



Federal  
Maritime  
Commission

58th Annual Report  
Fiscal Year 2019



# FEDERAL MARITIME COMMISSION

## 58TH ANNUAL REPORT

FOR

FISCAL YEAR  
2019



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# LETTER OF TRANSMITTAL



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

March 31, 2020

To the United States Senate and House of Representatives:

On behalf of my fellow Commissioners, and pursuant to section 103(e) of Reorganization Plan No. 7 of 1961, and section 208 of the Merchant Marine Act, 1936, as amended, at 46 U.S.C. 306(a), I welcome the opportunity to share with you the 58th Annual Report of the Federal Maritime Commission, Fiscal Year 2019.

This report highlights the key accomplishments, initiatives, and relevant events that occurred between October 1, 2018 and September 30, 2019. Included in the following pages are reports about:

- Significant agreements filed at the Commission
- Status of formal investigations, private complaints, and litigation before the Commission
- Investigation of detention, demurrage, and per diem practices of ocean carriers and marine terminal operators
- Trends in licensing of non-vessel operating common carriers and freight forwarders
- Developments in the key trade lanes serving the United States

Containerized ocean freight is an indispensable foundation of the Nation's economy, providing American importers and exporters with a competitive advantage in the global marketplace. It is the mission of the Federal Maritime Commission to ensure competition and integrity for America's ocean supply chain and we are proud of the work we do toward that goal.

Sincerely,  
Michael A. Khouri

Chairman





# MEMBERS OF THE COMMISSION

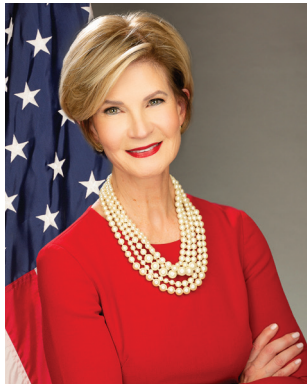
Fiscal Year 2019



Michael A. Khouri  
Chairman  
Appointed 2009  
Term Expires 2021



Daniel B. Maffei  
Commissioner  
Appointed 2016  
Term Expired 2022



Rebecca F. Dye  
Commissioner  
Appointed 2002  
Term Expires 2020



Louis Sola  
Commissioner  
Appointed 2019  
Term Expires 2023



# FMC MISSION, STRATEGIC GOALS, AND FUNCTIONS

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

The FMC's **Mission** is:

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

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

Competition and Integrity  
for America's Ocean Supply  
Chain

## STRATEGIC GOAL 1

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

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

## STRATEGIC GOAL 2

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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:

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

## STATUTORY AUTHORITY

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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 (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
- Section 834 of the Frank LoBiondo Coast Guard Authorization Act of 2018 (LoBiondo Act)

# YEAR IN REVIEW

Last year container lines contended with shifting supply chains, slowing trade growth, and preparations to comply with a new global mandate on vessel engine exhaust emissions. Nevertheless, the industry remains stable in terms of the number of ocean carriers providing service, routes offered, availability of container capacity, and the freight rates being charged to shippers.

While trade globally is slowing, container volumes transiting the United States grew at a positive level year over year, with 36.5 million Twenty Foot Equivalent Units (TEUs) being imported and exported, compared to 35 million TEUs in the previous year. Globally, volumes still grew, but at a slower pace year over year.

Containerized ocean transportation is highly commoditized and typically provides very low profit margins. Ocean carriers are continually seeking ways to grow business, add value to their customers, and differentiate themselves to better compete. Toward those goals, some of the major lines are expanding their landside logistics capabilities to provide more point-to-point/end-to-end commercial offerings. Accordingly, there have been a number of acquisitions by ocean carriers of companies operating in the logistics sector and that trend is expected to continue into the new year.

One industry development that will have an impact on operations and balance sheets is complying with a new global emissions requirement established by the International Maritime Organization and commonly referred to as “IMO 2020”. Under the new

regulation, effective January 1, 2020, ships must either burn low sulfur fuel or use an equivalent compliance method such as exhaust scrubbers. Ocean carriers have indicated they intend to recoup compliance costs via surcharges levied on shippers. Additionally, vessels being retrofitted with scrubber units temporarily remove some cargo capacity from the marketplace during the conversion process. The Federal Maritime Commission will monitor IMO 2020 surcharges implemented by ocean carriers to assure compliance with requirements under the Shipping Act that any fees charged are reasonably related to the stated case for cost recovery.

Over the course of Fiscal Year 2019, the Federal Maritime Commission engaged in investigative, rulemaking, and agreement activities that served to ensure a competitive and reliable international ocean transportation supply system that supports the U.S. economy and protects the public from unfair and deceptive practices.

One such undertaking of the Commission was complying with a mandate of the *Frank LoBiondo Coast Guard Authorization Act of 2018* that restricts ocean carriers’ ability to engage in joint procurement of certain covered marine services provided by U.S.-based companies. By the end of Fiscal Year 2019, the Commission had conducted a review of all carrier agreements on file and ensured that agreements that are not in compliance with the new law were advised of the updated statutory requirements addressing joint procurement authorities. For Agreements that contain authorities that might raise concerns

under the new law, the Commission has put in place information requirements so that it is equipped to conduct additional analysis on the impact of those agreements and take action where appropriate.

More broadly, agreements remain an invaluable tool for carriers and marine terminal operators to achieve efficiencies that benefit shippers and consumers. At the end of the fiscal year, the Commission had 398 agreements on file of which almost one-quarter were marine terminal operator agreements. The Commission had concerns about two agreements filed during the past year, the West Coast MTO Agreement (WCMTOA) and the Puerto Nuevo Terminals LLC Cooperative Working Agreement (PNT). In both cases, the Commission issued Requests for Additional Information and while both agreements ultimately went into effect, they did so under intensified monitoring requirements.

The Commission made or initiated several changes to its rules that should improve the efficiency of regulatory compliance while maintaining sufficient safeguards to protect the integrity of the marketplace. In December 2018, a final rule went into effect that restored the standard of what constitutes a “practice” to its legal and proper definition under Section 41102(c) of the Shipping Act of 1984. In May 2019, the Commission issued a final rule updating licensing rules for Ocean Transportation Intermediaries and in September 2019, the Commission voted to exempt ocean carriers from publishing essential terms of service contracts.

The work of Commissioner Rebecca Dye in her Fact Finding 28 investigation of detention and demurrage practices of ocean carriers and marine terminal operators moved into its final stage with the publication of a proposed interpretive rule. If adopted, the rule would provide the public with guidance about how the Commission assesses the reasonableness of demurrage and detention practices and regulations under the Shipping Act.

The great majority of the Commission’s activities take place under the authority of the Shipping Act of 1984. The Foreign Shipping Practices Act of 1988 and Section 19 of the Merchant Marine Act, 1920 give the FMC additional jurisdiction to investigate and sanction discriminatory conditions caused by rules, regulations, or laws of a foreign government. During Fiscal Year 2019, the Federal Maritime Commission continued to monitor developments related to proposed Canadian ballast water regulations that, if enacted, might adversely impact U.S. flag Great Lakes ship operators.

