

FEDERAL MARITIME  
COMMISSION

54TH ANNUAL  
REPORT

FOR

FISCAL YEAR  
2015



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# LETTER OF TRANSMITTAL



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

March 31, 2016

To the United States Senate and House of Representatives:

On behalf of the Commission, I am pleased to submit the 54th Annual Report covering activities of the Federal Maritime Commission (FMC) for fiscal year 2015, pursuant to section 103(e) of Reorganization Plan No. 7 of 1961, and Section 208 of the Merchant Marine Act of 1936, now codified and amended at 46 U.S.C. § 306(a).

This Report highlights the Commission's major accomplishments and initiatives undertaken during the fiscal year to support its mission and strategic goals to maintain an efficient and competitive international ocean transportation system, protect the shipping public, and resolve shipping disputes. The Report recaps continuing trends, as well as new forms of cooperation evaluated and overseen by the Commission. Two new developments emerged during the fiscal year: greater cooperation among carriers and marine terminal operators to provide transportation services and address supply chain congestion challenges; and emergence of what appears to be a new round of carrier consolidation in liner shipping.

Enforcement efforts to address Shipping Act violations collected over \$2 million, and promotes a secure, efficient, and fair maritime transportation system. The Commission constantly looks for ways to reduce costs, both internally and externally. Under our multi-year IT strategy, we are leveraging technology to improve delivery of services to the shipping public. To make government efficient and responsive to industry needs, we updated rules and regulations to adapt to changing industry conditions, reduce regulatory burden, improve transparency, and streamline business processes.

The FMC is the regulatory agency responsible for maintaining competitive and reliable practices in the \$980 billion international ocean transportation industry. We manage this responsibility with a small but effective staff of 125 employees. As international shipping increases, the FMC will continue to ensure that the needs of the business community and U.S. consumer are met in the most efficient manner possible. It is my sincere belief that we are the agency best experienced to help industry participants solve existing and future congestion problems at America's ports, and this will continue to be one of our top priorities.

It is our honor and privilege to protect the American people from anticompetitive, deceptive, and unfair practices in international ocean shipping. As more cost savings

are sought by international carriers, our role in evaluating and overseeing the competitive impact of regulated parties' cooperation, including operational alliances is more important than ever.

Every member of our FMC team is dedicated to achieving our mission with the highest level of excellence, and we stand ready to provide any further information you may require.

Sincerely,

A handwritten signature in blue ink, appearing to read "Mario Cordero". The signature is stylized with a large, sweeping "M" and a long, horizontal flourish at the end.

Mario Cordero  
Chairman

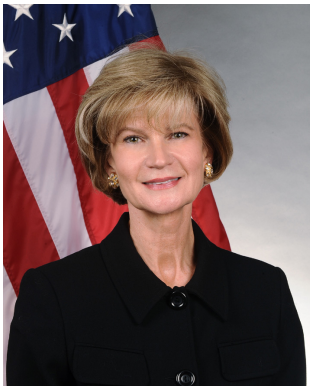
# MEMBERS OF THE COMMISSION



Mario Cordero  
Chairman  
Appointed 2011  
Term Expires 2019



Richard A. Lidinsky, Jr.  
Commissioner  
Appointed 2009  
Term Expired 2012



Rebecca F. Dye  
Commissioner  
Appointed 2002  
Term Expired 2015



William P. Doyle  
Commissioner  
Appointed 2013  
Term Expires 2018



Michael A. Khouri  
Commissioner  
Appointed 2009  
Term Expires 2016





# FMC MISSION, STRATEGIC GOALS AND FUNCTIONS

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

The FMC's **Mission** is:

- To foster a fair, efficient and reliable international ocean transportation system and to protect the public from unfair and deceptive practices.

The FMC's **Vision** is:

- Fairness and Efficiency in the U.S. Maritime Commerce.

## FMC Mission

To foster a fair, efficient and reliable international ocean transportation system and to protect the public from unfair and deceptive practices.

## STRATEGIC GOAL 1

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Maintain an efficient and competitive international ocean transportation system.

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

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

## STRATEGIC GOAL 2

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

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

- Helping resolve disputes involving shipment of cargo, personal or household goods, or disputes between cruise vessel operators and passengers;
- Investigating and ruling on complaints regarding rates, charges, classifications, and practices of common

carriers, MTOs, and Ocean Transportation Intermediaries (OTIs), that violate the Shipping Act;

- Licensing OTIs with appropriate character and adequate financial responsibility;
- Identifying and holding regulated entities accountable for mislabeling cargo shipped to or from the United States; and
- Ensuring that cruise lines maintain financial responsibility to pay claims for personal injury or death, and to reimburse passengers when their cruise fails to sail.

## STATUTORY AUTHORITY

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

- The Shipping Act of 1984, as amended by the Ocean Shipping Reform Act of 1998 (Shipping Act)

- The Foreign Shipping Practices Act of 1988 (FSPA)
- Section 19 of the Merchant Marine Act, 1920 (1920 Act)
- Sections 2 and 3 of Pub. L. No. 89-777, 80 Stat.1350

# YEAR IN REVIEW

World economic output continued to expand during the fiscal year, producing a 3 percent growth rate in worldwide container trade. This means that worldwide container trade grew for the sixth consecutive year. As the fiscal year came to a close, however, 243 containerships lay idle — or 4 percent of the total containership fleet capacity, reflecting continuing global overcapacity. In contrast, 131 ships or 1 percent of all container ships lay idle at the end of fiscal year 2014.

As the expert regulatory agency for liner shipping in U.S. trades, the Commission facilitates growth in ocean commerce by helping to ensure fair, efficient, and reliable maritime transportation services while minimizing regulatory burden. Trade growth gives businesses engaged in international ocean commerce the confidence to hire more American workers. The Commission supports these efforts by actively seeking ways to facilitate the competitiveness of our Nation's ports and its liner shipping system, and by providing maritime businesses regulatory relief.

The congestion problems that developed in late FY 2014 were unabated during FY 2015. The Commission remained vigilant in using its authorities and expertise to support affected industry stakeholders and promote the smooth flow of ocean commerce. It examined various approaches to reducing congestion adopted at many major ports in the United States. Following on the heels of the four Port Forums the FMC held in 2014 in different gateways throughout the United States, the Commission released a report entitled

*“Rules, Rates, and Practices Relating to Detention, Demurrage, and Free Time for Containerized Imports and Exports Moving Through Selected United States Ports”* in April 2015; followed in July 2015 by *“U.S. Container Port Congestion & Related International Supply Chain Issues: Causes, Consequences & Challenges,”* a separate report that summarized the problems, potential solutions, and remaining challenges as identified and discussed by participants at the FMC-sponsored port forums.

The FMC continues to closely monitor carrier alliances among the world's largest carriers covering major geographic trade regions, to identify any indication that they may be a contributing factor in the chronic congestion at the West Coast ports, and perhaps at other port facilities.

As a direct result of complaints from stakeholders about PierPass operations, costs, and quality of services, and pursuant to the FMC's statutory mandate to monitor agreements to ensure that once an agreement becomes effective under the Shipping Act, behavior under the agreement authority does not subsequently result in an unreasonable increase in transportation cost or unreasonable decrease in transportation service, this fiscal year saw continued and more aggressive monitoring of PierPass. The Chairman called on PierPass to be more transparent about the cost to operate off-peak shifts and the revenue collected from the traffic mitigation fee (TMF). He demanded openness in the supply chain and urged PierPass to critically self-assess its performance along five key dimensions:

sun setting the program, service level quality, fairness, transparency, and performance metrics. The Chairman reiterated his request that PierPass submit its books for an independent third-party audit, a request that is motivated by stakeholder concerns for further transparency. At the close of the fiscal year, Commission staff were scheduling on-site meetings with PierPass officials and stakeholders for early FY 2016.

A total of 365 carrier agreements and 157 MTO agreements remained active at year end, while 258 new agreements were filed during fiscal year 2015. With respect to marine terminal agreements, in 2015 two new agreements of significance were filed and are now in effect: the Northwest Seaport Alliance and the Pacific Ports Operational Improvements Agreement. The second of these agreements authorizes the Ocean Carrier Equipment Management Association, the West Coast MTO Agreement, and most vessel-operating carriers and MTOs serving U.S. West Coast ports to discuss and exchange information, and reach agreement on measures to address and improve efficiency of operations at U.S. West Coast port facilities with a stated purpose of reducing congestion, particularly severe at the Ports of Los Angeles and Long Beach. In July 2015, the FMC issued a Section 15 Order to obtain information related to the terminal operations of the agreement.

The Commission was also active internationally, furthering its key role in the international trade arena, participating in the U.S.-Japan Maritime Bilateral Meeting, meeting with

counterparts of the European Union and the People's Republic of China, and participating in discussions at the Organisation of Economic Co-operation and Development.

Finally, the FMC used this year to look inward. Pursuant to Executive Order (E.O. 13579), and the Commission's Plan for Retrospective Review of Existing Rules, the Commission reviewed existing rules and regulations and streamline a number of regulations as needed in the interest of making government efficient and responsive to the industry's needs. Most notably, the Commission issued a Notice of Proposed Rulemaking (NPR) proposing revisions to its Ocean Transportation Intermediary regulations after considering extensive comments submitted to its earlier Advanced Notice of Proposed Rulemaking (ANPR). The NPR was drafted to address commenters concerns and changing industry conditions, improve regulatory oversight and transparency, streamline FMC business processes, and reduce regulatory burdens on the industry. In addition, the Commission considered recommendations to revise its regulations for ocean common carrier and marine terminal agreements and its rules governing service contracts and NVOCC service arrangements. Issuance of rulemakings to seek public comment on updating regulations in these two regulatory areas is planned during FY 2016.

The following presents a detailed summary of the Commission's activities during fiscal year 2015.

# EFFICIENCY AND COMPETITION

## STRATEGIC GOAL 1

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

The Shipping Act allows competitors to meet and discuss (and in some cases agree on) certain business issues, but first they must file a written agreement with the Commission. The Commission reviews agreements using traditional antitrust law and economic models to evaluate the potential competitive impact of a proposed agreement before it may go into effect. The initial review and analysis of a proposed agreement and subsequent monitoring of the members' activities under the agreement, should it become effective, are designed to identify and guard against possible abuse of the filed authority, avoid unreasonable increases in transportation costs or decreases in transportation services, and address other activities prohibited by the Shipping Act.

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

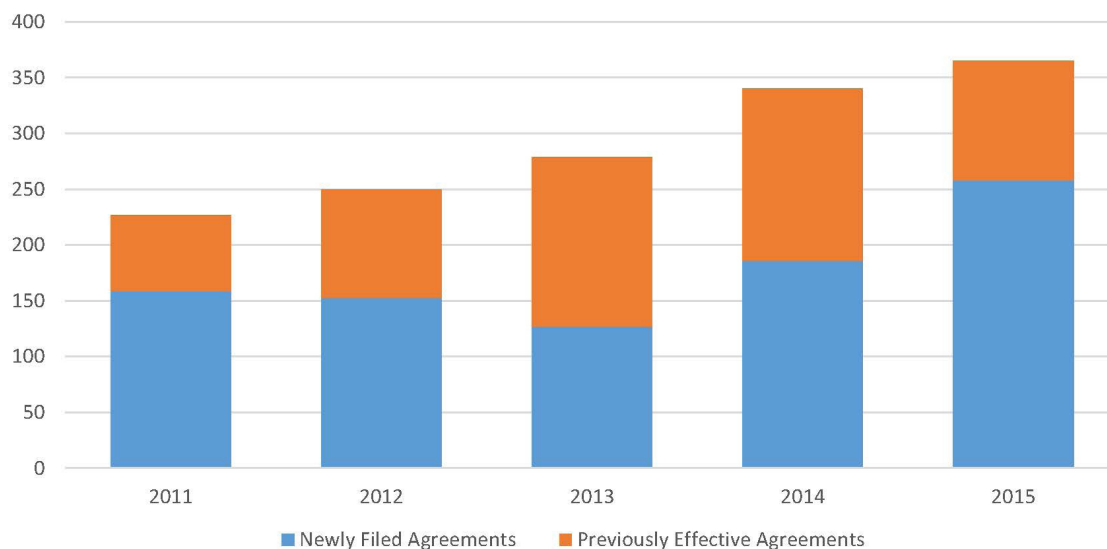
So long as the regulated entities comply with the statutory and regulatory proscriptions of the Act, then the other federal antitrust statutes generally do not apply. Conversely, if a regulated entity violates the Shipping Act, they would be subject to penalties set forth in the Act, and may under certain circumstances be subject to investigation and prosecution under the full array of federal antitrust statutes.

## AGREEMENT FILINGS AND REVIEW

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Under Sections 4 and 5 of the Shipping Act, all agreements by or among ocean common carriers to fix rates or conditions of service, pool cargo revenue, allot ports or regulate sailings, limit or regulate the volume or character of cargo (or passengers) to be carried, control or prevent competition, or engage in exclusive or preferential arrangements, are required to

Agreements on File by Year



be filed with the Commission. Except for certain exempted categories, agreements among MTOs, and agreements among one or more MTOs and one or more ocean common carriers also must be filed with the Commission. Generally, an agreement becomes effective 45 days after filing, unless the Commission requests additional information to evaluate the competitive impact of the agreement. All agreements filed with the Commission are reviewed pursuant to the standard set forth in section 6(g) of the Shipping Act, 46 U.S.C. §

41307(b)(1). Effective agreements are exempt from U.S. antitrust laws, and instead subject to Shipping Act restrictions and Commission oversight.

