

FEDERAL MARITIME
COMMISSION

59TH ANNUAL
REPORT

FOR

FISCAL YEAR
2020

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LETTER OF TRANSMITTAL



FEDERAL MARITIME COMMISSION
800 North Capitol Street, N.W.
Washington, DC 20573-0001

March 31, 2021

To the United States Senate and House of Representatives:

On behalf of my fellow Commissioners, and pursuant to section 103(e) of Reorganization Plan No. 7 of 1961, and section 208 of the Merchant Marine Act, 1936, as amended, at 46 U.S.C. 306(a), I welcome the opportunity to share with you the 59th Annual Report of the Federal Maritime Commission, Fiscal Year 2020.

This report highlights the key accomplishments, initiatives, and relevant events that occurred between October 1, 2019, and September 30, 2020. Included in the following pages are reports about:

- Consequences to the shipping industry of the global spread of COVID-19 and related Commission initiatives;
- Commission operations during the pandemic;
- Significant agreements filed at the Commission;
- Status of formal investigations, private complaints, and litigation before the Commission;
- Trends in licensing of non-vessel-operating common carriers and freight forwarders; and
- Developments in the key trade lanes serving the United States.

It is the mission of the Federal Maritime Commission to ensure a competitive and reliable international ocean transportation system. The Commissioners and Staff of the FMC are proud of the work we do toward that goal.

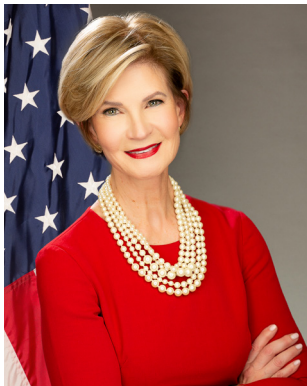
Sincerely,

A handwritten signature in black ink, appearing to read 'MA Khouri', written in a cursive style.

Michael A. Khouri
Chairman

MEMBERS OF THE COMMISSION

Fiscal Year 2020



Rebecca F. Dye
Commissioner
Appointed 2002
Term Expired 2020



Michael A. Khouri
Chairman
Appointed 2009
Term Expires 2021



Daniel B. Maffei
Commissioner
Appointed 2016
Term Expires 2022



Louis Sola
Commissioner
Appointed 2019
Term Expires 2023



Carl W. Bentzel
Commissioner
Appointed 2019
Term Expires 2024



Chairman Khouri and his fellow Commissioners welcome Carl W. Bentzel to the FMC as its newest member, December 9, 2019.

GLOSSARY

Agreement means an understanding, arrangement, or association, written or oral (including any modification, cancellation or appendix) entered into by or among ocean common carriers and/or marine terminal operators, but does not include a maritime labor agreement. Various types of agreements are described in Appendix D to this report.

Bulk cargo means cargo that is loaded and carried in bulk without mark or count in a loose unpackaged form, having homogeneous characteristics.

Common carrier means a person holding itself out to the general public to provide transportation by water of cargo between the United States and a foreign country for compensation that:

1. Assumes responsibility for the transportation from port or point of receipt to the port or point of destination; and
2. Utilizes, for all or part of that transportation, a vessel operating on the high seas or the Great Lakes between a port in the United States and a port in a foreign country, except that the term does not include a common carrier engaged in ocean transportation by ferry boat, ocean tramp, or chemical parcel tanker or by a vessel when primarily engaged in the carriage of perishable agricultural commodities:
 - i. If the common carrier and the owner of those commodities are wholly-owned, directly or indirectly, by a person primarily

engaged in the marketing and distribution of those commodities and

- ii. Only with respect to the carriage of those commodities.

Consignee means the recipient of cargo from a shipper; the person to whom a transported commodity is to be delivered.

Container means a demountable and reusable freight-carrying unit designed to be transported by different modes of transportation and having construction, fittings, and fastenings able to withstand, without permanent distortion or additional exterior packaging or containment, the normal stresses that apply on continuous all-water and intermodal transportation. The term includes dry cargo, ventilated, insulated, refrigerated, flat rack, vehicle rack, liquid tank, and open-top containers without chassis, but does not include crates, boxes or pallets.

Controlled carrier means a vessel-operating common carrier that is, or whose operating assets are, directly or indirectly owned or controlled by a government; ownership or control by a government shall be deemed to exist with respect to such common carrier if:

1. A majority portion of the interest in the common carrier is owned or controlled in any manner by that government, by an agency thereof, or by any public or private person controlled in any manner by that government, by any agency thereof, or by any public or private

person controlled by that government;
or

2. That government has the right to appoint or disapprove the appointment of a majority of the directors, the chief operating officer or the chief executive officer of the common carrier.

IMO 2020 means an International Maritime Organization rule in effect as of January 1, 2020 that limits Sulphur content in fuel use on board ships.

Intermodal transportation means continuous through transportation involving more than one mode of service (e.g., ship, rail, motor, air), for pickup and/or delivery at a point beyond the area of the port at which the vessel calls. The term “intermodal transportation” can apply to “through transportation (at through rates)” or transportation on through routes using combination rates.

Demurrage is the charge per container for the use of ground space at the marine terminal.

Detention is the charge by the ocean carrier for use of the container equipment. Per Diem relates to assessorial charges beyond demurrage and detention.

Marine Terminal Operator (MTO) means a person engaged in the United States of a commonwealth, territory, or possession thereof, in the business of furnishing wharfage, dock, warehouse or other terminal facilities in connection with a common carrier, or in connection with a common carrier and a water carrier subject to Subchapter II of Chapter 135 of Title 49, United States Code. A marine

terminal operator includes, but is not limited to, terminals owned or operated by states and their political subdivisions; railroads who perform port terminal services not covered by their line haul rates; common carriers who perform port terminal services; and warehousemen who operate port terminal facilities.

Ocean Carrier Alliance Agreement means two or more shipping lines authorized to discuss and agree on the supply of vessel capacity across multiple trades. Alliance agreements may contain other authorities such as, information exchange, joint procurement of goods or services necessary to operate their services, etc. While there are currently seven global alliance agreements on file with the Commission, only three are jointly/collectively operating container services in the U.S. trades.

Vessel-operating common carrier (VOCC) / Ocean common carrier means a common carrier that operates, for all or part of its common carrier service, a vessel on the high seas or the Great Lakes between a port in the United States and a port in a foreign country, except that the term does not include a common carrier engaged in ocean transportation by ferry boat, ocean tramp, or chemical parcel-tanker.

Ocean transportation intermediary (OTI) means an ocean freight forwarder or a non-vessel-operating common carrier. For purposes of this part,

Ocean freight forwarder means a person that—

1. In the United States, dispatches shipments from the United States via a common carrier and books or otherwise

arranges space for those shipments on behalf of shippers; and

2. Processes the documentation or performs related activities incident to those shipments; and

Non-vessel-operating common carrier (NVOCC) means a common carrier that does not operate the vessels by which the ocean transportation is provided and is a shipper in its relationship with an ocean common carrier.

Port means a place at which a common carrier originates or terminates (by transshipment or otherwise) its actual ocean carriage of cargo or passengers as to any particular transportation movement.

Service Contract means a written contract, other than a bill of lading or receipt, between one or more shippers and an individual ocean common carrier or an agreement between or among ocean common carriers in which the shipper makes a commitment to provide a certain minimum quantity or portion of its cargo or freight revenue over a fixed time period, and the individual ocean common carrier or the agreement commits to a certain rate or rate schedule and a defined service level, such as, assured space, transit time, port rotation, or

similar service features.

Shipper means: a cargo owner; the person for whose account the ocean transportation is provided; the person to whom delivery is to be made; a shipper's association; or an NVOCC that accepts responsibility for payment of all charges applicable under the tariff or service contract.

Tariff means a publication containing the actual rates, charges, classifications, rules, regulations and practices of a common carrier or a conference of common carriers. The term "practices" refers to those usages, customs or modes of operation which in any way affect, determine or change the transportation rates, charges or services provided by a common carrier or conference and, in the case of conferences, must be restricted to activities authorized by the basic conference agreement.

Transshipment means the physical transfer of cargo from a vessel of one carrier to a vessel of another in the course of all-water or through transportation, where at least one of the exchanging carriers is an ocean common carrier subject to the Commission's jurisdiction.

FMC MISSION, STRATEGIC GOALS, AND FUNCTIONS

The Federal Maritime Commission (FMC or Commission) is an independent agency responsible for the regulation of oceanborne transportation in the foreign commerce of the United States for the benefit of U.S. exporters, importers, and the U.S. consumer.

The FMC's **Mission** is:

- Ensure a competitive and reliable international ocean transportation supply system that supports the U.S. economy and protects the public from unfair and deceptive practices.

The Commission achieves its mission by ensuring that the fundamental dynamics of a free, open, and competitive ocean transportation market drive economic outcomes. To that end, the Commission is committed to faithfully administer the Shipping Act, employing a minimum of government intervention and regulatory costs and by placing a greater reliance on the marketplace.

Competition and Integrity for
America's Ocean Supply Chain

STRATEGIC GOAL 1

Maintain an efficient and competitive international ocean transportation system.

The FMC ensures competitive and efficient ocean transportation services for the shipping public by:

- Reviewing and monitoring agreements among ocean common carriers and marine terminal operators (MTOs) serving the U.S. foreign oceanborne trades to ensure that any joint or collective activities do not cause substantial increases in transportation costs or decreases in transportation services;
- Maintaining and reviewing confidentially filed service contracts and Non-Vessel-Operating Common Carrier (NVOCC) Service Arrangements to guard against detrimental effects to shipping;
- Providing a forum for exporters, importers, and other members of the shipping public to obtain relief from ocean shipping practices or disputes that impede the flow of commerce;
- Ensuring common carriers' tariff rates and charges are published in private, automated tariff systems and electronically available;
- Monitoring rates, charges, and rules of government-owned or controlled carriers to ensure they are just and reasonable; and

- Taking action to address unfavorable conditions caused by foreign government or business practices in U.S. foreign shipping trades.

STRATEGIC GOAL 2

Protect the shipping public from unlawful, unfair and deceptive ocean transportation practices and resolve shipping disputes.

The FMC protects the public from financial harm and contributes to the integrity and security of the U.S. supply chain and transportation system by:

- Investigating and ruling on complaints regarding rates, charges, classifications, and practices of common carriers, MTOs, and Ocean Transportation Intermediaries (OTIs) that violate the Shipping Act;
- Licensing OTIs with appropriate character and adequate financial responsibility;
- Helping resolve disputes involving shipments of cargo, personal or household goods, or disputes between cruise vessel operators and passengers;
- Identifying and holding regulated entities accountable for mislabeling cargo shipped to or from the United States; and
- Ensuring that cruise lines maintain financial responsibility to pay claims for personal injury or death, and to reimburse passengers when their cruise fails to sail.

STATUTORY AUTHORITY

The principal statutes administered by the Commission, now codified in Title 46 of the U.S. Code at sections 40101 through 44106, are:

- The Shipping Act of 1984 (Shipping Act), 46 U.S.C. chapters 401-413;
- The Foreign Shipping Practices Act of 1988 (FSPA), 46 U.S.C. chapter 423;
- Section 19 of the Merchant Marine Act, 1920 (1920 Act), 46 U.S.C. chapter 421;
- Sections 2 and 3 of Pub. L. No. 89-777, 80 Stat. 1350, 46 U.S.C. chapter 441; and
- Section 834 of the Frank LoBiondo Coast Guard Authorization Act of 2018 (LoBiondo Act), 46 U.S.C. § 3503(b)(1)(C).

YEAR IN REVIEW

Changes to the container shipping industry were anticipated for 2020, however, the predicted cause was the implementation of a new global low sulfur fuel mandate referred to as IMO 2020. Instead, the global spread of COVID-19 had systemic consequences to shipping and supply chains. The consequence has been a year in industry and trade that has been unlike any other.

At the time of this report's preparation, COVID-19's impact to shipping and the ocean-linked supply chain can be broken into two distinct phases. The first phase began in the early spring 2020 and lasted until approximately July. During that period, when factories were closing in China, cargo volumes collapsed. Ocean carriers cancelled sailings to match vessel capacity to far lower than usual cargo demand. Cargo began stacking up on docks, as distribution centers reached capacity and there was simply nowhere for freight to go. Terminals in the United States became congested with both imports and empty containers. Cargo began stacking up on docks, as distribution centers reached capacity and there was simply nowhere for freight to go. So dramatic was the hit to shipping in the early days of the pandemic, the ability of ocean carriers to survive this pandemic was being questioned.

The second phase began in August, when cargo volumes increased dramatically to meet demand in the United States and the need to restock inventory to the point where, at some ports, records were set for the number of loaded import containers handled. There is no immediate change to this situation in

sight and predictions are that carriers will continue to operate ships filled to capacity into the first quarter of 2021, at the very least. Carriers responded to this increased demand by restoring service and deploying as many vessels as they were able to put into service. Similarly, shipping companies and intermodal equipment companies have been aggressively purchasing new containers to meet demand. Despite these efforts, both space on ships and the containers needed to move commodities have been in short supply, leading to rates on the spot market that have been uncharacteristically and historically high. The Commission responded to questions about carrier behavior by increasing its monitoring of ocean carrier alliances and increasing the reporting requirements alliances must meet. The Commission remains vigilant for any indication of anti-competitive behavior on the part of shipping companies. The Commission will act quickly and decisively if it determines any parties are not complying with their legal obligations.

In March, the Commission launched Fact Finding 29, charging Commissioner Rebecca F. Dye with examining COVID-19 related impacts to the supply chain and identifying operational solutions to cargo delivery system challenges related to the pandemic. As Fact Finding Officer, she convened Supply Chain Innovation Teams to identify what steps could be taken to clear cargo that was accumulating at ports, particularly at the Southern California gateways. In the following months, Commissioner Dye examined conditions at the Port of New York and New Jersey, and the Port of New Orleans. Additionally, she conducted

individual interviews with shippers, carriers, and MTOs to better understand how supply chains were being adjusted in response to changing trade volumes. In November, the Commission approved a Supplemental Order to Fact Finding 29 expanding the authority of Commissioner Dye as the Fact Finding Officer and directing her to examine whether certain policies and practices of ocean carriers operating in alliances and calling the Port of Long Beach, the Port of Los Angeles, or the Port of New York and New Jersey violate 46 U.S.C. § 41102(c), commonly referred to as 10(d)(1) of the Shipping Act, the prohibition against unjust or unreasonable practices and regulations. Furthermore, an advisory to the trade was issued counseling shippers and truckers they may contact the Commission's Bureau of Enforcement with allegations of ocean carriers and MTOs employing practices or regulations in violation of 46 U.S.C. § 41102(c) involving non-compliance with the Final Rule published earlier this year by the FMC that addresses detention and demurrage.

Action taken by the Commission related to COVID-19 was not limited to Fact Finding 29. The Commission provided, and extended, temporary relief to carriers and shippers by permitting service contracts to be filed up to 30 days after becoming effective. Originally granted as regulatory relief associated with information developed through Fact Finding 29, the Commission determined that providing such relief permanently would be beneficial to the trade community, while not impeding the Commission's ability to perform its oversight and monitoring activities. A rule-making process has been initiated to establish this change and the Commission anticipates finalizing this regulatory reform by mid-2021.

Responding to COVID-19 has meant that the Commission needed to adjust its operations as an agency. In the spring, as the pandemic spread from China to the United States, the Commission implemented a maximum telework policy to allow its employees to work from home if they elected to do so. Information technology investments that the Commission made in past years for the workforce paid dividends, in that the agency has continued its operations without disruption and with no adverse consequences to its stakeholders. The Commission will work to identify any gaps in the information technology infrastructure that allows for continuity of operations and address those requirements. From the experience of operating through COVID-19, however, it would appear any such additional resources will be minor and easily addressed.

During fiscal year (FY) 2020, the FMC acted in several different and substantial rulemakings that amended how the agency conducts its business, provided regulatory relief to industry, and issued guidance to the trade related to detention and demurrage charges. More specifically, key rulemaking activity included:

- Incorporating in regulation statutory provisions of the Frank LoBiondo Coast Guard Authorization Act of 2018 that addressed the FMC. The changes included amending regulations as they relate to Commission meetings, the activities of Ocean Transportation Intermediaries, and the confidentiality of comments filed in association with agreements:
- Revising its delegations to the Bureau of Enforcement and its procedures

for initiating enforcement action to facilitate Commission oversight of enforcement procedures and to allow for response from subjects of investigation earlier in the process;

- Eliminating the requirement to publish service contract essential terms, as a partial grant of a petition filed by the World Shipping Council; and
- Publishing a final rule setting forth guidance on how the Commission will determine the reasonableness of demurrage and detention practices under 46 U.S.C. § 41102(c).

International commerce now moves on information almost as much as it does on ships. The interaction between shippers and ocean carriers as well as between ocean carriers, other transportation providers, ports, or government agencies such as the FMC takes place online. Two new agreements filed at the Commission and now in effect create the conditions that permit for information that will facilitate cargo to flow more freely and effectively. Three technology related agreements were filed at the Commission in recent years, and as entities involved in international trade expand their embrace of technology to facilitate the movement of cargo, we may see additional such agreements filed at the agency.