Finally, the Commission added two new members. On January 23, 2019 Messrs. Daniel B. Maffei of New York and Louis E. Sola of Florida were sworn-in as Commissioners serving terms that will expire in 2022 and 2023 respectively. Mr. Carl W. Bentzel of Maryland was nominated by President Trump on June 12, 2019 for a term that will expire in 2024. Mr. Bentzel was confirmed by the United States Senate on November 21, 2019 and sworn-in as a Commissioner on December 9, 2019.

# EFFICIENCY AND COMPETITION

## STRATEGIC GOAL 1

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

The Shipping Act allows ocean carrier and marine terminal competitors to meet, discuss, and in some cases, cooperate on certain business issues, but first they must file a written agreement with the Commission. The Commission reviews agreements using traditional antitrust law 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 anticompetitive abuse of the filed authority, avoid

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

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

So long as 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

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

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

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

The Commission reviews all agreements filed under the Shipping Act as well as evolving commercial conditions in the U.S. foreign trades to determine whether cooperation contemplated between or among ports, ocean common carriers, and/or MTOs is likely to or has resulted in an unreasonable reduction in service or increase in rates.

When the Commission is unable to determine the likely competitive impact of a proposed agreement within the 45-day statutory review period, the Commission may issue a request for additional information (RAI) to the agreement parties to obtain additional data and/or clarification on unclear or indefinite proposed agreement authority.

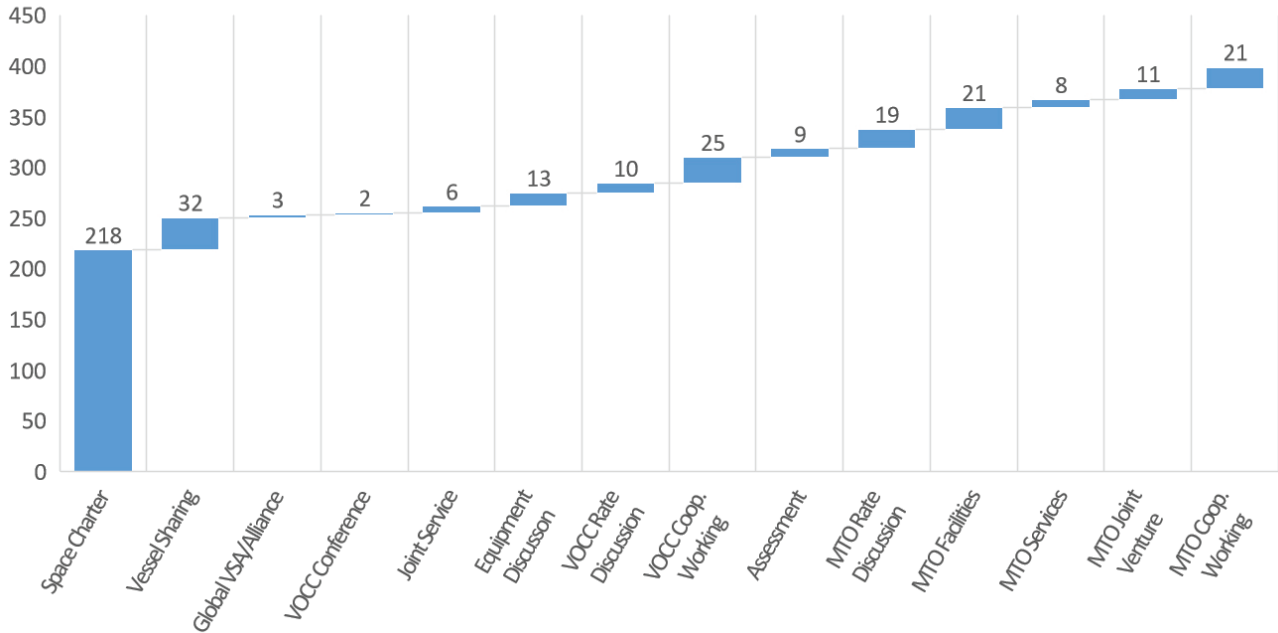
In FY 2019, the Commission received 170 agreement filings, including new agreements and amendments to, or terminations of,

### Agreement Review Process

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



## Agreements in Effect at end of FY 2019



existing agreements. This activity represents a slight decrease in filings from FY 2018, though not one that appears directly attributable to any notable changes in the ocean transportation industry. Among these filings were a substantial number of terminations of outdated VOCC agreements. Commission staff continues to review and audit agreements on file to identify those that may be no longer actively in use or that have lapsed in terms of membership. When such an agreement is identified, the FMC seeks termination of the agreement, if appropriate, or an update of its provisions.

FY 2019 was the third full year of availability of the eAgreements electronic filing system, and over 98 percent of all agreements and amendments were filed electronically. The

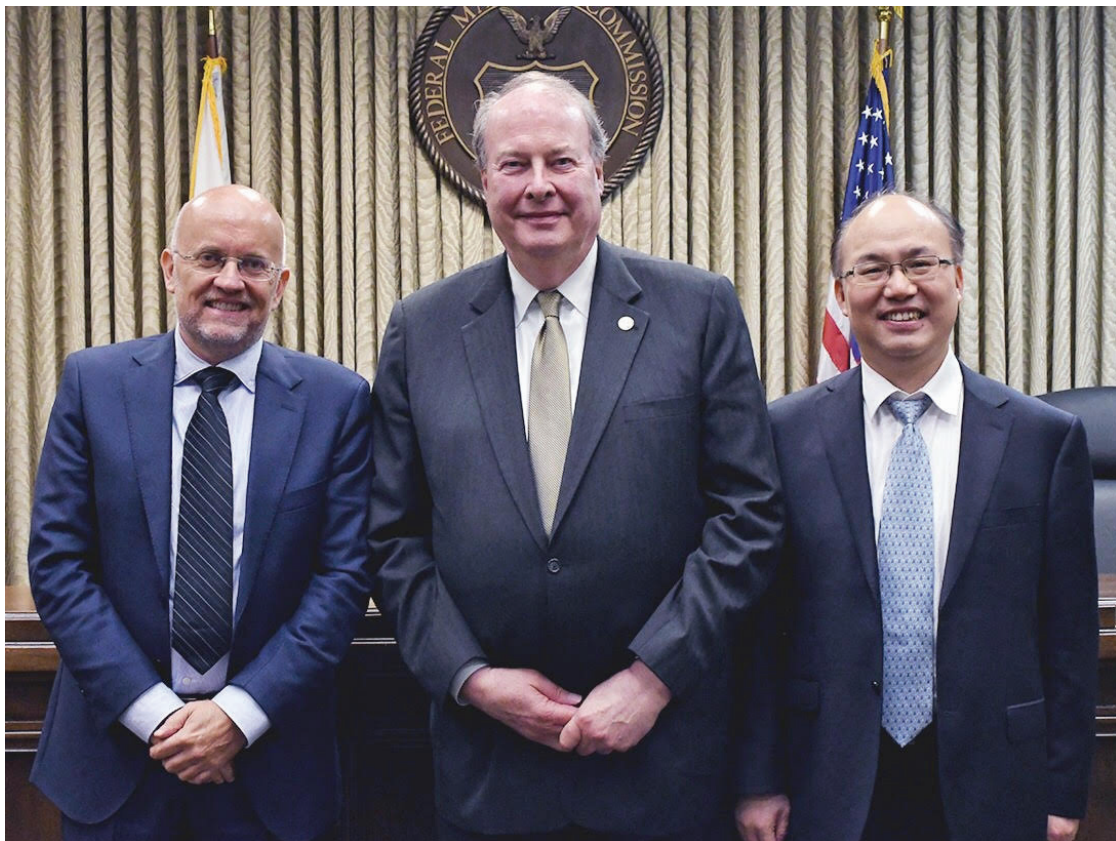
eAgreements system has streamlined FMC business processes by reducing initial agreement intake time, resulting in faster public access to pending filed agreements and significantly reducing administrative costs for both the industry and the Commission. In FY 2019, the Commission completed the migration of all agreements into the eAgreements system, allowing the public to access all FMC-filed agreements in a single location.

