

# FEDERAL MARITIME COMMISSION

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## 37th ANNUAL REPORT

for

Fiscal Year

1998





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

March 31, 1999

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-seventh annual report of the activities of the Federal Maritime Commission for fiscal year 1998.

Additionally, section V.N of this report contains an Update on Remote Access - September 1998, 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,

A handwritten signature in black ink, appearing to read "Harold J. Creel, Jr.", written over the printed name.

Harold J. Creel, Jr.  
Chairman





# MEMBERS OF COMMISSION\*



*Harold J. Creel, Jr.  
Chairman  
Appointed 1994  
Term Expires 2004*



*Ming C. Hsu  
Commissioner  
Appointed 1990  
Term Expired 1996*



*Joe Scroggins, Jr.  
Commissioner  
Appointed 1994  
Term Expired 1995*



*Delmond J.H. Won  
Commissioner  
Appointed 1994  
Term Expired 1997*

\* One vacancy as of February 4, 1996.



## SENIOR COMMISSION OFFICIALS

Counsel to the Chairman . . . . .	<b>Bruce A. Dombrowski</b>
Secretary . . . . .	<b>Joseph C. Polking</b>
Chief Administrative Law Judge . . . . .	<b>Norman D. Kline</b>
General Counsel . . . . .	<b>Thomas Panebianco</b>
Director, Office of Equal Employment Opportunity . . . . .	<b>Alice M. Blackmon</b>
Inspector General . . . . .	<b>Tony P. Kominoth</b>
Managing Director . . . . .	<b>Edward P. Walsh</b>
Director, Bureau of Economics and Agreement Analysis . . . . .	<b>Austin L. Schmitt</b>
Director, Bureau of Tariffs, Certification and Licensing . . . . .	<b>Bryant L. VanBrakle</b>
Director, Bureau of Enforcement . . . . .	<b>Vern W. Hill</b>
Director, Bureau of Administration . . . . .	<b>Sandra L. Kusumoto</b>



# 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 of the U.S. The passage of the Shipping Act of 1984 ("1984 Act") brought about a major change in the regulatory regime facing shipping companies operating in the U.S. foreign commerce.

### B. FUNCTIONS

The principal statutes or statutory provisions administered by the Commission are the 1984 Act, the Foreign Shipping Practices Act of 1988 ("FSPA"), section 19 of the Merchant Marine Act, 1920 ("1920 Act"), and Pub. L. No. 89-777.

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.**
- **Receiving and reviewing 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 foreign government-owned or -controlled carriers to ensure that they are just and reasonable.**
- **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.**
- **Licensing international ocean freight forwarders.**

- **Bonding non-vessel-operating common carriers ("NVOCCs").**
- **Investigating discriminatory rates, charges, classifications, and practices of ocean common carriers, terminal operators, and freight forwarders operating in the foreign 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, however, does not 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 or -controlled carriers.

Pub. L. No. 89-777 requires the operators of passenger vessels with 50 or more berths, who embark passengers at U.S. ports, to establish financial coverage to indemnify passengers in cases of death, injury, or nonperformance of transportation. The Commission certifies such operators upon the submission of satisfactory evidence of financial responsibility.

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 Economics and Agreement Analysis; Bureau of Tariffs, Certification



and Licensing; Bureau of Enforcement; and Bureau of Administration. The Managing Director assists the Chairman in providing executive and administrative direction to the Commission's bureaus. These offices and bureaus are responsible for the Commission's regulatory programs or provide administrative support.

In fiscal year 1998, the Commission was authorized a total of 180 full-time equivalent positions and had a total appropriation of \$14,000,000. The majority of the Commission's personnel are located in Washington, D.C., with area representatives in New York, New Orleans, Los Angeles, Miami and Seattle.



## II

### THE YEAR IN REVIEW

The Commission again was very active in the administration of its international trade and transportation responsibilities in fiscal year 1998. A major focus continued to be the protection of U.S. trades from unfair foreign shipping practices, along with ensuring that U.S. importers and exporters were afforded fair and reasonable treatment in U.S. oceanborne trades.

The Commission remained vigilant in its monitoring efforts so as to identify relevant trends and assess their impact on U.S. ocean commerce. Particular attention was paid to the competitive practices in the transpacific and the operations of the major agreement in the North Atlantic. Other trades were targeted so that the Commission was in a position to ensure that all segments of the industry appropriately complied with applicable shipping statutes. Additionally, major emphasis continued to be placed on the restrictive practices of foreign governments, as U.S. trade with Japan, Brazil and the People's Republic of China ("PRC" or "China") continued to face adverse consequences as a result of specific unfavorable conditions. And, the Commission offered technical advice to Congress throughout the year on regulatory reform legislation that was primed for enactment at fiscal year end.

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. OCEAN SHIPPING REFORM LEGISLATION**

Legislation to dramatically alter the Nation's regulatory approach to U.S. ocean shipping was close to enactment at fiscal year end. The legislative reform process, which began in early 1995, culminated in a compromise bill that passed both the Senate and the House, and was expected to receive the President's signature early in fiscal year 1999. The Commission was an active player throughout this process, testifying before Congressional Committees, offering technical advice to Congress as to various proposals, and meeting continually with all sectors of the industry.

The Ocean Shipping Reform Act of 1998, or OSRA, is a response to those in the industry who advocated more flexibility and freedom for operations in U.S. ocean trade. OSRA removes many regulatory restrictions, and seeks to promote the growth of U.S. trade by placing a greater reliance on the marketplace.

Generally speaking, OSRA should liberalize operations in U.S. ocean trade. It will end public tariff filing with the Commission, instead requiring carriers to publish tariffs in their own automated systems. The Commission will be responsible for prescribing regulations for the accessibility and accuracy of these systems. Service contracts will be filed confidentially with the Commission, and carriers are required to make only a bare minimum of information on each contract publicly available. Multiple carriers will be able to negotiate contracts with multiple shippers, agreements will have minimal control over their members' contracting activity, proscriptions against discrimination will be narrowed, and carriers no longer will be required to offer consummated contracts to similarly situated shippers. The list of commodities exempt from tariff and service contracts requirements will be expanded, and two of the four present criteria for obtaining exemption from a specific statutory provision are to be removed. Carriers will have the ability to jointly

negotiate rates and service requirements with inland carriers, and the notice period for independent action will be cut in half to five days.

OSRA has other, less significant changes as well. These and the foregoing all will become effective May 1, 1999, once the President signs the bill. OSRA directs the Commission to complete final rules implementing its statutory changes by March 1, 1999.

## **B. TRADE DEVELOPMENTS**

U.S. oceanborne shipping remains a vital component of our Nation's overall commerce. The Commission maintains an ongoing effort to discern relevant commercial developments so as to facilitate its important oversight role.

From a general perspective, carriers in most trades continued the recent trend toward consolidation or other forms of operational alliances, in an effort to reduce costs and maximize global opportunities. This trend likely will gain greater momentum as the industry progresses forward under new shipping reform legislation.

In the transatlantic, liner imports from North Europe grew by 16 percent and exceeded liner exports by 93,000 TEUs, while growth in U.S. liner exports to North Europe was 6 percent. The trade imbalance was largely symptomatic of global trade conditions brought on by the Asian economic crisis that caused the value of the U.S. dollar to soar against foreign currencies. Pressures from trade instability, increased competition, and regulatory intervention took their toll on carrier unity in the *Trans-Atlantic Conference Agreement* ("TACA"). Once the dominant force in the trade, TACA will have lost six carrier members by year-end 1998, all of whom will remain in the trade in some form to compete as non-conference carriers. Additional carriers, including APL, Ltd. and Mitsui OSK Lines, entered the trade as non-conference competitors.

On regulatory matters, the Commission's formal proceedings regarding the space charter activities of certain transatlantic carriers remained pending at the close of the fiscal year. The European Commission ("EC") imposed fines of \$318 million against the TACA carriers for abuse of their dominant market position. TACA, in turn, appealed the EC's ruling and imposition of fines to the European Courts. Meanwhile, measures are being taken by TACA to resolve the issues involved in the EC's decision.

In the Mediterranean, U.S. liner export of logs and lumber to Italy and Spain were in high demand due to intensified construction. In the U.S., the demand for Mediterranean imports of home furnishings was spurred on by the robust housing market. Competition among carriers remained intense as the *United States South Europe Conference* realized no gains in market share or membership in the fiscal year.

U.S. liner exports to Middle East nations receded due to economic problems in the region, while Middle East imports to the U.S. performed well. Economic growth among Middle East nations suffered from the drop in oil prices and a decline in tourism due to the continued outbreaks of violence.

Economic growth for many African nations declined in the fiscal year due largely to political unrest, poor infrastructure, and destructive weather conditions. Overall liner trade, however, grew moderately for both U.S. imports and exports. The *American West Africa Freight Conference* terminated its agreement early in the fiscal year in the face of drastically falling rates, although carriers operating in the trade did expand their liner services. Work toward improving African port facilities to alleviate congestion and delays continued to progress.

Latin America remained a growth market, as steady increases were realized in the U.S. bilateral trades with Brazil and Venezuela, the region's top U.S. trading partners, as well as in the trades between

the U.S. and Caribbean nations. Chronic problems of overcapacity and falling rate levels did not deter new carrier entry in the Latin America trades. The *Inland Shipping Services Association* (“ISSA”) became effective during this fiscal year. ISSA is an inland rate conference that covers ratemaking only related to the U.S. inland portion of through movements. By fiscal year end, ISSA had not filed an inland tariff with the Commission.

The transpacific was marked by a continuing imbalance in favor of U.S. imports, as well as rate increases implemented in light of strong eastbound demand. The *Transpacific Stabilization Agreement* (“TSA”), a voluntary discussion agreement in the inbound trade, effectuated an across-the-board \$300 per FEU rate increase, plus additional peak season charges in May 1998. By July, TSA had agreed on an increase in peak season charges from \$100 to \$300 per FEU. Members of the *Westbound Transpacific Stabilization Agreement* faced capacity utilization at or below 50 percent, as much of Asia cut back on its purchase of U.S. exports. The resulting low levels of demand are reported to have more than offset the \$300 general rate increase that TSA managed to implement. Later in the year, the Commission received complaints from various shippers alleging that TSA carriers were allocating scarce equipment and vessel space on a priority basis to their major customers and high-revenue accounts, and forcing some shippers to agree to “voluntary” rate increases for peak season cargo. The Commission instituted Fact Finding Investigation No. 23 to look into the possibility of unlawful practices.

### **C. RESTRICTIVE TRADE PRACTICES**

The Commission is specifically charged to address restrictive or unfair trade practices that have adverse consequences on U.S. trade or U.S. interests. Specifically, section 19 of the Merchant Marine Act, 1920 (“1920 Act”), authorizes the Commission to implement rules and regulations applicable to the U.S. oceanborne trades to adjust or meet conditions unfavorable to shipping. The Foreign

Shipping Practices Act of 1988 ("FSPA") directs the Commission to address adverse conditions affecting U.S. carriers in any U.S. foreign trade with countervailing sanctions aimed at eliminating the adverse conditions. And section 13(b)(5) of the Shipping Act of 1984 ("1984 Act") permits the Commission to assess penalties or take other appropriate action if a foreign government or carrier unduly impairs a U.S.-flag vessel from accessing a foreign-to-foreign trade.

The Commission continued the aggressive pursuit of its authority in the area of restrictive practices in 1998. Based on its ongoing monitoring efforts, continuing dialogue with affected maritime interests, and regular interaction with U.S. executive agencies, possible harmful practices were identified and appropriately addressed. The Commission pursued several matters in 1998 that may warrant formal proceedings under section 19 and the FSPA, the most prominent of which involve Japan, Brazil, and China.

With regard to Brazil, the Commission continues to review information collected from shipping lines as to whether the failure of Brazilian authorities to permit a U.S.-flag carrier to operate a bonded warehouse in Brazil creates unfavorable trading conditions or adversely affects U.S. carriers. The Commission also has inquired as to whether restrictions on U.S. carriers' ability to carry cargoes in the cross-trades between Brazil and other South American countries impair access of U.S.-flag vessels to ocean trade between foreign ports, in violation of section 13(b)(5) of the 1984 Act. More recently, the Commission collected information concerning tax and cargo preference legislation in Brazil which may place U.S. carriers at a severe competitive disadvantage to their Brazilian counterparts. This situation was under review at fiscal year end and could be the subject of formal adjudicatory or rulemaking proceedings should it remain unresolved.

The Commission also continues to monitor a number of issues in the PRC, including implementation of a Chinese commitment to allow U.S. carriers to offer consolidation and logistics services in the



PRC through wholly-owned subsidiaries. The Commission also is reviewing the establishment of the Shanghai Shipping Exchange, a combination freight exchange and regulatory body recently established by PRC authorities, to ensure that its operations do not impede or disadvantage U.S. carriers serving the region.

And the Commission continued its general monitoring of progress made in removing restrictive port practices at Japan's ports. The Commission previously had determined that these practices created conditions unfavorable to U.S. shipping. After a lengthy and contentious rulemaking, which included a \$1.5 million payment by Japanese carriers in light of the restrictions existing at Japanese ports, bilateral negotiations resulted in a commitment by the Japanese Government to reform the problematic conditions which impeded fair and open trade. The Commission agreed not to assess any further fees against the Japanese carriers, and placed its proceeding in a suspended state pending completion of all actions necessary to remove the adverse conditions. The Commission continues to assess this situation, and while some progress has been made, it awaits a full resolution of the matter. Absent significant progress toward that end, the Commission stands ready to initiate whatever action is necessary to achieve full compliance with the commitments previously made by the Japanese.

#### **D. MONITORING**

The Commission actively monitors conditions in U.S. oceanborne trade to identify practices or behavior that can have a negative effect on U.S. commerce and those who participate in it. Our efforts are aimed at ensuring compliance with statutory and regulatory requirements, and appropriately addressing potentially troublesome trade activities.

During the fiscal year, the Commission issued orders under section 15 of the 1984 Act for information on matters discussed in meetings among carriers under the Asian Shipowners' Forum

("ASF"). The orders seek to determine the nature of these meetings and whether the ASF would statutorily constitute a carrier agreement subject to the Commission's jurisdiction. In addition, in response to an informal complaint, an ongoing review and analysis was conducted of U.S.-flag carrier rate levels for the movement of military household goods and personal effects in the transatlantic trades.

Other specific monitoring and research projects undertaken in fiscal year 1998 included: the review of information in formal proceedings concerning the space chartering activities of certain carriers operating in the transatlantic trades; a comparative pricing study and report on controlled carriers in the major trades; a report analyzing the quarterly monitoring data submitted by carrier members of major agreements; the review of agreement information and data in certain trades concerning possible violations of the shipping statutes; and a report examining the use of alliances, along with their relationship to mergers and potential regulatory concerns.

## **E. ENFORCEMENT**

The Commission is charged with oversight of U.S. ocean shipping to deter malpractices and appropriately address conditions that adversely affect fair and efficient trade. We are guided in that effort by the dual objectives of obtaining compliance with applicable statutes and ensuring that equitable trading conditions exist in all U.S. ocean trades.

In fiscal year 1998, the Commission reestablished a presence in the port of New York/New Jersey for the first time since closing its district offices in fiscal year 1996. An area representative was employed in that location by shifting a position from Washington headquarters. We also maintain a presence in Los Angeles, Miami, New Orleans, and Seattle through area representatives. These representatives serve the other major port cities and transportation centers within their respective areas, providing liaison between the

Commission and the maritime industry, collecting and analyzing intelligence, and assessing industry conditions and practices.

The Commission pursued a major enforcement effort this fiscal year which centered on suspected rebating and other forms of malpractices by ocean carriers, cargo interests, and middlemen in the South American trades. We also conducted malpractice investigations in the transpacific and Caribbean trades, and continued to monitor the impact of settlement agreements reached with TACA in the North Atlantic through periodic reports and semiannual meetings with the conferences' members. The level of malpractices in U.S. trades appeared to be on the rise during the year – the continually changing versions of pending legislative reform added to uncertainty regarding applicable statutory requirements.

As previously mentioned, the Commission initiated a formal fact finding investigation to address alleged malpractices in the eastbound Pacific trade. Shippers and NVOCCs complained of difficulties in obtaining space and demands for abrupt and significant rate increases during the peak holiday shipping season. That investigation was scheduled to be completed early in calendar year 1999.

The Commission collected approximately \$3,870,000 in civil penalties this past fiscal year. These collections covered a wide range of malpractices in several of our major trade lanes, and involved most segments of the industry. Continued Commission investigations and surveillance are essential to deter egregious malpractices and foster compliance with applicable statutory requirements. The Commission will reassess its enforcement program as it prepares to implement OSRA, to ensure that its goals and objectives comport with the new policy direction of this statute.

## F. TARIFF AUTOMATION

Carriers and conferences are required to file tariffs with the Commission detailing the rates and practices that will apply to every service they offer in the U.S. foreign ocean trades. The Commission's automated tariff filing system enables tariff matter to be created on the filer's own computer and transmitted to the Commission's Automated Tariff Filing and Information System ("ATFI"). This system, which has been fully operational since 1994, permits ready access of the involved information for any interested party.

The Commission received 785 new electronic tariffs in fiscal year 1998, and closed the year with 4,778 tariffs in the ATFI system. This is an increase of 40 tariffs compared to the prior fiscal year. At the end of fiscal year 1998, there were 40 firms certified for batch filing. Additionally, the Commission received 12,271 new service contracts in fiscal year 1998, a 16 percent increase from the prior year, and 33,812 amendments to service contracts, which represents a 17 percent increase. Those tariffs and all essential terms of service contracts are available on a 24-hour basis to the 5,035 entities with ATFI access capability.

