financial centers such as London and New York and other cities near major trading ports in Western Europe developed a fundamental role in the resolution of trade-in-commodities disputes. As a result of this heritage, the resolution of commercial disputes, notably in the commodities markets, is still largely influenced by the law, *inter alia*, of England, France and the State of New York.

These are World-leading dispute-resolution hubs for the resolution of trade-in-commodities and will continue to be so. However, as Asian nations and other newly-industrialized countries play a larger role in the trade-in-commodities markets, two phenomena are taking place. First, specialized forms of arbitration that already exist are adapting to the trends in the market structure. And, second, industries in newly-industrialized countries are developing their own forms of arbitration within their own standard contracts, general terms and conditions, and even their own arbitration rules and arbitration associations. As this process consolidates, Asian dispute-resolution hubs are increasing their role in trade-in-commodities dispute-resolution.

Arbitration under the rules of trade-in-commodities associations has sometimes led to non-enforcement in China, not as much because of being of an *ad hoc* nature, but because of the differences between Chinese dispute-resolution practices and the dispute-resolution practices among the enterprises that are part of these industry associations. In a dispute between a food processing industry in mainland China and a Singaporean cocoa beans trading corporation to import Malaysian cocoa beans, Wuxi Intermediate People's Court denied enforcement of the arbitral award rendered according to the Cocoa Association of London (CAL) Rules. Denial of enforcement was confirmed by the Supreme People's Court (SPC) in *Yideman case*.⁵

⁵ The report mechanism for denial of enforcement of arbitral awards set a milestone towards the promotion of international commercial arbitration in China.

See, for instance: WUNSCHHEIM, C. von. *Enforcement of commercial arbitral awards in China*. [St. Paul, Minn.]: West, 2011.

In this case, the arbitration clause was deemed invalid both under Art. 5 of the New York Convention and under the China's Civil Litigation Law, since it was unilaterally sent by fax to the buyer within an *addendum* to the contract and there was no mutual consent upon arbitration.⁶ Hence the importance of clearly incorporating the terms and conditions and other contractual documents that may contain arbitration and other ADR clauses, making clear and explicit that it is the will of the parties to incorporate them to the contract.

For instance, the incorporation of International Rail Transport Committee (CIT) legal instruments that may include arbitration clauses ought to be done by stapling a copy of the standard terms to the consignment note.⁷ Trade-in-commodities associations provide standard arbitration clauses that may be incorporated by the parties to their contracts to show their agreement to utilize specialized trade-in-commodities arbitration. The parties may also utilize standard contracts drafted by trade-in-commodities associations, which often already include arbitration clauses referring to these specialized forms of arbitration and to specific arbitration rules.

The present section will analyze the suitability of forms of arbitration created within some trade-in-commodities markets for the resolution of land freight transport disputes whenever these arise out of a land freight transport contract for the carriage of specific kinds of commodities. The following trade-in-commodities markets will be addressed: (i) grains and feed and oil, seeds and fats, (ii) coffee and cocoa and (iii) cotton. These markets are representative of some of the global trends that are currently taking place and that may consolidate in the years to come.

2.1 Grains, Feed, Oils, Seeds and Fats Arbitration for Land Transport Disputes

Chinese industries are major players in the cross-border markets of grains and feed, as well as oils, seeds

⁶ UNITED NATIONS COMMISSION ON INTERNATIONAL TRADE LAW. *Singapore Yedeman Asian Co. (Asia) Pte Ltd. V Wuxi Huaxin Cocoa Food Corp*, 12 June 2003. Reply of the Supreme People's Court regarding Jiangsu Higher People's Court's Request for instruction on the recognition and enforcement of a foreign arbitral award by the applicant Singapore Yedeman Asian Co. Ltd. Available at: https://newyorkconvention1958.org/index.php?lvl=notice_display&id=597&opac_view=6. Accessed on: 11 May 2024.

⁷ EVTIMOV, E. *Interview of the author to the Deputy Secretary General of the International Rail Transport Committee (CIT)*. Geneva, 2022.

and fats. The participation of the People's Republic of China (PRC) in cross-border trade of some grains already reflect China's economic weight: for instance, Mainland China is by far the World's largest soybeans importer.⁸ The presence of China in the cross-border trade of oils, seeds and fats is also very significant. According to statistics from the Food and Agriculture Organization of the United Nations (FAO), in 2019, the PRC was the 2nd largest sunflower oil importer by volume, the 2nd largest importer of rapeseed oil, the 3rd largest importer and the 10th largest exporter of soybean oil, as well as the 11th largest importer and the 19th largest exporter of animal oils and fats.⁹

The European Union, as well as countries in Eastern Europe, are among the World's largest wheat exporters. Ukraine in particular is among the World's major exporters of coarse grain.¹⁰ These food commodities are often carried through maritime and multimodal routes. In any case, disputes concerning the carriage by land of food commodities and agricultural products could emerge both along Europe-China land corridors and along overland hauls within multimodal routes.

Disputes concerning food commodities and agricultural products may also emerge along the regional routes that link China to other Asian countries. Some of these routes may be fully carried by land, such as rice carried from major rice producers in the region (such as Thailand, Vietnam and Pakistan) to China and wheat carried out from Kazakhstan to China.

⁸ The volume of 2019 China's soybeans imports was much larger than the sum of the following nineteen largest importers (Mexico, Argentina, Egypt, Netherlands, Germany, Japan, Spain, Turkey, Taiwan, Indonesia, Thailand, Iran, Bangladesh, Italy, Russia, Pakistan, Vietnam, the Republic of Korea and Portugal). That same year, China was the 16th largest exporter of soybeans, being Brazil (by far) the largest exporter, followed by the USA and Argentina.

FOOD AND AGRICULTURE ORGANIZATION OF THE UNITED NATIONS. *Commodities by country*. Section FAOSTAT: Rankings. Rome: FAO, [2024?]. Available at: https://www.fao.org/faostat/en/#rankings/commodities_by_country. Accessed on: 4 may 2024.

⁹ FOOD AND AGRICULTURE ORGANIZATION OF THE UNITED NATIONS. *Commodities by country*. Section FAOSTAT: Rankings. Rome: FAO, [2024?]. Available at: https://www.fao.org/faostat/en/#rankings/commodities_by_country. Accessed on: 4 may 2024.

¹⁰ FOOD AND AGRICULTURE ORGANIZATION OF THE UNITED NATIONS. *FAO cereal supply and demand brief*. Section World Food Situation: FAO Food Price Index. Rome: FAO, [2024?]. Available at: <https://www.fao.org/worldfoodsituation/foodprices-index/en>. Accessed on: 4 may 2024.