During the fiscal year, the Commission initiated an audit of VOCC agreements on file to determine which ones may require additional scrutiny in terms of joint negotiation or contracting for the purchase of certain covered services as set forth under the LoBiondo Act (Public Law No. 115-282) as further described below. This effort required the review of all

agreements on file with the Commission, of which 171 were identified as containing joint procurement or negotiation authority. Each of these agreements were then informed that they would need to submit to the Commission any joint agreements reached under the authority, and that monitoring requirements would likely be imposed to allow the Commission to review any future activities

concerning joint procurement or negotiating authority for certain covered services. This process continues into FY 2020.

At the end of the fiscal year, a total of 398 agreements were in effect and on file with the Commission, categorized as follows. See Appendix D for description of all agreement types.



Chairman Michael Khouri (center), Director Henrik Morch of the European Commission's Directorate General for Competition (left), and Deputy Director-General Yi Jiyong from the Water Transport Bureau, Ministry of Transport, People's Republic of China (right).

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# COMPETITIVE IMPACT AND MONITORING

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The following are examples of agreements filed with the Commission during the fiscal year, including specific Commission monitoring and actions taken to ensure compliance with the Shipping Act.

## **West Coast MTO Agreement (WCMTOA):**

Under this Agreement, marine terminal operators at the Ports of Los Angeles and Long Beach created an off-peak gate program, known as PierPass, to address cargo-related congestion and pollution in the port area. The PierPass program was originally developed to incentivize the use of terminal gates during night and weekend (off-peak) shifts as opposed to daytime (peak) shifts. This was accomplished through a traffic mitigation fee (TMF) assessed on cargo moving during daytime shifts. The program was successful in reducing traffic congestion and air pollution caused by idling trucks awaiting access to terminal gates during high-traffic hours.

In response to increasingly vocal stakeholder dissatisfaction with aspects of the PierPass program, particularly related to the loss of productivity during the peak/off-peak shift changeover, WCMTOA amended its agreement to replace the existing structure with a new program, termed PierPass 2.0. Beginning in November 2018, the TMF was replaced with a flat container fee applied to all terminal gate users during all shifts (day, night and weekend) combined with a truck appointment system. All existing exemptions from the TMF still apply under the new version of the PierPass program. WCMTOA asserts that this

new structure will be effective in managing truck flow and terminal workload.

The Commission implemented additional reporting requirements warranted by the Agreement's change in revenue structure. Since the new program's implementation, the WCMTOA terminals have faced challenges in reaching the same division of cargo between peak and off-peak shifts, as more traffic has shifted to peak hours than expected. The terminals have adjusted appointments in an attempt to optimize traffic flows through the ports. The Commission continues to monitor PierPass program performance for changes in terminal service resulting from the implementation of the new program structure that could impact cargo flows through the ports.

## **Digital Container Shipping Association Agreement:**

In March 2019, five major carriers entered into an agreement to incorporate the Digital Container Shipping Association (DCSA) under which the parties sought to discuss and agree on the standardization of information technology (IT) relating to the movement of container cargo and those services. In July 2019, four additional carriers joined the agreement. Topics of discussion for setting IT standards include the exchange of container data in the "internet of things", data security, software, blockchain, electronic communications (between and with ocean carriers, vessels, customs, terminals, customers, and other transport modes), electronic bills of lading and other related documents. On such matters, the parties seek to share and publish industry IT

standards to encourage their common adoption and use by all industry participants and promote operational efficiencies. Decisions and duties are executed under the agreement by a General Assembly, Supervisory Board, and Management Board. The Commission monitors the activities and progress of the parties through the minutes of these meetings and through direct meetings with representatives of DCSA.

### **Puerto Nuevo Terminals LLC Cooperative Working Agreement:**

The agreement was originally filed at the Commission in March 2019 between two marine terminal operators (MTOs) at the Port of San Juan, Puerto Rico. The MTO parties to the agreement are Luis A. Ayala Colon Sucrs., Inc. (LAC) and Puerto Rico Terminals LLC (PRT). Under the terms of the agreement, the parties plan to discontinue their separate and competing operations to form and operate a joint marine terminal, the Puerto Nuevo Terminals LLC (PNT). Each party will own 50 percent of PNT. The joint MTO will set the rates for its services; publish rate schedules/tariffs; enter into marine terminal service,

conference, and other agreements; purchase and lease cranes and other yard equipment; coordinate labor for dock stevedoring; and all other matters relating to standard marine terminal operations and practices at the port. Liner shipping service at Puerto Rico is divided into the U.S. domestic trade and international trade (i.e., cargo outside of the trade between the U.S. and Puerto Rico). The domestic trade is regulated under the Jones Act by the U.S. Surface Transportation Board, and the international trade is regulated under the Shipping Act by the FMC. The agreement reduces competition between the two primary MTOs that handle international container cargo for the island. Given this concern, the Commission issued an RFAI in May 2019. On review of the responses to the RFAI, the Commission did not find sufficient evidence to seek an injunction of the agreement, and it became effective in August 2019. In its review, however, the Commission imposed additional reporting requirements to oversee the implementation of the agreement and obtained concessions from the parties to maintain their current rate levels through 2020.

## **CARRIER ALLIANCE AGREEMENTS**

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At the end of FY 2019, the three global alliances, namely, THE Alliance, the OCEAN Alliance and the 2M Alliance, controlled close to 90 percent of the vessel capacity in the two largest U.S. trades, the transpacific and the transatlantic. The transpacific trade encompasses cargo moving between Asia and the U.S., while the transatlantic trade includes cargo moving between Europe and the United States. Collectively, the three alliances have

market shares of 85 percent in the transpacific and 91 percent in the transatlantic. Given these considerable market shares, the FMC closely monitors alliance activities. As part of the Commission's agreement monitoring program, alliances report individual members' average revenue data and statistical tests are performed using that data for indications of collaborative price setting within alliances, among alliances, and among all alliance

carriers. If tests indicate that this is the case, the Commission can take appropriate action.

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

The largest ocean carriers operate in the three global alliances as discussed below.

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

The 2M Alliance consists of Maersk Line and MSC, the largest and second-largest ocean carriers by global TEU capacity. The Commission monitors the activities of the parties in the alliance, the parties' average revenues, and their vessel capacity and utilization levels. The parties also provide the Commission with advance notice of any planned capacity reductions in the U.S. liner trades. As world trade began to slow, however, 2M adjusted capacity downward to more closely meet its cargo demand in the transpacific, while increasing capacity to meet demand in the transatlantic. At the end of the fiscal year, the 2M Alliance

accounted for approximately 34 percent of global container capacity. During FY 2019, 2M expanded its slot exchange and purchasing agreement with Zim to include the liner trades between Asia and U.S. Pacific Northwest, as well as between Asia and the U.S. Gulf Coast. The three carriers also collaborate on the liner trade between Asia and the U.S. Atlantic Coast. In August 2019, the 2M Alliance and Zim launched a second service connecting Asia with the U.S. Gulf Coast, increasing their weekly capacity by approximately 4,000 TEUs in this trade lane. The 2M carriers' slot exchange and purchasing agreement with Hyundai Merchant Marine covering the liner trade between Asia and the U.S. Pacific and Atlantic Coasts will expire in early 2020 when Hyundai Merchant Marine plans to join THE Alliance.