Enactment of the aforementioned ocean shipping reform legislation will eliminate the need for the Commission's ATFI system. OSRA ends the requirement for filing with the Commission, replacing it with the stipulation that carriers and conferences make their tariffs publicly available in their own automated systems. The Commission will be responsible for preparing regulations applicable to the accessibility and accuracy of such systems. Accordingly, the Commission this fiscal year negotiated an eight-month extension of the contract under which ATFI is operated and maintained. The contractor will ensure that the system is available for tariff filing and retrieval through April 30, 1999. The month of May will be dedicated to archiving filed material and contract close-out operations. All activity pursuant to the ATFI contract will end as of

May 31, 1999. The Commission separately will determine the most cost-effective and efficient means of making historical ATFI data available to interested parties.



# III

## MONITORING AND ENFORCEMENT

### A. MONITORING

The systematic monitoring of carrier activities and commercial conditions in the U.S. liner trades is an integral part of the Commission's responsibilities under the 1984 Act. Such monitoring helps ensure that carriers operating in the U.S. trades comply with the statutory standards of the 1984 Act and the requirements of relevant Commission regulations. To that end, the Commission administers a variety of monitoring programs and other research activities designed to keep 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 when additional information from filing parties is deemed necessary and is requested. 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. The Commission'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, and shipper complaints.

In fiscal year 1998, the Bureau of Economics and Agreement Analysis prepared a variety of economic analyses and reports on the activities and practices of carriers operating in the U.S. international trade. Projects included: (1) a review of agreement behavior in the transpacific trades in order to determine whether any section 6(g) problems exist; (2) working with the Bureau of Enforcement to evaluate and incorporate into Docket Nos. 97-07 and 97-08 matters obtained from the Bureau's review of responses to the section 15 order of various carriers; (3) a report on pricing and market share activities of a major controlled carrier in U.S. trades; (4) a report entitled "Trade Profiles Report," giving an economic snapshot of major agreements submitting quarterly monitoring report data; (5) a report examining the use of alliances as business strategies, their relationship to mergers and their potential regulatory concerns; (6) a report examining similarities of certain major agreements; (7) a study examining current industry trends, expected changes, and potential regulatory concerns; (8) an analysis of trade conditions and ocean freight rate levels in the North Atlantic trades for 1997; (9) a review of agreement minutes, service contracting and exit/entry patterns of agreement members in major U.S. trades; and (10) an updated monitoring report of controlled carrier activities.



## **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. A principal 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 maintains a presence in Los Angeles, Miami, New Orleans, New York and Seattle, through an area representative based in each of those cities. These representatives also serve the other major port cities and transportation centers within their respective areas. Until June 1998, coverage of the North Atlantic region was the responsibility of the Bureau's staff in Washington, D.C. However, an area representative was established in the port of New York/New Jersey during that month. Local presence in major port areas greatly enhances the Commission's ability to perform its various functions and improves communications with the regulated industry and its customers.

Cooperation between the Commission's area representatives and the U.S. Customs Service ("Customs"), with respect to the exchange of investigative information, continues to be beneficial. All area representatives are now co-located with Customs in their respective port districts and have established symbiotic working relationships which contribute to the productivity and efficiency of both agencies.

During 1998, the Commission developed evidence of extensive malpractices, particularly unlawful rebating in the South American trades. Other trades were also the subject of malpractice

investigations, including the transpacific and Caribbean trades. These investigations included improper rating practices, such as various forms of secret discounts and absorptions, and unlawful equipment substitution, as well as carriage of cargo by and for untariffed and unbonded NVOCCs.

In August and September 1998, the Commission received numerous complaints from shippers and NVOCCs in the eastbound transpacific trades concerning difficulties in obtaining space and demands for abrupt and significant increases in rates from carriers during the peak holiday shipping season. In response to those complaints, the Commission initiated Fact Finding Investigation No. 23, *Ocean Common Carrier Practices in the Transpacific Trades*. Commissioner D.J.H. Won was appointed as the Investigative Officer and directed to report the results of this investigation to the Commission by December 24, 1998.

During fiscal year 1998, the Commission collected \$3,869,005.96 in civil penalties. Settlements were reached with many different segments of the industry (*e.g.*, carriers, shippers, forwarders, and NVOCCs) operating in the U.S. foreign trades (*see* Appendix E).

## IV

# DEVELOPMENTS IN MAJOR U.S. FOREIGN TRADES

### A. TRANSATLANTIC

After achieving solid, double-digit growth for both imports and exports moving between the U.S. and North Europe during the previous 18 months, liner trade flows began to slow towards the end of fiscal year 1998. During the fiscal year, liner imports from North Europe expanded 16 percent over the previous period's 8 percent growth. Vigorous U.S. consumer spending, particularly in the housing market, as well as a strong U.S. dollar relative to certain European currencies, allowed imports to hold on to record growth rates through the first half of the fiscal year. North European imports grew by a record 21 percent during the first quarter of 1998 -- the largest quarterly increase in over 10 years. The overall rise in liner imports consisted primarily of higher-priced consumer goods. Most notable was a large 25 percent jump in furniture from Denmark; a 16 percent increase in beer and ale from the United Kingdom ("U.K."), the Netherlands, Belgium and Germany; and a 13 percent increase in Scandinavian paper products. Traffic from Eastern Europe continued to expand at record double-digit levels through the second quarter of 1998, with imports of veneers and plywood from Russia, and furniture from Poland supported by strong U.S. demand in the housing and home furnishings markets.

While imports from North Europe have been expanding sharply since the second quarter of 1997, a slowdown in U.S. consumer spending, largely in response to rapidly deteriorating economies overseas, began to appear during the end of the fiscal year. Even though import growth slowed, year-end projections anticipated

a 15 percent improvement in the volume of U.S. imports from North Europe over 1997 trade volumes. However, the pace of growth for North European imports is expected to continue to slow significantly through the end of 1998 and over the next two years. Inbound traffic expansion is forecasted to fall to 6.5 percent in 1999 and 5.7 percent in 2000.

After last fiscal year's outstanding 11 percent growth, U.S. liner exports briefly maintained momentum, lost energy midway through the fiscal year, quickly turned flat during the second quarter of 1998, and finally plunged to negative 6 percent in the final fiscal quarter. U.S. exports to North Europe ended the fiscal year with a 6 percent growth.

The fiscal year started promisingly for U.S. exports, with most North European countries experiencing broad-based economic growth and improved consumer confidence preceding the adoption of the Euro in 1999. Belgium moved past the U.K. to become the number one European destination for U.S. exports. Automobile parts and chemicals were the major U.S. exports to Belgium, while beer and ale led shipments to the U.K. Other commodities with notable gains included construction-related equipment to Finland and frozen fish and lunch meats to Norway and Denmark. U.S. exports of kaolin and china clay, automobiles, and logs and lumber led shipments to Scandinavia. By the second quarter of 1998, economic growth in Europe began to show signs of a cool-down. Unemployment in Germany and France remained above 12 percent and curtailed consumer spending, while competition from Asian products dampened the demand for U.S. goods. Additionally, Europe's exports were affected by a steep fall in several Asian currencies, limiting its export earnings and, consequently, overall demand. These unfavorable economic conditions are expected to continue through the end of 1998 and on into 1999, causing the demand for U.S. exports to this region to slump. Year-end forecasts projected a moderate 5 percent increase in the volume of U.S. exports to North Europe, and growth should remain in this range through 2000.

Usually the inbound route from North Europe tends to be the stronger of the two trade legs, with 1997 being the exception. During the 1998 fiscal year, U.S. liner imports from North Europe regained the dominant position, exceeding exports by more than 93,000 TEUs. Not only were cargo volumes worse than expected in both trade directions, but this significant shift in cargo flows adversely affected carrier operations, causing carriers to report weak utilization levels.

Previously characterized as having favorable rates, relatively slow capacity growth, limited entry and an effective conference, conditions in the U.S./North Europe trade have deteriorated over the fiscal year. The capacity utilization levels of the *Trans-Atlantic Conference Agreement* ("TACA") fell in the eastbound trade (now in the 60 to 65 percent range) while westbound capacity utilization levels, which had been rising mainly due to a surge in westbound cargo volume, reversed direction and fell from 85 to 80 percent. Overall excess capacity in the total trade is reported to have reached 15 percent. The increased competitive pressures in the trade are also apparent in TACA's third quarter 1998 market share, estimated at 53 percent for both imports and exports combined -- down from 65 percent from the same period one year previously.

Competition from new independents and the loss of TACA membership are the main factors contributing to the erosion in TACA's capacity utilization and market share. China Ocean Shipping Co. ("COSCO"), Kawasaki Kisen Kaisha, Ltd., and Yangming Marine Transport entered the trade in mid-February 1997, together offering a weekly non-conference service through a number of space chartering and cooperative working agreements (Nos. 203-011560, 232-011561, and 232-011562). This group of carriers doubled its capacity in the fall of 1998, further escalating competition in the trade. APL Ltd. and Mitsui O.S.K. Lines, Ltd. ("Mitsui") entered the trade during spring 1998 and began operations under two space charter and sailing agreements (Nos. 232-011544 and 232-011611) in cooperation with long-time, non-conference carrier Lykes Lines. To accommodate the entry of APL Ltd. and Mitsui, Lykes

Lines nearly doubled its vessel capacity and added 28 percent more vessel space to the trade.

By January 1, 1999, TACA membership would be reduced to just 9 members, down from 15. The exodus from TACA began in January 1998, with Hanjin Shipping Co.'s resignation. This was followed by the withdrawal of Neptune Orient Lines, Cho Yang Shipping, Hyundai Merchant Marine, and DSR-Senator Lines, Transportation Maritima Mexicana, and Tecomar Ltd. (treated as one merged company). These former conference carriers have continued operating in the trade, providing non-conference services. Upcoming U.S. shipping reform, EC regulatory activity, changing market conditions and increased competition are said to have contributed to these TACA resignations.

During 1992, when TACA was originally formed, there were only four significantly large (in terms of market share) non-conference carriers serving the trade, *i.e.*, Evergreen Marine Corporation, Ltd., Lykes Lines, Atlantic Cargo Services, and Independent Container Line. As of January 1, 1999, shippers will have 11 additional non-conference carriers to choose from -- 5 new trade entrants and 6 former TACA members.

TACA members started 1998 optimistically with the intent of implementing a 6 to 7 percent general rate increase. However, rate levels soon eroded due to a combination of problematic trade conditions and heightened rate competition. With the appreciation of the U.S. dollar against European currencies, cargo growth shifted in favor of U.S. imports, while U.S. export growth lagged. By April 1998, TACA reported that import rates were holding at 1997 levels, while export rates were below 1997 levels. However, later in the year, as shippers met their service contract minimum quantity commitments and new independent carriers entered the trade, TACA reported that rates had fallen 10 to 15 percent over the summer months and expected the trend to continue through the end of the

year. This decline was due primarily to TACA's failure to meet its 1998 Business Plan and the renegotiation of service contracts.

Enhanced rate competition, brought on primarily by the increase of non-conference carriers, prompted TACA members to take substantial rate cuts on strategic commodities. For example, in the U.S. import market, TACA members lowered their service contract rates by \$400 per FEU on wines and spirits, a highly sought after top commodity from North Europe. Similarly, TACA members dropped their service contract rate for edible nuts by \$500 per FEU in the U.S. export market. Non-conference carriers also fought for market share by cutting rates. Indicators placed non-conference rates at levels up to 15 percent below TACA's already reduced service contract rates.

TACA carriers proposed a moderate 1999 Business Plan. For 1999, TACA's plan would raise rates both eastbound by \$40 per TEU and \$50 per FEU and westbound by \$80 per TEU and \$100 per FEU. However, most industry observers doubt the rate increases will hold given the impending regulatory changes and heightened competition in the trade.

During 1997, the Commission issued three orders in connection with its proceedings in Docket Nos. 97-07 and 97-08, concerning space/slot chartering between and among carriers in the transatlantic trades. These matters were pending at the close of fiscal year 1998.

In addition to the FMC's close scrutiny of TACA and its members' activities, TACA continued to undergo examination by the EC. On September 16, 1998, the EC issued a final decision in its original May 1996 case against TACA, concluding that TACA had abused its dominant position, and fined TACA carriers \$318 million for operating outside the European guidelines for liner conferences between 1994 and 1996. Additionally, while the EC did not fine TACA for joint inland price fixing in its final decision, it warned that

it may impose fines on such activity in the future. In anticipation of possible further fines, TACA amended its agreement by removing its collective ratemaking authority over European inland rates. The matter had been pending before the European Court of Justice, which allowed TACA to continue setting inland prices until the court issued its decision.

The EC has drafted a set of regulatory principles or proposals for TACA members to consider as a means to move forward and settle remaining legal issues, including a continuing dispute over the EC's decision to lift TACA's immunity to fines in November 1996. Apparently TACA carriers have agreed to these proposals in principle, and have begun to implement many of the EC's restrictions. If the EC is sufficiently satisfied with the carriers' efforts to adopt its settlement proposals, then the remaining legal disputes may be dismissed. However, TACA formally appealed the latest EC ruling that imposed \$318 million in fines on the carriers for abuse of its dominant position. The appeal addresses such matters as questions on legal procedure, the basis for market share calculations, case law on abuse of dominant position, and the nature and application of fines. A decision in this case is not expected for several years.

Concerns over upcoming U.S. shipping reform and EC regulatory actions, and increased trade competition prompted a collective effort among TACA carriers to examine options for restructuring the trade, *e.g.*, abandoning the traditional conference in favor of a more flexible agreement. TACA executives and executives from nearly all non-conference carriers serving the trade were scheduled to meet late in 1998 to explore options for future carrier cooperation in the trade.

## **B. MEDITERRANEAN**

The Mediterranean countries saw growth continue in fiscal year 1997 after experiencing a brief slowdown a year earlier. Economic growth during fiscal year 1998 of 2 to 3 percent was



expected throughout the region. All the Mediterranean countries have implemented policies of fiscal austerity and monetary easing which have stimulated growth and positioned these countries for inclusion into the European Monetary Union. Imports from the region to the U.S. have continued their steady growth due to the strength of the domestic U.S. economy.

The stronger economies of the Mediterranean countries, Italy and Spain, saw exports from the U.S. grow by 12,000 TEUs, an increase of 22 percent. Exports of logs and lumber have been especially strong, spurred by intensified construction activity in Italy and Spain. The commodities moving into the region remained unchanged, with imports of the region's top six commodities accounting for over half the TEU growth. With the guaranteed participation of Italy, Spain, and Portugal in the Euro, foreign investment in the region should grow due to the low cost of production in the area.

Imports from the Mediterranean grew by 18 percent. A booming U.S. housing market spurred a large increase in imports of furniture, tiles, and other home furnishings. However, growth in imports of wine is expected to taper off as competition from other countries cuts into the region's share of the world market.

The *United States South Europe Conference* (No. 202-011587) has not increased its membership since its inception in July 1997. The four members' 30 percent market share showed the intensely competitive economic environment in the trade.

## C. MIDDLE EAST

Israel's Gross Domestic Product ("GDP") growth has been slowing due to tight monetary conditions initiated to fight rising inflation. With economic prospects falling and a drop off in tourism due to uncertainties about the peace process, any type of economic

revival is unlikely until 1999. Saudi Arabia and the other Gulf countries continue to be hurt by declining oil prices. Nevertheless, the domestic economies of these countries should continue to show modest growth in the near term.

Export growth to the Middle East countries hit 8 percent in 1997. However, 1998 should see a significant deceleration in export growth to the region due to the problems in the domestic economies of the region. The rise in 1997 exports was fueled by growth in exports of fruit, furniture, and wastepaper. U.S. exports of almonds, however, should grow, as Israel has agreed to lower import duties by more than 50 percent.

Imports from the Middle East were significant, with Israel being the biggest contributor to the growth. There was a sharp rise in industrial-use fabrics and hardware from Israel. With the value of the shekal rising, Israel's competitive position could be undermined. However, with interest rates declining, the shekal's value should eventually decline and allow for a resumption of export growth. Aluminum rods and plate and float glass from Saudi Arabia performed well in 1997. With the sharp decline in oil prices this year, these nations will likely seek to accelerate their export diversification efforts, further propelling shipments of goods to the U.S.

## **D. AFRICA**

During fiscal year 1998, the World Bank and its affiliate agencies, the International Finance Corporation ("IFC") and the International Development Agency ("IDA"), sharply increased their investments in Africa. Investments more than doubled that of fiscal year 1997. The IFC investments reached record levels, with 81 new projects in 23 sub-Saharan countries valued at \$679 million. The IDA also increased its investments by more than 17 percent. Total World Bank investments exceeded \$18 billion during the period. Projects undertaken were principally infrastructure development such

as: transportation, agriculture, population research, health and nutrition, electric power generation, energy, education and public sector management. African institutions, such as the Organization of African Unity, the Southern Africa Development Community, the West African Economic and Monetary Union, and the African Development Bank, had greater roles in the development effort than in previous years.

Despite these efforts, growth rates, measured by GDP, fell below fiscal year 1997 rates in many countries. The primary forces working against growth were poor education and infrastructure development and political unrest. In some countries, notably Ethiopia, El Niño's adverse weather conditions destroyed agriculture, further lowering GDP.

Trade between the U.S. and Africa increased in both directions during the 1998 period. Imports increased to 75,527 TEUs from 69,277 TEUs in 1997. Exports increased from 112,335 TEUs to 119,805 TEUs. Container trade from Egypt increased 6 percent, as more apparel and glassware were exported from that country. In the Ivory Coast, excellent coffee and cocoa harvests increased exports of these crops by 41 percent.

Ocean freight rates have not rebounded from the depressed conditions of fiscal year 1997. In that period rates fell by more than 40 percent, mainly due to rate cutting by members of the *American West Africa Freight Conference* ("AWAFC"). In December 1997, the AWAFC was dissolved as members withdrew from the Agreement because of disagreements over rate policy.