In fiscal year 2015, the Commission received 258 agreement filings, an increase of 38 percent over the previous year. This was the largest number of agreements filed (both new agreements and amendments to existing agreements) during a 12 month period since 2006.

## TYPES OF CARRIER AGREEMENTS

**Conference agreements** are distinguished from all other types of agreements because they allow members to collectively discuss, agree, and fix freight rates and practices.

**Rate discussion agreements (RDAs)** also focus on rate matters, but unlike conferences, any consensus on rates is non-binding on the members.



**Operational agreements** do not contain authority to discuss or fix rates. They include vessel-sharing agreements (VSAs), joint service agreements (JSAs), cooperative working agreements (CWAs), and discussion agreements.

- VSAs typically authorize some level of service cooperation with the goal of reducing an individual line's operating costs.
- Under JSAs, two or more carriers operate a combined service under a single name in a specified trading area.
- Many CWAs deal with unique operational considerations relating to acquisitions, sharing of administrative services, or internet portal management. Other CWAs include agency, sailing, trans-shipment, and equipment interchange (including chassis pooling) agreements.
- Discussion agreements allow members to discuss matters of mutual interest other than rates. Typically, these agreements focus on macro-economic, regulatory, safety or security issues.

**MTO agreements** are agreements between MTOs (operated by both public and private entities) that 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.

Conference or price-fixing agreements have become largely irrelevant to U.S. liner shipping, particularly in light of the periodic excess capacity conditions in U.S. liner trades. No new carrier conference agreement has been

filed with the Commission in 15 years. The three remaining conferences cover only U.S. military or government cargoes. At this time, no changes in the membership or activities

No new conference or price fixing agreement has been filed in 15 years.

of these conferences are anticipated.

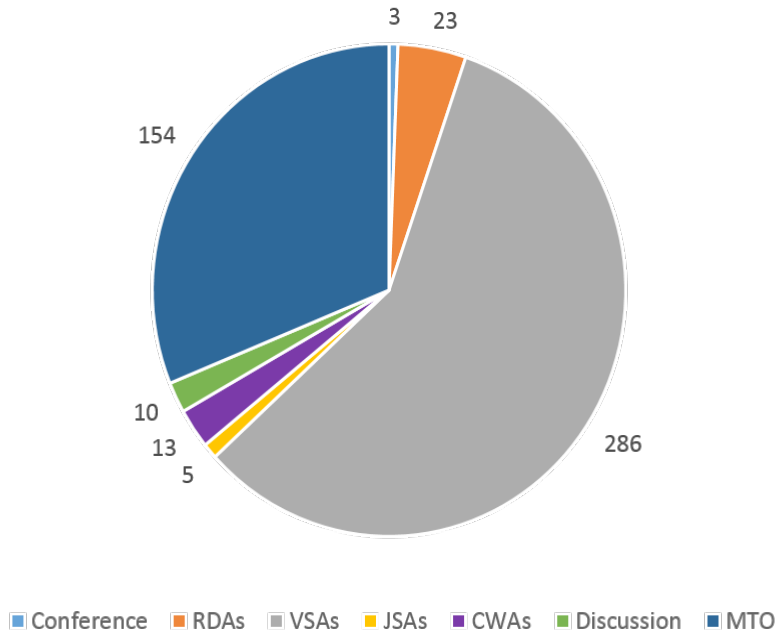
While the number of RDAs on file with the Commission have declined 60 percent over the last 5 years from 36 to 22 agreements, RDAs remain the primary pricing forum in U.S. trade lanes.

At the end of the fiscal year, operational agreements accounted for 93 percent of all carrier agreements on file. VSAs account for the vast majority in this category - 90 percent, and 84 percent of all carrier agreements on file during FY 2015.

A broad view of the types of agreements filed during the past year shows a trend towards greater cooperation among carriers and MTOs under cooperative working agreements to provide transportation services and address concerns with cargo movement. In addition, operational cooperation among carriers under VSAs and CWAs jumped during the fiscal year with 26 new agreements filed.

Significant filings of this type involve some of the largest carriers and cover multiple geographic regions, including a new cooperative arrangement among CMA CGM, China Shipping Container Line (CSCL), and the United Arab Shipping Company (known as the "Ocean 3 Alliance"); and the addition of Evergreen to the CKYH Alliance. Cooperation between members of different carrier alliances also expanded under new or amended

## Agreements in Effect by Type (FY 2014)



agreements, most likely necessitated by increasingly larger vessels that require multiple participating carriers to optimize vessel capacity utilization.

The inception of what could prove to be a period of consolidation within the liner shipping industry emerged during the fiscal year. Hapag Lloyd and Hamburg Sud completed their purchases of the liner shipping assets of Chilean Compañía Sud Americana de Vapores (CSAV) and Compañía Chilena de Navegación Interoceánica S.A. (CCNI). In addition, at the close of the fiscal year, preliminary discussions regarding a new merger between COSCO and CSCL were emerging, and the proposed purchase of APL by CMA CGM was separately being explored.

In addition to the substantial number of agreement filings related to container shipping in 2015, slot charter agreements among

Roll On-Roll Off (RO/RO) carriers grew significantly. A number of RO/RO carriers developed global slot charter agreements to allow more efficient and rapid access to space for the movement of vehicles and other RO/RO cargo. This trend is expected to continue.

Two new MTO agreements of significance were filed during the fiscal year. The Ports of Seattle and Tacoma formed the Northwest Seaport Alliance allowing the two competing ports to act as a single entity for marketing and infrastructure development, jointly operate container facilities, and jointly discuss rates. The Pacific Ports Operational Improvements Agreement authorizes the Ocean Carrier Equipment Management Association, the West Coast MTO Agreement, and most vessel-operating common carriers and MTOs serving U.S. West Coast ports to discuss and exchange information, and reach



agreement on measures to address congestion and improve operations at U.S. West Coast port facilities. Prior to and at the time of filing

this agreement, port congestion was particularly severe at the Ports of Los Angeles and Long Beach.

## COMPETITIVE IMPACT AND MONITORING

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While systematically monitoring ocean common carrier and MTO activities and commercial conditions in the U.S. foreign trades, the Commission took the following specific measures to assess the competitive impact of certain agreements. Notable during the fiscal year were the relatively high number of unique or “special” reporting requirements developed by the Commission for several new agreements or amended agreements where the market share of the parties and/or the expansive operational cooperation contemplated under the agreement warranted heightened oversight.

**Pacific Ports Operational Improvements Agreement:** This new agreement allows carriers and MTOs to jointly discuss and reach agreement on measures to address congestion at U.S. West Coast ports. To complete a competitive impact analysis and establish appropriate monitoring requirements, the Commission issued a Section 15 Order to obtain certain commercial information from the agreement parties related to terminal operations. The Commission’s review also included evaluation of information received from the agreement parties in response to questions raised by staff and Commissioners during the review period; removal of agreement authority to address Commission concerns, including proposed authority to impose fees and charges on third parties; and consideration of public comments received on the Agreement.

**The Los Angeles and Long Beach Port Infrastructure and Environmental Programs Cooperative Working Agreement:** The agreement was amended to allow the two neighboring ports to jointly discuss and reach agreement on measures aimed at expediting the flow of containers through the ports. Under its agreement monitoring program, the Commission reviews reports of activities authorized by this amendment.

**West Coast MTO Agreement:** Expanding on previous monitoring efforts, during the fiscal year the Commission commenced a more in-depth examination of the activities conducted by the parties to assess their potential competitive impact including examining complaints received regarding the PierPass program under the agreement.

**Oakland MTO Agreement:** The Commission issued a Request for Additional Information (RAFI) regarding a proposed amendment to establish OAKPASS, a program that would allow MTOs to offer Saturday gate access. The cost of providing these extra gates would be recovered by imposing a fee on shippers and truckers using the Monday through Friday daytime gates. Responses to the RAFI will permit the Commission to conduct an in-depth analysis of the proposed program under the section 6(g) standard of the Shipping Act, to address public comments received, and to establish appropriate monitoring requirements, if warranted.

**Port of Seattle/Port of Tacoma Alliance Agreement:** This new agreement allows the two ports to jointly operate, through the Northwest Seaport Alliance, container and other cargo facilities to help improve the competitiveness of the Puget Sound gateway. Special ongoing monitoring requirements were developed and imposed on the agreement parties to assist the Commission in monitoring the competitive impact of the agreement.

**The COSCON/KL/YMUK/HANJIN/ELJSA (CKYHE) Slot Allocation and Sailing Agreement:** Evergreen joined a pre-existing vessel sailing alliance among COSCO, K Line, Yang Ming and Hanjin covering multiple geographic regions. Following a competitive impact analysis of the amended agreement, special reporting requirements were issued and tailored to the specific authority contained in this operational agreement.

**Consolidated Chassis Management Pool Agreement:** The Commission continued to closely monitor new developments and the availability of chassis equipment under the agreement as ocean carriers divest themselves of their chassis fleets and discontinue providing chassis service.

**Transpacific Stabilization Agreement (TSA):** Under the terms of the 2003 settlement agreement between the Commission and the TSA parties, biannual meetings are conducted with representatives of the TSA to review and closely examine major developments in the liner trade between the U.S. and Asia. Under the Commission's ongoing agreement monitoring program, TSA is also required to file regular reports on its members' commercial performance and activities in the trade.

## TARIFFS, SERVICE CONTRACTS, NSAs, & MTO SCHEDULES

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### Tariffs

The Shipping Act requires common carriers and conferences to publish their tariffs containing rates, charges, rules, and practices, electronically in private systems. For ease of public access, the Commission publishes the web addresses of those tariffs on its website. At the close of the fiscal year, 5,500 tariff location addresses were posted. Of that number, 5,163 tariff addresses were for NVOCCs.

The Commission provides regulatory relief, allowing licensed and foreign registered NVOCCs to "opt out" of the requirement to file rate tariffs providing they use NVOCC Negotiated Rate Arrangements (NRAs)

exclusively. At the end of the fiscal year, nearly 1,800 NVOCCs had filed prominent notices or a rule in their respective tariff indicating that they had invoked the exemption – up 98 percent from 900 in FY 2014. It is anticipated that NVOCCs will continue to take advantage of this opportunity, thereby significantly reducing the number of rate tariffs that the Commission must review to ensure compliance with applicable regulations.

### Service Contracts

Service contracts are an alternative to transportation of cargo under tariff rates. Between 90 and 95 percent of the total cargo moving

## Service Contracts and NSAs filed in 2015

- Newly filed service contracts: 51,109
- Amendments to service contracts: 653,315
- Newly filed NSAs: 901
- Amendments to NSAs: 1,790

in the U.S. liner trades moves under service contracts, not tariffs. Service contracts enable the parties to tailor transportation services and rates to their commercial and operational needs and to keep these arrangements confidential. During the fiscal year, the Commission received 51,109 new service contracts, compared to 44,208 in fiscal year 2014; and 653,315 contract amendments, compared to 573,208 in fiscal year 2014.

### NVOCC Service Arrangements (NSAs)

Commission rules allow NVOCCs to offer transportation services pursuant to individually negotiated, confidential service arrangements with customers, rather than

under a published tariff. For the first time since NSAs became available for use, the number of NSAs filed during the fiscal year plummeted 41 percent. This significant reduction in NSA filings was the result of one of the largest volume filers discontinuing the use of NSAs during the fiscal year. Of the 1,780 NVOCCs registered with the Commission to file NSAs, only 244 (about 13 percent) have done so. Those 244 NSA users represent approximately 4 percent of all registered NVOCCs.

### Marine Terminal Schedules

An MTO may make available to the public a schedule of rates, regulations, and practices, including limitations of liability for cargo loss or damage, pertaining to receiving, delivering, handling, or storing property at its marine terminal. Any such schedule made available to the public shall be enforceable by an appropriate court as an implied contract without proof of actual knowledge of its provisions. During the fiscal year, 266 MTOs filed Form FMC-1, which reports the electronic location of an MTO's terminal schedule, with 158 MTOs electing to voluntarily publish their actual terminal schedules. The internet addresses of these MTO terminal schedules are posted on the Commission's website.

## PORT CONGESTION

International trade through U.S. ports now accounts for one-third of our nation's economic output (GDP) and this figure is expected to reach two-thirds by 2030. International trade supports U.S. jobs, and in 2010 (the latest available data) nearly 25 percent

of all U.S. manufacturing and agricultural jobs were supported by U.S. exports. Because international trade and GDP are thoroughly linked, modern efficient ports are essential to facilitate international trade and to maintain a healthy and vibrant U.S. economy.



Participants at the Mid-Atlantic Port Congestion Forum in Baltimore on October 1, 2014

Maintaining the efficiency and effectiveness of America's global supply chains is exceptionally important to the nation's continued economic vitality. Unfortunately, congestion at ports and other points in the nation's intermodal system has become a serious risk factor to the growth of the American economy and its competitive position in the world economy.

During the latter part of fiscal year 2014 and extending into FY 2015, the Commission hosted discussion forums around the country to hear firsthand the port congestion problems that ports, their customers, and other partners in the U.S. intermodal system were facing as a result of problems brought on by contemporary developments in liner shipping. Four separate one-day public listening sessions

were held in different regions of the country, each lead by at least one FMC Commissioner. Forums were held in Los Angeles, Baltimore, New Orleans and Charleston.