### **OCEAN Alliance Agreement:**

The OCEAN Alliance consists of APL, COSCO, CMA CGM, Evergreen Line, and OOCL. The Commission monitors the activities of the parties in the OCEAN Alliance, the parties' average revenues, and their vessel capacity and utilization levels. The parties also provide the FMC with advance notice of any planned capacity reductions in the U.S. liner trades. The OCEAN Alliance left capacity largely unchanged during the year across its transpacific services, while decreasing it in the transatlantic. At the fiscal year's end, the OCEAN Alliance accounted for approximately 29 percent of global container capacity. Of note, CMA CGM is the owner of APL, and COSCO holds a majority stake in OOCL. The OCEAN Alliance added Tampa, Florida, to its transpacific network in December 2018, and now calls the port on two of its services

connecting Asia to the United States.

### **THE Alliance Agreement:**

THE Alliance, comprised of members Hapag-Lloyd, ONE, and Yang Ming, continued in its third year of operations. THE Alliance accounted for 17 percent of the global container capacity in FY 2019. In July 2019, THE Alliance announced that a fourth member, Hyundai Merchant Marine (HMM) would be joining the alliance in April 2020.

THE Alliance is expected to file an amendment to its agreement to add HMM as a member in late CY 2019. THE Alliance adjusted several service strings to accommodate demand during the fiscal year. As with the other global carrier alliances, the Commission monitors THE Alliance parties' activities under the Agreement, along with their vessel capacity and utilization, average revenue and any planned capacity reductions in the U.S. liner trades.

## **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 FY 2019, 5,867 tariff location addresses were posted. Of that number, 5,716 tariff addresses were for NVOCCs.

### **Tariff Exemptions – NRAs and NSAs**

The Commission provides regulatory relief from its NVOCC rate tariff requirements by exempting licensed and foreign-registered NVOCCs when using NVOCC Negotiated Rate Arrangements (NRAs). NVOCCs have indicated that NRAs, which are not required to be published or filed with the Commission, are a less burdensome commercial pricing option than rate tariffs, which must be published. Consequently, NVOCCs advise that NRAs save them both time and money. In

August 2018, the Commission provided further regulatory relief to NVOCCs by significantly expanding the commercial flexibilities available to NVOCCs and their shippers under NRAs (see Docket No. 17-10). At the end of the fiscal year, nearly 2,057 active NVOCCs or approximately 36 percent of all 5,716 NVOCCs, had filed a prominent notice or rule in their respective tariff indicating that they had invoked the NRA exemption as an alternative to rate tariff publication. The majority of NVOCCs which have implemented NRAs continue to use a combination of NRAs and tariff rate filings.

Commission rules also granted regulatory relief from rate tariff requirements by allowing NVOCCs to offer transportation services pursuant to individually negotiated, confidential service arrangements with customers, termed NVOCC Service Arrangements (NSAs), rather than under a published tariff. The Commission expanded this regulatory relief to NVOCCs by eliminating the requirement to file NSAs and their amendments with the Commission as of August 22, 2018 (also see Docket No. 17-10).

When NSA filing was discontinued, the Commission had received a total of 1,140 original NSAs and 1,609 NSA amendments filed by 94 NVOs during the year. As a pricing option, NSAs are more commonly offered by larger volume NVOCCs. Smaller volume NVOCCs tend to use NRAs and tariff rates as pricing options for their shipper customers.

## Service Contracts

Service contracts enable carriers and shippers to tailor transportation services and rates to their commercial and operational needs and to keep these arrangements confidential. While the majority of cargo volumes transported in the major U.S. liner trades move under service contracts, as an alternative to tariffs, VOCC use of tariffs vs. service contracts varies by carrier and trade lane. Of the 140 active VOCCs in the U.S. trades, 82 filed service contracts with the Commission in FY 2019, employing a blend of service contracts and tariffs. The remaining 68 VOCCs solely used tariffs in rating their cargo. During the fiscal year, the Commission received 47,214 new service contracts, compared to 47,972 in FY 2018, and 752,090 contract amendments, compared to 773,014 in FY 2018.

## Marine Terminal Operator Schedules

An MTO may voluntarily make available to the public a schedule of rates, regulations, and practices, including limitations of liability for cargo loss or damage, pertaining to receiving, delivering, handling, or storing property at its marine terminal. An MTO schedule made available to the public is enforceable by an appropriate court as an implied contract without proof of actual knowledge of its provisions.

During the fiscal year, 9 new MTOs registered with the Commission, increasing the total to 281 MTOs actively registered through Form FMC-1. MTOs report the electronic location of their MTO terminal schedules through the filing of Form FMC-1, with 175 MTOs electing to voluntarily publish their terminal schedules. The internet address of these MTO terminal schedules are posted on the Commission's website.

## INTERNATIONAL COOPERATION

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### Global Maritime Forum Annual Summit in Hong Kong

In October 2018, Chairman Khouri visited Hong Kong to attend the Global Maritime Forum's 2018 Annual Summit. The Chairman also met with representatives of the Hong Kong Competition Commission, the American Chamber of Commerce in Hong Kong, and representatives from the Ministry of Transport.

### International Bar Association Meeting in Rome, Italy, & Maritime Law Organization Annual Conference in London, England

In October 2018, Commissioner Dye traveled to Rome, Italy, to attend the International Bar Association Meeting and discuss the Commission's approach to enforcing competition in the U.S. liner trades. Later that month, Commissioner Dye traveled to London, England, to present the keynote speech at the European Maritime Law Organization's 24th Annual Conference. During her speech, Commissioner Dye discussed U.S. liner shipping statutes and how the Commission reviews agreements, as well as the fact-finding investigation on detention and demurrage practices.

### Consultative Shipping Group Meeting at the Canadian Embassy

In October 2018, General Counsel Tyler Wood attended the U.S.-Consultative Shipping Group (CSG) industry dialogue meeting

at the Embassy of Canada in Washington, DC. Representatives from the U.S. Government and CSG discussed the state of play for global shipping, ongoing trade issues, current policy initiatives, sanctions, environmental issues, ballast water management, and digitalization in the industry, among other topics.

### U.S.-Korea Maritime Bilateral Meetings in Washington, DC and Busan, South Korea

In October 2018, staff from the Office of the General Counsel attended the 2018 U.S.-Republic of Korea Maritime Bilateral Meeting at the U.S. Maritime Administration in Washington, DC. Representatives from the U.S. and Korean government discussed topics including maritime strategies and mariner training, the effects of the Panama Canal expansion, and the Arctic Ocean route.