Some new shipping services were launched, while others were upgraded. Safbank Line Limited and CMB Transport N.V. launched a reefer cargo service to take advantage of the large deregulated South African fruit industry. They provided a range of reefer/container equipment, including controlled atmosphere boxes, to keep fruit fresh during shipment. A weekly service was provided to North America

and the Far East. A.P. Moller-Maersk Line ("Maersk") launched a biweekly service between the U.S. Gulf Coast and West Africa in March 1998, using five multi-purpose vessels. The service caters to shippers of dry, reefer, breakbulk and project cargo. In September 1998, Maersk also started a direct fixed-day service between the U.S. Atlantic Coast and Western and Southern Africa. A new service by Gulf Africa Line began in 1998. Regular service for its container, breakbulk, heavylift and project cargo is provided between the U.S. Gulf and Southern Africa. Meanwhile, Delmas America/Africa Line enhanced its U.S. to West Africa service by adding a vessel and calling at ports in Nigeria and Matadi, Zaire.

In East Africa, the Port of Mombasa experienced extreme congestion. Delays of up to two weeks caused severe problems with vessel schedules. The congestion was compounded by flooding that swept away bridges, roads and railway operations. Cargo from Kenya and the Central Africa hinterland was often unable to be picked up or delivered. Relatively good conditions at the port of Dar Es Salaam, where there were few delays, helped to reduce the burden of congestion in East Africa. Elsewhere, equipment was upgraded at the port of Durban and traffic experienced no congestion problems. Capetown became a favorite bunkering port. Tenders were offered for the privatization and upgrade of the port of Maputo in Mozambique. The port of Walvis Bay, in Namibia, began upgrading to accommodate more traffic than at present.

## **E. LATIN AMERICA AND THE CARIBBEAN**

Latin America can be divided into three distinct regions in terms of patterns of trade growth: Central America and the Caribbean, East Coast of South America, and West Coast of South America. The largest region, East Coast of South America, generated 41 percent, or about 2.2 million TEUs, of containerized Latin American trade last year. Brazil accounts for almost all of the East Coast of South America trade, and is the largest South American trading partner with the U.S. Brazil accounts for more than 65

percent of the imports from, and 50 percent of the exports to, the East Coast of South America. Brazil's import and export growth mirrored the general trend of trade between the U.S. and the East Coast of South America, growing steadily despite the fears of a slowdown due to the Asian economic crisis.

Central America accounts for 38 percent, or about 2.1 million TEUs, of the trade with Latin America. The smaller West Coast of South America trade accounted for the remaining 21 percent, or 1.2 million TEUs, of the total trade. Both Central America and the West Coast of South America faced severe economic difficulties during 1997/1998. Central America was strongly affected by unpredictable weather, bringing droughts then torrential rains. The West Coast of South America suffered from the Asian crisis and the radical drop in container export volumes to Asia. Mitigating the harm from the Asian crisis is the region's continued dependence upon the U.S. market, which continues to have robust growth and prosperity. Forecasters predict that with continued open access to the U.S. market, economic growth in Latin America and, therefore, growth in trade with the U.S., will remain strong.

The robust trade between the U.S. and Latin America has been beneficial to the U.S. For the first half of 1998, the U.S. enjoyed a trade surplus of \$6.83 billion with Latin America, compared with a \$3.14 billion surplus in the same period of 1997. Of this surplus, \$2.34 billion was with Brazil, and \$1.79 billion was with Argentina.

U.S. exports to the Caribbean increased by 16 percent, reaching 5,310 TEUs. A great demand for fabrics made this the main export item. However, there were also significant increases in exports of paper, poultry and medical equipment. Construction-related goods and food products, notably grocery items, were also exported. Imports from the Caribbean increased by 14 percent, led by an expansion in the apparel industry, principally from the Dominican Republic. Other imports consisted of shellfish, general cargo, woodenware and dairy products from the Bahamas, and general cargo

from Haiti, Trinidad and Tobago. However, imports from Jamaica fell sharply because of rising labor costs in the Jamaica garment industry and an overvalued Jamaican dollar.

Despite forecasts of trade growth for fiscal year 1999, overtonnaging is a problem throughout Latin America. Utilization rates as low as 30 percent for Caribbean imports and 48 percent for East Coast of South America imports show the extent of the problem. Although export capacity utilization levels are generally in the 50 to 60 percent range, such levels suggest rationalization of vessels and cutbacks in the frequency of port calls may occur. To some extent, such rationalization is occurring as carriers increasingly enter into alliances with each other. Nevertheless, new entrants to the trade have swamped the efforts of alliances to reduce capacity. And, existing overtonnaging is being exacerbated by the shift to larger vessels by several carriers.

Strikes in Santos and other Brazilian ports have made trade between the U.S. and Brazil more difficult. By early September 1998, a backlog of around 17,000 containers had accumulated in Santos as a result of the four-week protest by customs officers. Once that strike was settled, another strike at Salvador in Brazil's northeast further worsened the reputation of Brazil's ports for delay and inefficiency. In an effort to combat this reputation, Brazil has been privatizing large sections of its ports and has been building new ports. In July 1998, a new container port opened near Rio de Janeiro. The new port, Sepetiba, was created to service the industrial Sao Paulo region.

El Niño brought torrential spring rains to some of Central America, flooding and destroying crops and negatively affecting exports. The drought also caused restrictions on Panama Canal usage, with the Panama Canal Commission imposing draft restrictions in May 1998. Operations returned to normal by June. Faced with these restrictions, shippers were forced to move some cargo via mini-land bridge across the U.S. or face delays while

vessels off-loaded some cargo prior to transiting the canal. To cover the increased costs associated with the off-loading and on-loading of cargo, carriers imposed special Panama Canal surcharges in the Asia/U.S. East and Gulf Coast trades. The Panama Canal Commission estimates that the restrictions caused a 15 percent loss of traffic during the second quarter and a corresponding loss of toll revenue of about 17 percent.

A unique conference agreement, *Inland Shipping Services Association* ("ISSA") (No. 202-011579) became effective during the fiscal year. Unlike traditional conference agreements, it covers the ratemaking activities related only to the U.S. inland portion of certain through movements of U.S./Latin America cargo. Under ISSA, carriers that are members of other conferences and independent carriers may become participants in the agreement. At fiscal year's end, no tariff has been filed to implement ISSA's authority.

Additionally, seven agreements in Latin America terminated for various reasons, ten new slot chartering or joint services started (or expanded their agreement to include rate discussions), and a number of membership changes were filed, as carriers adjusted to changing market conditions.

Rate levels in the Latin American trade have been falling, both inbound and outbound. In the U.S. East and Gulf Coasts to the East Coast of South America, new entrants and larger vessels have caused rates to fall. The revenue losses usually associated with rate declines have been mitigated somewhat by the increased volumes generated by the growing Brazilian, Venezuelan, and Argentine economies. Containerized exports to Brazil (the largest U.S. trading partner in South America) increased 11.4 percent during 1997/1998. Exports to Venezuela (our second largest trading partner) increased a dramatic 50.7 percent. Imports from Brazil and Venezuela also grew 4.4 percent and 11.4 percent, respectively. In Argentina and Brazil, developments in port and inland rail infrastructure increased the availability of newly developed production centers in Argentina,

Paraguay, and Uruguay to international trade, and have increasingly opened up the Amazon River to containerized traffic.

The West Coast of South America also witnessed falling rate levels as the large transpacific carriers have increasingly brought larger vessels into the trade. Also contributing to rate instability in the trade is the increased use of direct liner service between Asia and South America, which has lowered the profitability of frequent U.S. West Coast to West Coast of South America liner sailings. In response, Sea-Land Service, Inc., and Maersk announced a cessation of their weekly West Coast service to South America and limited the service to Mexico and Central America.

West Coast U.S. imports from the West Coast of South America have become cheaper and hence more competitive in U.S. markets. This has improved the balance of cargo flows which traditionally favored southbound cargo. Further in these trades, vessels transiting the Panama Canal have been assisted by the development of extensive transshipment centers on both ends of the Canal, which allows cargo from Asia going to the U.S. East and Gulf Coasts to be joined with cargo from South America for the final leg of the journey. Utilization rates in this portion of the trade, therefore, have been quite high, and carriers have increased the number of vessels in response. Although this increase in capacity has decreased rates, the improved cargo flow has maintained carrier profits.

## **F. TRANSPACIFIC**

The continuing financial crisis in Asia, which resulted in the devaluation of a number of national currencies, contributed substantially to the severe trade imbalance in the transpacific trade. Exports from the U.S. to Asia declined by approximately 15 percent in 1998, and U.S. imports from Asia grew by a dramatic 17 percent, creating important opportunities and enormous challenges for transpacific carriers.



In the eastbound trades, members of the *Transpacific Stabilization Agreement* ("TSA") (No. 203-011223), a voluntary discussion agreement among 13 conference and non-conference lines serving the Far East and the Indian Subcontinent, announced a \$300 per FEU general rate increase on service contracts and tariffs in November 1997. Independent actions by members of the *Asia North America Eastbound Rate Agreement* ("ANERA") (No. 202-010776), decreased, with a corresponding sharp decline in rate discounts by non-conference lines. Those actions were a prelude to TSA's successful implementation of an across-the-board \$300 per FEU rate increase, plus additional peak season charges, in May 1998. By July, TSA had agreed on an increase in peak season charges from \$100 to \$300 per FEU. The charges were eventually extended through November 1998.

However, in the westbound trade, the same lines' vessels returned to Asia half-full. Members of the *Westbound Transpacific Stabilization Agreement* ("WTSA") (No. 203-011325), a voluntary discussion group composed of many of the same lines as TSA, faced a year of declining demand and falling rates. Capacity utilization had slipped to levels at or below 50 percent by the close of fiscal year 1998, as much of Asia (Korea and Southeast Asia, in particular) cut back on their purchases of U.S. exports. The resulting low levels of demand, accompanying low rates, and increased repositioning costs for moving empty containers back to the high demand sites in Asia, are reported to have more than offset the \$300 general rate increase that TSA managed to implement. The fall in exports relative to the booming import trade reportedly created serious financial problems for most transpacific lines offering round-trip service between Asia and the U.S.

By September 1998 the Commission had received complaints from various shippers alleging that member lines of TSA -- as well as COSCO, the major independent line in the trade -- were allocating scarce equipment and vessel space on a priority basis to their major customers and higher revenue accounts. This practice, it was

alleged, forced some shippers, including many NVOCCs, to agree to "voluntary" rate increases as a means of ensuring that they had sufficient space and equipment during the peak holiday cargo season. In response to those complaints the Commission instituted Fact Finding Investigation No. 23 - *Ocean Common Carrier Practices in the Transpacific Trade* - to assess the validity of the allegations.

In late October 1998, the TSA lines agreed to implement rate increases as follows: (1) a base rate increase of \$900 to \$1000 per FEU, effective May 1, 1999; (2) a \$300 per FEU peak season surcharge on all cargo moving from June 1, 1999, through November 30, 1999; and (3) a Panama Canal surcharge of \$80 per FEU beginning May 1, 1999. In the Indian Subcontinent trade, TSA slated even larger increases: a \$1,000 per FEU increase effective on January 1, 1999, plus a May 1, 1999, increase of \$900 to \$1,000 per FEU.

Since OSRA would take effect the same day that TSA's annual service contract negotiation period traditionally closes, it is not clear whether the new provisions allowing confidential contracting would have much, if any, impact on rate negotiations in the eastbound transpacific trades. However, TSA officials have indicated that forecasts of continuing high levels of demand for space, in combination with the absence of new vessels coming into the trade in 1999, the need to earn additional revenues to offset the weak westbound rates and cargo levels, and the need to finance future investments, may result in full implementation of TSA's announced rate increase.

In the westbound trades, the *Transpacific Westbound Rate Agreement* ("TWRA") (No. 202-010689), the conference agreement covering the U.S. to Asia trades, suffered a serious loss of member support in 1998. With only about 50 percent market share and a diminishing cargo base available to it, TWRA faced serious competition from non-conference lines. In March 1998, P&O Nedlloyd resigned from the conference in an effort to offer its

customers greater service contract flexibility than permitted under TWRA. As a consequence, and to forestall further defections, TWRA decided to liberalize the group's service contracting procedures. That, however, did not prevent Hapag-Lloyd and APL Ltd., a founding member of TWRA, from announcing their departures from the conference.

Indeed, in the transpacific trades, discussion agreements like TSA and WTSA appeared to be taking over the role as the trades' primary collective rate-setting bodies, rather than ANERA and TWRA, the underlying conference agreements. It is reported that sometime in mid-January carrier officials may make a decision as to whether ANERA and TWRA should remain in effect.

In addition to oversight activities with respect to conferences and discussion agreements, on March 29, 1998, the Commission issued a section 15 order seeking information on the activities of the Asia Shipowners' Forum and one of its subgroups, the Stabilization of Trade Committee. The proceeding was pending at the close of the fiscal year.

## **G. WORLDWIDE**

U.S. liner trade conditions felt the shock of the economic crisis in Asia. The collapse of the financial markets and the ensuing recession in Asia sent the value of the U.S. dollar escalating upward relative to foreign currencies and weakened the demand for U.S. liner exports worldwide. At the same time, economic conditions in the U.S. remained strong. Favorable interest rates and low unemployment drove U.S. consumer demand for liner imports to record high levels. Consequently, the U.S. liner trades were thrown into a severe imbalance as the deficit between imports and exports expanded. Worldwide, U.S. liner imports grew by 16 percent in fiscal year 1998 relative to the previous fiscal year, while the results for U.S. liner exports were poor, at slightly below the figure for the previous fiscal year.

The trade imbalance was even more pronounced in the transpacific, sending carriers and shippers into a contentious struggle over vessel space and rates in the inbound direction. By the end of fiscal year 1998, U.S. liner imports from Asia were up by 19 percent in comparison to the previous fiscal year, while U.S. liner exports were down by 12 percent. After several years of overcapacity and flat rates, transpacific carriers reported capacity utilization levels of 100 percent in the inbound direction and at or below 50 percent in the outbound direction. TSA carriers were able to implement a general rate increase of \$300 per container in May 1998.

The situation became critical in the peak summer and fall months as import shippers were finding it hard to secure sufficient vessel space and equipment to move their products in time for the holiday season. Shippers were further affected when TSA carriers imposed a peak season surcharge of up to \$300 per container. Complaints from shippers and NVOCCs arose alleging that TSA carriers were exploiting the trade imbalance by allocating vessel space based on the cargo that generated the most revenue. In response to the situation, the Commission instituted Fact Finding Investigation No. 23 to gather information to determine whether carriers in the inbound transpacific trade were acting in violation of U.S. shipping statutes. The trade imbalance, however, is projected to continue for the next several years until economic conditions, both foreign and domestic, stabilize.

On other major issues, players in the liner shipping industry readied themselves throughout the fiscal year for the eventual passage of OSRA. The new legislation was expected to be signed into law by the President in October 1998, and would take effect May 1, 1999. Among the reforms enacted, the deregulation of service contracting has the potential to produce the most fundamental changes in the industry. OSRA extends service contract authority beyond conferences to other types of agreements between carriers, and prohibits agreements from restricting or obstructing individual

agreement members from negotiating and entering into service contracts. Moreover, carriers and agreements will no longer be required to publish their service contract rates, although they will be required to file each service contract confidentially with the Commission. Consequently, OSRA potentially reduces the ability of conferences to collectively manage the rate levels of its agreement members.

Anticipation of regulatory reforms has already produced structural changes among carriers that will likely continue in the future. Many carriers throughout the trades have shifted their focus away from traditional conferences toward more flexible discussion agreements. For instance, TWRA, once the dominant conference in the outbound transpacific, lost seven agreement members during the year, who nonetheless remain active in the WTSA.

Other structural changes among carriers within the past several years include the merger of P&O Containers and Nedlloyd, and the acquisitions of DSR-Senator Lines, APL Ltd., and Lykes Lines by Hanjin Shipping Co., Neptune Orient Lines, and Canadian Pacific Ltd., respectively. As carriers venture away from the traditional conference system, the trend toward higher market concentration in the shipping lanes may likely continue with additional mergers and acquisitions among carriers.

NVOCCs and shippers have also reacted to the regulatory reforms in order to remain competitive. The upcoming deregulation of service contracts may prompt NVOCCs, as well as smaller shippers, to collectively pool their cargo volumes by forming shippers' associations. Recently, three major NVOCCs formed the North American Consolidators Association, creating one of the largest shippers' associations, with an estimated annual cargo volume of 90,000 TEUs. Armed with higher cargo volumes as deregulation moves forward, shippers' associations should be in a better position

to negotiate favorable service contract rates to compete with those of large multinational proprietary shippers.

## V

# **AUTOMATED TARIFF FILING AND INFORMATION SYSTEM ("ATFI")**

## **A. INTRODUCTION AND BACKGROUND**

The 1984 Act requires common carriers by water in the foreign commerce of the U.S. to file and keep open to public inspection their "tariffs" applicable to ocean transportation. The 1984 Act also 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 contains a schedule of rates, charges, and rules applicable to the transportation of cargo by a carrier or conference. 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 connection with a common carrier by water in the foreign or domestic offshore commerce.

The applicable statutes and implementing regulations require the Commission to ensure compliance with certain essential standards before tariff material is accepted for filing. Similarly, service contracts may be rejected by the Commission if they do not

meet certain statutory and regulatory requirements. In order to ensure compliance with the law, the statutes provide for 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.

The Commission uses the filed tariff and service contract data for surveillance and investigatory purposes and adjudicates 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. While tariff and service contract information is used for regulatory purposes, the statutory scheme is designed primarily 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 by the Commission. Prior to implementation of the ATFI system, the Commission was receiving up to a million paper pages of tariff matter 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, beginning in 1981 and continuing through early in calendar year 1983.