An important part of the Commission's statutory authority is to protect U.S. carriers from discriminatory and unfair trade practices of other nations. A petition filed at the FMC by the Great Lakes Carriers Association raising concerns about ballast water exchange regulations proposed by the Canadian Government led to the Commission launching an investigation into this matter in May. The initiation of an investigation does not equate with making

a current determination that the proposed regulations are discriminatory; however, if the allegations are substantiated through the Commission investigation, then the Commission will be in position to act expeditiously.

The COVID-19 related impacts to the maritime sector are not limited to cargo shipping, the passenger cruise industry has also been adversely affected as a result of the cessation of their operations. In April, the Commission authorized Fact Finding 30 and charged Commissioner Louis E. Sola with engaging industry stakeholders to examine impacts to the cruise industry and to identify commercial measures cruise lines can adopt to mitigate COVID-19 related impacts to this sector of the maritime industry. Over the course of the year, Commissioner Sola has visited ports in Florida, Alaska, and Texas, in addition to holding virtual meetings to gather information in support of this Fact Finding. To date, he has published five reports chronicling his work, and in addition to briefing the Commission on his efforts, he has also provided briefings to officials at the most senior levels of the Department of Transportation and the Department of Homeland Security. His work has led to the Commission initiating a rulemaking process that may lead to the Commission amending its regulations concerning non-performance by a cruise line and dictating under what circumstances passengers must be provided a refund for a cancelled or delayed voyage. The Commission has not yet finalized this rulemaking and Commissioner Sola continues his work as Fact Finding Officer.

Also, under the Commission's passenger vessel operator (PVO) program, in March, the FMC revoked the Certificate of Financial Responsibility and Indemnification of

Passengers for Nonperformance of French America Line (FAL). As a result, FAL is prohibited from offering, advertising, or conducting cruises.

Overall in the fiscal year, worldwide, the volume of container cargo declined by 3.3 percent in FY 2020 (October 1, 2019 – September 30, 2020), down from 3 percent growth in the preceding fiscal year. In the U.S. liner trades (combined inbound and outbound), container cargo declined by 4.2 percent to 34.9 million TEUs, compared to 36.5 million TEUs last fiscal year. Globally, the nominal capacity of the containership fleet grew by 2.8 percent.

Looking to the year ahead, the availability of a vaccine against COVID-19 will mean that the United States and the world will return

to a more normal order of life. While there may not be consensus on what shape the post-COVID-19 recovery will look like, there does seem to be agreement that there will be a recovery. There will be demand for products and for production inputs and those items will be shipped in containers aboard vessels. Working to ensure that the flow of commerce is not impeded by physical, operational, procedural, or regulatory obstacles will be critical. The FMC will do its part in both encouraging industry led solutions to improving supply chain performance while continuing to carry out its responsibilities to ensure competition and integrity for America's ocean supply chain.

EFFICIENCY AND COMPETITION

STRATEGIC GOAL 1

Maintaining a competitive and reliable international ocean transportation system and regularly scheduled liner trade by evaluating and monitoring the use of various types of agreement authority for anticompetitive effects is a primary function of the Commission. An efficient and competitive transportation system facilitates commerce, economic growth, and job creation. Competition among participants in U.S. liner trades fosters competitive rates and encourages a variety of service offerings for the benefit of U.S. exporters and importers, and ultimately consumers.

The Shipping Act allows ocean carrier and marine terminal competitors to meet, discuss, and in some cases, cooperate on certain business issues, but first they must file a written agreement with the Commission. The Commission reviews agreements using traditional antitrust law principles and economic models to evaluate the potential competitive impact of a proposed agreement before it may go into effect. The initial review and analysis of a proposed agreement and subsequent monitoring of the members' activities under the agreement, should it become effective, are designed to identify and guard against possible anti-competitive abuse of the filed authority, avoid

unreasonable increases in transportation costs or decreases in transportation services, and address other activities prohibited by the Shipping Act.

The Shipping Act is a federal competition law applicable to the industry of international liner shipping. It contains provisions similar to those found in the Sherman Act of 1890, the 1914 Clayton Act, and the Robinson-Patman Act of 1936, concerning various prohibitions of discriminatory or unfair business practices and standards regarding business combinations. The Shipping Act creates a regulatory regime separate from Department of Justice enforcement of the antitrust law, under which collective carrier or MTO activity is evaluated when an agreement is initially filed, and closely monitored thereafter for any adverse impact on competition in the trade.

So long as an agreement complies with the relevant Shipping Act and regulatory requirements, then the other federal antitrust statutes generally do not apply. Conversely, if a regulated entity violates the Shipping Act, they would be subject to penalties, and may, under certain circumstances, also be subject to investigation and prosecution under the full array of federal antitrust statutes.

AGREEMENT FILINGS AND REVIEW

Under Sections 4 and 5 of the Shipping Act, 46 U.S.C. §§ 40301–40303, all agreements by or among ocean common carriers to undertake any of the following are required to be filed with the Commission:

- fix rates or conditions of service,
- pool cargo revenue,
- allot ports or regulate sailings,
- limit or regulate the volume or character of cargo or passengers to be carried,
- control or prevent competition, or
- engage in exclusive or preferential arrangements.

Except for certain exempted categories, agreements among MTOs, and those among one or more MTOs and one or more ocean common carriers, also must be filed with the Commission.

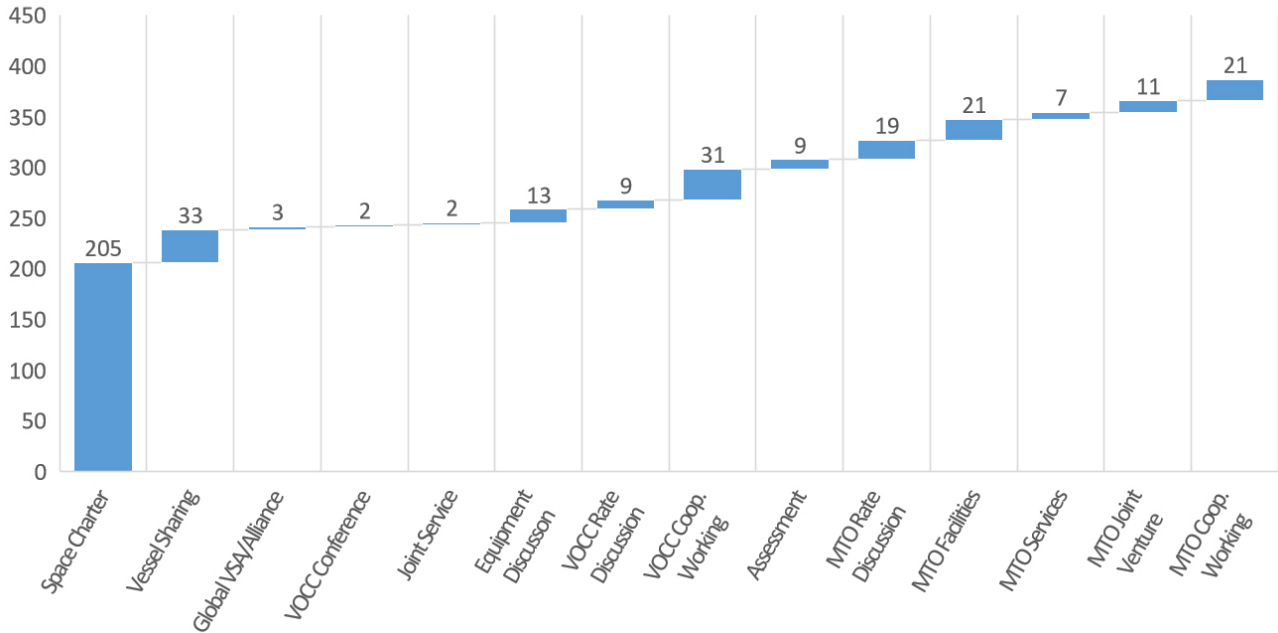
In FY 2020, the Commission received 120 agreement filings, including new agreements and amendments to, or terminations of, existing agreements. This activity represents a significant decrease in filings from the 170 received in FY 2019. This reduction was likely due to the impact of the COVID-19 global pandemic, and not based on any significant changes in the ocean transportation industry.

Following its introduction in FY 2018, the Commission’s eAgreements electronic filing system experienced increased adoption within the industry. Consequently, in FY 2020, 100 percent of agreement filings were received electronically. This adoption of an electronic option for securely filing agreements and associated documents represents a significant decrease in administrative burden on the

Agreement Review Process

- Agreements become effective 45 days after filing, unless the Commission has requested additional information to evaluate the competitive impact of the agreement. All agreements are reviewed according to the standard set in section 6(g) of the Shipping Act.
- The Commission has the authority to reject a pending agreement filing if it determines the filing fails to meet the Shipping Act and Commission regulations requiring filed agreements to be clear and definite, or if the filing is outside the Commission’s jurisdiction.
- The Commission may seek to enjoin the operations of an agreement if it determines that the agreement could reduce competition to the point of unreasonably impacting the market or substantially lessen competition in the purchasing of certain covered services as defined in the LoBiondo Act.
- Effective agreements are exempt from U.S. antitrust laws, and instead, are subject to Shipping Act restrictions and Commission oversight.

Agreements in Effect at end of FY 2020



industry, as well as Commission resources.

FMC staff continues to seek terminations of outdated or expired agreements to ensure that the online library of filed agreements available to the public on the Commission’s website comprises an accurate representation of cooperation among ocean carriers and MTOs under the Shipping Act. With respect to active agreements, staff ensures that filed agreements remain current, both in their membership and authorities.

The FMC also evaluates new agreements under the provisions of 46 U.S.C. § 3503(b) (1)(C), enacted in 2018 in the Frank LoBiondo Coast Guard Authorization Act, Pub. L. No. 115-282 (LoBiondo Act), regarding joint

procurement or negotiation by carriers of certain covered services. All current agreements that contain authorities that could allow joint purchasing or negotiation of certain covered services are required to submit to the Commission any joint agreements reached under the authority. During FY 2021, the Commission will continue working with these agreements, as necessary, and refining the agreement review under the LoBiondo Act and analysis under the Shipping Act’s section 6(g) standard.

At the end of the fiscal year, a total of 386 agreements were on file and in effect with the Commission.

COMPETITIVE IMPACT AND MONITORING

The following are examples of agreements filed with the Commission during the fiscal year, including specific Commission monitoring and actions taken to ensure compliance with the Shipping Act. Notably, new agreements between ocean carriers were filed to develop digitalized supply-chain platforms for the movement of container cargo using blockchain technology.

The TradeLens Agreement:

In February 2020, CMA CGM S.A., Hapag-Lloyd AG, Maersk A/S, Mediterranean Shipping Company S.A., and Ocean Network Express Pte. Ltd. entered into a cooperative working agreement known as the TradeLens Agreement. The agreement authorizes the parties to cooperate on the provision of data to a blockchain-enabled, global trade digitized solution (known as TradeLens) that allows shippers, terminals, port authorities, and other stakeholders to exchange information on supply chain events and documents, and to collaborate with the TradeLens platform providers, International Business Machines Corporation (IBM) and Maersk GTD Inc., on TradeLens platform products and marketing. The TradeLens platform permits visibility to data describing the physical progress of cargo in the supply chain to those parties associated with that shipment. The agreement does not authorize the discussion of rates, terms or conditions of transportation, or vessel capacity. The Commission requires the parties to file minutes of agreement meetings and monitors the activities of the agreement, including changes to ownership of the TradeLens

platform, and data access policies between IBM and Maersk GTD Inc.

North Carolina-Virginia Port Terminal Cooperative Working Agreement:

In March 2020, the North Carolina State Port Authority (NCPSA), Virginia Port Authority (VPA), and Virginia International Terminals LLC (VIT) entered into an agreement to discuss the potential for joint management and operation of an inland intermodal rail facility currently being constructed in North Carolina. Cargo handled at the facility will include cargo in foreign commerce moving to or from ports or marine terminal facilities in North Carolina or Virginia. Under the agreement, the parties are authorized to discuss and agree on matters relating to their respective operations, facilities and services, for the stated purpose of optimizing efficiency and improving the port and terminal services provided to the shipping public. Any agreement reached by the parties with respect to joint or cooperative operations would be filed with the Commission. The Commission monitors the activities of the parties through the minutes of meetings held under the agreement.

Global Shipping Business Network Agreement:

In July 2020, CMA CGM S.A., COSCO Shipping Lines Co. Ltd., Hapag-Lloyd AG, and Orient Overseas Container Line Limited entered into the Global Shipping Business Network Agreement (GSBN). The parties cooperate with respect to a separate non-profit joint venture that develops and operates a

platform for all shipping supply chain participants to work collaboratively to accelerate technology innovation and develop solutions through a blockchain-enabled, global trade digitized process. Like the TradeLens platform, the GSBN platform provides application programming interfaces for the publication of, and subscription to, event data describing

the physical progress of cargo through the supply chain and associated milestones. The parties do not have the authority to discuss rates, terms or conditions of transportation, or vessel capacity. Minutes of the parties' meetings are required to be filed to monitor developments under the agreement.

CARRIER ALLIANCE AGREEMENTS

Monitoring Program

A core function of the FMC is the monitoring of ocean carrier alliance agreements filed with the agency. The FMC receives and evaluates exhaustive, commercially sensitive information from regulated entities, in this case, parties to an ocean carrier alliance agreement. That information is carefully analyzed, along with other information that permits FMC staff to determine trends in the marketplace and the potential for illegal behavior.

The Commission's Bureau of Trade Analysis (BTA) has traditionally relied on a combination of individual vessel operator confidentially provided data and information from commercially available industry data to monitor and analyze container carrier freight rates and service market trends.

The FMC's section 6(g) (46 U.S.C. § 41307) review and oversight responsibility for filed agreements is ongoing and continues after a filed agreement has gone into effect. The FMC prioritizes its continuous monitoring of the 300 plus cooperative agreements currently filed with the Commission. The three major global carrier alliances are the top priority and receive the highest scrutiny. These three agreements have the greatest potential to cause or facilitate adverse market effects based

on the agreement's authority and geographic scope in combination with underlying market conditions.

On an ongoing basis, the FMC monitors key economic indicators and changes to underlying market conditions for all global alliance agreements to detect any joint activity by agreement members that might raise and maintain freight rates above competitive levels, or unreasonably decrease services. For these agreements, FMC staff conducts more detailed reviews, and periodically presents current findings and recommendations to the Commission.

The Commission's BTA has determined that given recent fluctuations in the markets, they need to receive key trade data directly from alliance carriers on a more frequent basis in order to better position staff economists to timely evaluate changes in the transpacific and transatlantic trades and report findings to the Commission.

Conditions in the Trade

At the end of FY 2020, the three global alliances, namely, THE Alliance, the OCEAN Alliance, and the 2M Alliance, controlled close to 90 percent of the vessel capacity in the two largest U.S. trades, the transpacific and the

transatlantic. The transpacific trade encompasses cargo moving between Asia and the U.S., while the transatlantic trade includes cargo moving between Europe and the U.S. Collectively, the three alliances have market shares of 93 percent in the transpacific and 90 percent in the transatlantic. Given these considerable market shares, the Commission closely monitors the alliance parties' activities through its prescribed periodic reporting requirements and semi-annual meetings.

During the fiscal year, the COVID-19 pandemic caused an initial decline in volume, followed by recovery. Cancelled sailings in the spring led to empty containers accruing on terminals, prompting some alliances and shipping lines to temporarily send megaships to the U.S. to retrieve them. Towards the end of FY 2020, the strong demand for U.S. imports (without a corresponding increase in demand for U.S. exports) led to container shortages in Asia and congested terminals at a number of major U.S. ports, according to press reports. Furthermore, this cargo surge contributed to backlogs at U.S. warehouses, which had been operating at lower capacity due to COVID-19 labor restrictions, leading to containers being returned to marine terminals at a slower pace than is typical.

Entering the fiscal year, a major concern for the alliances and other carriers were the IMO 2020 fuel requirements. The new requirements, which took effect January 1, 2020, imposed strict emissions restrictions on bunker fuel. These required carriers to either use Very Low Sulfur Fuel Oil (VLSFO), or in lieu of VLSFO, the carriers could elect to install industrial scrubbers on vessel exhaust systems which clean the exhaust from standard heavy fuel oil. Before the COVID-19

pandemic, this requirement was a major concern because VLSFO is generally much more expensive than heavy fuel oil (HFO). The large cost spread between VLSFO and HFO meant that carriers either needed to pay for more expensive fuel, or install expensive industrial scrubbers; however, these concerns did not materialize, because COVID-19 introduced shocks to the petroleum market, closing the gap between VLSFO and HFO prices.

Vessel capacity utilization continues to be higher in the headhaul trades (trade lanes generating the highest revenues, and generally those with the greater cargo volume) compared to the backhaul trades (the trade lane direction that carries both less cargo volume and generally cargo of lower value). More specifically, in the major east-west U.S. import and export trades (Asia-U.S. Pacific Coast and Europe-U.S. Atlantic Coast), the higher value cargo headhaul is Asia eastbound to the U.S. and Europe-westbound to the U.S. From a volume perspective, the trades are also imbalanced, with more loaded containers entering the U.S. from Asia, than U.S. export loads bound for Asia. A similar imbalance exists in the transatlantic trade, with more loaded containers arriving at U.S. Atlantic and Gulf ports than U.S. exports to Europe. The largest ocean carriers operate in the global alliances as discussed below.