In July 2019, Commissioner Sola represented the Commission at the 2019 U.S.-Republic of Korea Bilateral Maritime Meeting in Busan, South Korea. Commissioner Sola addressed the current competitive outlook of the ocean shipping industry and the reduction of global carriers since 2016. He also provided an overview of the Commission's agreement review process. Other topics of discussion included IMO 2020 compliance strategies, LNG carrier issues, mariner training, and U.S.-flag car carrier operations.



## U.S.-Vietnam Maritime Bilateral Meeting in Washington, DC

In July 2019, staff from the Office of the General Counsel attended the 2019 U.S.-Vietnam Maritime Bilateral Meeting, hosted by the U.S. Maritime Administration in Washington, DC. U.S. and Vietnam government representatives provided updates on their respective maritime policies, LNG shipping, and cooperation on safety and security and mariner training.

## Global Regulatory Summit at the Federal Maritime Commission

In July 2019, the Commission hosted senior government officials from the European Union and People's Republic of China to participate in the Fourth Global Regulatory Summit. Topics covered during the consultations included market conditions and industry trends, operational and business practices of carriers, and updates by each delegation on changes to regulations and laws governing shipping. The parties announced their intention to hold the Fifth Global Regulatory Summit in Europe in 2021.



Commissioners Rebecca Dye (left) and Louis Sola (center) with ZENG Hui (right), Deputy Director-General of the Maritime Safety Administration, People's Republic of China at the Global Regulatory Summit.

## U.S.-Japan Maritime Bilateral Meeting

In August 2019, Commissioner Dye represented the Commission at the U.S.-Japan Maritime Bilateral Meeting, hosted by the U.S. Maritime Administration in Washington, DC. Commissioner Dye provided an update on the competitive outlook of the industry and discussed the impact of overcapacity and the IMO 2020 sulfur limit.

## London International Shipping Week 2019

In September 2019, Chairman Khouri traveled to London, England, to attend the 2019 London International Shipping Week. Chairman Khouri also met with U.K. government officials involved in regulating and promoting the maritime industry.



Chairman Michael Khouri attended London International Shipping Week where he gave remarks aboard the lighthouse tender NLV Pharos pictured left.  
(Photo courtesy of London International Shipping Week)





# 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 competitiveness, integrity, fairness, and efficiency 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.

### INVESTIGATION INTO DEMURRAGE, DETENTION, AND PER DIEM CHARGES

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On December 3, 2018, Commissioner Rebecca F. Dye delivered her final report in Fact Finding Investigation No. 28, a non-adjudicatory investigation, into the practices of vessel operating common carriers and marine terminal operators relating to U.S. demurrage, detention, and per diem charges. Demurrage is the charge per container for the use of ground space at the marine terminal. Detention is the charge by the ocean carrier for use of the container equipment. Per Diem relates to assessorial charges beyond demurrage and detention. All charges are subject to an agreed number of free days.

Commissioner Dye's final report found that demurrage and detention charges can incentivize cargo to move expeditiously and that standardizing practices for when these fees are levied would improve velocity at ports. Commissioner Dye also found that significant benefits to the U.S. international ocean freight delivery system and the American economy

as a whole would result from:

- Transparent, standardized language for demurrage and detention practices;
- Clear, simplified, and accessible demurrage and detention billing practices and dispute resolution processes;
- Explicit guidance regarding the types of evidence relevant to resolving demurrage and detention disputes; and
- Consistent notice to cargo interests of container availability.

In August of 2019, Commissioner Dye submitted three proposals to the FMC. First, she recommended the Commission publish an interpretive rule that clarifies how the agency will assess the reasonableness of detention and demurrage practices. She also recommended establishing a Shipper Advisory Board and continued support for the Supply Chain Innovation Team working to address chassis availability issues in Memphis, TN.

An interpretive rule was published for public comment on September 13, 2019. The comment period closed October 31, 2019 and the

Commission anticipates publication of a final rule in FY 2020.

## LICENSING

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There are two types of ocean transportation intermediaries (OTIs) that serve as transportation middlemen for cargo moving in the U.S.-foreign oceanborne trades: NVOCCs and ocean freight forwarders (OFFs). All NVOCCs and OFFs located in the U.S. must be licensed by the Commission and must establish financial responsibility. In order to be issued a license, an OTI must provide the Commission evidence of experience in OTI activities in the U.S., the necessary character to render services, and proof of financial responsibility.

An NVOCC is a common carrier that holds itself out to the public to provide ocean transportation and issues its own house bill of lading or equivalent document, but does not operate the vessel by which ocean transportation is provided.

A U.S.-based ocean freight forwarder arranges for transportation of cargo with a common carrier (NVOCC or VOCC) on behalf of shippers and processes documents related to U.S. export shipments. However, an ocean freight forwarder does not hold itself out to the public to provide ocean transportation and does not issue a house bill of lading or equivalent document.

In FY 2019, licensed NVOCCs and OFFs had financial responsibility in the form of surety bonds on file with the FMC, collectively in excess of \$458 million. These funds are held to pay any damages arising out of a licensee's ocean transportation-related activities.

### Licensing Activity in FY 2019

- New OTI applications accepted: 333
- Amended applications accepted: 349
- New OTI licenses issued: 285
- Amended licenses issued: 114
- Licenses revoked or surrendered: 314
- New registrations accepted: 209
- Licenses renewed: 1797
- Registrations renewed: 650
- 4,000 of over 4,800 FMC licenses renewed since May 2017.
  - o 78% of OTIs recorded new ownership
  - o 9% updated contact information
  - o 13% reported a physical address change

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 so. Foreign-based NVOCCs must register with the Commission and establish financial

responsibility if not licensed under the FMC's program. Foreign NVOCCs (registered and licensed) had approximately \$262 million in surety bonds on file with the FMC in FY 2019.

The Commission's triennial renewal program for FMC-licensed OTIs was instituted in 2017 to ensure accurate industry information. After two full years of license renewals, over 4,000 (83 percent) of approximately 4,800 FMC-licensed OTIs have completed their initial renewal process. The online user-friendly renewal process prepopulates the OTI's renewal form with information from the FMC's files, providing a streamlined experience. In most cases the renewal process takes only five minutes. The online renewal process has improved the accuracy of OTI records, and timeliness of reporting material changes in ownership and operations, for the benefit of OTI sureties, carriers, and the shipping public. Foreign-registered NVOCCs must also renew their registrations every three years. In FY 2019, 650 foreign-registered NVOCCs successfully completed their renewals with the Commission.

The Commission has received inquiries from industry regarding the Chinese government's continued requirement for the Optional Rider for Additional NVOCC Financial Responsibility, to meet the Chinese government's financial responsibility requirements, and various articles have been published in the press indicating the Chinese government may be loosening the financial responsibility requirements for NVOCCs. The optional China bond rider originated from bilateral discussions between the United States and Chinese governments and a 2003 agreement, which the Commission implemented through regulations in 2004. It is not, and never has

been, required by the Commission. From the Commission's perspective, the bond is optional and at the discretion of individual NVOCCs. As of the end of the fiscal year, the Commission had on file 426 Optional Riders with an approximate aggregated value of \$21.3 million.

# PASSENGER VESSEL PROGRAM

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

The maximum performance financial coverage requirement is currently \$32 million per cruise line. The cap is adjusted every two years based on the Consumer Price Index for All Urban Consumers (CPI-U). The cap adjustment based on the CPI-U was completed in 2019. Based on the adjustment formula, the adjusted cap figure of \$31.8 million was rounded to the nearest \$1 million, and the maximum coverage requirement was increased to \$32 million per cruise line. The next adjustment will occur in 2021.