Besides, some of the World's major producers of food commodities and agricultural products are located in countries such as Brazil, Argentina, the United States of America, and Australia. Disputes concerning the carriage by land of these goods from the American continent and Oceania to Asia (and particularly to China) may emerge either during the land haul to carry the goods from the place of production to a maritime port or in the land haul from a port in Asia to its final destination.¹¹

Industry associations in early-industrialized countries developed specialized forms of arbitration that are still the main forms of dispute resolution utilized in contracts of the food and agricultural products industries nowadays. These associations also developed standard contracts for the carriage of food commodities. The specialized forms of arbitration in this field were coined and developed through standard contracts, model dispute-resolution clauses, general terms and conditions, specialized arbitration rules and lists of specialized arbitrators.

The Grain and Feed Trade Association (GAFTA) and the Federation of Oils, Seeds and Fats Association Ltd. (FOSFA) (both headquartered in London) are the major industry associations that have created specialized forms of arbitration and they play a major role in this field until today.¹² GAFTA contracts, for instance, foresee the resolution of cross-border disputes concerning grain and feed contracts (including shipping aspects) under GAFTA contracts. The dispute-resolution mechanisms most often foreseen in GAFTA contracts include mediation under GAFTA Mediation Rules and arbitration under GAFTA Arbitration Rules.¹³ Similarly, FOSFA standard contracts most often refer to the resolution of commercial disputes under the FOSFA Arbitration Rules.

¹¹ The transport documents utilized for the carriage of food commodities and agricultural products along these routes may vary from one product to another. Either a multimodal bill of lading or a combination of land and maritime transport documents could be used (for instance, a CMR consignment note, plus a port-to-port bill of lading, followed by a CIM consignment note).

¹² THE GRAIN AND FEED TRADE ASSOCIATION. [2022?]. Available at: <https://www.gafta.com/>. Accessed on: 25 may 2022. FOSFA INTERNATIONAL. *About us*. London: FOSFA, [2022?]. Available at: <https://www.fosfa.org/about-us/>. Accessed on: 25 may 2022.

¹³ THE GRAIN AND FEED TRADE ASSOCIATION. *Arbitration*. London: GAFTA, [2022?]. Available at: <https://www.gafta.com/arbitration>. Accessed on: 20 may 2022.

English law, English language and the courts in London play an outstanding role in these traditional forms of specialized arbitration in the field of food commodities and agricultural products. For instance, GAFTA arbitral awards can be appealed before English Courts. Arbitration in London, the use of English language and the English law are likely to continue to have a strong presence in the cross-border trade of food commodities and agricultural products due to the use of standard contracts designed by industry associations.

As for domestic and certain cross-border (notably regional) contracts for the carriage of food commodities, Chinese industries (such as the holding China Oil and Foodstuffs Corporation, COFCO) tend to prefer to utilize China International Economic and Trade Arbitration Commission (CIETAC) arbitration. Although CIETAC administrates arbitrations in all fields of commercial law, specialization in CIETAC arbitration can be sought through the choice of arbitrators.

Besides, as the structure of global food commodities' markets evolves towards a greater presence of recently-industrialized countries, traditional organizations such as GAFTA and FOSFA have sought to adapt through the creation of new standard contracts, dispute-resolution clauses and other contractual instruments. For instance, in order to reflect the major role of China and Brazil within the markets of grains and feed, GAFTA has drafted new specific standard contracts, such as those for the trade of "Chinese goods" and for "Brazil cargoes".¹⁴

These standard contracts developed by GAFTA for the shipment of goods with specific features adapt some clauses, but they all resemble GAFTA General Contract for Shipment of Feeding Stuffs (GAFTA Contract No. 1).¹⁵ A clear example of these adaptations can be seen, for instance, in §7 of GAFTA General Contract for Chinese Goods (GAFTA Contract No. 2), which contains a particular clause on the ports of shipment:¹⁶

From a port or ports on the Yang-tze Kiang River between Hankow and Shanghai, both inclusive, and/or Changsha, and/or Shasi, and/or port or ports in the China Seas, and/or Dalny and/or Vladivostock [*sic.*] via the Suez Canal and/or Cape of Good Hope, and/or Panama Canal.

A peculiarity of GAFTA Contract No. 45 for Brazil Cargoes lies on the fact that it contains a clause related to financial futures, unlike GAFTA Contract No. 1 and GAFTA Contract No. 2.¹⁷ However, the text of the arbitration clauses in these relatively new contracts tends to be the same standard GAFTA arbitration clause contained in traditional standard GAFTA contracts. The arbitration clause contained in §28 of GAFTA Contract No.1, §29 of GAFTA Contract No. 2 and §30 of GAFTA Contract No. 45 is exactly the same:

(a) Any and all disputes arising out of or under this contract or any claim regarding the interpretation or execution of this contract shall be determined by arbitration in accordance with the GAFTA Arbitration Rules, No 125, in the edition current at the date of this contract; such Rules are incorporated into and form part of this Contract and both parties hereto shall be deemed to be fully cognizant of and to have expressly agreed to the application of such Rules.

(b) Neither party hereto, nor any persons claiming under either of them shall bring any action or other legal proceedings against the other in respect of any such dispute, or claim until such dispute or claim shall first have been heard and determined by the arbitrator(s) or a board of appeal, as the case may be, in accordance with the Arbitration Rules and it is expressly agreed and declared that the obtaining of an award from the arbitrator(s) or board of appeal, as the case may be, shall be a condition precedent to the right of either party hereto or of any persons claiming under either of them to bring any action or other legal proceedings against the other of them in respect of any such dispute or claim.

(c) Nothing contained under this Arbitration Clause shall prevent the parties from seeking to obtain security in respect of their claim or counterclaim via legal proceedings in any jurisdiction, provided such legal proceedings shall be limited to applying for and/or obtaining security for a claim or counterclaim, it being understood and agreed that the substantive merits of any dispute or claim shall be

¹⁴ THE GRAIN AND FEED TRADE ASSOCIATION. *All contracts*. London: GAFTA, [2022?]. Available at: <https://www.gafta.com/All-Contracts>. Accessed on: 25 May 2022.

¹⁵ THE GRAIN AND FEED TRADE ASSOCIATION. *Contract no. 1*. General contract for shipment of feeding stuffs in bags. Tale quale – CIF/CIFFO/C&F/C&FFO terms. London: GAFTA, 2022. Available at: https://www.gafta.com/write/MediaUploads/Contracts/2022/1_2022.pdf. Accessed on: 12 Apr. 2022.

¹⁶ THE GRAIN AND FEED TRADE ASSOCIATION. *Contract no. 2*. General contract for chinese googs in bags/parcels. Tale quale – CIF/CIFFO/C&F/C&FFO terms. London: GAFTA,

2022. Available at: https://www.gafta.com/write/MediaUploads/Contracts/2022/2_2022.pdf. Accessed on: 12 Apr. 2022.

¹⁷ THE GRAIN AND FEED TRADE ASSOCIATION. *Contract no. 45*. Contract for Brazil argoes/part cargoes/parcels in bulk. Tale quale – CIF/CIFFO/C&F/C&FFO terms. London: GAFTA, 2022. Available at: https://www.gafta.com/write/MediaUploads/Contracts/2022/45_2022.pdf. Accessed on: 12 Apr. 2022. §30

determined solely by arbitration in accordance with the GAFTA Arbitration Rules, No 125.

