FEDERAL MARITIME COMMISSION

33rd ANNUAL REPORT

for

Fiscal Year

1994

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FEDERAL MARITIME COMMISSION
WASHINGTON, D.C. 20573-0001

March 31, 1995

To the United States Senate and House of Representatives:

Pursuant to section 103(e) of Reorganization Plan No. 7 of 1961, and section 208 of the Merchant Marine Act, 1936, as amended, I am pleased to submit the thirty-third annual report of the activities of the Federal Maritime Commission for fiscal year 1994.

Additionally, section V.N of this report contains an Update on Remote Access - September 1994, to comply with the request of Congress to be kept informed on developments of reasonable restrictions on remote access to the Commission's *Automated Tariff Filing and Information System ("ATFI")*.

Sincerely,

William D. Hathaway
Chairman

MEMBERS OF COMMISSION

William D. Hathaway
Chairman
Appointed 1990
Term Expires 1998

Ming C. Hsu
Commissioner
Appointed 1990
Term Expires 1996

Joe Scroggins, Jr.
Commissioner
Appointed 1994
Term Expires 1995

Delmond J.H. Won
Commissioner
Appointed 1994
Term Expires 1997

Harold J. Creel, Jr.
Commissioner
Appointed 1994
Term Expires 1999

SENIOR COMMISSION OFFICIALS

Secretary . . . . . *Joseph C. Polking*

Chief Administrative Law Judge . . . . . *Norman D. Kline*

General Counsel . . . . . *Robert D. Bourgoin*

Director, Office of Equal Employment Opportunity . . . . *Mary A. Jackson*

Inspector General . . . . . *Tony P. Kominoth*

Managing Director . . . . . *Edward P. Walsh*

Deputy Managing Director . . . . . *Bruce A. Dombrowski*

Director, Bureau of Trade Monitoring and Analysis . . . . . *Austin L. Schmitt*

Director, Bureau of Tariffs, Certification and Licensing . . . . . *Bryant L. VanBrakle*

Director, Bureau of Hearing Counsel . . . . . *Wm. Jarrel Smith, Jr.*

Director, Bureau of Investigations . . . . . *Norman W. Littlejohn*

Director, Bureau of Administration . . . . . *Sandra L. Kusumoto*

I

THE COMMISSION

A. HISTORY

The Federal Maritime Commission ("Commission" or "FMC") was established as an independent regulatory agency by Reorganization Plan No. 7, effective August 12, 1961. Prior to that time, the Federal Maritime Board was responsible for both the regulation of ocean commerce and the promotion of the United States ("U.S.") Merchant Marine. Under the reorganization plan, the shipping laws of the U.S. were separated into two categories -- regulatory and promotional. The responsibilities associated with promotion of an adequate and efficient U.S. Merchant Marine were assigned to the Maritime Administration, now located within the Department of Transportation ("DOT"). The newly-created FMC was charged with the administration of the regulatory provisions of the shipping laws.

The Commission is now responsible for the regulation of oceanborne transportation in the foreign commerce and in the domestic offshore trade of the U.S. The passage of the Shipping Act of 1984 brought about a major change in the regulatory regime facing shipping companies operating in the foreign commerce of the U.S.

B. FUNCTIONS

The principal statutes or statutory provisions ("shipping statutes") administered by the Commission are the Shipping Act of 1984 ("1984 Act"), the Shipping Act, 1916 ("1916 Act"), the Intercoastal Shipping Act, 1933 ("1933 Act"), the Foreign Shipping Practices Act of 1988 ("FSPA"), and section 19 of the Merchant Marine Act, 1920 ("1920 Act").

During 1990, the 1984 Act was amended to provide for the bonding of non-vessel-operating common carriers (the Non-Vessel-Operating Common Carrier Amendments of 1990 - "1990 Amendments"), and section 19 of the 1920 Act was amended to provide for information gathering and other authorities.

The Commission's regulatory responsibilities include:

- **Protecting shippers and carriers engaged in the foreign commerce of the U.S. from restrictive or non-market-oriented rules and regulations of foreign governments and/or the practices of foreign-flag carriers that have an adverse effect on the commerce of the U.S.**

- **Protecting the rights of U.S.-flag shipping companies to transport cargoes in the U.S. foreign oceanborne and foreign-to-foreign trades.**

- **Reviewing and monitoring agreements of common carriers and other persons engaged in the U.S. foreign commerce. These agreements include conference, pooling, joint service and space charter agreements.**

- **Receipt and review of tariff filings (but not the regulation of rate levels) by common carriers engaged in the U.S. foreign commerce.**

- **Regulating rates, charges, classifications, rules, regulations and tariffs of controlled carriers to ensure that such matters are just and reasonable.**

- **Regulating rates, charges, classifications, practices and tariffs of ocean common carriers in the domestic offshore trades of the U.S.**

- **Licensing international ocean freight forwarders.**

- **Bonding of non-vessel-operating common carriers ("NVOCCs").**

- **Issuing passenger vessel certificates evidencing financial responsibility of vessel owners or charterers to pay judgments for personal injury or death or to repay fares for the nonperformance of a voyage or cruise.**

- **Investigating discriminatory rates, charges, classifications, and practices of ocean common carriers, terminal operators, and freight forwarders operating in the foreign and/or domestic offshore commerce of the U.S.**

The Commission is authorized by the FSPA, section 19 of the 1920 Act, and section 13(b)(5) of the 1984 Act, to take action to ensure that the foreign commerce of the U.S. is not burdened by non-market barriers to ocean shipping. The Commission may take countervailing action to correct unfavorable shipping conditions in U.S. foreign commerce and may impose penalties to address actions by carriers or foreign governments that adversely affect the operation of U.S. carriers in the U.S. foreign oceanborne trades and that impair access of U.S.-flag vessels to ocean trade between foreign ports.

The 1984 Act is applicable to the operations of common carriers and other persons engaged in U.S. foreign commerce. It exempts agreements that have become effective under the Act from the U.S. antitrust laws (as contained in the Sherman

and Clayton Acts). The Commission reviews and evaluates agreements to ensure that they do not exploit the grant of antitrust immunity, and to ensure that agreements do not otherwise violate the 1984 Act or result in an unreasonable increase in transportation cost or unreasonable reduction in service.

In addition to monitoring relationships among carriers, the Commission is also responsible for ensuring that individual carriers, as well as those permitted by agreement to act in concert, fairly treat shippers and other members of the shipping public. The 1984 Act prohibits carriers from unduly discriminating among shippers and other members of the shipping public. The 1984 Act also requires carriers to make their rates, charges and practices publicly available in tariffs that must be on file with the Commission. Carriers may only assess the rates and charges that are lawfully on file with the Commission. The Commission does not, however, have the authority to approve or disapprove general rate increases or individual commodity rate levels in the U.S. foreign commerce, except with regard to certain foreign government-owned carriers.

The 1916 and 1933 Acts regulate the activities of common carriers and other persons engaged in the domestic offshore trades of the U.S. In general, they provide for tariff filing and protect against unduly discriminatory practices in a manner similar to the 1984 Act. In addition, the 1933 Act provides for a more comprehensive scheme of regulation to ensure that the minimum and maximum rates and practices of common carriers in the domestic offshore trades are just and reasonable.

The Commission carries out its regulatory responsibilities by conducting informal and formal investigations. It also holds hearings, considers evidence and renders decisions, and issues appropriate orders and implementing regulations. The

Commission also adjudicates disputes involving the regulated community, the general shipping public, and other affected individuals or interest groups.

C. ORGANIZATION

The Commission is composed of five Commissioners appointed for five-year terms by the President with the advice and consent of the Senate. Not more than three members of the Commission may belong to the same political party. The President designates one of the Commissioners to serve as Chairman. The Chairman is the chief executive and administrative officer of the agency.

The Commission's organizational units consist of: Office of the Managing Director; Office of the Secretary; Office of the General Counsel; Office of Administrative Law Judges; Office of Equal Employment Opportunity; Office of the Inspector General; Bureau of Trade Monitoring and Analysis; Bureau of Tariffs, Certification and Licensing; Bureau of Hearing Counsel; Bureau of Administration; and Bureau of Investigations. The Managing Director assists the Chairman in providing executive and administrative direction to the Commission's Offices and Bureaus. These Offices and Bureaus are responsible for the Commission's regulatory programs or provide administrative support.

In fiscal year 1994, the Commission was authorized a total of 225 full-time equivalent positions and had a total appropriation of $18,900,000. The majority of the Commission's personnel are located in Washington, D.C., with field offices in New York, San Francisco, Los Angeles, New Orleans, Miami, Houston, and Hato Rey, Puerto Rico, consisting of personnel from the Bureau of Investigations.

II

THE YEAR IN REVIEW

The Commission vigorously pursued its international transportation and trade responsibilities during fiscal year 1994. Special emphasis was placed on ensuring the fair and reasonable treatment of all U.S. exporters and importers, and the protection of U.S. trades from unfair foreign shipping practices.

Developments in major trades were monitored and assessed to identify trends and assist surveillance and enforcement initiatives. Restrictive practices by foreign governments were pursued under section 19 and the FSPA, and potential commercial malpractices were identified and addressed. A broad enforcement effort was initiated regarding the activities of the major conference in the North Atlantic trades. Additionally, the Commission's Automated Tariff Filing and Information System ("ATFI" or "System") became fully operational with the conversion by carriers and conferences of their paper tariffs and service contract essential terms to the electronic format.

This Annual Report essentially is structured on an office-by-office basis and contains a synopsis of each unit's activities and accomplishments. Special sections are devoted to areas of particular interest. This section of the Report is a brief summary of the Commission's major activities and accomplishments during the year.

A. TRADE DEVELOPMENTS

The international ocean shipping industry is a vital link between the U.S. economy and the rest of the world. The Commission continually assesses trade developments so as to discern all commercial and economic factors relevant to its oversight role.

The transatlantic trades, historically marked by overcapacity and fierce competition, saw inbound cargo volume growth and a slight drop in outbound trade in fiscal year 1994. Projections are for positive growth in 1995. The Trans-Atlantic Agreement ("TAA") proposed several changes to its basic agreement, which received close scrutiny from the Commission and the European Union ("EU"). (*See* Section C, *Enforcement*). The EU published draft regulations in March 1994 proposing a block exemption from the competition rules of the Treaty of Rome. The Commission commented on these draft rules, essentially advising that they went beyond what was necessary to protect industry members from anticompetitive injury and could create conflicts of law with third countries. Finally, one liner operator long established in the transpacific trades joined TAA, and will operate in the trade via chartering vessel space from two existing carriers.

The international economic environment generally was unfavorable to shipping in the Mediterranean during the past year. Liner operators forged strategic partnerships to share vessel space and rationalize assets in order to augment their services. Trade conditions caused the withdrawal of some established carriers, but operators from other trade areas began entering the Mediterranean during the fiscal year. Additionally, a tradewide self-policing agreement was filed establishing a neutral body to police carrier obligations in the trade.

In the Mideast, the optimism for recovery after the Gulf Conflict did not materialize. Overcapacity was a serious problem and freight rates were depressed significantly from those existing at the end of the Gulf hostilities. Carriers began to individually reorganize their operations to deploy existing vessel capacity more efficiently. Also, carriers filed vessel-sharing, space-chartering, joint service, sailing, and cooperative working agreements throughout the year in an attempt to increase efficiency and enhance profit margins.

The African trade continued to be burdened by a significant external debt which slowed trade growth. However, several new services were initiated and capacity added by others, although two carriers did discontinue segments of their operations.

Trade continued to grow between the U.S. and Latin America/the Caribbean in light of regional trade agreements which removed certain trade barriers and a reduction in average tariffs. Service to the area increased, providing shippers with more options to penetrate markets, and freight rates remained relatively stable. However, trade imbalance again was a problem in favor of southward movements. Also, these trades continued to be plagued by port congestion, labor problems, and insufficient port equipment. Numerous new agreements were filed, basically involving various types of service rationalization.

In the transpacific, inbound cargo volumes increased, while there was a lower-than-normal demand for outbound cargo. There continued to be a high degree of competition in the trades as evidenced by the erosion of conference rate increases, formation of a shippers' association by a group of large shippers, and rumors that several conference lines were to offer service through Vancouver, British Columbia. There was also an extensive amount of intra-conference competition in

both directions. Nonetheless, carriers expanded their networks and cooperated with other carriers to take advantage of economies of scale in order to meet the increased cargo availability inbound. Additionally, a tradeswide self-policing agreement, similar to other such agreements filed with the Commission, was initiated during fiscal year 1994. Numerous types of rationalization and service agreements were filed throughout the year.

B. RESTRICTIVE TRADE PRACTICES

One of the Commission's primary missions is to identify and eliminate protectionist practices of other countries that favor their domestic interests and discriminate against U.S. trade interests in ocean shipping. The Commission has been extremely successful in attaining this goal, consistently resolving trade obstacles and issues to the satisfaction of affected U.S. parties.

The Commission ended a long-running controversy in fiscal year 1994 involving the Republic of Korea ("ROK") trade. The Commission previously had issued a final rule to address restrictions by the ROK that precluded U.S. carriers from engaging in trucking operations and from directly contracting with railroads. The final rule called for a $100,000 per-voyage fee on ROK-flag vessels calling at U.S. ports. This sanction was suspended temporarily in light of ROK commitments to eliminate or adjust the involved restrictions. In May 1994, given the progress achieved by the ROK in removing the restrictions, the Commission withdrew the final rule and discontinued the involved formal proceeding.

Corrective actions by foreign governments previously enabled the Commission to discontinue FSPA proceedings in the Japan, Taiwan, and Peoples Republic of China ("PRC") trades. The Commission continued to monitor progress made

on commitments by these foreign governments to ensure that all outstanding issues are resolved. Other potentially restrictive practices in the Japan trade also were being followed during the fiscal year to determine if specific action under section 19 or the FSPA was warranted. As in all such matters, the Commission was prepared to initiate whatever action is necessary to protect U.S. trades from unfair foreign shipping restrictions.

Further, the Commission published a final rule in this fiscal year updating its regulations governing proceedings under section 19. The rule implemented statutory changes which clarified and expanded the Commission's powers to address conditions affecting intermodal, shoreside, and other ocean transportation activities, and added certain information-gathering and discovery tools.

C. ENFORCEMENT

The Commission's most significant enforcement action during the fiscal year involved its examination and investigation of the TAA. TAA's competitive power and the impact of that power upon shippers was a major concern from the time the agreement became effective in 1992. In fiscal year 1994, the Commission initiated a full-scale review of TAA's operations and commercial consequences. Staff investigators, economists, transportation specialists, and attorneys collaborated in a major effort to evaluate conditions in the TAA trade. Based upon reports of alleged unlawful activity by TAA from several sources, including the Commission's own monitoring initiatives and inquiries, and petitions from transportation users, the Commission launched a formal inquiry (Fact Finding Investigation No. 21) into the activities of TAA and its member lines. Fact finding hearings were held in several cities to obtain information and evidence about TAA's practices from affected shippers. The TAA carriers also were scheduled to appear at

future hearings. At fiscal year end, the Commission was assessing an interim report from its fact finding officers and considering whether formal adjudicatory proceedings or injunctive action was warranted.

The Commission also continued its efforts to confront and terminate malpractices in the major trades. Having concluded highly successful programs in the transatlantic and transpacific trades, the Commission instituted Fact Finding Investigation No. 22 into possible rate malpractices in the trades between the U.S. and Europe, the Far East, South America, Central America, and the Caribbean. The Commission continues to encourage strong neutral body self-policing as a means of enhancing fair competition in the U.S. foreign commerce. During the year, in addition to the continuation of self-policing in the transatlantic, tradeswide self-policing programs were implemented by carrier groups in the Mediterranean and transpacific trades.

Notwithstanding industry moves toward self-policing, the Commission continues to identify and address malpractice activity that results in unfair treatment or has a negative effect on competition. The Commission collected $870,464 in civil penalties in fiscal year 1994 and pursued potential malpractices that were widespread or could have a significant effect on a given trade. Our enforcement efforts continue to be driven by the dual goals of obtaining statutory compliance and ensuring equitable trading conditions.

D. SURVEILLANCE

This Commission activity monitors market practices and carrier/conference behavior in the U.S. ocean trades to ensure continued compliance with statutory and regulatory requirements. These surveillance efforts help to identify unreasonable or discriminatory trade practices that need to be addressed by some form of enforcement action. As aforementioned, the practices of TAA were a primary Commission focus in fiscal year 1994. In order to assist the previously described fact finding, detailed information on TAA's service contract, independent action, and other agreement activities was developed so as to ascertain the ongoing impact on U.S. exporters and importers. Amendments to TAA, including a proposed name change to Trans-Atlantic Conference Agreement ("TACA"), were received in early July as the Commission was launching Fact Finding Investigation No. 21. These amendments, combined with substantial shipper complaints, raised further questions about TAA/TACA's anticompetitive impact. Subsequent to conducting a detailed economic analysis, Commission staff met with TAA, which agreed to adopt a number of pro-competitive revisions. The Commission was scheduled to consider these amendments, and their relationship to the fact finding, early in fiscal year 1995.

In addition to the extensive activity surrounding TAA, other major monitoring and research projects undertaken in fiscal year 1994 included: various monitoring reports on the Transpacific Stabilization Agreement, a rate discussion agreement covering the inbound Asia/U.S. trades; a critique of a Department of Agriculture-sponsored study of the impact of the maritime regulatory policy on U.S. agricultural exports; a review of the cargo handling and coloading practices of non-vessel operators ("NVOs"); a controlled carrier report; a semiannual report on marine terminal operators' service agreements; a review of the Inter-American Discussion

Agreement's first six-month report; a section 15 order concerning bunker fuel and current adjustment surcharges in the transpacific trades; and the collection of market share data for various trades.

E. TARIFF AUTOMATION

The ATFI System became fully operational in fiscal year 1994, and the Commission has achieved essentially a paperless tariff environment. The Commission adhered to its final implementation schedule, which called for all paper tariffs to be converted to electronic format by December 31, 1993. Some tariff filers petitioned for temporary exemption from the electronic tariff filing requirements, but the Commission was willing to grant extensions only through the final closing date of December 31, 1993. A number of tariff filers failed to comply with the implementation schedule and did not file a petition for temporary exemption. The Commission then initiated a series of proceedings that ordered these carriers to show cause why their paper tariffs should not be canceled for failure to convert to electronic format. Approximately 125 carriers ultimately had their tariffs canceled in fiscal year 1994 for failure to file. An additional show cause order will be issued early in the next fiscal year to cancel all remaining paper tariffs.

During fiscal year 1994, 2,913 electronic tariffs were filed, the majority of which were conversions from paper tariffs. By fiscal year end, there were 3,763 electronic tariffs in the ATFI System. All essential terms of service contracts also are required to be filed in ATFI, so that all relevant tariff and service contract information is available on a 24-hour basis to any of the almost 3,300 organizations which have been granted ATFI access capability.

Seven firms were certified for batch filing capability during the fiscal year, bringing the total of certified firms to 37.

And, three additional firms received approval of their accounting/collection systems relative to the collection and submission of secondary user fees. These fees presently are scheduled to expire at the end of fiscal year 1995, and the Commission is conducting a review to determine appropriate future action.

The Commission also negotiated with its ATFI contractor to maintain the System through fiscal year 1995, with options for fiscal year 1996. At the same time, the Commission continued the process for the recompetition of the contract to ensure the operation of a viable and technically up-to-date system in future years.

III

SURVEILLANCE AND ENFORCEMENT

A. SURVEILLANCE

The systematic surveillance of carrier activities and commercial conditions in the U.S. liner trades is an integral part of the Commission's responsibilities under the 1916 Act and the 1984 Act. Such surveillance helps ensure that carriers operating in the U.S. trades comply with the statutory standards of the applicable Acts and the requirements of relevant Commission regulations. To that end, the Bureau of Trade Monitoring and Analysis ("BTMA") administers a variety of monitoring programs and other research activities, designed to keep the Commission informed of current trade conditions, emerging commercial trends, and carrier pricing and service activities.

The importance the Commission attaches to its ongoing monitoring activities is a direct consequence of the removal, under the 1984 Act, of the Commission's previous broad discretion to disapprove agreements. The 1984 Act provides that, unless rejected under relevant statutory authority, agreements filed with the Commission shall become effective on the 45th day after filing or the 30th day after notice in the *Federal Register*, whichever is later. Agreements can be rejected for technical reasons or for failure to include statutory provisions in the agreement language. Also, the Commission may extend the original 45-day period for an additional 45 days, if necessary, to obtain additional information from filing parties. Finally, if the Commission determines that an agreement, by virtue of a reduction in competition, is likely to unreasonably

increase transportation costs or decrease transportation service, it may seek injunctive relief in the U.S. District Court for the District of Columbia.

As a consequence of the Commission's limited authority to block agreements from taking effect, the need for adequate and timely evaluation of post-implementation agreement activity has increased considerably. BTMA's monitoring program provides such an evaluation through its examination of carrier competition including market share, concentration, entry conditions, general rate and service conditions, as well as pricing trends, vessel utilization, service contracting activity, shipper complaints, and the activities of capacity management programs.

In fiscal year 1994, BTMA's monitoring and research involved a variety of economic analyses of, and reports on the pricing and service behavior of carriers operating in the U.S. trades. Projects included: (1) an analysis of periodic reports filed by the Trans-Atlantic Agreement ("TAA") and of trade conditions in the North Atlantic; (2) monitoring reports on TAA and the Transpacific Stabilization Agreement ("TSA"), a capacity management and rate discussion agreement covering the inbound Asia/U.S. trades; (3) a detailed economic analysis of the impact of TAA amendments that established the Trans-Atlantic Conference Agreement ("TACA"), the successor to TAA; (4) an analysis of a USDA-sponsored study of the impact of maritime regulatory policy on U.S. agricultural exports; (5) a semiannual report on marine terminal operators' service agreements; (6) a review of the first six-months reporting requirements of the Inter-American Discussion Agreement; (7) a market share report on the transpacific outbound trades; (8) a section 15 order requiring TAA/TACA to submit information and documents regarding independent action activities by the member lines; and (9) a section 15 order on

bunker fuel and currency adjustment surcharges in the transpacific trades.

In addition to its regular monitoring programs, BTMA participated in the preparation for and implementation of Fact Finding Investigation No. 21, a multi-issue investigation into the pricing and service behavior of TAA/TACA and its member lines. In particular, BTMA provided testimony regarding the extent and competitive consequences of vessel sharing arrangements undertaken by TAA/TACA members and reviewed documents submitted in response to the section 15 order on independent action. The Commission subsequently ordered an adjudicatory investigation into alleged unlawful restraints on the rights of TAA/TACA members to take independent action. A final report on Fact Finding Investigation No. 21 is scheduled for March 27, 1995.

During the first quarter of fiscal year 1994, the Bureau of Investigations' ("BOI") NVOCC Review Program came to an end. This program was inaugurated to develop an understanding of industry practices in a number of areas, whether lawful or not. The areas of review included a number of issues but were specifically aimed at the handling of less-than-container-load and full-container-load cargo and the coloading of such cargoes by, between and among NVOCCs. This program resulted in a rulemaking proceeding to deal with the evolving practices of NVOCCs in the coloading of ocean shipments which they handled.

B. ENFORCEMENT

The 1984 Act establishes an integrated system for the regulation of the shipping and related industries in furtherance of the statutory declaration of policy to ensure a nondiscriminatory, efficient, and economic ocean transportation system for the benefit of international trade of the U.S.

The enforcement program represents a major area of Commission activity under the 1984 Act. A major goal of the program is to achieve compliance with the provisions of the 1984 Act. Compliance, in turn, provides the pathway to the statutory objectives of the 1984 Act. Enforcement is a traditional means to achieve compliance through deterrence.

The Commission continued its efforts to confront and terminate malpractices in major trades. Having concluded highly successful programs in the transatlantic and transpacific trades, the Commission instituted Fact Finding Investigation No. 22 into possible rate malpractices in the trades between the U.S. and Europe, the Far East, South America, Central America, and the Caribbean.

On July 27, 1994, the Commission launched the most comprehensive inquiry into the competitive power of a conference and the impact of that power upon shippers in its history. This unparalleled initiative began as a fact finding investigation into the activities of the TAA and its member lines. The Commission has requested the Investigative Officers to report on additional Commission action which may be necessary.

The enforcement program generally has focused on malpractices in a particular trade or particularly insidious practices. There is also a need to preserve hard-won regulatory adherence to the 1984 Act and relative malpractice-free conditions in those trades in which major activities have previously occurred. Thus, we are vigilant in our oversight of competitive conditions in these trades.

In furtherance of the policy of the 1984 Act, an enforcement program requires early identification of perpetrators of systematic fraud against shippers and carriers and the dedication of resources to investigate cases thoroughly,

to take administrative action, and if necessary, to proceed to court for enforcement.

BOI liaison and enforcement activities involved cooperation and coordination with other Government agencies. A joint support program between the Commission and the U.S. Customs Service ("Customs") has resulted in interagency coordination of effort on matters of mutual concern. During fiscal year 1994, the Commission's district offices greatly increased the level of information retrieval activities from Customs' Automated Commercial System ("ACS") database. Access to Customs' ACS data has greatly enhanced the Commission's capability in uncovering and detecting malpractices at early stages in their development.

Although the Commission accomplished much by way of laying the necessary groundwork for increased access to the ACS in fiscal year 1994, this effort will not be fully realized until fiscal year 1995. In fiscal year 1995, the Commission will significantly expand cooperation with the Customs' ACS to include access to the Automated Broker Interface ("ABI"). This new source of information will further enhance the ability of investigative personnel to target the types of data to review in connection with ocean transportation transactions.

The expanded access to the Customs' databases, together with on-line access to the Commission's ATFI system, should significantly increase the amount and timeliness of investigative groundwork that we will be able to accomplish through electronic database manipulation.

BOI began a comprehensive program on tariff integrity enforcement to ensure compliance with the tariff filing and adherence requirements of the 1984 Act. This program has been designed to include not only the tariff filing and adherence practices of common carriers, particularly NVOCCs, but

improper shipper practices, such as misdescription of commodity and misdeclaration of measurement that undermine tariff integrity.

The Commission's enforcement activity in fiscal year 1994 resulted in the collection of civil penalties in the amount of $870,464 (*See* Appendix E). It is anticipated that sustained enforcement activity will have an escalating deterrent effect on malpractices in the shipping industry.

IV

DEVELOPMENTS IN MAJOR U.S. FOREIGN TRADES

A. TRANSATLANTIC

Ship operators offering services in the transatlantic trades have historically encountered overcapacity and fierce competition. Principal conference carriers operating in the transatlantic trades reported collective losses of $400 million in 1992 and $150 million in 1993, primarily due to low vessel capacity utilization and depressed freight rates. During fiscal year 1994, several major transatlantic carriers reported improvements in their financial performance, with at least one carrier reporting a return to profit. Increased freight rates, improved vessel capacity utilization, and further operational rationalization among carriers contributed to reported improved financial positions.

These relatively improved trade conditions have encouraged ship operators to launch new services in the transatlantic trade over the past two years. However, none of the new entrants have been able to maintain their services. During the fiscal year, another two carriers offering independent services entered the trade, but were unsuccessful in attracting sufficient cargo and terminated their operations. One liner operator, long established in the U.S./Far East trades, joined the transatlantic conference during the fiscal year. It will begin operations in concert with the services of two other established conference carriers in January 1995.

During fiscal year 1994, inbound cargo volume continued to grow, while the outbound trade dropped slightly. Imports

from Europe grew 11 percent over fiscal year 1993. U.S. exports to Europe were down 2 percent from the previous fiscal year.

The European recession and the depreciation of several European currencies were the main cause of the slump in the demand for U.S. exports to Europe. Industry forecasts project positive growth during the second half of 1994 for U.S. exports to Europe. It is anticipated that improved European demand, augmented by rising industrial output in their economies, will promote further growth for U.S. exports in 1995.

A substantial amount of Commission resources continued to be focused on the activities of the *Trans-Atlantic Agreement*, ("TAA") (No. 202-011375), and its members during fiscal year 1994. Originally filed in 1992, TAA established a conference of 15 carriers in the trade between the U.S. and North Europe and replaced two former conferences that operated separately in the eastbound and westbound sectors of the trade, the *USA-North Europe Rate Agreement* (No. 202-011241) and the *North Europe-USA Rate Agreement* (No. 202-011242). TAA members include: A.P. Moller-Maersk Line ("Maersk"), Atlantic Container Line AB, Cho Yang Shipping Co. ("Cho Yang"), DSR-Senator Lines, Hapag Lloyd, AG ("Hapag Lloyd"), Mediterranean Shipping Co. ("Med Shipping"), Nedlloyd Lijnen BV ("Nedlloyd"), Neptune Orient Lines Ltd. ("NOL"), Nippon Yusen Kaisha ("NYK Line"), Orient Overseas Container Line (U.K.) Ltd. ("OOCL"), P&O Containers Limited ("P&O Containers"), Polish Ocean Lines, Sea-Land Service, Inc. ("Sea-Land"), Transportacion Maritima Mexicana, S.A. de C.V. ("TMM"), and Tecomar S.A. de C.V. ("Tecomar"). In August 1994, Hanjin Shipping Co. ("Hanjin") entered the transatlantic trade and became a member of TAA. The Agreement currently has 16 members.