Maersk/MSK Vessel Sharing Agreement (2M Alliance):

The 2M Alliance consists of Maersk Line (headquarters-Denmark) and MSC (headquarters-Switzerland), the largest and second-largest ocean carriers by global Twenty-foot Equivalent Unit (TEU) capacity. At the end of FY 2020, the 2M Alliance

accounted for approximately 33% of all global container capacity. The 2M accounted for: 19% of the transpacific U.S. import trade, and 19% of the transpacific U.S. export trade. In the transatlantic, 2M has 41% of U.S. the import trade and 33% of the U.S. export trade.

The COVID-19 pandemic dominated market developments and 2M Alliance's competitive environment throughout the year. Much like the other global carrier alliances, the 2M Alliance cancelled and suspended numerous sailings and service strings in early Spring 2020 in anticipation of decreased freight demand. Over the fiscal year, the 2M Alliance cancelled 20 sailings and suspended three service strings due to the pandemic. The 2M Alliance suspended its USWC3 string from April to June, its USEC3 from April to July, and its TA4 from April through and beyond the end of the fiscal year.

As demand and freight rates increased, the 2M Alliance quickly resumed two of these service strings, and additionally, launched new services. In July and August, after resuming its previous transpacific service suspensions, 2M introduced two new transpacific U.S. West Coast (USWC) service strings; the first new string has five vessels totaling approximately 43,000 TEUs, and the second has six vessels totaling approximately 51,000 TEUs.

A significant development for the 2M Alliance during the fiscal year was the shift in a vessel sharing partner. Specifically, in early 2020, the 2M Alliance's vessel sharing agreement with Hyundai Merchant Marine (HMM) expired, and shortly thereafter, the 2M Alliance and SM Line entered into a new vessel sharing agreement. Initially, the new agreement was a six-vessel transpacific USWC route utilizing four vessels (each 11,500 TEUs) from

the 2M Alliance and two vessels (each 11,500 TEUs) from SM Line; however, shortly after the service was initiated, it was suspended from April through June due to the COVID-19 pandemic. The vessel sharing agreement resumed in June after the associated USWC service was resumed.

OCEAN Alliance Agreement:

Three ocean carriers make up the OCEAN Alliance (OA); CMA CGM (including its affiliate APL) (headquarters-France), COSCO (including its majority-owned affiliate OOCL) (headquarters-China), and Evergreen (headquarters-Taiwan). Together these carriers operate several services branded under the OCEAN Alliance banner that encompass the major east-west trade lanes, including the transpacific, transatlantic, and Asia-Europe trades. At the fiscal year's end, the OCEAN Alliance accounted for approximately 29% of all global container capacity. The OCEAN Alliance accounted for: 43% of the transpacific U.S. import trade and 43% of the transpacific U.S. export trade. In the transatlantic, Ocean Alliance has 19% of the U.S. import trade and 21% of the U.S. export trade.

Pursuant to CMA CGM Group's brand and network restructuring earlier in 2020, beginning on October 1, 2020, APL no longer receives set capacity allocations on OA U.S. trades. Focusing now on its US-Flag services to the US Government, APL may from time to time get capacity on OA services on an "as used" basis only.

To address the decrease in demand due the COVID-19 pandemic, the alliance parties as a group began canceling (or blanking) sailings, particularly 34 in the month of February, which registered the highest number of sailing

cancelations of any month in the eastbound transpacific. A high number of sailing cancellations was expected in February due to the closing of factories related to the Chinese Lunar New Year celebrations, but this record number is mostly attributed to the adverse effects of the COVID-19 pandemic. When cargo volumes in the trades recovered later in the fiscal year, the alliance parties reduced its cancelled sailings and even reinstated some sailings that had been scheduled to be cancelled.

The carriers also amended their agreement to add the nations of India, Bahrain, Iraq, and Oman and reconfigured their services to include port calls in these countries. A major reason behind this is predominantly the strong demand from Southeast Asia, supported by the source shifting from China to Southeast Asia.

THE Alliance Agreement:

THE Alliance (THEA) is comprised of four members Hapag-Lloyd (headquarters-Germany), Hyundai Merchant Marine (HMM) (headquarters-South Korea), ONE (headquarters-Japan), and Yang Ming (headquarters-Taiwan). THE Alliance members accounted for 19% of the global container capacity in FY 2020. THEA accounted for 29% of the transpacific U.S. import trade and 34% of the transpacific U.S. export trade. In the transatlantic, THEA has 30% of the U.S.

import trade and 36% of the U.S. export trade.

HMM joined THE Alliance in April 2020; previously, the carrier swapped container slots and purchased space on 2M services. Upon the addition of HMM, THEA began to offer an additional service sailing between Asia and the Pacific Southwest, using six vessels that collectively total 60,000 TEUs. Notably, HMM does not participate in THEA's transatlantic offerings nor do they offer service in that region outside of THEA.

As with the other global carrier alliances, THEA adjusted its carriers' operations significantly with the global outbreak of COVID-19, instituting blank sailings and temporarily reducing the frequency of some of their services. During the fiscal year, these carriers collectively cancelled 148 sailings across their transpacific and transatlantic services. THEA reduced the frequency of several of their services during the initial wave of the COVID-19 pandemic and gradually returned these services to their pre-COVID-19 levels over the summer and fall. The carriers have introduced no new services since HMM joined in April.

THE Alliance also engages in a slot exchange agreement with Zim encompassing the Mediterranean-U.S. East Coast trade. THEA carriers also operate a vessel sharing agreement with some members of OCEAN Alliance in this trade as well.

TARIFFS, SERVICE CONTRACTS, NSAs, & MTO SCHEDULES

Tariffs

The Shipping Act requires common carriers and conferences to publish their tariffs containing rates, charges, rules, and practices, electronically in private systems. For ease of public access, the Commission publishes the web addresses of those tariffs on its website. At the close of FY 2020, 6,048 tariff location addresses were posted. Of that number, 5,900 tariff location addresses were for NVOCCs.

Tariff Exemptions – NRAs and NSAs

The Commission provides regulatory relief from its NVOCC rate tariff requirements by exempting licensed and foreign registered NVOCCs when using NVOCC Negotiated Rate Arrangements (NRAs). In August 2018, the Commission provided further regulatory relief to NVOCCs by significantly expanding the commercial flexibilities available to NVOCCs and their shippers under NRAs (see Docket No. 17-10). NVOCCs have indicated that NRAs, which are not required to be published or filed with the Commission, are a less burdensome commercial pricing option than rate tariffs, which must be published, saving them time and reducing costs.

At the end of the fiscal year, there were a total of 5,900 licensed NVOCCs. Of this total, 2,173 (37%) had filed a prominent notice or rule in their respective tariff indicating that they had invoked the NRA exemption as an alternative to rate tariff publication. The majority of NVOCCs which have implemented NRAs

continue to use a combination of NRAs and tariff rate filings, whereas, 190 NVOCCs have opted to use the NRA exemption exclusively and do not publish tariff rates.

Commission rules also granted regulatory relief from rate tariff requirements by allowing NVOCCs to offer transportation services pursuant to individually negotiated, confidential service arrangements with customers, termed NVOCC Service Arrangements (NSAs), rather than under a published tariff. The Commission expanded this regulatory relief to NVOCCs by eliminating the requirement to file NSAs and their amendments with the Commission as of August 22, 2018 (also see Docket No. 17-10). A total of 1,272 NVOCCs have opted to publish a tariff rule in their respective tariff indicating they reserve the right to use the NSA option as an alternative to rate tariff publication.

Service Contracts

Service contracts enable carriers and shippers to tailor transportation services and rates to their commercial and operational needs and to keep these arrangements confidential. While the majority of cargo volumes transported in the major U.S. liner trades move under service contracts, as an alternative to tariffs, ocean carrier use of tariffs versus service contracts varies by carrier and trade lane. Of the 139 active ocean carriers in the U.S. trades at the end of FY 2020, 81 filed service contracts with the Commission during the fiscal year, employing a blend of service contracts and tariffs. The remaining 58 ocean carriers solely

used tariffs in rating their cargo. During the fiscal year, the Commission received 45,164 new service contracts, compared to 47,214 in FY 2019, and 779,884 contract amendments, compared to 752,090 in FY 2019.

The Commission granted regulatory flexibilities for service contracts through a rulemaking in Docket No. 16-05 which addressed commercial issues raised by contracting parties without compromising regulatory oversight. As part of this regulatory relief, ocean carriers were allowed up to 30 days to file service contract amendments after agreement by the ocean carrier and the shipper, along with expanded timelines for correcting service contracts.

In FY 2020, the COVID-19 pandemic had a significant impact on the global supply chain, including service contract negotiation and implementation. To allow contracting parties time to adapt to the increased pressures from COVID-19 and minimize disruptions to the contracting process, the Commission issued a temporary blanket exemption on April 27, 2020, extending the filing flexibilities for service contract amendments to original service contracts, and later extended that relief to June 1, 2021 (see Docket No. 20-06). The Commission granted further regulatory relief to ocean carriers during the fiscal year by eliminating the requirement that carriers publish the essential terms of individual service contracts, resulting in cost savings to the industry (see Docket No. 20-02).

Marine Terminal Schedules

An MTO may voluntarily make available to the public a schedule of rates, regulations, and practices, including limitations of liability for cargo loss or damage, pertaining to receiving, delivering, handling, or storing property at its marine terminal. An MTO schedule made available to the public is enforceable by an appropriate court as an implied contract without proof of actual knowledge of its provisions. During the fiscal year, 3 new MTOs registered with the Commission, however, it was determined during the fiscal year that 21 entities were no longer operating as MTOs, thereby decreasing the total to 263 MTOs actively registered through Form FMC-1. MTOs report the electronic location of their MTO terminal schedules through the filing of Form FMC-1, with 172 MTOs electing to voluntarily publish their terminal schedules. The internet address of these MTO terminal schedules are posted on the Commission's website.

The Commission issued a temporary blanket exemption on April 27, 2020, allowing ocean carriers up to 30 days to file service contract amendments after agreement by the ocean carrier and the shipper.

INTERNATIONAL COOPERATION

Global Maritime Forum Annual Summit in Singapore

In October 2019, Commissioner Maffei attended the Global Maritime Forum Annual Summit in Singapore. In addition to the Commission's participation in the Summit, which brought together various industry stakeholders and regulators from around the world, Commission representatives visited the Port of Singapore.

European Maritime Law Organization (EMLO) Conference in Limassol, Cyprus

In October 2019, Commissioner Dye participated in the 25th annual European Maritime Law Organization (EMLO) Conference in

Cyprus. EMLO is an independent organization that provides a neutral and independent forum for debate and research on EU maritime affairs. The Commissioner gave a presentation on international trade and competition challenges facing the FMC.

Several other international events and opportunities for international cooperation were cancelled or postponed due to the COVID-19 pandemic.



Commissioner Daniel B. Maffei and Mr. Lam Pin Min, the Singaporean Senior Minister of State in The Ministry of Health and the Ministry of Transport at the Global Maritime Forum.

PROTECTING THE PUBLIC

STRATEGIC GOAL 2

The FMC engages in a variety of activities that protect the public from unlawful, unfair, and deceptive practices, that lead to financial harm. The Commission issues licenses for U.S. OTIs and registers foreign-based OTIs; ensures financial responsibility of all OTIs through bonding requirements; helps resolve disputes about the shipment of goods or the carriage of passengers; investigates and prosecutes unreasonable or unjust practices; and issues rulings on private party complaints that allege Shipping Act violations. In addition, the FMC ensures that passenger vessel operators maintain proper financial coverage to reimburse cruise passengers in the event their cruise is cancelled or to cover liability in the event of death or injury at sea.

FACT FINDINGS 28, 29, & 30

During Fiscal Year 2020, the FMC authorized two Fact Findings, each tasked with exploring COVID-19 related impacts to the maritime industry. Fact Finding 29 (FF29) focused on international ocean transportation supply chain dislocations and Fact Finding 30 (FF30) examined the passenger cruise industry.

International Ocean Transportation Supply Chain Engagement (Fact Finding 29)

In March, the Commission voted to establish Fact Finding 29: International Ocean Transportation Supply Chain Engagement, designating Commissioner Rebecca F. Dye as the Fact Finding Officer, and authorizing her to identify operational solutions to cargo delivery system challenges related to COVID-19.

To aid in her efforts as Fact Finding Officer, the Order also authorized the creation of Supply Chain Innovation Teams, which Commissioner Dye had previously employed in

Fact Finding 28, and the earlier “Supply Chain Innovation Initiative”. The Order provided for examination of issues related to supply chain visibility, chassis availability and chassis pools in the Memphis rail head, and demurrage and detention charges.

The global supply chain was already experiencing disruption from COVID-19 related impacts as the virus spread throughout China before it reached the United States in early 2020. Widespread closures and quarantines in China shuttered factories, which had an associated impact on freight flows, port operations, and ocean carrier service offerings.

In the earliest days of COVID-19 related impacts to the supply chain in the United States, import cargo volumes dropped precipitously and ocean carriers cut service offerings accordingly. The consequence was that domestic ports, particularly on the West Coast, became congested with import loads that were not being picked-up for final delivery and empty containers waiting to be repositioned to Asia.

Making headway in addressing what was becoming an untenable situation was Commissioner Dye's first priority. She convened Supply Chain Innovation Teams to identify what steps could be taken to clear cargo that was accumulating at ports, especially at the Southern California gateways. It was determined that simple steps surrounding shippers providing information to terminal operators about which shipments contained Personal Protective Equipment, which containers shippers wanted to accept and were willing to pick-up, and identifying what containers shippers were not able to accept would all make meaningful contributions to reducing cargo congestion on terminals. Finally, Commissioner Dye was engaged in working with ports and shippers to find available cargo storage locations for U.S. companies whose businesses were shutdown.

After identifying immediate steps that could be taken to address COVID-19 related port congestion in the San Pedro Bay, Commissioner Dye then engaged nine Innovation Teams to determine what underlying behavior or policies of carriers or marine terminals could be changed to improve efficiencies at U.S. seaport gateways for international ocean freight. The Innovation Teams reached consensus on four key measures to improve port performance:

1. Truckers should be directed to return empty containers to the terminal where they were picked up, allowing them to make dual moves and reduce the number of chassis required.
2. Notice of terminal gate closures should be given no less than three days, and preferably seven days, before gate closing. At no time should a closure occur

mid-shift.

3. Notice of blank sailings should be given not only to beneficial cargo owners (BCOs), but also posted prominently on a carrier's website, at least seven days in advance. Notice of bypassed ports should be posted at least 72 hours in advance.
4. Carriers and terminals should immediately seek to collaborate regarding Export Cargo Receiving Timelines.

Shippers on the Innovation Teams requested that the Commission's service contract filing requirements be waived to allow shippers to use service contract provisions immediately, due to impediments to contract filing created by COVID-19 restrictions. The Commission voted to extend contract filing requirements for 30 days, effective until January 1, 2021. This contract filing relief was later extended by the Commission until June 1, 2021. A rule is pending before the Commission to make this relief permanent.

The Innovation Teams also recommended that FF29 adopt a regional port for the remainder of the FF29 discussions. The next phase of FF29 adopted this recommendation and focused on operations in the U.S. port gateways of Los Angeles, Long Beach, New York and New Jersey, and New Orleans.

Regional Approach to Fact Finding 29

In the months following the first phase of FF29, Commissioner Dye examined conditions at the Ports of Los Angeles, Long Beach, New York and New Jersey, and New Orleans. This was in addition to individual interviews she conducted with other shippers, ocean carriers, MTOs, truckers, and NVOs to understand the challenges they faced to manage logistics



Commissioner Rebecca Dye (Left) receives Malcom McLean Award from Lisa Yakomin, President of Association of Bi-State Motor Carriers



Commissioner Sola in Seward, AK where he met with (L-R) Sonya Hibbetts and Jesse Groom of the ILWU and Christy Terry of the Alaska Railroad

operations as trade volumes surged. Commissioner Dye continues to encourage all U.S. international supply chain leaders to focus on the four port process goals identified in the first phase of FF29 and to continue to work together to find workable solutions to these challenges.

Based on information obtained in the fact finding, the Commission became concerned that ocean carriers in alliances who call on the Port of New York and New Jersey or who call on the Port of Long Beach and the Port of Los Angeles may be employing unjust or unreasonable practices and regulations that could violate 46 U.S.C. § 41102(c). As such, in November, the Commission approved a Supplemental Order to Fact Finding 29 expanding the authority of Commissioner Dye as the Fact Finding Officer. The Supplemental Order allows Commissioner Dye to investigate ocean carriers operating in alliances and calling the Ports of Los Angeles, Long Beach, or New York and New Jersey to determine if the policies and practices of the lines related to detention and demurrage, container return, and container availability for U.S. export cargoes violate 46 U.S.C. 41102(c).

Commissioner Dye continues to encourage ocean carrier executives to become directly involved in port operations in Los Angeles, Long Beach, and New York and New Jersey to address port operations involving carrier equipment return. Commissioner Dye intends to conclude FF29 with Innovation Team discussions on container depots and cargo forecasting.