2.2 Coffee and Cocoa Arbitration for Land Transport Disputes

The presence of China and other recently-industrialized countries in the cross-border trade of coffee and cocoa is still low compared to the size of some of these economies, as can be inferred from FAO statistics.¹⁸ However, as these countries further increase their middle-classes (as they move towards “moderately prosperous societies”), the consumption of coffee and cocoa products will keep steadily growing (notably in urban areas).¹⁹ The presence of China and Chinese parties in the cross-border trade of coffee and cocoa is expected to keep growing at a good pace.

Coffee is primarily produced in the tropical regions of America (Brazil and Colombia), but also in parts of Africa and Asia (notably in Vietnam).²⁰ Disputes related to the transportation of coffee are rather likely to arise, notably along the regional land routes that link China and other Asian countries (for instance, freight of coffee beans from Vietnam to China). Besides, disputes related to the carriage of coffee are also likely to arise along regional Asian overland hauls within multimodal transport routes that bring coffee produced in the American continent to China.

The major cocoa producers worldwide are located in tropical regions of Africa (Côte D’Ivoire, Ghana, Nige-

ria and Cameroon) followed by parts of Asia and America –such as Indonesia–. Therefore, transportation of cocoa beans towards China tends to include a maritime haul. BRI commercial disputes concerning the transportation of cocoa beans by land may primarily arise along the land hauls that go from a port in Asia to the place of destination in China, which are part of multimodal routes.²¹

Chinese food industries tend to favour the utilization of CIETAC arbitration, notably in domestic contracts. Meanwhile, cross-border disputes related to the freight of coffee and cocoa beans tend to be resolved through coffee arbitration and cocoa arbitration respectively.

The resolution of commercial disputes related to the cross-border carriage of coffee is largely shaped by the standard contracts of the main industry associations in Europe and North America: the European Coffee Federation (ECF) and the Green Coffee Association (GCA), respectively. These contracts exclude the resolution of disputes before State courts and foresee the use of arbitration.

ECF standard dispute-resolution clauses provide for arbitration before different European coffee associations, located in major traditional coffee-importing ports, such as Hamburg (*Deutscher Kaffeeverband e. V.*), Le Havre (*Chambre arbitrale des cafés et poivres du Havre*), London (The British Coffee Association), Rijswijk (Royal Netherlands Coffee and Tea Association), Antwerp (*Union professionnelle du commerce anversois d’importation de café*) and Trieste (*Associazione Caffè Trieste*). Meanwhile, GCF standard contracts by default provide for arbitration in New York.²²

Similarly, cocoa arbitration was largely shaped by industry associations in major cocoa bean-importing ports in early-industrialized countries by assisting the formation of specialized panels or lists of arbitrators and by administering arbitral proceedings. The three major industry associations that shaped the resolution of cross-border disputes in this field were: the *Association Française du Commerce des Cacaos* (AFCC), headquartered in Paris, the Cocoa Merchant’s Association of

¹⁸ This may be a reflection of China’s stage of development as a whole, but there are also important cultural factors that cannot be neglected. First, the consumption of tea, which may sometimes act as a substitute of coffee, is strongly rooted in Chinese culture. Second, cocoa is often consumed as part of processed foods that are too sugary for the Chinese taste. FOOD AND AGRICULTURE ORGANIZATION OF THE UNITED NATIONS. *Commodities by country*. Section FAOSTAT: Rankings. Rome: FAO, [2024?]. Available at: https://www.fao.org/faostat/en/#rankings/commodities_by_country. Accessed on: 4 may 2024.

¹⁹ Contemporary cross-border trade of coffee and cocoa beans started to meet the European demand of luxury products by the early times of globalization. Along the 20th Century, coffee and cocoa consumption became widespread in early-industrialized countries. Since the beginning of the 21st Century, these products are being gradually introduced into newly-industrialized countries.

²⁰ FOOD AND AGRICULTURE ORGANIZATION OF THE UNITED NATIONS. *Coffee*. Section Markets and Trade: Commodities. Rome: FAO, [2022?]. Available at: <https://www.fao.org/markets-and-trade/commodities-overview/beverages/coffee/en>. Accessed on: 22 Mar. 2022.

²¹ These hauls may either be the object of a separate land freight transport contract or be part of a multimodal transport contract. Frequently used transport documents may include a land consignment note, a port-to-port bill of lading, plus another land consignment note or a single multimodal bill of lading.

²² INTERNATIONAL TRADE CENTER. *The coffee exporter’s guide*. 3. ed. Geneva: ITC, 2011. p. 120.

America, in New York, and the abovementioned CAL, headquartered in London.²³ In 2002, CAL merged with AFCC, giving birth to the *Fédération du commerce des Cacao* or Federation of Cocoa Commerce (FCC).²⁴

Parties from mainland China are often concerned about the need to further diversify the profile of arbitrators within industry associations. In Yideman Case, this was a major concern of Huaxin Corporation (the Chinese buyer of Malaysian cocoa beans from Yideman, a Singaporean trade-in-commodities corporation). Although this argument was not decisive in order to deny the recognition and enforcement of the CAL arbitral award, Huaxin argued that out of thirty-three CAL arbitrators, five were employees of Yideman (the Singaporean trade-in-commodities corporation that was selling the cocoa beans).²⁵ Meanwhile, enterprises from mainland China had little or no representation in CAL list of arbitrators.

Coffee arbitration and cocoa arbitration can potentially be utilized for the resolution of some land freight transport disputes that may emerge along relatively new land routes, and very especially along Asian regional routes. However, it must be borne in mind that these specialized forms of arbitration were primarily created and shaped by the coffee and cocoa industry associations in early-industrialized countries.²⁶ As newly-indus-

trialized nations increase their role in coffee and cocoa trading, these industries may seek to adapt these forms of specialized arbitration to the structure of the market. This could be easily achieved by including umpires from recently-industrialized countries.

2.3 Cotton Arbitration for Land Transport Disputes

Europe is among the largest cotton importers of the World, which has managed to diversify the sources of its cotton imports to a large extent. China is the second largest cotton producer, as well as a large consumer of raw cotton for its transformation industries. Europe-China corridors are currently not among the major routes for the shipping of cotton, but eventually, disputes may still emerge along these routes. Disputes related to the carriage of cotton by land along the regional routes that link China to other Asian countries may arise more frequently. Such disputes may arise either out of or in relation with an independent land freight transport contract or out of or in relation with an overland haul within a multimodal transport route.

Freight is key to the efficient functioning of cotton markets.²⁷ Disputes arising out of or in relation with transportation of cotton by land within China will virtually always utilize CIETAC arbitration, as proposed by the China Cotton Association (CCA), headquartered in Hefei (Anhui Province). However, these are domestic disputes without cross-border elements.