TAA permits the carriers to discuss and agree upon rates, charges, and conditions of service in the trade. As originally

filed with the Commission on April 15, 1992, TAA was deficient in form and format. The original filing was withdrawn, and a corrected version was refiled on May 7, 1992. To analyze thoroughly TAA's overall impact, the Commission issued a formal Request for Additional Information on June 19, 1992. After an analysis of the carriers' response, the Commission informed TAA that it was prepared to seek a court order enjoining certain restrictive provisions relating to service contracts and membership withdrawal. TAA removed the offending provisions, and the Commission took no further action to prevent it from becoming effective on August 31, 1992.

As originally filed, TAA differed from a traditional conference because it provided for a two-tiered membership and a Capacity Management Program ("CMP") in the westbound trade (Europe to U.S.). The two-tier scheme permitted six former independent carriers (non-rate committee members) to charge different rates than the other nine carriers (rate committee members). Also, non-rate committee members could initiate individual service contracts or participate in conference contracts.

Because of TAA's market share and its unique structure, the Commission subjected TAA to a comprehensive review when it was initially filed and continues to monitor it closely. TAA is required to submit quarterly reports on its carriers' service activities, capacity utilization, average revenue per TEU and other data relevant to its operation. The Commission monitors this information on an ongoing basis to assess the impact of TAA on market conditions in the transatlantic trade and to ensure that the Agreement remains in compliance with section 6(g) and other provisions of the 1984 Act.

In July 1994, based on reports of allegedly unlawful activity by the TAA from several sources, including the Commission's own monitoring initiatives and inquiries, the Commission instituted an extensive non-adjudicatory proceeding (Fact Finding Investigation No. 21) to investigate whether TAA, and some or all of its members may have engaged in, or may be engaged in, activities violative of various provisions of the 1984 Act. In addition to document production and responses to specific questions under Fact Finding Investigation No. 21, TAA and its members were required to produce responses and documents relevant to two discrete issues under separate Commission Section 15 Orders. Document production as well as oral testimony from industry participants was also pursued. The first round of public hearings was held in Boston, Massachusetts (August), followed by public hearings and testimony in Chicago, Illinois, and New York, New York (September), and Washington, D.C. (October).

In the meantime, the TAA parties filed amendments to the Agreement. The amendments proposed to: (1) restructure and expand the Agreement's CMP, (2) eliminate the two-tier membership system, (3) reduce the advance notice required for independent action on tariff rates, (4) restructure the service contract voting procedures and reduce the minimum commitments required for service contacts, and (5) rename the Agreement the Trans-Atlantic Conference Agreement ("TACA").

Due to unresolved concerns over how the Agreement's provisions would be implemented and what effect they would have on competition, the Commission issued a formal Request for Additional Information on August 10, 1994. The Commission's Request for Additional Information sought to develop more information concerning the Agreement's likely effect on rates and services available to the shipping public.

As the result of deliberations with the Commission on these matters, the parties modified the TACA to: (1) eliminate the capacity regulation program in its entirety, (2) establish a 15-day window to allow a member to take unilateral action on service contracts, (3) delete any minimum cargo commitment previously required of shippers negotiating service contracts, (4) clarify the number of votes necessary for carriers to execute a service contract, (5) reduce the independent action notice period to three business days, (6) delete authority that authorized members collectively deal with inland carriers on European inland segments of through transportation, and (7) delete authority that could permit members to meet with other unnamed persons and engage in activities, including the exchange of information, for the purpose of negotiating and entering into other agreements. The Commission was scheduled to consider the acceptability of the TACA in October 1994. The Agreement's scheduled effective date was October 24, 1994.

The Directorate General of Competition ("DG IV") of the European Union ("EU") also is considering the validity of TAA. DG IV was scheduled to determine whether TAA satisfies the criteria under which liner conferences are granted an exemption from the EU's competition laws. DG IV had voiced a position that a conference should have a common rate structure rather than two levels. DG IV also was concerned about TAA's CMP and stated that it was not an appropriate type of activity for a conference under the EU's competition laws. Moreover, DG IV has cited TAA's provisions permitting member lines to agree on charges for inland transportation in Europe, stating that the conference exemption from the EU's competition laws is limited to port-to-port transportation.

The EU reportedly was to issue a decision on TAA early in fiscal year 1995. The most recent reports also indicate that the EU is currently reviewing TAA's successor, TACA, and has

not reached a decision as to whether TACA qualifies for an exemption from the EU's competition laws.

In March 1994, the EU published draft regulations to establish a block exemption for certain types of liner shipping agreements from the otherwise applicable competition rules of the Treaty of Rome. These regulations extended to almost any agreement among ocean carriers other than conference agreements -- not only traditional consortium/joint service arrangements, but other vessel, equipment and terminal sharing or rationalization agreements as well. In August 1994, the Commission submitted comments on the EU's draft regulations on shipping consortia.

In its comments, the Commission advised that the draft requirements for a block exemption went beyond what was necessary to protect industry members from anticompetitive injury. The Commission pointed out that many of the activities covered by the draft regulation, including joint service arrangements, pose less of a danger to competition than conferences; nevertheless, the draft regulations were more restrictive than the EU's law governing liner conferences. Also, it was noted that the regulation's restrictions could create conflicts of law with third countries.

The Commission called attention to the draft regulation's restrictions on consortia market share and membership, noting that these limits could cause unintended and unpredictable consequences. These consequences could be avoided by proscribing specific anticompetitive behavior, rather than regulating comparable market shares, the Commission advised. It was urged that government regulation of consortia agreements that limit competition among shipping lines should be proportional to the likelihood that the agreements will harm shippers using ocean transport services. Publication of the final EU consortia regulations is expected in early 1995.

Other agreements filed in fiscal year 1994 are as follows:

Hanjin entered the transatlantic trade, joined TAA/TACA, and is scheduled to begin operating a service in January 1995. Hanjin will not introduce any additional tonnage into the trade, but instead will charter space from DSR-Senator Lines and Cho Yang. Under the *Hanjin/Tricon Agreement* (No. 232-011475), DSR-Senator Lines and Cho Yang will make 300 TEUs (vessel slots) per week available to Hanjin for the transport of cargoes in the transatlantic trade.

In July 1994, members of the Trans-Atlantic American Flag Liner Operators and the American Auto Carriers, Inc., filed a discussion agreement, *TAAFLO/ACC Discussion Agreement* (No. 203-011462), that allows the members to meet and discuss through intermodal, volume, and time-volume rates, charges for services, and other matters of mutual concern in the trades between U.S. ports and points and ports and points in Europe. Adherence to any agreement reached is voluntary.

B. MEDITERRANEAN

Two major conferences in the Mediterranean have held dominant market positions for many years. The inbound trade has been served by the *South Europe - U.S.A. Freight Conference* ("SEUSA") (No. 202-010676). The outbound trade has been served by the *U.S. Atlantic and Gulf/Western Mediterranean Rate Agreement* ("AGWM") (No. 202-011102). The two conference agreements were merged into the *South Europe American Conference Agreement* ("SEAC") (No. 202-011456) during the year. A pooling agreement related to AGWM, the *U.S.A./South Europe Pool Agreement* (No. 212-011234), authorizes the parties to pool revenue and to cross charter space. The U.S. Pacific-Mediterranean trades are served by the

Mediterranean/North Pacific Freight Conference (No. 202-008090) in the inbound and outbound directions.

The international economic environment was generally unfavorable to shipping in the Mediterranean, the Middle East, and elsewhere during the past year. The weakness in the European and Japanese economies, and to some extent the fragile U.S. economic recovery, served as constraints on ocean commerce in the region. Liner shipments improved somewhat, whereas major dry bulk commodity movements tended to be more depressed. The overall operating results of the liner industry reflected the unsatisfactory performance registered in the prior year. Liner operators stepped up their efforts to improve market shares, frequently leading to overcapacity. The continuing overcapacity in major liner trades, accompanied by severe competition, exerted downward pressure on liner freight rates. Strategic partnerships continued to proliferate in the liner shipping sector, where carriers sought to augment services offered in the trade while attempting to minimize the risk of excessive expansion. The continuing focus of liner operators was on vessel-sharing agreements and rationalizing assets.

The U.S./Mediterranean liner trade has been plagued by overcapacity and excessive competition for many years. This has resulted in the withdrawal of some established operators from the trade. However, liner operators from Asia, Europe, and the U.S. have begun entering the trade, thereby positioning the Mediterranean market to become an integral part of their service routes between the U.S. and Asia via the Mediterranean, the Middle East, and India. The underlying rationale for this service is that it is more profitable to load and discharge cargoes in the Mediterranean market than to transport empty containers, despite the currently depressed freight rate levels in the trade.

U.S. exports to Mediterranean countries were adversely affected by the recession in Europe, and by the appreciation of the dollar last year, which priced some American products out of the European market. Prior to the merger of AGWM and SEUSA into the SEAC, SEUSA had a market share of 64 percent of the westbound trade. Nonetheless, SEUSA's share of the market is expected to decline due to increasing competition from independent operators. Last year, the AGWM Conference share of the eastbound trade volume approached 70 percent. The current membership of SEAC includes Sea-Land, Nedlloyd, P&O Containers, Maersk, Italian Line, Evergreen Line, Lykes, and Zim Navigation.

Rationalization of shipping services continued to be a major factor underlying the types of agreements implemented in the Mediterranean during the year. These include *Container Transport Agreement* (No. 203-011466), which contains space charter and sailing authority for Cast Logistics, DSR-Senator Lines, Compagnie Maritime d'Affretement, and Cho Yang in the U.S. Atlantic/Mediterranean and Middle East trades. The Agreement also provides for voluntary rate and service authority in the Middle East trade.

The *CMA/Tecomar Space Charter and Sailing Agreement* (No. 232-011459) authorizes the parties to charter space to each other, rationalize sailings, jointly enter into terminal and similar arrangements, and lease equipment to each other in the trades between ports and points in the U.S. Atlantic and Gulf, and Mexican, Spanish, Portuguese and Mediterranean ports and points.

The *U.S./Mediterranean Policing Agreement* (No. 203-011447) authorizes the 15 member lines to discuss and agree upon matters related to self-policing and neutral body policing of their obligations in the eastbound and westbound directions of the U.S./Mediterranean trades. Subsequently, amendments

were filed to four conference agreements in the U.S. and Puerto Rico/Mediterranean trades (Nos. 202-008090, 202-010676, 202-010984, and 202-011102), stating that each agreement will be policed in accordance with the provisions of the *U.S./Mediterranean Policing Agreement.*

C. MIDDLE EAST

In the Middle East, shipowners continued to pursue strategies of rationalization and restructuring of their liner services. Despite earlier forecasts for a substantial recovery in the trade following the Gulf Conflict, this optimistic scenario failed to materialize. Reportedly, an overcapacity condition approaching 40 percent prevailed in the trade with freight rates depressed between 20 and 30 percent below the level existing at the end of hostilities in the Gulf.

Several carriers in the U.S./Middle East trade, reacting to the situation of extensive overcapacity and declining rates, filed a discussion agreement with the Commission last year as a preparatory step to forming a new conference. Subsequently, the agreement was amended to include the *"8900" Lines Rate Agreement* (U.S. East Coast/Middle East trade) and the *West Coast/Middle East Agreement.* The purpose of the discussion agreement was to permit carriers to discuss rates, capacity, and other common issues in the trade. In a separate development, individual ship operators also began reorganizing their operations in the Middle East to deploy their existing vessel capacity in the trade more efficiently. At the same time, the liner trade with the Indian Subcontinent has prospered due to that region's close proximity to the Middle East. Several carriers operating in the Gulf have begun carrying cargoes bound for Karachi, Bombay, and beyond via Middle East ports. The prevalence of mainhaul services by major carriers operating between the U.S., Europe, and Asia, and calls at ports in the Mediterranean, Middle East, and India, is increasingly apparent.

The dominant trend toward rationalization and restructuring of liner shipping services in the Middle East appears to be continuing. A vessel-sharing agreement between Sea-Land, P&O Containers, and Maersk, the *U.S./Arabian Gulf Agreement* (No. 203-011403), which entered into force last year, has been upgraded recently to include weekly port calls in the Persian Gulf.

The *NOSAC/NYK Joint Service (East/West) Agreement* (No. 203-011441) established a joint service in the trades between U.S. ports and points, including Alaska and Hawaii, and ports and points in the Mediterranean Sea, Black Sea, Red Sea, Gulf of Aden, Arabian Gulf, and the Gulf of Oman. This joint service has entered into cooperative working agreements with NOSAC ANS (No. 232-011442) and Nippon Yusen Kaisha (No. 232-011443). The two agreements authorize their respective parties to charter space on each other's vessels, agree upon vessel capacity, space requirements, equipment interchanges, and to rationalize sailings in the trade.

The *NSCSA/UASC Agreement* (No. 203-011437) permits the National Shipping Company of Saudi Arabia and the United Arab Shipping Company to charter vessel space to each other, interchange container equipment, and rationalize sailings in the trade between U.S. Atlantic and Gulf ports and points, and ports and points in the Middle East, Mediterranean, Indian Subcontinent, the Far East, and Canada.

The *"8900" Lines Rate Agreement* (No. 202-008900) expanded its geographic scope to include authority covering exports from the U.S. Pacific Coast ports to Jordan, Yemen, and the Indian Subcontinent.

The *Neptune Orient Lines, Ltd. and Nippon Yusen Kaisha Space Charter and Sailing Agreement* (No. 232-011431) permits the parties to charter space on each other's vessels and to

rationalize services in the Far East, South East Asia, Australasia, South West Asia, and the Mid-East/U.S. Atlantic Coast trades.

D. AFRICA

Africa's external debt reached $285.5 billion in 1994, more than double the 1980 total of $113.3 billion. The burden of this debt is one of the factors responsible for slowing growth.

U.S. exports to Africa in fiscal year 1994 exceeded $5.4 billion. Major items were manufactured goods, such as data processing and related equipment, aircraft and aircraft parts, and other industrial commodities. Imports were approximately $3.2 billion, consisting of manganese, chrome ore, and other materials, such as diamonds and gemstones. The Republic of South Africa ("South Africa") generated the largest part (44 percent) of Africa's trade with the U.S.

Several new services were started during fiscal year 1994. Three carriers, Lykes Line, Safbank Line, and Med Shipping, cooperated in a joint service between the U.S. East Coast and South Africa, and another service to West Africa. Evergreen started a new service between the U.S. Pacific Coast, South Africa and Mauritius. Wilhelmsen Line added capacity in its U.S. Gulf Coast to West Africa service. China Ocean Shipping Company ("COSCO") added South Africa into its Far East to East Coast of South America service.

Carriers that withdrew from service in the African trade were: Wilhelmsen Line, canceling its South Africa/U.S. Gulf Coast Service; and, Safmarine, discontinuing a South Africa to Europe service.

The major agreements that became effective in this trade during fiscal year 1994 were *The Southern Africa/Oceania Agreement* (No. 203-011453) and *Global Container Lines/Bosco Atlantic Lines Agreement* (No. 203-011429), both of which are discussion agreements. *The United States Atlantic and Gulf Ports/Eastern Mediterranean and North African Freight Conference* (No. 202-009548) was amended to add ports and points in Romania to its scope of authority.

E. LATIN AMERICA AND THE CARIBBEAN

Trade between the U.S. and Latin America and the Caribbean continued to grow, exceeding $80 billion in 1994. The growth in trade was facilitated by the lowering of the average tariff from 56 percent in 1987 to 12 percent in 1994. In addition, regional trade agreements based on convertible exchange rates and free access to investments have removed many barriers to trade.

U.S. exports to Brazil increased by 23.8 percent, and 4.6 percent to Argentina. However, U.S. exports fell by 9.1 percent in the trade with Venezuela. On the South American West Coast, U.S. exports to Chile, Colombia, Ecuador and Peru increased by an average of 8 percent. Imports from the countries on the East Coast of South America increased by approximately 12 percent on average. Brazil led the way with an increase of 16.5 percent. Increased imports from the countries of the West Coast of South America to the U.S. averaged more than 15 percent.

Trade imbalance was a continuing problem. With more containers moving southward than northward the storage and accounting for containers was a constant source of added cost for carriers. Other problems affecting the trade included port congestion, labor problems, and insufficient port equipment, such as cranes.

Many carriers added capacity by implementing new services or by joint ventures. Sea-Land increased services to the region not only by increasing its own capacity, but also by entering into agreements with other carriers. In the trade between the U.S. Atlantic and Gulf Coast and the East Coast of South America, Sea-Land entered into a vessel-sharing agreement with Transroll Navegacao, deploying six ships in weekly service. Sea-Land also entered into a joint service with Maersk to serve in the trade between the U.S. Pacific Coast and the West Coast of South America. Maersk launched a fixed-day-of-the week fortnightly service, and provides space to Sea-Land under the agreement. Sea-Land also joined Maersk's Andean fortnightly service linking the U.S. Atlantic Coast with the West Coast of South America. Other joint services between Sea-Land and Maersk include: the provision of space to Maersk on Sea-Land's weekly service between the U.S. Pacific Coast and the West Coast of Central America; and the provision of space to Maersk on Sea-Land's existing weekly service between the U.S. Gulf Coast and the East Coast of Central America.

Independently, Sea-Land added a biweekly service between the U.S. Atlantic Coast and the West Coast of South America. It also added another biweekly service between the U.S. Pacific Coast and the West Coast of South America.

Maersk also added capacity independently, with a weekly, three-vessel, U.S. Atlantic Coast to East Coast of South America Service, and a U.S. Gulf to Mexico fortnightly service. The company also added a fortnightly service between the U.S. Atlantic Coast and the East Coast of South America.

In the trade with the West Coast of South America, additions were made through a joint service between Lykes, Nedlloyd, and Compania Chilena de Navegacion Interoceanic. The carriers deployed seven vessels in a weekly service between

the U.S. Atlantic Coast and the Pacific Coast of South America. Grancolombiana also added three vessels in the trade between the U.S. Atlantic Coast and the Pacific Coast of South America. Pan American Independent Line added a biweekly service from the U.S. Atlantic and Gulf Coasts. Hapag Lloyd started a U.S. Atlantic Coast to West Coast of South America feeder service connecting Savannah, Miami, and Kingston.

Carriers that left the trade or reduced service were: Empresa Lineas Maritimas Argentinas, Empresa Naviera Santa, and Linebol. The Venezuelan Line, CAVN, a controlled carrier, went out of business.

The overall increase in service to the region provided shippers more options to penetrate the markets. Additionally, freight rates remained relatively stable. The Inter-American Freight Conference sought to establish a 5 percent across-the-board increase. Several non-conference lines, however, did not follow the conference, thus offering the shippers a competitive alternative.

Among other developments, attempts to achieve economic integration in Latin America and the Caribbean continued during the year. Since the implementation of the North American Free Trade Agreement ("NAFTA") between the U.S., Canada and Mexico, other countries have raised the possibility of a wider NAFTA to include South America.

New agreements implemented in fiscal year 1994 reflecting the general trend in the rationalization of services included: *FMG Lykes Cooperative Working Agreement* (No. 203-011470); *Crowley American Transport Inc., A/S Ivaran Rederi Space Charter and Sailing Agreement* (No. 203-011471); *East Coast North America to West Coast South America and Caribbean Cooperative Working Agreement* (No. 203-011463); *South America Pacific Coast Service Agreement* (No. 203-

011464); *Pacific Coast/Latin America Discussion Agreement* (No. 203-011458); *CMA/Tecomar Space Charter and Sailing Agreement* (No. 232-011459); *The U.S./Latin America Agreement* (No. 203-011448); *Space Charter Agreement Between Seafreight Line Ltd./Navimar Lines, C.A.*, (No. 217-011445); *Frontier Liner Services/Kirk Line Agreement* (No. 203-011444); *NOSAC/NYC Joint Service (North/South) Agreement* (No. 207-011438); *Hornet Shipping Company Limited/Lauritzen Reefers A/S Joint Service Agreement* (No. 207-011436). In addition, two conference agreements were filed in this region, *South America Pacific Coast Conference Agreement* (No. 202-011465) and *Pacific Central America Agreement* (No. 202-011432). Other agreements were amended to add geographic scope. They are *Hornet Shipping Company Limited/Lauritzen Reefers A/S Joint Service Agreement* (No. 207-011436 and 207-011436) and *DSR/Stinnes West Indies Service GmbH Joint Service Agreement* (No. 202-011371).

F. TRANSPACIFIC

Most U.S. exports to Asia are primary materials, e.g., paper and paperboard, wastepaper, newspaper, raw cotton, chemicals, hay, and lumber, used as inputs in the production of finished goods. U.S. imports from Asia tend to be finished goods including shoes, toys, electronic equipment, furniture, automobile parts, and sporting goods. Imported goods, therefore, tend to be higher valued than exported goods.

In response to the increasing vessel utilization occasioned by the growth in the U.S. trade with Southeast Asia and the improved U.S. economy, the carriers making up the *Transpacific Stabilization Agreement* ("TSA") (No. 202-011223) initiated a general rate increase set to commence January 1, 1995. By year end, however, as intra-conference competition heated up within the *Asia North America Eastbound Rate Agreement* ("ANERA") (No. 202-010776), the members of which are also TSA

members, inbound rates on footware, electronic goods, and auto parts began to fall. Nor could the carriers maintain higher rates for toys shipped by large shippers, which were able to obtain favorable service contracts. Kawasaki Kisen Kaisha Ltd. ("K Line"), Mitsui O.S.K. Lines Ltd., ("MOL"), OOCL, and NOL were identified as being particularly aggressive. Similarly, the *Transpacific Freight Conference of Japan* ("TFCJ") (No. 202-000150) also experienced rate erosion, as the two largest U.S.-flag carriers, American President Lines, Ltd., and Sea-Land, announced discounts on commodities moving from Japan to the U.S. Midwest.

The major indicator of what the year's average rates will be in the inbound Pacific trades comes in the spring as service contracts are signed covering the rest of the year. In 1994, independent carriers began offering discounts early in an effort to capture premium accounts from the conferences. The independent Korean carrier Hanjin, for example, aggressively signed contracts at rates well below the targets set by the conference. Another South Korean independent, Hyundai, signed another major contract. There has been some speculation that this aggressive behavior stems from the South Korean lines' concern about filling the new ships they have coming into the trade this year. Hanjin is putting a new set of four 1,600 TEU vessels into service for the Pacific Southwest in 1994, and Hyundai recently accepted the last of six new 4,000 TEU vessels. Nevertheless, some of the largest shippers increased their volume commitment with ANERA for their 1994-1995 service contracts.

To secure lower freight rates, several major shippers formed a shippers' association called the Global Shippers Association. The willingness of large shippers to band together indicates that a strong level of competition in the Pacific existed during 1994. Another indicator of a high level of competition in

the Pacific was the lowering of rates on electronic goods by the inbound carriers.

The TFCJ also faced strong competitive pressure to reduce rates. NOL, a conference member, began offering lower rates in the spring of 1994, driving the other members of the conference to lower their rates. As with ANERA, major manufacturers of electronic goods refused to commit to large annual shipping volumes until the TFCJ eliminated proposed rate increases. These shippers, hit especially hard by the appreciation of the yen and the Japanese recession, were able to present a strongly united front.

Additional competitive tension affecting both ANERA and TFCJ is evidenced by the rumor that several conference lines are offering U.S. shippers service through Vancouver, British Columbia. From there, shippers take control of the cargo and arrange their own inland arrangements to U.S. locations. The savings, compared with direct service to inland U.S. points, varies, but could, in some cases, be considerable. In particular, offering a Canadian gateway option undercuts the rates offered by ANERA to U.S. ports.

The outbound rate increases also failed to hold in the face of strong competitive stress. The *Trans-Pacific Westbound Rate Agreement* ("TWRA") (No. 202-010689) rates on outbound wastepaper and hay fell in October, ushering declines in other commodities. Perhaps of most concern to the Pacific carriers was the aggressive solicitation of cotton by the independent carrier Yangming. In mid-November 1993, Yangming left the *Westbound Transpacific Stabilization Agreement* ("WTSA") (No. 203-011325) and began offering rates significantly lower than either the conference or other independent carriers. Cotton is a major commodity in the Pacific trade, accounting for roughly 5 to 8 percent of the outbound traffic flow. It also typically commands a higher freight rate than most base commodity

cargoes. To protect themselves, the other independents, such as Evergreen and Hyundai, quickly matched Yangming's rates. The conference subsequently followed suit, offering a time-volume rate covering cotton.

It is common in the westbound trade for cargo flows to drop during the summer when Asian manufacturers reduce their purchases of American raw materials. Demand then usually picks up in the late fall when Asian production picks up. This cycle held in 1994, although the economic conditions in Japan, the largest U.S. trading partner in Asia, worsened, causing lower-than-normal demand for outbound cargo. However, despite the reduced cargo flow, carriers in the WTSA reported that they were able to maintain approximately 70 percent capacity utilization rates.

By spring 1994, anticipating the late summer cyclical increase in demand, the TWRA carriers determined to restore rate levels and proposed rate increases to take effect in August 1994. Yet by the end of April many of these rate increases had been largely eroded through competitive independent actions. Cotton once again played a big part in the failure of the proposed rate levels to hold. TWRA, in an effort to preempt a repeat of Yangming's 1993 surprise rate undercutting, broadened its time-volume discount plan. Yangming, in response, offered even lower rates. Other carriers, caught in a downward rate shift, matched the lower rates, and carrier revenues correspondingly declined. Yet the lower rates have had a beneficial impact on cotton exporters. Partially in response to the lower rates for cotton, a California cotton cooperative signed a roughly 240,000 bale cotton export contract with a Chinese importer. Although COSCO, the national flag carrier of China, is expected to carry the bulk of the cargo, most carriers wonder whether COSCO will be able to handle all the cargo -- amounting to roughly 2,800 FEUs -- in a timely fashion.

The financial picture in the Pacific is changing. Because of the yen's appreciation, weak economic conditions, and Japan's continuing recession, Japan's top carriers have been forced to restructure their operations. NYK Line, MOL, and K Line have all been forced to reduce operating and yen-denominated costs. K Line, for example, shifted people to Hong Kong and the U.S., and MOL shifted to a higher percentage of borrowing from foreign, as opposed to Japanese, banks.

As the higher-valued eastbound cargo increasingly dominates the transpacific trades, Pacific carriers are lowering their transit times. The trend has been most pronounced for cargo coming from Southeast and Central Asia. Sea-Land and Maersk started another string of ships aimed at moving cargo to and from Singapore to the U.S. West Coast in 16 days, and from Hong Kong in 12 days. This represents a shift from the North Asia countries of Korea and Japan, which used to be the main source of high-valued goods demanding fast service, to the Southeast Asia countries, whose lower labor and production facility costs have been enticing producers to move southward. Significantly, the demand for liner services has not fallen from the Northern Asian countries, rather the demand from Southeast Asia has increased.

To meet the increased demand for container slots, carriers have increased their available slots in several different ways. American President Lines ("APL"), MOL, OOCL, and Nedlloyd agreed to coordinate ship sailings and port and equipment cooperation. APL, MOL and OOCL will operate jointly in the U.S. transpacific trade and will join with Nedlloyd for the Asia to Europe trade. This gives APL, formerly a Pacific carrier, a presence in two of the world's three major sea lanes, and may become a foothold in Europe from which APL can initiate a transatlantic service.

Other carriers have lost market share despite vessel-sharing agreements. According to *The Journal of Commerce*, MOL lost almost half of its share in the Asia to U.S. East Coast trade when it pulled all of its own vessels and began chartering space from the NYK Line, NOL, and Hapag Lloyd consortium. This, in part, shows one of the difficulties involved with relying on chartered space to maintain a presence in a trade. According to MOL, the reduced market share occurred because, while they are filling all the space available to them, the amount of space available has fallen.

In contrast to MOL, Hyundai, traditionally a non-conference carrier, began a rapid expansion in 1993. With the introduction of six new vessels and a restructured port rotation that includes direct calls outbound from the U.S. to Japan and Singapore, Hyundai is positioning itself as a major player in the trade. According to Hyundai officials, the carrier has repeatedly experienced limitations in its available slot capacity. The addition of the new vessels and of increased double-stack rail service permits Hyundai to offer what it believes will be conference-style premium service.

OOCL is adding six of the biggest containerships ever built to its fleet. The vessels, each with a capacity of 4,950 TEUs, are part of a trend to build post-Panamax (vessels too large to transit the Panama Canal) ships for deployment in the Pacific. The vessels are due for delivery in 1995 and 1996 and are being characterized as replacement tonnage rather than fleet expansion. Route deployment, however, will determine the amount of actual capacity added to the trade, since a faster transit time effectively adds more capacity to a trade than slower transit times. OOCL also recently added Vietnam to its services, including a substantial provision of refrigerated slots, using vessels in the 100-150 TEU range. If trade with Vietnam increases, OOCL may deploy larger vessels from other parts of its worldwide service to act as intra-Asia feeder vessels,

replacing them with vessels displaced by the Panamax vessels. In anticipation of these changes, in the early spring of 1994, OOCL signed a slot-sharing agreement across the Pacific with APL which lasts until the year 2005.