COVID-19 Impact on Cruise Industry (Fact Finding 30)

On April 30, 2020, the Commission voted to initiate Fact Finding 30: COVID-19 Impact on Cruise Industry. Commissioner Louis E. Sola was designated Fact Finding Officer, charged to investigate and report on the challenges that impacted the cruise industry and the ports that rely on the cruise business.

Since launching the investigation in the spring, Commissioner Sola has traveled to ports in Florida, Alaska, and Texas. Additionally, he has held virtual meetings with individuals not only in those states, but in Alabama, Louisiana, Mississippi, Oregon, and Washington. His engagement with cruise industry stakeholders has led him to interview executives with ports, cruise lines, and labor organization; public officials at the local, state, and federal level; and, cruise passengers.

Commissioner Sola's efforts have examined the consequences of the cessation of cruising on U.S. ports, as well as on related industries. By the close of the fiscal year, Commissioner Sola had published four reports: Licensing and Bonds; Refund Policy; Economic Impact of COVID-19 on the Cruise Industry in Florida; and the Economic Impact of COVID-19 on the Cruise Industry in Alaska, Washington, and Oregon. A fifth report published in calendar year 2020 examines the economic impact to the Gulf Coast.

In addition to published reports, Commissioner Sola has provided in-person briefings to interested parties in the legislative and executive branches of government. He has spoken with Senators, Representatives, and Congressional staff serving on committees and in personal offices. Furthermore, he has

provided briefings on his work to officials at the Secretary and Under Secretary levels of the Departments of Homeland Security and Transportation.

To date, the Commission has acted on two recommendations made by Commissioner Sola. In July 2020, it issued a Policy Statement on Passenger Vessel Financial Responsibility that provided limited and temporary relief to small passenger vessel operators whose operations and business have been disrupted by the response to COVID-19. That relief will remain in effect until April 1, 2021. In October 2020, the Commission issued an Advance Notice of Proposed Rulemaking seeking comment on potential changes to regulations as they relate to non-performance by a cruise line and under what circumstances passengers may secure refunds. The Commission has yet to take final action in this matter.

In the coming fiscal year, Commissioner Sola will continue his review of impacts of COVID-19 on the cruise industry at other U.S. ports. A final report will be issued at an appropriate point detailing his findings and making recommendations, if any, about additional

regulatory or legislative action that would be beneficial.

Investigation into Demurrage, Detention, and Per Diem Charges (Fact Finding 28)

In response to the Fact Finding Officer's recommendations, the Commission voted to publish an interpretive rule that clarifies how the Commission will assess the reasonableness of detention and demurrage practices. That rule became final and effective on May 18, 2020. On December 3, 2018, Commissioner Rebecca F. Dye delivered her final report in Fact Finding Investigation No. 28, a non-adjudicatory investigation, into the practices of ocean carriers and MTOS relating to U.S. demurrage, detention, and per diem charges. Demurrage is the charge per container for the use of ground space at the marine terminal. Detention is the charge by the ocean carrier for use of the container equipment. Per Diem relates to assessorial charges beyond demurrage and detention. All charges are subject to an agreed number of free days.

LICENSING

There are two types of ocean transportation intermediaries that serve as transportation middlemen for cargo moving in the U.S.-foreign oceanborne trades: NVOCCs and ocean freight forwarders (OFFs). An NVOCC is a common carrier that holds itself out to the public to provide ocean transportation and issues its own house bill of lading or equivalent document but does not operate the vessel by which ocean transportation is provided. A U.S.-based OFF arranges for transportation

of cargo with a common carrier (NVOCC or Ocean Carrier) on behalf of shippers and processes documents related to U.S. export shipments. However, an OFF does not hold itself out to the public to provide ocean transportation and does not issue a house bill of lading or equivalent shipping documents.

All NVOCCs and OFFs located in the U.S. must be licensed by the Commission and must establish financial responsibility. To be issued a license, an OTI must provide the

Commission evidence of experience in OTI activities in the U.S., the necessary character to render services, and proof of financial responsibility. In FY 2020, there were 4,819 licensed NVOCCs and OFFs that maintained financial responsibility in the form of surety bonds on file with the FMC, collectively in excess of \$452 million. These funds are held to pay any damages arising out of a licensee's ocean transportation-related activities.

Foreign-based NVOCCs that do business in the U.S. foreign trades are required to register with the Commission, and to have financial responsibility in the form of surety bonds. Registrants provide basic corporate contact information for the company. A foreign NVOCC may choose to become licensed if they wish. There are 1,784 foreign registered NVOCCs and 76 foreign licensed NVOCCs that maintain approximately \$273 million in surety bonds on file with the FMC in FY 2020.

The Commission's triennial renewal program for FMC-licensed OTIs was instituted in 2017 to ensure accurate industry information. The Commission completed the first three-year cycle of renewals on May 31, 2020. The online user-friendly renewal process prepopulates the OTI's renewal form with information from the FMC's files, providing a streamlined experience. In most cases, the renewal process takes only five minutes. The online renewal process has improved the accuracy of OTI records, and timeliness of reporting material changes in ownership and operations for the benefit of OTI sureties, carriers, and the shipping public. Foreign-registered NVOCCs must also renew their registrations every three years.

Licensing Activity in FY 2020

- New OTI applications accepted: 375
- Amended applications accepted: 273
- New OTI licenses issued: 275
- Amended licenses issued: 85
- Licenses revoked or surrendered: 285
- New registrations accepted: 171
- Licenses renewed: 1456
- Registrations renewed: 535

The Commission has received inquiries from the industry regarding the Chinese government's continued requirement for the Optional Rider for Additional NVOCC Financial Responsibility, to meet the Chinese government's financial responsibility requirements, and various articles have been published in the press indicating the Chinese government may be loosening the financial responsibility requirements for NVOCCs. The optional China bond rider originated from bilateral discussions between the United States and Chinese governments and a 2003 agreement, which the Commission implemented through regulations in 2004. It is not, and never has been, required by the Commission. From the Commission's perspective, the bond is optional and at the discretion of individual NVOCCs. As of the end of the fiscal year, the Commission had on file 405 Optional Riders with an approximate aggregated value of over \$20 million.

PASSENGER VESSEL PROGRAM

The passenger vessel operator (PVO) program administered by the Commission (46 U.S.C. §§ 44102-44103), requires evidence of financial responsibility for vessels which have berth or stateroom accommodations for 50 or more passengers and embark passengers at U.S. ports and territories. Certificates of performance cover financial responsibility used to reimburse passengers in the event their cruise is cancelled. Certificates of casualty are required to cover liability that may occur for death or injury to passengers or other persons on voyages to or from U.S. ports.

PVO Financial Coverage

- Aggregate evidence of financial responsibility for nonperformance: \$791 million
- Aggregate evidence of financial responsibility for casualty: \$767 million
- New Performance Certificates issued: 12 in FY 2020
- New Casualty Certificates issued: 9

The maximum performance financial coverage requirement is currently \$32 million per cruise line. The cap is adjusted every two

years based on the Consumer Price Index for All Urban Consumers (CPI-U). The next adjustment will occur in 2021.

Notably this fiscal year, on March 20, 2020, after notice and hearing, the FMC revoked the certificate of performance for Great Northern & Southern Navigation Co., LLC, which does business as French America Line (FAL), a domestic passenger vessel operator, prohibiting it from offering, advertising, or conducting cruises. The Commission found that FAL failed to respond to lawful inquiries and requests for information, and that the company's repeated failures to adhere to the requirements of its escrow agreement demonstrated it was not financially responsible.

The PVO industry was impacted by COVID-19, and a description of the Commission's action to institute a Fact Finding Investigation as a result of the pandemic is described above.

At the close of FY 2020, 244 vessels owned by 52 passenger vessel operators were certified under the PVO program. The combined evidence of financial responsibility for non-performance of transportation for all cruise vessels in the program is \$791 million. Under the Commission's program, there is \$767 million in aggregate financial responsibility for casualty coverage. During the fiscal year, 12 new performance certificates and 9 casualty certificates were issued.

CONSUMER AFFAIRS AND DISPUTE RESOLUTION

The Commission, through its Office of Consumer Affairs and Dispute Resolution (CADRS) provides alternative dispute resolution (ADR), ombuds (informal conflict resolution), and mediation services, to assist parties in resolving international ocean shipping and cruise disputes. These services are available to the shipping public at any stage of a dispute. The Commission's ADR services help parties avoid the expense and delay inherent in litigation and facilitate the flow of U.S. foreign commerce.

This fiscal year, the Commission closed a total of 241 ombuds matters: 76 relating to commercial cargo; 36 involved shipment of household goods; and 129 cruise matters. The COVID-19 pandemic had a significant impact on the number of cruise ombuds matters handled by the Commission during this fiscal year. Of the 129 total cruise matters handled and closed by FMC staff, 108 were COVID-19 related. Commission staff handled 2 non-cruise complaints (1 commercial cargo and 1 household goods) where it was alleged that the pandemic was a contributing factor to the dispute at hand.

Eight mediation matters were concluded. CADRS staff attorneys also serve as presiding officers in special docket requests (no qualifying requests were received in this fiscal year).

CADRS also responded to approximately 1,730 general inquiries from the public during the fiscal year (a 52% increase from the previous fiscal year), 845 of which were related to COVID-19.

Highlights:

- In a dispute where it was alleged that an ocean carrier was unlawfully holding a shipper's cargo based on a general lien for past due amounts on unrelated shipments, FMC staff assisted in facilitating an agreement where the ocean carrier agreed to release the held shipments and the shipper would pay the outstanding charges shortly thereafter.
- In a dispute involving a significant amount of demurrage that had accrued at a foreign port, the FMC assisted the parties in reaching an agreement where the amount to be paid was reduced by approximately \$238,000.
- In a case where a significant amount of demurrage had accrued while an importer was resolving a dispute with its overseas manufacturer (which had shut down temporarily due to the COVID-19 pandemic), Commission staff assisted in facilitating communications to help the interested parties reach an agreement where the importer was allowed to pay a demurrage amount reduced by approximately \$23,000.
- In a dispute involving an importer who was required to pay a large amount of demurrage accrued in connection with an intensive customs examination, its initial attempts for mitigation were rejected by the ocean carrier. FMC staff assisted in contacting the ocean

carrier to request reconsideration of the importer's argument that the disputed demurrage charges should be refunded in light of the Commission's recently issued interpretive rule on detention and demurrage. After reviewing the matter, the ocean carrier agreed to issue a full refund of the disputed charges.

- In a COVID-19 related cruise complaint, a passenger was denied a full refund and instead given a Future

Cruise Credit, as he was unable to go on a scheduled cruise for work-related reasons. The passenger was employed as a firefighter paramedic at the time and was notified that until further notice all Fire EMS personnel were banned from travel due to COVID-19. Commission staff contacted the cruise line on the passenger's behalf to request reconsideration and the cruise line agreed to issue a cash refund.

ENFORCEMENT, AUDITS AND PENALTIES

The Bureau of Enforcement's (BOE) attorneys, investigative analysts and the Commission's Area Representatives (ARs) work to obtain industry compliance with the Shipping Act of 1984, as amended, as well as with the shipping statutes administered by the Commission. The Commission's goal is to protect the public from unlawful and deceptive practices in the foreign oceanborne commerce of the United States.

Over the course of the fiscal year, BOE and the ARs investigated and pursued illegal practices in the Transpacific, North Atlantic, Middle East, South American and Caribbean trades. These practices included:

- Cargo misdescription and misdeclaration;
- Unlawful access to a service contract ;
- Transportation of cargo by ocean carriers and licensed NVOCCs to entities performing or advertising OTI services that have not obtained a license, financial responsibility or published tariffs; and

- OTI license revocation for fixing ocean transportation intermediary prices in violation of the Sherman Act and the Shipping Act.

As of the beginning of FY 2020, 7 enforcement cases were pending final resolution and there were 7 matters pending which BOE was monitoring or providing internal legal advice. Inclusive of cases opened at headquarters, 26 new investigative matters were referred to BOE by ARs for enforcement action or informal compromise, and 25 matters were administratively closed or referred for formal proceedings. At the end of the fiscal year, BOE had 26 enforcement cases pending resolution. The Formal Investigations section of this report includes information on formal proceedings, including two cases litigated by BOE this year.

The Commission's compliance audit program is carried out by BOE industry analysts. The analysts review the operations of NVOCCs and ocean freight forwarders, identify elements of their operations that are not in compliance with statutory or Commission

regulatory requirements, and provide guidance to help bring them into compliance. The audit program also includes review of entities that hold themselves out to be ocean carriers but who do not appear to conduct vessel operations. Although non-ocean carriers entities may issue bills of lading and other documents, the absence of vessel operations might indicate, among other Shipping Act violations, that they are operating as unlicensed OTIs. During the fiscal year, the analysts opened 122 audits and completed 130 (including audits carried over from fiscal year 2019), with 8 audits pending as of September 30, 2020.

Enforcement Procedures Amended

In FY 2020, the Commission voted to make the most significant changes to its enforcement procedures since 1988. The Direct Final Rule became effective on December 23, 2019, and amended the process to: (1) provide notice to the subject of investigations and allow them the opportunity to respond before BOE recommends that the Commission take enforcement action; (2) require Commission approval to initiate formal or informal action; and (3) require Commission approval of proposed compromise agreements.

The new pre-enforcement process includes notice to the subject of an investigation that BOE has determined, based upon information

developed in the investigation process, to recommend that the Commission initiate enforcement action. The FMC's new process was modeled after the U.S. Securities and Exchange Commission's Wells process. An opportunity is given for the subject of the investigation to submit a written statement to BOE that will be included in BOE's recommendation to the Commission. The Commission's review process continues and may result in additional guidance or internal enforcement policies to facilitate implementation.

During the ongoing review and implementation of these new enforcement procedures, formal and informal civil prosecutions by the Bureau of Enforcement have significantly slowed, as staff and the Commission gain experience with the new processes/procedures. As a result, no cases involving compromise payments were completed during Fiscal Year 2020, and no Civil Penalties were assessed or collected.

The Commission cooperates on a regular basis with other federal, state and local transportation and law enforcement agencies through established memoranda of understanding (MOU), collaborations and partnerships addressing specific transportation related policies, issues, or incidents involving U.S. domestic and international liner shipping.

INTER-AGENCY COOPERATION

Law Enforcement

Collaboration between the Commission and the U.S. Customs and Border Protection (CBP) on the exchange of investigative information continues to enhance and safeguard our Nation's global economic competitiveness.

Cooperation with CBP included staff interactions and joint field operations to investigate entities suspected of violating each agencies' statutes or regulations. This cooperation also includes local police and other government entities, the U.S. Attorney's Office, the Federal

Bureau of Investigation, and when necessary, Immigration and Customs Enforcement (ICE).

The Commission completed its eighth year under a formal MOU with the Census Bureau, U.S. Department of Commerce, which provides the FMC with access to the Census Automated Export System (AES) database - a database used to review confidential U.S. export shipment data for law enforcement purposes. The Commission also continued its membership in the National Intellectual Property Rights Coordination Center (IPR Center), led by Homeland Security Investigations (HSI), a partnership of 21 federal and international agencies targeting intellectual property and trade-related crimes.

The Commission's Area Representatives participated in several federal law enforcement initiatives sponsored by other federal agencies: the U.S. Department of Homeland Security (CBP, ICE, U.S. Coast Guard), the U.S. Department of Transportation's (Federal Motor Carrier Safety Administration); the U.S. Department of Commerce (Bureau of Industry and Security); the U.S. Department of Justice (including the Bureau of Alcohol, Tobacco, Firearms and Explosives, and the FBI); and interagency Joint Terrorism Task Forces operating regionally in the U.S.

The law enforcement activities included criminal and civil investigations of entities licensed or regulated by the FMC, as well as violations of export and import statutes and regulations. Several ARs participated with CBP, Coast Guard, and other federal agencies in the annual Multi-Agency Strike Force Operations conducted at marine terminals at the ports of New York and New Jersey, Oakland, CA and Seattle, WA. The ARs aided these investigations by providing expert knowledge

on ocean carrier and OTI practices, procedures and documentation related to shipping transactions. They also continued to work closely with state and local law enforcement agencies, including police jurisdictions in all six major port cities in a myriad of matters relating to international shipping, such as the export of stolen motor vehicles.

Under the MOU between the FMC and the Federal Motor Carrier Safety Administration (FMCSA), Commission staff continued to participate in the FMCSA's Moving Fraud Task Force and Moving Fraud Partnership initiatives.

Maritime Policy and Multi-Agency Consumer Assistance

The FMC also actively participates in the U.S. Committee on the Marine Transportation System (CMTS), a partnership of federal departments and agencies with responsibility for the Marine Transportation System (MTS). The CMTS is authorized by Congress to assess the adequacy of the MTS and coordinate federal maritime policy amongst the many federal maritime interests. The FMC's Chairman sits on the Committee's Cabinet-level Committee and the Commission is represented on the sub-Cabinet Coordinating Board and in the work of the various CMTS Integrated Action Teams and Task Teams.