Cross-border freight of cotton most often includes a maritime haul and at least one overland haul.²⁸ Dispu-

²³ Whereas in Europe arbitration is a friendly and commonly-used dispute resolution mechanism, in the United States the parties often reach an agreement before arbitration starts. Another feature of cocoa arbitration in Europe is the publication of a number of decisions that may serve as guidance, although they (by no means) set a binding precedent.

INTERNACIONAL TRADE CENTER. *Cocoa: a guide to trade practices*. Geneva: ITC, 2001. p. 86-88.

²⁴ FEDERATION OF COCOA COMMERCE. [2022?]. Available at: <https://www.cocoafederation.com/>. Accessed on: 11 Apr. 2022.

²⁵ UNITED NATIONS COMMISSION ON INTERNATIONAL TRADE LAW. *Singapore Yedeman Asian Co. (Asia) Pte Ltd. V Wuxi Huaxin Cocoa Food Corp*, 12 June 2003. Reply of the Supreme People's Court regarding Jiangsu Higher People's Court's Request for instruction on the recognition and enforcement of a foreign arbitral award by the applicant Singapore Yedeman Asian Co. Ltd. Available at: https://newyorkconvention1958.org/index.php?lvl=notice_display&id=597&copac_view=6. Accessed on: 11 May 2024.

²⁶ Commodities arbitration is often divided into "quality" and "technical" arbitration. The first kind is a specific sort of dispute-resolution method used in certain perishable commodities' industries; it involves particular proceedings, such as taking samples of the lots and strict time limits to avoid deterioration of the goods. The so-called "technical arbitration" concerns issues very similar to any other sort of commercial arbitration, including breaches of the contract such as default of payment or delivery.

INTERNACIONAL TRADE CENTER. *Cocoa: a guide to trade practices*. Geneva: ITC, 2001. p. 86-87.

INTERNACIONAL TRADE CENTER. *The coffee exporter's guide*. 3. ed. Geneva: ITC, 2011. p. 120-121.

²⁷ Prices in the cotton markets are largely dependent on the efficiency of freight. The price perceived by the spinner (the so-called "delivered mill" price) includes: "interior freight from gin yard or interior warehouse via land transport (rail or truck) to ocean shipping port, ocean freight from the shipping port to the disembarkation port, and delivery to the final destination (usually a spinning mill, sometimes a warehouse)". INTERNACIONAL TRADE CENTER. *Cotton exporter's guide*. Geneva: ITC, 2007. p. 122-127.

²⁸ The transport document most frequently utilized for the carriage of cotton is a multimodal bill of lading, that is, "[a] negotiable document issued by a water carrier after receipt of container of cotton on board a rail car or other transport equipment. A typical intermodal B/L [bill of lading] might cover the shipment of containerized cotton from the ginnery or the warehouse to a spinning mill overseas". INTERNACIONAL TRADE CENTER. *Cotton ex-*

te-resolution clauses in contracts for the cross-border carriage of cotton often refer to specialized cotton arbitration. These specialized forms of arbitration were developed by the cotton industries in early-industrialized countries through the bylaws of cotton industry-associations, as well as through standard contracts, dispute resolution clauses, general terms and conditions and arbitration rules developed by these associations.

Cotton arbitration developed in early-industrialized countries (which are primarily forms of *ad hoc* arbitration) still play a major role in the resolution of disputes related to the cross-border carriage of cotton. Long-standing cotton arbitration hubs will continue playing a fundamental role in the years to come. More than half of cross-border cotton trade is carried out under the Bylaws and Rules of the International Cotton Association (ICA), headquartered in Liverpool since its foundation in 1841.²⁹ Other major associations of the cotton industries in early-industrialized countries that provide *ad hoc* cotton arbitration services at a global scale include: the *Association Française Cotonnière* (AFCOT) in Le Havre, the *Bremer Baumwollbörse* (in Bremen, Germany) and the American Cotton Shippers Association, headquartered in Memphis.³⁰

The resolution of cotton disputes in national Asian markets increasingly relies upon the bylaws of national industry associations. The Cotton Association of India (CAI) (headquartered in Mumbai) has its own set of institutional rules.³¹ Instead of creating specialized cotton arbitration rules, the CCA in China has sought specialization through the incorporation of cotton ex-

perts to CIETAC's panel of arbitrators.³² Being India and China the World's largest cotton producers, as well as large cotton-transforming economies, the forms of cotton arbitration recommended by the industry associations of these countries may be increasingly often utilized in the years to come and contribute to shaping global practice in this field.³³

Depending on the specific features of a given dispute related to the carriage of cotton along Asian regional routes, its resolution may rely upon different sorts of cotton arbitration (and may well even rely upon other forms of commercial arbitration). A major advantage of cotton arbitration over other forms of commercial arbitration lies on the fact that failure to comply with cotton awards worldwide is monitored through a mechanism developed under the auspices of the Committee for International Cooperation between Cotton Associations (CICCA).³⁴

3 Maritime Arbitration for Land Transport Disputes?

May specialized forms of arbitration created for the resolution of freight transport disputes in modes of transport other than road and rail be suitable for the resolution of land freight transport disputes? The present section will analyze the suitability of forms of maritime arbitration and air arbitration for the resolution of disputes related to the carriage of goods by road and rail.

Overland freight disputes may arise out of a land haul within a multimodal (maritime plus) freight route. Such would be the case of a dispute that arises along a land haul in Asia within a multimodal route for the shipping of soy beans from Primavera do Leste (State

porter's guide. Geneva: ITC, 2007. p. 122-126.

²⁹ ICA Bylaws and Rules refer to English Law and to the 1996 Arbitration Act and evidence under ICA Arbitration rules has to be submitted in English language or officially translated into English. These features could be perceived as potential drawbacks for the utilization of ICA arbitration at a global scale. The fact is that, English is the most frequently-used language for drafting cotton contracts and the leading language for drafting cross-border commodities contracts. INTERNACIONAL TRADE CENTER. *Cotton exporter's guide*. Geneva: ITC, 2007. 105-108.

³⁰ Besides, the European Cotton Rules seek to harmonize the resolution of cotton among different European national cotton industries, including the *Centro Algodonero Nacional* (Barcelona, Spain), the *Association Cotonnière de Belgique and Gdynia Cotton Association (Poland)*.

³¹ COTTON ASSOCIATION OF INDIA. *About CAI*. Mumbai: CAI, [2022?]. Available at: <https://www.caionline.in/about-us/cai>. Accessed on: 23 Mar. 2022.

COTTON ASSOCIATION OF INDIA. *CAI Rules of Arbitration*. Mumbai: CAI, [2022?]. Available at: <https://www.caionline.in/pages/rules-of-arbitration>. Accessed on: 23 Mar. 2022.

³² In 2014, for instance, six cotton arbitrators were incorporated into CIETAC's panel of arbitrators. CHINA COTTON ASSOCIATION. *The first appointment of six CIETAC cotton arbitrators*. Hebei: CCA, 2014. Available at: <http://english.china-cotton.org/index/newsshow/MSTUaI5BxkFMRgVeQgIeQeQ>. Accessed on: 23 Mar. 2022.