## **B. EARLY STUDIES ON TARIFFS**

The Commission conducted a study to examine the validity of the premises upon which tariff filing requirements were based. The study contained three parts, which included an internal Commission analysis; interviews with shippers, exporters, and ocean freight forwarders; and interviews with ocean carriers and conferences.



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.

With the results of these two studies in hand, the Commission explored the issue of tariff automation, interviewing carriers, conferences, freight forwarders, shippers, and transportation service firms. This survey revealed these parties' overall belief that implementation of an automated system was overdue.

### **C. FIRST STEP IN TARIFF AUTOMATION**

Recognizing the need and apparent industry support for tariff automation, the Commission undertook 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.*" A number of replies were received. The commenters also raised questions of both a legal and policy nature which needed to be resolved before proceeding.

### **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 requirement 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, a special Tariff Automation Task Force was formed to gather additional information. In January 1985, it sent questionnaires to ocean carriers, NVOCCs, conferences, freight forwarders, and shippers on the use of tariff data and suggestions to improve the process.

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.

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, the Commission's need for automated filing and retrieval of tariff data, and the objectives of an automated system.

The report recommended the conduct of a feasibility study to 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 report concluded that the feasibility study should be contracted out, since the Commission lacked the necessary technical expertise. Because the Commission 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 or operating system.

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

The Commission entered into an interagency memorandum of understanding with the General Services Administration ("GSA") in August 1985 for the development of a feasibility study, 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, the Commission's ATFI Industry Advisory Committee was established.

Candidates for membership on the Committee were solicited. The nineteen industry members selected 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.

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 ATFI Advisory Committee met in several sessions between January and November 1986, during which it provided input to and reviewed the reports of the *Feasibility Study* Contractor. The final report of the Contractor was approved in principle by the Advisory Committee with a few suggested changes. In summary, the *Feasibility Study* identified key tariff filing, Commission tariff processing, tariff retrieval, and functionality requirements, and also identified key policy assumptions.

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 *Feasibility Study* stated:

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.

## **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 ("NOI").

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 NOI, 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 connectivity. 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. The 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, however, must 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.]

The Commission also explained in the NOI and in the draft RFP that remote access to the Commission's database by modem would be available any time of the day for retrieval of tariff information by any interested person.

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 OMB, concerning the functionality of "remote retrieval." 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.

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 contractors 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.

\* \* \* \* \*

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).]

## **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 Full-scale Operation. The contract was 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.

The system's Prototype Phase (Phase IV) began in April 1990. As required by the 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. At about the same time, the Contractor and the Commission identified 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. 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, has 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. At that time, the Commission

elected to continue its contractual arrangement with PRC Inc. on a limited basis, while it considered what approach it would use to select a contractor to design and develop an updated version of its ATFI system. Accordingly, the Commission negotiated extensions of the PRC Inc. contract that were limited to ongoing maintenance of the ATFI equipment and other necessities, while the Commission began the process of developing a formal procurement to select a contractor to design and develop additional and enhanced functions.

### **K. DOCKET NO. 90-23**

On August 1, 1990, the Commission instituted Docket No. 90-23, in which it issued a second ATFI NOI - Advance 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 December 26, 1990, the Commission issued a first Interim Report, which considered the comments received and resolved the issues raised in the NOI.

On March 25, 1991, the Commission issued a Second Interim Report that responded to concerns of four electronic tariff filer firms which had raised 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.

The Commission's Third Interim Report in this proceeding was issued on July 23, 1991, and finalized most of the remaining issues listed in the August 1990 NOI, so that a Notice of Proposed Rulemaking could be issued.

The proposed rule in Docket No. 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. Part 514 is the sole, all-inclusive CFR part covering tariffs and service contracts filed into the Commission's electronic system. Other CFR parts which govern the filing of paper tariffs and service contracts were removed from the CFR, *i.e.*, Parts 515, 520, 550, 580 and 581.

Still further comments were invited, and an oral comment session was conducted by the full Commission. 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, *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. 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. 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.

## **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, among other things, 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., also are revised when necessary and made available to regular subscribers. This process is expected to continue throughout the life of the system.

## **M. MISCELLANEOUS MILESTONES**

Certifications of firms for batch filing capability began in late fiscal year 1992. There now are 40 such certified firms.

On February 11, 1992, the Commission 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 No. 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 to file during their designated periods, 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 file timely in ATFI format. The Commission issued its last show cause order on this matter early in fiscal year 1995. All told, approximately 310 carriers had their paper tariffs canceled for failure to file in the new electronic format.

During fiscal year 1998, 785 new tariffs were filed in the ATFI system. This figure does not include the three Surface



Transportation Board (“STB”) tariffs that were filed in the ATFI system in fiscal year 1998. At the end of the fiscal year, there were 4,778 effective tariffs in the system, a net increase of 40 tariffs compared to fiscal year 1997. The filing of new tariffs has leveled off significantly since the completion of the conversion from paper to the electronic form.

Additionally, all essential terms of service contracts entered into after November 22, 1993, are electronically filed in ATFI. The Commission received 12,271 new service contracts in fiscal year 1998, which represented an approximate 16 percent increase from the prior year. And the practice of amending service contracts continued its increasing trend in fiscal year 1998. The 33,812 amendments received this fiscal year represent a 17 percent increase over last year, and is an approximate 280 percent increase over the number filed just three years ago. All tariff and service contract essential term filings are available on a 24-hour basis to any of the 5,035 individuals and organizations, including government agencies, registered to access ATFI data. The number of ATFI registrants increased by approximately 225 this fiscal year.

The Commission has kept the ATFI user community updated by routinely and systematically revising the ATFI User Guides and issuing press releases and ATFI System News items. The Commission also continually adds new locations to the ATFI system, and ended the fiscal year with 324,520 locations in this database. Additionally, ATFI registration forms are among the many documents the Commission has made available electronically on the Commission’s Internet home page. Certain ATFI user fees were adjusted this past fiscal year, in conjunction with the agency’s biannual review of all user fees.

In fiscal year 1996, the Commission published a final rule affording filers the option of submitting an abbreviated paper service contract which incorporates by reference the provisions filed in the electronic essential terms filing. This rule was intended to reduce

Commission and carrier costs, and facilitate automation of the Commission's records. Unfortunately, few filers are taking advantage of this option.

During fiscal year 1996, the Commission entered into a Memorandum of Understanding ("MOU") with the STB regarding the filing of U.S. domestic offshore tariffs in ATFI. Legislation passed in fiscal year 1996 transferred jurisdiction over the U.S. domestic offshore trades from the FMC to the STB. The MOU permits these tariffs to continue being filed in ATFI, and sets up specific protocols for STB access and administration. The FMC also offers the STB advice and assistance on the operation and use of the ATFI system, as well as any particular aspects or actions related to the domestic offshore trades. The Commission remains the sole signatory to the ATFI contract and continues to deal with the Contractor on domestic issues on behalf of the STB. The MOU provides for the STB to make annual reimbursements to the FMC for contract and other costs the FMC incurs.

Toward the end of the fiscal year, the Commission agreed on an eight-month extension of the ATFI contract, through May 31, 1999. Again this year, the Commission's budgetary constraints necessitated reductions in certain services and maintenance areas, which limits the system from operating at optimum efficiency. System integrity, accessibility and effectiveness, however, were not unduly compromised.

The eight-month period was chosen in light of pending maritime reform legislation that had passed both the House and the Senate late in the fiscal year, and seemed almost certain to be signed by the President. This legislation would eliminate the current requirement for public tariff filing with the Commission, and replace it with an approach whereby carriers and conferences would be required to publish their tariffs in private, automated systems, accessible by any interested party. The new Act has a scheduled effective date of May 1, 1999, with an additional provision mandating

the Commission to complete all regulations to implement it by March 1, 1999.

Pursuant to the terms of the contract extension, the Contractor will continue maintenance of the system through April 30, 1999, to ensure its availability for tariff filing and retrieval until the new law becomes effective. The period from May 1 through May 31, 1999, will be dedicated to archiving matter filed through April 30, 1999, and performing all required contract close-out operations. Assuming enactment of the OSRA, the Commission will be required to complete requirements for the new private systems for tariff publishing by March 1, 1999. The Commission also will be determining the most cost-effective and efficient means of making historical information from the ATFI system available to the public.

## **N. UPDATE ON REMOTE ACCESS SEPTEMBER 1998**

Since 1986, during the *Feasibility Study*, both Congress and members of the public expressed concern over the use and accessibility of the ATFI system by all interested parties. (For a more detailed description of Congress' concerns, see the *33rd Annual Report* of the Federal Maritime Commission.) While tariff material was to be made available electronically through the Commission's ATFI system, Congress was concerned that ATFI not compete with private sector providers of information services. Congress expressed these concerns in section 2(b) of Pub. L. No. 101-92 which provided that: "The Commission shall impose reasonable controls upon the system to limit remote access usage by any one person."

This statutory restriction reflected similar language 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.

In response to this direction, ATFI's design, while allowing for remote retrieval of tariff data, limited tariff retrievers, but not filers, in the following two respects:

- 1. A tariff retriever would be limited to accessing a single, individual tariff per connection with the ATFI-host computer; and**
- 2. A tariff retriever would be limited to a certain time, such as 30 minutes, per connection to the ATFI computer.**

These restrictions were included in the ATFI system in preparation for the planned implementation of ATFI in 1992. As indicated herein, implementation was postponed until February 1993 because of the relocation of the Commission's headquarters offices. In the interim, on November 2, 1992, the President signed Pub. L. No. 102-582, section 502 of which (46 U.S.C. app. § 1707(a)) repeals the statutory restriction referenced above. (See section 2 of Pub. L. No. 101-92.) The major features of Pub. L. No. 102-582 are as follows:

- a. The Commission must make available the ATFI tariff data without time quantity or other limitation;
- b. A direct access charge of \$.46 per minute for tariff retrieval; and
- c. A secondary use charge of \$.46 per minute for the use of tariff data maintained by others in a database that has multiple

tariff information obtained directly or indirectly from the Commission. (This secondary use charge had an expiration date of September 30, 1995.)

The Commission implemented the provisions of Pub. L. No. 102-582 by publishing regulations that required third-party vendors that wish to obtain the ATFI database on tape to submit a plan for collecting secondary user fees. With the expiration of the secondary use fee provisions on September 30, 1995, retrievers of ATFI data have direct access at a cost of \$.46 per minute. Fees for the secondary use of tariff data no longer are applicable.



## 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.

During fiscal year 1998, the Commission investigated potentially restrictive practices of the Governments of Brazil and PRC which may warrant institution of formal proceedings under the FSPA or other statutes. These matters included limitations on port access, intermodal services, forwarding and consolidation services in China, and Brazilian restrictions on warehousing and cross-trading with other South American nations, and possible unfair tax treatment of non-Brazilian vessels in that country.

## **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 Journal of Commerce's Port Import Export Reporting Service ("PIERS") database was used to derive the Commission's list of top twenty partners. In prior years, data provided by the Bureau of Census ("Census") were used to develop the list. The Census data are no longer utilized by the Commission. The PIERS data are aggregated so as to exclude all non-liner shipments.

PIERS import data are collected in two ways: (1) tapes of import manifests filed electronically via the Automated Manifest System ("AMS") obtained from Customs, and (2) data transcribed manually at individual ports from import manifests not necessarily filed electronically with Customs. The raw data obtained from AMS are edited to conform to PIERS. Export data are manually transcribed at each port from bills of lading filed by ship lines with Customs. PIERS uses standardized spellings of company names, coding of ship lines, port names, and country code assignments. The Journal of Commerce also employs proprietary artificial intelligence software to increase the accuracy of their data.

The most recent complete calendar year for which data were available is 1997. 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 1997. The figures in the table represent each country's total U.S. liner imports and exports in thousands of 20-foot TEUs.



## Top Twenty U.S. Liner Cargo Trading Partners (1997)

<u>Rank</u>	<u>Country</u>	<u>TEUs (000's)</u>
1	China (PRC) .....	1,885
2	Japan .....	1,765
3	Hong Kong .....	1,132
4	Taiwan .....	951
5	South Korea .....	701
6	Germany .....	468
7	United Kingdom (Incl. N. Ireland) .....	459
8	Brazil .....	417
9	Italy .....	415
10	Belgium & Luxembourg .....	377
11	The Netherlands .....	336
12	Indonesia .....	335
13	Thailand .....	332
14	Malaysia .....	251
15	France .....	250
16	Philippines .....	236
17	Venezuela .....	221
18	Dominican Republic .....	214
19	Honduras .....	213
20	Singapore .....	201

*Source: All data are aggregated from the PIERS (Port Import Export Reporting Service)/Journal of Commerce database. PIERS obtains its information from ship manifests and bills of lading for all vessels calling at U.S. ports.*

The same countries comprised the Top Twenty U.S. Liner Trading Partners in 1997 as in the preceding calendar year, with the exception of three countries — the Dominican Republic, Honduras, and Singapore. Increased traffic volume as a result of the expanding apparel manufacturing industries in the Dominican Republic and Honduras catapulted those countries into the top trading partners category for the first time. Singapore's ranking has continually been either in the high teens or low twenties since the inception of the list. In terms of ranking order, China (PRC) overcame Japan, the perennial leader. On July 1, 1997, the third largest trading partner, Hong Kong, reverted to Chinese control as a special administrative region. However, PIERS continues to collect data separately for Hong Kong due to its status as a major transshipment center. Only minor changes occurred among the rankings of the other top countries.

**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 subpoenas 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 1998:

- **The Commission issued decisions concluding five formal proceedings. Another 7 formal**

**proceedings were discontinued or dismissed without decision, while 16 initial decisions of an administrative law judge became administratively final without Commission review. The Commission also concluded 107 special docket applications, and 1 informal docket which involved claims sought against carriers for up to \$10,000. During the same period, the Commission issued final rules in three rulemaking proceedings.**

- **Special Docket Officers issued decisions in 106 proceedings during fiscal year 1998.**

Six rulemaking proceedings and one formal petition were pending before the Commission at the end of the year. Final decisions in these matters are anticipated in fiscal year 1999.

## **2. Office of Informal Inquiries and Complaints and Informal Dockets**

This Office coordinates the informal complaint handling system throughout the Commission. A total of 1,926 complaints and information requests were processed in fiscal year 1998. Recoveries to the general public of overcharges, refunds and other savings attributable to the complaint handling activities amounted to \$162,578. Since 1989, this Office has helped complainants recover over \$1,500,000.

The Office facilitated communications among maritime industry representatives and Commission officials, and supplied materials and information requested by the general public. During fiscal year 1998, this Office responded to 1,007 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. These claims must be predicated upon violations of the 1984 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 1998, three claims were filed, while three pending cases were carried over from the previous year. There were three pending cases at the close of the fiscal year.

During fiscal year 1998:

- **The Office cooperated closely with the staff of the Bureau of Enforcement with respect to the activities of several nonperforming NVOCCs. These efforts helped many customers of the concerned firms recover their apparent losses, and contributed to formal enforcement efforts in several noteworthy cases.**
  
- **The Office continued to broaden its outreach activities. Efforts in this area contributed to a wider variety in the types of complaints received.**





## **B. OFFICE OF ADMINISTRATIVE LAW JUDGES**

### **1. General**

Administrative Law Judges ("ALJs") manage the development of an evidentiary record through rulings and conferences with counsel for the litigating parties, rule upon dispositive motions, and preside at hearings held after the receipt of a complaint or institution of a proceeding on the Commission's own motion.

ALJs have the authority to administer oaths and affirmations; issue subpoenas; 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 1998, seventeen formal proceedings, two special docket proceedings, and one informal proceeding were pending before the ALJs. During the year, 28 cases were added. The ALJs formally settled ten proceedings, dismissed or discontinued one proceeding, and issued thirteen initial decisions in formal proceedings, nine decisions in special docket proceedings, and one decision in an informal proceeding.

### **2. Commission Action**

The Commission adopted ten formal initial decisions, eight special docket decisions, nine orders of approval of settlement, and one dismissal of complaint of the ALJs.

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

***Total Fitness Equipment, Inc. d/b/a Professional Gym v. Worldlink Logistics, Inc. [Informal Docket No. 1831(F)].***

***Application of Total Fitness Equipment, Inc. d/b/a Professional Gym for the Benefit of Itself [Special Docket No. 3110].***

In these consolidated proceedings, complainant, a manufacturer of exercise equipment located in Missouri, imported a shipment of chrome track bars from Taiwan and was quoted a lower rate by respondent carrier's agent in Taiwan. However, after the shipment arrived in Missouri, the respondent carrier refused to honor its agent's rate quotation and demanded \$11,009.38 before the carrier would release the cargo, although the complainant had already paid the respondent's agent in Taiwan under the originally quoted rate. It was held that respondent violated sections 10(b)(6) and 10(d)(1) of the 1984 Act by engaging in unreasonable and discriminatory ratemaking and delivery practices notwithstanding the respondent carrier's filed tariff rates, and complainant was awarded the above amount plus interest.

***River Parishes Company, Inc. v. Ormet Primary Aluminum Corporation [Docket No. 96-06].***

In this proceeding, complainant, a tugboat operator along the Mississippi River, alleged that respondent, a marine terminal operator ("MTO"), had violated sections 10(b)(11), 10(b)(12), and 10(d)(1) of the 1984 Act by entering into an exclusive contract with a competitor of complainants to perform tug services at respondent's terminal. Complainant asked for a cease and desist order plus money damages in an unspecified amount. Respondent claimed that it did not serve

common carriers by water and that the Commission, therefore, lacked jurisdiction and that its practices were more efficient and safer for the ships it served. It was held that the Commission had jurisdiction because many common carriers called at the terminal, and that respondent's practices did not violate the 1984 Act as alleged because of the many benefits resulting from respondent's decision to provide service under the exclusive contract.