The Commission works with other federal, state, and local jurisdictions on international ocean shipping issues. In 2020, the Commission was contacted by individuals with shipping and cruise-related complaints referred by the Attorney General offices in the states of Florida, Massachusetts and New York, as well as other state consumer protection agencies such as the Miami-Dade Office

of Consumer Affairs and the Florida Department of Agriculture and Consumer Services. The Commission, through its CADRS staff, worked to resolve these issues. Where appropriate, the FMC also referred individuals to the Federal Motor Carrier Safety Administration

for concerns related to domestic interstate moves. During FY 2020, the FMC also received and responded to twenty-five (25) requests from the offices of U.S. Senators and Congressmen on behalf of their constituents relating to shipping and passenger disputes.



Commissioner Carl W. Bentzel, seen at his confirmation hearing, joined the Commission on December 9th, 2019.

COMPETITIVE IMPACT OF OCEAN CARRIER ALLIANCE JOINT PURCHASES OF CERTAIN COVERED SERVICES

On December 4, 2018, the LoBiondo Act was enacted as Public Law No. 115-282. Among other changes, the LoBiondo Act placed restrictions on cooperation between or among ocean carriers and MTOs, including removing antitrust immunity for certain activities, prohibiting certain joint procurement activities, restricting overlapping agreement participation, and modifying the legal standard for enjoining agreements to jointly procure certain covered services, including:

- the berthing or bunkering of a vessel;
- the loading or unloading of cargo to or from a vessel to or from a point on a wharf or terminal;
- the positioning, removal, or replacement of buoys related to the movement of the vessel; or
- towing vessel services provided to a vessel.

The LoBiondo Act also amended 46 U.S.C. § 46106 to require that the Commission annually provide to Congress: (1) an analysis of the competitive impact of ocean carrier alliance

joint purchases of the covered services mentioned above; and (2) a summary of actions, including corrective actions, taken by the Commission to promote competition.

Additionally, the LoBiondo Act added a new standard in 46 U.S.C. § 41307(b) to evaluate the competitive impacts of agreements affecting the purchase of covered services. Specifically, the Commission may seek an injunction if it determines that an agreement is likely, “to substantially lessen competition in the purchasing of certain covered services.” 46 U.S.C. § 41307(b)(1). This new legal standard may be applied to existing agreements as well as any agreements filed in the future. The LoBiondo amendments also added several new prohibited acts in 46 U.S.C. §§ 41104 and 41105, including a prohibition against carriers jointly negotiating for towing vessel services and a prohibition against carriers jointly negotiating for the purchase of other covered services unless the negotiations and any resulting agreements are not in violation of the antitrust laws. 46 U.S.C. § 41105(5), (6).

REVIEW OF AGREEMENTS UNDER LOBIONDO ACT

The Commission reviews all new agreement filings to determine if they contain language authorizing activity that could potentially represent a reduction in competition in the purchasing of certain covered services. When such an agreement is identified, filing counsel

for that agreement is sent a letter: (a) requesting that any agreements reached under this authority be provided to the Commission, even if they may be exempt from filing pursuant to 46 C.F.R. § 535.408; (b) reminding the parties that any agreements reached with third

parties must be filed with the Commission unless those further agreements fall under one of the listed exemptions in 46 C.F.R. § 535.408; and (c) reminding parties that agreements should clearly and definitively reflect the intentions of the parties, and that any authorities that the parties have not and do not intend to use, should be removed. This letter is similar to the ones sent to agreements already in effect when the LoBiondo Act was passed.

By the end of FY 2020, the Commission had sent letters to filing counsel for 176 agreements, including those previously in effect, identified under the preceding criteria. Responses have been received from all these agreements.

DOJ/FTC GUIDELINES FOR COLLABORATIONS AMONG COMPETITORS

The U.S. Department of Justice (DOJ) and the Federal Trade Commission (FTC) (collectively, the Agencies) have jointly issued guidance on the appropriate safeguards that should be implemented when market participants engage in joint purchasing. See *Guidelines for Collaborations Among Competitors* (2000) and *Statements of Antitrust Enforcement Policy in Health Care* (1996). Although the latter guidance initially was offered with respect to hospitals, the Agencies were mindful that this issue has broader, general applicability. Of note, DOJ Business Review Letters have since referenced the guidance in sanctioning joint purchasing arrangements outside of the health-care industry.

The Agencies determined that they would not challenge participation in purchasing groups, provided certain conditions were satisfied. To give participants in joint purchasing

Forty-three of those agreements were identified as no longer active and were terminated; counsel for 126 agreements responded that these agreements had not jointly negotiated terminal services agreements; and three agreements were amended to reduce or remove any joint negotiation authority. At the beginning of FY 2020, two vessel sharing agreements maintained jointly negotiated terminal service agreements including covered services that required analysis under § 41307(b)(1). During the fiscal year, one of the two agreements allowed its joint terminal services agreement to expire, leaving one agreement warranting additional Commission review under the LoBiondo Act.

arrangements guidance as to when antitrust issues could begin to surface, the Agencies established a “safety zone.” As long as joint purchases account for less than 35 percent of the total sales (or output) of the purchased services in the relevant upstream market, and the cost of the jointly purchased services account for less than 20 percent of the buying group’s sales revenue in each relevant downstream market, the DOJ/FTC generally would consider any such arrangement to fall with the safety zone. These two thresholds are not hard and fast boundaries beyond which a buying group should not venture, rather they are general boundaries that, if crossed, would likely subject the group to increased antitrust scrutiny.

In the case of agreements between ocean carriers and terminal operators and/or stevedoring companies, the relevant upstream

market is the market in which terminal and stevedoring services are sold by these providers and purchased by ocean carriers. The relevant downstream market consists of the ocean transportation services market in which the purchasing group (carriers) are competing to sell those services to shippers. When structured properly so as to produce efficiency-enhancing or pro-competitive outcomes, joint purchasing activities (i.e., agreements among purchasers/buyers) are lawful under U.S. antitrust laws, but arrangements that aim to simply fix the price that each purchasing group member will pay for the services rendered, are not legitimate under the antitrust laws. Additionally, an arrangement could run afoul of the antitrust laws if it includes other features that unduly restrict or distort competition. Other principles in the guidelines stress that group buying activity should not be used as a vehicle for exchanging commercially sensitive information between or among competitors, and that members should be free to make individual purchases outside the joint purchasing arrangement.

In FY 2020, the Commission reviewed the terminal and stevedoring services agreements jointly negotiated by the remaining vessel sharing agreement noted above to ensure conformity with the DOJ/FTC guidelines for joint purchasing arrangements. Based on the Commission's analysis, while this agreement engaged in joint purchasing of terminal and stevedoring services, it did so within the safe harbor guidelines for joint purchasing arrangements promulgated by the DOJ and FTC. Nevertheless, joint purchasing of covered services by the agreement parties warrants close monitoring to ensure that joint purchasing activity in the upstream and downstream

markets continue to conform to the antitrust laws, and the FMC will continue to monitor this agreement for analysis under §§ 41307(b)(1) and 41105(6).

The following outlines the findings of the Commission's review of the current joint purchasing agreement:

The Commission applied the DOJ/FTC safety zone tests to assess the magnitude of combined purchases in the relevant market with respect to joint purchases of terminal and stevedoring services by members of the agreement, which required: (a) identifying each separate relevant port market in which the agreement purchased those services; (b) calculating the total output (or sales) in each such port market; and (c) calculating what percentage of the total output (or sales) in each such market was purchased by the agreement under jointly negotiated contracts. At the time of the review, using FY 2020 data, the agreement's services and ports of call in the U.S. were identified. The agreement had jointly negotiated terminal and stevedoring services agreements at a number of the ports served. In terms of applying the DOJ/FTC safety zone test for combined purchases in the relevant markets, generally each individual port in this analysis was considered as the relevant (local) market for terminal and stevedoring services. Applying this rule produces the most conservative (i.e., strictest) application of the test. A broader definition of the relevant geographic market would lower the results of the test in percentage terms, thereby making it more likely the agreement would fall into the safety zone. However, exceptions to this rule were made where the ports are contiguous. Contiguous ports were considered as being in the same geographical market.

Traditionally, there are two competition issues of primary concern with respect to joint purchasing arrangements. First, if the parties have a significant degree of market power because their joint purchases account for a large proportion of total purchases in the market, a risk exists that the parties may drive the price of the services being purchased below competitive levels. The second competition issue of concern is that, if access to service providers is limited, there exists a risk of competing purchasers being excluded from the purchasing market. This event is most likely to develop where there are barriers to entry that prevent new service providers from entering the purchasing market or that prevent expansion by existing providers. Application of the safety zone threshold test for combined purchases of covered services by the members of the agreement in each relevant upstream market for terminal and stevedoring services showed that none of the upstream markets breached the threshold.

Turning to the second threshold test, members within the agreement compete on price in downstream ocean transportation markets; consequently, it is possible that equalization

of costs for a jointly purchased input, such as terminal and stevedoring services, could reduce price competition in those markets if the cost to buy terminal and stevedoring services account for a significant percentage of the ocean carriers' selling prices in the downstream markets. In applying the DOJ/FTC safety zone test to this area of concern, each jointly purchased input is matched with each party's sales revenue for the downstream product (i.e., ocean transportation services). Whether the cost of the jointly purchased services (i.e., the input of jointly procured terminal and stevedoring services) is 20 percent or more of each agreement member's total sales revenue in each downstream market is then determined.

The agreement's members were (and still are) competing with each other on prices in all of the downstream markets. The input value of joint purchases of terminal and stevedoring services as a percent of total sales in each downstream market was below the threshold of 20 percent. Under the Agencies' guidelines, no further antitrust scrutiny was warranted.



Photo courtesy of the Port of Los Angeles.

DEVELOPMENTS IN MAJOR U.S. FOREIGN TRADES

WORLDWIDE

In the midst of the global COVID-19 pandemic, worldwide, the volume of container cargo declined by 3.3 percent in FY 2020 (October 1, 2019 – September 30, 2020), down from 3 percent growth in the preceding fiscal year. At the end of September 2020, there were 140 idle containerships, down from 180 idle containerships a year ago. While market shares of the top global ocean carriers remained high, they were relatively unchanged from the preceding period. The top five carriers deployed 64 percent of the world's containership capacity, and the top ten controlled 82.1 percent. The top three carriers, Maersk Line, MSC, and COSCO, deployed 17, 16, and 13 percent of the world's containership capacity, respectively.

Overall, in the combined inbound and outbound U.S. liner trades, container cargo declined by 4.2 percent to 34.9 million TEUs, compared to 36.5 million TEUs last fiscal year. U.S. container exports declined by 4.7 percent to 11.6 million TEUs, and container imports to the U.S. dropped by 4 percent to 23.3 million TEUs. Container imports exceeded exports

Worldwide volume of container cargo declined by 3.3%; capacity exceeded demand by 11.4% at close of FY.

by a ratio of almost 2 to 1. The U.S. share of the world's container cargo remained at 16 percent.

Globally, the nominal capacity of the containership fleet grew by 2.8 percent. At the end of the fiscal year, 5,334 containerships, with a total fleet capacity of 23.5 million TEUs, were operational. There were 306 new containerships on order with an aggregate capacity of 2.6 million TEUs, or 8.7 percent of the existing fleet capacity. Containerships with nominal capacities equal to or greater than 10,000 TEUs accounted for 37 percent of the existing fleet's total capacity and 80 percent of the total capacity on order.

ASIA

21 Million TEUs

The liner trades between the U.S. and nations in Asia accounted for the largest container cargo volume of over 21 million TEUs in FY 2020 (exports and imports combined), or 61 percent of total U.S. container trade. The

U.S. imported substantially more container cargo from the region than it exported. In FY 2020, the U.S. imported 15.6 million TEUs of goods from Asia, a decrease of 5 percent over the previous fiscal year, while the U.S. exported 5.8 million TEUs, 3 percent less

compared to the prior year. Northeast Asia (China, Japan, South Korea, Taiwan, and Hong Kong) accounted for 46 percent of total U.S. container cargo, and Southeast Asia (Brunei, Cambodia, Indonesia, Malaysia, the Philippines, Singapore, and Vietnam) accounted for 15 percent.

Just under half of the container imports from Asia moved through the ports of Los Angeles and Long Beach. U.S. Pacific ports handled 60 percent of all Asian imports and exports, and U.S. Atlantic and Gulf ports handled 40 percent.

The original decline and subsequent recovery in volume due to the COVID-19 pandemic led to many shifts in this trade lane during the fiscal year. Initially, the pandemic caused a large, sustained decline in container volumes, leading to numerous cancelled sailings, adversely impacting operations at U.S. ports. These cancelled sailings led to empty containers accruing on terminals, prompting some shipping lines to temporarily send megaships to the U.S. to retrieve them. However, demand for U.S. imports picked up substantially in the summer, leading to shipping lines introducing several new services between Asia and the U.S. in the latter half of the fiscal year. The 2M Alliance, MSC (separately from 2M), Matson, and Zim each launched a new service during the fiscal year connecting Asia to the U.S. West Coast. Several lines noted that these new services would focus on e-commerce goods

purchased on the internet after an increase in consumer demand for goods during the pandemic. Towards the end of the fiscal year however, the strong demand for U.S. imports (without a corresponding increase in demand for U.S. exports) led to container shortages in Asia and congested terminals at a number of major U.S. ports, according to press reports. Furthermore, this cargo surge contributed to backlogs at U.S. warehouses, which had been operating at lower capacity due to COVID labor restrictions, leading to containers being returned to marine terminals more slowly than is typical.

Asia accounts for 67 percent of containerized imports to the U.S. and 50 percent of containerized exports from the U.S.

Several notable changes among shipping lines and alliances had occurred in this market during the year. In April, Hyundai Merchant Marine formally joined THE Alliance. Simultaneously, the 2M Alliance entered into a vessel sharing and slot exchange agreement with South Korea-based SM Line between Asia and the U.S. West Coast. Furthermore, Pacific International Lines (PIL) exited the transpacific and U.S. trades in March.

NORTH EUROPE

3.8 Million TEUs

The liner trade with North Europe is the second largest U.S. trade by volume, accounting for 3.8 million TEUs, or 11 percent of

the total U.S. container cargo (exports and imports combined). The region of North Europe includes Iceland and all nations in North West/East Europe and Scandinavia.

Compared to the preceding period, U.S. container exports declined by 6.4 percent to 1.5 million TEUs, and U.S. container imports fell by 5.3 percent to 2.3 million TEUs. The declines in cargo volume were largely due to the drop in demand caused by the pandemic and reciprocal tariff sanctions imposed on selected goods traded between the U.S. and EU member nations. In particular, the closure of bars and restaurants during the U.S. lockdowns hurt the demand of the top imported commodities of wine and beer from Europe. Nonetheless, beer, auto parts and furniture remained the top imported commodities, while used cars, woodpulp, and auto parts were among the top U.S. container exports. The cargo volume moved by Hapag Lloyd, MSC, Maersk Line and ONE accounted for 64 percent of the total trade.

Carriers serving the trade reduced their vessel capacity in relation to the decline in demand. In April, parties to the 2M Alliance (Maersk Line and MSC) suspended their weekly TA4 loop service between U.S. Atlantic and North Europe ports. Parties to the other alliance agreements cancelled sailings

in the trade, and in July 2020, CMA CGM and Marfret reduced the frequency of their North Europe-US-Oceania pendulum service from weekly to fortnightly. By the end of the fiscal year, the reduction in vessel capacity was 11 percent in each trade direction, and the average utilization of capacity for the fiscal year was 82 percent inbound and 56 percent outbound. According to press reports, spot rates in the headhaul inbound direction declined by 10 percent to around \$2,200 per 40-foot container (FEU) compared to the preceding fiscal year. Projections of cargo volumes in the transatlantic foresee some improvement in growth by the 2nd quarter of 2021.

In March 2020, the European Commission (EC) extended its block exemption regulations for consortia agreements between liner shipping carriers until April 25, 2024, when the regulations will again be reviewed. The EC concluded that the exemption was still effective at creating cost and operational efficiencies that allowed carriers to better deploy vessel capacity and offer customers more connections. European shippers opposed the extension.

INDIAN SUBCONTINENT AND MIDDLE EAST

Combined 2.5 Million TEUs

The Indian Subcontinent and Middle East regions combined accounted for 7.3 percent of total U.S. container trade in FY 2020, with the Indian Subcontinent being the larger of the two. The Indian Subcontinent includes the countries of Bangladesh, Burma, India, Nepal, Pakistan, and Sri Lanka, and the Middle East includes a range of countries in Western Asia from Israel, Lebanon, and Syria in the West to Afghanistan in the East. Total trade for both

the Indian Subcontinent and the Middle East was down, with the Indian Subcontinent trade decreasing 7.9 percent and the Middle East trade decreasing 5 percent. Total trade from the regions dropped from 2.7 million TEUs in FY 2019 to 2.5 million in FY 2020.

Much of the decrease in trade was driven by lower export volume, with exports to the Indian Subcontinent falling 12.7 percent to 678,000 TEUs and exports to the Middle East dropping 4.3 percent to 557,000 TEUs. Import

volume from the Indian Subcontinent and the Middle East decreased as well but to a smaller degree, in total dropping by 4.9 percent to 1.3 million TEUs.