The sessions were extremely well attended and, at most venues, there was standing room only. The energetic discussions that took place were transcribed and posted on the Commission's website along with public comments submitted on the port congestion issue. By the time the fourth forum concluded in early November 2014, over one thousand pages of transcripts had been compiled. Participants gave detailed accounts of what they saw as the chief causes of congestion in several of the nation's major container ports, came with reports of new solutions being applied, and



shared new ideas. The Commission's dispute resolution specialists also participated in the Baltimore and Charleston port forums and rendered assistance to parties seeking to resolve port congestion related demurrage and per diem disputes in 250 matters.

Building on these efforts, the Chairman made addressing the challenges of port congestion his top priority for calendar year 2015. Several examples of supply chain participants cooperating and working together under the authority of the Shipping Act were reflected in a number of cooperative working agreements filed in 2015 that had as their central focus, improving port productivity, innovation and efficiency. (A description of these agreements is found in the *Efficiency and Competition* section of this Report).

By and large, participants at the FMC-organized port forums recognized that long-term fixes to the system's infrastructure issues are needed, but they also saw an urgent need for short-term solutions. Following the port congestion forums, to address some of the shorter-term issues identified, the FMC publically released two staff reports. The first dealt with congestion costs in the form of substantial demurrage and detention fees being incurred unavoidably by cargo interests. This study was fast-tracked to address voluminous complaints heard leading up to, during, and continuing after, the forums. Entitled, *"Rules, Rates, and Practices Relating to Detention, Demurrage, and Free Time for Containerized Imports and Exports Moving Through Selected United States Ports"* the report detailed



Commissioner Rebecca Dye with the Gulf Coast Port Authorities at the Gulf Coast Port Forum on November 3, 2014

possible actions ocean carriers, terminal operators, and port authorities can take to help minimize congestion and attendant demurrage and detention fees, and noted possible actions that cargo interests and motor carriers can take. It also identified possible actions the Commission could take concerning free time, detention and demurrage practices.

The second report, *“U.S. Container Port Congestion & Related International Supply Chain Issues: Causes, Consequences & Challenges,”* organized and further developed stakeholders’ discussions at the port forums around seven major themes that emerged – investment and planning; chassis availability and related issues; vessel and terminal operations;

port drayage and truck-turn-time; extended gate hours, PierPASS and congestion pricing; and collaboration and communication. It also addressed current and possible future challenges caused by congestion at U.S. port gateways, and commented on the causes and effects of congestion in order to encourage further discourse on potential solutions.

As the fiscal year drew to a close, plans were being laid to ensure the FMC remains engaged with this serious issue. Ports and terminal operators will be challenged in the foreseeable future to find ways to accommodate bigger ships and larger container exchanges per visit, likely resulting in occasional chassis dislocations, trucking shortages, and local congestion.

## INTERNATIONAL COOPERATION

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### Global Regulatory Summit Part II

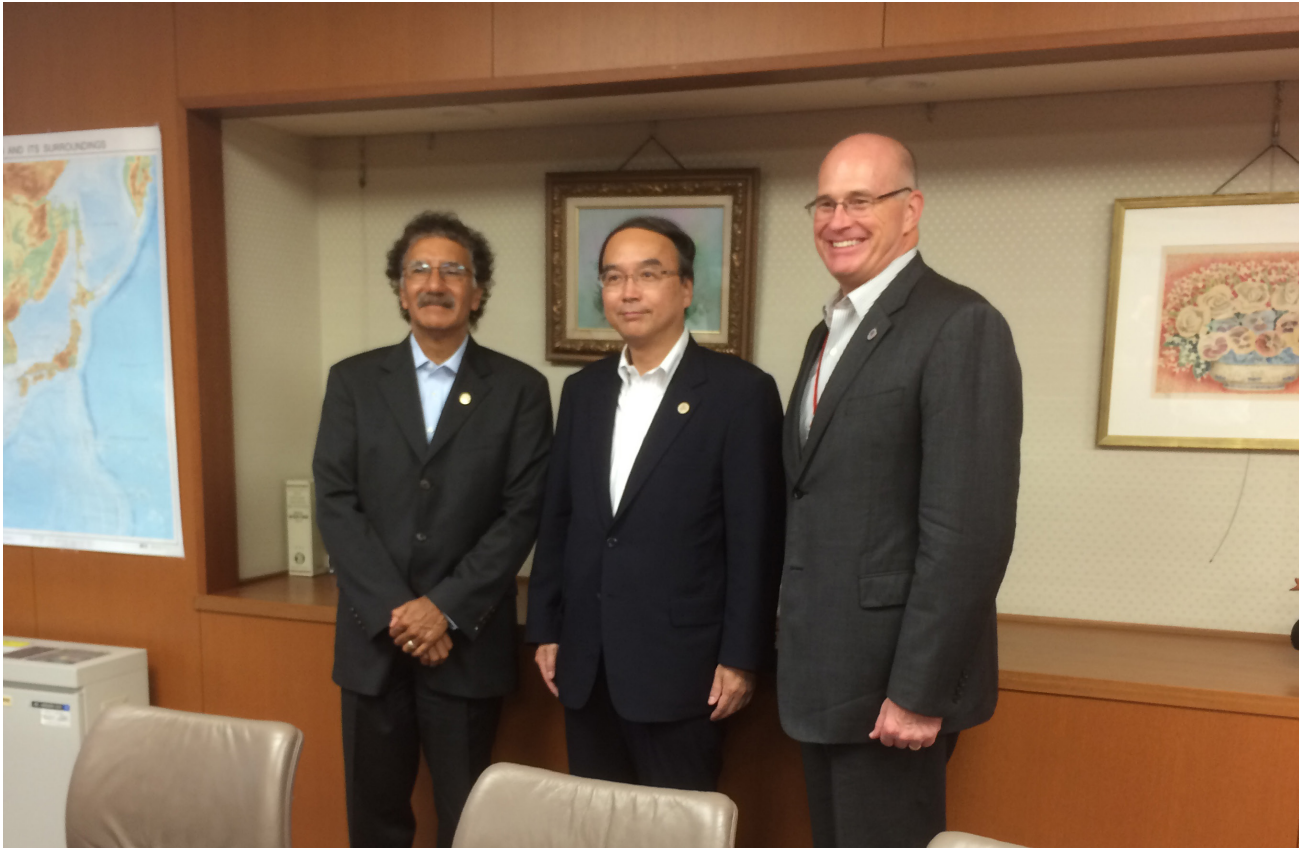
Maritime regulators from the United States, the People’s Republic of China, and the European Commission met and conferred in Brussels, Belgium, in June 2015 to consider the evolving international maritime landscape. Officials discussed their differing regulatory frameworks and the potential effects of carrier cooperation on international trade. The EU delegation was led by Cecilio Madero Villarejo, the Deputy Director General for Antitrust, and Mr. Hubert de Broca, Head of Unit, Directorate General for Competition, Antitrust-Transport, Post and Other Services; and the Chinese delegation was led by Mr. Li Hongyin, Deputy Director-General, Bureau of Water Transport, Ministry of Transport. FMC Chairman Mario Cordero led the U.S. delegation.

### OECD

The FMC’s General Counsel participated in a discussion at the Organisation for Economic Co-operation and Development (OECD) on the topic of “Competition Issues in Liner Shipping.” The Working Group was organized by the Directorate for Financial and Enterprise Affairs, Competition Committee. The General Counsel discussed the developments in the ocean shipping industry since 1984, and the regulatory oversight of the segment to ensure robust competition.

### U.S.-Japan Bilateral Maritime Meeting

September 2015, Chairman Cordero and FMC Chief of Staff participated in a U.S.-Japan Bilateral Maritime Meeting, hosted by the Japanese Ministry of Transport in Tokyo, Japan. Maritime Administrator Paul Jaenichen headed the U.S. Delegation. U.S. and Japanese officials discussed many mutual issues



U.S. Delegation Meeting with Mr. Toshiya Morishige, Vice-Minister for International Affairs, MLIT

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and shared insights on the global maritime landscape. Officials discussed such topics as the global alliances, the Panama Canal expansion, environmental issues, liquefied natural gas (LNG)-fueled vessels, port development, anti-piracy measures, and education efforts aimed at increasing visibility of the maritime industry. Participants agreed that coordination on these maritime issues is valuable for promoting mutual interests in international ocean transportation and commerce.

### **Trade In Services Agreement Negotiations**

On behalf of the Commission, the OGC acted as a maritime technical advisor to two ongoing trade negotiations, Trade in Services Agreement (TiSA) and Transatlantic Trade and Investment Partnership (T-TIP).





# PROTECTING THE PUBLIC

## STRATEGIC GOAL 2

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The FMC engages in a variety of activities that protect the public from financial harm, including licensing and registering of ocean transportation intermediaries; helping resolve disputes about the shipment of goods or the carriage of passengers; investigating and prosecuting unreasonable or unjust practices, and ruling on private party complaints alleging Shipping Act violations. These activities contribute to the integrity and security of the nation's import and export supply chains and ocean transportation system. In addition, the FMC ensures that passenger vessel operators maintain proper financial coverage to reimburse cruise passengers in the event their cruise is cancelled or to cover liability in the event of death or injury at sea.

### LICENSING

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

An ocean freight forwarder domiciled in the U.S. arranges for the transportation of cargo with a common carrier on behalf of shippers and processes documents related to those shipments. Both NVOCCs and OFFs must be licensed by the Commission if they are located in the U.S. and must establish financial responsibility.

NVOCCs doing business in the U.S.-foreign trades but located outside the U.S. (foreign NVOCCs) may choose to become FMC-licensed, but are not required to do

#### Licensing Activity in FY 2015

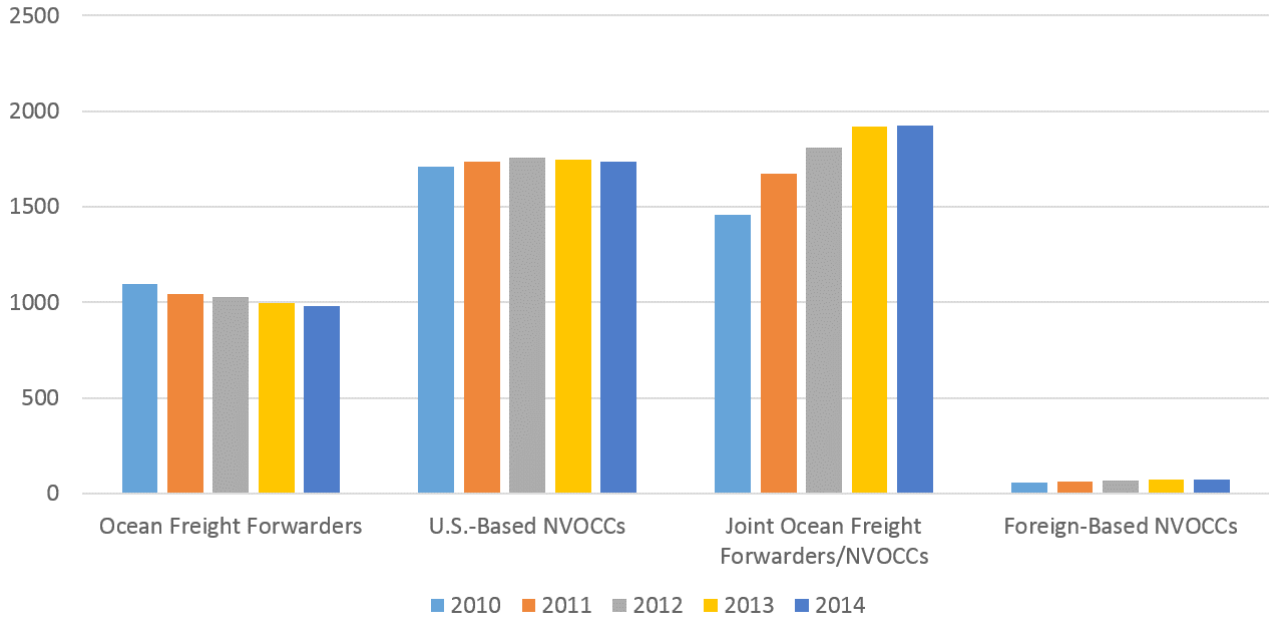
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- New OTI applications accepted: 376
- Amended applications accepted: 314
- New OTI licenses issued: 250
- Amended licenses issued: 100
- Licenses revoked: 293
- Licenses voluntarily surrendered: 72

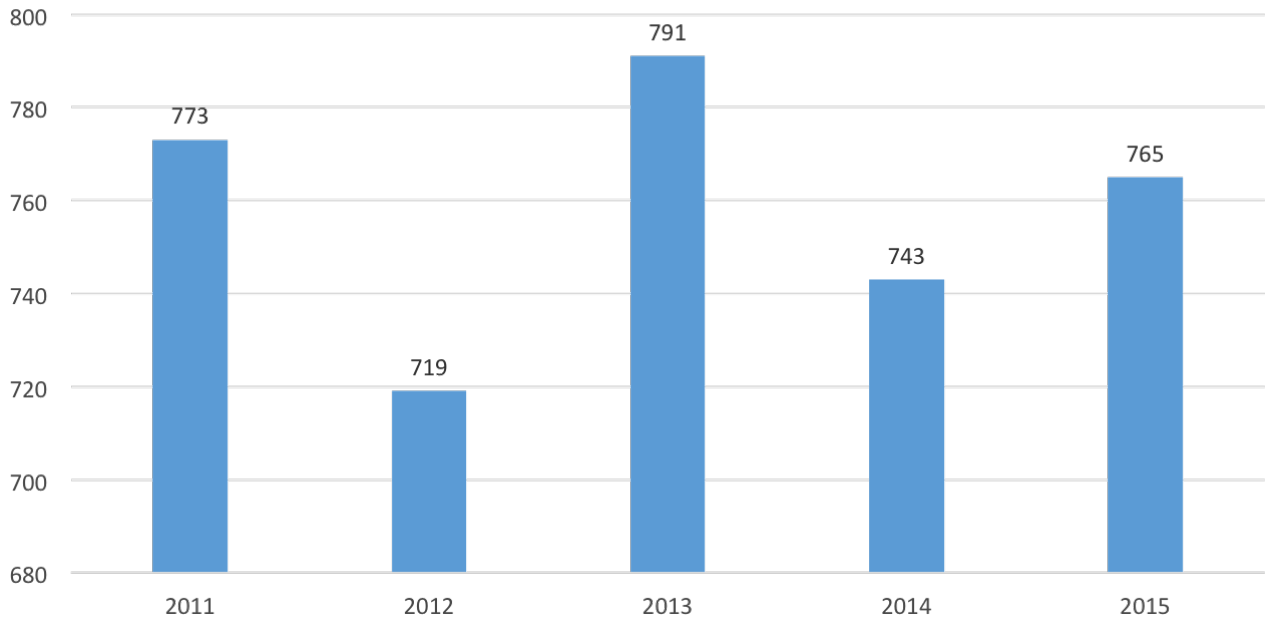
so. If not licensed under the FMC's program, foreign-based NVOCCs must register with the Commission and establish financial responsibility.