³³ Followed by the United States of America and Brazil. FOOD AND AGRICULTURE ORGANIZATION OF THE UNITED NATIONS. *Cotton*. Section Markets and Trade: Commodities. Rome: FAO, [2022?]. Available at: <https://www.fao.org/markets-and-trade/food-and-agricultural-markets-analysis-FAMA/cotton/en>. Accessed on: 22 Mar. 2022.

³⁴ INTERNACIONAL TRADE CENTER. *Cotton exporter's guide*. Geneva: ITC, 2007. p. 105-108.

of Mato Grosso, Brazil) to Chengdu.³⁵ In other occasions, disputes may arise out of a fully-overland regional Asian route and it would be rather unlikely to use maritime arbitration. Such would be the case of a land freight transport contract for shipping rice from Hanoi to Chongqing or a contract for shipping wheat from Kazakhstan to Xi'an.

3.1 Maritime Arbitration and the Resolution of Land Transport Disputes

A number of regional land freight transport hauls that link Asian countries to China are often part of multimodal transcontinental routes in which the maritime haul outstands. This is the case in the carriage of food commodities (such as soy, coffee and cocoa beans) from the American continent to China.³⁶ When these regional overland hauls are the object of a separate contract, this sort of disputes may be resolved according to the transport document that is being used (CMR, CIM, SMGS or CIM-SMGS consignment notes) as well as through the legal instruments for the resolution of disputes that the parties to the contract may have agreed upon. However, when Asian regional hauls are part of a multimodal transport contract, maritime arbitration could constitute a suitable option for the resolution of this particular sort of land freight transport disputes.³⁷

Ad hoc maritime arbitration has been predominant in traditional maritime arbitration hubs, such as London and New York. Is this tradition of *ad hoc* arbitration a di-

³⁵ Such a multimodal route could be articulated either through a single multimodal contract or through a maritime transport contract and one (or two) land transport contracts.

³⁶ A few examples of these multimodal routes were described in the section above.

³⁷ The United Nations Convention on Contracts for the International Carriage of Goods Wholly or Partly by Sea (2008 Rotterdam Rules) has not entered into force. Its entry into force would require twenty parties and there are only five so far. The United Nations Convention on International Multimodal Transport of Goods has not entered into force either: this would require its ratification by thirty parties, while only eleven parties have ratified so far. UNITED NATIONS COMMISSION ON INTERNATIONAL TRADE LAW L. *Status*: United Nations Convention on contracts for the International Carriage of Goods wholly or partly by sea. New York: UNCITRAL, [2002?]. Available at: https://uncitral.un.org/en/texts/transportgoods/conventions/rotterdam_rules/status Accessed on: 18 Aug. 2022. UNITED NATIONS TREATY COLLECTION. *Transport and communications*. Section Depository. New York: UNCTC, [2022?]. Available at: https://treaties.un.org/Pages/ViewDetails.aspx?src=TREATY&mtdsg_no=XI-E-1&chapter=11&clang=_en. Accessed on: 18 Aug. 2022.

sadvantage of maritime arbitration for the resolution of land freight transport disputes along regional Asian routes? This does not seem to be a big concern nowadays. The first reason is that institutional maritime arbitration is increasingly utilized, most remarkably in the far East, but also in other traditional maritime dispute-resolution hubs. Consolidated dispute-resolution institutions in maritime arbitration hubs tend to receive a considerable number of maritime disputes; such is the case of the International Chamber of Commerce (ICC) and London Court of International Arbitration (LCIA). The second reason lies on the fact that China seems to be moving towards increasing acceptance of *ad hoc* arbitration.

Maritime arbitration was first developed by European maritime freight industries, followed (since the late 19th Century) by the maritime freight industries in the United States of America and Japan. The second half of the 20th Century saw the creation of important merchant fleets in newly-industrialized countries, such as the Republic of Korea and the PRC. As maritime industries have flourished in Asian countries, maritime arbitration has sought adaptation in two different ways. First, traditional maritime arbitration hubs are adapting to the trends in the market. Second, new maritime arbitration hubs are consolidating in the Asia-Pacific region, such as Hong Kong and Singapore.

3.2 The Adaptation of Maritime Arbitration to the Industry's Structure

Swift adaptability to the market structure is a major advantage of using maritime arbitration for the resolution of this kind of land freight transport disputes. The ability of maritime arbitration to adapt to the structure of the market derives from the fact that this dispute-resolution mechanism is the result of a number of contractual instruments coined by the maritime freight industries, such as model contracts, model dispute-resolution clauses, general contracting terms and conditions of the maritime industries, as well as arbitration associations and specialized maritime arbitration rules.

The first way in which maritime arbitration is being adapted to the consolidation of maritime freight industries in Asia is through the incorporation of arbitrators with Asian linguistic, cultural and legal backgrounds into lists and panels of maritime umpires. London Maritime Arbitrators Association (LMAA), for instance, has already included a number of Asian supporting members

and LMAA Terms and other LMAA documents are available in Mandarin.³⁸ More diversity in the profile of maritime arbitrators may still be convenient in order to further adapt to the trends in the maritime industry.³⁹

Maritime industry associations are also making adaptations in order to reflect the higher presence of Asian industry associations in cross-border maritime freight markets. The Baltic and International Maritime Council (BIMCO), one of the oldest and most influential associations of the maritime industries, has already made considerable efforts to reflect the contemporary structure of the shipping industry and its current needs.⁴⁰ Traditionally, BIMCO maritime dispute-resolution clauses referred either to LMAA arbitration in accordance with English Law or to the Society of Maritime Arbitrators (SMA) Rules, governed either by US maritime law or by the laws of the State of New York. In 2012, BIMCO introduced an alternative model dispute-resolution clause which referred to arbitration in Singapore.

³⁸ LMAA is an association that “facilitates ad hoc arbitration”, funded in 1960, with remote origins in the resolution of disputes among members of the Baltic Exchange. The Baltic Exchange was created in 1744 among the shipping industries and the resolution of disputes among its members has been a priority, long before the creation of LMAA.

BALTIC EXCHANGE. *Timeline*. London: Baltic Exchange, [2025?]. Available at: <https://www.balticexchange.com/en/who-we-are/history.html>. Accessed on: 26 Apr. 2022.

LMAA keeps two lists: one of “full members” and another one of “supporting members”. The latter are defined as: “those who do not act as a general rule practice as umpires or arbitrators, but who are in sympathy with, and wish to lend their support to, the achievement of the objects of the Association”.

THE LONDON MARITIME ARBITRATORS ASSOCIATION. *Full membership*. London: LMAA, [2022?]. Available at: <https://lmaa.london/product/full-membership/>. Accessed on: 26 Apr. 2022.