The direction of trade volumes for both the Indian Subcontinent and the Middle East remained unbalanced. For the Indian Subcontinent, container imports exceeded exports by a ratio of 1.5 to 1. Conversely, for the Middle East, container exports exceeded imports by a ratio of 2.1 to 1.

Much like the rest of global trade, the Middle East and Indian Subcontinent were substantially impacted by the pandemic and associated recession. In addition to the region's direct trade decline, the Suez Canal was also impacted a great deal by

the pandemic. Although trade through the Suez remained stable until April, into and through the summer, monthly volumes fell to multi-year lows. Dry bulk and oil tanker traffic remained strong, buoying total traffic through the canal, but container trade collapsed during the summer. In response to these challenges, and to carriers' renewed consideration of the Cape of Good Hope route, the Suez Canal Authority offered a number of pricing and rebate incentives over the spring and summer. The dynamics of the COVID-19 era on the shipping industry have rekindled the competition between the Suez Canal and Cape of Good Hope trade routes.

CENTRAL AMERICA AND THE CARIBBEAN

2.1 Million TEUs

The Central America and Caribbean regions combined accounted for 6 percent of the total U.S. container cargo in FY 2020, or 2.1 million TEUs. Nations in Central America are Belize, Costa Rica, El Salvador, Guatemala, Honduras, and Panama, while the Caribbean are those island nations in the West Indies and Caribbean Sea, including the Bahamas, Dominican Republic, and Jamaica. Total cargo volume for Central America and the Caribbean declined in both regions and collectively was down by 5.1 percent. Central American volume was double that of the Caribbean at 1.4 million TEUs (4 percent of U.S. trade) versus 700,878 TEUs (2 percent of U.S. trade).

Total cargo volume in Central America was down 5.2 percent in FY 2020. U.S. exports to Central America declined dramatically, falling by 13.2 percent to 543,550 TEUs while imports

from the region to the U.S. increased modestly by 0.5 percent to 885,597 TEUs. Paper products account for the largest share of U.S. exports to the region followed by cotton, grocery products, used automobiles and fabrics. Fresh fruits are the top imported goods from the region. Major carriers serving the trade participate in the Central America Discussion Agreement (CADA), which is a voluntary rate discussion agreement. CADA members are Seaboard Marine, Crowley Liner Services, King Ocean Services, Dole Ocean Cargo Express, and Great White Fleet Liner Service Ltd.

For the Caribbean, total cargo volume fell 5 percent in FY 2020. U.S. exports to the Caribbean fell 5 percent to 525,485 TEUs while imports from the region fell 4.8 percent to 175,393. The economies of the Caribbean nations depend heavily on tourism, which has

been brought to a halt by the pandemic. Lower trade volume from depressed economies will likely continue until tourism resumes. Carriers servicing the U.S./Caribbean trade routes participate in two rate discussion agreements covering geographically discrete areas: (1) the ABC Discussion Agreement (covering Aruba, Bonaire, Curacao, and Venezuela), and (2) the Caribbean Shipowners Association.

In January 2020, COSCO entered into a vessel sharing agreement with CMA CGM to participate in its US Gulf-Caribbean-South America service. COSCO provides one 3,600

TEU containership in combination with the eight vessels that CMA CGM deploys in this service. As trade conditions worsened due to the pandemic, in April 2020, the Caribbean and Central American Emergency Cooperative Working Agreement was formed, authorizing the parties to discuss and adjust their vessel capacity and services in the trade between the U.S. Atlantic and Gulf Coasts and Central America and the Caribbean. Parties to the agreement include Crowley Liner Services, King Ocean Services, and Seaboard Marine.

SOUTH AMERICA

2.1 Million TEUs

The South America region accounted for 6 percent of total U.S. container cargo in FY 2020, or about 2.1 million TEUs. The entire continent of South America is included in the region. Cargo volumes held steady between FY 2019 and FY 2020, with a modest increase of 0.41 percent. Exports to South America declined by 3.36 percent to 910,883 TEUs, while imports grew by 3.51 percent to nearly 1.2 million TEUs. Leading U.S. container exports to the region included chemicals, automobile parts, and paper products. The top imports to the

U.S included bananas, wood products, and coffee.

Only two ocean carriers (Seaboard Marine and King Ocean Services) remain in the West Coast of South America Discussion Agreement (WCSADA), which is a voluntary rate discussion agreement. Members of WCSADA faced increased competition from other major carriers. As noted, in January 2020, COSCO deployed a vessel and began sharing space through an agreement with CMA CGM on one of its services that includes ports in South America.

MEDITERRANEAN

1.8 Million TEUs

Container volume between the U.S. and the Mediterranean accounted for 5 percent, or 1.8 million TEUs, of the total U.S. container cargo in FY 2020. Nations bordering the Mediterranean Sea comprise this region, including South Europe countries, Turkey, and Egypt. Conditions in this trade appeared to be less affected

by the global pandemic than in other trades. Compared to the prior period, U.S. container exports declined by 3.5 percent to 457,543 TEUs, while imports from the region, rose by 3 percent to 1.3 million TEUs. Container imports exceeded exports by a ratio of 2.9 to 1. The top traded commodities remained the same; these were imported containers of wine, ceramic

tiles, and furniture, and exported containers of woodpulp, cotton, paperboard, and nuts. The top four European-based carriers, MSC, Hapag Lloyd, Maersk Line and CMA-CGM, moved 79 percent of the total container cargo in the trade.

In April 2020, a new dedicated service was added to the trade through a vessel sharing agreement between COSCO, OOCL, ONE and Yang Ming. Under this new East Mediterranean-America (EMA) service, the

carriers deploy six 4,500 TEU containerships on a weekly rotation between U.S. Atlantic ports and ports in Spain, Italy, Greece, Turkey, Israel, and Egypt. In other service changes, Hapag Lloyd reduced the frequency of its MGX service between U.S. Gulf and Mediterranean ports from weekly to fortnightly. By the end of the fiscal year, vessel capacity in the trade was up by 2 percent in each trade direction.

AFRICA

476,415 TEUs

In FY 2020, imports and exports combined between the U.S. and Africa were 476,415 TEUs, accounting for approximately 1.4 percent of all U.S. container volume. The Africa region includes all the nations on the continent except Egypt, which for container cargo is primarily served via the Mediterranean trade lane. Compared to the previous period, U.S. container exports to nations in Africa decreased by 4.9 percent to 347,499 TEUs, and U.S. container imports from the region decreased by 6.5 percent to 128,916 TEUs. Consequently, U.S. container exports exceed imports by a ratio of 2.7 to 1.

The top container U.S. exports to Africa included automobiles and poultry, while

swimwear, cocoa beans and citrus fruit were among the top import commodities. The Republic of South Africa is the largest U.S. liner trading nation on the continent, accounting for approximately 21 percent of the containerized cargo. MSC and Maersk Line, including its subsidiary Safmarine, moved 67 percent of the total container cargo in the trade.

Due to the pandemic, a number of services diverted their routes around the Cape of Good Hope over the summer. Deeply depressed fuel prices and increased freight rates have made the longer Good Hope route a viable option for carriers, who typically use the shorter Suez Canal. As noted, these dynamics have reinvigorated competition between the two routes.

AUSTRALIA AND OCEANIA

415,000 TEUs

Oceania consists of Australia, New Zealand, and the South Pacific Islands. The liner trades between the U.S. and Oceania comprised approximately one percent of the total U.S. container cargo in FY 2020, or 415,000

TEUs. Compared to the preceding period, the volume of U.S. container exports declined by 4.2 percent to 230,712 TEUs, and the top exported commodities included auto parts, general merchandise, and tires. U.S. container imports from the region fell substantially by

10.4 percent to 183,889 TEUs, and the top imported commodities included wine and fresh or frozen meat products.

The U.S. Pacific-Oceania Agreement is one of the major vessel sharing agreements that remains operational in the trade. Parties to the VSA agreement are Maersk Line, Hapag Lloyd and ANL Singapore Pte. Ltd., a subsidiary of CMA-CGM. In May 2020, PIL terminated its space charter agreement with the VSA parties

and exited the trade.

In other service changes, in January 2020, Matson Navigation Co. Inc. entered into an agreement with Maersk Line for vessel space between U.S. Pacific ports and ports in Samoa and Tahiti. Also, under their vessel sharing agreement, in July 2020, CMA CGM and Marfret reduced the frequency of their pendulum service that includes the trade from weekly to fortnightly.

TOP TWENTY U.S. LINER CARGO TRADING PARTNERS

The Foreign Shipping Practices Act, 46 U.S.C. § 306 (b)(1), requires the FMC to include in its annual report to Congress “a list of the twenty foreign countries which generated the largest volume of oceanborne liner cargo for the most recent calendar year in bilateral trade with the United States.”

The Commission derives its list of top-twenty trading partners from the Port Import Export Reporting Service (PIERS) database. The most recent complete calendar year of available data is 2019. The table on the next page lists the twenty foreign countries that generated the largest volume of oceanborne liner cargo in the bilateral trade with the United States in calendar year 2019. The figures in the table represent each country’s U.S. liner imports and exports combined in thousands of loaded TEUs.

Bilateral trade with the United States’ top-twenty liner trading partners represented approximately 80 percent of the nation’s total liner trade in 2019. The total volume of trade with our top-twenty liner trading partners

was about the same as in the preceding calendar year with a slight two percent increase.

The top-twenty list has been comprised of nearly the same trading partners since 2009. However, in 2019, there were some changes in the ranking order of the countries compared to the preceding period. China remained the U.S.’s top trading partner in 2019, accounting for 33 percent, or about 12 million TEUs, of the total volume of trade. Malaysia jumped in rank from 15 to 12, growing in cargo volume by 26 percent during 2019. Spain joined the top trading partners at the rank of 20 with a growth rate of 10 percent, while Honduras no longer ranked among the top 20. Notably, in terms of growth, trade with Vietnam (#2) increased by 26%, Thailand (#8) was up 14%, and Turkey (#19) was up 12%. Conversely, trade with China (#1) and Hong Kong (#16) declined by 11 and 14 percent, respectively. By region, half of the top 20 trading partners are countries located in Asia, seven are in Europe, and three are in South and Central America.

Malaysia, Guatemala, United Kingdom, Turkey, and Spain climbed up in the rankings, while Brazil, the Netherlands, Hong Kong, Chile, and Honduras slipped down.

TOP TWENTY U.S. LINER CARGO TRADING PARTNERS (CY2019)

Rank	Country	TEUs (000)
1	China (PRC)	11,939
2	Vietnam	2,028
3	South Korea	1,639
4	Japan	1,404
5	India	1,365
6	Taiwan (ROC)	1,348
7	Germany	1,136
8	Thailand	897
9	Indonesia	798
10	Belgium & Luxembourg	780
11	Italy	711

Rank	Country	TEUs (000)
12	Malaysia	685
13	Brazil	677
14	Netherlands	584
15	Guatemala	479
16	Hong Kong ¹	475
17	United Kingdom	433
18	Chile	426
19	Turkey	393
20	Spain	381

¹ Hong Kong reverted to Chinese control in July 1997. However, PIERS continues to report data separately for Hong Kong due to its status as a major transshipment center.

FOREIGN SHIPPING PRACTICES ACT

The Commission has the authority to address restrictive foreign shipping practices under section 19 of the Merchant Marine Act of 1920 (46 U.S.C. ch. 421) and the Foreign Shipping Practices Act (46 U.S.C. ch. 423). Section 19 empowers the Commission to make rules and regulations governing shipping in the foreign trade to adjust or meet conditions unfavorable to shipping. The FSPA directs the Commission to address adverse conditions that affect U.S. carriers in the foreign trade and that do not exist for foreign carriers in the United States.

On March 6, 2020, the Commission received a petition from the Lake Carriers' Association, a trade association made up of owners and operators of vessels on the Great Lakes, alleging that conditions created by Transport Canada, an agency of the Government of Canada are unfavorable to shipping in the United States/Canada trade under Section 19. In particular, the Lake Carriers' Association asserted that Transport Canada's proposed regulations requiring the installation of ballast water management systems on vessels loading or discharging ballast water in Canadian vessels would drive U.S.-flag vessels from the cross-lakes U.S. export trade with Canada. On June 16, 2020, the Commission issued a Notice of Investigation and Request for Comments. The comment period closed on July 22, 2020, and the Commission continues to gather information and consult with other federal agencies as it proceeds with its investigation.

CONTROLLED CARRIERS

A controlled carrier is an ocean common carrier that is, or whose operating assets are, owned or controlled directly or indirectly by a foreign government. The Shipping Act provides that no controlled carrier may maintain rates or charges in its tariffs or service contracts that are below a level that is just and reasonable, nor may any such carrier establish, maintain, or enforce unjust or unreasonable classifications, rules, or regulations in those tariffs or service contracts. In addition, tariff rates, charges, classifications, rules, or regulations of a controlled carrier may not, without special permission of the Commission, become effective sooner than the 30th day after the date of publication. The Commission's staff monitors U.S. and foreign trade press and other information sources to identify controlled carriers and any unjust or unreasonable controlled carrier activity that might require Commission action. As of the end of fiscal year 2020, four controlled carriers operated in the U.S. trades. All four controlled carriers are subsidiaries of COSCO SHIPPING Holdings Co., Ltd.:

1. COSCO SHIPPING Lines Co., Ltd. – People's Republic of China;
2. Orient Overseas Container Line Limited – People's Republic of China;
3. OOCL (Europe) Limited – People's Republic of China; and
4. COSCO Shipping Lines (Europe) GmbH – People's Republic of China.

FORMAL INVESTIGATIONS, PRIVATE COMPLAINTS AND LITIGATION

Adjudicative proceedings before the Commission are commenced by the filing of a complaint, or by order of the Commission upon petition, or upon its own motion. Types of docketed proceedings include:

- **Private complaints:** Any person may file a formal complaint alleging violations of specific sections of the Shipping Act found at 46 U.S.C. Chapter 411. Formal complaints are generally assigned to an Administrative Law Judge (ALJ) who issues an initial decision which is reviewed by the Commission.
- **Small claims complaints:** For claims of \$50,000 or less, an informal complaint may be filed. The complaint is handled by a settlement officer for resolution using informal procedures that do not tend to include discovery or motions practice.
- **Investigative proceedings:** The Commission may investigate the activities of ocean common carriers, OTIs, MTOs, and other persons to ensure effective compliance with the statutes and regulations administered by the Commission. Formal orders of investigation and hearing are assigned to an ALJ for an initial decision and may be reviewed by the Commission.

The following summarizes the results of docketed proceedings concluded during FY 2020 by the OALJ and the Commission:

FORMAL PROCEEDINGS

Ngobros and Company Nigeria Limited v. Oceane Cargo Link, LLC [Docket No. 14-15]

Complainant alleges that Respondents violated the Shipping Act in transporting three vehicles from Georgia to West Africa. The ALJ found that Respondents violated 46 U.S.C. § 41102(c) and awarded Complainant reparations. The Commission determined to review the ALJ decision, but, while review was underway, one of the Respondents filed for bankruptcy. Because of the bankruptcy, the Commission stayed the proceeding. In

October 2017, the Commission learned that the Respondent had received a Chapter 7 bankruptcy discharge, and the stay was lifted. Meanwhile, the same Respondent was indicted and later plead guilty to fraud and identity theft in federal court. In December 2019, the Commission vacated and remanded in part the ALJ decision. Complainant then requested voluntary dismissal of the complaint. The ALJ granted the request, and the dismissal became administratively final in March 2020.

In Re: Vehicle Carrier Services [Docket Nos. 16-01, 16-07, 16-10, 16-11]

Complainants in these four consolidated cases allege that Respondents violated multiple provisions of the Shipping Act for nearly two decades by secretly agreeing and conspiring to fix, raise, and stabilize prices and allocate customers and market share in the roll on/roll off (RoRo) shipping trade. Complainants shipped or purchased new assembled cars and trucks transported on Respondents' RoRo ships and allege that Respondents' illegally inflated charges were passed along to them, either directly as freight charges or indirectly in the purchase prices of vehicles. Complainants sued on their own behalf and on behalf of similarly-situated members of a class. The ALJ dismissed Complainants' claims as time-barred and for lack of standing and also provisionally ruled that the Commission lacked authority to adjudicate class actions. Complainants appealed. In October 2019, the Commission affirmed the ALJ's dismissal of the indirect purchaser complaints for lack of standing under the direct purchaser rule; affirmed the ALJ's dismissal of the direct purchaser complaint as to reparations as untimely; and reversed the ALJ insofar as the ALJ allowed the direct purchasers to pursue cease-and-desist relief.

Hangzhou Qianwang Dress Co., Ltd. v. RDD Freight International Inc. [Docket No. 17-02]

Complainant alleges that Respondent violated the Shipping Act by releasing goods to a consignee before it had received the original bills of lading or permission to release from Complainant. The ALJ found that Respondent released cargo without the original bill

of lading in violation of 46 U.S.C. § 41102(c) and awarded Complainant reparations. The Commission vacated the ALJ decision and remanded the case so that the ALJ could determine whether Respondent's acts or omissions occurred on a normal, customary, and continuous basis. On remand, the ALJ found that Complainant had not established a § 41102(c) violation and dismissed the complaint. The Commission affirmed the ALJ's decision in September 2020.