***Bermuda Container Line Ltd. v. SHG International Sales Inc., FX Coughlin Co., and Clark Building Systems, Inc.***  
**[Docket No. 97-22].**

In this proceeding, complainant vessel-operating carrier alleged that respondent, a licensed freight forwarder, violated section 19 of the 1984 Act and the Commission's freight forwarder regulations by failing to warn complainant that a shipper, whom respondent freight forwarder had briefly represented, was unreliable and likely not to pay the ocean freight to the carrier. It was held that the freight forwarder had acted properly, that the complainant carrier had caused its own problem by extending credit to the unreliable shipper without investigating the shipper's credit rating, and that the forwarder was under no additional duty to investigate the forwarder's shipper-clients before booking shipments with vessel-operating carriers.

***The Board of Commissioners of the Port of New Orleans v. Kaiser Aluminum and Chemical Corporation and the Board of Commissioners of the St. Bernard Parish Port, Harbor and Terminal District and the St. Bernard Port, Harbor and Terminal District*** [Docket No. 98-01].

In this proceeding, complainant Port alleged that various competing ports and MTOs had violated sections 4(b), 8, and 10(b) of the 1984 Act by charging certain rates unlawfully to the detriment

of complainant Port, mainly by failing to observe the rates charged by complainant Board, in violation of certain tariffs and agreements, by charging rates other than those filed in its tariffs, and by discriminating against certain common carriers and others. The parties entered into a settlement agreement, which also settled a companion court case, which agreement was approved by the presiding judge under the standards of law applicable to settlement agreements.

***Panalpina Inc. v. Eastern Mediterranean Shipping Corp.***  
**[Docket No. 98-12].**

In this proceeding, complainant alleged that respondent, an NVOCC, violated sections 10(b)(6)(D) and 10(d)(1) of the 1984 Act by not taking care to make sure that a shipment was properly delivered overseas or to pay certain on-carriage and demurrage charges that had accrued overseas. Reparations amounting to \$11,641.74, plus interest, were awarded to complainant, resulting from the violations of law that were found to have occurred.

#### **4. Pending Proceedings**

At the close of fiscal year 1998, there were sixteen pending proceedings before the ALJs, of which seven were investigations initiated by the Commission. The remaining proceedings were instituted by the filing of complaints 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, and 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. Rulemakings and Decisions**

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

#### **(a) Rulemakings**

***Order Denying Petition for Rulemaking or Declaratory Order in re: The Impact of Modern Technology on the Customs and Practices of the Freight Forwarding Industry*** [Petition No. P3-98], 28 S.R.R. 418 (September 14, 1998).

This proceeding was initiated by a petition for rulemaking or declaratory order filed by R.F. International, Ltd., an international ocean freight forwarder licensed by the Commission, requesting that the Commission institute a rulemaking or issue a declaratory order clarifying the Commission's policies on: (1) "in-plant" forwarders; (2) the use of electronic data interchange ("EDI") systems by freight

forwarders; and (3) the effect of the use of in-plants and EDI systems on carrier compensation and fees charged to shippers by freight forwarders.

The Commission found that a freight forwarder could include in-plant and EDI arrangements as a part of its business and incorporate those arrangements as part of a package of services. In order to collect a fee or carrier compensation, however, the Commission found that the forwarder must also perform traditional freight forwarding services for each and every shipment.

The Commission denied the petition, finding that the number of diverse arrangements that could be made between forwarders and their shipper and carrier clients in regard to in-plants and EDI systems were too great to address in a single rulemaking or declaratory order. The Commission recognized the common use of in-plants and EDI systems in the industry and thus, did not want to discourage technological innovation. The Commission, therefore, refused to issue a regulation attempting to predict every possible permutation of these arrangements that could arise.

### **(b) Decisions**

***Corpco International, Inc. v. Straightway, Inc.* [Docket No. 97-05], 28 S.R.R. 296 (June 8, 1998).**

This proceeding was initiated by a complaint filed by Corpco International Inc. ("Corpco") against Straightway, Inc. ("Straightway"). Corpco alleged that Straightway violated sections 10(b)(1), 10(b)(12), and 10(d)(1) of the 1984 Act by failing to make available for delivery a mobile crane which Straightway had agreed to transport from the U.S. to Qingdao, China, until substantial additional charges were paid; demurrage and customs charges were alleged to have arisen from the delay as well.

On January 8, 1998, the presiding ALJ issued an Initial Decision in which he found that Straightway violated section 10(d)(1) of the 1984 Act by forcing Corpco to pay substantial additional charges to obtain the necessary negotiable bill of lading to secure release of the cargo Corpco had arranged to transport with Straightway. On June 9, 1998, the Commission issued its Report and Order adopting the Initial Decision.

***The Government of the Territory of Guam, et al. v. Sea-Land Service, Inc. and American President Lines, Ltd.***  
**[Docket No. 89-26], 28 S.R.R. 252 (June 1, 1998).**

This proceeding was initiated by a complaint filed by the Government of the Territory of Guam ("GovGuam") on behalf of itself and other named and unnamed Guam shippers against Sea-Land Service, Inc. ("Sea-Land") and American President Lines, Ltd., ("APL"). GovGuam alleged that Sea-Land and APL had violated several provisions of the 1916 Act by charging unreasonably high rates in the trade between Guam and the mainland U.S., as well as in the trade between Guam and Hawaii. The ALJ issued an Initial Decision on June 3, 1996, in which he found that the rates of Sea-Land and APL were not unreasonable; he, therefore, dismissed the case.

GovGuam filed exceptions to the Initial Decision. On June 1, 1998, the Commission issued an order finding that Sea-Land and APL violated the 1916 Act by charging excessive rates. Sea-Land's rates were found to exceed the allowable rate-of-return by \$6,274,659, and APL's rates were found to exceed the allowable rate-of-return by \$16,733,229. The Commission remanded the proceeding to the ALJ for a determination on damages as well as a determination on a jurisdictional issue regarding whether certain containers moved by Sea-Land after it withdrew its FMC-filed tariffs were subject to the Commission's jurisdiction. The Commission also ruled that reparations were only available to named complainants under the 1916 Act, so that GovGuam's attempts to represent unnamed shippers

in its complaint could not result in an award of reparations to those shippers.

***Petition of China Ocean Shipping (Group) Company for a Limited Exemption from Section 9(c) of the Shipping Act of 1984 [Petition No. P1-98], 28 S.R.R. 144 (March 27, 1998).***

On January 7, 1998, China Ocean Shipping (Group) Company ("COSCO") filed a Petition with the Commission seeking a limited exemption from certain provisions of section 9 of the 1984 Act. Under that section, a government-owned or -controlled carrier, such as COSCO, cannot lower its rates without giving 30 days advance notice or otherwise receiving special permission from the Commission. COSCO proposed an exemption (provided for under section 16 of the 1984 Act) to allow it to reduce rates to match (but not undercut) competitors' rates on 1, rather than 30, day's notice.

COSCO suggested that the proposed exemption would provide more service options for shippers of time-sensitive cargoes, which must move before the end of the 30-day period. It argued that the waiting period undermined its ability to compete for such cargoes, and asserted that its non-controlled competitors (which are not subject to the waiting period) could win customers from COSCO, simply by undercutting COSCO's rate. COSCO clarified that, under the relief sought, its rates would still be subject to the substantive standards of section 9(a) -- that is, they could not be "below a level that is just and reasonable."

Attached to COSCO's petition were 29 letters from its shipper customers explaining that, in certain circumstances, the 30-day requirement caused them to have to use lines other than COSCO. The Commission also received comments from three additional shippers, APL, Sea-Land, and the Maritime Administration, DOT, all supporting COSCO's request.



The Commission granted COSCO's requested exemption, finding that it met the standards for exemption set forth in section 16. The Commission noted that the exemption would increase service options for shippers, while remaining consistent with Congress' intent in enacting the controlled carrier standards to protect against unfair or predatory price cutting. The Commission also found COSCO's request to be similar to approaches taken in prior Commission decisions and rules regarding waiting periods. However, the Commission clarified that COSCO would only be able to match the filed rates of vessel operators; matching NVOCC rates or unfiled rate quotations would not be permitted. Also, the Commission cautioned that the exemption would be revoked if there were any abuses or predatory pricing practices by COSCO.

***Compania Sud Americana de Vapores S.A. v. Inter-American Freight Conference, et al.* [Docket No. 96-14], 28 S.R.R. 12 (March 19, 1998).**

This proceeding was initiated by a complaint filed by Compania Sud Americana de Vapores S.A. ("CSAV") against Respondents Inter-American Freight Conference ("IAFC"), Section C of the IAFC, A.P. Moller Maersk Line, Crowley American Transport, Inc., A/S Ivarans Rederi, Companhia Maritima Nacional, Companhia de Navegacao Lloyd Brasileiro, Empresa Lineas Maritimas Argentinas, S.A., Empresa de Navagacao Alianca S.A., Frota Amazonica S.A., Hamburg-Sudamerikanische Dampfschiffahrts-Gesellschaft Eggert & Amsinck, and Transroll/Sea-Land Joint Service. CSAV alleged that the respondents violated sections 10(a)(2) and 10(a)(3) of the 1984 Act, 46 U.S.C. app. §§ 1709(a)(2) and (3), by charging CSAV for expenses allegedly not authorized by the IAFC Agreement. CSAV claimed to have been damaged by the IAFC's action in drawing on a CSAV-supplied letter of credit to pay for a portion of the winding-up expenses of a juridical entity known as the Sociedade Brasileira de Administracao de Conferencias de Frete ("Sobracon"). In response to the complaint,

respondents submitted a Motion to Dismiss and/or for Summary Judgment. CSAV then filed a Cross-Motion for Partial Summary Judgment. The presiding ALJ issued a decision in which he granted the respondents' Motion for Summary Judgment and dismissed the complaint.

The complainant had argued that the respondents violated section 10(a)(2) by failing to file with the Commission an agreement to dissolve Sobracon, a Brazilian corporation employed to administer the respondents' conference activities in Brazil. The ALJ found that, as a matter of law, the respondents had provided sufficient language in their filed FMC Agreement to satisfy the agency's filing requirements. Disagreeing with this conclusion, the Commission issued an order in which it determined that the respondents had not filed the agreement to dissolve the corporation, and that this failure to file produced a violation of section 10(a)(2) of the Act. After the Commission issued its Order, the respondents filed a Petition for Reconsideration, and several outside parties filed an *amicus curiae* brief in support of the Petition for Reconsideration. That Petition is currently being reviewed by the Commission.

## **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:

***American President Lines, Ltd. v. Federal Maritime Commission, D.C. Cir. No. 98-1271, consolidated with Sea-Land Service, Inc. v. Federal Maritime Commission, D.C. Cir. No. 98-1272; Government of the Territory of Guam v. Federal Maritime Commission, D.C. Cir. No. 98-1354.***

These cases arose from the Commission's decision in Docket No. 89-26, *Government of the Territory of Guam v. Sea-Land Service, Inc. and American President Lines, Ltd.* GovGuam alleged that Sea-Land and APL had violated several provisions of the 1916 Act by charging unreasonably high rates in the trade between Guam and the mainland U.S., as well as in the trade between Guam and Hawaii. The ALJ issued an Initial Decision on June 3, 1996, in which he found that the rates of Sea-Land and APL were not unreasonable; he, therefore, dismissed the case. GovGuam filed exceptions to the Initial Decision, and on June 1, 1998, the Commission issued an order finding several violations of the 1916 Act, and remanding the proceeding to the ALJ for a determination on damages as well as a determination on a jurisdictional issue regarding whether certain containers moved by Sea-Land after it withdrew its FMC-filed tariffs were subject to the Commission's jurisdiction.

Sea-Land and APL filed petitions for review of the Commission's decision in the U.S. Court of Appeals for the District of Columbia Circuit on June 11, 1998. Their appeals were consolidated by the court. GovGuam filed a petition for review of the Commission's decision in the same court on July 28, 1998. Its petition was not consolidated with the carriers' cases.

On July 13, 1998, the Commission filed a motion to dismiss for lack of subject matter jurisdiction in cases 98-1271 and 98-1272, arguing that the Commission's June 1, 1998, order was not final under the Hobbs Act and, thus, not yet susceptible to court review.

On September 14, 1998, the Commission filed a similar motion in case 98-1354. The court agreed with the Commission's arguments and granted the motions to dismiss on November 24, 1998. The remanded proceeding before the ALJ, which had been held in abeyance pending conclusion of the appeals, resumed on December 7, 1998.

***Maryland Port Administration v. Federal Maritime Commission, 4th Cir. No. 97-2418.***

This proceeding sought review of the Commission's decision in Docket No. 94-01, *Ceres Marine Terminals, Inc. v. Maryland Port Administration* ("MPA"). Ceres, an MTO, alleging violations of sections 10(b)(11), (b)(12), (d)(1) and (d)(3) of the 1984 Act and sections 16 and 17 of the 1916 Act, claimed that MPA engaged in unjust preference and prejudice and unreasonable discrimination by failing to grant it equivalent lease terms and terminal facilities, that it provided to an ocean common carrier in its lease with the Port. MPA argued that ocean common carriers and MTOs are not similarly situated and, thus, any disparate treatment was not unjust or unreasonable.

On October 10, 1997, the Commission found that the ALJ had failed to consider or address the evidence or to reflect the applicable standards for his decision. Therefore, the Commission vacated the Initial Decision and decided the case *de novo*. The Commission found that respondent MPA had violated sections 10(b)(11) and (12) of the 1984 Act by relying on a vessel call guarantee to justify granting more favorable lease terms to an ocean common carrier and refusing those same, or substantially similar, terms to an MTO solely because of its status, where the vessel call guarantee did not provide to the port any more security or assurances than the MTO could have provided, and further violated section 10(d)(1) by imposing on the MTO rates and charges that were excessive in relation to the benefit received, particularly where the degree of disparity in the rates so

greatly disfavored the party committed to moving substantially more cargo. The Commission also found that respondent violated sections 10(b)(11) and (12) by refusing to grant the MTO rates for its barge service that were comparable to those offered to another barge operator unless the MTO dropped its existing state court lawsuit and paid amounts allegedly due, and further violated section 10(d)(1) by imposing on the MTO rates for its barge service that were excessive in comparison to the rates provided to the operator of another barge service for the same service and that was not reasonably related to any legitimate goal of the port.

Respondent appealed the Commission's decision to the U.S. Court of Appeals for the Fourth Circuit in Richmond, Virginia, and Ceres intervened in the proceeding. Briefing was completed on February 19, 1998, and argument was heard on April 8, 1998. The Court is expected to issue its decision early in fiscal year 1999.

***Sea-Land Service, Inc. v. Federal Maritime Commission, D.C. Cir. No. 97-1083; Military Sealift Command v. Federal Maritime Commission, D.C. Cir. No. 97-1084; and American President Lines, Ltd. v. Federal Maritime Commission, D.C. Cir. No. 97-1085.***

These consolidated cases are petitions to review the Commission's decision in Docket No. 90-08, *Military Sealift Command v. Sea-Land Service, Inc.*, issued December 10, 1996. The Commission found in that case that two vessel-sharing agreements between a U.S.-flag carrier and two foreign-flag carriers, whereby the foreign-flag carriers agreed not to use any vessel or space chartered from the U.S.-flag carrier to carry cargo subject to U.S. cargo preference laws, were allocations of a particular shipper within the meaning of section 10(c)(6) of the 1984 Act, but that the allocations were "required by the law of the United States" within the meaning of the "except" clause of section 10(c)(6) because they were required

by orders of the Maritime Administration, DOT, which orders had not been found unlawful by any court of competent jurisdiction.

On January 9, 1998, the Court of Appeals ordered supplemental briefing in the consolidated cases on the standing of Sea-Land and APL to seek review of the FMC's decision. Supplemental briefs were filed on January 26, 1998. On March 13, 1998, the Court of Appeals affirmed the Commission's decision that the challenged allocations were required by the law of the U.S. and dismissed the carriers' petitions for review for lack of standing.

***James J. Flanagan Shipping Corporation d/b/a James J. Flanagan Stevedores v. Federal Maritime Commission, D.C. Cir. No. 97-1616.***

This case is the result of a petition by James J. Flanagan Shipping Corporation to review the Commission's decision in Docket No. 94-32, *James J. Flanagan Shipping Corporation d/b/a James J. Flanagan Stevedores v. Lake Charles Harbor and Terminal District and Lake Charles Stevedores, Inc.*, served on July 30, 1997. The Commission found that a supplemental rail car switching charge imposed by the respondent port and stevedore on the complainant stevedore violated section 10(d)(1) of the 1984 Act because the complainant stevedore was not a user of the switching service and derived no allocable benefit from it. The Commission further found that an increase in the port's pallet use charge from \$.75 to \$1.50 per ton did not violate the 1984 Act because the increase was justified by expensive cleaning and construction costs.

Flanagan filed a petition for review of the Commission's decision in the U.S. Court of Appeals for the District of Columbia Circuit on September 29, 1997. On November 17, 1997, the Commission filed a motion to dismiss for lack of subject matter jurisdiction, arguing that the Commission's order was not final under

the Hobbs Act. The Court granted the Commission's motion to dismiss on January 12, 1998.

### **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, responding to Congressional requests for assistance, and preparing agency responses to requests from OMB on proposed bills and testimony.

During fiscal year 1998, 151 bills, proposals and Congressional inquiries were referred to General Counsel for comments. The Office also worked closely with Congressional staffs on proposed legislation that affected the Commission. In particular, the Office monitored the progress of and commented on various aspects of S. 414, the OSRA, that would significantly affect the Commission's statutory mandates.