At the close of FY 2019, 244 vessels owned by 51 passenger vessel operators were certified under the PVO program. The combined evidence of financial responsibility for non-performance of transportation for all cruise vessels in the program is \$684.7 million. Under the Commission's program, there is \$771.2 million in aggregate financial responsibility for casualty coverage. During the fiscal year,

## PVO Financial Coverage

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- Aggregate evidence of financial responsibility for nonperformance: \$684.7 million
- Aggregate evidence of financial responsibility for casualty: \$771.2 million
- New Performance Certificates issued: 19 in FY 2019
- New Casualty Certificates issued : 19

19 new performance certificates and 19 casualty certificates were issued.

Haimark Line, Ltd. filed for bankruptcy in 2015. At the time of bankruptcy, unearned passenger revenue (UPR) remained in the Haimark escrow account for the purpose of reimbursing passengers for ocean transportation related payments under the Commission program. Due to Haimark's bankruptcy's status, during FY 2019, Commission staff conducted an in-house review to ensure there were no other passengers that were owed reimbursement from the escrow account. Commission staff verified all passengers had been refunded, and the Commission approved the termination of the escrow account and released the remaining funds to the estate of Haimark Line, Ltd.



# CONSUMER AFFAIRS AND DISPUTE RESOLUTION

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The Commission, through its Office of Consumer Affairs and Dispute Resolution (CADRS), provides alternative dispute resolution (ADR), ombuds (informal conflict resolution), and mediation services, to assist parties in resolving international ocean shipping and cruise disputes. 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. This fiscal year, the Commission closed a total of 296 ombuds matters: 127 relating to commercial cargo; 84 involved household goods; and 82 cruise matters.<sup>3</sup> additional closed matters were unclassified. 11 mediation matters were concluded. In the fiscal year, CADRS responded to 825 inquiries from the public.

## Highlights:

- CADRS assisted parties resolve a dispute in which an importer relied on an ocean carrier's information as to the last free day at a marine terminal; the ocean carrier agreed to refund over \$25,000 in demurrage charges.
- In a formal docket before the Commission with multiple respondents, CADRS provided mediation and all the parties reached settlements. The matter was discontinued.
- Through the Office of the Chairman, CADRS assisted with 4 requests from the offices of U.S. Senators and

Congressmen on behalf of their constituents relating to shipping and passenger disputes.

- In a dispute with just under \$10,000 in controversy, one container in a 7-container import shipment from Turkey to Baltimore via Long Beach was lost. Through CADRS efforts, the container was located and released.
- In a dispute between a licensed OTI and an ocean carrier regarding demurrage on an export shipment, CADRS assisted the parties reach a compromise whereby the ocean carrier would refund half of the demurrage the OTI had paid.
- In a dispute between foreign OTIs that caused a cargo hold at destination, rail demurrage and subsequent additional charges, CADRS assisted the shipper and the ocean carrier to reach an initial settlement by which the ocean carrier ordered the cargo off the rail to mitigate damages. The ocean carrier also discounted the charges; the shipper and OTIs ultimately agreed to share the payment of the reduced charges, and the shipment was released.
- A passenger provided detailed complaints about the safety, security and customer service aboard a cruise ship. CADRS contacted the PVO, which advised that it would provide the passenger an onboard credit of \$200.
- An importer who bought paper products from a manufacturer in China under CIF terms sought CADRS

help. It was the responsibility of the manufacturer to ship the product to the US. When the importer received the arrival notice, it was advised that it had to pay unexpected charges. Although the importer objected, it was told that these charges needed to be paid before the shipment would be released. CADRS contacted the destination agent regarding these concerns and was advised shortly thereafter that the disputed charges (over \$3,500) had been waived, and the cargo was released.

- In a dispute between an OTI and an ocean carrier, the OTI alleged that an ocean carrier had unfairly charged for demurrage on an import shipment. The container was charged for demurrage during an alleged customs examination; there were also charges for rail demurrage, although the OTI stated that free time had not yet expired at the rail ramp. CADRS contacted the ocean carrier, who reported that it would waive the charges (over \$7,400).

## INDUSTRY OUTREACH AND EDUCATION/AWARENESS

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Area Representatives (ARs) represent the FMC and maintain a presence at six regional field offices located in Southern California, South Florida, New Orleans, New York/New Jersey, Houston and Seattle/Tacoma. They collect and analyze intelligence of regulatory significance, assess industry conditions, explain Commission programs and clarify OTI licensing and compliance requirements. ARs also provide advice and guidance to the shipping public and participate in local maritime industry groups. They investigate alleged violations of the shipping statutes of regulated entities, both VOCC and OTIs, to protect the

shipping public from deceptive and unfair trade practices and serve as an ombudsman in an effort to assist or resolve complaints and disputes between parties involved in international oceanborne shipping (often coordinating with CADRS staff).

During the fiscal year, ARs conducted outreach to the public, consumer groups, trade associations, investigations, and worked with other Federal, state and local government agencies to achieve and enhance regulatory compliance and protect the public from financial harm.

## ENFORCEMENT, AUDITS AND PENALTIES

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The Commission's Bureau of Enforcement (BOE) staff and ARs in the field offices work to obtain industry compliance with the shipping statutes administered by the Commission to help protect the public from unlawful and deceptive practices in the foreign oceanborne commerce of the United States.

During the fiscal year, Commission staff investigated and prosecuted potential illegal practices in many trade lanes, including the Transpacific, North Atlantic, Middle East, South American and Caribbean trades. These illegal practices included:

- market distorting unfiled agreement activities;
- misdescriptions of cargo;
- unlawful use of service contracts;
- rebates and absorptions; and
- carriage of cargo by and for untariffed and unbonded NVOCCs.

At the outset of FY 2019, 14 enforcement cases were pending final resolution and there were 11 pending matters that BOE was monitoring or providing internal legal review. Inclusive of cases opened at headquarters, during the fiscal year, the ARs referred 24 new investigative matters for enforcement action or informal compromise; 32 matters were compromised and settled or administratively closed; and, 17 enforcement cases were pending resolution at fiscal year's end. BOE was

monitoring 11 matters that remained pending at the end of the fiscal year. The Formal Investigations section of this report includes more information on formal proceedings concluded during the fiscal year.

Under the Commission's compliance audit program, analysts review the operations of licensed OTIs and assist them in complying with the statutory requirements and the Commission's rules and regulations. The audit program also includes review of entities that hold themselves out to the public as Vessel Operating Common Carriers but where there are no signs of actual vessel operations. The absence of vessel operations, though the entities may issue bills of lading and other documents, might indicate, among other possible Shipping Act violations, that they operate as unlicensed OTIs. During the fiscal year, 121 audits were opened, 113 audits were completed (including audits carried over from fiscal year 2018), and 8 remained pending on September 30, 2019.

Cumulatively, the Commission collected over \$600,000 in penalties which were deposited directly into the U.S. Treasury General Fund during FY 2019. Most of these investigations were resolved informally, some with compromise settlements and civil penalties. A list of parties and penalties collected can be found in Appendix D.

## INTER-AGENCY COOPERATION

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The Commission regularly works with a number of other federal, state, and local transportation and law enforcement agencies, either through established memoranda of understanding (MOU), collaborations or partnerships to address specific transportation related policies, issues or incidents in both the U.S. domestic shipping arena and international liner shipping.