Port Elizabeth Terminal & Warehouse Corp. v. Port Authority of New York & New Jersey [Docket No. 17-07]

Complainant alleges that Respondent decided to lease property occupied by Complainant at Port Newark to another tenant, while at the same time declining to lease additional property to Complainant, in violation of 46 U.S.C. §§ 41102(c), 41106(2), 41106(3), 41104(a)(8), and 41104(a)(9). The ALJ dismissed two of the claims and found that Complainant was barred from seeking reparations for the surviving claims under the Shipping Act's statute of limitations. Complainant appealed the ALJ's decision. While the appeal was pending, the ALJ in March 2019 dismissed the remaining claims on the merits. Complainant filed exceptions to that decision as well. In December 2019, the Commission approved the parties' settlement and dismissed the case.

Marine Transport Logistics, Inc. v. CMA-CGM (America) LLC [Docket No. 18-07]

Complainant filed a complaint alleging violations of the Shipping Act including that Respondent violated 46 U.S.C. §§ 41102(c),

41104(9), and 41104(10), connected with the shipment of and failure to deliver nine containers to Yemen. Respondent filed its answer, denying the allegations and raising affirmative defenses. The parties were granted a stay while they pursued a settlement. When the proceeding did not resolve, Respondent filed a motion to dismiss. Complainant filed an opposition to the motion to dismiss and a cross-motion for leave to file an amended complaint. The ALJ issued an order granting the amended complaint and denying the motion to dismiss. The parties filed a joint petition for approval of settlement. On February 18, 2020, the ALJ issued an order approving the confidential settlement and dismissing the proceeding with prejudice.

Logfret, Inc. v. Kirsha, B.V. [Docket No. 18-10]

Complainant alleges that Respondents committed numerous unethical and illegal activities related to the management and governance of Complainant's Dutch affiliate in violation of 46 U.S.C. § 41103(a), such as improper leasing decisions and sharing company-sensitive information with competitors. The ALJ dismissed the complaint, and Respondents subsequently petitioned for attorney fees. The ALJ denied the petition. Respondents filed exceptions to the decision denying their petition, but in June 2020, the Commission affirmed the ALJ.

Muhammad Rana v. Michelle Franklin, D.B.A. "The Right Move" Inc. [Docket No. 19-03]

Complainant filed a complaint alleging violations of the Shipping Act for failure to pay shipping fees for a shipment of household

goods from the United States to Pakistan. Respondent admitted that she failed to pay the ocean shipping charges, blaming problems with prior shipments, but disputed that the failure was willful, that she violated the Shipping Act, and the request for damages. Complainant withdrew the claim of a violation of § 41102(c). The ALJ issued an initial decision finding that Respondent violated § 41102(a) of the Shipping Act by utilizing unjust or unfair means to obtain ocean transportation at less than the rates that otherwise would be applicable and imposing reparations in the amount of \$7,472.40 with interest. Respondent appealed and this proceeding is currently pending before the Commission.

Possible Revocation of Passenger Vessel Operator Performance Certificate No. P1397 Great Northern & Southern Navigation Co., LLC dba French America Line [Docket 19-08]

On April 10, 2019, the Commission's Bureau of Certification and Licensing notified Great Northern & Southern Navigation Co., LLC dba French America Line (FAL) that it intended to revoke Respondent's Certificate of Financial Responsibility for Indemnification of Passengers for Nonperformance of Transportation (Certificate). On October 31, 2019, the Commission issued an order granting a hearing and directing FAL to Show Cause why its Certificate should not be revoked. The Bureau of Enforcement submitted its Memorandum of Law and Exhibits responding to FAL's submissions. On March 20, 2020, the Commission revoked the Certificate (Performance) of Great Northern & Southern Navigation Co., LLC, prohibiting it from offering, advertising, or conducting passenger vessel cruises.

The Commission found FAL to have failed to respond to lawful inquiries, requests for information, provided willfully false information in connection with an application for a Certificate (Performance), and failed to maintain its qualification as financially responsible.

VerTerra Ltd. v. D.B. Group America Ltd. and D.B. Group India Ltd. [Docket No. 19-09]

Complainant filed a complaint alleging violations of the Shipping Act, including 46 U.S.C. §§ 41104, 41104(a), 41104(a)(2), 41104(a)(3), 41104(a)(4), 41104(a)(5), 40501, and 40502. Complainant alleges that Respondents committed the violations when Respondents coordinated approximately 293 discreet shipping jobs for Complainant from May 2016 through December 2018. Respondents filed a timely motion to dismiss the proceeding. The ALJ issued an order denying Respondents' motion to dismiss or stay the proceedings. Respondents filed their answer, denying any violation of the Shipping Act and raising affirmative defenses. The parties filed a joint petition for approval of settlement and request for confidential treatment. The ALJ issued an initial decision approving the confidential settlement agreement and dismissing the proceeding. The decision became administratively final on July 14, 2020.

Earlean Edwards Dukart v. Ocean Star International Inc., d/b/a International Van Lines [Docket No. 20-03]

Complainant alleges that Respondent violated 46 U.S.C §§ 41102(a),(b),(c); 41103(a); 41104(a)(1), (2)(A), (3), (4)(A), (4)(D), (4)(E),

(5), (8), (10); and 41105(1), (2), (4) of the Shipping Act in connection with a dispute over a contract to ship household goods from the United States to Belize. Respondent denied the allegations, asserting that the shipment was not an overseas shipment handled by their company, and asked that the complaint be dismissed. The ALJ issued an initial decision granting Complainant's request for voluntary dismissal without prejudice. On August 11, 2020, the decision became administratively final.

Dip Shipping Company, LLC Revocation of Ocean Transportation Intermediary License No. 018752 [Docket 20-04]

On February 19, 2020, the Commission's Bureau of Certification and Licensing (BCL) issued a Notice of Intent to Revoke the OTI license of Dip Shipping Company based on the guilty plea by Dip Shipping of fixing OTI prices in violation of the Sherman Act. Dip Shipping requested, and was granted, a hearing that was conducted pursuant to the Commission's regulations governing revocations of OTI licenses. The Bureau of Enforcement submitted supporting materials upon which BCL relied in issuing the Notice of Intent, as well as its brief in reply to Dip Shipping's response to the Notice. The Administrative Law Judge issued a decision on July 29, 2020 finding that the evidence supported a finding that Dip Shipping's conviction of conspiracy to fix OTI prices in violation of the Sherman Act supported revocation of Dip Shipping's OTI license. The decision became administratively final on August 31, 2020.

Zero Waste Challenge, LLC v. Worldwide Freight Services, Inc. d/b/a United American Line [Docket No. 20-08]

Complainant filed a complaint alleging that Respondent violated 46 U.S.C. § 41102(c) of the Shipping Act in connection with 58 containers being shipped from the United States to Pakistan. The parties filed a joint motion requesting an extension of time to file a responsive pleading. The ALJ granted the extension. The Complainant then filed a request for voluntary dismissal of the complaint. The Secretary issued a notice of voluntary dismissal.

MAC Industries, Inc. d/b/a MAC Container Line v. COSCO SHIPPING Lines Co., Ltd. [Docket No. 20-09]

Complainant filed a complaint alleging violations of the Shipping Act, including that Respondent violated 46 U.S.C. § 41104(3) by denying Complainant access to shipping rates normally available to volume shippers. On July 10, 2020, the parties filed a joint petition requesting approval of a settlement and attached a copy of the confidential settlement agreement. The ALJ issued an initial decision approving the confidential settlement agreement and dismissing the proceeding. The decision became administratively final on August 31, 2020.

Aeneas Exporting LLC v. Carlo Shipping International, Inc. [Docket No. 20-11]

Complainant filed a complaint alleging violations of the Shipping Act, including that Respondent violated 46 U.S.C. §§ 41102(c) and

41104(a)(3), and seeking damages accrued due to an increase in shipping rates and subsequent detention of 24 of Complainant's shipping containers in Benghazi, Libya. Complainant filed a request for dismissal pursuant to settlement. The ALJ issued an initial decision approving the settlement agreement and dismissing the proceeding. At the end of the fiscal year, the Commission had not determined whether or not to review the decision.

M/S Parsons Overseas v. Seven Seas Shipping USA, Inc. [Docket No. 1960(I)]

Claimant initiated an informal proceeding alleging that Respondent violated the Shipping Act by creating false bills of lading and releasing Claimant's shipment to an unauthorized party without obtaining the genuine bill of lading. The Small Claims Officer (SCO) found in favor of the Claimant and awarded reparations. The Commission vacated the SCO decision and remanded the case so that the SCO determine whether Respondent's acts or omissions occurred on a "normal, customary, and continuous basis." On remand, the SCO found that Claimant had not proved a violation of § 41102(c) and dismissed the claim. In December 2019, the Commission vacated the SCO decision dismissing the claim and remanded to give Claimant an opportunity to seek discovery regarding whether Respondent engaged in unjust and unreasonable conduct with respect to other shipments or shippers. Claimant then moved to withdraw the complaint and dismiss the proceeding, and the SCO granted the request in February 2020. The decision to dismiss became administratively final on March 30, 2020.

RULEMAKINGS

The Commission initiated several rulemakings during the fiscal year to update its regulations and reduce regulatory burdens.

Licensing, Registration and Financial Responsibility Requirements for Ocean Transportation Intermediaries [Docket No. 18-11]

The Commission proposed minor changes to the requirements for OTIs in a Notice of Proposed Rulemaking published on December 17, 2018. The proposed changes involved minor adjustments to the application and renewal procedures for licenses and registrations, such as changes to the form, type, and timing of information required to be submitted to the Commission. The Commission issued a final rule on November 15, 2019, adopting all but one of the proposed changes.

Hearing Procedures Governing the Denial, Revocation, or Suspension of an OTI License [Docket No. 19-04]

The Commission issued a final rule on January 31, 2020, modifying the hearing procedures governing the denial, revocation, or suspension of an OTI license found in 46 C.F.R. § 515.17. The Commission previously issued a Notice of Proposed Rulemaking on September 3, 2019 and received no comments. The revised hearing procedures align more closely with other Commission proceedings, ensure a more streamlined process, and fulfill the need for more detailed procedural requirements.

Interpretive Rule on Demurrage and Detention under the Shipping Act [Docket No. 19-05]

In March 2018, based in part on Petition No. P4-16 filed by a group of importers, exporters, freight forwarders, and truckers, the Commission initiated Fact Finding Investigation No. 28 to investigate port demurrage, detention, and free time practices. Commissioner Rebecca F. Dye was appointed the Fact Finding Officer. After an almost 18-month investigation, Commissioner Dye recommended that the Commission: (1) issue an interpretive rule clarifying how the Commission will assess the reasonableness of detention and demurrage practices; (2) establish a Shipper Advisory Board; and (3) continue to support the Supply Chain Innovation Team working to address chassis availability issues in Memphis, TN. The Commission approved the recommendations and issued a proposed interpretive rule on detention and demurrage in September 2019. The Commission received over one hundred comments on the proposed interpretive rule, and, on May 18, 2020, the Commission published a final rule setting forth guidance on how the Commission will determine the reasonableness of demurrage and detention practices under 46 U.S.C. § 41102(c).

Regulatory Amendments Implementing the Frank LoBiondo Coast Guard Authorization Act of 2018 [Docket No. 19-06]

The Commission issued a notice of proposed rulemaking on October 9, 2019, proposing to revise its regulations to reflect

the statutory changes in the Frank LoBiondo Coast Guard Authorization Act of 2018, Public Law 115-282 (LoBiondo Act). The Commission published a final rule on February 20, 2020. The more significant changes adopted by the final rule included: (1) revising the regulations governing Commission meetings to include provisions on “nonpublic collaborative discussions,” a new type of meeting established by the LoBiondo Act that is not open to public observation; (2) revising the regulations governing OTI licensing and financial responsibility to reflect changes to the types of activities that require a license; and (3) revising the regulations to reflect the statutory change making confidential any comments on filed ocean common carrier and MTO agreements.

Delegations to Bureau of Enforcement and Enforcement Procedures [Docket No. 19-07]

The Commission published a direct final rule on October 9, 2019, revising its enforcement procedures. The revised procedures include: (1) providing notice to the subjects of Bureau of Enforcement investigations and allowing them an opportunity to respond; (2) requiring Commission approval before formal or informal enforcement action is undertaken; and (3) requiring Commission approval of any proposed compromise agreements. The rule mirrors the U.S. Securities and Exchange Commission’s Wells process.

Petition of the World Shipping Council for an Exemption and Rulemaking [Petition P3-18] / Service Contract Rulemaking [Docket No. 20-02]

The World Shipping Council (WSC), a trade association of ocean common carriers, petitioned the Commission for an exemption from the service contract filing and essential terms publication requirements set forth at 46 U.S.C. § 40502(b) and (d), and further petitioned for the initiation of a rulemaking proceeding to amend the Commission’s service contract regulations in 46 C.F.R. part 530 consistent with the requested exemption.

On December 20, 2019, the Commission issued an order denying in part and granting in part the petition. Specifically, the Commission denied WSC’s request for an exemption from the requirement in 46 U.S.C. § 40502(b) that ocean common carriers file service contracts with the Commission. In contrast, the Commission granted WSC’s request for an exemption from the requirement in § 40502(d) that carriers publish essential terms with each service contract, determining that an exemption from § 40502(d) would not result in a substantial reduction in competition or be detrimental to commerce. The Commission also determined to initiate a rulemaking to implement the essential terms publication exemption.

After publishing a notice of proposed rulemaking on February 14, 2020, and reviewing the comments received, the Commission published a final rule on June 25, 2020, eliminating the essential terms requirements in the Commission’s regulations.

Temporary Exemption from Certain Service Contract Requirements [Docket No. 20-06]

Responding to the impact of COVID-19 on commercial shipping operations, the Commission issued an order on April 27, 2020, temporarily exempting carriers from the requirement that service contracts be filed with the Commission before becoming effective, so long as carriers file the contracts within 30 days of the effective date.

Policy Statement on Passenger Vessel Financial Responsibility [Docket No. 20-13]

On April 30, 2020, the Commission initiated Fact Finding 30 to investigate COVID-19's impact on the cruise industry. Based on information gathered as part of the Fact Finding, the Commission issued a policy statement on August 14, 2020, determining that COVID-19's unprecedented effects on the cruise industry constituted good cause under Commission regulations to consider alternative forms of financial protection using a shorter period of time to determine the required amount of coverage. The Commission's goal is to help mitigate the commercial impact of the COVID-19 pandemic on the cruise industry by eliminating unnecessary compliance costs.

The Commission determined to maintain the policy as long as COVID-19's negative effects on the cruise industry continue.

Passenger Vessel Financial Responsibility [Docket No. 20-15]

On April 30, 2020, the Commission initiated Fact Finding 30 to investigate COVID-19's impact on the cruise industry. As part of the investigation, the Fact-Finding Officer issued an interim report on passenger vessel operator (PVO) refund policies on July 27, 2020. The Fact-Finding Officer concluded that clearer guidance is needed in determining whether a passenger is entitled to obtain a refund if a PVO cancels a voyage, makes a significant schedule change, or significantly delays a voyage. The Fact-Finding Officer proposed that the Commission provide a clear interpretation of when nonperformance of transportation has occurred and modify the appropriate provisions of the Commission's PVO regulations to make clear how passengers may obtain refunds under the PVOs' financial responsibility instruments filed with the Commission. The Commission subsequently approved the recommendation on August 10, 2020 and voted to initiate a rulemaking to implement the proposed regulatory changes.

LEVERAGING TECHNOLOGY

The Commission continues to leverage technology advances to update its business functions and migrate away from older technology to cloud-based enterprise systems. The FMC's automated information technology (IT) systems are used by the shipping public to file license applications, carrier and MTO agreements, and commercially sensitive operational data used by the Commission's economists to conduct mission-critical competition analysis. Planned information system infrastructure and architecture investments across all agency tasks and processes will streamline the Commission's core workflow and business functions to maximize productivity, expand research and analysis capabilities, and provide better public access to FMC information.

During FY 2020, the FMC's multiyear initiative to turn on-premise line of business applications into cloud based enterprise applications and implementation of security features to strengthen the Commission's security posture allowed the Commission to transition seamlessly to maximum telework work necessitated by the unprecedented COVID-19 pandemic. At the beginning of the pandemic in March 2020, all staff were able to work remotely with Commission-issued laptop computers and fully access the FMC's network. Moreover, many documents previously maintained in hard copy only were available online as a result of the FMC's investment in electronic recordkeeping.

The FMC's IT management and modernization efforts are guided by its Information Technology Strategic Plan for FY 2018-2022 (IT Strategic Plan), finalized in December 2018.

This 5-year Plan reflects the FMC's progress with prior year initiatives; next steps for improving IT services and solutions; and guides the FMC's IT mission setting performance goals, objectives, and timelines. The IT Strategic Plan is aligned with the Commission's agency-wide Strategic Plan for FY 2018-2022 and outlines how technology will be used to meet the Commission's mid-term strategy and long-term mission goals and objectives.

The FMC has identified four strategic goals in its IT Strategic Plan that target quality, efficiency, cybersecurity, and compliance, with action-oriented objectives supported by key initiatives. The four IT strategic goals are:

IT Strategic Goal 1 – Manage and deliver quality IT systems and services critical for the FMC to fulfill its mission and support related administrative, business, and operational functions.