### **4. Significant Ongoing Activity**

#### ***Port Restrictions and Requirements in the United States/Japan Trade [Docket No. 96-20], 27 S.R.R. 913 (February 26, 1997).***

On February 26, 1997, the Commission issued a final rule to impose fees of \$100,000 per voyage on Japanese liner operators, in response to unfavorable restrictive practices in place in Japanese ports. The imposition of these sanctions was first proposed on November 6, 1996, pursuant to section 19 of the 1920 Act, after an extensive FMC investigation into Japanese port practices. The final rule was originally scheduled to take effect April 14, 1997; after a postponement to allow diplomatic efforts at resolution, the final rule took effect on September 4, 1997.

In its decision, the Commission found a series of restrictive conditions involving the dominance of the harbor services industry in Japan by the Japan Harbor Transportation Association ("JHTA"), an association of Japanese waterfront employers. The Commission found that shipping lines in the U.S.-Japan trades are not allowed to make operational changes, major or minor, without the permission of JHTA. That organization exercised its control through its administration of the "prior consultation" system, a mandatory process of negotiations and pre-approvals involving carriers, JHTA, and waterfront unions. No written criteria, explanations, or avenues for appeal were given for JHTA's decisions, and JHTA used its control over access to the prior consultation system to suppress competition and allocate work among its member companies. The Commission also found that JHTA used its authority to disrupt the business operations of its detractors, extract payment of unwarranted fees, and impose operational restrictions, such as Sunday work limits. As a result of these conditions, U.S. carriers and U.S.-Japan trade were burdened with unreasonably high costs and inefficiencies.

The Commission found that the Government of Japan bore ultimate responsibility for JHTA's actions, as JHTA operates with the permission of, and under the regulatory authority and ministerial guidance of, the Ministry of Transport ("MOT"). Also, JHTA member companies are subject to MOT oversight and regulation, and their rates and business plans are subject to MOT approval. In ruling that the imposition of fees was warranted, the Commission found that repeated diplomatic efforts over the last several years by the U.S. and other major trading nations have failed to bring about necessary reforms.

The sanctions were originally scheduled to go into effect April 14, 1997; however, bilateral discussions covering many of the Commission's concerns were held between the U.S. Government and the Government of Japan, concluding with the signing of a "Memorandum of Consultation" by the two governments on April 11. In the Memorandum of Consultation, the Government of Japan



committed to a framework for reforming the prior consultation system by July 31, 1997. Based on this and other commitments, the Commission postponed the effective date for the imposition of fees on April 13 until September 4, 1997. When that date arrived, however, no reform plans for the prior consultation system had been agreed upon or implemented. Therefore, the Commission took no action to further stay the sanctions, and the fees began to accrue.

On October 15, 1997, under the payment provisions set forth in the final rule, the payment of \$4 million in fees assessed for the month of September was due by the Japanese carriers. However, on October 16, the Commission was informed that the Japanese carriers did not intend to pay the amounts owed. In response, the Commission announced its intention to put into effect the provisions of the final rule addressing non-payment of fees. Under these provisions, liner vessels operated by the Japanese carriers could be barred from, or detained in, U.S. ports, and be denied customs clearance, until their debts to the U.S. Government were satisfied.

The likelihood of ship detentions added a new level of urgency to ongoing U.S.-Japan maritime negotiations (led by the Maritime Administration, DOT, together with the Department of State). These negotiations ultimately proved successful. On October 24, 1997, before any ships were actually detained, U.S. and Japanese negotiators concluded documents which would constitute a historic, detailed and far-reaching commitment to reform Japanese port practices. In light of these developments, the Commission entered into an agreement with Japanese shipping lines on fees assessed for the month of September, accepting \$1.5 million in compromise.

In November, once the documents agreed to by the negotiators were formally ratified by all necessary government and industry leaders, the Commission suspended the effectiveness of its final rule assessing sanctions. The Commission and Japanese carriers also executed a compromise agreement whereby the Commission -- in

recognition of the substantial sums already paid by the carriers in this case and the signing of the port reform accords -- agreed not to collect those fees assessed on Japanese shipping lines during October and November 1997. The Commission kept the agency proceeding open, however, to monitor compliance with the commitments made by the negotiators, and to ensure that agreed-upon reforms are actually implemented.

## **5. Foreign Shipping Restrictions and International Affairs**

The General Counsel is responsible for the administration of the Commission's international affairs program. The General Counsel monitors potentially restrictive foreign shipping laws and practices, and makes recommendations to the Commission for investigating and addressing such practices.

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

In fiscal year 1998, the Commission investigated and addressed a number of potentially unfavorable or discriminatory shipping practices by foreign governments in Brazil and the PRC.

With regard to PRC, the Office of the General Counsel continues to monitor a number of issues, including implementation of a Chinese commitment to allow U.S. carriers to offer consolidation and logistics services in the PRC through wholly-owned subsidiaries. The Office is also reviewing the establishment of the Shanghai

Shipping Exchange, a combination freight exchange and regulatory body recently established by PRC authorities, to ensure that its operations do not impede or disadvantage U.S. carriers serving the region.

The Commission continues to review information collected from shipping lines on certain policies or practices of the Government of Brazil which may contravene applicable U.S. law. In particular, the Commission seeks to ascertain whether the failure of Brazilian authorities to permit a U.S.-flag carrier to operate a bonded warehouse in Brazil created conditions unfavorable to shipping in the foreign trade under section 19 of the 1920 Act or constituted adverse conditions affecting U.S. carriers that do not exist for Brazilian carriers, in conflict with the FSPA. The Commission also inquired as to whether restrictions on U.S. carriers' ability to carry cargoes in the cross-trades between Brazil and other South American countries impairs access of U.S.-flag vessels to ocean trade between foreign ports, in violation of section 13(b)(5) of the 1984 Act. The Commission also recently collected information regarding tax and cargo preference legislation in Brazil which may place U.S. carriers at a severe competitive disadvantage to their Brazilian counterparts. If information collected by the Commission points to violations of law, it may launch formal adjudicatory or rulemaking proceedings. Such proceedings could result in the imposition of sanctions, including imposition of per-voyage fees, limitations on sailings, and suspension of tariffs.

The Office of the General Counsel also participated in interagency groups and international maritime discussions, and 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 1998, 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 1998 include the following:

- 1. Provided briefings to senior staff.**
- 2. Provided workshops on equal employment opportunity.**
- 3. Provided counseling assistance to managers, supervisors and employees.**
- 4. Reviewed and assessed management and personnel human resource activity and actions.**
- 5. Developed information and materials for training senior executives, area representatives, and staff and EEO Counselors.**
- 6. Planned and developed special emphasis programs for FMC employee participation.**
- 7. Continued to improve FMC's image and identity among Federal agencies and the community by developing cooperative programs in the special emphasis areas.**
- 8. Continued non-discrimination policy and programs in response to Pub. L. No. 103-123.**

During fiscal year 1999, 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 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 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 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 1998, the OIG issued five audit reports in final, including a comprehensive review of the Commission's Fiscal Year 1997 Financial Statements. Other audits included a review of the Passenger Vessel Certification Program, a review of the Compressed Work Schedule Program, an evaluation of the Agency's Area Representative Concept, and a review of the Agency's Property Management System. In addition, the Office conducted a peer review of an OIG at another agency as required by the General Accounting Office's Government Auditing Standards.

During the year, various investigations, both formal and informal, were opened and pursued. Two formal investigations remain pending review by the Department of Justice. One other formal investigation was concluded without referral outside the agency.



In fiscal year 1999, the OIG intends to conduct a comprehensive program of audits and reviews, with a continued high priority on program evaluations. The goal is to improve program operations while continuing to combat any waste, fraud and abuse that may exist in agency programs. These audits and reviews are tied to both the agency and the OIG strategic plans. The passage of OSRA will generate new agency initiatives which will require oversight by the OIG.

The Inspector General is an active member of the Executive Council on Integrity and Efficiency ("ECIE") and regularly attends and participates at meetings held by that body. The ECIE serves as a forum for the exchange of views for the inspector general community and provides a base for the establishment of joint inspector general projects. It is anticipated that the Commission's OIG will participate in any such projects developed during fiscal year 1999.



## 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 Economics and Agreement Analysis.**
- **Bureau of Tariffs, Certification and Licensing.**
- **Bureau of Enforcement.**
- **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 the Inspector General.**

Further, the **Office of Information Resources Management** reports directly to the Office of the Managing Director.

This management structure 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 Chief Information Officer, and the Commission's Chief Operating Officer.

The Deputy Managing Director is the Contracting Officer for the Commission's ATFI system. As the ATFI Contracting Officer, the Deputy Managing Director has direct responsibility for administration of this contract. Additionally, the Chairman has designated a member of the Commission as the Chairman of the Automated Data Processing ("ADP") Committee and responsible for ATFI oversight.

A significant achievement of the Office during fiscal year 1998 was implementation of the five-year strategic plan as required by the Government Performance and Results Act of 1993 ("GPRA"). Additionally, the Office provided oversight in the implementation of the requirements of the Small Business Regulatory Enforcement Fairness Act of 1996 ("SBREFA"). Also, the Office continued its coordination of the Commission's field operations structure, expanding it to include a permanent Commission presence in New York, a port area previously served from Commission headquarters. The Office continues to oversee a rulemaking process reviewing passenger vessel operators' financial responsibility requirements aimed at ensuring that adequate levels of coverage are maintained, in addition to supporting the development of rules to implement OSRA.

The Office's key objectives for fiscal year 1999 are the initiation of all actions necessary to appropriately implement the final rules effectuated under OSRA; further development of the Commission's enforcement program; completion of the passenger vessel operator rulemaking process; continued implementation of the Commission's five-year plan under the GPRA; and continuing oversight of staff efforts to address restrictive practices of foreign governments.

## **Office of Information Resources Management**

The Office of Information Resources Management (“OIRM”) administers the Commission’s information resources management (“IRM”) program under the Paperwork Reduction Act of 1995, as amended, as well as other applicable laws which prescribe responsibility for operating the IRM program. These IRM functions include: conducting IRM management studies and surveys; managing data telecommunications; developing and managing databases and applications; coordinating records management activities; administering IRM contracts; and developing Paperwork Reduction Act clearances for submission to OMB. The Office is also responsible for managing the computer security, and the records and forms programs. The Director of the Office serves as Senior IRM Manager, Forms Control Officer, Computer Security Officer, Records Management Officer, and ADP Coordinator for the ADP Committee. The Director of the Office also monitors the activities of the ATFI Contracting Officer's Technical Representative.

During fiscal year 1998, the Office:

- **Modified and enhanced the FMC home page.**
- **Modified and enhanced the FMC optical imaging system.**
- **Conducted Information Technology (“IT”) Group meetings to share current IT information with Commission employees.**
- **Coordinated technical, logistical, procedural and security issues related to the Commission's worldwide ATFI system and other database systems created, owned and maintained by the Commission.**

- **Furnished agency-wide advice and coordination on records management, OMB clearances, collections of information, and IRM.**
- **Coordinated the agency-wide installation and training of the SACONS Requisitions/Procurement System .**
- **Upgraded the Commission's e-mail system.**
- **Updated the Commission Order *Automated Information Security Program* and handbook and conducted a computer security survey of Commission database systems.**
- **Received, tested and installed new PC workstations and upgraded the Commission's Local Area Network.**
- **Coordinated revised schedule of user fees, prepared the press release, and updated the Commission's website and ATFI system to reflect the updated schedules.**

In addition to implementing ongoing Office programs mentioned above, major initiatives for fiscal year 1999 include: (1) providing guidance for the implementation of an agency-wide Intranet site; (2) finalizing and submitting an electronic records management schedule to the National Archives and Records Administration to include as appropriate Government Information Locator Service ("GILS") records; (3) enhancing the FMC home page; (4) upgrading hardware and software for agency-wide file servers; (5) conducting an agency-wide records management audit; (6) maintaining liaison with the Government Printing Office to ensure that FMC's GILS entries remain current; (7) providing continued administrative support to agency components regarding IRM matters;

(8) evaluating commercial-off-the-shelf software for Year 2000 (“Y2K”) compliance and for Commission use; (9) providing technical support and assistance for program offices to access carrier automated tariff systems; and (10) providing technical support and assistance for the electronic filing of service contracts.





# **G. BUREAU OF ECONOMICS AND AGREEMENT ANALYSIS**

## **1. General**

The primary function of the Bureau 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. 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, and to advise the Commission and its staff on current trade conditions, emerging trends, and regulatory needs affecting 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.**
- **Providing expert economic testimony and support in formal proceedings, particularly regarding unfair foreign shipping practices.**
- **Processing and analyzing common carrier and marine terminal agreements.**

## **2. Monitoring**

The goal of the Bureau's monitoring activities is to ensure that carriers operating in U.S. ocean trades comply fully with applicable statutory standards 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 1998, see Section III. A, *Monitoring*.

## **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 including rulemaking proceedings. Bureau economists prepare testimony in fact-finding investigations and cases of unfair shipping practices under section 19 of the 1920 Act and the FSPA. They also prepare speeches and briefings for senior agency officials.

Key projects the Bureau completed in fiscal year 1998 included: (1) profiles of the major trade lanes based on information contained in the information reporting requirements; (2) a paper which examined the use of carrier alliances as a business strategy; (3) an examination of similar competitive practices of major agreements; (4) an updated monitoring report of controlled carrier activities, and individual controlled carrier profiles; (5) an analysis of rates and contract provisions of certain carriers operating in the transatlantic trade; (6) an update of the Bureau's carrier agreement database, including a compendium entitled *Carrier Agreements in the U.S. Oceanborne Trades*; (7) an analysis of 65 waiver requests from agreement parties seeking relief from portions of the Commission's

agreement reporting requirements; (8) an analysis of issues in Docket No. 97-07, *Possible Unfiled Agreements Between Hyundai Merchant Marine Company, Ltd. and Mediterranean Shipping Co., S.A.*, and Docket No. 97-08, *Possible Unfiled Agreements Among A.P. Moller Maersk Line, P&O Nedlloyd Limited and Sea-Land Service, Inc.*; (9) an analysis of a major agreement under the 6(g) standard; (10) classification of agreements to determine each agreement's monitoring report requirements for 1998; (11) responses to informal complaints of shippers regarding an agreement in the U.S. Pacific Northwest trade with Russia; (12) preparation of quarterly status reports on the activities of controlled carriers; (13) an analysis of rates charged by a major controlled carrier; (14) a review of shipping conditions in the Brazil trade; (15) a refinement of the terminal agreements database; (16) a review of South America trades; (17) conducting semiannual Trans-Atlantic Conference Agreement/FMC meetings to discuss trade conditions and conference activities; (18) preparation of speeches and briefings for senior agency officials; (19) preparation of an inquiry into the Asian Shipowners' Forum; (20) an analysis of the Commission's user fees; (21) refinement of an automated database and filing system for information submitted in compliance with the Commission's agreement reporting requirements; and (22) a review of baseline data submissions under the Commission's agreement reporting requirements.

## **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 common carriers. These agreements typically are limited to a geographical area or trade route. Interconference agreements are between two or more conferences, and usually cover

shared administration, or provide a forum for discussing issues of common interest.

During fiscal year 1998, the Bureau analyzed and processed 99 conference and interconference agreement filings, including modifications to existing agreements. At the end of the fiscal year, there were 34 conference agreements and 2 interconference agreements on file at the Commission.

### **(b) Pooling and Equal Access Agreements**

Pooling agreements are commercial arrangements among carriers in a given trade providing for the pooling and apportionment of cargo or revenues or both 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 8 pooling and equal access agreements on file at the end of the fiscal year.

### **(c) Space Charter and Sailing Agreements**

Space charter agreements authorize the chartering of vessel space or container slots between or among participating vessel operators. Sailing agreements provide for the rationalization of the parties' sailing schedules. Through effective management of their vessels and the space on those vessels, participants in these agreements are able to provide a high level of service at reduced operating costs. These agreements also generally contain authority to exchange equipment. A number of conferences and discussion agreements also have included space charter and sailing authority within the scope of their agreements.

During fiscal year 1998, the Bureau processed 40 space charter and sailing agreements and modifications. At the end of the fiscal year, there were 94 space chartering and sailing agreements on file.

**(d) Joint Service Agreements**

Parties to joint service agreements operate a joint venture under a single name in a specified trading area. The joint venture issues its own bills of lading and sets its own rates as an individual entity.

Three joint service agreements were filed during fiscal year 1998. Eighteen joint service agreements were on file 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 that do not fit precisely within the other agreement categories. This category also includes voluntary rate discussion agreements.

Carriers filed 108 CWAs, including amendments, in fiscal year 1998. There were 118 CWAs on file 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 reviewing and processing agreements related to the marine terminal industry.

During fiscal year 1998, the Bureau analyzed 66 terminal agreements relating to port and marine terminal services and facilities. Certain terminal agreements become effective upon filing under Commission rules that exempt certain classes of marine terminal agreements from the waiting period requirements of the 1984 Act. Terminal agreements not entitled to an exemption are processed under applicable statutory requirements. At the end of the fiscal year, 570 terminal agreements were on file with the Commission.

The number of marine terminal agreement filings have decreased drastically since fiscal year 1992. That year, to lessen the regulatory burden on the industry, the Commission exempted terminal lease agreements from filing. Prior to that time the Commission was receiving approximately 340 terminal agreements a year. In fiscal year 1998, the Commission received only 68 terminal agreements.

## **5. Overview of Agreement Filings**

In fiscal year 1998, the Bureau received 357 agreements, including modifications to existing agreements, a 12 percent decrease from the previous fiscal year, but still some 30 percent higher than prior years. The Bureau processed 345 agreements including modifications to existing agreements during the fiscal year. Appendix C contains a breakdown of receipt and processing categories for the fiscal year.

At the end of fiscal year 1998, the Bureau had a total of 286 carrier agreements and 570 terminal agreements on file. Appendix C provides a breakdown of various agreements by type.