NVOCCs wishing to serve in the U.S.-China trade may file an Optional Rider for Additional NVOCC Financial Responsibility, to meet the Chinese government's financial

### Active OTI Licenses by Year



### OTI Applications Received



responsibility requirements. This rider adds additional financial liability to meet the bond aggregate amount of \$125,000.

The rider amount is available to pay fines and penalties for activities in the U.S.-China trades imposed by the Chinese government.

This rider is accepted as a convenience to the U.S. During the fiscal year, 50 China Bond Riders were received and 23 were terminated. At the close of the fiscal year, 440 U.S. NVOCCs had China Bond Riders.

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## REVISIONS TO LICENSING RULES

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On October 10, 2014 the Commission published a Notice of Proposed Rulemaking (NPR), 79 FR 61544, significantly amending its regulations governing OTIs for the first time since it promulgated implementing regulations under the Ocean Shipping Reform Act of 1998, Public Law 105-258, 112 Stat. 1902 (OSRA). The proposed rule was published following an ANPR published in May 2013. After considering extensive comments submitted to the ANPR, the proposed rule was revised to address commenters concerns and adapt to changing industry conditions, improve regulatory oversight, improve transparency, streamline FMC business processes, and reduce regulatory burdens on the industry. Among other revisions, most significantly the rule proposed to:

- require licenses and registrations be renewed every three years;
- require the FMC to develop a user-friendly, online renewal process;
- require common carriers to verify OTI licenses and registrations, tariff publication and financial responsibility, and that the Commission develop a single location for such verifications on its website; and
- provide for a new expedited hearing procedure to streamline the current procedures for denial, revocation, or suspension of an OTI license.

At the close of the fiscal year, the Commission was preparing to consider and vote on a draft Final Rule to be implemented in FY 2016.

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## LEVERAGING TECHNOLOGY

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Improving service delivery through technology is a critical priority for the FMC. Due to historical budgetary constraints, the FMC had been unable to migrate from its legacy applications and aging architecture. While the Commission's budget remains lean, it is committed to establishing a more robust IT infrastructure. The Commission's multi-year strategy, encompassed in the FMC's

Information Technology Capital Plan, will enhance its cybersecurity efforts and better manage current and future business demands.

The cornerstone of the Commission's IT upgrade effort is development and implementation of its Enterprise Content Management (ECM) platform, designed to capture, manage, store, preserve, and deliver information supporting key Commission processes. The ECM

will enhance both internal and external interface with its electronic systems and databases and will eliminate duplicate data entry that is inherent in the current legacy systems.

In FY 2015, the FMC completed a cloud migration of its in-house file server based data management system. In addition, all Commission employee workstations were upgraded to the latest Microsoft operating system and Office 365. A cloud-based training solution was procured to give all employees access to high quality, job-relevant, training courses as well as eBooks and audio books. By

leveraging these cloud services, the Commission is better able to support the President's policy on Enhancing Workplace Flexibilities and Work-Life Programs by extending telework to a greater number of employees.

The Commission also upgraded its server hardware to improve the operating efficiency of the internal and external applications used by FMC staff and the maritime industry. In addition, the Commission launched its disaster recovery site to support access to critical applications in the event of an emergency.

## PASSENGER VESSEL PROGRAM

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

At the close of the fiscal year, 223 vessels owned by 48 passenger vessel operators were certified under the Commission's program. The combined evidence of financial responsibility for nonperformance of transportation for all cruise vessels in the program is \$590 million. Under the Commission's program, \$750 million in aggregate financial responsibility for casualty coverage is evidenced. In

FY 2015, 18 new performance certificates and 19 casualty certificates were issued. No

### PVO Program Participants

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- 48 PVOs are certified under the Commission's program
- 223 vessels are certified
- 19 new Casualty Certificates issued in FY 2015
- 18 new Performance Certificates issued in FY 2015

### PVO Program Coverage

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- \$590 million aggregate evidence of financial responsibility for nonperformance
- \$750 million aggregate evidence of financial responsibility for casualty

reimbursements for unperformed cruises were necessary under the FMC's program during the fiscal year.

On April 2, 2015 the maximum coverage requirement increased to \$30 million per cruise line with an adjustment to the cap thereafter every two years based on the Consumer Price Index for All Urban Consumers (CPI-U).

The Commission offers information and guidance to the cruising public on passenger rights and obligations regarding monies paid to cruise lines that fail to perform voyages, as well as other cruise difficulties such as itinerary changes. A new cruise brochure was designed and published during the fiscal year that provides information and resources to help passengers avoid problems that may commonly arise during a cruise vacation. This brochure was widely distributed to travel agents and associations, and other federal agencies working in partnership with the Commission to educate and protect the cruising public.



## CONSUMER AFFAIRS AND EDUCATION

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### Dispute Resolution

Through its Office of Consumer Affairs and Dispute Resolution Services (CADRS), the Commission provides alternative dispute resolution (ADR), *ombuds*, and mediation services, to assist parties in resolving international ocean shipping disputes, including a Rapid Response Team especially focused on addressing problems exporters may encounter. Such services are available to the shipping public at any stage of a dispute, regardless of whether litigation has been filed at the FMC or another jurisdictional forum. The Commission's ADR

services help parties avoid the expense and delay inherent in litigation, and facilitate the flow of U.S. foreign commerce. During the fiscal year, the FMC:

- Closed 574 *ombuds* matters: 152 household goods matters; 328 cargo other than household goods matters; 93 cruise matters; and 1 other Shipping Act matter.
- Provided mediation services in 5 matters.
- Collaborated with Miami-Dade Consumer Protection to render assistance





CADRS Deputy Director Jennifer Gartlan addressing the International Association of Movers' Annual Meeting, October 10, 2014

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to consumers whose shipments were in jeopardy after tendering shipments and payment to an unlicensed OTI that deposited the cargo with a licensed OTI, but failed to tender freight. CADRS negotiated with the licensed entity to ship the cargo to destination at no further cost to consumers.

- With the Commission's Area Representatives (ARs), actively assisted individual cargo owners victimized by the shutdown of a major household goods company operating to Central America. As a result of this effort, many cargo owners were able to locate and retrieve their personal effects from warehouses in various port areas.

- Published an informational article on the importance of using FMC-licensed and bonded OTIs in *The Compass*, a trade association publication for the Florida Yacht Brokers Association.
- Presented to various industry and consumer trade associations regarding regulatory compliance, best practices, and the use of alternative dispute resolution to resolve regulatory and commercial ocean transportation disputes.

### **Area Representatives**

Area Representatives represent the FMC at regional field offices located in Southern California, South Florida, New Orleans, New York, Houston and Seattle. They resolve complaints

and disputes between parties involved in international oceanborne shipping (often coordinating with CADRS staff), investigate alleged violations of the shipping statutes, and participate in local maritime industry groups. ARs provide advice and guidance to the shipping public, collect and analyze information of regulatory significance, and assess industry conditions.

During the fiscal year, ARs were actively involved in reaching out to the public, consumer groups, trade associations, and other government agencies to achieve regulatory

compliance and protection for the shippers of household goods and personal effects. The ARs were instrumental in the publication of public service announcements (PSAs) for each major port area, warning consumers against the use of unlawful transportation providers and intermediaries. They also made presentations to interested industry audiences in their regions, explaining OTI licensing requirements, proposed changes to the Commission's OTI rules on bonding and license renewals, and OTI compliance with tariff filing requirements and provisions applicable to NRAs.

## ENFORCEMENT, AUDITS AND PENALTIES

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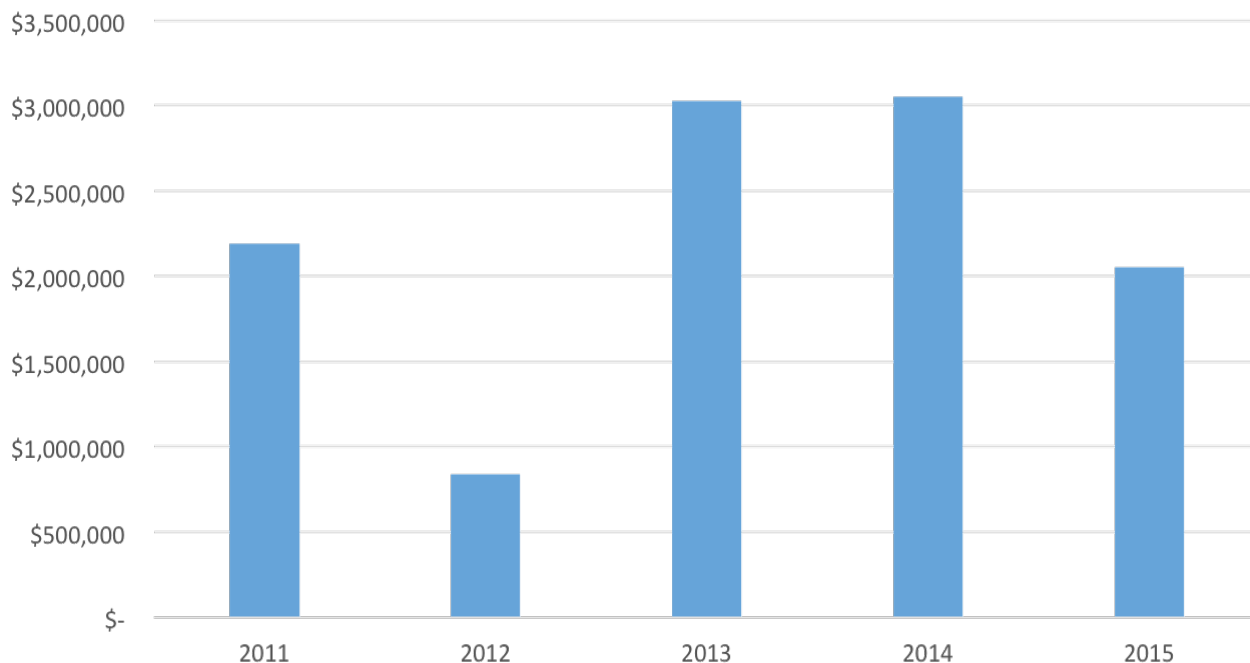
The Commission's Bureau of Enforcement (BOE) and the ARs investigated and prosecuted possible illegal practices in many trade lanes, including the Transpacific, North Atlantic, Middle East, South American and Caribbean trades. These market-distorting activities included various forms of unfiled agreements, rebates and absorptions, misdescription of commodities, and unlawful use of service contracts, as well as carriage of cargo by and for untariffed and unbonded NVOCCs.

At the beginning of the fiscal year, 10 enforcement cases were pending final resolution by BOE, the Bureau was party to 4 formal proceedings, and there were 14 matters pending for which BOE was providing internal legal advice. The ARs referred 18 investigative matters to BOE for enforcement action or informal compromise; 17 were compromised and settled, administratively closed, or referred for formal proceedings; and 11 enforcement cases were pending resolution at fiscal year's end.

Three formal proceedings were initiated; 4 formal proceedings were completed; and 3 were pending at the end of the fiscal year.

Major investigations undertaken or completed during the fiscal year addressed VOCCs seeking to operate pursuant to agreements that were not filed with the Commission, as well as deceptive or fraudulent practices of certain OTIs operating in the China-U.S. inbound trades. Of note, BOE's efforts in pursuing inquiries regarding certain car carriers in the Japan/South Korea/China-U.S. trade, Europe-U.S. trade and in other U.S. trades, culminated in an additional \$135,000 settlement with Siem Car Carriers AS relating to unfiled carrier agreements. Penalties of \$537,500 were also compromised with United Arab Shipping Co. with respect to allegations of unlawful rebates paid in the U.S.-Middle East trades. Civil penalties were also pursued in several noteworthy formal proceedings before the

## Civil Penalties Collected



Commission's Administrative Law Judges that are summarized in the *Formal Investigations* section of this report.