Lauritzen Reefers, the Danish operator of refrigerated vessels, began a weekly service to move bananas from the West Coast of South America to Japan, with stops in Los Angeles. The service will also carry containerized general cargo back from Japan. Although primarily a breakbulk carrier, the seven vessels making up the service are able to carry up to 145 FEUs each. Operating under the name Pacific Shipping Ltd., the service will price itself as an independent.

Carriers are meeting the increased inbound cargo volumes by expanding their networks and cooperating or merging with other carriers to be able to take advantage of economies of scope and scale in marketing and cargo solicitation. Examples include the *APL/MOL/OOCL Asia-Pacific Alliance Agreement* (No. 203-011468), which grants the parties space chartering and sailing authority, as well as authority to reach voluntary agreement on rates and service matters. APL has also entered into the *APL-TMM Discussion Agreement* (No. 203-011428), which permits the parties to discuss rates, costs of service and other matters of mutual concern in the trade and various subtrades between ports and points in the Far East, Indian Subcontinent, Middle East, and ports and points in the U.S.

In 1994, ANERA expanded its scope to extend to the Indian Subcontinent, permitting the parties to the Agreement's Indian Subcontinent Section to agree upon and implement a common tariff and common service contracts. Previously, a U.S. East Coast originating agreement, the *"8900" Lines Rate Agreement* (No. 202-008900), amended the geographic scope of the basic Agreement to include U.S. Pacific Coast ports, Jordan, Yemen, and the Indian Subcontinent. This establishes the

Agreement's pendulum service through the Panama and Suez canals.

Two policing agreements have been filed in the Pacific. The *Trans-Pacific Policing Discussion Agreement* (No. 203-011434) authorizes the parties to discuss, agree, and exchange information on matters relating to self-policing and neutral-body policing of the parties' obligations in the trades between U.S. ports and points, and ports and points in Asia. From the discussion agreement came the *Trans-Pacific Policing Agreement* (No. 203-011452), with 17 participants and encompassing the entire Far East trade. This Agreement is similar to other policing agreements filed with the Commission.

A final group of agreements simply increases the scope of cooperation already existing between carriers to increase either the range of their cooperation or the number of slots being cross-chartered. *Maersk/Sea-Land Pacific Agreement* (No. 232-011321) has been amended to permit the parties to agree, on a voluntary basis, on rates, terms and conditions of service in the Agreement trade. The amendment further provides that a party may not withdraw from the Agreement prior to December 31, 1995. Along these lines, *the Neptune Orient Lines, Ltd. and Nippon Yusen Kaisha Space Charter and Sailing Agreement* (No. 232-011431) in the Far East, South East Asia, Australasia, South West Asia and Mid-East/U.S. Atlantic Coast trades, permits the parties to charter space on each other's vessels and to rationalize service in the above-mentioned trades. Finally, the *Blue Star/Columbus/Serpac Cooperative Working Agreement* (No. 203-011433) permits the parties to utilize common terminals and stevedores on the U.S. Pacific Coast, jointly or in parallel, negotiate and enter into leases, licenses, etc., or terminal facilities or contracts for stevedoring, and to coordinate with each other to schedule vessel calls and terminal, stevedoring and other port services.

In other parts of the Pacific, trade is booming. Far Eastern Shipping Co. of Russia ("FESCO") has been removed from the Commission's list of state-controlled carriers. The decision means FESCO is no longer subject to special tariff rate regulation. Since it was privatized with the breakup of the former Soviet Union, FESCO has been slowly expanding its services from the U.S. West Coast to Russia. Last year it began a U.S. Pacific Northwest to the Russian Far East service. This year it expanded that service to provide a regular, direct service to California. During fiscal year 1994, FESCO was the only carrier to offer direct service from California to Russia. Other carriers, such as APL, Sea-Land, Hyundai, and Navix Line of Japan, service Russia's Far East via transshipment through their hubs in Asia. While the volume is not expected to be large, the institution of a regular service is likely to encourage exporters to consider Russia as an option.

Two agreements affecting Australasia have been filed. The first, *Safbank Line, Ltd. and Mediterranean Shipping Co., S.A.* (No. 202-011454), is a conference agreement in the trade between the U.S. and Australia/New Zealand, which allows these companies to work together with the *South Africa/Oceania Agreement* (No. 203-011453). The second, the *Australia-New Zealand Direct Line Service Agreement* ("ANZDL") (No. 207-011144-005), changes the names of the parties to the joint service as a result of a change in corporate organization. Pacific Container S.A. is replaced by Compagnie Commerciale Armoricaine d'Armement, S.A.; Australia-New Zealand Containerline S.A. is replaced by Francaise de Navigation par Contonteneurs, S.A.; and Societe Navale et Commerciale is replaced by SCAC Delmas Vieljeux.

Competition in the U.S.-Australia/New Zealand trades has been stronger in recent years, and the carriers in the Australia/New Zealand European Community States ("ANZECS") conference decided to dissolve this group. In its

place, they have started a new joint service. Under this agreement, six carriers, one of which used to be an independent, operate a 24-vessel fleet on four routes, one route of which has a round-the-world service agreement (ANZDL). The new agreement is less rigid than ANZECS, in that individual carriers are to be given greater authority to conduct individual marketing of their services.

One of the largest volume northbound commodities in the Australia/New Zealand to U.S. trade, frozen meat, has seen two major rate reductions recently. Three container carriers, Blue Star Line, Columbus Line, and Australia-New Zealand Direct Line, cut rates for the second time in September 1994. The *Australia-United States Container Line Association* (No. 202-011407) announced the new rate structure as a competitive response to the entry of Scaldis Australia into the trade. Scaldis enters as a breakbulk carrier whose vessels have been rigged to carry reefer containers. Despite the fact that most container traffic is into, rather than out of, Australia, almost all the reefer business is for northbound cargo. Carriers cope with this problem by sharing equipment with carriers taking reefer cargo westbound from the U.S. to Southeast Asia. The Australian carriers then pick up the reefer containers and transport them, often empty, back to Australia to be loaded for the northbound journey. Competition for reefer business threatens to disrupt the carefully established network established to do this.

Since trade with Vietnam has resumed, Sea-Land and APL have formally entered the market, competing with Evergreen, which has an established Vietnam to U.S. direct service, and K Line, which has also announced intentions to enter the trade. Vietnam thereby joins China as a country whose increasing maritime contacts with the rest of the world position it for rapid growth.

G. WORLDWIDE

Worldwide liner shipping markets continued to be affected by unbalanced traffic flows in major trades, decreased trade due to economic recessions, currency fluctuations, and overtonnaging. As a result, many operators continue to see their profitability eroded. This, in turn, continues to accelerate rationalization through cooperative joint service and vessel-sharing arrangements, and the restructuring of shipper services in all major trades.

Cooperation among carriers extended to the issue of electronic data interchange ("EDI") systems. The *Systems and Logistics Agreement* (No. 203-011460) authorizes the parties (ACL, Blue Star (North America) Ltd., Cho Yang, and Senator) to discuss, exchange documents and information and cooperate in the development and use of uniform and/or compatible systems in accounting, inland transportation, logistics, "in transit" handling of containers, ATFI-related matters, booking and documentation, and equipment utilization between worldwide ports and points. Similarly, the *EDISHIP Agreement* (No. 202-011457) provides for its members to cooperate in the promotion of technological innovation and economic efficiencies through development and utilization of common or compatible information systems to facilitate access by customers and other third parties in Europe to the parties' common carrier services between all U.S. ports and points and all foreign ports and points.

One area of especially dramatic change is the increasing size of containerships being ordered and brought into the world fleet. Vessels considered large last year are being dwarfed by those being launched each month. In 1992, the average size of newly completed ships was approximately 2,300 TEUs. In 1994, vessels larger than 4,000 TEUs became increasingly common.

Vessel size growth will have significant repercussions on ports, inland networks, and shippers for years to come.

V

AUTOMATED TARIFF FILING AND INFORMATION SYSTEM ("ATFI")

A. INTRODUCTION AND BACKGROUND

The Commission administers, *inter alia*, the 1916 Act and the 1984 Act, which apply to domestic offshore commerce (e.g., between the mainland and Hawaii or Puerto Rico), and to foreign commerce, respectively, for both inbound and outbound waterborne transportation. The statutes require that common carriers by water in these trades file and keep open to public inspection their "tariffs." Also, the 1984 Act requires that service contracts be filed and that their essential terms be made available to the public in tariff format. *See* 46 U.S.C. app. §§ 817 and 1707.

A freight "tariff" filed at the Commission is a publication of a carrier or conference and contains a schedule of rates, charges, and rules applicable to its transportation of cargo.[1] A service contract is a special agreement between shipper(s) and carrier(s) that applies in lieu of the freight tariff. Mutual commitments are made in a service contract, with the shipper guaranteeing the carrier a minimum quantity of cargo over a period of time, in consideration for a commitment by the carrier to a certain rate and service level.

Additionally, terminal tariffs are required to be filed by persons engaged in carrying on the business of furnishing wharfage, dock, warehouse or other terminal facilities in

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[1] A Customs "tariff" is a publication of the Government containing a schedule of Customs duties.

connection with a common carrier by water in the foreign or domestic offshore commerce.

The statutes and implementing regulations require the Commission to ensure compliance with certain essential standards before tariff material is accepted for filing. For example, a tariff, or an amendment thereto, must not be unclear or indefinite and must not duplicate or conflict with other tariff provisions already in effect. Moreover, tariffs must contain effective date provisions in compliance with the statutes, e.g., a minimum of 30 days notice for an increase. If a tariff filing is defective in any of these respects, it is rejected and the filer must file again in the proper manner before the rate can go into effect. Similarly, service contracts may be rejected by the Commission if they do not meet certain statutory and regulatory requirements. *See* 46 CFR, Parts 515, 550, 580, and 581.

In order to facilitate compliance with the law, there are substantial penalties for not filing or, if properly filed, for not adhering to the provisions of a tariff or the essential terms of a service contract. *See, e.g.,* 46 U.S.C. app. §§ 812, 815, 818, 1708, and 1709.

In addition to enforcing these penalties, the Commission uses the filed tariff and service contract data for surveillance and investigatory purposes and, in its proceedings, adjudicates related issues raised by private parties. For Commission proceedings, as well as in any court case, the tariff or service contract provision, on file at the Commission and in effect, is official evidence of the applicable rate, charge or rule, when so "certified" by the Commission. While tariff and service contract information is used for regulatory purposes, the statutory scheme is primarily designed to provide rate information to the shipping public to promote competition and to facilitate the

flow of U.S. exports and imports. All such tariff data is filed with and maintained at the Commission in paper format.

While the first U.S. maritime regulatory body was established in 1916, it was not until 1961 that carriers in the U.S. foreign commerce were required to file tariffs containing all the rates, charges, and rules applicable to their shipments.[2] In the ensuing years, the Commission has received up to a million pages per year.

The enormous amount of paper the Commission had to process with a limited number of employees led it to consider modern technology as a means of alleviating the paperwork burdens on both the government and the shipping industry. A systematic exploration of this subject area by the Commission commenced with a series of studies.

B. EARLY STUDIES ON TARIFFS

In 1981, the Commission conducted a study to examine the validity of the premises upon which the tariff filing requirements of the 1961 amendments to the 1916 Act were based. The study contained three parts.

The first part concerned the internal use of tariff data in the effectuation of non-tariff programs, such as agreements, formal decisions, enforcement, etc. That analysis, published on October 1, 1981, was based upon an internal staff questionnaire. It concluded that tariffs are of critical importance to many Commission statutory functions, and that they could be more effectively used if the data were more accessible.

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[2] A relatively small number of carriers in the domestic offshore commerce have been required to file tariffs since the enactment of the 1933 Act.

The second part of the study, published on December 9, 1981, evaluated the impact of the tariff filing system on external users -- shippers and freight forwarders -- and was based on interviews with 25 importers and exporters and 9 freight forwarders. It revealed that, at that time, those groups believed that publicly available tariffs were a necessity and should be maintained at the Commission. Virtually all interviewees, however, agreed that the tariff system was too complex and could be simplified by implementing per-container rates, a class system of rates, computerized filing, and classification based upon the *US Foreign Trade Schedule B, Statistical Classification of Domestic and Foreign Commodities Exported from the United States ("Schedule B").*

The third part of the study, published in January 1983, focused upon ten liner operations and five conferences. This segment of the maritime industry opined that tariffs should be publicly available and maintained at the Commission. Unlike those interviewed for the earlier part of the study, however, the carriers and conferences stated that the marketplace determines the contents of tariffs. A majority believed that the complexity of tariffs might be a necessary evil. Several interviewees stated that any program to simplify the tariff system should include tariff automation.

The overall conclusion of the three-part study was that retention of the requirement to file tariffs had widespread support in the maritime industry, but that the system was in need of modernization, particularly in the area of computerization.

While conducting this three-part study, the Commission also began an internal study of the impact of filing activity upon the Commission itself. The internal study revealed that during a six-month period, July-December 1981, a total of 212,458 permanent filings were received at the Commission. Thirty out

of several hundred filers accounted for 47 percent of the total volume. The internal study also found that, based upon first quarter fiscal year 1982 actual expenses, the estimated annual cost of examining and maintaining the tariff filings of the 30 major filers was $158,000.

With the results of these two studies in hand, the Commission explored the issue of tariff automation. Of particular interest to the Commission was the industry's views on the feasibility of, possible methods for, and implementation of an automated tariff system. In early 1983, the Commission interviewed seven carriers, five conferences, two freight forwarders, twelve shippers, and two transportation service firms.

The report of this survey was issued in March 1983, and revealed the overall belief of these parties that not only should the tariff system be automated, but that implementation of an automated system was overdue. Almost all interviewees said that there was a likelihood that they would use an automated system if it were more efficient and proved, over the long run, to be less costly than the existing system.

The various respondents were, themselves, at different stages of automation. A few carriers were highly automated, and a number of conferences and shippers had made substantial commitments to automation. Those respondents that were automated to some degree generally believed that automated tariffs would fit well into their systems.

C. FIRST STEP IN TARIFF AUTOMATION: ISSUES

Recognizing that there was a need and apparent industry support for tariff automation, the Commission's next step was to determine if any parties were interested in developing an appropriate system. On November 14, 1983, the Commission published in the *Commerce Business Daily* a *Notice of Inquiry*, entitled *"Sources Sought for 'Paperless' Federal Maritime Commission Electronic Filing, Storage and Retrieval Systems for Tariffs."* Of the 31 replies received, 15 were considered to be responsive or partly responsive to the notice (i.e., indicated interest in being considered to develop the automated tariff system and/or described their qualifications). The comments also raised questions of both a legal and policy nature which needed to be resolved before proceeding with additional phases leading to the eventual adoption of an electronic tariff system. The major questions raised were:

1. Does the filing and storage of tariff information with a private contractor off Commission premises comply with the statutory requirement that tariffs be filed with the Commission?

2. Can the Commission mandate 100 percent industry compliance with electronic filing?

3. What is an appointed vendor's right of ownership to vendor-developed software, external to Commission's own database requirements?

4. What copyrights are involved in tariff data?

5. What will be the "official agency record of tariff-filing," the data electronically stored or the hard copy that is either filed or produced from electronic filing? How long will

storage be required? To what extent will hard copy continue to be required?

6. Will the contractor have monopoly control over the use of the tariff information filed in the system?

7. What will be the financial impact of a system on carriers and other firms that already have tariff automation?

8. What is the minimum term of any possible contract with an appointed outside vendor?

9. What is the economic and political viability of Commission as a free system user?

10. What will be the number of outside vendors which will be ultimately selected?

11. What will be Commission's programming demands on the contractor?

12. To what extent will there be a need to put present tariff data into the electronic system database? How?

13. How will a system provide security for filed tariff data?

14. To what extent would a new system be compatible with other format standardizations?

D. THE SHIPPING ACT OF 1984

On March 20, 1984, the 1984 Act was enacted. Even though the continued need for various tariff requirements had been questioned by certain government agencies and by the private sector during hearings on the Act, section 8 continued

the requirements to file and abide by tariffs. Service contracts were authorized as an alternative to a tariff. While service contracts were required to be filed confidentially with the Commission, their essential terms had to be filed with the Commission in tariff format for availability to the general public.

E. THE TARIFF AUTOMATION TASK FORCE

In August 1984, Commission Chairman Alan Green, Jr., appointed Vice Chairman James J. Carey as head of a special Tariff Automation Task Force. The Task Force gathered additional information, and in January 1985, sent questionnaires to 17 ocean carriers, 10 NVOCCs, 19 conferences, 52 freight forwarders and 20 shippers. The questionnaires focused on the use of tariff data and suggestions to improve the process. Sixty-three entities responded. Some of the results of these responses are synthesized as follows:

- **Tariffs were used by virtually all, usually on a daily basis, and mostly in paper form.**

- **Most, with the exception of shippers, were satisfied with the current tariff form. Those not satisfied indicated a desire for an automated system.**

- **Most of the respondents obtained data from commercial tariff services, but many used carrier/conference subscriptions. Carriers were the predominant users of Commission files, while a large number of freight forwarders, NVOCCs and shippers went directly to ocean carrier representatives for tariff information. They indicated that these sources met their needs; however, those suggesting improvements generally**

favored automation which could provide more timely and accurate data.

- **A majority of the respondents used publicly available standardized commodity coding systems, e.g., *Schedule A, Tariff Schedules of the United States Annotated, Standard International Trade Classification, Schedule B,* and *Standard Transportation Commodity Code.* Most respondents did not use standardized geographic coding systems, nor did they see a need for them.**

- **Freight forwarder and shipper respondents showed the greatest degree of willingness to use more than one type of coding system.**

- **Practically all ocean carrier and conference respondents believed that it would be advantageous to file data with the Commission in an automated fashion. The NVOCC respondents thought it might be too expensive.**

At about the same time as the 1985 industry surveys, an in-house survey was conducted at the Commission to ascertain its needs for tariff automation and perceptions about this concept. The survey results included the following findings:

- **Most respondents in the Commission's operating bureaus felt that automated tariffs would increase the quality of their work, as well as their productivity.**

- **Sixty-two percent of the respondents felt that hard copy was unnecessary if tariffs were accessible via machine-readable form. Reasons cited for paper copies were the need for evidence in court, exhibits**

for enforcement reports, and a backup system in case of computer malfunction.

- **Forty percent said that a standard commodity classification code would increase both their efficiency and quality of work, while an additional 21 percent responded that it would increase only their efficiency but not their quality of work. Responses were similar regarding a standard geographic code.**

In August 1985, the Task Force issued a report entitled *Tariff Automation (A Functional Analysis)*. In addition to describing the results of the 1985 industry and in-house surveys, the report described the problems with manual tariff filing and review, and the Commission's need for automated filing and retrieval of tariff data. The objectives of an automated system were described to be as follows:

- **The automated system will operate in the private sector to the extent possible.**

- **The system will be financially self-sufficient through the assessment of user charges for access to the information.**

- **Access by the Commission will be without cost.**

- **The integrity of the system will be insured by the Commission through the development and ownership of software which will control entry into the system.**

- **A means will be constructed to minimize the monopolistic control of a single company operating the system, and effort should be made to preserve**

existing satellite companies now engaged in dissemination of tariff data.

- **Contractual arrangements for electronic filing may not curtail the ability of the public to have access to tariff documents now routinely available in public document rooms or otherwise.**

The report recommended the conduct of a feasibility study which would evaluate the technical alternatives available and their costs, including a market analysis of the demand for tariff information and the likelihood that the Commission's costs could be recaptured. The Task Force report developed two primary options to be evaluated in the feasibility study:

1. Multiple private-sector databases which would require Commission control or oversight regarding the acceptance of tariff filing within the database; controls to prevent tampering with the data; and accessibility of the information in the database to the Commission and to the public through the Commission's public reference facility (Tariff Control Center). This might require some sort of certification process. This option would probably involve the least cost to the Commission and minimum government involvement, but legislative changes would likely be required to implement it.

2. Single database - one contractor designs and operates a single database of tariffs for the Commission. After review and acceptance of the data, tariff information would then be made available to users for a fee, a portion of which would offset the cost of the contract to the Commission. Rather than grant the contractor a total monopoly over tariff information, however, the report indicated that it would seem more advisable for the contractor to supply only the raw data, perhaps on a subscription basis. The purchasers of the data

would save on input costs to their system and obtain quicker access to the information in an electronically-usable form. Each purchaser could purchase electronic data, design its own software for providing the data in usable form, and sell the data to other users. Hard copy and/or microfiche pages could also be made available for sale by the contractor.

The report concluded that, since the Commission lacked the technical expertise, the feasibility study should be contracted out.

Because the Commission also needed to ensure that all future studies were unbiased, thorough, and accurate, it hired an industry consultant in August 1985 for technical assistance. The contract provided that the consultant must remain independent of the feasibility study contractor and could not become the contractor for the pilot/operating system.

F. ATFI: FEASIBILITY STUDY OF TARIFF AUTOMATION and THE ATFI ADVISORY COMMITTEE

The Commission next turned to the General Services Administration ("GSA") for assistance with the feasibility study and entered into an interagency memorandum of understanding with GSA on August 1, 1985. Pursuant to this agreement, funds were transferred to a GSA fund and a Statement of Work for the development of a feasibility study was drafted, resulting in a contract for this task with a GSA-approved contractor.

Early in 1985, the Commission determined the need and importance of not only soliciting, but also considering in a public arena, the opinions of all interests that might be affected by the automation of tariff filing. For that purpose and pursuant to the provisions of the Federal Advisory Committee

Act, 5 U.S.C. app. I, 1-15, the Commission's ATFI Industry Advisory Committee was established.

The Commission's first step in the formation of the Advisory Committee was to draft a charter and submit it to the GSA Advisory Committee Secretariat with an explanation of the need for the Committee and the Commission's plan to obtain a balanced membership. Thereafter, candidates for membership on the Committee were solicited by *Federal Register* notice of April 12, 1987 (50 Fed. Reg. 14,453). Nominees were required to waive compensation for their services and acknowledge that they were ineligible to bid on any procurement solicitations resulting from the work of the Committee.

On November 11, 1985, the Commission published in the *Federal Register* (50 Fed. Reg. 47,447) its Notice of the Formation of the ATFI Advisory Committee and announced the first meeting on December 6, 1985 (50 Fed. Reg. 50,013). FMC Commissioner Edward J. Philbin was designated Chairman of the Committee. The nineteen industry members represented three ocean carriers, three steamship conferences, two NVOCCs, three freight forwarders and the National Customs Brokers and Forwarders Association, three ports and the California Association of Port Authorities, two exporters and importers and the American Association of Exporters and Importers, two information service firms, and the Information Industry Association.

FMC Chairman Edward V. Hickey, Jr., opened the first Advisory Committee meeting on January 23, 1986, by asking for guidance on the following policy questions about any proposed automated system:

- **Is it desirable that it operate in the private sector?**

- **Can it be structured so as to be financially self-sufficient through the assessment of user charges for access to the information?**

- **Is it possible to achieve cost-free access to the system for the Commission?**

- **Can the integrity of the system be ensured by the Commission through the development and ownership of software which will control entry into the system?**

- **What means can be devised to minimize the possibility of monopolistic control by any single company that might operate the system, and to minimize interference with the operations of commercial companies currently engaged in the dissemination of tariff data?**

- **Can the system operation be structured to maintain public access to tariff information now routinely made available in public document rooms or otherwise?**

- **Can system operation be structured to complement public access under the Freedom of Information Act?**

- **Can a system be structured so that the burden imposed upon tariff filers to comply with the technical requirements of filing tariffs in an automated system will be minimized?**

Chairman Hickey explained that four items were necessary to assure the integrity of the Commission's statutory mandates:

- **The Commission is to retain final authority to reject filings that do not comply with agency requirements, and is to determine the public availability of information pursuant to the Freedom of Information Act and other statutes.**

- **The system must permit the maintenance of historical records that can be retained, retrieved and reproduced for legal evidentiary purposes and to comply with requirements for retention of government records.**

- **The system must obviate unauthorized modification or tampering with data, yet allow the identification and authorized correction of errors.**

- **All fees for the use of the system (filing, retrieval or data reproduction) are to be reasonable and not prevent, deter or impair full public use.**

The critical objectives of the Advisory Committee were established as follows:

- **To allow each segment of the shipping industry to formulate and specify its needs and goals in the process of automating shipping tariffs.**

- **To educate each segment of the shipping industry about the needs and goals of the other segments in such a process.**

- **To investigate the possible applications of existing and foreseeable Automated Data Processing technology to accommodate such needs and goals.**

- **Then, if feasible, to formulate the necessary compromises of the needs and goals of each industry segment to design a system which is acceptable and beneficial to all industry segments.**

The Commission directed the Advisory Committee to make an in-depth and critical evaluation of the draft sections of the *ATFI Feasibility Study*, and to evaluate and comment on any implementation plan which may be formulated after completion of the *ATFI Feasibility Study*.

The ATFI Advisory Committee met in three two-day sessions from January to November 1986, in which it actively provided input to and review of the reports of the *Feasibility Study* Contractor. The final report of the Contractor, entitled *Comprehensive Study of the Feasibility of an Automated Tariff System, Federal Maritime Commission, October 28, 1986*, detailed the basic functionality for tariff automation, the necessary assumptions, the concept of a system, alternative concepts of operation, policy assumptions, delivery alternatives, costs and funding. This report was approved in principle by the Advisory Committee with a few suggested changes. In summary, the tariff automation requirements identified by the *Feasibility Study* were:

1. Key Tariff Filing Requirements

(a) Electronically create and transmit tariff filings to Commission.

(b) Provide fault-tolerant filing (e.g., backup computer).

(c) Provide compatibility with existing systems (to the extent possible).

2. Key Commission Tariff Processing Requirements

(a) Accept electronically filed tariffs (e.g., new tariffs; essential terms; amendments).

(b) Provide tickler capability (e.g., reminder to follow up on a letter of criticism).

(c) Perform computer-assisted conformity check of tariff filings (e.g., syntactic, validity, associative edits).

(d) Provide workload tracking functions (e.g., track status of new tariff filings).

(e) Generate Commission communications (e.g., letter of rejection).

(f) Route tariff filings.

(g) Collect workload statistics (e.g., number of new tariffs filed in a week).

3. Key Tariff Retrieval Requirements

(a) It is expected that any value-added services built into this system will be for Commission's internal use, exclusively. Third-party vendors will provide value-added services to the public.

(b) Retrieve current tariff information with different keys (e.g., origin and destination).

(c) Retrieve historical tariff information with different keys (e.g., commodity code).

(d) Link tariff information to other data sources.

(e) Retrieve current tariff information in different formats (e.g., page).

(f) Retrieve historical tariff information in different formats (e.g., entire tariff).

(g) Provide computer-assisted identification of filed data (e.g., subscription service).

(h) Retrieve tariff information to support enforcement (e.g., re-rating).

(i) Retrieve tariffs to support special studies (e.g., rate indices).

4. Key Functionality Requirements

(a) Accuracy (e.g., amendments are properly applied to the database).

(b) Timeliness (e.g., quick turnaround on posting new rates).

(c) Security (e.g., user identification and passwords).

(d) Special analyses for Commission (e.g., rate indices).

5. Key Policy Assumptions

(a) Commission will provide public access to the system via terminals in a public terminal room at the Commission.

Commission will make copies of the database available to third-party vendors, who could then resell the data (or value-added services) on a retail basis.

(b) Commission would not want the system to provide value-added services directly to the public; these services will be provided by third-party services. Any value-added services provided by the system would be available only to Commission users (e.g., for enforcement purposes).

(c) Commission would not want to restrict ownership rights to the database as a creative financing method.

The functions and requirements of tariff automation identified in the study have not changed and have become the backbone of subsequent efforts to procure the ATFI system. The system concept developed and recommended to the Commission by the Contractor had a total estimated cost of $7.3 million and an estimated implementation time frame of 14 months. The cost estimate was based on a present value calculation for the five-year period, and the implementation time frame consisted of design and implementation phases, including training, data conversion and testing. The cost estimates were considered conservative in the sense that they were the costs for complete development, i.e., "building from scratch." Some of the commercial tariff services may have existing systems which could be adapted to meet a portion of the functional requirements of ATFI.

The *Feasibility Study* concluded:

> Tariff automation appears to offer significant benefits to the maritime industry and to the Commission; tariff automation appears to be politically feasible; and the potential costs of tariff automation appear to be within the reasonable range, when balanced against the benefits

that would accrue and the practical limits in the budgetary process.

The ATFI Advisory Committee, in approving the *Feasibility Study* in principle, made two further recommendations which the Commission adopted:

- First, the Commission should proceed with tariff automation as described in the study.