## **6. Future Plans and Proposed Activities**

The Bureau's overall monitoring program will focus on systematic oversight of carrier and trade activity with an emphasis on analyzing market share, commodity, and revenue data submitted by carriers in agreements pursuant to the Commission's reporting requirements; reviewing agreement minutes submissions; and monitoring current developments and trade trends. Together with publicly available sources of trade information, the above data will be employed to assess the impact of key issues facing the industry in order to monitor developments in major trades and analyze agreements in the foreign trades under the standards of the 1984 Act or OSRA.

The Bureau also will continue to furnish support and prepare economic testimony in formal Commission proceedings, including proceedings under section 19 of the 1920 Act and the FSPA; provide analyses and recommendations on petitions, information demand orders, rulemakings, including those necessary to implement OSRA, and major rule and small business impact analyses; perform pre-effectiveness analyses 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, OSRA, or raise general policy questions; prepare recommendations to the Commission on the more complex agreements and those agreements that raise policy issues; and process other agreement matters internally under authority delegated by the Commission.





## **H. BUREAU OF TARIFFS, CERTIFICATION AND LICENSING**

### **1. General**

The Bureau of Tariffs, Certification and Licensing is responsible for the review of all tariffs filed by common carriers, conferences of such carriers, and MTOs, as well as service contracts filed by carriers and conferences; ensuring that NVOCCs submit appropriate evidence of financial responsibility; the licensing of ocean freight forwarders; and the certification of owners and operators of passenger vessels for financial responsibility. In meeting these responsibilities, the Bureau:

- **Reviews and maintains both new and amended tariff filings, rejecting those which fail to conform to the Commission's regulations.**
- **Ensures that shippers, as a result of tariff filings, are not subjected to unjust, unfair or unreasonable discriminatory practices in the movement of cargo in the U.S. foreign commerce.**
- **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.**
- **Licenses ocean freight forwarders.**
- **Certifies 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.**
- **Assists in the maintenance of the Commission's ATFI system, and has primary responsibility for administration and review of all tariffs and service contract essential terms filed in the ATFI system.**

As part of its program responsibilities, the Bureau:

- **Initiates recommendations for formal action and proceedings by the Commission in collaboration with other offices of the Commission as warranted.**
- **Cooperates with other Commission components with regard to enforcement of the Commission's regulatory requirements.**
- **Maintains several automated databases, including the Regulated Persons Index which contains the names, addresses, phone numbers, trade names,**

**and other pertinent information on the persons the Commission regulates.**

Information concerning regulatory matters that the Bureau administers is available to the industry and the public at large through the Commission's home page on the Internet. Included in this information are the regulations that apply to ocean freight forwarders under 46 CFR Part 510; the tariff and service contract regulations under 46 CFR Part 514; passenger vessel financial responsibility requirements under 46 CFR part 540; anti-rebate certification requirements under 46 CFR Part 582; and financial responsibility requirements for NVOCCs under 46 CFR Part 583. Additionally, electronic, downloadable versions of forms that are used in support of the Bureau's regulatory programs are available on the home page, *e.g.*, the freight forwarder application form, ATFI registration form, and the application for certification of financial responsibility.

In fiscal year 1998, the Bureau contributed to the Commission's efforts toward complying with the requirements of the Debt Collection Improvement Act of 1996, Pub. Law No. 104-134, whose purpose is to maximize the collection of delinquent debt owed to the Federal Government.

## **2. Foreign Commerce**

### **(a) Foreign Tariffs**

Section 8 of the 1984 Act (46 U.S.C. app. § 1707) requires common carriers to file tariffs setting forth their rates, charges, rules and practices for transporting cargo in the foreign waterborne commerce of the U.S. Section 8 does not give the Commission the authority to regulate rate levels except with regard to controlled carriers. However, the Bureau reviews tariff filings and rejects tariff matter which fails to comply with Commission regulations or statutory requirements. These rejections help protect shippers and

fulfill the Commission's obligation to protect shippers from unfair and discriminatory practices.

During fiscal year 1998, the Commission received 757 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 and in Appendix D.) The Bureau also processed 329 foreign special permission applications (including five controlled carrier special permission applications) to deviate from the statutory provisions of the 1984 Act and/or the Commission's tariff filing regulations.

### **(b) Service Contracts**

Section 8(c) of the 1984 Act (46 U.S.C. app. § 1707) provides that ocean common carriers and conferences of such carriers operating in the foreign commerce of the U.S. may enter into confidential service contracts with shippers and/or shippers' associations. A concise statement of the essential terms of the service contract is publicly available through the Commission's ATFI system. The essential terms of any service contract must be offered to all similarly situated shippers for a period of at least 30 days from its filing.

Service contracts offer an alternative to transportation under tariff terms. Their flexibility enables contract parties to tailor transportation services to accommodate specific commercial and operational needs. During fiscal year 1998, the Bureau received 21 essential terms publications, 12,271 new service contracts, and 33,812 amendments. The Commission received 1,706 more contracts in fiscal year 1998 than it did in fiscal year 1997, and received 4,944 more service contract amendments than it did in fiscal year 1997. The service contract filings involved an estimated 44,056 shippers, 25 conferences, and 90 individual ocean common carriers. Of these contracts, 168 contracts were filed on behalf of 49 shippers' associations.

### (c) **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. During fiscal year 1998, the Bureau received five applications for special permission from controlled carriers. By Order on March 27, 1998, the Commission granted one controlled carrier, China Ocean Shipping (Group) Company ("COSCO"), a limited exemption from the 30-day notice period applicable to controlled carriers to reduce rates to meet or exceed the filed rates of competing ocean common carriers (Petition No. P1-98, *Petition of China Ocean Shipping (Group) Company for a Limited Exemption from Section 9(c) of the Shipping Act of 1984.*) COSCO, however, in fiscal year 1998, did not exercise the authority granted by the Commission Order.

**(d) 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. (Effective October 1, 1996, this was increased to \$5,500 pursuant to the Federal Civil Penalties Inflation Adjustment Act of 1990, Pub. L. No. 101-410, 104 Stat. 890, 28 U.S.C. § 2461.) 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 initial tariff filing or application for an ocean freight forwarder license that does not include an anti-rebate certification in accordance with Part 582 is returned. Carriers and freight forwarders that need to file their initial certification or a renewal can obtain a copy of the certification form directly from the Commission's Internet home page.

A program supported by the Bureau's electronic databases is in place to ensure that common carriers and freight forwarders file their certifications. Pursuant to a notice of cancellation and suspension which appeared in the *Federal Register* on December 9, 1997, 165 tariffs were canceled and 6 freight forwarder licenses were suspended for failure to file anti-rebate certifications that were due in the previous fiscal year. The Commission action followed extensive Bureau efforts to notify affected parties and obtain approximately 4,750 anti-rebate certifications. Existing certifications were not due

to be renewed during fiscal year 1998. However, approximately 657 certifications were filed by new carriers or freight forwarders registering with the Commission.

**(e) NVOCC Financial Responsibility**

Section 23 of the 1984 Act (46 U.S.C. app. § 1721) requires an NVOCC operating in the foreign commerce of the U.S. to file a bond, insurance or other surety as proof of financial responsibility. The Commission's regulations require proof of financial responsibility in the amount of \$50,000. 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 2,554 bonds and one insurance policy are currently on file. The Bureau estimates that over 1,000 inquiries on surety bond matters were handled during the fiscal year.

**3. Domestic Commerce**

**(a) Domestic Tariffs**

The regulatory responsibility for U.S. domestic offshore commerce was transferred to the STB effective October 1, 1996, pursuant to the ICC Termination Act of 1995, Pub. L. No. 104-88, 109 Stat. 803 (1995). The FMC and STB entered into an MOU that provides for tariffs under the jurisdiction of the STB to continue to be filed in the Commission's ATFI system. The Bureau maintains administrative control in support of the STB's receipt and review of all domestic trade tariffs filed in the ATFI system. The Bureau provides the STB with advice on the operation and use of the ATFI system, ATFI administrative changes, reports, and news bulletins that affect domestic offshore tariff filings.

## **(b) Marine Terminal Activities**

The Commission is responsible for the review of tariffs related to the marine terminal industry. Terminal tariffs cover the facilities, services and labor provided by both public and private entities in connection with the receipt and delivery of cargo from shippers and consignees, and the interchange of cargo between land and ocean carriers. The Bureau reviewed 7 new marine terminal tariffs, along with numerous amendments that were filed into the ATFI system during the fiscal year.

## **4. 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 certain persons to present the Commission with 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 140 vessels and 45 operators, which have evidence of financial responsibility coverage in excess of \$310 million for nonperformance and over \$1 billion for casualty. The certificates issued pursuant to this program are necessary for the Customs clearance of thousands of passenger vessel sailings annually.



During fiscal year 1998, the Commission received 111 applications for passenger vessel certificates. During the fiscal year, 48 casualty certificates and 49 performance certificates were approved and issued to passenger vessel applicants.

The Bureau was involved in a Further Notice of Proposed Rulemaking aimed at protecting a higher proportion of passenger deposits and prepaid fares, Docket No. 94-06, *Financial Responsibility Requirements for Nonperformance of Transportation*. At the end of the fiscal year, a cost benefit analysis was being reviewed for this proceeding.

During fiscal year 1998, the Bureau also handled matters arising from a Chapter 11 bankruptcy proceeding involving a cruise line, which affected thousands of travelers. Claims which are covered under Pub. L. No. 89-777 are presently being paid by the responsible underwriter issuer.

## **5. Freight Forwarders**

The Commission's regulatory responsibilities over the forwarding industry are found in section 19 of the 1984 Act. Ocean freight forwarders are persons who, in effect, hold themselves out to shippers as export departments for hire. Ocean freight forwarders operate in the export 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 1998, 355 new and amending license applications were received for processing. The Commission approved 241 applications, 94 applications were deficient and returned, and 20 applications were withdrawn. One hundred and six

licenses were issued, while 71 licenses were revoked. At the end of the fiscal year, 2,058 licensed forwarders were operating under the Commission's jurisdiction. Applicants are continuing to use the revised form FMC-18, *Application for a License as an Ocean Freight Forwarder*. The streamlined form ended the requirement to submit financial data and reduced the applicant's estimated paperwork burden from 18 hours to 2 hours.

The Commission considers the successful completion of the National Customs Brokers and Forwarders Association of America exam as one factor in deciding whether an applicant meets the "experience" test for licensing. The Bureau's Director is the Commission's liaison and advisor to the Association in connection with its Certified Ocean Forwarder program.

## **6. Automated Database Systems**

### **(a) ATFI**

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 provides carriers and conferences with greater flexibility in establishing price and service offerings by streamlining the process for filing tariffs containing those offerings with the Commission as required by section 8 of the 1984 Act. The Commission activated the ATFI system on February 22, 1993. Through the use of the ATFI system, the Bureau has achieved a "paperless tariff environment." At the end of fiscal year 1998, there were 4,778 effective tariffs in ATFI (Appendix D shows the number of tariff objects filed in the ATFI system in fiscal year 1998).

## **(b) Other Databases**

The Bureau maintains and uses several automated database systems other than its ATFI system. These are the (1) Service Contract System, (2) Regulated Persons Index, (3) Microfiche System, (4) Ocean Freight Forwarder System, and (5) FMC Imaging System. The Service Contract System contains certain key service contract data, some of which is only available to the Commission's staff since it is made confidential by law. The Regulated Persons Index assigns a discrete number to each person the Commission regulates and contains, among other things, the address, telephone number, trade name of the person and bonding information. The Microfiche System provides a means of locating canceled tariffs and amendments which have been microfiched. The Ocean Freight Forwarder System contains certain information concerning licensees, including surety bond information. The FMC Imaging System provides for document storage and retrieval of tariffs and service contracts. These databases provide support for many of the Commission's programs. Certain information contained in the databases is also available to the public.

## **7. Rulemaking and Docketed Proceedings**

The Bureau recommends the initiation of, or supports, formal rulemakings and Commission docketed proceedings. During fiscal year 1998, the Bureau participated in the following matters:

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

In Docket No. 94-06, the Bureau is involved in a Further Notice of Proposed Rulemaking to protect a higher proportion of passengers' deposits and prepaid fares. The Bureau has analyzed the comments filed to the proposed rule and is reviewing a cost benefit analysis.

***Rose International, Inc. v. Overseas Moving Network International, et al. [Docket No. 95-05].***

The Bureau responded to a subpoena in this proceeding.

***Port Restrictions and Requirements in the U.S./Japan Trade [Docket No. 96-20].***

The Bureau provided research and support for this proceeding.

***Simplification of Service Contract Filing Requirements [Docket No. 97-23].***

The Bureau contributed to the promulgation of the Final Rule, which became effective December 1, 1997, and discontinued an obsolete requirement for service contract filings.

***Update of Existing and Addition of New Filing and Service Fees [Docket No. 98-09].***

The Bureau contributed to setting the new fees for certain ATFI and Bureau-provided services.

***Hual AS - Service Contracts and Time-Volume Rate Arrangements with Ocean Freight Forwarders [Docket No. 98-15].***

The Bureau provided support to the investigation of HUAL AS (formerly Hoegh Ugland Auto Liners A/S) for possible violations of the 1984 Act.

***Petition No. P1-98, Petition of China Ocean Shipping (Group) Company for a Limited Exemption from Section 9(c) of the Shipping Act of 1984.***

The Bureau contributed to the Commission's efforts in granting this petition and is responsible for verifying all rates and charges filed pursuant to the authority granted by the Petition.

***Fact Finding Investigation No. 23 - Ocean Common Carrier Practices in the Transpacific Trades.***

The Bureau conducted tariff and service contract research for this investigation.



# I. BUREAU OF ENFORCEMENT

The Bureau of Enforcement is the primary investigatory and prosecutorial arm of the Commission. Attorneys of the Bureau serve as trial attorneys in formal proceedings instituted under section 11 of the 1984 Act, and in investigations instituted under the FSPA. Bureau attorneys serve as legal advisors to the Managing Director and other bureaus, and also may be designated Investigative Officers in nonadjudicatory fact finding proceedings. The Bureau monitors all other formal proceedings in order to identify major regulatory issues and to advise the Managing Director and the other bureaus. The Bureau also participates in the development of Commission rules and regulations. On occasion, under the direction of the General Counsel, attorneys from the Bureau may participate in matters of court or other agency litigation to which the Commission is a party.

Through investigative personnel, the Bureau monitors and conducts investigations into the activities of 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. Monitoring activities include: (1) service contract reviews to determine compliance with applicable statutes and regulations; (2) reviews of NVOCC operations, including compliance with tariff and bonding requirements; (3) post-licensing and routine compliance checks of licensed ocean freight forwarders to determine whether their operations conform with regulatory requirements; (4) audits of passenger vessel operators to ensure the financial protection of cruise passengers; and (5) various studies and surveys to support Commission programs. Investigations are conducted into alleged violations of the full range of statutes and regulations administered by the Commission, including: illegal rebating; misdescriptions or misdeclarations of cargo; illegal or unfiled agreements; abuses of antitrust immunity; unlicensed freight forwarding; untariffed cargo carriage; unbonded NVOCC and passenger vessel operations; and various types of consumer abuses,

such as failure of carriers or intermediaries to carry out transportation obligations, resulting in cargo delays and financial losses for shippers.

The Commission maintains a presence in Los Angeles, Miami, New Orleans, New York and Seattle through an area representative based in each of those cities. These representatives serve other major port cities and transportation centers within their respective areas. Coverage of the North Atlantic region was the responsibility of the Bureau's staff in Washington, D.C., until July 1998 when a permanent New York Area Representative was established. In addition to monitoring and investigative functions, area representatives represent the Commission within their jurisdictions, provide liaison between the Commission and the maritime industry and the shipping public, collect and analyze intelligence of regulatory significance, and assess industry conditions. 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.

The Bureau prepares and serves notices of violations of the shipping statutes and Commission regulations and may compromise and settle civil penalty demands arising out of those violations. If settlement is not reached, Bureau attorneys act as prosecutors 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.

During fiscal year 1998, the Bureau continued its investigation and prosecution of malpractices in the transpacific trades. Eastbound misdescriptions decreased as supply began to overtake demand, but unlawful equipment substitution in the weaker westbound trades became a new focus of these efforts. Other trades, particularly South America, were also the subject of numerous malpractice investigations. The practices under investigation, some of which have already resulted in compromises of civil penalty demands,



include various forms of secret rebates and absorptions, misdescription of commodities and misdeclaration of measurements, as well as carriage of cargo by and for untariffed and unbonded NVOCCs. Most of these malpractice investigations have resulted in compromise settlements of civil penalties. However, investigations of several foreign-based NVOCCs and one U.S.-based ocean common carrier have required the institution of formal adjudicatory proceedings in order to pursue remedies under the 1984 Act. *See, e.g.,* Docket No. 97-17, *Portman Square Limited - Possible Violations of Section 10(a)(1) of the Shipping Act of 1984* (civil penalty of \$797,500 assessed), and Docket No. 98-06, *Sea-Land Service, Inc. - Possible Violations of Section 10(b)(1) of the Shipping Act of 1984* (pending).

In the U.S./North Europe trades, the Bureau continued to work closely with the Bureau of Economics and Agreement Analysis in prosecuting possible unfiled agreements in Docket No. 97-07, *Possible Unfiled Agreement Between Hyundai Merchant Marine Company, Ltd. and Mediterranean Shipping Co., S.A.*, and Docket No. 97-08, *Possible Unfiled Agreements Among A.P. Moller-Maersk Line, P&O Nedlloyd Limited and Sea-Land Service, Inc.*

The cooperation between the Commission's area representatives and Customs, with respect to the exchange of investigative information, continues to be beneficial to both agencies and now includes the port of New York/New Jersey. All area representatives are co-located with Customs and have ready access to ocean common carrier's manifests. The manifest information permits Commission personnel to quickly identify misdescriptions and other possible violations of the 1984 Act. We expect this avenue of cooperation in the import and export trades of the U.S. to continue.