Interaction between the Commission and the U.S. Customs and Border Protection (CBP) on the exchange of investigative information continues to be beneficial to each agency.

- Cooperation with CBP included joint field operations to investigate entities suspected of violating the agencies' respective statutes or regulations. Such cooperation has also included local police and Federal entities, including U.S. Attorney's Offices, the Federal Bureau of Investigation, and Immigration and Customs Enforcement, as needed.
- ARs participated with CBP, the U.S. Coast Guard and other federal agencies in annual Multi-Agency Strike Force Operations conducted at marine terminals at the ports of New York/New Jersey, Oakland, CA and Seattle, WA.

The ARs further participated in a number of other criminal and civil investigations of entities licensed or regulated by the FMC, including violations of export and import statutes and regulations, sponsored by federal or state agencies:

- Federal Motor Carrier Safety Administration;
- Department of Commerce (Bureau of Industry and Security);
- Department of Justice (DOJ) (including the Bureau of Alcohol, Tobacco, Firearms and Explosives, and the Federal Bureau of Investigation);
- interagency Joint Terrorism Task Forces operating regionally in the U.S.; and
- local police jurisdictions in New York, New Jersey, South Florida, and Houston.

The ARs aided these investigations by providing expert knowledge on ocean carrier and OTI practices, procedures and documentation related to shipping transactions.

The Commission's CADRS staff consulted with the following entities regarding cruise, household goods, moving, and commercial cargo shipping complaints :

- Surface Transportation Board, Rail Customer and Public Assistance Program;
- New Jersey Office of the Attorney General;
- Miami-Dade Office of Consumer Affairs
- Florida Attorney General's Office; and
- Florida Department of Agriculture and Consumer Services Division of Consumer Services

The Commission also has MOUs with the following agencies and entities, under which it may share data:

- Census Bureau, U.S. Department of Commerce, which provides the FMC with access to the Census' Automated Export System (AES) database - a database used to review confidential U.S. export shipment data for law enforcement purposes.
- National Intellectual Property Rights Coordination Center (IPR Center), a partnership of 21 Federal and international agencies targeting intellectual property and trade-related crimes.
- U.S. Customs and Border Protection, to provide a more efficient utilization of existing systems and services, such as CBP's Automated Commercial Environment (ACE).



Chairman Michael Khouri (right) joined witnesses from the Coast Guard and Maritime Administration to testify before the House Committee on Transportation and Infrastructure, Subcommittee on Coast Guard & Maritime Transport on Fiscal Year 2020 budget issues.



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

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

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

Section 703 of the LoBiondo Act also requires that the Commission annually provide to Congress: (1) an analysis of the competitive impact of ocean carrier alliance joint purchases of the covered services mentioned above; and (2) a summary of actions, including corrective actions, taken by the Commission to promote competition.

Additionally, the LoBiondo Act permits the Commission to seek an injunction if it determines that an agreement is likely, “to substantially lessen competition in the purchasing of certain covered services.” 46 U.S.C. § 41307(b)(1). This new legal standard may be applied to existing agreements as well as any agreements filed in the future. The LoBiondo amendments also stipulate that no group of two or more common carriers may negotiate for the purchase of certain covered services unless the negotiations and any resulting agreements are not in violation of the antitrust laws. 46 U.S.C. § 41105(6).

## REVIEW OF AGREEMENTS UNDER LOBIONDO ACT

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To determine the extent to which existing agreements contained language that could potentially represent a reduction in competition in the purchasing of certain covered services, the Commission initiated a review of all ocean carrier agreements in FY 2019. If an agreement was viewed as potentially authorizing the joint negotiation or purchase

of covered services by two or more VOCCs, filing counsel for that agreement was sent a letter: (a) requesting that any agreements reached under this authority be provided to the Commission; (b) reminding the parties that any agreements reached with the third parties must be filed with the Commission unless those further agreements fall under

one of the listed exemptions in 46 C.F.R. § 535.408; (c) reminding parties that agreements should clearly and definitely reflect the intentions of the parties, and that any authorities that the parties have not and do not intend to use should be removed by amendment to the agreement; and (d) that any agreement no longer in use should be terminated with the Commission. As of October 1, 2019, the Commission sent letters to filing counsel for 172 agreements identified under the preceding criteria. Responses have been received from the majority of these agreements, and

staff is currently working with counsel for the remaining agreements.

Twenty-nine of those agreements were identified as no longer active and were terminated; counsel for 112 agreements responded that these agreements had no jointly negotiated terminal services agreements to provide; and three agreements were amended to reduce or remove any joint negotiation authority. Three agreements with vessel sharing authority provided their jointly negotiated terminal service agreements for analysis under § 41307(b)(1).

## DOJ/FTC GUIDELINES FOR COLLABORATIONS AMONG COMPETITORS

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

The Agencies determined that they would not challenge participation in purchasing groups provided certain conditions were satisfied. To give participants in joint purchasing arrangements guidance as to when antitrust issues could begin to surface, the Agencies established a “safety zone.” As long as joint

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

In the case of agreements between ocean carriers and terminal operators and/or stevedoring companies, the relevant upstream market is the market in which terminal and stevedoring services are sold by providers and purchased by ocean carriers. The relevant downstream market consists of the ocean transportation services market in which those participating in the buying group are



competing to sell those services to shippers.

When structured properly so as to produce efficiency-enhancing or pro-competitive outcomes, joint purchasing activities (i.e., agreements among buyers) are lawful under U.S. antitrust laws, but arrangements that aim to simply fix the price that each group member will pay for the services rendered are not legitimate under the antitrust laws. Additionally, an arrangement could run afoul of the antitrust laws if it includes other features that unduly restrict or distort competition. Other principles in the guidelines stress that group buying activity should not be used as a vehicle for exchanging commercially sensitive information between or among competitors, and that members should be free to make purchases outside the joint purchasing arrangement.

The above referenced terminal and stevedoring services agreements jointly negotiated by the three agreements were reviewed to ensure conformity with the DOJ/FTC guidelines for joint purchasing arrangements. The following section outlines the findings of that review.

Parties to one of the three agreements that engaged in joint procurement had substantial common ownership and maintenance of permanent economic management. As a result, the two companies in the agreement operate as a single entity from a competition point of view. There is no marketplace competition between these two companies and, therefore, no reduction in competition as a result of them having joint contracting authority. Accordingly, no additional analysis was conducted on this agreement's jointly negotiated terminal services agreements.

Applying the DOJ/FTC safety zone tests to assess the magnitude of combined purchases in the relevant market with respect to joint purchases of terminal and stevedoring services by members of the other two agreements with vessel sharing authority required (a) identifying each separate relevant port market in which the agreements purchased those services, (b) calculating the total output (or sales) in each such port market, and (c) calculating what percentage of the total output (or sales) in each such market was purchased by each agreement under jointly negotiated contracts.

At the time of the review using fiscal year 2019 data, the two agreements' services and ports of call in the United States were identified. The agreements had jointly negotiated terminal and stevedoring services agreements at a number of the ports served. In terms of applying the DOJ/FTC safety zone test for combined purchases in the relevant markets, generally each individual port in this analysis was considered as the relevant (local) market for terminal and stevedoring services. Applying this rule produces the most conservative (i.e., strictest) application of the test. A broader definition of the relevant geographic market would lower the results of the test in percentage terms, thereby making it more likely the agreements would fall into the safety zone. However, exceptions to this rule were made where the ports are contiguous. These ports were considered as being in the same geographical market.