THE LONDON MARITIME ARBITRATORS ASSOCIATION. *Supporting membership*. London: LMAA, [2022?]. Available at: <https://lmaa.london/product/supporting-membership/>. Accessed on: 26 Apr. 2022.

³⁹ The Society of Maritime Arbitrators (SMA), in New York, has also sought diversification by awarding a greater role to the use of Spanish language within maritime arbitrations. This is a major asset for carrying arbitrations in the whole American continent, but further diversification would be required to adapt to the global presence of Asian maritime freight industries.

SOCIETY OF MARITIME ARBITRATORS. *About The Society of Maritime Arbitrators*. New York: SMA, [2022?]. Available at: <https://smany.org/about/>. Accessed on: 26 Apr. 2022.

⁴⁰ BALTIC AND INTERNATIONAL MARITIME COUNCIL. *BIMCO Standard Dispute Resolution Clause 2017*. Available at: https://bimco.org/contracts-and-clauses/bimco-clauses/earlier/dispute_resolution_clause_2017 Accessed on: 26 Apr. 2022.

3.3 New Maritime Arbitration Hubs in Asia

The creation of maritime arbitration institutions in Japan, China and the Republic of Korea is also a reflection of the increasing relative importance of Asian shipping industries. Model contracts of the Japanese, Chinese and South Korean maritime industry associations often foresee the resolution of maritime disputes before the arbitration institutions in these countries. Contracts of these national Asian maritime industries also often refer to arbitration in Hong Kong and in Singapore, which are often perceived as more neutral dispute-resolution hubs in the region.

Japan was the first Asian nation to develop a world-class maritime shipping industry and create mechanisms for the resolution of maritime commercial disputes. Japan has had specialized dispute resolution *fora* for maritime disputes since very early. Since the end of the 19th Century, maritime disputes were submitted to the Kobe District Court and, as early as 1921, the Kobe Shipping Union provided arbitration services. This function was passed to the Kobe Shipping Exchange in 1926 and, in 1933, this institution became part of the Japan Shipping Exchange (JSE). Also in 1926, the Tokyo Maritime Arbitration Commission (TOMAC) was established within the institutional framework of the JSE.⁴¹ Like in other jurisdictions with a strong maritime tradition, non-specialized commercial ADR institutions may also handle maritime disputes, such as the Japan Commercial Arbitration Association (JCAA).⁴²

Mainland China has developed specialized ADR institution for maritime disputes. Founded in 1959, China Maritime Arbitration Commission (CMAC) is a consolidated specialized institution in this field. Its original name until 1988 was Maritime Arbitration Commission of China Council for the Promotion of International Trade. CMAC has its headquarter in Beijing, besides it has

Sub-commissions in Shanghai, Tianjin, Chongqing, Guangdong, Hong Kong and Fujian, Pilot Free Trade Zone Arbitration Center in Zhejiang

⁴¹ ALLSOP, J. The Tokyo Maritime Arbitration Commission of the Japan Shipping Exchange, Inc. (TOMAC). In: SMIT, H.; RIBEIRO, J.; SHORE, L. *World arbitration reporter*. 2. ed. New York: JURIS, 2024. v. 2.

⁴² THE JAPAN COMMERCIAL ARBITRATION ASSOCIATION. *Statistics*. Section Arbitration. Tokyo: JCAA, [2022?]. Available at: <https://jcaa.or.jp/en/arbitration/statistics.html#>. Accessed on: 27 Apr. 2022.

and other places and liaison offices in major coastal cities such as Dalian, Tianjin, Qingdao, Ningbo, Guangzhou and Zhoushan.⁴³

South Korea belongs to the group of newly-industrialized countries that have successfully developed shipping industries and contributed to the creation of transnational legal instruments in the field of maritime transport. The creation of a specialized ADR institution for maritime disputes in South Korea is particularly recent. In 2017, the Korean Commercial Arbitration Board (KCAB) launched the Asia-Pacific Maritime Arbitration Centre in the city of Busan.⁴⁴ Although it has not yet reached the scale of other dispute-resolution centers in Asia, the ADR environment in South Korea is rapidly growing.

The role of Singapore in maritime freight services and maritime commercial dispute resolution is evolving in various ways. First, foreign dispute-resolution institutions, such as LMAA, often conduct maritime arbitration in Singapore, a trend that has been increasing in recent years. Second, specialized *fora* for the resolution of maritime disputes have been established in the city-State, especially since the beginning of the 21st Century. In 2004, Singapore Maritime Arbitrators Association (SMAA) was created, following the arbitration association model of LMAA and the Society of Maritime Arbitrators. Soon after, in 2009, the Singapore Chamber of Maritime Arbitration (SCMA), a specialized forum for institutional arbitration in the field of maritime disputes, was established.

Hong Kong SAR is also a major maritime dispute-resolution hub in the Asia-Pacific region, only comparable to Singapore and has developed both *ad hoc* and institutional maritime arbitration practice. *Ad hoc* maritime arbitration in Hong Kong finds its origins in LMAA arbitrations carried out in this city. It was not until the year 2000 that Hong Kong Maritime Arbitration Group (HKMAG) was created under the model of arbitration associations.⁴⁵ Institutional maritime commercial arbi-

tration in Hong Kong takes place primarily under the auspices of generalist commercial dispute resolution institutions, among which Hong Kong International Arbitration Centre (HKIA) and the International Chamber of Commerce in Hong Kong clearly stand out.⁴⁶

A major advantage of maritime arbitration in Hong Kong and Singapore lies on the fact that both *ad hoc* and institutional dispute resolution mechanisms have been developed in these cities. This may be the result of the confluence of the Asian tradition and the *common law*. Singapore's traditional neutrality makes it an ideal maritime dispute-resolution hub, not only for the Asia Pacific region, but also at a global scale. Singapore Exchange's acquisition of the Baltic Exchange in 2016 symbolizes the global role that Singapore is expected to play as a maritime shipping and dispute-resolution hub in the 21st Century.

The swift adaptability of maritime arbitration to the trends in the market of freight services market is a major advantage of maritime arbitration over other kinds of arbitration, especially when disputes arise along an overland haul that is part of a multimodal (maritime plus) route (unlike when they arise out of or in relation with an independent road or rail transport contract).

4 Air Transport Arbitration for Land Transport Disputes?

As a matter of fact, air carriage tends to be too expensive for the carriage of staple food commodities. This mode of transport may only be used for the carriage of food commodities that are expensive and easily-perishable. Unlike maritime arbitration, aviation arbitration is seldom utilized for the resolution of disputes related to other modes of transport, such as road and rail transport.⁴⁷

⁴⁶ Other arbitration institutions also receive maritime commercial disputes as a result of defective dispute resolution clauses that refer to "arbitration in Hong Kong", without explicitly designating an institution.

⁴⁷ "Aviation disputes" refers to those arising out of or in relation with the commercial activity of the civil aviation industry, including (of course) air transportation. The term "aviation disputes" often includes the disputes that arise out of other commercial contracts, such as contracts for the manufacture of aircrafts, sales, leasing of aircrafts and insurance, among others. "Air freight transport arbitration" is a specific kind of aviation dispute.