- Second, the Commission should conduct a cost/benefit study of tariff automation to ensure that the perceived benefits are not outweighed by the costs of the impact of automation upon the industry.

G. BENEFIT COST ANALYSIS and PROCUREMENT AUTHORITY

In October 1987, a Benefit Cost Analysis was prepared by a commercial contractor and corroborated the economic feasibility of the project. This analysis was submitted to the Office of Management and Budget ("OMB").

In December 1987, a delegation of procurement authority for the project was obtained from GSA.

H. INQUIRY ON THE FUNCTIONALITY OF ATFI and PRESOLICITATION CONFERENCE

In December 1987, the Commission began to develop a draft request for proposals ("RFP") which would yield comment from the vendor community on the project. At the same time, the Commission sought public comment on the proposed functionality of the system in a (first ATFI) Notice of Inquiry.

The purpose of this "outreach program" was to ensure that the regulated community and the potential user public were fully aware of the Commission's plans for tariff automation. Comments were requested from other than potential bidders on the basic functionality of the proposed ATFI system. This functionality, as set forth in the Notice of Inquiry, has remained constant throughout the project:

> The electronic ATFI system, for which the Commission is seeking a prime contractor, will be run on the contractor's central computer with appropriate terminals at the Commission for tariff review, processing, and retrieval. The format of tariff data to be electronically filed is being developed in conjunction with the industry Transportation Data Coordinating Committee and will emphasize "tariff line items," vis-a-vis, tariff pages, as under the present system. "Tariff line items" are basically equivalent to commodity rate items in current paper tariffs and can be amended directly, without having to issue an entire revised page.
>
> As recommended by the Commission's Advisory Committee, standardized commodity or geographic coding will not be mandated at the beginning, but the system must have the capability to provide for these functions at the appropriate time. The system will also include the essential terms of service contracts.
>
> Full implementation of the system will be in phases to allow commercial firms time to adapt their operations. Exemptions, at least temporary, will be granted to some types of tariff filers who are not economically able to use the electronic system.
>
> The system will be as compatible as possible with existing computer equipment through the use of software

for full connectibility. Filing of tariffs will be done primarily by using asynchronous terminals or microcomputers, dialing in with a modem to the Commission's database. The filing software will provide on-line edit checks to ensure that the tariff information is correct and that basic statutory provisions are complied with before the tariff can be officially on file. Such edit checks, for example, will be able to electronically identify improper effective dates, such as a rate increase on less than 30-days' notice. Other problems for which rejection is warranted, such as unclear or conflicting tariff provisions, will still have to be handled by Commission staff and, if necessary, resolved at the Commission level. The system's computer capabilities, however, will facilitate this process also.

The ATFI system will have appropriate security mechanisms to protect the integrity of the database.

Tariff filers will be able to file and amend their tariff materials by remote access directly to the ATFI system by carriers or conferences almost any time of day. The carrier or conference will be able to screen-scan its tariff so that the appropriate item can be amended. Commercial tariff services can also continue to be used by carriers and conferences for filing, e.g., by direct input into the database, after creating tariffs on instruction from their clients, or transforming their paper tariffs into electronic form. The Commission will encourage commercial tariff services to assist small firms who may find it difficult to file electronically.

Once the tariff data are officially on file, the Commission will download the entire database in "flat files," formatted onto computer tapes which will be sold to any person at the relatively inexpensive marginal cost

of dissemination. This will satisfy the Commission's statutory duty of providing copies of tariffs at a reasonable charge. In order to keep up with a substantial number of rapidly changing freight rates in the shipping industry, however, interested persons must obtain these updated database tapes frequently. Commission will offer a subscription service to provide this capability.

The Commission will not perform any value-added processing of the tariff data for sale to the shipping public in competition with commercial tariff services. It is expected that those services will subscribe to the database tapes to facilitate their value-added services. The Commission must, however, use the system to process tariff data internally for investigative and other regulatory purposes and will continue to utilize appropriate and available, value-added services of commercial tariff firms for this purpose.

In order to carry out its other statutory function of making tariffs and essential terms of service contracts available for public inspection, the Commission will continue to have a public reference room at its headquarters in Washington, D.C. Here, interested persons can access a terminal on which information on a particular tariff will be brought up on the screen and scanned to find the necessary rates and rules. Paper copies of tariff data will still be available upon written request, especially for certification to courts and other tribunals for proceedings involving disputes over historical tariff rates. [*Inquiry on Tariff Automation*, December 22, 1987, 52 Fed. Reg. 48,504.]

Explained in the Notice of Inquiry and contained in the draft RFP was remote access to the Commission database by

modem, almost any time of the day, for retrieval of tariff information by any interested person. This is described in the October 28, 1986, *Feasibility Study Final Report* as follows:

b. Retrieval and Analysis by the Public

> . . . Commission would also allow remote access whereby a member of the general public could access the automated tariff system from remote locations. For example, the system would enable a shipper on the West Coast to retrieve data from the automated tariff system using a terminal or microcomputer equipped with a device (i.e., a modem) to enable data communications over public telephone lines.
>
> However, members of the general public would only be able to perform relatively rudimentary retrievals, and essentially no analysis of the data. Specifically, members of the public would only be able to retrieve one tariff at a time, in its full format. To retrieve a tariff, the public user would have to specify the specific tariff of a particular carrier that is desired: the public user would not be able to search by keys (e.g., by route or community).
>
> Commission has imposed these restrictions based on a careful analysis of applicable federal policies and precedents. Commission does not want to compete with third-party services for the provision of sophisticated retrieval and analysis of tariff data for shippers, carriers, and others in the private market. . . . In the absence of tariff automation -- i.e., the status quo -- Commission will make available copies of tariffs to members of the public only if they can specify the particular tariff desired. A user fee is assessed for this service. Commission would not expand these services after tariff automation is

implemented. . . . However, Commission would help ensure that third-party services can provide such services. [Pages IV-8 and 9.]

While the Commission was waiting for public comment on the proposed features and functionality of the proposed ATFI system, a draft RFP was issued to the vendor community. Firms and individuals on the bidders list were requested to submit their questions on the proposed competitive acquisition and to attend a presolicitation conference for an opportunity for face-to-face questioning.

In April 1988, the Commission issued its *Report on Tariff Automation Inquiry* (53 Fed. Reg. 13,066) and detailed its rationale for the features and functions proposed for the system.

I. REMOTE RETRIEVAL

While the Commission was in the process of finalizing the RFP, it became aware of concerns raised by both the House Subcommittee on Information, Justice and Agriculture, and by OMB. Their concerns revolved around the functionality of "remote retrieval." As noted earlier, this feature was intended to allow the shipping public to obtain telephone modem access to an individual tariff of a carrier or conference. It would give access to one tariff at a time, and would not provide for sophisticated searches. Questions about this feature were based on an apparent perception that the Commission might compete with existing or intended value-added services offered by private sector firms. In June 1988, the Commission acknowledged its commitment to tariff automation, but placed the development of the system on "hold" to resolve the remote retrieval concerns (53 Fed. Reg. 22,048).

During the period June-December 1988, the Commission reassessed the functionality of the ATFI system, especially in

the area of remote retrieval. This process involved a dialogue with officials of Congress and the Executive Branch. Technical revisions were made to the RFP to reflect new funding exigencies and legal requirements. In October 1988, the Commission issued to some 200 potential offerors a second draft RFP for comment on the technical revisions. However, the Commission remained concerned about the questions on remote retrieval and stated in the letter transmitting the second draft RFP:

> The remote retrieval issue has not been finally decided. Accordingly, this draft RFP is issued with the remote retrieval question still open. That issue will be decided in the final RFP.

After much analysis and reconsideration, the Commission decided in December 1988, to retain the functionality of the system with remote retrieval. In its *Second Report on Tariff Automation Inquiry*, the Commission stated:

> The controlling question is: In designing the functionality of its ATFI system, has the Commission properly considered and balanced competing interests, such as (1) the system's utility to shippers, carriers and other members of the shipping public, and (2) the future role of private-sector information services? The Commission believes it has.
>
> In October, 1986, a year before the Commission heard of any complaints about "remote retrieval," its private-sector contractor issued "A Comprehensive Study of the Feasibility of an Automated Tariff System." This report accurately describes the proposed functionality of the ATFI system in terms sufficiently precise for private-sector firms to fully understand for the purpose of submitting proposals. This public report was considered

and discussed by the Commission's Industry Advisory Committee at the time and there were no objections to "remote retrieval" . . . .

More importantly, with the approval of the Commission and the Advisory Committee, the Feasibility Study Report suboptimized ATFI's public retrieval functions as an accommodation to private-sector information firms.

Commission does not want to compete with third-party services for the provision of sophisticated retrieval and analysis of tariff data for shippers, carriers, and others in the private market. [Page IV-8.]

Accordingly, the self-imposed restrictions would allow the general public to perform only relatively rudimentary retrievals of tariffs, and essentially no analysis of the data.

In consideration of the statutory duties of the Commission and the available technology required for it to properly perform these functions, the 1986 accommodation appeared reasonable. It still does.

The shipping public should also benefit from this modern technology by being allowed to obtain basic, raw tariff data on a limited basis. For more sophisticated services, the utilization of third-party vendors, both for filing and retrieval, continues to be encouraged. An efficient tariff filing and retrieval network will promote fair competition and facilitate trade.

Accordingly and after further analysis, the Commission believes that it has sufficiently considered all policies and conflicting interests involved in the proposed

system and has struck a proper balance in retaining the functionality of ATFI as originally devised in the Feasibility Study, and as further refined in the RFP. [December 23, 1988 (53 Fed. Reg. 52,785).]

With respect to retrieval, however, section 502 of Pub. L. No. 102-582 (46 U.S.C. app. 1707a) of November 2, 1992, has established new criteria for providing for remote access. *See* Section N, *Update on Remote Access - September 1994*, below.

J. CONTRACT AWARD and MAJOR CHANGES

After receiving many technical comments on the two draft RFPs, and after resolving the "remote retrieval" issue, the Commission issued a final RFP in January 1989 to over 200 potential offerors on the bidders' list. Eight proposals were received in March 1989 and evaluated for technical quality and cost effectiveness.

On August 8, 1989, the ATFI contract was awarded for Phase I, System Concept (including verification of requirements), and Phase II, System Design, to Planning Research Corporation ("PRC Inc." or "Contractor") of McLean, Virginia, teaming with Data Exchange International ("DXI"), of Pittsburgh, Pennsylvania, which had the best technical, as well as the best cost proposal.

The contract for the five-year system life also contained options for each subsequent Phase, i.e., Development and Testing, Prototype Operation, and each year of Full-scale Operation. The contract is worth approximately $7M with the exercise of all options.

Work on Phase I began on September 5, 1989, and during fiscal year 1990 the Contractor finished Phases I and II, as well as Phase III - Development and Testing. Later in the fiscal

year, Commissioner Donald R. Quartel, Jr., was put in charge of the Commission's Committee on Automated Data Processing ("ADP Committee") and the ATFI project.

The system's Prototype Phase (Phase IV) began in April 1990. As required by Clauses C.3.3 and C.3.3.10 of the prime contract, the Contractor resurveyed existing software being developed by private industry, to see if there was any that could be incorporated into the ATFI system in order to improve it. The survey identified only one such software package, one being developed by DXI, that met the functionality requirements of the system. Analysis of this software promised that it would be a decided improvement.

At about the same time, as required by Clause C.3.5.4 of the contract, the Contractor and the Commission identified some other changes, mostly from new technology, that could improve the system. One such proposed change was the substitution of a new model minicomputer for the originally planned mainframe computer. This would continue to provide sufficient capacity but significantly improve user-friendliness in interface, screen navigation and key stroking. The Contractor submitted a proposed modification containing the desired changes and Delegation of Procurement Authority was obtained from GSA for the modification.

Since DXI contemplated a significant commercial market for its proprietary software, it could not be required to simply donate the software to the Commission. However, DXI did agree to a "cosponsor" approach under the Federal Acquisition Regulation ("FAR," at 48 CFR 27.408), in return for funding of its enhancement and relinquishment of ownership by the Commission. Thus, the new contractual arrangement had to protect DXI's rights in this software through licensing and escrow arrangements. The Commission, in turn, will have a one-year warranty after it formally accepts the software, and

complete access to the underlying documentation (source code) thereafter.

Under the license agreement, sign-on screens show the copyright notice, as follows: © *1990. Data Exchange International, Inc. Unpublished. All rights reserved under the copyright laws of the United States. See* 48 CFR §§ 27.408(b) and 52.227-14. The Commission does not in any way endorse this or any other commercial product, and clause H.9.1 of the prime contract requires any commercial tariff services performed by an affiliate of the Contractor to be completely separate from contract performance. Accordingly, the cosponsored approach, allowed and encouraged by the FAR § 27.408, and as implemented by the Commission's contractual arrangements, complied with the language in H. Rep. No. 31, 101st Cong., 1st Sess. 5-6 (1989): "In addition, the Commission, in establishing the ATFI system, should take all appropriate steps to ensure that the private contractor is precluded from gaining an unfair advantage over other private companies in the provision of value-added services." On July 19, 1990, the contract was modified to incorporate these changes.

The last optional phase of the PRC Inc. contract expired towards the end of fiscal year 1994, and the Commission negotiated an extension of the current contract, which will include ongoing maintenance of the ATFI equipment. The Commission also intends to explore adding other functions with a view towards making ATFI more efficient and functional, including enhancements resulting from improved technologies.

K. DOCKET NO. 90-23

On August 1, 1990, the Commission instituted Docket No. 90-23, in which it issued a second ATFI Notice of Inquiry ("NOI" - Advanced Notice of Proposed Rulemaking) requesting further public comment on some of the basic features being

considered for ATFI and how they may impact current paper tariff practices.

On September 5, 1990, a public demonstration of the system was held. After being provided the opportunity to see the system, 22 firms submitted public comments on the NOI in October 1990. On December 26, 1990, the Commission issued a first Interim Report ("First Interim Report"), which considered the comments and resolved the issues raised in the NOI.

On March 25, 1991, the Commission issued a Second Interim Report ("Second Interim Report") that responded to concerns of four Electronic Tariff Filer Firms. These firms raised their concerns in testimony at the Commission's fiscal year 1992 authorization hearing held by the Subcommittee on Merchant Marine of the House Committee on Merchant Marine and Fisheries on February 28, 1991. These concerns were submitted to the Commission on March 8, 1991. The Second Interim Report clarified the matters raised, established a schedule (to the extent possible), and reiterated that the "Batch Filing Guide" is all that any person needs to begin immediate development of its own batch filing software.

The Commission's Third Interim Report ("Third Interim Report") in this proceeding was issued on July 23, 1991 (with notice of availability appearing on July 29, 1991, at 56 Fed. Reg. 35,847), and finalized most of the remaining issues listed in the August 1990 NOI, so that a Notice of Proposed Rulemaking could be issued. The additional comments of ten of the original commenters in this proceeding were addressed, and further comments were invited on the only outstanding matters: the modified approach to the Harmonized System and the proposed transition plan.

The proposed rule in Docket 90-23, *Tariffs and Service Contracts*, was issued on September 9, 1991 (56 Fed. Reg. 46,044), as a new Part 514 of Title 46 CFR, with the deadline for comments being October 31, 1991. The supplementary information to the proposed rule contained tables showing where the Commission's reports addressed and decided the major policy issues listed in the NOI and the sources in the current CFR of portions of proposed Part 514. Once all tariff matter is being filed in electronic format, Part 514 will be the sole, all-inclusive CFR part covering tariffs and service contracts. Other CFR parts which govern the filing of paper tariffs and service contracts, will be removed from the CFR, i.e., Parts 515, 520, 550, 580 and 581.

The proposed new Part 514 reiterated and/or rephrased traditional regulatory policy, so that it could be adapted to the new electronic system. Also, in tracking the designed functionality, the proposed rule contained the following major features:

- **The Harmonized System of Commodity Coding, as modified for ATFI, had to be used for describing and codifying commodities.**

- **The essential terms of service contracts, as well as tariffs themselves, had to be filed and maintained in database format, rather than in textual format.**

- **Assessorial charges had to be expressed in algorithm (mathematical-formula) format.**

In order that the public could register in advance for use of ATFI for filing and/or retrieval, as well as obtain other important materials, the registration form and user-charge portions of the proposed rule were finalized in December of

1991 (56 Fed. Reg. 61,164), at about the same time as public comments to the entire proposed rule were submitted.

As suggested by the 1991 submissions, still further comments were invited, and an oral comment session was conducted by the full Commission on May 19, 1992. After consideration of all the comments, the Commission finalized the proposed rule in an interim rule of August 12, 1992 (57 Fed. Reg. 36,248). The interim rule addressed three major policy issues as follows:

- **The Harmonized Code provision for commodities was changed from mandatory to optional (or preferred), without prejudice to future rulemakings.**

- **As suggested by the commenters, the essential terms of service contracts could be filed in full-text, *vis-a-vis* the database format of the proposed rule, with some degree of standardization (e.g., rule numbers) and with the final format to be developed after another round of comments from the public.**

- **Algorithms need not (cannot) be developed for all possible assessorial charges, e.g., those that are not pre-determinable. The interim rule clarified the algorithm requirement and provided another option for linking textual rules to Tariff Line Items ("TLI"), i.e., the "dummy algorithm" or "null linkage." Under the full-text format for essential terms, no algorithmization would be possible.**

Further comments were invited by the interim rule publication, especially on suggestions for full-text filing of essential terms. As a result of these comments, the *First Interim ATFI Amendments* were issued on January 4, 1993 (58 Fed. Reg. 25), effective on February 3, 1993, and inviting two more

rounds of comments in 1993. The major subject of the *First Interim ATFI Amendments* was the "final format" for electronically filing essential terms so that they could be filed in "full-text" format. While certain standardization was retained, such as the numbers and subjects of the statutory-required terms, the new provision allowed more flexibility in *filing* and, therefore, made it easier for firms to file. On the other hand, the "full-text" format had the possibility of making *retrieval* more difficult for the average shipper, so the format decision may have to be revisited after further experience.

The two 1993 rounds of further comments to the interim rules addressed almost solely non-rulemaking matters, but rather technical or operational concerns which continue to be addressed and resolved to the extent feasible.

L. BATCH FILING GUIDE

The proposed refinements and resolution of tariff policy issues contained in the fiscal year 1990 contract modification also required revision of the File Transfer Formats and Code Reference Tables ("Transaction Set") originally issued in March 1990. The NOI in Docket No. 90-23 also provided that the Commission would not make available to the public batch-filing software, but would distribute file transfer formats and code reference tables (in a batch filing guide) to facilitate formatting and transfer of tariff data and, if private-sector firms desired, the development of their own software.

Accordingly, the First Interim Report of December 1990 in Docket No. 90-23 appended the ATFI "Batch Filing Guide" (containing, *inter alia*, transaction sets, file transfer formats, data dictionary, and code reference tables). Since its first issuance, the "Batch Filing Guide" has been revised several times to reflect major system improvements, while, at the same time, attempting to provide the public with as much advance notice

of such changes as possible. Other parts of the ATFI User Guides, such as the "ATFI Fundamentals Guide," etc., are also revised when necessary and made available to regular subscribers. This process is expected to continue throughout the life of the system.

M. MISCELLANEOUS MILESTONES

Information Bulletins ("IBs") 9-91 and 24-91, both containing Technical Questions and Answers, were issued on April 10, 1991, and September 18, 1991 (after a September 12, 1991, technical meeting for the public), respectively. In fiscal year 1992, three more technical IBs were issued, i.e., IBs 05-92, 06-92 and 07-92.

Upon Commissioner Quartel's resignation from the Commission in early fiscal year 1992, Commissioner Ming C. Hsu was appointed by Chairman Christopher L. Koch to be in charge of the Commission's ADP Committee and the ATFI project.

Certifications of firms for batch filing capability began in late fiscal year 1992. There now are 37 such certified firms, many of which are assisting carriers and conferences to convert their tariff matter to electronic form.

On February 11, 1992, IB 04-92 announced that ATFI implementation, previously scheduled for July 1992, would have to be postponed as a result of a GSA-required relocation of FMC headquarters offices. When it was learned that the move would take place in August 1992, Supplemental Report No. 2 and Order in Docket 90-23, issued on August 12, 1992, provided a new implementation schedule, with filing requirements phased in by trade-areas/operations of the filers, beginning in early 1993.

The implementation schedule was refined on December 17, 1992 (at 57 Fed. Reg. 59,999) and was republished on May 28, 1993 (at 58 Fed. Reg. 31,522). This schedule provided that the official tariffs be filed electronically at different times in calendar year 1993. Carriers and conferences operating in the Worldwide/Asian & South Pacific trades were scheduled to file first, followed by those in the European trades; the Africa/Mid East trades; the North American/Caribbean trades; and the Central/South America trades. Terminal operators and carriers in the domestic offshore trades filed last. Finally, the schedule provided for the beginning of the electronic filing of all essential terms of new service contracts. Many filers were not ready and were granted extensions of time. A total of 36 petitions representing 219 carriers/conferences were filed, 32 of which were granted, enabling carriers to extend their filing deadline. Even with the extensions, however, the Commission continued to target December 31, 1993, as being the date by which all filers should be in compliance. Those filers who did not meet the Commission schedule found themselves named in orders to show cause why their tariffs should not be canceled for failure to timely file in ATFI format. Approximately 125 carriers ultimately had their paper tariffs canceled for failure to file. An additional Show Cause Order was prepared late in the fiscal year for issuance early in fiscal year 1995. The Commission anticipates canceling all remaining paper tariffs with this order.

The Commission achieved essentially a paperless tariff environment during fiscal year 1994. There were 2,913 electronic tariffs filed during the year, the majority of which were conversions from paper tariffs. At fiscal year end, there were 3,763 effective tariffs in the ATFI system. Additionally, all essential terms of service contracts entered into after November 22, 1993, are electronically filed in ATFI, making them available on a 24-hour basis to any ATFI user. Over

1,000 new organizations were granted ATFI access capability during the fiscal year, bringing the total to 3,295.

Meanwhile, new Part 514, *Tariffs and Service Contracts*, established by the rulemaking in Docket No. 90-23, has been sufficiently finalized to provide guidance to ATFI users, especially the new filers, along with the systematically-updated ATFI User Guides (Batch Filing Guide, etc.), press releases, and ATFI System News. One of the most active areas of change involves the addition to the locations' database of new locations.

Additionally, 46 CFR Part 514, which will be the only tariffs and service contract rule (CFR part) after full implementation of ATFI, has been amended several times for non-ATFI related purposes, such as for filing requirements for Anti-Rebate Certifications in Docket No. 92-27. Other dockets not directly involving electronic filing but requiring amendment of Part 514, include Dockets Nos. 92-21, *Amendments to Service Contracts* (57 Fed. Reg. 46,318); 92-34, *Domestic Offshore Filing Regulations -- Exemption Under Section 35 of the Shipping Act, 1916* (57 Fed. Reg. 44,697); 92-36, *Reduction of Notice Requirement for Tariff Increases in the Domestic Offshore Trades -- Exemption Under Section 35 of the Shipping Act, 1916* (57 Fed. Reg. 44,504); and 92-37, *Financial Responsibility for Non-Vessel-Operating Common Carriers* (58 Fed. Reg. 5,618).

New rules directly related to ATFI's electronic-filing requirements are the *Electronic Filing of Military Rates* (Docket No. 93-01 of May 17, 1993, at 58 Fed. Reg. 28,787) and *Implementation of Section 502 of Public Law 102-582* (Docket No. 93-03 of May 27, 1993, at 58 Fed. Reg. 30,709). For a more detailed analysis of the latter, *see* Section N, below.

N. UPDATE ON REMOTE ACCESS SEPTEMBER 1994

Since the 1986 *Feasibility Study* (*see* sections F, H, and I, above), the Commission's ATFI system has been designed to accommodate remote filing and retrieval of tariff data through modems to and from the off-site host processor (minicomputer). However, to avoid competition with private-sector tariff services, the design originally contemplated restrictions on remote retrieval, such as the ability to retrieve only rudimentary information, "one-tariff-at-a-time."

A similar restriction was enacted into law [§ 2(b), Pub. L. No. 101-92]:

> The Commission shall impose reasonable controls on the system to limit remote access usage by any one person.[3]

Congress explained this provision as follows:

> Concern has been expressed over the use and accessibility of the ATFI system by all interested parties. In particular, the remote retrieval function will permit the public to dial into the system (by modem) and obtain a

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[3] Additionally, subsections (a) and (c) of section 2 of the Act of August 16, 1989 (46 App. U.S.C. 1111c), provided respectively: "(a) The Federal Maritime Commission shall require that complete and update electronic copies of the Automated Tariff Filing and Information data base are made available (in bulk) in a timely and nondiscriminatory fashion, and the Commission shall assess reasonable fees for this service consistent with section 552 of title 5, United States Code. [(b) *See* text.] (c) The Commission shall provide that any information from the Automated Tariff Filing and Information System that is made available to the public may be used, resold, or disseminated by any person without restriction and without payment of additional fees or royalties."

particular carrier's rates on a requested commodity in a given trade.

* * *

At the present time, no precise definition of "reasonable controls" in the limiting of access can be offered because the system has yet to be developed or implemented. However, the following non-exclusive possibilities are reasonable. First, members of the public could be limited to retrieving one tariff at a time in its full format, and the use would have to specify the specific tariff of the particular carrier that is desired. In the alternative, specific limitations on access time could be imposed, and automatic log-off would then occur. Either limitation, or a combination of both, could satisfy the requirement discussed herein . . . . [H.R. Rep. No. 31, 101st Cong., 1st Sess.]

* * * * *

. . . While the ATFI system has not yet been fully developed, the Committee expects that controls will be built into the design. These controls can be in the form of a limitation on access at any one time and a limit on the total amount of time on the system with an automatic log-off feature . . . [Some form of user identification] will assist in preventing circumvention of the limitation features and prevent a monopolization of the system by a single entity. [S. Rep. No. 71, 101st Cong., 1st Sess.]

Both the House Merchant Marine and Senate Commerce Committees also requested to be kept informed on developments on reasonable restrictions. Accordingly, an "Update on Remote Access" was first included in the

Commission's 28th Annual Report to Congress for fiscal year 1989, and the practice has continued.[4]

In addition to the foregoing, similar language was contained in H.R. Rep. 173 to H.R. 2991, (Pub. L. No. 101-162), the Commission's fiscal year 1990 Appropriations Act:

> . . . In implementing this system, the Committee expects the Commission to develop procedures that will ensure that ATFI will not * compete with private sector providers of information services. As the Commission's 1986 Feasibility Study recommended, remote access to the system should be only rudimentary with essentially no analysis of the data. In addition, the procedures governing the system should provide that the user be able to access the system on a limited number of items before automatic log-off.
>
> [* S. Rep. No. 101-144 to H.R. 2991 added the word "unfairly," otherwise the language is identical.]

The ATFI Contractor, working with the Commission staff, had developed reasonable controls and procedures governing remote access to accommodate the intent of Congress, as described above. These, however, are subject to further modification as regulatory requirements change, even after experience during prototype and full operation. The regulatory requirements were substantially changed with the

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[4] The *Update on Remote Retrieval* was also included in the Commission's December 1990 *Interim Report* in Docket No. 90-23, *Notice of Inquiry on Ocean Freight Tariffs in Foreign and Domestic Offshore Commerce* (the second *ATFI* Notice of Inquiry), with appended *Batch Filing Guide*. In fiscal years 1991 through 1993, the Commission provided extensive opportunity for more public comment, as well as public demonstrations and training during the Prototype Phase.

enactment of Pub. L. No. 102-582 on November 2, 1992. *See* below.

It is still intended, however, that there be automatic log-off for any kind of modem access after five or ten minutes of inactivity. This is similar to many types of electronic, remote-access services.

For remote retrieval of tariff data, the user specifies a particular tariff desired to be accessed, after consulting various "help" tables at log-on. To identify the sought-after TLI, there also are various "help" functions, such as commodity indexes, before bringing up the item on the screen.

Because tariffs will continue to have separate "Rules" sections governing the applicability of the rate, these sections of the same tariff also may be accessed. Moreover, where the tariff filer has a separate "Rules" or "Bill-of-Lading" tariff, instead of an all-inclusive "section" in the same tariff, these types of governing tariffs also may be readily accessed during the same session. There is no artificial limitation to "one-tariff-at-a-time," other than that dictated by the basic functionality of the system, itself.

The original design had intended that the retriever will be automatically logged-off a session after a particular time, such as 30 minutes. The period of time established would allow sufficient exploration of all the applicable rules and, perhaps, another TLI, if there was a mistake in selecting the first TLI. After experience, it was intended that this time limit would be adjusted upward or downward.

Software and instructional materials assist in correcting as many problems as possible before tariffs are filed. This should minimize errors and rejections. In order that a carrier can determine that a filing session has been successful, however, it

will be allowed free access to (only) its own filing and to consult a special message screen developed for this purpose. The fewer the errors, the easier it is for all concerned.

The ATFI system design also provides for user identification and monitoring of utilization so that action can be taken to prevent access abuses by any individual or group.