Cumulatively, the Commission collected \$2 million in penalties in FY 2015. Most of these investigations were resolved informally, some with compromise settlements and civil penalties. A list of parties and penalties can be found in Appendix D.

BOE's compliance audit program, conducted from headquarters primarily by mail, e-mail and telephone, reviews the operations

of licensed OTIs to assist them in complying with the statutory requirements and the Commission's rules and regulations. The audit program also reviews entities holding themselves out as VOCCs, where there is no indication of actual vessel operations. At the beginning of the fiscal year, 14 audits were pending. During the fiscal year, 183 audits were commenced, 163 audits were completed (including audits carried over from fiscal year 2014), and 34 remained pending at the close of the fiscal year.

## INTER-AGENCY COOPERATION

The Commission works regularly with a number of other federal, state, and local transportation and law enforcement agencies, either through established memoranda of understanding (MOU) or collaborations to

address specific transportation related issues or incidents in both the U.S. domestic shipping arena and international liner shipping.

CADRS advanced the MOU between the FMC and the Federal Motor Carrier Safety



Administration (FMCSA) through continued participation in the FMCSA's Moving Fraud Task Force and Moving Fraud Partnership initiatives. CADRS staff also participated in FMCSA's Moving Season Kickoff Event, giving a panel presentation on cooperative efforts and innovations to protect consumers against international moving fraud.

Interaction between BOE, the ARs, and Customs and Border Patrol (CBP) on the exchange of investigative information continues to be beneficial to all parties. Cooperation with CBP included staff interactions and joint field operations to investigate entities suspected of violating both agencies' statutes or regulations. Such cooperation also has included local police and other government entities, including the U.S. Attorney's Office, Federal Bureau of Investigation (FBI), and Immigration and Customs Enforcement (ICE), when necessary.

BOE completed its third year under a formal MOU with the Census Bureau, U.S. Department of Commerce, providing FMC with access to the Census' Automated Export System (AES) database. The completed MOU accommodates Census' ongoing concerns for data security by limiting such use of confidential U.S. export shipment data only for FMC law enforcement purposes. BOE also commenced membership in the Homeland Security Investigations-led National Intellectual Property Rights Coordination Center (IPR Center), a partnership of 21 Federal and international agencies targeting intellectual property- and trade-related crimes.

The ARs continued to work closely with a number of law enforcement agencies,

including local police jurisdictions in New York, New Jersey, South Florida and Houston, in matters relating to international shipping, such as the export of stolen motor vehicles. They also participated in various enforcement initiatives sponsored by Federal law enforcement agencies: the U.S. Department of Justice, Alcohol, Tobacco and Firearms (ATF); FBI; the Department of Homeland Security (including CBP and ICE); the Joint Terrorism Task Force (JTTF); Department of Commerce; Coast Guard; Export-Import Bank; and the FMCSA. These activities included criminal and civil investigations of entities licensed or regulated by the Commission, interdiction of illicit imports and exports, consultation on carrier practices, procedures and documentation relating to shipping and international trade,

### FMC and Federal Partners Work to Protect the Public:

- Federal Motor Carrier Safety Administration
- Federal Bureau of Investigation
- Alcohol, Tobacco and Firearms (DOJ)
- Customs and Border Patrol (DHS)
- Immigration and Customs Enforcement (DHS)
- Joint Terrorism Task Force
- Census Bureau (DOC)
- U.S. Coast Guard
- U.S. Export-Import Bank

and coordinated action seeking to protect the shipping public from deceptive and unfair practices.

Three AR offices participated in a large multi-agency strike force operation, jointly led by the Coast Guard and CBP, which included a dozen federal agencies and numerous local police jurisdictions engaged in the inspection of hundreds of intermodal ocean containers at port terminals in New York/New Jersey to uncover violations of safety, cargo declaration and licensing regulations.

# DEVELOPMENTS IN MAJOR U.S. FOREIGN TRADES

## WORLDWIDE

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The world's container trade expanded by 3 percent in fiscal year 2015 compared to a more robust growth rate of 5 percent in 2014. As the fiscal year came to a close, 243 containerships lay idle, representing 4 percent of the total fleet capacity measured in TEUs (twenty-foot equivalent container units). In contrast, 131 ships or 1 percent of the containership capacity lay idle at the end of fiscal year 2014.

The world's container shipping industry remained as concentrated during fiscal year 2015 as it had been in prior years. The top three container operators controlled 38 percent of the world's containership capacity; the top five controlled 47 percent; and the top ten controlled nearly 64 percent. A.P. Moller-Maersk A/S (15 percent), Mediterranean Shipping Company SA (13 percent) and CMA CGM S.A. (9 percent) continued to hold the top three positions in terms of vessel capacity deployed.

Container volumes in the U.S. liner trades expanded by 2 percent to 31.5 million TEUs, compared to 31 million last year. The U.S. share of the world's container trades was nearly 17 percent. U.S. container imports continued to grow, expanding 6 percent to 20 million TEUs, compared to a revised figure of 18.8 million in 2014. This was the second consecutive year that U.S. imports surpassed the record of 18.6 million reached in fiscal year 2007. U.S. container exports lost ground

### Worldwide

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- Worldwide container trade expanded only 3% vs. a 5% growth rate last year.
- New signs of global vessel overcapacity indicated as number of container ships that lay idle nearly doubled at year's end.
- The world's top 3 operators controlled 38% of the worldwide vessel capacity.

### U.S. Liner Trades

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- Container volumes in the U.S. liner trades (imports and exports combined) grew for the 6th consecutive year.
- U.S. container imbalance worsened this FY with imports continuing to outpace U.S. exports; a 5% drop in U.S. exports further widened the gap.

decreasing 5 percent to nearly 11.5 million TEUs. As a result, the U.S. container imbalance continued to worsen; for every 100 loaded containers exported from the U.S., 175 were imported, compared to 156 imported in fiscal year 2014.

The world's containership fleet continued to expand with nominal capacity growing by approximately 9 percent. At the end of the fiscal year, 5,143 containerships, with a total fleet capacity of 19.7 million TEUs, were available to serve the world's container trades and there were orders worldwide for 511 new containerships with an aggregate capacity of

4.1 million TEUs – an increase of 21 percent over the existing fleet capacity. Vessels with nominal capacities exceeding 10,000 TEUs comprised 22 percent of the existing containership fleet capacity and 73 percent of the orderbook fleet capacity at year-end, reflecting the increasing size of containerships being ordered.

## ASIA

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In terms of container cargo volumes, Asia remains our largest trading region. In fiscal year 2015, Asia was responsible for 62 percent of U.S. container trade volumes (exports and imports combined). Northeast Asia accounted for 53 percent of all U.S. container cargo from this region and Southeast Asia accounted for nearly 10 percent. Roughly 69 percent of all U.S. container imports originated from Asia and the region received 51 percent of all U.S. container exports. Nearly half of all containers originating from or destined to Northeast and Southeast Asia are handled at the Ports of Los Angeles and Long Beach.

The U.S. imported 13.7 million TEUs of merchandise from Asia, which is a 6 percent

increase over the previous fiscal year. On the export side, the U.S. sent nearly 5.9 million TEUs of goods to Asia, a decrease of 7 percent over the last year.

The *Transpacific Stabilization Agreement*, a 15-member discussion agreement with voluntary pricing authority is the major agreement in the transpacific trade. TSA covers the inbound and outbound transpacific container trade lanes, and its geographic scope also includes parts of the Indian Subcontinent (Bangladesh, Pakistan and Sri Lanka, but not India). During the fiscal year, TSA's share of the U.S. inbound and outbound Asia container trades was approximately 90 and 91 percent, respectively.

Nearly 70% of all U.S. containerized imports are from Asia; and more than half of all U.S. containerized exports are shipped to Asia.

## AUSTRALIA AND OCEANIA

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The Oceania trade includes the nations and territories of Australia, New Zealand, Papua New Guinea, Western Samoa, and other South Pacific islands. As in many of the U.S. liner trades, the increase in the value of the U.S. dollar against foreign currencies affected the

container cargo market making U.S. exports less attractive. Compared to the preceding fiscal year, U.S. container exports to the region declined by 4 percent, while imports to the U.S. jumped nearly 10 percent. Notwithstanding the decline in U.S. exports to this region,

container exports continued to exceed imports by a ratio of 1.37 to 1. Meat and wine, the top commodities from the region, accounted for nearly 36 percent of the total import cargo volume. The top two carriers, Hamburg Sud and ANL Singapore Pte. Ltd. (a subsidiary of CMA CGM), moved close to 50 percent of the total liner cargo volume in each trade direction. As parties to the Trans-Pacific Partnership, if ratified, trade in container cargo between the U.S. and Australia and New Zealand will likely benefit from the reduction or elimination of tariffs and quotas on many products.

Two main rate discussion agreements cover the trade between the U.S. and Australia and

New Zealand. Seven carriers with a combined market share of 80 percent participate in the *United States/Australasia Discussion Agreement* covering the outbound trade; and five carriers with a combined market share of 94 percent participate in the *Australia and New Zealand-United States Discussion Agreement* covering the inbound trade. All carriers serving the trade provide direct service through vessel sharing and space charter agreements.

Papua New Guinea, Western Samoa, and other South Pacific islands are served by five carriers operating under the *Pacific Islands Discussion Agreement*. Collectively these carriers hold a market share of 76 percent.

## INDIAN SUBCONTINENT AND MIDDLE EAST

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The Indian Subcontinent and Middle East regions together accounted for over 6 percent of total U.S. container volumes in fiscal year 2015. U.S. container trade with the Indian Subcontinent alone (exports and imports combined) grew 7 percent over last year, while the container market between the U.S. and Middle East (exports and imports combined) grew by nearly 3 percent.

The U.S. imported 801,000 TEUs from the Indian Subcontinent and 201,000 TEUs from the Middle East - 10 percent and 15 percent increases respectively over the prior fiscal year. The U.S. exported 458,000 TEUs to the Indian Subcontinent and 578,000 TEUs to the

Middle East, an increase of almost 3 percent and a decrease of slightly more than 1 percent, respectively, over the preceding fiscal year.

In this region, TSA is the rate discussion agreement covering part of the U.S. inbound and outbound container trades. Its geographic scope covers the Indian Subcontinent countries of Bangladesh, Pakistan, and Sri Lanka, but not India or the Middle East. For the fiscal year, TSA's market share for imports from and exports to this trade region were 86 and 89 percent, respectively. There are no other rate discussion agreements covering the trades between the U.S. and India or the Middle East.

## NORTH EUROPE

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During the fiscal year, the strength of the U.S. dollar against European currencies affected container cargo growth in the U.S. liner trade

with North Europe. Compared to the preceding period, container exports to North Europe declined by nearly 6 percent, while container



imports to the U.S. rose by nearly 9 percent. In both trade directions, half of the containers were moved by the top three ocean carriers, which in ranking order were MSC, Hapag Lloyd, and Maersk Line. The deployment of vessel capacity expanded by over 30 percent in each trade direction, and the average vessel capacity utilization rate during the fiscal year reportedly was 91 percent inbound and 64 percent outbound. Freight rates in the stronger inbound direction were reported to range between \$1,500 and \$2,000 per container, while outbound rates remained depressed at \$1,200 per container and below.

A number of significant changes to services offered in the trade are worth noting. In January 2015, UASC entered the trade through a new vessel sharing arrangement with CMA CGM and Hamburg Sud under the *CMA CGM/HSDG/UASC Vessel Sharing Agreement*. Together the three carriers deploy 15 vessels

Top 3 carriers carry over half the cargo shipped in the U.S./North Europe trade.

in a weekly pendulum service between ports in North Europe, the U.S. Atlantic, and Asia. In May 2015, independent of its alliance with Maersk Line, MSC introduced a new weekly loop service with eight vessels operating between ports in North Europe and the U.S. Pacific Coast through the Panama Canal. Jointly, MSC and Maersk Line added a fourth weekly loop service with four vessels between U.S. Atlantic and North Europe ports under their alliance, the *Maersk/MSVessel Sharing Agreement*. Similarly, members of the *G6 Alliance Agreement* introduced a fourth

weekly loop service with four vessels operating in the transatlantic trade. Both groups of carriers announced that their new weekly loop services would be suspended for the winter slack season until April 2016. In August 2015, CMA CGM also temporarily suspended its Liberty Bridge service, which it operated with four vessels in a weekly transatlantic loop.

## MEDITERRANEAN

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After a strong rebound in both trade directions during last fiscal year, conditions in the container cargo market were mixed in the U.S./Mediterranean trade during fiscal year 2015. U.S. container exports tumbled nearly 12 percent, while container imports from the region grew 4 percent. Import containers exceeded export containers by a ratio of 2 to 1. The top imported commodities included wine, furniture and ceramic tiles. Paper, cotton and wood pulp were among the top U.S. export

commodities. MSC and Hapag Lloyd moved about half of the total container cargo in each trade direction.

In terms of service changes, in January 2015, CMA CGM terminated its weekly loop service and entered into a vessel sharing arrangement with UASC, Hanjin Shipping Co., and CSCL under the *Hanjin/UASC/CMA CGM/CSCL Vessel Sharing and Slot Charter Agreement*. Together these carriers deploy 12 vessels in a weekly pendulum service operating between ports in the Indian Subcontinent, Middle East,

Mediterranean and the U.S. Atlantic Coast via the Suez Canal. In April 2015, CMA CGM independently initiated a new weekly loop service with six vessels between U.S. Gulf and Mediterranean ports and later added three more vessels to expand the service to ports in the Caribbean and South America. Under their alliance, MSC and Maersk Line consolidated their service strings into two weekly loop

services between ports in the Mediterranean and the U.S. Atlantic and Gulf, respectively, and two pendulum services between ports in the Mediterranean, Asia, and the U.S. Pacific Coast. By the end of the fiscal year, vessel capacity deployed was reduced by 8 percent in the outbound direction and increased by 7 percent in the inbound direction.