It must be borne in mind that dispute resolution under the institu-

⁴³ CHINA MARITIME ARBITRATION COMMISSION. *About us*. Beijing: CMAC, 1959. Available at: <https://www.cmac.org.cn/en/index.php?catid=10#>. Accessed on: 27 Apr. 2022.

⁴⁴ ASIA-PACIFIC MARITIME ARBITRATION CENTER. *The Asia-Pacific Maritime Arbitration Center is...* Munhyeon-dong: APMAC, [2022?]. Available at: www.apmac.or.kr/html/kcab_ebus/intro/history.jsp. Accessed on: 27 Apr. 2022.

⁴⁵ HONG KONG MARITIME ARBITRATION GROUP. *Introduction*. Section About. Hong Kong: HKMAG, 2022. Available at: <https://www.hkmag.org.hk/about>. Accessed on: 27 Apr. 2022.

The preponderance of maritime freight over other modes of transport has led to the predominance of maritime dispute resolution over other sorts of freight transport arbitration, especially within multimodal routes. Maritime arbitration is often used for the resolution of disputes that arise along hauls carried out through modes of transport other than maritime. A reason for this may be the fact that air transport is less frequently part of a multimodal route than maritime transport.

Although the utilization of aviation arbitration for the resolution of disputes that arise along land hauls within multimodal routes is rare, there is no legal impediment to eventually use air freight arbitration for the resolution of land freight transport disputes within multimodal routes.

Art. 34 of the Montreal Convention of 1999 for the Unification of Certain Rules for International Carriage by Air (MC) consolidates the utilization of arbitration for the resolution of air freight transport disputes.⁴⁸ With 137 parties (the European Union, China, the United States of America, Brazil, India and Russia among them) MC is the unrivalled cross-border legal instrument on private international law aspects of international carriage by air. This convention could be compared to the CMR, although MC has an even wider geographical scope.⁴⁹

The most widely utilized commercial dispute-resolution mechanism for air freight transport disputes is commercial arbitration under the Rules of the International Air Transport Association (IATA), which is a form of *ad hoc* arbitration created by the unrivalled industry association in the field of air transport services.⁵⁰ In any

tional framework of the International Civil Aviation Organization (ICAO) predominantly deals with State-to-State disputes (not air freight transport disputes) and therefore fall outside the scope of the present article.

⁴⁸ The possibility to conclude arbitration clauses was already foreseen in Art. 32 of the Warsaw Convention of 1929 (WC) as amended by The Hague Protocol of 1955, the 4th Montreal Protocol and the Guadalajara Convention of 1961, with slight variations.

CLARKE, M.; YATES, David. *Contracts of carriage by land and air*. 2. ed. London: Informa Law from Routledge, 2008. p. 455.

⁴⁹ INTERNATIONAL CIVIL AVIATION ORGANIZATION. *Convention for the unification of certain rules for international carriage by air, done at Montreal on 28 may 1999*. Montreal: ICAO, 1999. Available at: https://www.icao.int/secretariat/legal/list%20of%20parties/mtl99_en.pdf Accessed on: 29 Mar. 2022.

The universality of the MC contrasts with the fragmentation of the legal regime of cross-border rail freight transport, in which CIM Rules and SMGS coexist.

⁵⁰ INTERNATIONAL AIR TRANSPORT ASSOCIATION.

case, contractual legal instruments developed under the auspices of IATA focus on the avoidance and early settlement of disputes rather than on the utilization of third-party adjudication, such as arbitration.⁵¹ Neither the Air Waybill Manual (contained in IATA Resolution 600a) nor IATA conditions of contract (IATA Resolution 600b and IATA Resolution 600b II), explicitly refer to the utilization of arbitration.⁵²

The heyday of aviation arbitration, along with the growing importance of the aviation industries in some Asian countries, led to the creation in June 2014 of the Shanghai International Aviation Court of Arbitration (SIACA).⁵³ SIACA was created with the support of the China Air Transport Association (CATA) under the auspices of Shanghai International Arbitration Centre (SHIAC).⁵⁴

IATA arbitration rules. Montreal: IATA, 1999. Available at: <https://www.iata.org/contentassets/b7fc716af6a94192b1889420c7d573ce/iata-arbitration-rules.pdf>. Accessed on: 30 may 2022.

⁵¹ The air waybill is the transport document that may give evidence of the air transport contract. Under MC, the utilization of a transport document is not compulsory for the validity of the cross-border contract of carriage. However, in the words of Yates: “in the case of international carriage [sic], a carrier would ordinarily be foolish not to require an air waybill containing the stipulated particulars”.

CLARKE, M.; YATES, David. *Contracts of carriage by land and air*. 2. ed. London: Informa Law from Routledge, 2008. p. 464.

The Air Waybill Handbook proposed under the auspices of International Air Transport Association (IATA) (IATA Resolution 600a) is a legal instrument that aims at providing guidance on the standardization of the formal requirements of air waybills. This handbook could be compared to the manual on transport documents drafted under the auspices of the International Rail Transport Committee (CIT), such as the CIM consignment note manual and the CIM-SMGS consignment note manual. IATA has more than 290 member airlines from 120 different countries. Meanwhile, 128 railway undertakings from Europe and its neighboring regions: (North Africa, the Middle East and Central Asia) are CIT members.

INTERNATIONAL AIR TRANSPORT ASSOCIATION. *IATA membership*. Montreal: IATA, [2022?]. Available at: <https://www.iata.org/en/about/members/>. Accessed on: 29 Mar. 2022.

⁵² IATA conditions of contract aim at fostering the early settlement of claims. See Art. 10 when IATA Resolution 600b or Art. 12 IATA Resolution 600b(II) depending on the conditions of contracts have been incorporated to the air waybill.

⁵³ SHANGHAI INTERNATIONAL AVIATION COURT OF ARBITRATION. *Introduction*. Section About Us. Shanghai: SHIAC, [2022?]. Available at: <https://www.shiac.org/pc/Aviation?moduleCode=aboutus>. Accessed on: 30 Mar. 2022.

⁵⁴ SHANGHAI INTERNATIONAL AVIATION COURT OF ARBITRATION. *Introduction*. Section About Us. Shanghai: SHIAC, [2022?]. Available at: <https://www.shiac.org/pc/Aviation?moduleCode=aboutus>. Accessed on: 30 Mar. 2022.