The Commission's interim rules (issued on August 12, 1992, and January 4, 1993) in Docket 90-23, *Tariffs and Service Contracts*, have addressed remote retrieval issues and comments submitted by the public.

On November 2, 1992, however, the President signed Pub. L. No. 102-582, section 502 of which (46 App. U.S.C. 1707a) repeals section 2 of the Act of August 16, 1989 (46 App. U.S.C. 1111c -- *see* above), and directs that most of the restrictions on public retrieval of tariff data be removed from the ATFI system.

Accordingly, on February 8, 1993, the Commission issued a notice of proposed rulemaking in Docket No. 93-03, *Implementation of Section 502 of Public Law 102-582.* After public comments were submitted by March 10, 1993, a final rule was issued on May 27, 1993, becoming effective on June 28, 1993. In addition to repealing the restrictions of remote retrieval, the new law, as implemented by the final rule, contained the following major requirements:

- **Electronic filing of tariff material into ATFI by September 1, 1992.**

- **The Commission make available the ATFI tariff data electronically to any person, "without time, quantity, or other limitation."[5]**

- **A fee of 46 cents a minute for both:**

  1. Direct remote access to ATFI, resulting in the lowering of the Commission-intended fee of 50 cents per minute; and

  2. Subsequent computer access by any person of ATFI data maintained by a commercial tariff service for its private customers. The Commission's implementing rules provide that third-party vendors desiring to obtain the ATFI database on tape must submit for approval a plan to collect this new, secondary fee from their customers and remit the fees monthly to the Commission. As of October 1994, six such firms have had their accounting/collection systems approved. Because not all electronic tariffs became effective by the end of December 1993, however, initially there was little demand for access to ATFI data, either remote or otherwise. This demand began to increase as carriers completed the conversion to ATFI format.

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[5] The original ATFI design had intended that the retriever be automatically logged-off a session after a particular time, such as 30 minutes. The period of time established would allow sufficient exploration of all the applicable rules and, perhaps, another TLI, if there was a mistake in selecting the first TLI. After experience, it was intended that this time limit would be adjusted upward or downward. The new statutory provision, however, would not allow such a limitation.

The statutory fees are scheduled to sunset automatically on October 1, 1995. The Commission plans to review the remote retrieval issue during fiscal year 1995.

VI

THE FOREIGN SHIPPING PRACTICES ACT OF 1988

A. GENERAL

The Omnibus Trade and Competitiveness Act of 1988, enacted by Congress and effective with the President's signing on August 23, 1988, contains at Title X, Subtitle A, the Foreign Shipping Practices Act of 1988 ("FSPA").

The FSPA directs the Commission to address adverse conditions affecting U.S. carriers in U.S./foreign oceanborne trades, which conditions do not exist for foreign carriers in the U.S., either under U.S. law or as a result of acts of U.S. carriers or others providing maritime or maritime-related services in the U.S.

Although the Commission discontinued two FSPA proceedings in the last two years, one in the Japan trade (Docket No. 91-19) and one in the Taiwan trade (Docket No. 91-44), the Commission continues to monitor the progress on commitments made to resolve issues in those proceedings. The Commission can institute new proceedings if it determines that sufficient progress is not being made to address conditions adversely affecting U.S. carrier operations overseas.

B. TOP TWENTY U.S. LINER CARGO TRADING PARTNERS

Section 10002(g)(1) of the Omnibus Trade and Competitiveness Act of 1988 requires the FMC to include in its annual report to Congress "a list of the twenty foreign countries

that generated the largest volume of oceanborne liner cargo for the most recent calendar year in bilateral trade with the United States."

The data which the staff used to derive the Commission's list of top twenty partners were furnished by the Bureau of the Census ("Census"). The Census data distinguish between liner, tramp, tanker, and dry cargo service. Census defines liner service as that "type of service offered by a regular line operator of vessels on berth. The itineraries and sailing schedules of vessels in liner service are predetermined and fixed." The data supplied to the Commission by Census are intended to exclude all non-liner shipments in accordance with this definition.

The export data are compiled primarily from Shipper's Export Declarations; while the import data are compiled from the import entry and warehouse withdrawal forms. Both types of documents are required to be filed with U.S. Customs. These data are subsequently forwarded to Census. Both export and import statistics exclude: shipments between the U.S. possessions, shipments of mail or parcel post, exports and imports of vessels themselves, and other transactions such as military household goods shipments, bunker fuels and other supplies, intransit shipments through the U.S., etc.

The most recent year for which Census data were available to the Commission is calendar year 1993. The table on the next page gives the twenty foreign countries that generated the largest volume of oceanborne liner cargo in bilateral trade with the U.S. in 1993. The figures in the table represent each country's total U.S. liner imports and exports in thousands of long tons.

Top Twenty U.S. Liner Cargo Trading Partners (1992)

Rank	Country	Tons (000's)
1	Japan	18,149
2	Taiwan	7,769
3	China (PRC)	6,745
4	South Korea	5,323
5	Germany	4,591
6	United Kingdom (Incl. N. Ireland)	3,553
7	Hong Kong	3,188
8	Italy	2,945
9	The Netherlands (Holland)	2,873
10	Brazil	2,732
11	Indonesia	2,473
12	France	2,461
13	Thailand	2,451
14	Belgium	2,102
15	Australia	1,999
16	Spain	1,577
17	Venezuela	1,442
18	India	1,398
19	Malaysia	1,377
20	Philippines	1,340

Source: U.S. Department of Commerce, Bureau of the Census. Figures listed above are based on monthly data provided by Census and are subject to revision.

For calendar year 1993, only moderate changes occurred in the ranking order of the U.S. top twenty liner cargo trading partners as compared to the previous calendar year. The top seven countries remained unchanged in rank. Japan continued to lead as the number one U.S. liner trading partner with cargo volume far exceeding other trading nations at 18.1 million long tons. Liner trading with other Asian countries remained strong as well. Taiwan, China (PRC), and South Korea held on to their respective ranks as the second, third, and fourth largest U.S. trading partners.

The changes that did occur in 1993 include a shift in the ranks of Italy (from 9th to 8th) and The Netherlands (from 8th to 9th). Also, Brazil and Indonesia advanced by three positions in rank to 10th and 11th, respectively, while France, Thailand, and Belgium each fell by two positions in rank to 12th, 13th, and 14th, respectively. India entered into the top twenty displacing the Philippines in the 18th position, while the Philippines dropped to the 20th position pushing Singapore out of the top twenty U.S. liner trading partners.

VII

SIGNIFICANT OPERATING ACTIVITIES

BY

ORGANIZATIONAL UNIT

A. OFFICE OF THE SECRETARY

1. General

The Office of the Secretary serves as the focal point for all matters submitted to and emanating from the members of the Commission. Accordingly, the Office is responsible for preparing and submitting regular and notation agenda of matters for consideration by the Commission and preparing and maintaining the minutes of actions taken by the Commission on these items; receiving and processing formal and informal complaints involving violations of the shipping statutes and other applicable laws; receiving and processing special docket applications and applications to correct clerical or administrative errors in service contracts; issuing orders and notices of actions of the Commission; maintaining official files and records of all formal proceedings; receiving all communications, petitions, notices, pleadings, briefs, or other legal instruments in administrative proceedings and subpenas served on the Commission or members and employees thereof; administering the Freedom of Information, Government in the Sunshine, and Privacy Acts; responding to information requests from the Commission staff, maritime industry, and the public; issuing publications and authenticating instruments and documents of the Commission; compiling and publishing bound volumes of Commission decisions; and maintaining official copies of the Commission's regulations. The office also is responsible for approving or denying special docket requests.

The Secretary's Office also participates in the development of rules designed to reduce the length and complexity of formal proceedings, and participates in the implementation of legislative changes to the shipping statutes. During fiscal year 1994:

- **The Commission issued decisions concluding 15 formal proceedings. Another 7 formal proceedings were discontinued or dismissed without decision, while 5 initial decisions of an Administrative Law Judge became administratively final without Commission review. The Commission also concluded 246 special docket applications and 29 informal dockets which involve claims sought against carriers for up to $10,000. During the same period, the Commission issued final rules in 4 rulemaking proceedings and withdrew 2 proposed rules.**

- **Seven rulemaking proceedings and two formal petitions were pending before the Commission at the end of the year. Final decisions in these matters are anticipated in fiscal year 1995.**

- **Special Docket Officers issued decisions in 238 proceedings during fiscal year 1994.**

2. Office of Informal Inquiries and Complaints and Informal Dockets

This Office coordinates the informal complaint handling system throughout the Commission. A total of 1,576 complaints and information requests were processed in fiscal year 1994. Recoveries to the general public of overcharges, refunds and other savings attributable to the complaint handling activities amounted to $115,634. Since 1985, this Office has helped complainants recover over $2,300,000.

The Office facilitated communications among maritime industry representatives and Commission officials, and supplied materials and information requested by the general public. During fiscal year 1994, this Office responded to 736 such

telephone requests and inquiries. The Office maintained liaison with members of the President's Consumer Affairs Council, in which it participated throughout the fiscal year.

In addition, the Office is responsible for the initial adjudication of reparation claims up to $10,000 that are filed by shippers against common carriers by water engaged in the foreign and domestic offshore commerce of the U.S. These claims must be predicated upon violations of the 1916 Act, the 1984 Act, or the 1933 Act. Many of the claims received under this program constitute shippers' requests for freight adjustments arising from alleged overcharges by carriers, while a significant number pertain to the mishandling of personal effects shipments. During fiscal year 1994, 29 claims were filed, while 10 pending cases were carried over from the previous year. During the same period, 36 informal docket claims were concluded by the Office, while 1 other became a formal docket. There were 2 pending cases at the close of the fiscal year.

During fiscal year 1994:

- **The Office continued its involvement in interagency discussions designed to enhance consumer referral and complaint resolution techniques. These discussions included exploration of telephone "hotline" technology and other responsiveness methodologies.**

- **The Office completed its processing of the large number of reparation claims arising from statutory violations on the part of an untariffed NVOCC specializing in auto transport. The practices of this carrier commanded a significant share of available resources, and involved damages to a large number of individual shippers' efforts directed at consumers.**

- **The Office enhanced its outreach efforts to the general public, and strove to inform individual consumers of its services. One result involved the wider use of the reparation process by individuals against international movers of household effects.**

B. OFFICE OF ADMINISTRATIVE LAW JUDGES

1. General

Administrative Law Judges preside at hearings held after the receipt of a complaint or institution of a proceeding on the Commission's own motion.

Administrative Law Judges have the authority to administer oaths and affirmations; issue subpenas; rule upon offers of proof and receive relevant evidence; take or cause depositions to be taken whenever the ends of justice would be served thereby; regulate the course of the hearing; hold conferences for the settlement or simplification of the issues by consent of the parties; dispose of procedural requests or similar matters; make decisions or recommend decisions; and take any other action authorized by agency rule consistent with the Administrative Procedure Act.

At the beginning of fiscal year 1994, fifteen proceedings were pending before Administrative Law Judges. During the year, eighteen cases were added, which included three proceedings remanded to Administrative Law Judges for further proceedings. The judges held five prehearing conferences, held three formal oral hearings including five days of oral hearing in the final phase of the *Guam* case (Docket No. 89-26), formally settled eight proceedings, dismissed or discontinued five proceedings, and issued three initial decisions in formal proceedings, and one initial decision in an informal docket. One formal proceeding was removed from Administrative Law Judges and consolidated with a proceeding to be heard by the Commission.

2. Commission Action

The Commission adopted one formal decision and one informal decision, and partially adopted one formal decision.

3. Decisions of Administrative Law Judges (in proceedings not yet decided by the Commission)

Martyn Merritt, AMG Services, Inc., D/B/A Ariel Maritime Group and Ariel Maritime, Oasis Express Lines, Javelin Line, Trans Africa Line, Coast Container Line, Buccaneer Line, and Union Exportadora Lines--Possible Violations of Sections 10(a)(1) and 10(b)(1) of the Shipping Act of 1984 **[Docket No. 89-27].**

This proceeding is the second one in which the Commission has investigated respondent Martyn Merritt and companies he created and operated and in which Merritt and his companies were found to have misdescribed cargo and failed to adhere to their filed tariffs on numerous occasions, in violation of sections 10(a)(1) and 10(b)(1) of the 1984 Act and its predecessor statute. In the first proceeding, Docket No. 84-38 - *Ariel Maritime Group et al.*, Merritt and his companies were assessed a penalty of $335,000 for the violations. In the instant proceeding, Merritt was assessed a penalty of $395,000 by the Commission. After his appeal to the U.S. Court of Appeals for the Second Circuit, the case was remanded to the Commission to determine Merritt's ability to pay the penalty and the proper amount of a penalty.

Because Mr. Merritt was imprisoned in a federal penitentiary after his conviction in an unrelated criminal case, it was necessary to develop the evidentiary record by taking his deposition at the prison and furnishing additional evidence on the question of his ability to pay through Commission

investigators. Mr. Merritt was afforded the opportunity of rebutting the evidence adduced by the investigators.

On the basis of the evidence so developed, by Initial Decision, served April 18, 1994, it was decided that Mr. Merritt had access to and control over funds totaling over $1.3 million and that, under applicable law, he should be assessed a penalty in that amount because all of his violations of shipping law were committed knowingly and willfully. The Initial Decision noted that in the 1984 Act, Congress had expressly authorized the Commission to raise penalties to $25,000 for each knowing and willful violation of law rather than the previous level of $5,000 per violation which, it had been thought, was applicable to most of the violations.

4. Pending Proceedings

At the close of fiscal year 1994, there were fifteen pending proceedings, of which two were investigations initiated by the Commission. The remaining proceedings were instituted by the filing of complaints or applications by common carriers by water, shippers, conferences, port authorities or districts, terminal operators, trade associations, and stevedores.

C. OFFICE OF THE GENERAL COUNSEL

The General Counsel provides legal counsel to the Commission. This includes reviewing for legal sufficiency staff recommendations for Commission action, drafting proposed rules to implement Commission policies, and preparing final decisions, orders, and regulations for Commission ratification. In addition, the Office of the General Counsel provides written or oral legal opinions to the Commission, its staff, or the general public in appropriate cases. As described in more detail below, the General Counsel also represents the Commission before the courts and Congress and administers the Commission's international affairs program.

1. Decisions and Rulemakings

The following are adjudications and rulemakings representative of matters prepared by the General Counsel's Office:

***Coloading Practices by Non-Vessel-Operating Common Carriers; Shipper Affiliate Access to Service Contracts,* [Docket No. 93-22], 58 Fed. Reg. 62,077 (November 24, 1993).**

The Commission issued a proposed rule to amend its coloading regulations to remove ambiguities in the current rules and reflect developments in coloading industry practices. The proposal would redefine the term "coloading" to mean cargo combined pursuant to an agreement between or among NVOCCs, and to exclude cargo for which the receiving NVOCC issues its own bill of lading. The Commission also solicited comment on whether full containerload cargo could be

coloaded. The proposed rule would require coloading agreements to be put in writing and made available to the Commission, prohibit coloaded cargo from being carried under a service contract, and limit the affiliates that may access service contracts. The Commission also invited comment on the more fundamental issue of whether coloading should be prohibited altogether.

Upon review of the 58 comments received in response to the proposed rule, the Commission determined to hold this proceeding in abeyance and to explore further whether existing coloading practices are consistent with statutory requirements. Therefore, on November 4, 1994, the Commission initiated a new proceeding, Docket No. 94-26, *Inquiry into Statutory Basis for Coloading Practices and Possible Section 16 Exemption for Coloading,* in which it served notice that coloading appears to contravene statutory tariff filing requirements. Docket No. 94-26 also solicits comment on whether the Commission should initiate a proceeding under section 16 of the 1984 Act, to exempt some aspect of coloading activity from otherwise applicable requirements if no other statutory basis for coloading can be identified. Comments on this Inquiry are due at the end of the year.

***Regulations to Adjust or Meet Conditions Unfavorable to Shipping in the Foreign Trade of the United States,* [Docket No. 93-20], 58 Fed. Reg. 64,909 (December 10, 1993).**

Following publication of a notice of proposed rulemaking and receipt of a single comment, the Commission published a final rule updating its regulations governing proceedings under section 19 of the 1920 Act, 46 U.S.C. app. § 876 ("Section 19"). The revised rule reflects the changes and additions to Section 19 made by section 103 of Pub. L. No. 101-595, 104 Stat. 2979 ("Section 19 Amendments"). The Section 19 Amendments

clarified and expanded the powers of the Commission to address unfavorable shipping conditions, particularly those which affect intermodal, shoreside and other ocean transportation activities, and added certain information-gathering and discovery tools, 46 U.S.C. app. §§ 876(5)-(12). The rule also included some editorial and conforming changes, added a number of new sections in order to implement the new statutory authorities, and restructured the rules for a more logical presentation.

***Waterman Steamship Corporation v. General Foundries, Inc.* [Docket No. 93-15], 26 S.R.R. 1173 (December 9, 1993).**

In July 1993, Waterman Steamship Corporation filed a complaint against General Foundries, Inc., alleging that General Foundries fraudulently induced Waterman to surrender its possessory lien on six shipments of industrial castings by stopping payment on checks tendered as payment for freight, in violation of section 10(a)(1) of the 1984 Act. The administrative law judge ("ALJ") issued an Initial Decision ("ID") on December 9, 1993, finding that General Foundries' conduct amounted to an unjust or unfair device or means to obtain ocean transportation at less than the applicable rates in violation of section 10(a)(1), and awarding damages. General Foundries filed exceptions to the ID, asserting that the ALJ should have dismissed the proceeding on the basis of the doctrine of *forum non conveniens*. General Foundries also took exception to the ALJ's finding that it used an unjust or unfair device or means in violation of the 1984 Act. In an Order issued June 13, 1994, the Commission adopted the ID in most respects, and awarded $53,610.43 reparations to Waterman.

***Service Contracts,* [Docket No. 92-31], 59 Fed. Reg. 4,885 (February 2, 1994).**

The Commission initiated this proceeding by publishing a proposed rule to amend the definition of "shippers' association" contained in its service contract and tariff rules, to indicate that a group of shippers would be considered to be a shippers' association if it met certain conditions. In addition, the proposal clarified the terms "consolidates" and "nonprofit basis," as used in the subject definition.

The Commission received 15 comments in response to the proposed rule. Upon review of the comments, and a reevaluation of the concerns that prompted the proposal, the Commission concluded that no final rule was warranted. The Commission noted that the legal objections raised presented close and difficult questions, but that these did not have to be resolved because of practical and policy concerns militating against additional regulations affecting service contract negotiations between carriers and shippers' associations.

***Western Overseas Trade and Development Corp. v. Asia North America Eastbound Rate Agreement,* [Docket No. 92-06], *Allstate Trading Company, et al. v. Asia North America Eastbound Rate Agreement,* [Docket No. 92-07], *Thai Agri Foods Co., Ltd. et al. v. Asia North America Eastbound Rate Agreement,* [Docket No. 92-17], *Pacific Motif, Inc. v. Asia North America Eastbound Rate Agreement,* [Docket No. 92-18], 26 S.R.R. 874 (April 26, 1993) and 26 S.R.R. 1239 (February 24, 1994).**

In February and March of 1988, the Asia North America Eastbound Rate Agreement ("ANERA") entered into service

contracts with several shippers in the Far East/U.S. trades. Pursuant to each of these service contracts, the shipper agreed to ship a certain minimum quantity of cargo with ANERA, and ANERA agreed to supply sufficient space and equipment to carry the cargo at certain fixed rates. The shippers tendered cargo under the service contracts and were assessed the contract rates therefor.

None of the shippers met its Minimum Quantity Commitment ("MQC"), and ANERA sought payment of liquidated damages (dead freight) pursuant to the service contracts. When none of the shippers paid the liquidated damages, ANERA sought arbitration, as provided by the service contracts. Rather than accede to ANERA's arbitration demand, the shippers initiated complaint proceedings before the Commission.

The original complaints contained three different claims: first, that the service contracts were not "service contracts" as defined by section 3(21) of the 1984 Act, and were void *ab initio*, because they did not contain a meaningful service commitment on the part of ANERA; second, that the filing of independent action ("IA") rates during the course of the service contracts that were lower than the rates contained in the service contracts violated sections 10(b)(6), (10), (11) and (12) of the 1984 Act; and third, that ANERA's attempts to collect liquidated damages violated section 10(b)(1) of the 1984 Act.

The ALJ granted motions by ANERA to dismiss the complaints, and complainants appealed. The Commission disposed of the appeal in its order of April 26, 1993, which set forth the following conclusions with respect to the original complaints:

- The Commission had jurisdiction to determine whether a purported service contract is truly subject to section 8(c) of the 1984 Act;

- Although the subject service contracts improperly limited the shipper's remedy in the event ANERA failed to perform, this did not make the service contracts void *ab initio*;

- The member lines of a conference may lawfully take IA to establish tariff rates that are lower than the corresponding rates contained in conference service contracts; and

- Section 8(c) of the 1984 Act barred the Commission from hearing complainants' other claims, which, although couched in terms of alleged violations of that Act, sought remedies that would otherwise be available in a breach of contract action if the matter were brought before a court.

While the appeal to the Commission was still pending, several of the complainants filed amended complaints against ANERA and Orient Overseas Container Line, Inc. ("OOCL"). Each of the amended complaints alleged that OOCL, acting on behalf of ANERA, falsely induced the complainant to enter into its service contract with ANERA by representing that cargo moving pursuant to OOCL's IA rates would count toward complainant's MQC under the service contract. Each complaint contended that, as a result, ANERA and OOCL have violated sections 6(g), 8(c), 8(d), 10(a)(1), 10(b)(1)-(6) and 10(b)(8)-(12) of the 1984 Act. Complainants requested that the Commission order ANERA to cease and desist from assessing and collecting dead freight, and to accept complainants' payments already made as just and reasonable charges contained in tariffs properly filed with the Commission for the period of the service

contract. Complainants sought as reparations "all sums plus interest received as a result of enforcement of the minimum quantity requirements of the Service Contract" and attorney's fees. They also requested an order directing indemnification or contribution from OOCL in the event ANERA prevails in the collection of dead freight.

The ALJ granted motions by ANERA to dismiss the amended complaints, and complainants appealed. In an order served February 24, 1994, the Commission concluded that section 8(c) bars the Commission from hearing claims which, although couched in terms of alleged violations of the 1984 Act, assert a common law defense to a breach of contract action for liquidated damages.

***American President Lines, Ltd. v. Cyprus Minerals Corporation,* [Docket No. 91-27], and *American President Lines, Ltd. v. Cyprus Copper Company,* [Docket No. 92-01], 26 S.R.R. 1227 (January 31, 1994).**

American President Lines, Ltd. ("APL") filed two complaints against Cyprus Copper Company ("Cyprus") alleging violations of section 10(a)(1) of the 1984 Act, based upon alleged misdescriptions of certain shipments from the U.S. to Japan. Upon APL's motion for summary judgment and Cyprus' motion for subpoena, the presiding ALJ issued an order denying Cyprus' motion but granting APL's, and awarded it reparations of $455,345.57, plus interest. The ALJ, however, declined to award APL the attorney's fees it had requested. Both parties filed exceptions to the order, and the Commission heard oral argument.

The Commission, in an order served January 31, 1994, found that the filed rate doctrine continues to apply to cases under the 1984 Act, and, therefore, any agreement to charge other than tariff rates is irrelevant. The Commission further

found correct the ALJ's denial of Cyprus' motion for subpoena. However, the Commission expressed some reservations about the state of the record. In particular it questioned the proper classification of the cargo under the applicable tariffs and the methodology used to compute the freight due. The Commission, accordingly, remanded the proceeding to the ALJ to resolve those limited issues. The Commission also noted that should APL ultimately prevail, it would be entitled to petition for attorney's fees. The ALJ has held a further hearing in this matter during which both parties presented witnesses and introduced additional evidence. The ALJ issued a supplemental ID in which he found that APL had properly classified the cargo shipped according to its applicable tariff and that APL used the proper methodology to compute the freight charges due. Cyprus has subsequently filed exceptions to this decision, but APL has yet to reply. The Commission will then consider the exceptions and issue a final order.

***Actions to Adjust or Meet Conditions Unfavorable to Shipping in the United States/Korea Trade,* [Docket No. 91-24], 26 S.R.R. 585 (November 18, 1992).**

The Commission determined to initiate a rulemaking proceeding pursuant to section 19 to address certain restrictions on U.S. carrier operations in the U.S./ROK trade which are imposed by operation of ROK law. Specifically, U.S. carriers are precluded from engaging in trucking operations in the ROK and from directly contracting with railroads. In light of substantial commitments made by the ROK Government which potentially resolved most of the issues, the Commission suspended further action in this rulemaking on October 30, 1991, and solicited additional comments from the parties in February 1992 and May 1992. Additional comments due August 12, 1992, were solicited to address intergovernmental discussions held during the summer. The Commission decided, on the basis of those comments, that unfavorable ROK

Government restrictions on U.S. carrier trucking operations existed in the trade, and accordingly issued a final rule imposing fees of $100,000 per voyage on ROK-flag vessels calling at U.S. ports. Those sanctions were suspended, however, until June 1, 1994, in light of ROK Government commitments to eliminate or adjust those restrictions. U.S. and ROK carriers have been submitting periodic reports advising the Commission on developments in liberalizing Korean restrictions on truck and rail access. On May 13, 1994, after the Commission reviewed the progress achieved by the ROK Government in implementing commitments to remove the restrictions, the Commission withdrew the final rule and discontinued this proceeding.

***Burlington Northern Railroad Company v. M. C. Terminals, Inc.*, [Docket No. 91-06], 26 S.R.R. 934 (May 21, 1993).**

Complainant, a rail carrier being sued in a court by Respondent, a marine terminal operator, asked the court to stay the case to obtain the Commission's ruling as to the reasonableness of the tariff item under which the terminal operator was seeking to recover money. The tariff item in question concerned an assessment on rail cars delivered to the terminal, the terminal claiming that it was conferring benefits on the railroad, in the form of services and use of terminal facilities in completion of the railroad's duty of delivery of the rail cars to the terminal. In its complaint to the Commission, the rail carrier challenged two other tariff items which dealt with charges to be assessed against it by the terminal in cases of disruption of rail service or delay in delivering rail cars to the terminal.

The ID of the ALJ held that the Commission lacks jurisdiction over the subject matter of each of the challenged tariff items, but that the tariff items could remain in the tariff

subject to publication of a notice that they did not relate to marine terminal functions. On exceptions, the Commission reversed the holdings that it lacks subject matter jurisdiction under section 10(d)(1) of the 1984 Act, 46 U.S.C. app. § 1709(d)(1), over charges for moving rail cars to position them in the order requested for unloading by the terminal, and that Complainant is not a user of Respondent's marine terminal facilities, insofar as these include the underground hoppers and supporting structures. Tariff items relating to rail service disruption and delay in delivery of rail cars, not subject to the Commission's jurisdiction under the 1984 Act, were ordered deleted from the marine terminal operator's tariff. The Commission also reversed the ID to the extent that it relied on section 33 of the 1916 Act, 46 U.S.C. app. § 832, for determination of the reach of the 1984 Act. The ID was otherwise adopted and the proceeding was held in abeyance for the parties to seek clarification of matters from the Interstate Commerce Commission ("ICC"). Each party sought a declaratory order in a proceeding before the ICC. On August 9, 1994, the parties requested a 30-day extension from ICC, reporting that they have reached an agreement in principle to settle and need the time to finalize it.

***Application of Orient Overseas Container Line (USA) Inc. for the Benefit of Crystals International, Inc.*, [Special Docket No. 2253], 26 S.R.R. 1236 (February 8, 1994).**

The Commission reviewed a decision of a special dockets officer ("SDO") denying OOCL's special docket application seeking a waiver of collection of over $11,000 in freight charges. The denial stemmed from OOCL's refusal to respond to the SDO's numerous requests to address deficiencies and inaccuracies in OOCL's application. On exceptions to the Commission following the SDO's denial, OOCL addressed some of the shortcomings of its original application. The Commission

considered the merits of OOCL's supplemental evidence, and granted some special docket relief in order not to punish the innocent shipper for OOCL's deliberate or negligent failure to present and prosecute its application in an appropriate manner. The Commission warned, however, that it would not again engage in extraordinary efforts to extract factual support for special docket applications, and that the integrity of the process, as well as the Commission's strained resources and increased special docket caseload, dictate that failure to respond in a timely and forthright manner to SDOs' requests will result in the denial of an application.

2. Litigation

The General Counsel represents the Commission in litigation before courts and other administrative agencies. Although the litigation work largely consists of representing the Commission upon petition for review of its orders filed with the U.S. Courts of Appeals, the General Counsel also participates in actions for injunctions, enforcement of Commission orders, actions to collect civil penalties, and other cases where the Commission's interest may be affected by litigation.

The following are representative of matters litigated by the Office:

All State Trading Co. et. al v. FMC, D.C. Cir. No. 94-1165.