IT Strategic Goal 2 – Maintain IT policies, procedures, and practices that support efficient and effective FMC business, administrative, and mission processes.

IT Strategic Goal 3 – Expand on current progress to strengthen the security posture of FMC's networks and systems.

IT Strategic Goal 4 – Ensure reliability and accuracy of federal information technology as required by statutes, government-wide requirements, directives, or guidance.

At the enterprise level, IT capital planning and investment control (CPIC) is informed through engagement with the FMC's Information Technology Advisory Board (ITAB). The ITAB is responsible for reviewing IT planning

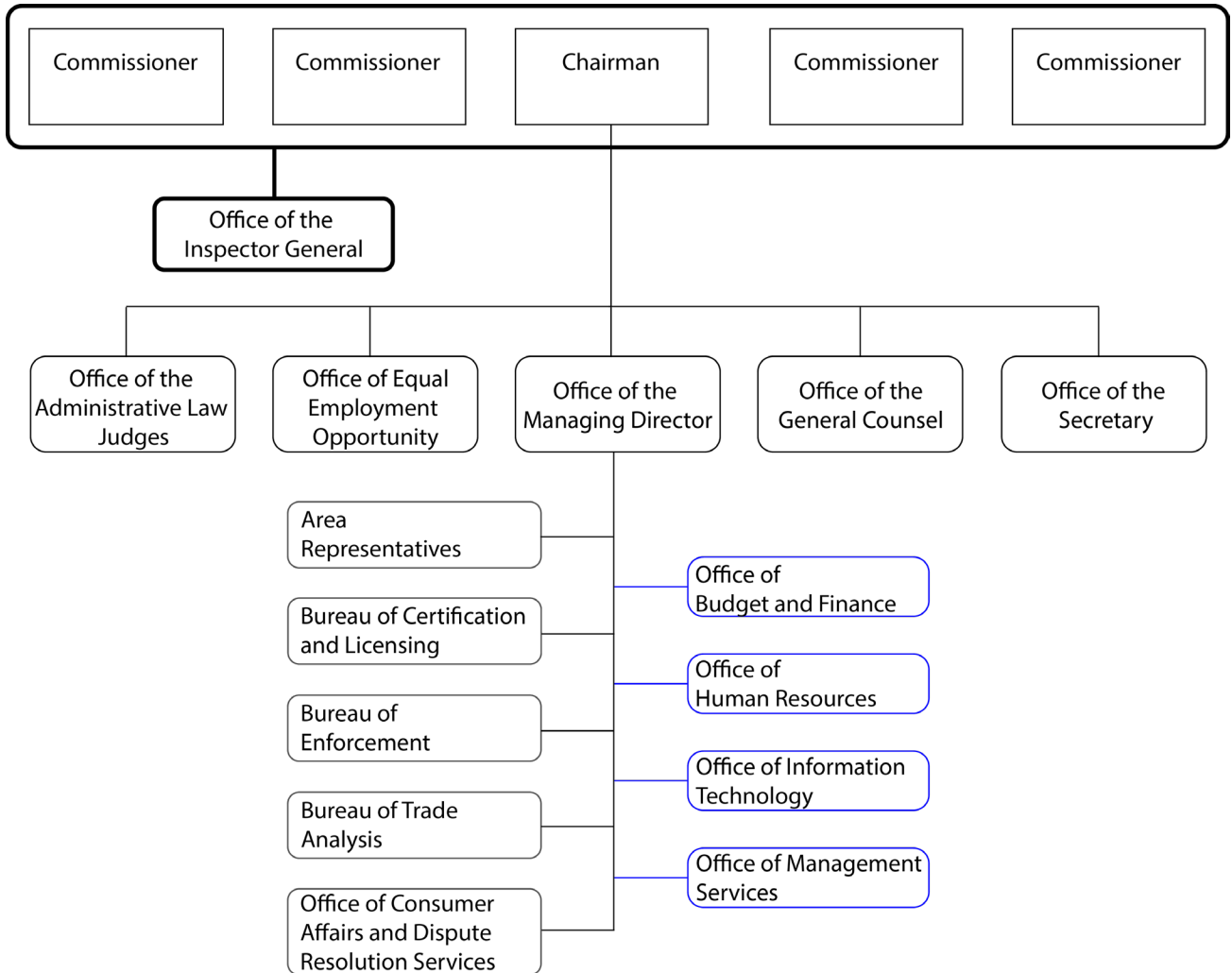
and the budget appropriate to support IT application development, business continuity and disaster recovery, information assurance and cybersecurity, data management and user support, as well as network and telecommunications systems maintenance.

The Commission continued progress on several key initiatives in 2020. The FMC finalized development of its Ebonds system, moving from a paper-based process into a

cloud-based application that will be a part of OTIS, an enterprise cloud-based application. The Commission implemented security features and updates to strengthen the security posture, to include fully implementing continuous diagnostic and monitoring (CDM).

APPENDICES

A – FMC ORGANIZATION CHART



B – FMC SENIOR OFFICIALS – FY 2020

Chief of Staff.....	Mary T. Hoang
Counsel to Chairman Khouri.....	John A. Moran
Counsel to Commissioner Dye.....	Robert M. Blair***
Counsel to Commissioner Maffei.....	Katharine Primosch
Counsel to Commissioner Sola.....	Cory Cinque***, Clark Jennings
Counsel to Commissioner Bentzel.....	John Young
General Counsel.....	Tyler J. Wood*, William Shakely**, Steven Andersen
Secretary	Rachel E. Dickon
Chief Administrative Law Judge.....	Erin Wirth
Director, Office of EEO.....	Ebony Jarrett
Inspector General.....	Jon Hatfield
Managing Director.....	Karen V. Gregory
Deputy Managing Director.....	Peter King
Director, Bureau of Trade Analysis.....	Florence A. Carr
Director, Bureau of Certification and Licensing.....	Sandra L. Kusumoto*, Clifford Johnson**, Cindy Hennigan
Director (Deputy), Bureau of Enforcement.....	Benjamin K. Trogdon
Director, Office of CADRS.....	Rebecca A. Fenneman*, Zoraya de la Cruz**, Philip Lee **

*Departed, **Acting, ***Interim Counsel

C – STATEMENT OF APPROPRIATIONS, OBLIGATIONS, AND RECEIPTS

Statement of Appropriations - Public Law 116-94:

For necessary expenses of the Federal Maritime Commission as authorized by § 201(d) of the Merchant Marine Act, 1936, as amended (46 U.S.C. § 307), including services as authorized by 5 U.S.C. § 3109; hire of passenger motor vehicles as authorized by 31 U.S.C. § 1343(b); and uniforms or allowances therefore, as authorized by 5 U.S.C. § 5901-5902, \$28,000,000: Provided, that not to exceed \$2,000 shall be available for official reception and representation expenses.

Statement of Custodial Activity:

	2020	2019
Fines, Penalties, and Forfeitures	\$103	\$660,125
General Fund Proprietary Receipts (User fees)	190,950	233,770
Refunds of Proprietary Receipts (User fees)	(2,375)	(2,747)
Interest	15	19
Total Custodial Collections	\$188,693	\$891,166

Financial Operations: For a detailed review of the FMC's financial operations, including expenditures, please refer to the FMC's Congressional Budget Reports and its Performance and Accountability Reports found at <https://www.fmc.gov/about-the-fmc/strategies-budgets-and-performance/>.

D – AGREEMENT TYPES

Types of Agreements

First introduced with the current eAgreements system in FY 2016, the Commission categorizes ocean common carrier agreements by the types of agreements currently utilized by the ocean transportation industry, recognizing trends among types of agreement filings, and provided more refined information to users. The current categories are summarized below.

Space charter agreements authorize an ocean common carrier(s) to sell or exchange vessel space for use by another shipping line. Space charter agreements do not include the authority to discuss the provision of space in a trade, only the chartering of space already deployed.

Vessel sharing agreements authorize two or more shipping lines to discuss and agree on the supply of vessel capacity in a defined U.S. trade through the deployment of a specific service string or strings.

Global vessel sharing agreements/alliances authorize two or more shipping lines to discuss and agree on the supply of vessel capacity across multiple trades. Alliance agreements may contain other authorities such as, information exchange, joint procurement of goods or services necessary to operate their services, etc. While there are currently seven global alliance agreements on file with the Commission, only three are jointly/collectively operating container services in the U.S. trades.

Vessel-operating common carrier (VOCC) conference agreements are distinguished from all other types of agreements because they authorize two or more shipping lines to collectively discuss, agree, and fix uniform freight rates, charges, practices, and conditions of service relating to the receipt, carriage, handling and/or delivery of passengers or cargo. There are currently no conference agreements on file that cover the movement of general commercial cargo. The conference agreements currently on file with the Commission only involve the transport of government impelled cargo.

Joint service agreements authorize two or more shipping lines to establish and operate a combined vessel service or joint venture that uses a distinct operating name and generally acts as a single shipping line independent of the shipping lines that are parties to the joint service agreement.

Equipment discussion agreements are agreements between shipping lines that primarily focus on the discussion, exchange, and transportation of containers, chassis, LASH/ SEABEE barges, and related equipment.

VOCC rate discussion agreements focus on any type of rate matter or charges, but unlike conferences, any consensus on rates among the shipping line members is non-binding on the members.

VOCC cooperative working agreements (CWAs) authorize shipping lines to establish exclusive, preferential, or cooperative working relationships that are subject to the Shipping

Act, but that do not fall precisely within the parameters of any other specifically defined agreement category.

Assessment agreements, whether part of a collective bargaining agreement or negotiated separately, authorize the parties to collectively bargain for fringe benefit obligations on other than a uniform man-hour basis regardless of the cargo handled or type of vessel or equipment utilized. These agreements can be between common carriers and labor organizations, or marine terminal operators and labor organizations, and are effective upon filing with the Commission.

Marine terminal rate discussion agreements authorize marine terminal operators to discuss rates and/or charges related to marine terminal operations.

Marine terminal facilities agreements generally refer to lease agreements between a marine terminal operator and the owner of the land or warehouse/facility at a port.

Marine terminal services agreements are agreements between a marine terminal operator and a shipping line concerning marine terminal services provided to and paid for by a shipping line. These services include: dockage, free time, handling, heavy lift, loading and unloading, terminal storage, usage, wharfage, wharf demurrage, and checking (the service of counting and checking cargo against the shipping documentation), and including any marine terminal facilities that may be provided incidentally to such marine terminal services.

Marine terminal joint venture agreements are agreements between or among two or more marine terminal operators, or between one or more marine terminal operators and one or more shipping lines, operating as a joint venture whereby a separate marine terminal operator is established.

MTO cooperative working agreements authorize marine terminal operators to establish exclusive, preferential, or cooperative working relationships subject to the Shipping Act, but do not fall precisely within the parameters of any of the above specifically defined agreement categories

E – AGREEMENT REVIEW STANDARD

Statutory Standard and Process for Commission Review of Agreements Between or Among Ocean Common Carriers or Marine Terminal Operators

Review of agreements is governed by 46 U.S.C. 41307(b), also commonly referred to as Section 6(g) of the Shipping Act.

The Commission’s process for review of agreements is established in 46 U.S.C. 40301 – 40303:

- Agreements becomes effective 45 days after filing unless the Commission has requested additional information to evaluate the competitive impact of the agreement. All agreements are reviewed pursuant to the standard set forth in section 6(g) of the Shipping Act, 46 U.S.C. § 41307(b)(1).
- The Commission has the authority to reject a pending agreement filing if it determines the filing fails to meet the Shipping Act and Commission regulations requiring filed agreements to be clear and definite, or if the filing is outside the Commission’s jurisdiction.
- The Commission may seek to enjoin the operations of an agreement under 46 U.S.C. § 41307(b), where it determines that the agreement could reduce competition to the point of unreasonably impacting the market, or substantially lessen competition in the purchasing of certain covered services as defined in the Frank LoBiondo Coast Guard Authorization Act of 2018 (Pub. L. No 115-282).
- Effective agreements are exempt from U.S. antitrust laws, and instead, are subject to Shipping Act restrictions and Commission oversight.

46 U.S.C. 41307 – Injunctive relief sought by the Commission

(b) REDUCTION IN COMPETITION. —

(1) ACTION BY COMMISSION. —

If, at any time after the filing or effective date of an agreement under chapter 403 of this title, the Commission determines that the agreement is likely, by a reduction in competition, to produce an unreasonable reduction in transportation service or an unreasonable increase in transportation cost or to substantially lessen competition in the purchasing of certain covered services, the Commission, after notice to the person filing the agreement, may bring a civil action in the United States District Court for the District of Columbia to enjoin the operation of the agreement. The Commission’s

sole remedy with respect to an agreement likely to have such an effect is an action under this subsection.

(2) REMEDIES BY COURT.—In an action under this subsection, the court may issue—

(A) a temporary restraining order or a preliminary injunction; and

(B) a permanent injunction after a showing that the agreement is likely to have the effect described in paragraph (1).

(3) BURDEN OF PROOF AND THIRD PARTIES.—

In an action under this subsection, the burden of proof is on the Commission. The court may not allow a third party to intervene.

(4) COMPETITION FACTORS.—

In making a determination under this subsection regarding whether an agreement is likely to substantially lessen competition in the purchasing of certain covered services, the Commission may consider any relevant competition factors in affected markets, including, without limitation, the competitive effect of agreements other than the agreement under review.

F – STANDARD FOR PRACTICES IN HANDLING PROPERTY

46 U.S.C. 41102(c), commonly referred to as Section 10(d)(1) of the Shipping Act

(c) PRACTICES IN HANDLING PROPERTY. —

A common carrier, marine terminal operator, or ocean transportation intermediary may not fail to establish, observe, and enforce just and reasonable regulations and practices relating to or connected with receiving, handling, storing, or delivering property.

The Commission has recently published interpretive rules regarding 46 U.S.C. 41102(c) to clarify the scope of the prohibition, and provide guidance about its interpretation in the context of detention and demurrage charges.

46 C.F.R. §545.4 Interpretation of Shipping Act of 1984 – Unjust and unreasonable practices.

46 U.S.C. 41102(c) is interpreted to require the following elements in order to establish a successful claim for reparations:

- (a) The respondent is an ocean common carrier, marine terminal operator, or ocean transportation intermediary;
- (b) The claimed acts or omissions of the regulated entity are occurring on a normal, customary, and continuous basis;
- (c) The practice or regulation relates to or is connected with receiving, handling, storing, or delivering property;
- (d) The practice or regulation is unjust or unreasonable; and
- (e) The practice or regulation is the proximate cause of the claimed loss.

46 C.F.R. §545.5 Interpretation of Shipping Act of 1984 – Unjust and unreasonable practices with respect to demurrage and detention.

(a) Purpose. The purpose of this rule is to provide guidance about how the Commission will interpret 46 U.S.C. 41102(c) and §545.4(d) in the context of demurrage and detention.

(b) Applicability and scope. This rule applies to practices and regulations relating to demurrage and detention for containerized cargo. For purposes of this rule, the terms demurrage and detention encompass any charges, including “per diem,” assessed by ocean common carriers, marine terminal operators, or ocean transportation intermediaries (“regulated entities”) related to the use of marine terminal space (e.g., land) or shipping containers, not including freight charges.

(c) Incentive principle—(1) General. In assessing the reasonableness of demurrage and detention practices and regulations, the Commission will consider the extent to which demurrage and detention are serving their intended primary purposes as financial incentives to promote freight fluidity.

(2) Particular applications of incentive principle—(i) Cargo availability. The Commission may consider in the reasonableness analysis the extent to which demurrage practices and regulations relate demurrage or free time to cargo availability for retrieval.

(ii) Empty container return. Absent extenuating circumstances, practices and regulations that provide for imposition of detention when it does not serve its incentivizing purposes, such as when empty containers cannot be returned, are likely to be found unreasonable.

(iii) Notice of cargo availability. In assessing the reasonableness of demurrage practices and regulations, the Commission may consider whether and how regulated entities provide notice to cargo interests that cargo is available for retrieval. The Commission may consider the type of notice, to whom notice is provided, the format of notice, method of distribution of notice, the timing of notice, and the effect of the notice.

(iv) Government inspections. In assessing the reasonableness of demurrage and detention practices in the context of government inspections, the Commission may consider the extent to which demurrage and detention are serving their intended purposes and may also consider any extenuating circumstances.

(d) Demurrage and detention policies. The Commission may consider in the reasonableness analysis the existence, accessibility, content, and clarity of policies implementing demurrage and detention practices and regulations, including dispute resolution policies and practices and regulations regarding demurrage and detention billing. In assessing dispute resolution policies, the Commission may further consider the extent to which they contain information about points of contact, timeframes, and corroboration requirements.

(e) Transparent terminology. The Commission may consider in the reasonableness analysis the extent to which regulated entities have clearly defined the terms used in demurrage and detention practices and regulations, the accessibility of definitions, and the extent to which the definitions differ from how the terms are used in other contexts.

(f) Non-Preclusion. Nothing in this rule precludes the Commission from considering factors, arguments, and evidence in addition to those specifically listed in this rule.