## AFRICA

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The Republic of South Africa is the largest U.S. liner trading nation on the continent, accounting for about 25 percent of the total container cargo. The volume of container cargo shipped between the U.S. and all nations in Africa (exports and imports combined) fell 6 percent during the fiscal year. Compared to the preceding year, U.S. exports to Africa dropped nearly 10 percent, while imports from the continent grew almost 4 percent. Notwithstanding the drop in U.S. exports to this region during the fiscal year, U.S. container exports continued to substantially exceed imports. For every container moving inbound, 2.4 containers moved outbound. The major

export commodities remained unchanged and included automobiles (mostly used), poultry, and grocery products, while cocoa bean and citrus fruit were among the top import commodities.

Almost 70 percent of the container cargo in the trade was carried by MSC and Maersk Line (including Maersk Line's subsidiary, Safmarine). Under the *Southern Africa Agreement*, MSC and Maersk Line share space on each other's ships in the America Express (AMEX) service between the U.S. Atlantic Coast and the Republic of South Africa with calls at Cape Town, Port Elizabeth, and Durban.

## LATIN AMERICA

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### Central America and the Caribbean

U.S. export cargo volumes to Central America increased by nearly 5 percent to 611,000 TEUs, while U.S. import cargo volumes decreased by almost 4 percent to 751,100 TEUs. Paper and paperboard (including waste paper) accounted for the largest share of U.S. containerized exports. Other major export commodities included fabrics, yarns, and raw cotton. Grocery products, used

automobiles and apparel were also significant exports. Fresh fruit made up the majority of all U.S. imports from the region with bananas accounting for close to three quarters of all fresh fruit shipped to the U.S. The second largest commodity imported from this region was clothing and apparel.

Five of the largest regional carriers in the U.S./Central America trade participated in the *Central America Discussion Agreement (CADA)*:

Seaboard Marine, Crowley Latin America Services, King Ocean Services, Dole Ocean Cargo Express, and Great White Fleet Liner Service Ltd.

In the liner trade between the U.S. and the Caribbean, U.S. exports, mainly consisting of food, consumer goods, and manufactured

The trade gap between imports/exports shipped in the U.S./Central America and the Caribbean trade narrowed by almost 30% the FY.

products increased almost 8 percent to 512,000 TEUs. Imports to the U.S. decreased nearly 3 percent to approximately 166,000 TEUs.

Carriers operating in the U.S./Caribbean trade participated in three rate discussion agreements covering discrete trades: (1) the *Aruba Bonaire and Curacao Discussion Agreement*, (2) the *Bermuda Discussion Agreement*, and (3) the *Caribbean Shipowners Association*.

## South America

U.S. containerized trade with South America (exports and imports combined) was nearly 2 million TEUs during the fiscal year, relatively unchanged from the previous year. U.S. exports to the region slightly exceeded U.S. imports. In addition to general merchandise, other top export commodities to South

America included auto parts, petroleum resins, chemical woodpulp, and polymers. On the U.S. import side, bananas/plantains, sawn wood, coffee, plywood, and granite were the commodities moving in greatest volume.

Several carriers providing service to the West Coast of South America are members of the *West Coast of South America Discussion Agreement* (WCSADA). Previously, the membership of WCSADA consisted of eight regional and four global carriers. However, as a result primarily of mergers and acquisitions, by fiscal year's end WCSADA membership had dwindled to seven, including three regional carriers (Seaboard Marine, Trinity Shipping, and King Ocean Services) and four global carriers (CMA CGM, Hamburg Sud, Hapag Lloyd, and MSC).

In addition to service from members of WCSADA, a number of independent carriers serve the trade including Dole Ocean Cargo Express and Great White Fleet, that mainly transport proprietary cargo such as fresh fruits and vegetables. WCSADA also faces competition from Nippon Yusen Kaisha Line, Maersk Line, Evergreen, Mitsui O.S.K. Line, and Zim, that often use transshipment hubs in Mexico, Panama, and the Caribbean. Several regional carriers also serve the trade and compete for cargo. There were no active rate discussion agreements in the trade between the U.S. and the East Coast of South America.



# TOP TWENTY U.S. LINER CARGO TRADING PARTNERS

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

The Journal of Commerce’s *Port Import Export Reporting Service* (PIERS) database was used to derive the Commission’s list of top-twenty trading partners. The most recent complete calendar year for which data are available is 2014. The table on the next page lists the twenty foreign countries that generated the largest volume of oceanborne liner cargo in bilateral trade with the United States in 2014. The figures in the table represent each country’s total U.S. liner imports and exports combined in thousands of loaded TEUs.

For calendar year 2014, there was a 3 percent year-to-year increase in bilateral trade with the United States’ top-twenty liner trading partners. The top-twenty liner cargo trading partners has remained the same since 2009. For the second year in a row, several changes in ranking occurred among the top-twenty countries. India rose above Vietnam in the rankings to occupy 6th place, reflecting a year-to-year liner volume increase of over 12 percent. Belgium and Luxembourg also rose in the rankings to 9th place, trading places with Brazil which slipped to 10th place. Brazil was one of five countries that experienced lower liner cargo volumes (the

others being Japan, Hong Kong, Malaysia and Honduras). The lower volume of liner cargo trade with Malaysia and Honduras enabled Chile to climb above them, rising two places in the listing to 17th place. (Although Hong Kong reverted to Chinese control in July 1997, PIERS continues to report data separately for Hong Kong because it is a major transshipment center).

India, Belgium & Luxembourg, and Chile climbed up in the rankings while Vietnam, Brazil, Malaysia and Honduras slipped down the rankings.

## TOP TWENTY U.S. LINER CARGO TRADING PARTNERS (CY 2014)

Rank	Country	TEUs (000)
1	China (PRC)	11,861
2	Japan	1,409
3	South Korea	1,329
4	Taiwan (ROC)	1,134
5	Germany	930
6	India	885
7	Vietnam	877
8	Hong Kong	697
9	Belgium & Luxembourg	622
10	Brazil	589
11	Indonesia	576
12	Italy	553
13	Thailand	514
14	Netherlands	500
15	United Kingdom	435

Rank	Country	TEUs (000)
16	Guatemala	410
17	Chile	361
18	Malaysia	342
19	Honduras	335
20	Australia	332

# FOREIGN SHIPPING PRACTICES ACT

The Commission has the authority to address restrictive foreign shipping practices under section 19 of the Merchant Marine Act of 1920 and the Foreign Shipping Practices Act of 1988. Section 19 empowers the Commission to make rules and regulations governing shipping in the foreign trade to adjust or meet conditions unfavorable to shipping. The FSPA directs the Commission to address adverse conditions that affect U.S. carriers in foreign trade and that do not exist for foreign carriers in the United States.

The Commission, both through Commission action and through its Office of the General Counsel (OGC), informally pursued several matters involving potentially restrictive foreign practices. This included interpretations of existing legislation, foreign legislation and administrative law, and regulations of non-domestic carriers' terminal handling charges. No formal FSPA action by the Commission was necessary.

# CONTROLLED CARRIERS

A controlled carrier is an ocean common carrier that is, or whose operating assets are, owned or controlled directly or indirectly by a foreign government. The Shipping Act provides that no controlled carrier may maintain rates or charges in its tariffs or service contracts that are below a level that is just and reasonable, nor may any such carrier establish, maintain, or enforce unjust or unreasonable classifications, rules or regulations in those tariffs or service contracts. In addition, tariff rates, charges, classifications, rules, or regulations of a controlled carrier may not, without special permission of the Commission, become effective sooner than the 30th day after the date of publication. The Commission's staff monitors U.S. and foreign trade press and other information sources to

identify controlled carriers and any unjust or unreasonable controlled carrier activity that might require Commission action. In fiscal year 2015, five controlled carriers operated in the U.S. trades:

1. American President Lines, Ltd. and APL Co., Pte. – Republic of Singapore
2. COSCO Container Lines Company, Ltd. - People's Republic of China
3. China Shipping Container Lines Co., Ltd. and China Shipping Container Lines (Hong Kong) Company, Ltd. - People's Republic of China
4. Hainan P.O. Shipping Co., Ltd. – People's Republic of China
5. United Arab Shipping Co. SAG – State of Qatar



# FORMAL INVESTIGATIONS, PRIVATE COMPLAINTS AND LITIGATION

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

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

OTIs, MTOs, and other persons to ensure effective compliance with the statutes and regulations administered by the Commission. Formal orders of investigation and hearing are assigned to an ALJ for an initial decision and maybe reviewed by the Commission.

In FY 2015, 9 new private party complaints were filed and 1 new formal investigation was instituted. The Office of Administrative Law Judges (OALJ) issued 12 initial decisions, including 2 partial dismissals, 2 initial decisions on default, 5 initial decisions approving settlement, and 1 voluntary dismissal. The Commission issued 7 notices finalizing the ALJ's decisions in private complaint cases and 3 notices finalizing the ALJ's decisions in formal investigations. Two docket matters were adjudicated in the Commission's favor during the fiscal year in United States Courts of Appeals by the Office of General Counsel.

The following summarizes the results of docketed proceedings concluded during FY 2015 by the ALJs and the Commission.

## FORMAL INVESTIGATIONS

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### **Oceanic Bridge International, Inc. – Possible Violations of Section 10(a)(1) of the Shipping Act of 1984 [Docket No. 14-02]**

On February 21, 2014, the Commission issued an Order of Investigation and Hearing to determine whether Oceanic Bridge violated section 10(a)(1) of the Shipping Act, 46 U.S.C.

§ 41102(a), by knowingly and willfully obtaining ocean transportation at less than the rates and charges otherwise applicable by accessing services contracts on which it was not a signatory or named affiliate. Oceanic Bridge did not file an answer, respond to an order to show cause, or respond to BOE's motion for decision on default. On October 21, 2014, the ALJ



issued an Initial Decision on Default finding that Oceanic Bridge violated section 10(a)(1) on 49 shipments and assessing a civil penalty of \$392,000. On November 21, 2014, the Commission issued a Notice Not to Review and the decision became administratively final.

### **Metro Freight Services, Inc. d/b/a Maritime Express Lines – Possible Violations of Section 19(e)(3) of the Shipping Act of 1984 and 46 C.F.R. Part 515, LLC, [Docket No. 14-13]**

On September 29, 2014, the Commission issued an Order of Investigation and Hearing to determine whether respondent Metro Freight Services, Inc. d/b/a Maritime Express Lines (Metro Freight), a licensed OTI, violated the Shipping Act, 46 U.S.C. § 40904(c), by failing to notify the Commission promptly after the death of its qualifying individual (“QI”) and failing to seek and obtain approval of a replacement QI and whether it violated the Act by receiving freight forwarder compensation from a common carrier for shipments in which Metro Freight had a direct or indirect beneficial interest. On February 19, 2015, the ALJ issued an Initial Decision approving the settlement agreement between the BOE and Metro Freight. On March 23, 2015, the Commission issued a Notice Not to Review and the decision became administratively final.

### **Huntington International, Inc., JC Horizon Ltd., and Judy Lee – Possible Violations of Sections 10(a)(1) and 19 of the Shipping Act of 1984 [Docket No. 14-05]**

On June 4, 2014, the Commission issued an Order of Investigation and Hearing to determine: (1) whether Huntington International,

previously licensed as an OTI violated provisions of the Shipping Act, 46 U.S.C. §§ 40901, 40902, 40904, § 41102(a), and 46 C.F.R. Part 515, by continuing to operate as an OTI after its license had been revoked, by collecting freight forwarder compensation on shipments in which Judy Lee, an officer and director of the company, had a beneficial interest, and by sharing compensation with JC Horizon and Judy Lee; and (2) whether JC Horizon and Judy Lee violated 46 U.S.C. § 41102(a) by knowingly and willfully obtaining ocean transportation at less than the rates and charges that would otherwise apply by directing Huntington International to pay to Respondents monies derived from freight forwarder compensation paid by ocean common carriers that transported Respondent JC Horizon’s shipments. On July 7, 2014, Respondents Judy Lee and JC Horizon filed an Answer denying the allegations, asserting affirmative defenses, and filing a counterclaim under the Equal Access to Justice Act. Respondent Huntington International did not enter an appearance in this proceeding. On September 10, 2014, the ALJ issued an Initial Decision granting BOE’s motion to dismiss claims against Huntington International with prejudice and approving a settlement agreement with a \$300,000 monetary payment from the remaining respondents. On October 15, 2014 the Commission issued a Notice Not to Review and the decision became administratively final.