In fiscal year 1998, the Bureau of Enforcement continued its Revised Audit Program. This program is conducted from headquarters, primarily by mail, and reviews the operations of licensed ocean freight forwarders and assists them in complying with

statutory requirements and with the Commission's rules and regulations. This program also helped to identify several ocean freight forwarders and NVOCCs operating in violation of the 1984 Act and Commission regulations. The audit program has expanded to include review of entities holding themselves out as vessel operating common carriers with no indication of vessel operations.

During fiscal year 1998, the Bureau worked on the Commission's program for responding to certain informal inquiries from small businesses and a program for reduction or waiver of civil penalties in certain cases involving small businesses required by SBREFA. Both programs were implemented by the Commission upon notice to the public by *Federal Register* publication on December 24, 1997. The Commission reduced the amount of civil penalties collected from small businesses in 17 separate cases by \$91,000 and waived a total of \$1,950,000 in civil penalty liability.

At the beginning of fiscal year 1998, 28 enforcement cases were pending final resolution by the Bureau. During the fiscal year, 37 new enforcement actions were commenced. Forty were compromised and settled, administratively closed, or referred for formal proceedings. Twenty-five enforcement cases were pending resolution at fiscal year's end.

At the start of fiscal year 1998, the Bureau was party to 12 formal proceedings. During the fiscal year, the Bureau participated in 12 new formal proceedings. Ten proceedings in which the Bureau participated were completed. Accordingly, 14 formal proceedings were pending at the end of the fiscal year.

At the beginning of fiscal year 1998 there were 89 requests for legal advice pending in the Bureau. Seventy requests for legal advice were received during the fiscal year, and 74 legal advice projects were completed. Accordingly, 85 legal advice matters were pending in the Bureau on September 30, 1998.

As a result of enforcement activity, the Commission collected \$3,869,005.96 in civil penalties in fiscal year 1998. Settlements were reached with many different segments of the industry (*e.g.*, carriers, cruise operators, shippers, forwarders) operating in the U.S. foreign trades. Civil penalty collections are listed in Appendix E. (*See Part III, Monitoring and Enforcement.*)

In fiscal year 1999, the Bureau will continue to pursue fraudulent and anticompetitive practices and will monitor U.S. trades and the implementation of new statutory provisions and regulations resulting from the implementation of OSRA, to the extent that resources permit. The addition of the Area Representative in the New York/New Jersey port area will improve the Commission's enforcement/monitoring efforts in that important location.



# **J. 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 property 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 Personnel.**

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

The Director serves as the FMC's Competition Advocate, challenging barriers to competition and reviewing procurement practices as specified in the FAR. The Director is the Commission's representative, as Principal Management Official, to the Small Agency Council ("SAC"). As the Chief Financial Officer, the Director provides program oversight for the agency's budget and financial management responsibilities, and ensures agency compliance with the Financial Integrity Act, the Antideficiency Act and the Debt Collection Improvement Act of 1996.

The Commission's Training Officer is located in the Office of the Director. The Training Officer provides employee development

assistance and career counseling throughout the agency and provides technical assistance to the Executive Resources Board. The Training Officer also serves as a member of the SAC Training Committee. FMC employees took advantage of several cost-free training programs through SAC and the Department of Justice Legal Education Institute. Computer software training and training required by statute were also offered to FMC employees.

The Office of the Director also has the responsibility 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 12958.

## **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 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 applicable Federal guidelines.

**(b) Achievements**

During fiscal year 1998, the Office:

- **Continued to provide contracting guidance and assistance in support of the FMC's ATFI program.**
- **Revised Commission Order 112, *Procurement*, and Commission Order 108, *Personal Property Management*.**
- **Arranged for the printing and distribution of the FMC's *36th Annual Report*.**
- **Implemented the "Computers for Learning" program at the Commission and donated surplus IT equipment to several area schools and non-profit organizations.**
- **Established a purchasing credit card program at the FMC and implemented the International Merchant Purchase Authorization Card (IMPAC) system throughout the FMC.**
- **Reevaluated the Commission's copy management program and upgraded the photocopier machines to improve copy quality and expand capabilities.**
- **Completed the implementation and closed out the document imaging system contract.**
- **Completed administrative arrangements for a new FMC Area Representative office in New York City.**

- **Upgraded the voice telecommunication (Executone) system at Headquarters for Y2K compliance.**
- **Procured a new ID card system for the FMC.**
- **Initiated the procurement process to "tag" onto the Department of Interior's contract with NationsBank for GSA's new "smart card" credit card services.**

**(c) Future Plans**

In fiscal year 1999, the Office's objectives include the following: (1) fully implement the new SACONS windows upgrade of the automated procurement management system throughout the Commission; (2) continue efforts to expand the Commission's electronic commerce program for paperless office interactions; (3) develop and/or reestablish an appropriate MOU or contract with the Office of Thrift Supervision ("OTS") for management services and administrative support provided to the FMC; (4) fully implement the new GSA "smart card" task order with NationsBank to cover purchase and travel needs throughout the Commission; (5) continue to address any Y2K compliance concerns to ensure agency equipment and facilities are compliant; and (6) continue to provide innovative approaches to advisory and assistance support to FMC activities.

**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 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.

**(b) Achievements**

During fiscal year 1998, the Office:

- **Collected and deposited \$5,063,279 from user fees and fine and penalty collections.**
- **Prepared fiscal year 1999 OMB policy base line estimates, coordinated and prepared budget justifications and estimates for the fiscal year 1999 Congressional budget and the fiscal year 2000 budget to OMB, and participated in OMB and Congressional budget hearings.**
- **Prepared a variety of external reports such as: the Civil Monetary Penalty Report and the Current Asset Management Annual Certification (FY 1997 Cash Flow) (Department of the Treasury); the Report on First Class Airline Accommodations for FY 1997 (GSA); and the Annual Leave Year Report, and the Report on Workyears and Personnel Costs (Office of Personnel Management - "OPM").**
- **Provided management with monthly status reports on workyears, funding, travel and receivables.**

- **Participated on task forces regarding implementation of the Debt Collection Improvement Act of 1996 and the update of user fees to be effective in fiscal year 1999.**

**(c) Future Plans**

Financial management goals in fiscal year 1999 include redesign and refinement of the FMC accounts receivable systems. The Office will: (1) continue to implement electronic commerce to automate the processing of purchase orders, obligations and payments, in conjunction with the Office of Administrative Services and OIRM; (2) review procedures and controls for cash management; and (3) continue to pursue initiatives leading to economy and efficiency in budget and financial operations, including implementation of the Debt Collection Improvement Act.

### **3. 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 assistance, employee relations, workforce discipline, performance appraisal, incentive awards, employee benefits, career transition, retirement, and personnel security.

**(b) Achievements**

During fiscal year 1998, the Office:

- **Updated Commission Order 92, *Regular and Compressed Schedules, Flexitime*, reissued**

**guidelines for emergency arrival and dismissal procedures, and issued employee notifications of legislative and regulatory changes to benefits programs.**

- **Conducted the Federal Employees Health Benefits Program and Thrift Savings Plan Open Seasons, including sponsoring an annual Employee Health Benefits Fair. Sponsored Blue Cross/Blue Shield Service Days during which a representative met each month with employees on-site to assist them. Conducted Federal Employees Retirement System Transfer Open Season.**
- **Coordinated and publicized family-friendly initiatives and responded to Congressional inquiries regarding agency participation in specific programs.**
- **Coordinated with OTS to ensure all automated personnel data programs and documentation requirements will be met and are Y2K compliant; obtained specialized computer-related training for staff.**
- **Monitored and modified Employee Assistance Program contracts for the agency and managed a very successful Annual Leave Transfer Program. Coordinated the agency's Combined Federal Campaign effort, which raised close to \$19,000.**
- **Advised supervisors concerning their responsibilities in areas of employee conduct and performance. Charted performance appraisal milestones and issued reminders and instructions to supervisors and performance review board**

members concerning the performance appraisal process. Coordinated the triennial Senior Executive Service Recertification Program and prepared summary and time/cost reports.

- Conducted comprehensive classification, and recruitment and placement programs including staffing of mission-critical vacancies.
- Conducted a comprehensive personnel security program, coordinated with OPM appraisal officers in connection with an audit of the agency program, and began implementation of recommended revisions to the program.
- Prepared a number of recurring and ad hoc reports, including the annual Employee Assistance Program report, annual statistical and race/national origin reports in connection with the Luevano Decree, reports and plan certifications for all affirmative action programs, annual reports covering internal and external staffing activities under agency and interagency career transition assistance plans, the annual federal sector ready reserve mobilization screening program report, executive and political appointees semiannual verification and pay and performance reports, annual Occupational Safety and Health Report, report of activity under the Welfare-to-Work program, report of individuals detailed or transferred to international organizations during fiscal year 1997, and reports to OPM on family-friendly initiatives.

**(c) Future Plans**

In fiscal year 1999, the Office plans to continue to: (1) advise agency management and staff on all personnel matters and ensure the maintenance of a sound and progressive personnel program; (2) implement pertinent portions of the agency's strategic and related performance plans; and (3) conduct a systematic review and revision of pertinent Commission Orders in accordance with presidential initiatives and regulatory changes in human resource programs.



## **APPENDIXES**

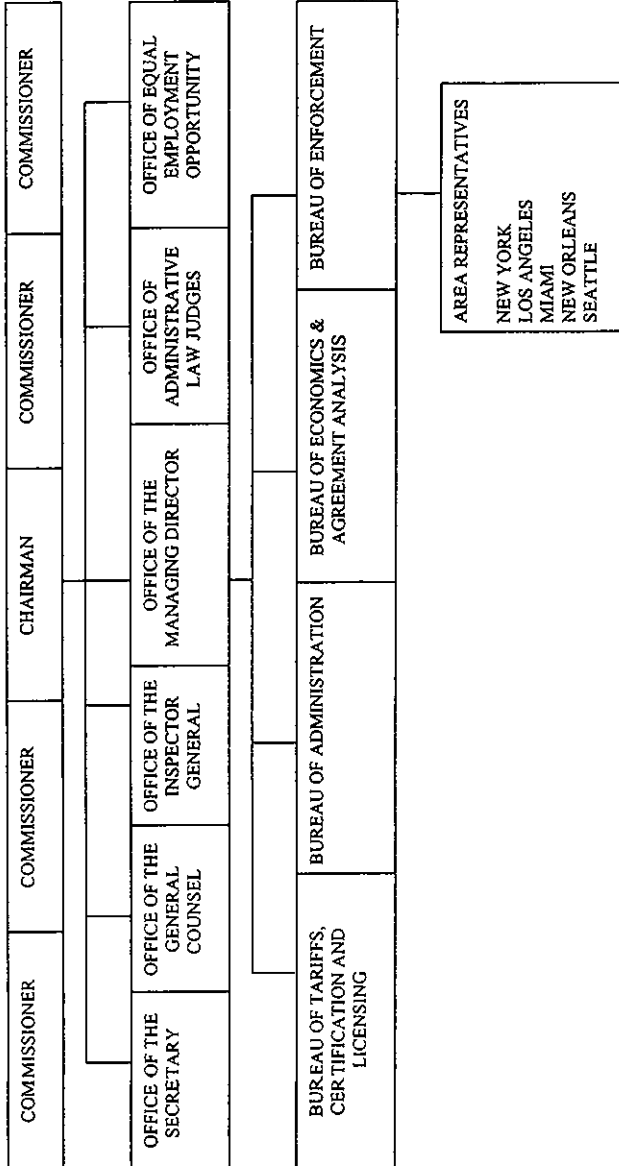




# APPENDIX A

## ORGANIZATION CHART

FEDERAL MARITIME COMMISSION



# APPENDIX B

## COMMISSION PROCEEDINGS Fiscal Year 1998

### *Formal Proceedings*

Decisions .....	5
Discontinuances & Dismissals .....	7
Initial Decisions Not Reviewed .....	16
Rulemakings - Final Rules .....	3

Total .....	<u>31</u>
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<i>Special Dockets</i> .....	107
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<i>Informal Dockets</i> .....	1
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# APPENDIX C

## AGREEMENT FILINGS AND STATUS Fiscal Year 1998

### Agreements Filed in FY 1998 (including modifications)

Carrier .....	289
Terminal .....	68
Total .....	357

### Agreements Processing Categories in FY 1998

Forty-Five Day Review .....	83
Shortened Review .....	18
Exempt-Effective Upon Filing .....	205
Rejection of Filing .....	0
Formal Extension of Review Period .....	3
Terminations .....	28
Not Subject .....	2
Withdrawals .....	6
Total .....	345

### Carrier Reports Submitted for Commission Review

Minutes of Meetings and Ad Hoc Reports .....	804
Monitoring Reports .....	259
Total .....	1,063

### Agreements on File as of September 30, 1998

Conference .....	34
Interconference .....	2
Pooling & Equal Access .....	8
Joint Service .....	18
Space Chartering/Sailing .....	94
Cooperative Working, Agency, & Equipment Interchange .....	130
Terminal .....	570
Total .....	856

# APPENDIX D

## TARIFF AND SERVICE CONTRACT FILINGS AND SPECIAL PERMISSION APPLICATIONS Fiscal Year 1998

*Electronic Tariffs\* in Effect* . . . . . 4,778

### *Electronic Tariff Filings*

*Tariffs (new)\** . . . . . 785  
*Rules* . . . . . 72,484  
*Commodity Descriptions* . . . . . 239,733  
*Tariff Line Items* . . . . . 2,381,802  
*Inland Tables* . . . . . 12,360  
*Tariff Records* . . . . . 2,552  
*Organization Records* . . . . . 2,095

### *Essential Terms Documents*

*New Service Contracts* . . . . . 12,271  
*Service Contract Amendments* . . . . . 33,812

### *Special Permission Applications*

*Granted* . . . . . 298  
*Denied* . . . . . 26  
*Withdrawn* . . . . . 5

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\*Includes essential terms publications, foreign and marine terminal tariffs.

# APPENDIX E

## CIVIL PENALTIES COLLECTED Fiscal Year 1998

<b>A &amp; M Independent Line Inc.</b> .....	<b>\$50,000.00</b>
Big Save International Co. ....	35,000.00
<b>Cross Water Line Inc.</b> .....	<b>15,000.00</b>
De Lourdes Corporation .....	10,000.00
<b>Everfreight Int'l NVOCC</b> .....	<b>50,000.00</b>
Exbo Shipping Company. . . . .	55,000.00
<b>Far Eastern Shipping Co.</b> .....	<b>550,000.00</b>
Global Asian Limited .....	30,000.00
<b>Japanese Lines.</b> .....	<b>1,500,000.00</b>
Kenwa Shipping Co., Ltd. ....	40,000.00
<b>Laparkan Trading Ltd</b> .....	<b>30,000.00</b>
Mediterranean Shipping Co. ....	360,000.00
<b>Nippon Yusen Kaisha</b> .....	<b>425,000.00</b>
Pacon Express, Inc. ....	35,000.00
<b>Penbroke Marine Services</b> .....	<b>25,000.00</b>
Portman Square Ltd. ....	50,000.00
<b>Pum Yang Shipping Co. Ltd.</b> .....	<b>27,500.00</b>
Savoy Shipping Company, Inc. ....	40,000.00
<b>Seabridge International</b> .....	<b>25,000.00</b>
Shipair Express (HK) .....	20,000.00
<b>Shipman Int'l (Taiwan) Ltd.</b> .....	<b>50,000.00</b>
Sigma Express Inc. ....	25,027.62
<b>Sims, Waters &amp; Associates</b> .....	<b>15,000.00</b>
Sinotrans International. ....	60,000.00
<b>Solex Express Inc.</b> .....	<b>70,000.00</b>
Topocean Consolidation Svs. ....	150,450.72
<b>Total Port Clearance of FL</b> .....	<b>17,000.00</b>
Transcargo Int'l. ....	25,027.62
<b>Translink Shipping Inc.</b> .....	<b>40,000.00</b>
Transport Partner USA Inc. ....	14,000.00
<b>Versatile International</b> .....	<b><u>30,000.00</u></b>
<b>Total Civil Penalties Collected</b> .....	<b>\$3,869,005.96</b>

# APPENDIX F

## INVESTIGATIONS Fiscal Year 1998

<i>Investigations/Special Inquiries Opened:</i>		185
<i>Audits/Compliance Checks Opened:</i>		105
<i>Compliance Checks:</i>	72	
<i>Cruise Audits:</i>	1	
<i>VOCC Audits:*</i>	32	
	<b><i>Total Openings:</i></b>	<b>290</b>
<i>Investigations/Special Inquiries Completed:</i>		194
<i>Audits/Compliance Checks Completed:</i>		58
<i>Compliance Checks:</i>	52	
<i>Cruise Audits:</i>	1	
<i>VOCC Audits:</i>	5	
	<b><i>Total Completions:</i></b>	<b>252</b>

\*VOCC Audit program was implemented in FY 98.

# APPENDIX G

## STATEMENT OF APPROPRIATIONS, OBLIGATIONS AND RECEIPTS FOR THE FISCAL YEAR ENDED SEPTEMBER 30, 1998

### *APPROPRIATIONS:*

Public Law 105-119: 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.

\$14,000,000

### *OBLIGATIONS AND UNOBLIGATED BALANCE:*

Net obligations for salaries and expenses for the fiscal year ended September 30, 1998. \$13,999,900

*STATEMENT OF RECEIPTS:* Deposited with the General Fund of the Treasury for the Fiscal Year Ended September 30, 1998:

Publications and reproductions, Fees and Vessel Certification, and Freight Forwarder Applications	\$1,194,273
Fines and penalties	<u>\$3,869,006</u>
<b>Total general fund receipts</b>	<b>\$5,063,279</b>