The complainants in *Western Overseas Trade and Development Corp. v. Asia North America Eastbound Rate Agreement* (Docket No. 92-06), *Allstate Trading Company, et al. v. Asia North America Eastbound Rate Agreement* ([Docket No. 92-07), *Pacific Motif, Inc. v. Asia North America Eastbound Rate Agreement* (Docket No. 92-18), discussed above, filed a petition for review of the Commission's Order of February 24, 1994,

dismissing their claims. After the D.C. Circuit denied their petition to stay the Commission's order, five of the seven petitioners settled their dispute with ANERA. As part of the settlement they have petitioned the court to dismiss their appeal with prejudice.

Universal Fixture Manufacturing Co., Inc. v. FMC, D.C. Cir. No. 94-1623.

Universal Fixture Manufacturing Co., Inc. ("Universal") filed a complaint against ANERA alleging various violations of the 1984 Act. The dispute centered around a service contract between Universal and ANERA, under which Universal shipped less cargo than it had committed. On August 10, 1993, the Commission issued a decision dismissing the alleged violations of sections 3(21) and 8(c) of the 1984 Act and remanding the proceeding to the ALJ for such further action as was warranted. Subsequently, ANERA filed a second motion to dismiss the remaining allegations of the complaint, which was granted on November 18, 1993. Universal appealed that order to the Commission.

On appeal, the Commission found that Universal's allegations of misrepresentations should be considered by a court or arbitrator and not by the Commission. The Commission found that Universal's arguments concerning misrepresentations, waiver and estoppel were defenses to common law contract actions and did not present meritorious claims under the 1984 Act. The Commission further concluded that there was no common source of discrimination in this case and that the filed rate doctrine did not apply. The Commission also found that Universal did not have a choice of remedies and that it did not have to resolve the issue of attorney's fees and costs at that time. Universal has since filed a petition for review with the U.S. Court of Appeals for the D.C. Circuit.

Best Homeware, Inc. v. FMC, D.C. Cir. No. 94-1661.

This proceeding was initiated by the filing of a complaint by Best Homeware, Inc. ("Best") against OOCL, Orient Overseas Container Line (USA), Inc., and ANERA, alleging violations of various sections of the 1984 Act. The dispute arose out of a service contract entered into between Best and ANERA, under which ANERA sought to collect deadfreight from Best for its failure to meet its volume commitment. ANERA subsequently filed a motion to dismiss the complaint, to which Best replied. On May 16, 1994, the ALJ issued an order granting ANERA's motion. Best appealed to the Commission.

The Commission, in an order served September 7, 1994, upheld the ALJ's dismissal of the complaint. The Commission concluded that such a course of action was consistent with its treatment of similar issues in several related cases. The Commission further concluded that the mere fact that some of those cases were on appeal did not require that the instant case be stayed. Best subsequently filed a petition for review of the Commission's order with the U.S. Court of Appeals for the D.C. Circuit. However, Best and ANERA then settled the matter, and Best's petition was dismissed.

USA & FMC v. Martyn C. Merritt, et al., S.D.N.Y. 88-Civ. 6253 (TPG).

Martyn Merritt appealed the entry of an order by the U.S. District Court for the Southern District of New York, enforcing the Commission's decision in Docket No. 84-38. The Commission had assessed penalties totaling $335,000 against Merritt individually, and jointly and severally with Ariel Maritime Group, Inc. and other Merritt-created and -controlled companies charged with multiple and repeated violations of the 1916 Act. The U.S. Court of Appeals for the Second Circuit

affirmed the District Court's ruling that Merritt's challenge to the Commission's order could only be brought on direct appeal to the U.S. Courts of Appeal, which he had not taken. The Court of Appeals affirmed the view of the District Court and the Commission that substantive challenges may not be raised in defense of an action to enforce Commission penalty orders under the 1984 Act. In the related action in the District Court, continuing orders of garnishment of certain Merritt and Ariel assets were entered on June 7, 1993. An order to disburse was entered on March 3, 1994.

***FMC v. Wilfredo Garcia, Virginia Scalabrino, and Abu W. Garcia Forwarding, Inc., et al.,* United States District Court, Middle District of Pennsylvania, Civil Action Number 3: CV-92-1760.**

On December 7, 1992, the Commission filed an action seeking a preliminary injunction against defendants to enjoin violations of the 1984 Act pending the completion of a Commission administrative proceeding, FMC Docket No. 92-52. The defendants had allegedly violated the 1984 Act by engaging in freight forwarding services without a license and bond, acting as an NVOCC without a tariff and bond, knowingly and willfully using an unfair device and means to obtain ocean transportation for less than the rates applicable, engaging in unfair practices in the adjustment and settlement of claims, and failing to establish, observe and enforce just and reasonable regulations and practices relating to or connected with receiving, handling, storing, or delivering property. The defendants had also allegedly engaged in fraud, deceit, and other unlawful conduct in booking or attempting to book cargo with ocean common carriers and NVOCCs, using the names of licensed freight forwarders without their knowledge and consent, and assuming fictitious names to conceal their true identities.

The U.S. District Court granted the preliminary injunction. Upon information that defendants were violating the injunction, the Commission filed a Motion for an Order to Show Cause-Alleged Contempt for Violation of Injunction. The U.S. District Court entered a Stipulations and Consent Order on March 8, 1993, which among other things prohibits defendants from violating any provisions of the 1984 Act. This Order also permanently enjoins defendants from engaging in any ocean or trucking transportation-related activities, requires full restitution to injured shippers, and terminated all of defendants' "800" telephone numbers. Defendants also admitted to all the factual allegations and violations in FMC Docket No. 92-52. The Court ordered a public defender for Garcia on June 27, 1994. A hearing was held on July 6, 1994, on FMC's request for 6 months of imprisonment. The Court issued a bench warrant for Garcia's arrest on July 14, 1994.

3. Legislative Activities

The General Counsel represents the Commission's interests in all matters before Congress. This includes commenting on proposed legislation, proposing legislation, preparing testimony for Commission officials, and responding to Congressional requests for assistance.

On December 20, 1993, President Clinton signed into law the Coast Guard Authorization Act of 1993, Pub. L. No. 103-206. Section 320 of this Act amends Section 3(b) of Pub. L. No. 89-777 pertaining to nonperformance of transportation and indemnification of passengers on cruise vessels. This amendment allows the Commission discretion to prescribe the necessary bond amount for passenger vessels.

During fiscal year 1994, 74 bills, proposals and Congressional inquiries were referred to General Counsel for comments. The Office also prepared and coordinated testimony for four Congressional hearings.

4. Significant Ongoing Activity

Fact Finding Investigation No. 21, Activities of the Trans-Atlantic Agreement and its Members.

On July 27, 1994, the Federal Maritime Commission commenced an extensive investigation into the activities of the Trans-Atlantic Agreement ("TAA") and its member lines. In its order instituting *Fact Finding Investigation No. 21*, the Commission announced that it will investigate whether or not the TAA lines have engaged in activities violative of the 1984 Act, including:

- Unreasonably increasing transportation costs by reducing competition in the North Atlantic trades;
- Operating under agreements that have not been filed, or in a manner not in accordance with the terms of its filed agreements;
- Retaliating against certain shippers by refusing or threatening to refuse cargo space accommodations, or by resorting to other unfair or unjustly discriminatory methods;
- Subjecting particular persons or descriptions of traffic to unreasonable refusals to deal or to undue or unreasonable prejudice or disadvantage;

- Knowingly and willfully accepting cargo for the account of untariffed or unbonded NVOCCs, or entering into service contracts with such carriers;

- Boycotting or taking other concerted actions resulting in unreasonable refusals to deal;

- Allocating shippers among specific carriers, or prohibiting TAA members from soliciting cargo from particular shippers;

- Charging, demanding, collecting or receiving greater, less, or different compensation for transportation of property than the applicable tariff rates and charges.

The investigation was launched in response to reports of alleged unlawful activity by TAA from several sources, including the Commission's own monitoring initiatives and inquiries, and petitions filed by the National Industrial Transportation League and by Container Freight International ("CFI") and Danish Consolidation Services ("DCS"). Those petitions are expressly included in the scope of the fact finding.

To augment the fact finding, the Commission also issued two compulsory orders directing TAA and its members to provide information and documents relating to: (1) alleged restrictions on the exercise of the right of independent action by TAA members; and (2) TAA members' non-exclusive transshipment agreements and so-called "connecting carrier" agreements. The Commission is inquiring whether the lines' use of such agreements constitutes unfair or unjust means to circumvent otherwise applicable tariffs and service contracts.

The purpose of the proceeding is to enable the Commission to determine whether there is sufficient evidence of violations of the 1984 Act to warrant further action, including the institution of injunction proceedings in U.S. District Court. The Director, Bureau of Hearing Counsel, and a number of attorneys in that Bureau were designated as the Investigative Officers, with continuous support to be provided by the Commission's other Bureaus. The Investigative Officers were directed to conclude this proceeding within 180 days, and to advise the Commission if it appears that more immediate action, particularly injunctive action, is necessary. Fact finding hearings were conducted in Boston, Chicago, New York, and Washington, DC.

***Petition for Investigation and Relief From Unlawful Actions of the Trans-Atlantic Agreement,* [Petition No. P3-94], 26 S.R.R. 1312 (March 28, 1994).**

On December 30, 1993, CFI and DCS, both of Denmark, filed a Petition requesting that the Commission investigate certain allegedly unlawful activities of the TAA. CFI and DCS alleged, *inter alia*, that TAA refused to enter into service contracts with them on terms to which they believed they were entitled. The petitioners argued that TAA should have calculated their service contract offer according to a formula, set forth in TAA's 1994 Business Plan, which was said to have been applied to other shippers. TAA's refusal to do so, petitioners argued, constituted unlawful discrimination and a refusal to deal, in violation of section 10 of the 1984 Act. They asked the Commission to investigate these allegations and also to seek an immediate injunction against TAA under section 6 of the 1984 Act.

The FMC took a three-part approach with regard to the petition. First, it declined to institute its own investigation into TAA's alleged discrimination and refusal to deal, because the

petition appeared to have a number of factual and theoretical weaknesses. However, the Commission reached no final judgment with regard to the petitioners' claims, and the petitioners were reminded that they remain free to file private complaints with the FMC.

Second, the FMC held in abeyance the remainder of the petition, which urged the Commission to seek an injunction in federal court. The Commission ruled that before it can determine whether to act on the petitioners' allegations regarding section 6, more information must be collected. Accordingly, the Commission's Bureau of Trade Monitoring and Analysis requested from both petitioners and conference carriers additional material relevant to the standards for injunctive relief.

Finally, the FMC directed TAA and its member lines to provide information about other possible unlawful activities which were mentioned, but not fully explained, in the petition and in TAA's replies. In the factual background to their service contract claims, the petitioners complained that OOCL repeatedly refused to book cargo under their 1993 service contracts in an effort to force the shippers' groups to renegotiate their contract rates. The Commission issued a separate order, pursuant to section 15 of the 1984 Act, directing TAA and its member lines to provide all available information and documents relevant to these disputes. The responses to the section 15 order were received by the Commission on June 13, 1994, and are currently being considered in the context of the Commission's broad fact finding investigation of TAA, Fact Finding Investigation No. 21.

***Petition for Further Inquiry into the Unlawful Actions of the Trans-Atlantic Agreement,* [Petition No. P5-94], 26 S.R.R. __ (June 8, 1994).**

On June 8, 1994, the Commission received a second petition from CFI and DCS, again alleging unlawful discrimination and refusal to deal in connection with TAA's 1994 service contract offer, and providing data purporting to show that TAA rigidly applied its 1994 Business Plan as a rate ceiling for all shippers except the petitioners. TAA responded to this second petition on July 8, 1993, denying the allegations, and providing data purporting to show that shippers in situations similar to CFI and DCS were treated comparably to petitioners with regard to their 1994 contracts. These issues are currently being investigated in the Commission's Fact Finding Investigation No. 21 proceeding.

***Petition of the National Industrial Transportation League for Investigation and Relief from the Anticompetitive Activities of the Trans-Atlantic Agreement,* [Petition No. P6-94], 26 S.R.R. __ (July 11, 1994).**

On July 11, 1994, the Commission received Petition No. P6-94, *Petition of the National Industrial Transportation League for Investigation and Relief from the Anticompetitive Activities of the Trans-Atlantic Agreement* ("NITL Petition"), which alleged that "TAA has unreasonably increased transportation rates, unreasonably decreased transportation service, and has generally abused its dominant position in the marketplace." The NITL Petition requested that the Commission initiate an investigation into TAA's activities, leading to a determination, under section 6(g) of the 1984 Act, that TAA is a substantially anticompetitive agreement. The NITL Petition further asked that the Commission commence a proceeding in U.S. District Court to enjoin certain of TAA's operations.

Included in the NITL Petition were 16 statements prepared by shippers and other users and providers of ocean transportation services. These statements contain allegations of purportedly anticompetitive activities on the part of TAA. The NITL Petition and its accompanying statements were included within the scope of Fact Finding Investigation No. 21.

***Section 6(g) of the Shipping Act of 1984,* [Docket. No. 93-23], 58 Fed. Reg. 62,616 (November 29, 1993).**

The Commission initiated an Advance Notice of Proposed Rulemaking concerning section 6(g) of the 1984 Act. The purpose of the Advance Notice is to obtain comments on whether the Commission should issue regulations or guidelines that would describe its enforcement policy under section 6(g), and if so, what form such guidelines should take. In the first round of comments, the Commission received an exceptionally broad range of comments on the desirability, form, and contents of the possible 6(g) guideline. Therefore, the Commission invited and received reply comments from carriers, shippers and government agencies. On November 9, 1994, the Commission voted to discontinue this proceeding, finding that its section 6(g) methodology was best developed through case experience and application.

On the same date, the Commission voted to issue a proposed rule to revise its information filing and reporting requirements. This new rulemaking proceeding incorporates various meritorious suggestions made by comments in Docket No. 93-23.

5. Foreign Shipping Restrictions and Related Matters

The Commission has the authority to address restrictive foreign shipping practices under section 19 of the 1920 Act and the FSPA. These statutory tools empower the Commission to make rules and regulations governing shipping in foreign trade to adjust or meet conditions unfavorable to shipping and to address adverse conditions affecting U.S. carriers in foreign trade, which conditions do not exist for foreign carriers in the U.S.

During fiscal year 1994, the Office of the General Counsel prepared and submitted several reports, recommendations, and rules to the Commission on matters arising under section 19 in the ROK trade. (*See* Docket No. 91-24, above). Also, although corrective action by foreign governments enabled the Commission to discontinue two FSPA proceedings over the last two years, one in the Japan trade (Docket No. 91-19, *Actions to Address Adverse Conditions Affecting United States Carriers That do not Exist for Foreign Carriers in the United States/Japan Trade*), and one in the Taiwan trade (Docket No. 91-44, *Actions to Address Adverse Conditions Affecting United States Carriers in the United States/Taiwan Trade*), the Commission continues to monitor the progress on commitments made to resolve outstanding issues. The Commission can institute new proceedings regarding these trades if it determines that sufficient progress is not being made to address conditions adversely affecting U.S. carrier operations overseas.

The Office of the General Counsel also participated in interagency groups and international maritime discussions, particularly as technical advisors to the Interagency Maritime Policy Group, whose other members include representatives of the U.S. Departments of Transportation, State, Commerce, and Justice, and the Office of the U.S. Trade Representative. The

Office also coordinated and participated in briefings of foreign visitors.

Another responsibility of the Office is the identification and verification of controlled carriers under section 9 of the 1984 Act. Common carriers that are owned and controlled by foreign governments are required to adhere to certain tariff-filing requirements under the 1984 Act. The Office investigates and makes appropriate recommendations to the Commission regarding the status of potential controlled carriers. The Office, in conjunction with other Commission components, also monitors the activities of controlled carriers. In fiscal year 1994, the Office reviewed documents and information relating to the controlled carrier status of a number of carriers.

D. OFFICE OF EQUAL EMPLOYMENT OPPORTUNITY

The Office of Equal Employment Opportunity ("EEO") applies knowledge of Federal EEO and personnel management concepts, procedures and regulations to develop and manage a comprehensive program of equal employment opportunity. The Office works independently under the direction of the Chairman to provide advice to the Commission's management in improving and carrying out its policies and program of non-discrimination and affirmative program planning.

The Office is responsible for affirmative program planning, special emphasis programming, and complaints processing and adjudication, with the assistance of collaterally-assigned EEO counselors and a Special Emphasis Program Coordinator.

The Office works closely with the Commission's Office of Personnel, managers and supervisors to:

- **Improve recruitment and representation of women, minorities and persons with handicapping conditions in the workforce.**
- **Provide adequate career counseling.**
- **Facilitate early resolution of employment-related problems.**
- **Develop program plans and progress reports.**

The Director, Office of EEO, arranges for counseling of employees who raise allegations of discrimination; provides for the investigation, hearing, fact-finding, adjustment, or early resolution of such complaints of discrimination; accepts or rejects formal complaints of discrimination; prepares and issues decisions for resolution of formal complaints; and monitors and evaluates the program's impact and effectiveness.

Significant accomplishments in fiscal year 1994 include the following:

1. Provided briefings to senior staff and district directors on the Civil Rights Act of 1991 and 29 CFR 1614.

2. Resolved all complaints through the early resolution program, which had a potential savings in investigative and settlement costs of approximately $50,000.

3. Provided extensive counseling assistance to managers, supervisors and employees.

4. Assisted in management reviews of district offices.

5. Continued to utilize outside resources at no expense to the agency to upgrade the skills of clerical, administrative and EEO staff.

6. Developed workshop materials for training senior executives, district directors and staff, and EEO Counselors.

7. Planned and developed programs for FMC employee participation.

8. Continued to improve FMC's image and identity among Federal agencies and the community by developing cooperative programs in the special emphasis areas.

9. Continued to chair the Small Agency Coalition of EEO Directors.

During fiscal years 1995 and 1996, the Office will continue all existing programs and initiate additional activities designed to increase an understanding of EEO concepts and principles.

E. OFFICE OF INSPECTOR GENERAL

The Office of Inspector General ("OIG") at the Commission was established pursuant to the Inspector General Act of 1978, which was amended in 1988 to provide for additional statutory inspectors general at designated Federal entities, including the Commission.

It is the duty and responsibility of the OIG to:

- **Provide policy direction for and to conduct, supervise, and coordinate audits and investigations relating to the Commission's programs and operations.**

- **Review existing and proposed legislation and regulations relating to the Commission's programs and operations and to make recommendations concerning the impact of such legislation or regulations on the economy and efficiency in, and the prevention and detection of fraud and abuse in, the administration of the Commission's programs and operations.**

- **Recommend policies for, and to conduct, supervise, or coordinate other activities carried out or financed by the Commission for the purpose of promoting economy and efficiency in the administration of, or preventing and detecting fraud and abuse in, the Commission's programs and operations.**

- **Recommend policies for, and to conduct, supervise, or coordinate relationships between the Commission**

and other Federal agencies, state and local governmental agencies, and nongovernmental agencies with respect to all matters relating to: the promotion of economy and efficiency in the administration of, or the prevention and detection of fraud and abuse in, programs and operations administered or financed by the Commission; and the identification and prosecution of participants in any fraud or abuse.

- **Keep the Chairman and the Congress fully and currently informed by means of semiannual and other reports concerning fraud and other serious problems, abuses, and deficiencies relating to the administration of programs and operations administered or financed by the Commission, recommend corrective action concerning such problems, abuses, and deficiencies, and report on the progress made in implementing such corrective action.**

In fiscal year 1994, the OIG issued one audit in final, one draft audit, and two operational reviews. In addition, we completed two extensive surveys without initiating audits. A number of formal and informal investigations were also conducted during the fiscal year.

In January of 1994, the Inspectors General issued a set of principles under which they will work to improve program management in their departments while continuing to fulfill their mandate to attack waste, fraud, and abuse. These principles, encompassed in a "vision statement," were issued to all senior managers at the Commission.

The Inspector General participates as an active member of the Executive Council on Integrity and Efficiency ("ECIE") and serves on a number of committees established by that body.

In fiscal year 1995, the OIG expects to complete a number of significant audits, as well as operational reviews, surveys and follow-up reviews. Investigations will be conducted as necessary. The Commission's Inspector General will continue his participation in the ECIE, which provides a forum for the exchange of views for the inspector general community.

The General Accounting Office issued a report in November 1993 titled *Inspectors General: Action Needed to Strengthen OIGs at Designated Federal Entities* ("DFE"). The principal recommendation in this report was that DFE IGs develop strategic plans that assess their particular agencies' risks and problems and describe their strategies for dealing with the risks. The OIG supports the recommendation and intends to make this a priority project in fiscal year 1995.

The National Performance Review recommendations will also have an impact on the type of work that the OIG completes and the manner in which this work is conducted. The OIG will continue its efforts to work with management and establish a full collaborative working relationship.

F. OFFICE OF THE MANAGING DIRECTOR

The Managing Director, as senior staff official, is responsible to the Chairman for the management and coordination of Commission programs managed by the:

- **Bureau of Trade Monitoring and Analysis.**
- **Bureau of Tariffs, Certification and Licensing.**
- **Bureau of Hearing Counsel.**
- **Bureau of Investigations.**
- **Bureau of Administration.**

and thereby implements the regulatory policies of the Commission and the administrative policies and directives of the Chairman.

Also, the Managing Director provides administrative guidance to the:

- **Office of the Secretary.**
- **Office of the General Counsel.**
- **Office of Administrative Law Judges.**

and administrative assistance to the:

- **Office of Equal Employment Opportunity.**
- **Office of the Inspector General.**

This has been established to ensure the timely and proper achievement of Commission goals and objectives.

In addition, the Managing Director is the Audit Follow-up and Management (Internal) Controls Official for the Commission, and the Office manages those programs. The

Managing Director is the agency's Senior Procurement Executive, its Designated Senior Information Resources Management Official, and the Commission's Chief Operating Officer.

At the beginning of fiscal year 1994, a Deputy Managing Director supervised the development of, and served as Contracting Officer for, the Commission's ATFI system. After his untimely death, the Chairman appointed the Director, Bureau of Administration, as the ATFI Contracting Officer. Additionally, the Chairman has designated a member of the Commission as the Chairman of the ADP Committee and responsible for ATFI oversight.

A significant achievement of the Office during fiscal year 1994 was the Office's coordination of an enhanced enforcement program involving all operating bureaus. One result of this effort was the achievement of a major agreement with a number of vessel-operating common carriers serving the U.S./North Mediterranean trades to implement self-policing. Additionally, the Commission launched an extensive fact finding investigation into the activities of TAA and its member lines late in the fiscal year, which involved all agency operating bureaus. Hearings were held around the country through early fiscal year 1995.

The Office is currently:

1. Guiding both the implementation of the agency's ATFI system under Commissioner Hsu's oversight and the planning for future ATFI contract requirements;

2. Overseeing all enforcement efforts;

3. Managing the Commission's planning and actions with respect to the President's directives and OMB's guidance on

streamlining government, strategic planning and management reform; and

4. Directing all staff efforts in cases involving restrictive practices of foreign governments.

The Office's key objectives for fiscal years 1995 and 1996 are the continued coordination of staff efforts regarding the implementation and maintenance of the ATFI system and development of the new ATFI contract; the further development of the Commission's enforcement program; organization of staff action to implement Presidential directives with respect to streamlining, strategic planning and management reform; and continuing oversight of staff efforts to address restrictive practices of foreign governments.

G. BUREAU OF TRADE MONITORING AND ANALYSIS

1. General

The primary function of the Bureau of Trade Monitoring and Analysis is to plan, develop, and administer programs related to the oversight of concerted activity of common carriers by water under the standards of the 1984 Act and 1916 Act. The Bureau's major program activities include:

- **Administering comprehensive trade monitoring programs to identify and track relevant competitive, commercial, and economic activity in each major U.S. trade in order to keep the Commission and its staff apprised of current trade conditions, emerging trends, and regulatory needs impacting on waterborne liner transportation.**

- **Conducting systematic surveillance of carrier activity in areas relevant to the Commission's administration of statutory standards.**

- **Developing economic studies and analyses in support of the Commission's regulatory responsibilities.**

- **Processing and analyzing common carrier and marine terminal agreements.**

- **Providing expert economic testimony and support in formal proceedings, particularly regarding unfair foreign shipping practices and domestic offshore rate-of-return cases.**

2. Surveillance

An integral part of the Bureau's responsibilities under the 1916 Act and the 1984 Act is the systematic surveillance of carrier activity and commercial conditions in the U.S. liner trades. The goal of Bureau surveillance activities is to ensure that carriers operating in these trades comply fully with the statutory standards of the applicable Acts and Commission regulations. To that end, the Bureau administers a variety of monitoring programs, and other research efforts, designed to apprise the Commission of current trade conditions, emerging commercial trends, and carrier pricing and service activities.

For a description of the Bureau's monitoring activities for fiscal year 1994, *see* Section III.A, *Surveillance*.

3. General Economic Analysis

In addition to research and economic analysis pertaining to its monitoring programs, the Bureau provides economic expertise for a variety of Commission initiatives. Bureau economists prepare testimony in domestic offshore rate cases, fact finding, section 19 and FSPA cases. They also provide assistance in formulating Commission rulemakings and prepare speeches and briefings for senior agency staff.

Projects the Bureau undertook in fiscal year 1994 included: (1) an advance notice of proposed rulemaking concerning section 6(g) of the 1984 Act; (2) a proposed rule on the financial reporting requirements and rate-of-return methodology in the domestic offshore trades; (3) petitions seeking investigation and relief from alleged unlawful actions of the TAA; (4) a fact finding investigation concerning the activities of TAA/TACA and its members; (5) proposed rules updating the Commission's existing user fees and implementing new fees; (6) section 15 information demand orders on TAA

independent action activities and on increases in fuel and currency adjustment surcharges by three inbound transpacific conferences; (7) a proposed rulemaking on new information and reporting requirements for agreements in foreign commerce; (8) a rate-of-return analysis of a general rate increase in the Hawaii trade; (9) reports on the activities of controlled carriers; (10) handling a variety of inquiries and complaints from members of Congress and shippers on a wide range of problems and issues, including antitrust issues, the level of rates, surcharges, accessorial charges, service contracts and port service; and (11) research for and preparation of speeches and briefings for senior Commission officials.

4. Types of Agreements

(a) Conference and Interconference Agreements

Conference agreements provide for the collective discussion, agreement, and establishment of ocean freight rates and practices by groups of ocean carriers. These agreements are limited to a geographical area or trade route. Interconference agreements are between two or more conferences.

During fiscal year 1994, the Bureau analyzed and processed 80 conference and interconference agreements, including modifications to existing agreements, under the 1984 Act. There were 47 conference agreements and 14 interconference agreements in effect at the end of the fiscal year.

(b) Pooling and Equal Access Agreements

Pooling agreements are commercial arrangements among carriers in given trades that provide for the pooling and apportionment of cargo and/or revenues in the interest of

increased efficiencies through stabilizing competitive conditions. These agreements often set forth sailing requirements and other requirements aimed at improving overall service efficiency. Equal access agreements serve to formalize national-flag carrier access to cargo that is controlled by the governments of reciprocal trading partners under cargo preference laws, import quotas, or other restrictions.

There were 21 agreements of this type in effect at the end of the fiscal year.

(c) Space Charter and Sailing Agreements

Space charter agreements authorize the chartering (or cross-chartering) of vessel space or container slots between or among vessel operators. The essential objectives of these agreements are to facilitate the rationalization of overall fleet operations and to reduce excess vessel capacity in given trades. These agreements generally contain authority to rationalize sailings and to exchange equipment. In addition, a number of conferences and discussion agreements have included space charter and sailing authority within the scope of their agreements.

During fiscal year 1994, 21 space charter and sailing agreements and modifications were filed under the 1984 Act, and 145 were in effect at the end of the fiscal year.

(d) Joint Service Agreements

Joint service agreements (also referred to as consortia agreements) generally establish a new, combined service operated as a joint venture. The joint service establishes its own rates, and issues its own bills of lading; but its operation is strictly confined to the authority specifically set forth in its underlying agreement.

Ten joint service agreements and amendments were filed during fiscal year 1994, and 41 joint service agreements were in effect at the conclusion of the fiscal year.

(e) Cooperative Working Agreements

Cooperative working agreements ("CWAs") run the gamut from discussion agreements, which permit the participants to discuss competitively sensitive trade matters, to specialized inter-carrier operational undertakings (e.g., capacity reduction arrangements) that do not precisely fit within the other categories mentioned. This category also includes voluntary ratemaking agreements. Fifty-seven CWAs and amendments to existing CWAs were filed in fiscal year 1994. There were 159 CWAs in effect at the end of the fiscal year.

(f) Marine Terminal Agreements

Marine terminals, operated by both public and private entities, provide facilities, services, and labor for the interchange of cargo and passengers between land and ocean carriers, and for the receipt and delivery of cargo from shippers and consignees. The Bureau is responsible for the review and processing of certain agreements related to the marine terminal industry.