## PRIVATE COMPLAINTS

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### **Yakov Kobel and Victor Berkovich v. Hapag-Lloyd A.G., HapagLloyd America, Inc., Limco Logistics, Inc., and International TLC, Inc. [Docket No. 10-06]**

This proceeding was initiated by a complaint filed with the Commission on July 6, 2010, alleging that Respondents violated various sections of the Shipping Act. After discovery, an evidentiary hearing, and briefing, on February 14, 2012, an Initial Decision was issued dismissing the complaint. On July 12, 2013, the Commission issued an Order Vacating Initial Decision In Part and Remanding for Further Proceedings. On July 30, 2014, the ALJ issued an Initial Decision on remand finding that the Respondents violated 46 U.S.C. § 41102(c) of the Shipping Act, and ordering that the Respondents be jointly and severally liable to the Complainants for a reparation award of \$126,072. On August 12, 2014, the Commission served a notice that it would review the decision. Exceptions to the ALJ's decision were filed on September 22, 2014. On May 26, 2015, the Commission entered an order imposing liability on several respondents, including Limco Logistics, Inc., and International TLC, Inc. Limco requested that the Commission reconsider its decision. At the end of the fiscal year, the matter was pending before the Commission.

### **Maier Terminals, LLC v. The Port Authority of New York and New Jersey [Docket No. 12 02]**

On March 30, 2012, Maier Terminals, LLC, filed a complaint alleging that the Port Authority of New York and New Jersey ("PANYNJ") violated the Shipping Act, 46 U.S.C. §§ 41102(c), 41106(2), 41106(3), and 41106(1), because PANYNJ: (a) has and continues to fail to establish, observe, and enforce just and reasonable regulations and practices relating to or connected with receiving, handling, storing or delivering property; (b) gave and continues to give an undue or unreasonable prejudice or disadvantage with respect to Maier and gave and continues to give an undue or unreasonable preference or advantage with respect to Maersk, APM, MSC, PNCT, NYCT, and Global, and other marine container terminal operators and ocean carriers; (c) has and continues to unreasonably refuse to deal or negotiate with Maier; and (d) has and continues to agree with another marine terminal operator or common carrier to boycott and/or unreasonably discriminate in the provision of terminal services to a common carrier. PANYNJ filed a motion to dismiss arguing that the proceeding should be dismissed for a number of reasons, including failure to plead a plausible violation of the Shipping Act. On January 30, 2015, the ALJ issued an Initial Decision granting the motion to dismiss, which dismissed all pending claims in the proceeding. Maier filed exceptions to the Initial Decision and the proceeding is pending before the Commission.



### **Streak Products, Inc., and SYX Distribution, Inc. v. UTi, United States, Inc. [Docket No. 13-04]**

On April 12, 2013, Streak, a shipper, filed a complaint alleging that UTi violated three sections of the Shipping Act: (1) 46 U.S.C. § 41104(2) by charging Streak rates greater than those stated in its published tariff; (2) 46 U.S.C. § 41104(4) by charging Streak rates greater than those it charged other shippers; and (3) 46 U.S.C. § 40501 by failing to keep open to public inspection in its tariff system tariffs showing all its rates, charges, classifications, rules, and practices between all points or ports on its own route and any through transportation route that has been established. Leave was granted to amend the Complaint to include Streak's affiliate SYX Distribution. On September 10, 2014, the ALJ entered an Initial Decision approving the parties' Confidential Settlement Agreement and General Release. On October 15, 2014 the Commission issued a Notice Not to Review and the ALJ's decision became administratively final.

### **Global Link Logistics, Inc. v. Hapag-Lloyd AG [Docket No. 13-07]**

On September 10, 2013, Global Link, an NVOCC, filed a Complaint alleging that Hapag Lloyd, a VOCC, violated the Shipping Act, 46 U.S.C. §§ 41102(c), 41104(3), and 41104(10) when it refused to renegotiate rates established by a service contract during the life of the contract. Hapag Lloyd moved to dismiss the Complaint for failure to state a claim. On April 17, 2014, the ALJ issued an Initial Decision granting the motion to dismiss, holding that the Complaint failed to state a claim of violation of the Act. On May 27, 2014,

Global Link filed exceptions to the Initial Decision. On April 14, 2015 the Commission issued an Order approving a settlement agreement between the parties and the proceeding was dismissed.

### **Edaf Antillas, Inc. v. Crowley Caribbean Logistics, LLC; IFS International Forwarding, S.L.; and IFS Neutral Maritime Services [Docket No. 14-04]**

On April 28, 2014, Edaf Antillas filed a complaint with the Commission alleging that Respondents violated the Shipping Act by permitting non-compliant cargo to be placed in a container with compliant cargo causing delay of Edaf Antillas's shipment and by failing to correct the problem in a timely manner after the container arrived in Puerto Rico. On November 6, 2014, the ALJ granted a motion to dismiss in part, but found that the Complaint stated a claim that Respondents failed to establish, observe, and enforce just and reasonable regulations and practices relating to or connected with receiving, handling, storing, or delivering property in violation of 46 U.S.C. § 41102(c). On December 8, 2014, the Commission issued a Notice Not to Review the dismissal.

Complainant Edaf Antillas failed to file its brief on the merits, and the ALJ issued an order to show cause to which Edaf Antillas did not respond. On April 15, 2015, the ALJ issued an Initial Decision dismissing the proceeding for failure to prosecute. The Initial Decision also addressed the applicability of a new provision in the Shipping Act permitting an award of attorney fees to a prevailing party. On May 18, 2015, the Commission issued a Notice Not to Review the dismissal. Prevailing

Respondents filed petitions for attorney fees to be decided by the ALJ pursuant to 46 C.F.R. § 502.254.

**Santa Fe Discount Cruise Parking, Inc., d/b/a EZ Cruise Parking, Lighthouse Parking, Inc., and Sylvia Robledo d/b/a 81st Dolphin Parking v. The Board of Trustees of the Galveston Wharves and the Galveston Port Facilities Corporation [Docket No. 14-06]**

Respondents operate the cruise terminal at the Port of Galveston. Complainants operate parking facilities near the Port where they provide parking for passengers who embark on cruises from the cruise terminal. As part of their service, Complainants provide transportation to the Port. On June 16, 2014, Complainants filed a complaint alleging that Respondents' tariff imposing charges on Complainants' shuttles transporting passengers to and from the terminal violated three sections of the Shipping Act. On November 21, 2014, the ALJ granted Respondents' motion to dismiss claims under two sections of the Act, but denied dismissal of claims under 46 U.S.C. § 41106(2), finding that the Complaint stated a claim that Respondents gave an undue or unreasonable preference or advantage or imposed an undue or unreasonable prejudice or disadvantage with respect to Complainants. On December 23, 2014, the Commission issued a Notice Not to Review the partial dismissals and the decision became administratively final. At the close of FY 2015, the ALJ's Initial Decision on the remaining claim was pending.

**Econocaribe Consolidators, Inc. v. Amoy International, LLC, [Docket No. 14-10]**

On August 11, 2014, Econocaribe Consolidators, Inc. filed a complaint alleging that Respondent Amoy International, LLC violated numerous sections of the Shipping Act and Commission regulations in connection with shipment of auto parts detained by Chinese customs. On September 9, 2014, Amoy filed its Answer denying the allegations. The parties engaged in discovery, filed numerous motions, and briefed the merits of the proceeding. The parties eventually reached a settlement agreement that they submitted for approval. On September 2, 2015, the ALJ issued an Initial Decision Approving Joint Settlement and Granting Motion to Dismiss. The time to file exceptions or for the Commission to review to the decision had not expired at the close of FY 2015.

**Mark Barr v. Ocean Trade Lines, Inc. [Docket No. 14-14]**

On November 13, 2014, Mark Barr filed a complaint alleging that Ocean Trade Lines violated the Shipping Act, 46 U.S.C. §§ 41102(c), 41104(2), 41104(3), and 41104(4), by failing to publish a tariff and to adhere to tariff publishing requirements and by failing to adhere to just, reasonable, and non-discriminatory practices regarding its cancellation and refund policies with respect to international ocean transport of Complainant's yacht. On November 19, 2014, the Commission's BOE filed a motion seeking leave to intervene. On February 19, 2015, the ALJ issued an Initial Decision approving the settlement agreement.

On March 23, 2015, the Commission issued a Notice Not to Review and the decision became administratively final.

**Baltic Auto Shipping, Inc. v. Michael Hitrinov a/k/a Michael Khitrinov and Empire Unite Lines Co., Inc. [Docket No. 14-16]**

On November 28, 2014, Baltic filed a complaint alleging that on several thousand shipments between November 2007 and January 2012, Empire, an NVOCC, violated several sections of the Shipping Act, 46 U.S.C. §§ 41102, 41104, 40501, and 46 C.F.R. Part 515, by charging rates not set forth in a tariff, charging Baltic rates greater than rates charged other shippers, and by failing to provide Baltic with shipping documents. Baltic sought a reparation award. All shipments began and almost all were delivered more than three years before Baltic filed its complaint. Empire moved for a summary decision dismissing the claim for a reparation award, arguing that the claim was barred by the statute of limitations. On September 15, 2015, the ALJ held that based on the material facts not in dispute, Baltic's claims accrued more than three years before Baltic filed the complaint and were barred. It was also determined that no other relief was warranted, and the complaint was dismissed. The time to file exceptions to the decision had not expired at the close of FY 2015.

**Okoye Christian Ogochukwu v. Emeka Onyechi d/b/a Donem International, LLC, [Docket No. 1945(F)]**

Complainant alleged violations of the Shipping Act, 46 U.S.C. 41102(c), related to shipment of nine pieces of medical equipment

to Nigeria. Respondent received the equipment in Africa, but would not release it to Complainant's consignee until storage fees were paid. On April 8, 2015, the ALJ issued an initial decision approving a settlement between the parties. On May 11, 2015, the Commission issued a Notice Not to Review the dismissal and the decision became administratively final.

**Smartstone Private Limited v. General Noli USA, Inc. and Savino Del Bene Freight Forwarders (India) PVT LTD [Docket No. 1946(F)]**

On August 5, 2014, Smartstone Private Limited filed an informal complaint against General Noli USA, Inc. and Savino Del Bene Freight Forwarders (India) Pvt. Ltd. The complaint alleged that Respondents violated the Shipping Act, 46 U.S.C. §§ 41102(c), and 41106(2). Smartstone asserted that the Respondents released a shipment of granite slabs shipped from Bangalore, India, to Houston, Texas, without obtaining the original bill of lading. In their Answer, Respondents denied the allegations in the complaint and raised 14 affirmative defenses. On July 16, 2015, a joint motion seeking approval of a settlement agreement, dismissal of the complaint, a stay of the briefing schedule, and a confidential settlement agreement were filed by the parties. On July 22, 2015, an Initial Decision Approving Proposed Settlement Agreement was issued. On August 24, 2015, the Commission issued a Notice Not to Review and the decision became administratively final.

## **ShemiTrans, LLC v. Rose Containerline, Inc. [Docket No. 1950(F)]**

On May 18, 2015, ShemiTrans filed a small claims complaint alleging violation of the Shipping Act, 46 U.S.C. § 41102(c). Rose Containerline filed an objection to small claims adjudication. ShemiTrans then filed a request

to dismiss the proceeding voluntarily. The Chief Judge assigned the proceeding to an ALJ for formal adjudication. On July 9, 2015, the ALJ granted the request for voluntary dismissal. On August 11, 2015, the Commission issued a Notice Not to Review and the decision became administratively final.

## **LITIGATION**

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The following docket matters were litigated during the fiscal year in United States Courts of Appeals by the OGC on behalf of the Commission.

### **Chief Cargo Services, Inc. v. Federal Maritime Commission, [Docket No. 10-08], United States Court of Appeals for the Second Circuit**

On November 1, 2013, Chief Cargo Services, Inc., filed a petition for review of the Commission's Order in FMC Docket 10-08, *Bimsha International v. Chief Cargo Services, Inc. & Kaiser Apparel, Inc.*, upholding the ALJ's initial decision holding that by the release of three shipping containers, without requiring presentation of the original bills of lading, Chief Cargo failed to fulfill its obligations as an NVOCC, thereby violating section 10(d) (1) of the Shipping Act, 46 U.S.C. § 41102(c). The ALJ also ordered Chief Cargo to "cease and desist releasing cargo without requiring presentation of an original bill of lading." On April 24, 2014, Chief Cargo filed its Joint Appendix, Brief, and Special Appendix. Chief Cargo questioned the jurisdiction of the Commission to hear and adjudicate Bimsha's claim of violations of the Shipping Act; argued that the Commission improperly found violations of the Shipping Act; and argued that the

Commission improperly issued a cease and desist order. On June 20, 2014, the Commission and the United States filed a joint brief. Oral Argument was held on September 30, 2014, and the Second Circuit handed down an opinion affirming the Commission, and denying the petition on October 2, 2015.

### **The Auction Block Co. v. City of Homer, [Docket No. 12-03], United States Court of Appeals for Ninth Circuit**

On April 2, 2012, Complainants, the Auction Block Company (Auction Block) and Harbor Leasing, LLC (Harbor Leasing) filed a complaint with the Commission against Respondents, The City of Homer (City) and the Port of Homer (Port), alleging violations of the Shipping Act, 46 U.S.C. §§ 40101 et seq. Complainants alleged that the City and Port were MTOs that violated the Shipping Act through unreasonable prejudice or preference, refusal to deal, and unfair practices, 46 U.S.C. §§ 41106(2)-(3), 41102(c). In a May 20, 2013 Initial Decision, the ALJ dismissed all of Complainants' claims against Respondents with prejudice, finding that the Commission lacked jurisdiction. On August 12, 2014, the Commission upheld the Initial Decision of the ALJ dismissing Auction Block's complaint



for lack of jurisdiction. On August 22, 2014 the Auction Block Company filed a Petition for Review of the Commission Order with the United States Court of Appeals for the Ninth Circuit. The Ninth Circuit heard oral argument in May 2015, and issued a decision affirming the Commission and denying the petition three weeks later.