SHANGHAI INTERNATIONAL ARBITRATION CENTER. *Shanghai International Aviation Court of Arbitration*: take-off in aviation arbitration. GAR, 29 may 2018. Available at: <https://globalarbitra>

SIACA started providing *ad hoc* arbitration services in Shanghai using IATA Arbitration Rules, which has been possible due to the 2017 Supreme People's Court Opinions on Providing Judicial Safeguards for the Construction of Pilot FTZs.⁵⁵ In 2015, SIACA developed its own set of arbitration rules, the China (Shanghai) Pilot Free Trade Zone Arbitration Rules, as well as a number of model dispute-resolution clauses.⁵⁶

Even before the creation of SIACA, arbitration institutions in mainland China had already sought to specialize in the resolution of aviation disputes, notably for the resolution of domestic civil aviation disputes. CMAC, originally created for the resolution of maritime disputes, used to receive disputes related to other modes of transport. As the number of cases related to other modes of transport increased, CMAC evolved towards specialization through the division of its workload into specialized ADR centers for each mode of transport. Two of these centers have specialized in the resolution of aviation disputes: The Aviation Dispute Arbitration Centre and the Aviation Dispute Mediation Center.⁵⁷

Like in the case of maritime arbitration, a major advantage of aviation arbitration for the resolution of land freight transport disputes (especially along regional Asian routes), is the adaptability to changes in the market structure in order to reflect the growing importance of Asian air freight services industries. Also like in maritime arbitration, the strong tradition of *ad hoc* arbitration may seem like a potential disadvantage of the use of aviation arbitration for the resolution of land freight transport disputes with Chinese elements, given the traditional preference for institutional arbitra-

tion in mainland China. The easing of *ad hoc* arbitration in mainland China is clear in the field of aviation, as the creation of SIACA and the China (Shanghai) Pilot FTZs Arbitration Rules shows.

In any case, air transport does not have the clear predominance within multimodal routes that maritime freight has. Therefore, the use of air transport arbitration is much less likely than the use of maritime arbitration for the resolution of land freight transport disputes within multimodal freight routes.

5 Conclusions

This article has analyzed the suitability of trade-in-commodities arbitration and maritime and air arbitration for the resolution of land freight transport disputes along Europe-China corridors and along the regional routes that link China to other countries in Asia. These special kinds of arbitration are often of an *ad hoc* nature, as opposed to institutional arbitration. This may be (at least potentially) a disadvantage for the resolution of trade-in-commodities disputes that involve Chinese parties. Despite the trends towards the progressive easing to utilize of *ad hoc* arbitration in mainland China, Chinese parties may still feel more comfortable using institutional arbitration.

However, specialized forms of arbitration developed by trade-in-commodities associations, as well as maritime arbitration, present a number of advantages for the resolution of land freight transport disputes along Europe-China corridors and Asian regional routes. A major virtue of these specialized arbitration mechanisms lies on their ability to adapt to changes in the structure of markets. As newly industrialized countries increase their presence in the cross-border trade of certain commodities, the dispute-resolution mechanisms utilized within these industries can adapt rapidly, since these specialized forms of arbitration are the result of the utilization of model jurisdiction clauses, model dispute-resolution clauses, arbitration clauses, standard contracts, as well as specialized arbitration rules and arbitration associations or ADR institutions.

Industry associations in the field of food commodities such as grains and feed trade have made considerable efforts to adapt their standard contracts and their forms of arbitration to the growing importance of

tionreview.com/review/the-asia-pacific-arbitration-review/2019/article/shanghai-international-aviation-court-of-arbitration-take-in-aviation-arbitration. Accessed on: 30 May 2022.

⁵⁵ TAO, J.; ZHONH, Mariana. *Resolving disputes in China*: new sometimes unpredictable developments. In: QUAYLE, P.; GAO, X. International organizations and the promotion of effective dispute resolution. Leiden: Brill, 2019. chap. 5. p. 60-61.

⁵⁶ SHANGHAI INTERNATIONAL ARBITRATION CENTRE. *The China (Shanghai) pilot free trade zone arbitration rules*. Shanghai: SHIAC, 2015. Available at: https://ng-lassen.oss-cn-hangzhou.aliyuncs.com/upload_files/file/2020/20200813142126_1384.pdf. Accessed on: 30 Mar. 2022.

⁵⁷ Other ADR centers within CMAC include the Logistics Dispute Resolution Centre, the Fishery Dispute Resolution Centre, the Maritime Mediation Centre and the Measurement Dispute Arbitration Centre.

CHINA MARITIME ARBITRATION COMMISSION. *About us*. Beijing: CMAC, 1959. Available at: <https://www.cmac.org.cn/en/index.php?catid=10#>. Accessed on: 27 Apr. 2022.

recently-industrialized countries. GAFTA and FOSFA arbitration are good options for the resolution of a large variety of land freight transport disputes both along Europe-China corridors and along Asian regional hauls, including those that are part of multimodal routes for food commodities with origin in the American continent and in Australia. A clear example of this trend can be observed in GAFTA standard contracts for the trade of “Chinese goods” and for “Brazil cargoes”.

Specialized forms of arbitration for non-staple food commodities markets such as those of coffee and cocoa could be utilized along for the resolution of land freight transport disputes along Asian regional routes, including both fully overland routes (for instance, Vietnamese coffee to Chengdu) and overland regional Asian hauls that are part of multimodal routes (such may be the case of Colombian coffee and Indonesian cocoa beans going to Nanjing). As could be seen in *Yideman Case*, there is a demand from the trading industries of goods such as cocoa beans in recently-industrialized countries (and most remarkably in China) to further diversify the lists and panels of arbitrators.

Cotton arbitration could be potentially utilized for the resolution of land freight transport disputes along Europe-China corridors. However, in practice, it is more likely that such cotton freight disputes could emerge in regional Asian routes. Cotton arbitration has sought adaptation to the international trends, in the first place, through the creation of national cotton associations with their own forms of arbitration. The Committee for International Cooperation between Cotton Associations plays a key role in monitoring the compliance with cotton awards worldwide.

Maritime arbitration is likely to be utilized for the resolution of land freight transport disputes when disputes arise out of or in relation with a regional Asian overland haul that is part of a multimodal transcontinental route (such would be the case of soybeans or coffee beans from Brazil shipped to Wuhan). Maritime arbitration has adapted to changes in the structure maritime freight services markets in which Asian transport industries play a constantly growing role.

Adaptation has been sought in a number of ways. First, traditional maritime ADR institutions are including umpires with a background in Asian languages and legal traditions in their lists or panels. Second, consolidated institutions such as LMAA make available

some of their contracts and documents related to the resolution of disputes in Mandarin. Third, traditional industry associations (such as BIMCO) foresee the use of arbitration in Asian dispute-resolution and maritime hubs, such as Singapore. Fourth, regional maritime powers (Japan, the Republic of Korea and China) and maritime hubs (Hong Kong SAR and Singapore) have consolidated their own maritime ADR institutions and arbitration practices.

The use of air freight arbitration for the resolution of land freight transport disputes is legally feasible, but it is seldom used in practice for two major reasons. First, because overland hauls, do not integrate “air-plus” multimodal routes as often as they integrate multimodal (maritime-plus) routes. Second, because air freight tends to be more expensive than other modes of transport and is often reserved for the carriage of easily-perishable and high-value (usually manufactured) goods.

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