During fiscal year 1994, the Bureau received 149 agreements and agreement modifications relating to port and marine terminal services and facilities. All terminal agreements became effective upon filing under Commission rules that exempt certain classes of marine terminal agreements from the waiting period requirements of the 1984 Act or the approval requirements of the 1916 Act. Agreements not entitled to the Commission's exemption provisions were processed under applicable statutory requirements. At the end of the fiscal year, 1,006 terminal agreements were on file with the Commission.

5. Future Plans and Proposed Activities

The Bureau's overall monitoring program will continue to focus on systematic oversight of carrier and trade activity with an emphasis on developing new and innovative programs and methods to enhance the Commission's effectiveness in administering the 1984 Act, section 19 and the FSPA.

The Bureau will continue to assess the impact of key issues facing the industry, to monitor developments in major trades, and to analyze agreements in the foreign trades under the standards of the 1984 Act and domestic agreements under the public interest standard of the 1916 Act.

The Bureau will continue to collect and analyze trade data in key conference trades. Using these data, the Bureau will track trends in the various trades and anticipate areas ripe for closer scrutiny.

The Bureau will continue to refine its section 6(g) monitoring program which allows the Bureau to evaluate the degree of anticompetitiveness generated by agreements within the context of their commercial environments.

The Bureau anticipates that its involvement in FSPA and section 19 cases will continue in 1995. During fiscal year 1994, the Bureau participated in monitoring conditions relative to FSPA cases in the PRC and Taiwan trades.

The Bureau anticipates further involvement in rulemakings during fiscal year 1995. During fiscal year 1994, the Bureau participated in rulemakings on financial reporting requirements and rate-of-return methodology in the domestic offshore trades; section 6(g) of the 1984 Act; and increasing existing user fees and proposing new fees.

The Bureau will continue pre-effectiveness analysis of newly filed agreements to determine whether they are likely to raise issues and specific questions under sections 5, 6(g) and 10 of the 1984 Act, or raise general policy questions. The Bureau will continue to prepare recommendations to the Commission on more complex agreements or issues and to handle other agreement matters internally under authority delegated by the Commission.

The Bureau will continue to analyze domestic offshore agreement filings under the public interest standards of the 1916 Act and make appropriate recommendations to the Commission for approval or disapproval of these agreements.

H. BUREAU OF TARIFFS, CERTIFICATION AND LICENSING

1. General

The Bureau of Tariffs, Certification and Licensing plans, develops, administers and analyzes programs and activities in connection with pricing by common carriers by water, conferences of such carriers, and marine terminal operators in the foreign and domestic offshore commerce of the U.S.; reviews and maintains both new and amended tariff filings, rejecting those which fail to conform to the Commission's regulations; approves or disapproves special permission applications involving requests to deviate from tariff filing rules; administers the NVOCC financial responsibility program by setting policies and guidelines and reviewing financial instruments that evidence financial responsibility; processes service contracts and essential terms publications filed by ocean common carriers and conferences of such carriers, issuing notices of intent to reject service contracts containing provisions which fail to conform to Commission regulations; prepares recommendations on requests to correct clerical or administrative errors in the essential terms of service contracts; and initiates recommendations, in collaboration with other offices of the Commission as warranted, for formal action and proceedings by the Commission.

The Bureau is also responsible for the licensing of ocean freight forwarders under the provisions of section 19 of the 1984 Act, and under Pub. L. No. 89-777, the certification of owners and operators of passenger vessels in U.S. trades with respect to the financial responsibility of such owners and operators to satisfy any liability incurred for nonperformance of voyages or death or injury to passengers or other persons. In addition, the Bureau assists in the planning and development of, and has

primary responsibility for, the program implementation of the Commission's ATFI system.

Thus, the Bureau is responsible for all tariffs filed by common carriers and marine terminal operators; financial responsibility for NVOCCs; service contracts; the licensing of ocean freight forwarders; and the certification of owners and operators of passenger vessels for financial responsibility.

The Bureau develops long-range plans, new or revised policies and standards, and rules and regulations with respect to its program activities. The Bureau also cooperates with other Commission components with regard to enforcement of the Commission's regulatory requirements.

2. Foreign Commerce

(a) Service Contracts

The 1984 Act permits ocean common carriers and conferences of such carriers operating in the foreign commerce of the U.S. to enter into service contracts with shippers and/or shippers' associations. A service contract is defined in the 1984 Act as:

> [A] contract between a shipper and an ocean common carrier or conference in which the shipper makes a commitment to provide a certain minimum quantity of cargo over a fixed time period, and the ocean common carrier or conference commits to a certain rate or rate schedule as well as a defined service level - such as, assured space, transit time, port rotation, or similar service features; the contract may also specify provisions in the event of nonperformance on the part of either party.

Each contract entered into under section 8(c) of the 1984 Act must be filed confidentially with the Commission and, at the same time, a concise statement of its essential terms must be filed with the Commission and made available to the general public in tariff format. The essential terms must be offered to all similarly situated shippers.

The essential terms of a service contract include:

* The origin and destination port ranges or geographic area;

* The commodity involved;

* The minimum volume;

* The line-haul rate;

* The duration;

* Service commitments; and

* Liquidated damages for nonperformance, if any.

The variables which can be prescribed in service contracts are almost infinite, thereby giving carriers and shippers significant freedom to tailor transportation arrangements suitable to their commercial needs. Thus, service contracts are an alternative to transportation under tariff terms, and therefore, can be negotiated on a case-by-case basis to accommodate the participants' specific commercial and operational needs. Service contracts can also be amended during the contract term should the shippers' transportation needs change.

Shippers' associations were recognized for the first time under the 1984 Act as entities in international ocean transportation. They are defined in the 1984 Act as groups of shippers which, on a nonprofit basis, consolidate their cargoes to secure volume rates or enter into service contracts. The 1984 Act expressly requires that carriers and conferences negotiate with shippers' associations. It also provides that associations can enter into service contracts on behalf of their members. Shippers' associations have not been granted antitrust immunity under the 1984 Act. During fiscal year 1994, 13 contracts were filed on behalf of 10 shippers' associations, a significant reduction from last fiscal year when the Commission received 65 contracts on behalf of 85 associations.

During fiscal year 1994, the Bureau received a total of 14,839 service contract filings involving an estimated 41,000 shippers, 27 conferences and 88 individual ocean common carriers, which involved the entire scope of the U.S. foreign commerce, both inbound and outbound. During fiscal year 1994, the Commission received 6,943 new service contracts, an 8 percent increase over last fiscal year. A total of 7,896 service contract amendments were filed during fiscal year 1994, the first full fiscal year during which service contract amendments were permitted under the Commission's rules.

Early in fiscal year 1994, the Commission completed its changeover to ATFI for service contract essential terms. Essential terms for contracts entered into after November 22, 1993, are electronically filed in ATFI, with a copy of the corresponding service contract being filed within the following ten days (essential terms filed prior to November 22, 1993, are maintained in paper format). Thus, ATFI enables essential terms to be immediately available on a 24-hour basis to any ATFI user at any location in the U.S. or abroad. At the end of the fiscal year the Commission was preparing a show cause

order against those carriers which had not yet provided for the cancellation of their paper essential terms publications.

Service contracts are reviewed for conformity with necessary statutory and regulatory requirements. Those which fail to contain mutually binding service and cargo commitments, or which contain meaningless liquidated damages provisions, are subject to rejection. During fiscal year 1994, the Bureau also worked toward more explicit standards of specificity in service contract commodity descriptions. This culminated in the preparation of a circular letter scheduled for release early in fiscal year 1995 to common carriers and conferences of such carriers in the foreign commerce of the U.S.

Substantial effort was invested during fiscal year 1994 in supporting the Commission's efforts to determine whether various classes of shippers are treated fairly and consistently in their service contract dealings with ocean common carriers and conferences and investigating related questions concerning trade practices. To this end, the Bureau prepared an analysis for the Commission of the Report of the Investigative Officer in Fact Finding Investigation No. 20, *Service Contract Negotiations with Shippers' Associations and Non-Vessel-Operating Common Carriers* ("FF-20"); prepared the Commission's Section 15 Order, *Service Contract Negotiations* (which implements certain of the Investigative Officer's recommendations in FF-20); analyzed two series of carrier and conference reports pursuant to that Section 15 Order; and provided extensive technical and analytical support to the staff working group involved with Fact Finding Investigation No. 21, *Activities of the Trans-Atlantic Agreement and its Members.*

(b) Controlled Carriers

A controlled carrier is an ocean common carrier whose operating assets are directly or indirectly owned or controlled

by the government under whose registry the vessels of the common carrier are operated. Section 9 of the 1984 Act (46 U.S.C. app. 1708) provides that no controlled carrier may maintain rates or charges in its tariffs filed with the Commission that are below a level that is just and reasonable, nor may any such carrier establish or maintain unjust or unreasonable classifications, rules or regulations in those tariffs. In addition, such 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 filing with the Commission. Exceptions to these proscriptions include rates of controlled carriers of a state whose vessels are entitled by a treaty of the U.S. to receive most-favored-nation treatment.

The Bureau monitors the tariff filings of controlled carriers to assure that the required notice for rate increases and decreases is given. The Bureau did not receive any request for special permission from controlled carriers during fiscal year 1994.

(c) Common Carrier Anti-Rebate Certification Program

Every common carrier by water in the foreign commerce of the U.S. and licensed ocean freight forwarder is required by section 15(b) of the 1984 Act (46 U.S.C. app. 1714) and 46 CFR Part 582 to file a sworn *Certification of Company Policies and Efforts to Combat Rebating in the Foreign Commerce of the United States*. This certification is to be filed with the Secretary of the Commission on or before December 31 of each even-numbered calendar year and is to be signed by the Chief Executive Officer of the common carrier or ocean freight forwarder. Section 15(b) of the 1984 Act and 46 CFR 582.1(b) provide that failure to file the required certification may result in a civil penalty of $5,000 for each day the violation continues. In addition to the civil penalty provision, the Commission's

regulations provide, upon 45-days' notice, for the cancellation of the tariffs of those carriers, and the suspension of the licenses of those ocean freight forwarders, who fail to file a certification. Furthermore, any application for an ocean freight forwarder license or initial tariff filing that does not include an anti-rebate certification in accordance with Part 582 shall be rejected.

A program supported by the Bureau's electronic databases is in place to ensure that common carriers and freight forwarders file their certifications. Existing certifications were not due to be renewed during fiscal year 1994; however, approximately 600 certifications were filed by new carriers or freight forwarders registering with the Commission.

(d) Foreign Tariffs

Section 8 of the 1984 Act (46 U.S.C. app. 1707) requires the filing of tariffs by all common carriers operating in the foreign waterborne commerce of the U.S.

Fiscal year 1994 marked the first full fiscal year for the Commission's ATFI system. During this year, the Commission received 2,679 new, complete tariffs from carriers and conferences operating in the U.S. foreign commerce. (Additional statistics concerning filings into ATFI can be found in the ATFI section below.) A large majority of these tariff filings represents the conversion of paper tariffs into electronic format. The pages that are canceled by electronic filings are being stored and will be transferred to magnetic media when funds permit. In connection with the fiscal year 1994 tariff filings, the Bureau received and processed 409 foreign special permission applications which allow carriers to deviate from the statutory provisions of the 1984 Act and or the Commission's tariff filing regulations.

(e) NVOCC Bonding

During fiscal year 1991, Congress enacted amendments to the 1984 Act imposing a bonding requirement on NVOCCs operating in the foreign commerce of the U.S. The Commission issued regulations requiring the filing of a surety bond in the amount of $50,000 by every NVOCC operating in the foreign waterborne commerce of the U.S.

During fiscal year 1993, the Commission amended its regulations in response to the Non-Vessel-Operating Common Carrier Act of 1991 ("1991 Act"), 106 Stat. 60. The 1991 Act amended section 23 of the 1984 Act, 46 U.S.C. app. 1721, to permit the Commission to accept, in addition to bonds, insurance or other surety as proof of an NVOCC's financial responsibility. The amended rule retains the $50,000 minimum coverage.

Evidence of financial responsibility obtained pursuant to this requirement is used to satisfy claims arising from transportation-related activities or penalties assessed by the Commission pursuant to section 13 of the 1984 Act. Under this program, approximately 2,100 bonds and 1 insurance policy are currently on file.

3. Domestic Commerce

(a) Domestic Tariffs

Common carriers operating in the U.S. domestic offshore commerce are required pursuant to section 18(a) of the 1916 Act (46 U.S.C. app. 817) and section 2 of the 1933 Act (46 U.S.C. app. 844) to file tariffs of rates, charges and rules with the Commission. The Bureau must ensure that these tariffs comply with applicable statutory requirements. The Commission's regulations also require the filing of annual

reports of financial and operating data by vessel-operating common carriers in the domestic offshore trades.

During fiscal year 1994, carriers operating in the U.S. domestic offshore trades, like carriers operating in the foreign trades, were required to file their tariffs into ATFI. The Commission received 90 new tariffs in ATFI during the fiscal year. The Bureau also received and processed seven special permission applications to deviate from the domestic tariff filing rules.

(b) Financial Analysis

In compliance with 46 CFR Part 552, vessel-operating common carriers in the domestic offshore trades are required to file annual reports of financial and operating data with the Commission. The Bureau provides accounting and financial expertise to help ensure the reasonableness of rates for the transportation of cargo and other services provided by common carriers in the domestic offshore waterborne commerce of the U.S. During the year, the Bureau reviewed tradewide increases in rates for the transportation of cargo between the U.S. Pacific Coast and Hawaii.

4. Marine Terminal Activities

Marine terminals, operated by both public and private entities, provide facilities, services, and labor for the interchange of cargo and passengers between land and ocean carriers, and for the receipt and delivery of cargo from shippers and consignees. The Commission is responsible for the review of tariffs related to the marine terminal industry.

The Bureau carried out its responsibilities with respect to marine terminal tariffs by reviewing all of the 144 marine terminal tariffs that were filed into the ATFI system during the

fiscal year. By the end of the fiscal year, most terminal operators were in full compliance with ATFI's filing requirements. Those operators which are not in compliance are being made respondents in a show cause proceeding.

5. Freight Forwarders

The ocean freight forwarding industry is comprised of persons who, in effect, hold themselves out to shippers as export departments for hire. Ocean freight forwarders operate in the foreign commerce of the U.S. by arranging for the ocean transportation of cargo by common carriers, and by handling the paperwork, legal requirements, safety requirements and other incidentals related to the shipment of cargo. Ocean freight forwarders receive a fee from the exporter for handling an export shipment as well as compensation from the ocean carrier whose vessel is selected to carry the cargo.

During fiscal year 1994, 360 new and amending license applications were received for processing. The Commission approved 178 applications. One hundred and thirty-six other applications were returned because of various deficiencies, 12 requests for a license were withdrawn by the applicants, and 1 request was denied. Fifty applications were on hand at the end of the fiscal year. One hundred and twelve licenses were issued, while 91 licensees had their licenses revoked, mostly due to their failure to maintain a valid surety bond on file with the Commission. At the end of the fiscal year, 1,781 licensed forwarders were operating under the Commission's jurisdiction.

On-site compliance investigations are conducted as part of the Commission's effort to ensure that licensed ocean freight forwarders comply with the provisions of the shipping statutes and the Commission's regulations. During the year, 159 investigative reports were received by the Bureau. Several of these reports resulted in the issuance of warning letters to

licensees; other reports concerned more serious matters and were referred to the Bureau of Hearing Counsel for the assessment of appropriate civil penalties. Nine reports were pending review at the year's end.

6. Passenger Vessel Certification

The Commission administers sections 2 and 3 of Pub. L. No. 89-777 (46 U.S.C. 817d and 817e), which are implemented by the Commission's regulations in 46 CFR 540 -- *Security for the Protection of the Public*. Pub. L. No. 89-777 requires evidence of financial responsibility to indemnify passengers and other persons for death, injury or nonperformance of transportation for vessels which have berth or stateroom accommodations for 50 or more passengers and embark passengers at U.S. ports.

Upon the submission of satisfactory evidence of financial responsibility in accordance with Subpart A of 46 CFR 540, the Commission issues a *Certificate of Financial Responsibility for Indemnification of Passengers for Nonperformance of Transportation.* Upon the submission of similar evidence in accordance with Subpart B of 46 CFR 540, the Commission issues a *Certificate of Financial Responsibility to Meet Liability Incurred for Death or Injury to Passengers or Other Persons on Voyages*. The program now encompasses about 135 vessels and 42 operators, which have evidence of financial responsibility coverage in excess of $330 million for nonperformance and over $1 billion for casualty. The certificates issued pursuant to this program are necessary for the U.S. Customs clearance of thousands of passenger vessel sailings annually.

During fiscal year 1994, the Commission received 64 applications for passenger vessel certificates. During fiscal year 1994, 31 casualty certificates and 29 performance certificates were approved and issued to passenger vessel applicants.

The Bureau prepared a Proposed Rule in Docket No. 94-06, *Financial Responsibility Requirements for Nonperformance of Transportation*, which addresses the Commission's responsibilities under section 3, Pub. L. No. 89-777, 46 U.S.C. app. 817e. This proceeding was instituted to provide for a greater degree of financial responsibility coverage for the approximately $700 million of the traveling public's deposits and prepaid fares which are not now covered. To this end, the proposed rule in this proceeding would remove the $15 million unearned passenger revenue nonperformance coverage ceiling applicable to vessel operators under 46 CFR 540.9(j), and instead provide for a sliding scale of increased coverage. This rulemaking would also remove self-insurance as an option for evidencing financial responsibility for nonperformance, except for states or federal entities.

7. Automated Database Systems

The Bureau maintains several automated database systems other than its ATFI system. These are the: (1) Service Contract System; (2) Regulated Persons Index; (3) Microfiche System; and (4) Ocean Freight Forwarder System. The Service Contract System contains certain key service contract data, such as geographics and shipper names, which are kept confidential. The Regulated Persons Index assigns a discrete number to each person the Commission regulates and contains the address, telephone number and trade name of the person. The Microfiche System provides a means of locating canceled tariffs which have been microfiched. The Ocean Freight Forwarder System contains certain information concerning licensees, including surety bond information.

8. ATFI

The Bureau has nearly achieved total compliance with respect to the industry's use of the ATFI system. ATFI, a

computer-based system designed to increase efficiency, reduce processing time, and enhance service, provides for electronic filing, processing and retrieval of foreign and domestic carrier tariffs, marine terminal tariffs, service contract essential terms, and amendments thereto. The ATFI system is comprised of eight components, which can be viewed independently of each other, providing carriers and conferences with greater flexibility in establishing price and service offerings and in filing tariffs containing those offerings with the Commission. The Commission launched the ATFI system on February 22, 1993, with conversion tests conducted using various carriers to permit systems modifications to ensure the quality of processes prior to full-scale implementation. Bureau personnel have been thoroughly trained in all aspects of systems operations, resulting in faster turnover time for reviewing tariff data.

Through the use of the ATFI system, the Bureau has essentially achieved a "paperless tariff environment." To achieve this objective, the Bureau established an aggressive timeline for conversion based on trade areas and operations, with complete conversion to the electronic filing system by December 31, 1993. The schedule provided a specified time frame ("window") for each trade area/operation to file in electronic format. A number of carriers/conferences found that they could not convert and file their paper tariff(s) or service contract essential terms by the close of their assigned window. These carriers/conferences filed petitions with the Commission for temporary exemption from the electronic tariff-filing requirements and requested permission to file in paper during the period of extension. During fiscal year 1994, the Commission received 36 petitions representing 219 carriers/conferences. The Commission granted 32 petitions and denied 3 petitions. One petition was withdrawn. The petitions that were granted allowed carriers/conferences to extend the filing deadline to no later than December 31, 1993. All petitions filed after this date were denied.

A number of carriers that failed to register and file their tariff(s) in electronic format by the close of their assigned window also failed to file a petition for temporary exemption with the Commission. Consequently, beginning in fiscal year 1993, the Commission initiated a series of proceedings which ordered these carriers to show cause why the Commission should not cancel their paper tariffs for failure to convert them to ATFI format. The Commission issued its first order, in Docket No. 93-19, *Cancellation of Tariffs for Failure to Comply with Automated Tariff Filing and Information System ("ATFI") Filing Requirements,* on September 28, 1993, to 103 carriers in the Worldwide, Asian and South Pacific trade areas. Sixty-seven carriers failed to respond to the order or file a tariff in ATFI. Their paper tariffs, therefore, were canceled by order issued on January 4, 1994.

During fiscal year 1994, two additional orders were initiated. Docket No. 93-25, *Cancellation of Tariffs for Failure to Comply with Automated Tariff Filing and Information System (ATFI) Filing Requirements (European Trade)*, was served on December 23, 1993, to 35 carriers with paper tariffs on file in the European trade area. The tariffs of 19 of these carriers were canceled by order served on May 11, 1994. Docket No. 94-04, *Cancellation of Tariffs for Failure to Comply with Automated Tariff Filing and Information System ("ATFI") Filing Requirements*, was issued on March 1, 1994, to 228 carriers with paper tariffs on file in the Worldwide, Asian and South Pacific trade areas. The tariffs of 37 of these carriers were canceled by order issued on July 29, 1994. A third and final order, was prepared at the end of fiscal year 1994 to be issued early in fiscal year 1995. The Commission anticipates canceling all remaining paper tariffs with this final order. Thereafter, the only remaining non-electronic rate information will be remnants of service contract essential term filings, which the Commission will end in early fiscal year 1995.

During fiscal year 1994, the following tariff-related database components were filed in the ATFI system:

Organization Record	4,135
Tariff Record	5,000
Location Groups	120,055
Inland Rate Tables	9,240
Rules	215,489
Commodity Descriptions	502,077
Tariff Line Items	3,980,420
Essential Terms Documents	10,402

9. Support Activities

The Bureau acts as one of the primary information and data sources for other Commission activities and programs.

Investigative activities require substantial tariff research and supporting documentation which is provided by Bureau staff. Automated databases, such as the Regulated Persons Index and the Service Contract System, are utilized for initial data identification purposes. The hard copy of relevant material is retrieved and provided to the Bureau of Investigations and/or the appropriate district office.

The Commission's district offices are also provided with general data lists of regulated persons situated in specific district office jurisdictions. Information on the more than 1,700 licensed ocean freight forwarders and approximately 40 passenger vessel owner/operators is also provided to the district offices. This data assists not only with investigative efforts, but serves public needs for information concerning Commission-regulated entities.

10. Rulemaking and Docketed Proceedings

The Bureau initiates or supports formal rulemakings and Commission docketed proceedings. During fiscal year 1994, the Bureau participated in, developed, or completed the following matters:

Cancellation of Tariffs for Failure to Comply with Automated Tariff Filing and Information System ("ATFI") Filing Requirements **[Docket No. 93-19].**

The Commission issued an order requiring carriers in the Worldwide, Asian and South Pacific trade areas to show cause why their paper tariffs should not be canceled for failure to register and file a tariff in ATFI by the required date. The Commission canceled the paper tariffs of carriers that failed to respond to the show cause order and/or file a tariff in ATFI.

Cancellation of Tariffs for Failure to Comply with Automated Tariff Filing and Information System ("ATFI") Filing Requirements (European Trade) **[Docket No. 93-25].**

The Commission issued an order requiring carriers in the European trade areas to show cause why their paper tariffs should not be canceled for failure to register and file a tariff in ATFI by the required date. The Commission canceled the paper tariffs of carriers that failed to respond to the show cause order and/or file a tariff in ATFI.

Cancellation of Tariffs for Failure to Comply with Automated Tariff Filing and Information System ("ATFI") Filing Requirements **[Docket No. 94-04].**

The Commission issued an order requiring carriers in the Worldwide, Asian and South Pacific trade areas to show cause why their paper tariffs should not be canceled for failure to register and file a tariff in ATFI by the required date. The Commission canceled the paper tariffs of carriers that failed to respond to the show cause order and/or file a tariff in ATFI.

Financial Responsibility Requirements for Nonperformance of Transportation - Proposed Rule **[Docket No. 94-06].**

The Commission issued a Notice of Proposed Rulemaking ("NPR")(59 Fed. Reg. 15,149) to amend the Commission's passenger vessel operator financial responsibility requirements under section 3, Pub. L. No. 89-777, 46 U.S.C. app. 817e. The NPR was instituted to provide for a greater degree of financial responsibility coverage for the approximately $700 million of the traveling public's deposits and prepaid fares which are not now covered. To this end, the proposed rule in this proceeding would remove the $15 million unearned passenger revenue nonperformance coverage ceiling applicable to vessel operators under 46 CFR 540.9(j), and instead provide for a sliding scale of increased coverage. This rulemaking would also remove self-insurance as an option for evidencing financial responsibility for nonperformance, except for states or federal entities.

***Financial Reporting Requirements and Rate of Return Methodology in the Domestic Offshore Trades - Proposed Rule* [Docket No. 94-07].**

The Commission issued an NPR (59 Fed. Reg. 16,592) to amend the Commission's financial reporting requirements and rate-of-return methodology regulations in the domestic offshore trades.

***Service Contract Negotiations with Shippers' Associations and Non-Vessel Operating Common Carriers,* Fact Finding Investigation No. 20 ("FF-20").**

This nonadjudicatory investigation was instituted to develop a factual record on the service contract negotiation process, including the practical experiences of shippers' associations and NVOCCs in seeking to negotiate and execute service contracts. The Bureau prepared an analysis for the Commission of the Report of the Investigative Officer in FF-20.

***Service Contract Negotiations,* Section 15 Order.**

The Commission issued this Section 15 order to implement certain of the Investigative Officer's recommendations in FF-20 with regard to developing additional information concerning the service contract negotiating process. The Bureau subsequently analyzed two series of carrier and conference reports pursuant to that Section 15 Order.

***Activities of the Trans-Atlantic Agreement and its Members,* Fact Finding Investigation No. 21.**

The Bureau provided extensive technical support to the staff working group involved with this nonadjudicatory investigation into whether a conference of ocean common carriers and/or individual ocean common carriers in the North Atlantic trade are engaging in activities violative of the 1984 Act.

I. BUREAU OF HEARING COUNSEL

The Bureau of Hearing Counsel participates as trial counsel in formal adjudicatory (docketed) proceedings, non-adjudicatory investigations, rulemaking proceedings when designated by Commission order, and other proceedings initiated by the Commission. Bureau attorneys serve as trial attorneys, where intervention is permitted and appropriate, in formal complaint proceedings instituted under section 22 of the 1916 Act (46 U.S.C. app. 821), section 11 of the 1984 Act (46 U.S.C. app. 1710), and in investigations instituted under the FSPA (46 U.S.C. app. 1701). Bureau attorneys also may be designated Investigative Officers in non-adjudicatory formal proceedings. The Bureau monitors all other formal proceedings in order to identify major regulatory issues and to advise the Managing Director and the other Commission Bureaus. The Bureau also participates in the development of Commission rules and regulations. On occasion, the Bureau may participate in court litigation by or against the Commission.

The Bureau also furnishes legal advice to the Managing Director and other Bureaus. Bureau attorneys work closely with the Bureau of Investigations during field investigations and review enforcement reports completed by that Bureau. The Bureau prepares and serves notices of violations of the shipping statutes and Commission regulations and may compromise and settle civil penalty allegations arising out of those violations. If settlement is not reached, the Bureau acts as prosecutor in formal Commission proceedings that may result in settlement or in the assessment of civil penalties. The Bureau also participates, in conjunction with other bureaus, in special enforcement initiatives.

The Commission continued its efforts to confront and terminate malpractices in major trades. Having concluded highly successful programs in the transatlantic and transpacific trades, the Commission on August 8, 1994, instituted Fact Finding Investigation No. 22, *Possible Rate Malpractices in Specified United States-Foreign Trades*. The fact finding was initiated to investigate possible rate malpractices in the trades between the U.S. and Europe, the Far East, South America, Central America, and the Caribbean. Only preliminary results are available at this time.

On July 27, 1994, the Commission launched a comprehensive inquiry into the competitive power of a conference and the impact of that power upon shippers. This unprecedented initiative began as a fact finding investigation into the activities of the Trans-Atlantic Agreement ("TAA") and its member lines. Activities to be addressed included: possible restrictions on the statutory right of TAA members to take independent action on rates; the use of connecting carrier agreements; operating under unfiled agreements or in a manner not in accordance with filed agreements; unjustly discriminatory acts against shippers; and use of untariffed and discriminatory inland container pools. Attorneys from the Bureau of Hearing Counsel were designated as Investigative Officers. The investigation was launched in response to reports of alleged unlawful activity by TAA from several sources, including the Commission's own monitoring initiatives and inquiries, and petitions filed by the National Industrial Transportation League and by Container Freight International and Danish Consolidation Services. The investigative officers were directed to advise the Commission if it appears that more immediate action, particularly injunctive action, is necessary.

At the beginning of fiscal year 1994, 14 enforcement cases were pending final resolution by the Bureau. During the fiscal year, 31 new enforcement actions were commenced. Twenty-

four cases were compromised and settled, administratively closed, or referred for formal proceedings. Twenty-one enforcement cases were pending resolution on September 30, 1994.