### **Kawasaki Kisen Kaisha, Ltd. v. The Port Authority of New York and New Jersey [Docket No. 11-12], United States Court of Appeals for the District of Columbia Circuit**

On August 5, 2011, nine vessel-operating common carriers filed a complaint alleging that the Port Authority of New York and New Jersey (PANYNJ) violated the Shipping Act by imposing a cargo facility charge. Eight complainants withdrew from the proceeding, leaving only Kawasaki Kisen Kaisha, Ltd. (“K” Line). On February 5, 2014, the ALJ dismissed the Complaint because “K” Line willfully failed to provide discovery. On March 31, 2014, “K” Line filed exceptions to the dismissal, and the Commission entered an order affirming the dismissal on November 20, 2014. “K” Line filed a Petition for Review in the United States Court of Appeals for the District of Columbia Circuit. With the briefing deadline pending, “K” Line withdrew the petition.

### **Lisa Anne Cornell and G. Ware Cornell, Jr. v. Princess Cruise Lines, Ltd. (Corp), Carnival plc, and Carnival Corporation, [Docket No. 13-02], United States Court of Appeals for the District of Columbia Circuit**

On January 30, 2013, complainants filed a complaint alleging that Respondent cruise ship lines refused to permit them to sail on their cruise ships in violation of section 10(b) (10) of the Act, 46 U.S.C. § 41104(10). The controversy stemmed from a dispute over a refund of money paid to a fine arts auction company that operates on the cruise ships after Lisa Cornell cancelled a purchase of works of art. Complainants had been involved in litigation for several years in Florida courts with the auction company, an affiliate of the cruise lines. Respondents filed a motion to dismiss or alternatively for summary judgment. On July 23, 2013, the ALJ issued a summary Initial Decision dismissing most claims, but found that respondent Princess violated section 10(b)(10) and entered a cease and desist order. The ALJ found that Complainants did not meet their burden of offering evidence that they had suffered actual injury as a result of the violation. On August 14, 2013, both parties filed exceptions to the decision. On August 28, 2014, the Commission issued an Order reversing in part, affirming in part, and vacating in part the Initial Decision and dismissing the complaint with prejudice on the ground that Princess Cruise Lines and other respondents did not violate the Shipping Act. The Complainants filed a Petition for Review in the D.C. Circuit, and the parties filed briefs.

Oral argument was scheduled for October 2, 2015. At the end of the fiscal year, the matter was pending before the D.C. Circuit.

### **Maier Terminals, Inc. v. The Port Authority of New York and New Jersey [Docket No. 08-03], United States Court of Appeals for the District of Columbia Circuit**

Maier leases land and facilities at the Elizabeth Port Authority Marine Terminal from the Port Authority of New York and New Jersey (PANYNJ) for use as a marine terminal. On June 3, 2008, Maier filed a complaint alleging that PANYNJ violated the Shipping Act, 46 U.S.C. §§ 41106(2) and (3) and 41102(c), because PANYNJ: (a) gave and continues to give an undue or unreasonable prejudice or disadvantage with respect to Maier as compared to APM Terminals North America, Inc. (APM), another marine terminal operator; (b) gave and continues to give an undue or unreasonable preference or advantage with respect to APM; (c) continues unreasonably to refuse to deal or negotiate with Maier; and (d) continues to fail to establish, observe, and enforce just and reasonable regulations and practices relating to or connected with receiving,

handling, storing, or delivering property. In January 2013, the Commission granted partial summary judgment to the Port, finding that some of Maier's requested relief was barred by the Commission's statute of limitations. Maier appealed this decision to the United States Court of Appeals for the D.C. Circuit. The Commission's OGC filed a motion to dismiss, and the D.C. Circuit dismissed the appeal in June 2013. The Commission subsequently denied Maier's motion for reconsideration of the summary judgment order, and again successfully defended its decision before the D.C. Circuit, which dismissed Maier's second appeal for lack of jurisdiction in July 2014, by granting the Commission's motion to dismiss. While the summary judgment issue was pending on appeal, the ALJ rejected Maier's claims on the merits in an Initial Decision dated April 25, 2014 determining that PANYNJ did not violate the Act and dismissed Maier's claims. The Commission issued a decision affirming the ALJ December 17, 2014. The claimants filed a Petition for Review in the D.C. Circuit in February 2015. The parties filed briefs, and at the end of the fiscal year, the matter was still pending before the D.C. Circuit.

## **PROCEDURAL RULE UPDATES**

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The Commission updated several of its procedural rules this year concerning proceeding and information requests at the Commission.

### **Dismissals of Actions, Final Rule, Docket No. 14-12 (79 FR 76901)**

The Commission amended its rules governing dismissals of actions by complainants, by order of the presiding officer, and by

respondents when complainant fails to prosecute to reflect the Commission's intent to adhere to its long-standing policy of reviewing settlements by adding language to clarify that when a voluntary dismissal is based on a settlement agreement, the agreement must be submitted for approval by the Commission.



### **Service of Private Party Complaints and Documents Containing Confidential Materials, Direct Final Rule, Docket No. 15-01 (80 FR 14318)**

The Commission amended its rules to clarify instructions to parties in proceedings concerning service of documents and filing of confidential documents.

### **Access to Commission Information and Records; Freedom of Information Act, Direct Final Rule, Docket No. 15-05 (80 FR 52638)**

The Commission amended its regulations governing access to Commission information and records and its regulations implementing the Freedom of Information Act to update and revise procedures for processing FOIA requests, to modify the criteria for a FOIA request to qualify for expedited processing, and to extend the administrative appeal deadline.

### **Time and Service in Adjudicatory Proceedings, Direct Final Rule, Docket No. 15-09 (80 FR 57305)**

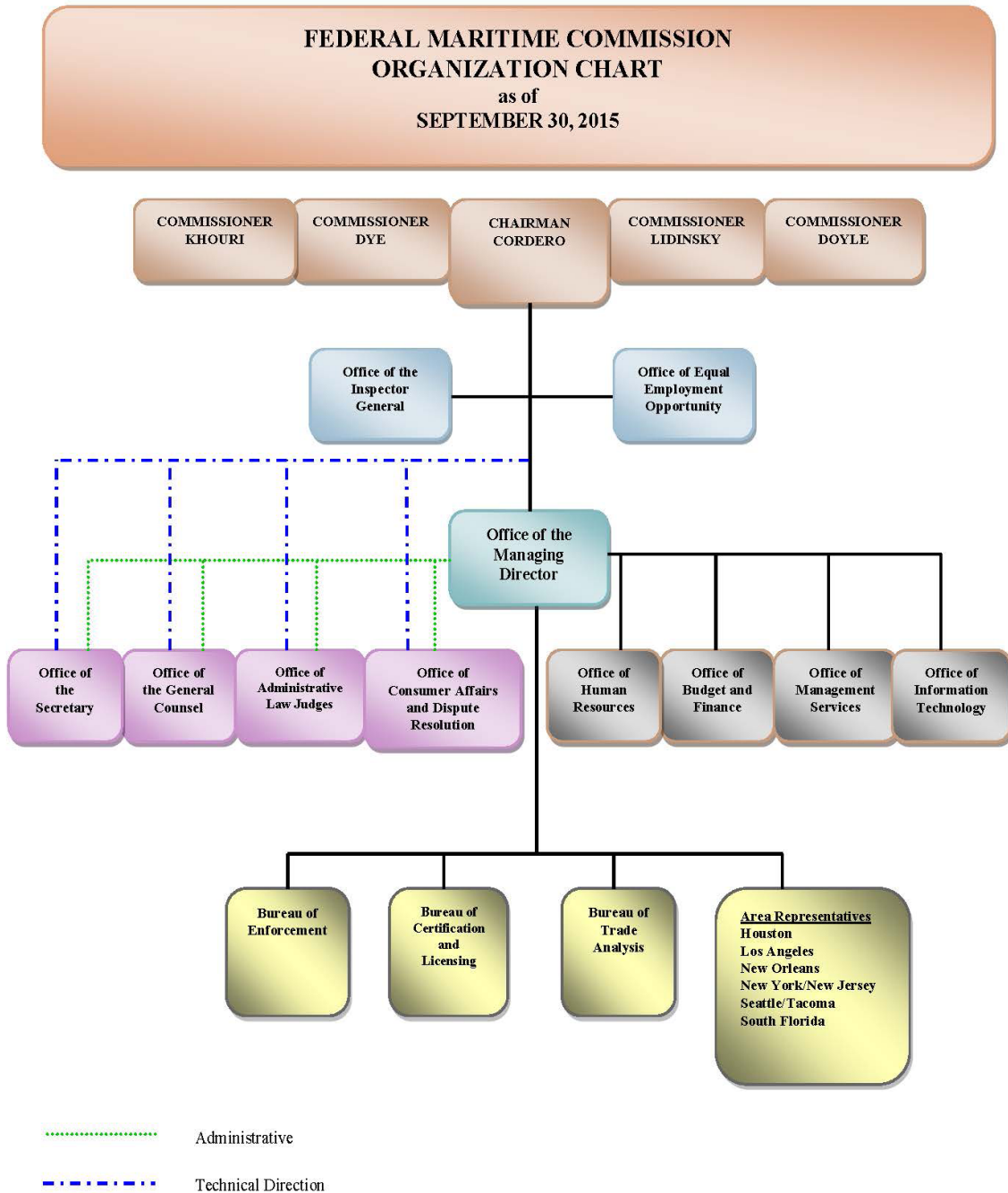
The Commission amended its rules concerning time and service in adjudicative proceedings to improve consistency across various processes and increase efficiency for parties to proceedings.

### **Attorneys Fees, Notice of Proposed Rulemaking, Docket No. 15-06 (80 FR 38153)**

The Commission proposed to amend its rules governing the award of attorney fees in Shipping Act complaint proceedings, and its regulations related to Commissioner terms and vacancies. The propose changes would implement amendments made by the Howard Coble Coast Guard and Maritime Transportation Act of 2014.

# APPENDICES

## A - FMC ORGANIZATION CHART



## B - FMC SENIOR OFFICIALS

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Chief of Staff.....	<i>Mary T. Hoang</i>
Counsel to Commissioner Dye.....	<i>Edward L. Lee, Jr.</i>
Counsel to Commissioner Lidinsky.....	<i>Jewel Jennings-Wright</i>
Counsel to Commissioner Khouri.....	<i>John A. Moran</i>
Counsel to Commissioner Doyle.....	<i>David J. Tubman, Jr.</i>
General Counsel.....	<i>Tyler J. Wood*</i>
Secretary.....	<i>Karen V. Gregory</i>
Chief Administrative Law Judge.....	<i>Clay G. Guthridge</i>
Director, Office of Consumer Affairs & Dispute Resolution Services.....	<i>Rebecca A. Fenneman</i>
Director, Office of Equal Employment Opportunity.....	<i>Howard F. Jimenez**</i>
Inspector General.....	<i>Jon Hatfield</i>
Managing Director.....	<i>Vern W. Hill</i>
Deputy Managing Director.....	<i>Vacant</i>
Director, Bureau of Certification and Licensing.....	<i>Sandra L. Kusumoto</i>
Director, Bureau of Enforcement.....	<i>Peter J. King</i>
Director, Bureau of Trade Analysis.....	<i>Florence A. Carr</i>

\*Assumed position in April 2015

\*\*Assumed position in June 2015

# C - STATEMENT OF APPROPRIATIONS, OBLIGATIONS AND RECEIPTS

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## Appropriations

For necessary expenses of the Federal Maritime Commission, as authorized by § 201(d) of the Merchant Marine Act, 1936, as amended (46 U.S.C. § 307), including services as authorized by 5 U.S.C. § 3109; hire of passenger motor vehicles as authorized by 31 U.S.C. § 1343(b); and uniforms or allowances therefore, as authorized by 5 U.S.C. §§ 5901-5902, \$25,660,000. Provided, That not to exceed \$2,000 shall be available for official reception and representation expenses.

Public Law 113-76	\$25,660,000
Total Budgetary Resources	\$25,660,000

## Obligations and Unobligated Balance:

Net obligations for salaries and expenses for the fiscal year ended September 30, 2015	\$25,642,375
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## Statement of Receipts:

Deposited with the General Fund of the Treasury for the Fiscal Year Ended with September 30, 2015:	
Publications and reproductions, fees and vessel certification, and freight forwarder applications	\$247,302
Fines and penalties	\$2,052,500
Total general fund receipts	\$2,299,802

## D - CIVIL PENALTIES COLLECTED

Sea Central Shipping Corp.	\$85,000
Unipac Shipping Inc.	\$75,000
Ri-Time Logistic Corp.	\$35,000
JHJ International Transportation Co Ltd.	\$65,000
CTS International Logistics Corp Ltd.	\$50,000
Hughes International LLC.	\$75,000
Oceanic Bridge International Inc.	\$75,000
Blue Cargo Group LLC.	\$105,000
C. H. Robinson Project Logistics Inc.	\$25,000
Oriental Logistics Group Ltd.	\$100,000
Sea Gate Logistics Inc.	\$80,000
Falcon Maritime and Aviation Inc.	\$85,000
City Ocean International Inc., et al.	\$325,000
United Arab Shipping Co. (S.A.G.)	\$537,500.00
Hyundai Logistics (USA) Inc	\$100,000.00
Metro Freight Services Inc.	\$100,000.00
Siem Car Carriers AS	\$135,000.00
<b>Total:</b>	<b>\$2,052,500.00</b>