At the start of fiscal year 1994, the Bureau was party to 7 formal proceedings. During the fiscal year, the Bureau participated in 9 new formal proceedings. Five proceedings in which the Bureau participated were completed. Accordingly, 11 formal proceedings were pending at the end of the fiscal year. At the beginning of fiscal year 1994, there were 49 requests for legal advice pending in the Bureau. Sixty-six requests for legal advice were received during the fiscal year, and 75 legal advice projects were completed. Accordingly, 40 legal advice matters were pending in the Bureau on September 30, 1994.

As a result of enforcement activity, the Commission collected $870,464 in civil penalties in fiscal year 1994. Settlements were reached with many different segments of the industry (e.g., carriers, shippers, forwarders) operating in the U.S. foreign trades.

In fiscal years 1995 and 1996, the Bureau will participate in a much enhanced caseload of formal proceedings and fact finding investigations. The Bureau will continue to plan enforcement programs with other Bureaus. Where violations of the 1984 Act are developed, the Bureau will pursue violations and negotiate settlements of these cases. The Bureau will also provide legal advice to the Managing Director and other Bureaus. The Bureau will continue its practice to implement policy decisions through formal proceedings in order to resolve regulatory and enforcement problems and to intervene in formal complaint cases with significant regulatory and jurisdictional issues.

J. BUREAU OF INVESTIGATIONS

The Bureau of Investigations monitors the activities of, and conducts investigations of alleged violations by, ocean common carriers, NVOCCs, freight forwarders, shippers, ports and terminals, and other persons to ensure compliance with the statutes and regulations administered by the Commission.

The Bureau maintains a headquarters office in Washington, D.C., and district offices in the major port cities of New York; Miami; Hato Rey, Puerto Rico; New Orleans; Houston; Los Angeles; and San Francisco. In addition to investigative functions, each district office represents the Commission within its jurisdiction, provides liaison between the Commission and the maritime industry and the shipping public, collects and analyzes intelligence of regulatory significance, and assesses industry-wide conditions for the Commission.

The Bureau investigates significant competitive practices pursuant to major Commission-approved malpractice programs. In addition, the Bureau investigates a full range of violations on a local level. These activities may also be carried out in conjunction with fact finding, formal, or court proceedings.

The following practices are subject to ongoing investigations conducted by the Bureau:

- **Illegal rebating by carriers and receipt of illegal rebates by shippers, NVOCCs, and shippers' associations.**

- **Misdescriptions and misdeclarations of cargo or other malpractices of carriers, shippers, consignees, and other persons.**

- **Activities of ocean common carriers who are parties to agreements whenever it appears that such agreements and modifications have been implemented prior to filing with the Commission or are being carried out in violation of the shipping acts.**

- **Failure by common carriers to file appropriate tariffs covering their rates and charges or to charge rates that are in effect and on file with the Commission.**

- **Operating as an ocean freight forwarder without a license issued by the Commission or contrary to statute or regulation.**

The Bureau's audit and compliance activities include:

- **Audits of service contracts to determine compliance with statute and regulation.**

- **Audits of NVOCCs.**

- **Post-licensing and routine compliance checks of licensed freight forwarders to determine whether their operations conform with regulatory requirements.**

- **Audits of passenger vessel operators to ensure the financial protection of cruise passengers.**

Bureau liaison activities involve cooperation and coordination with other Government agencies, providing regulatory information and relaying Commission policy to the shipping industry and the public, and handling informal complaints within a district.

The Bureau assists the Bureau of Hearing Counsel in formal proceedings before the Commission, conducts studies and surveys for use in program development and program revision, reports trade information, and recommends remedial action.

During fiscal year 1994, the Bureau continued to investigate malpractices in the South American trade. This initiative involved all seven district offices in a comprehensive review of shipments in both the northbound and southbound trades to and from all major points in South America. The Bureau also continued to investigate malpractices in the other key trade routes, including the transatlantic, transpacific, Mediterranean, Central American and Caribbean trades. The Bureau continued to conduct a limited number of targeted investigations in the transpacific trades while assessing the efforts of the major carriers to forge a tradewide self-policing mechanism. In addition, the Bureau continues to monitor and investigate conditions in the North Atlantic trades as part of the Transatlantic Enforcement Initiative that began in 1987.

The Bureau conducted 118 investigations and special inquiries, and 278 compliance checks and audits which include service contract audits and audits of NVOCCs. Appendix F summarizes the Bureau of Investigations' activities. A total of 26 investigations were referred for enforcement action. (*See* Section III, *Surveillance and Enforcement.*)

During fiscal year 1994, the Bureau also began a comprehensive program of tariff integrity enforcement to ensure compliance with the tariff filing and adherence requirements of the 1984 Act. This program has been designed to include not only the tariff filing and adherence practices of common carriers, particularly NVOCCs, but improper shipper practices, such as misdescription of commodity and misdeclaration of measurement, as well as those that undermine tariff integrity.

This program became critical as common carriers converted from paper to electronic tariff filing. The Bureau will closely scrutinize ATFI tariffs to ensure that common carriers file all their commodity rates as required.

The Commission has had to deal with increasingly sophisticated and deceptive malpractices such as the filing of allegedly fraudulent Connecting Carrier Agreements in several major trades, including the transatlantic and transpacific. This malpractice, widespread on certain trade routes, involves major steamship lines entering into Connecting Carrier Agreements with NVOCCs that pose as vessel-operating common carriers in order to receive less-than-tariffed ocean freight rates. Through the Bureau's efforts, a major steamship conference in the transpacific has pledged to eliminate fraudulent Connecting Carrier Agreements with its member lines. The Bureau will continue to monitor closely developments in the trade involving this serious malpractice.

Coordination between the Commission's district offices and the U.S. Customs' regional offices was enhanced in fiscal year 1994, as a part of the amended Memorandum of Understanding between the agencies to provide for the exchange of investigative information. During fiscal year 1994, there was a significant increase in the level of information retrieval activities from Customs' Automated Commercial System ("ACS") database. This activity was facilitated by the installation of new ACS software in headquarters.

The Bureau of Investigations has been negotiating with Customs to obtain on-line access to the Automated Broker Interface ("ABI") module in the ACS. Access to the ABI will provide investigators with critical information not currently available without great difficulty. This information will fill a gap in the investigator's ability to move quickly and accurately through very extensive ocean shipping transactions. When

malpractices in ocean shipping transactions are uncovered by investigative personnel from either agency, this information is routinely exchanged with the other agency providing there is a use for the information. The exchange of investigative information should continue to increase in fiscal years 1995 and 1996. These efforts will be further enhanced in the future as both agencies advance in automation and promote the electronic filing of regulatory information.

During fiscal year 1994, the Bureau continued to provide its staff with training in the use of the Commission's ATFI system. Additional training in ATFI filing and examination was provided at headquarters to Bureau personnel from the district offices as well as headquarters. The ATFI system permits the examination of significant numbers of ocean shipping transactions in substantially less time. Bureau personnel also continued to receive refresher training from Customs in the use of the ACS to obtain on-line vessel manifest information. These tools permit Bureau investigative staff to review and analyze large numbers of ocean shipping transactions for violations of statute or agency regulations, and to look for trends and significant shifts in cargo movements or changes in cargo carriage in the inbound U.S. trades.

Bureau resources in fiscal years 1995 and 1996 will continue to be directed toward malpractice programs in the major trade routes and the development of new efforts to deter unlawful shipping practices. The Bureau also will continue its numerous activities involving service contract audits, passenger vessel audits, freight forwarder compliance checks, NVOCC tariff audits and bonding compliance, and the collection and analysis of intelligence on industry practices.

The Bureau's enhanced capability in the collection and analysis of intelligence provides the foundation for more efficient programs to uncover and deter increasingly

sophisticated and disguised malpractices. The Bureau will continue to seek to enhance its level of investigative capability in the increasingly automated environment of the shipping industry by the use of automated systems in the conduct of investigations.

K. BUREAU OF ADMINISTRATION

Office of the Director

The Bureau of Administration ("BOA") provides administrative support to the program operations of the Commission. The Bureau interprets governmental policies and programs and administers these in a manner consistent with Federal guidelines, including those involving information management, procurement, financial management, and personnel. The Bureau initiates recommendations, collaborating with other elements of the Commission as warranted, for long-range plans, new or revised policies and standards, and rules and regulations, with respect to its program activities. The Director, BOA, is responsible for the direct administration and coordination of the:

- **Office of Administrative Services.**
- **Office of Budget and Financial Management.**
- **Office of Information Resources Management.**
- **Office of Personnel.**

Many of the functions and achievements of BOA are reflected in the narratives for these Offices, below.

The Director is the Contracting Officer for the Commission's ATFI system, as well as the Commission's representative to the Small Agency Council ("SAC"). The FMC training and development function is also administered within the Office. The Training Officer provides employee development assistance and career counseling throughout the agency, provides technical assistance to the Executive Resources Board, and coordinates the activities of the Senior Executive Service ("SES") Candidate Development Program. The Training Officer also serves as a member of the SAC Training Committee. During the past year, the agency utilized a number

of cost-free training opportunities available through the SAC and the Department of Justice. In addition, in a cooperative arrangement with the National Park Service ("NPS"), various training courses were made available to FMC employees at the headquarters site. The Office of the Director is responsible for directing and administering the Commission's Information Security Program, which includes an active oversight and security education program to ensure effective implementation of Executive Order 12356. BOA activities in connection with the National Performance Review are coordinated within the Office of the Director.

1. Office of Administrative Services

(a) General Office Responsibilities

The Office of Administrative Services directs and administers a variety of management services functions that principally provide administrative support to the regulatory program operations of the Commission. The Director of the Office is the Commission's Contracting Officer.

The Office's support programs include communications, telecommunications, procurement of administrative goods and services, property management, space management, printing and copying management, mail and records services, forms and graphic designs, facilities and equipment maintenance, and transportation. The Office's major functions are to secure and furnish all necessary supplies, equipment and services required in support of the Commission's mission and to formulate regulations, policies, procedures, and methods governing the use and provision of these support services in compliance with the Federal Acquisition Regulations, the Federal Property Management Regulations, the Federal Information Resources Management Regulation, and other appropriate Federal guidelines.

(b) Objectives

The objectives of the Office are to:

- **Develop, execute and administer Commission procurement actions and contracts that obligate the Government to an expenditure of funds.**

- **Control and administer the Commission's utilization, maintenance, inventory, and disposition of property.**

- **Develop and coordinate a comprehensive voice telecommunications program for all Commission locations, to include installation and maintenance of telecommunications equipment and features.**

- **Plan and administer programs for improvement of the workplace environment and other space utilization operations for all Commission locations, including the assignment of office space and provision of office furnishings.**

- **Manage the receipt, storage, issuance and inventory of all supplies, forms and accessories required in support of Commission operations.**

- **Coordinate and fulfill all printing, duplication, copying and graphic service requirements.**

- **Regulate the receipt, distribution and dispatching of mail.**

- **Coordinate the use of the building's physical facilities with respect to maintenance, security and parking.**

- **Arrange transportation services for all Commission locations.**

- **Conduct safety inspections and coordinate the Commission's emergency planning and evacuation plan.**

- **Manage the transfer and disposal of Commission records.**

- **Direct the Commission's participation, development and goal setting efforts under the Small Business Act.**

(c) **Achievements**

During fiscal year 1994, the Office:

- **Completed a multi-award contract for the library's requirements for subscription services.**

- **Conducted a cost-benefit analysis and acquired a new automated procurement system for the FMC.**

- **Arranged the renovation of the New York District Office for better space utilization and to reduce the annual rent cost to the FMC.**

- **Negotiated with the NPS Employee Development Office and arranged for joint training of agency employees at significant cost savings to FMC.**

- **Developed and issued a Standard Operating Procedure ("SOP") on the use of GSA or commercially leased vehicles for staff use.**

- **Arranged for the installation of new, upgraded low-volume copiers in each of the district office locations.**

- **Completed the fiscal year 1994 PIERS contract.**

- **Coordinated with the NPS in regards to physical security and shared in the enhancement of security measures at FMC headquarters.**

- **Established a Memorandum of Understanding between FMC and the U. S. Department of Agriculture's Cooperative Administrative Support Program for the disposal of excess property.**

- **Provided expert contracting support to the ATFI Contracting Officer.**

(d) Future Plans

In fiscal year 1995, the Office's objectives include the following: (1) automation of the Commission's property program; (2) complete the coordination of space requirements with GSA to relocate the Los Angeles, San Francisco, and Houston District Offices; (3) revise and update the procurement SOP and Commission order; and (4) expand the automated procurement system to include more users throughout the Commission.

2. Office of Budget and Financial Management

(a) General Office Responsibilities

The Office of Budget and Financial Management administers the Commission's financial management program, including fiscal accounting activities, fee and forfeiture

collections, and payments; ensures that Commission obligations and expenditures of appropriated funds are proper; develops annual budget justifications for submission to the Congress and OMB; develops and administers internal controls systems that provide accountability for agency funds; administers the Commission's travel and cash management programs, as well as the Commission's Imprest Funds; ensures accountability for official passports; and assists in the development of proper levels of user fees. The Director of the Office is the Commission's Chief Financial Officer.

(b) Objectives

The objectives of the Office are to:

- **Submit annual budget justifications and estimates to OMB and the Congress.**
- **Execute the budget to ensure appropriated funds are properly expended.**
- **Prepare regular financial reports to aid management decisions.**
- **Administer the control system over workyears of employment.**
- **Collect all fees and forfeitures due the Commission.**
- **Process payments to vendors efficiently and in accordance with the Prompt Payment Act.**
- **Process travel orders and vouchers within established time limits, and in accordance with Federal Travel Regulations.**

- **Administer the Commission's Imprest Fund program and manage the Commission's cash management program.**

- **Ensure resources are used properly to avoid fraud, waste, error, and abuse.**

- **Continually review financial management internal controls and accounting procedures to ensure that they conform to existing regulations, and develop procedures to correct deficiencies.**

(c) **Achievements**

During fiscal year 1994, the Office:

- **Collected and deposited $1,396,000 from user fees, fines and penalty collections, and ocean freight forwarder application and passenger vessel certification fees. Of this amount, $162,000 is related to ATFI user fees and $207,000 to ATFI fees collected under section 502 of Pub. L. No. 102-582 ("Davis Law").**

- **Coordinated and prepared budget justifications and estimates for the fiscal year 1995 Congressional budget and the fiscal year 1996 budget to OMB.**

- **Participated in OMB and Congressional budget hearings.**

- **Worked with GSA Transportation Management division (FBX) on the conversion of the Diners Club Credit Card System to the American Express Government Credit Card Program.**

- **Prepared a variety of external reports such as: the Civil Monetary Penalty Report (Treasury); the report on obligations for Major Information Technology Systems (OMB); the Annual Leave Year Report (Office of Personnel Management - "OPM"); the Annual Report on Occupational Safety and Health Program (Department of Labor); the Report on Financial Management Improvements (Joint Financial Management Improvement Program); the Annual Prompt Payment Report (OMB); the Report on Workyears and Personnel Costs (OPM); and the Report on Cash Management Initiatives (Treasury).**

- **Provided management with monthly status reports on workyears, funding, travel and receivables.**

- **Managed the Commission's travel and cash management programs.**

- **Prepared the Current Asset Management Annual certification (FY 1995 Cash Flow) (Treasury).**

- **Prepared fiscal year 1995 policy baseline estimates for OMB.**

- **Assisted with the update of user fees for the Commission.**

- **Developed Voluntary Separation Incentive Payments and Voluntary Early Retirement Proposals.**

- **Prepared an FTE plan for fiscal year 1994 in response to OMB Bulletin No. 94-04.**

(d) Future Plans

During fiscal years 1995 and 1996, the Office will: (1) pursue initiatives leading to economy and efficiency in budget and financial operations; (2) improve processing of payments; (3) prepare OMB and Congressional budget submissions; (4) in conjunction with the Office of Administrative Services, develop and implement electronic commerce to automate the processing of purchase orders; (5) implement the use of travel credit cards for ATM machines; (6) develop a tracking system on promotions, travel and training to provide information to managers on the year-to-date expenditures for their respective bureaus and offices; and (7) begin testing, on a pilot basis, its off-the-shelf travel management software. The travel management software will be integrated with the administrative accounting system to provide fund control, accounting updates, and electronic processing of travel.

3. Office of Information Resources Management

(a) General Office Responsibilities

The major function of the Office of Information Resources Management ("IRM") is to administer the information resources management program under the Paperwork Reduction Act of 1980, as amended, as well as other applicable laws which prescribe responsibility for operation of the Commission's IRM program. Other functions include: management studies and surveys; data telecommunications/database management and application development; records management; IRM contract administration; and development of Paperwork Reduction Act clearances for submission to OMB. The Office is also responsible for the computer security and records and forms management programs. The Director of the Office serves as

Contracting Officer's Technical Representative on the ATFI Project, Senior IRM Manager, Forms Control Officer, Computer Security Officer, Records Management Officer, and ADP Coordinator for the ADP Committee.

(b) Achievements

During fiscal year 1994, the Office:

- **On ATFI, coordinated technical, logistical, procedural and security issues related to the Commission's worldwide ATFI system and other database systems. Served as the agency's liaison with the ATFI contractor to ensure that the system remained in a viable operating state that was most useful to the Commission and the industry which the system serves. This included coordinating programs for the FMC's backup system. Provided ongoing ATFI training for FMC employees; coordinated and participated in ATFI demonstrations to various other Federal agencies and maritime industry groups; and reviewed industry accounting procedures to ensure compliance with the Davis Law. Granted ATFI access capability to 1,079 new organizations, bringing the total number of organizations accessing ATFI to 3,295.**

- **Engaged in various activities to further expand and enhance the Commission's use of information technology. For example, upgraded the Commission's Local Area Network ("LAN") to improve its interconnectivity with the remotely located ATFI host computer; implemented CD-ROM technology and desktop publishing in the LAN environment; completed plans to install LAN**

technologies in the FMC district offices to establish a Wide Area Network within the FMC; and implemented interagency E-mail in accordance with the National Performance Review initiative. Additionally, the Office initiated optical imaging technology in a LAN environment to improve the Commission's access to and retrieval of information currently stored on paper, and continued efforts to implement a Windows environment within the Commission.

- Furnished advice and coordination on records and information management issues to agency components. Also provided OMB clearance support and guidance for the FMC to assure that the Commission's information collection requirements fully comply with the requirements of the Paperwork Reduction Act of 1980, as amended. Served as liaison with external organizations, including OMB, National Archives and Records Administration, GSA, and Washington National Records Center.

- Provided extensive, Commission-wide, in-house training in the following areas: PC-based application software; office LAN administration; records management; OMB clearances; Internet and Interagency E-mail; and forms management.

- Served as members on several Government-wide working groups.

- Furnished ongoing technical support and assistance to Commission components.

(c) Future Plans

In addition to implementing ongoing Office programs and providing extensive technical support for the ATFI program mentioned above, major initiatives for fiscal years 1995 and 1996 include: (1) developing electronic records management and inter- and intra-agency E-mail standards; (2) assessing Internet capability; (3) developing Commission-wide LAN-based multi-user database systems to decrease duplication of information and to provide agency-wide access to all Commission databases; (4) converting FMC-specific ATFI transaction sets to UN/Edifact standards; (5) providing technical expertise for the recompetition of the ATFI contract; (6) designing an improved ATFI system to take advantage of emerging hardware and software technologies and to incorporate lessons learned since ATFI implementation; (7) completing installation of district office LANs to finalize the FMC Wide Area Network; (8) exploring use of teleconferencing to decrease costs associated with district office staff traveling to headquarters for meetings and training; and (9) implementing a computer security program.

4. Office of Personnel

(a) General Office Responsibilities

The Office of Personnel plans and administers a complete personnel management program including: recruitment and placement, position classification and pay administration, occupational safety and health, employee counseling services, employee relations, workforce discipline, performance appraisal, incentive awards, retirement, and personnel security.

(b) Achievements

During fiscal year 1994, the Office:

- **Implemented a compressed workweek program throughout the Commission.**

- **Implemented several new programs required by statute such as the Earned Income Tax Credit and Advanced Earned Income Tax Credit, court-ordered garnishment of an employee's pay to satisfy commercial indebtedness, and optional withholding of contributions to political action committees.**

- **Worked with the Commission's Executive Resources Board to prepare the fiscal year 1995 and fiscal years 1996/1997 SES position allocation request to OPM and conducted the SES recertification program.**

- **Played a major role in finalizing the Commission's streamlining plan to implement many National Performance Review recommendations.**

- **Provided mandatory HIV/AIDS education and training to all employees nationwide and revised and reissued the Commission's HIV/AIDS policy.**

- **Made significant progress in reviewing, revising and reducing the number of internal personnel regulations, and delegating authority to supervisors and managers.**

- **Revised and reissued the Commission's performance and incentive awards policy and established two new**

categories of awards called on-the-spot cash and time off with pay.

- Revised and reissued the Commission's emergency dismissal policy.

- Maintained the Commission's high standing among all agencies in percentage of employees with targeted disabilities, and offered special salary rates to clerical employees in Washington, D.C., New York, Florida, and California.

- Monitored employee counseling services contracts throughout the country, advised supervisors and employees of services provided by the contractors, and distributed a monthly counseling services newsletter to all employees.

- Conducted a Health Benefits Open Season and sponsored an annual Health Fair, two Thrift Savings Plan Open Seasons, and the Summer Youth Employment Program.

- Continued to advise supervisors concerning their responsibilities to correct conduct and performance problems, and worked closely with legal advisors to ensure that employees affected by adverse actions were accorded their rights.

- Continued to operate a successful annual leave transfer program.

- Completed work on all transition matters such as requests to OPM for Schedule C appointment authorities and advising new Commissioners and their staffs of their benefits.

- **Conducted a successful Combined Federal Campaign by raising $21,000.**

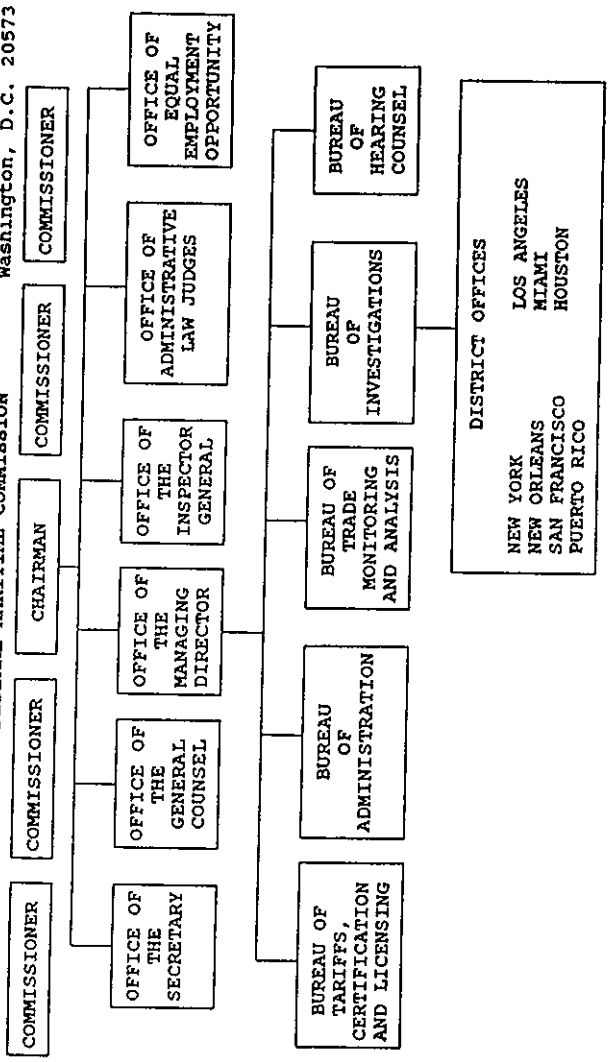
(c) Future Plans

During fiscal year 1995, the Office will continue to advise the Commission on all major personnel matters and ensure the maintenance of a sound and progressive personnel management program while fully implementing the provisions of the Commission's streamlining plan. The Office will continue its review of personnel policies as recommended by the National Performance Review with the goal of reducing its internal regulations in accordance with streamlining guidelines.

APPENDIXES

APPENDIX A

ORGANIZATION CHART



APPENDIX B

COMMISSION PROCEEDINGS
Fiscal Year 1994

Formal Proceedings

Decisions	15
Discontinuances & Dismissals	7
Initial Decisions Not Reviewed	5
Rulemakings - Final Rules	4
- Withdrawn	2
Total	33

Special Dockets	246
Informal Dockets	29

APPENDIX C

AGREEMENT FILINGS AND STATUS
Fiscal Year 1994

Carrier Agreements Filed in FY 1994 (including modifications)

Foreign and Domestic Commerce	168

Carrier Agreements Processing Categories in FY 1994

Forty-Five Day Review	70
Shortened Review	21
Exempt-Effective Upon Filing	99
Rejection of Filing	1
Formal Extension of Review Period	1
Approved Under Shipping Act, 1916	1
	193

Carrier Reports Submitted for Commission Review

Minutes of Meetings	1,214
Operating and Ad Hoc Reports	33
	1,247

Carrier Agreements on File as of September 30, 1994

Conference	47
Interconference	14
Pooling & Equal Access	21
Joint Service	41
Sailing & Charter	145
Cooperative Working, Agency, & Equipment Interchange	159
	427

Terminal Agreements (including amendments)

Received	149
On Hand 10/1/93	929
On Hand 10/1/94	1,006

APPENDIX D

TARIFF AND TERMINAL FILINGS AND STATUS
Fiscal Year 1994

Tariff Filings (Pages)

Foreign Filings	*193,600*
Domestic Filings	*2,300*
Terminal Filings	*740*
TOTAL	*196,640*

Electronic Tariffs in Effect *3,763*

Electronic Tariff Filings

Tariffs	*2,913*
Rules	*215,489*
Commodity Descriptions	*502,077*
Tariffs Line Items	*3,980,420*
Inland Tables	*9,240*
Tariff Records	*5,000*
Organization Records	*4,135*

Special Permission Applications

Total Received - Foreign *409*

Granted	*359*
Denied	*38*
Withdrawn	*12*

Total Received - Domestic *7*

Granted	*6*
Denied	*1*
Withdrawn	*0*

Domestic Investigation and Suspension Memoranda

Completed	*1*
Pending	*0*

Service Contracts Filed *6,943*

APPENDIX E

CIVIL PENALTIES COLLECTED
Fiscal Year 1994

Ariel Maritime Group, Inc.	$122,630.35
Banfi Products Corp.	**100,339.92**
Black Sea Shipping Co.	20,000.00
Bordelon Bros. Towing Co, Inc.	**25,000.00**
Coastal Transportation, Inc.	15,000.00
Direct Container Line, Inc.	**85,000.00**
Empresa Lineas Maritimas Arg	240,000.00
Laufer Group Int'l., Ltd.	**16,000.00**
Pao-Pao Plastics Corp.	40,264.00
Scan Shipping, Inc..	**25,000.00**
Shoe City, Inc..	1,229.61
C.A. Venezolana de Navegacion.	**140,000.00**
Vincent Shipping Ltd..	40,000.00
Total Civil Penalties Collected	**$870,463.88**

APPENDIX F

INVESTIGATIONS
Fiscal Year 1994

Investigations/Special Inquiries Opened:		*118*
Compliance Checks:	*205*	
Service Contract Audits:	*3*	
NVOCC Audits:	*70*	
Total Audits/Compliance Checks Opened:		*278*
Total Openings:		***396***
Investigations/Special Inquiries Completed:		*76*
Compliance Checks:	*180*	
Service Contract Audits:	*9*	
NVOCC Audits:	*58*	
Total Audits/Compliance Checks Completed:		*247*
Total Completions:		***323***
Reports Referred for Enforcement Action:		*26*

APPENDIX G

STATEMENT OF APPROPRIATIONS, OBLIGATIONS AND RECEIPTS FOR THE FISCAL YEAR ENDED SEPTEMBER 30, 1994

APPROPRIATIONS:

Public Law 103-121, approved October 27, 1993: For necessary expenses of the Federal Maritime Commission as authorized by section 201(d) of the Merchant Marine Act of 1936, as amended (46 App. U.S.C. 1111), including services as authorized by 5 U.S.C. 3109; hire of passenger motor vehicles authorized by 31 U.S.C. 1343 (b); and uniforms or allowances therefor, as authorized by 5 U.S.C. 5901-02; Provided, that not to exceed $2,000 shall be available for official reception and representation expenses.

$18,900,000

OBLIGATIONS AND UNOBLIGATED BALANCE:

Net obligations for salaries and expenses for the fiscal year ended September 30, 1994. **$18,899,867**

STATEMENT OF RECEIPTS: Deposited with the General Fund of the Treasury for the Fiscal Year Ended September 30, 1994:

Publications and reproductions, Fees and Vessel Certification, and Freight Forwarder Applications	$ 156,500
ATFI user fees	$ 162,000
Davis Law fees	$ 207,000
Fines and penalties	$ 870,500
Total general fund receipts	**$1,396,000**