Traditionally, there are two competition issues of primary concern with respect to joint purchasing arrangements. First, if the parties have a significant degree of market power because their joint purchases account for a large proportion of total purchases in

the market, a risk exists that the parties may drive the price of the services being purchased below competitive levels. The second competition issue of concern is that, if access to service providers is limited, there exists a risk of competing purchasers being excluded from the purchasing market. This event is most likely to develop where there are barriers to entry that prevent new service providers from entering the purchasing market or that prevent expansion by existing providers.

Application of the safety zone threshold test for combined purchases of covered services by the members of each agreement in each relevant upstream market for terminal and stevedoring services showed that none of the upstream markets breached the threshold.

Turning to the second threshold test, members within both agreements compete on price with their other agreement members in downstream ocean transportation markets; consequently, it is possible that equalization of costs for a substantial jointly purchased input such as terminal and stevedoring services could reduce price competition in those markets if the cost to buy terminal and stevedoring services account for a significant percentage of the ocean carriers' selling prices in the downstream markets. In applying the DOJ/FTC safety zone test to this area of concern, each jointly purchased input is matched with the downstream product (i.e.,

ocean transportation services) the agreements' members are selling in competition with each other. Whether the cost of the jointly purchased services (i.e., the input of jointly procured terminal and stevedoring services) is 20 percent or more of each agreements' members total sales revenue in each downstream market is then determined.

Both agreements' members were (and still are) competing with each other on prices in all of the downstream markets. The input value of joint purchases of terminal and stevedoring services as a percent of total sales in each downstream market was below the threshold of 20 percent, the range of one agreement being from 12.3 to 15.2 percent and the other agreement being 12.7 percent. Under the Agencies' guidelines, no further antitrust scrutiny was warranted.

In summary, it appears that the two agreements with vessel sharing authority that engage in joint purchasing of terminal and stevedoring services, at the time of the review, did so within the well-established boundaries of the guidelines for joint purchasing arrangements promulgated by the DOJ and FTC. Nevertheless, joint purchasing by these agreements of covered services warrants close monitoring to ensure that joint purchasing activity in the upstream and downstream markets continue to conform to the antitrust laws.



Port of Gulfport Deputy Executive Director, Matthew S. Wypyski; Commissioner Daniel B. Maffei; Port of Gulfport Executive Director & CEO, Johnathan Daniels; and Commissioner Louis E. Sola

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# DEVELOPMENTS IN MAJOR U.S. FOREIGN TRADES

## WORLDWIDE

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Worldwide, the volume of container cargo grew by 3 percent in FY 2019, down from 5 percent growth in the preceding fiscal year. At the end of September 2019, there were 180 idle containerships, including vessels undergoing scrubber retrofits to comply with the IMO 2020 low sulfur fuel mandate, which accounted for 3 percent of the world's containership capacity. While market shares of the top global ocean carriers remained high, they were relatively unchanged from the preceding period. The top five carriers deployed 65 percent of the world's containership capacity, and the top ten controlled 83 percent. The top three carriers, Maersk Line, MSC, and COSCO, deployed 18, 16, and 13 percent of the world's containership capacity, respectively.

Overall, in the U.S. liner trades, container cargo grew by 4 percent to 36.5 million TEUs, compared to 35 million TEUs last fiscal year. The growth rate in container cargo was 3 percent for U.S. exports and 5 percent for U.S. imports. Import containers exceeded export containers by a ratio of 2 to 1. The U.S. share of the world's container cargo remained at 16 percent.

Globally, the nominal capacity of the containership fleet grew by 4 percent. At the end of the fiscal year, 5,322 containerships, with a total fleet capacity of 23 million TEUs, were

### Worldwide

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Worldwide, containership cargo continued to grow, 3 percent, although at a lower rate than in the preceding fiscal year, 5 percent.

Only 3 percent of world's containership capacity remained idle, including vessel being retrofitted for scrubbers.

The top five ocean carriers deployed 65 percent of the world's containership capacity.

### U.S. Liner Trades

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Container volumes in the U.S. liner trades grew by 4 percent.

U.S. containers of imports exceeded exports by a ratio of 2 to 1.

operational. There were 364 new containerships on order with an aggregate capacity of 2.4 million TEUs, or 11 percent of the existing fleet capacity. Containerships with nominal capacities equal to or greater than 10,000 TEUs accounted for 33 percent of the existing fleet's total capacity and 77 percent of the total capacity on order.

# ASIA

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## 22 Million TEUs

The liner trades between the U.S. and nations in Asia accounted for the largest container cargo volume of over 22 million TEUs in FY 2019 (exports and imports combined), or 61 percent of total U.S. container trade. The U.S. imported substantially more container cargo from the region than it exported. In FY 2019, the U.S. imported more than 16 million TEUs of goods from Asia, an increase of 4 percent

over the previous fiscal year, while the U.S. exported 6 million TEUs, a slight decline of 1 percent from the prior year. Northeast Asia (China, Japan, South Korea, Taiwan, and Hong Kong) accounted for 48 percent of total U.S. container cargo, and Southeast Asia (Brunei, Cambodia, Indonesia, Malaysia, the Philippines, Singapore, and Vietnam) accounted for 13 percent. Trade tariffs and relations between the U.S. and China have led to increased



The Republic of Korea is the third largest origin of containerized cargo bound for the United States with 1.5 million TEUs. Commission Louis Sola was a delegate to the July 2019 U.S.-Korea Maritime Bilateral Meetings hosted in Busan (pictured).

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amounts of container cargo shifting to Southeast Asia since FY 2017. This trend is likely to continue as discussions between the two nations remain ongoing.

Just under half of the container imports from Asia moved through the ports of Los Angeles and Long Beach. U.S. Pacific ports handled 61 percent of all Asian imports and exports, and U.S. Atlantic and Gulf ports handled 38 percent.

The 2M Alliance, in partnership with Zim, added a second service connecting Asia with the U.S. Gulf Coast in August 2019, in order to cater to increased volumes moving to and from that region. 2M and Zim also began a joint service sailing from Asia to the Pacific Northwest in March 2019. Although Zim is not a member of the 2M Alliance, the carrier has entered into vessel sharing and slot swapping

Asia accounts for 68% of containerized imports to the U.S.; and 49% of containerized exports from the United States

agreements with 2M on its transpacific routes. The Port of Tampa Bay also gained direct connections to Asia via services from two of the major alliances (2M and OCEAN).

Furniture and auto parts led the way as the two top imported commodities from the region. Outbound, the highest quantities of containerized exports that move to the region included wastepaper, and hay and other forage products.

## NORTH EUROPE

### 4 Million TEUs

The liner trade with North Europe is the second largest U.S. trade by volume, accounting for 4 million TEUs, or 11 percent of the total U.S. container cargo (exports and imports combined). The region of North Europe includes Iceland and all nations in North West/East Europe and Scandinavia. Compared to the prior period, U.S. container exports grew by 5 percent to 1.6 million TEUs, and U.S. container imports grew by 4 percent to 2.4 million TEUs.

The top imported commodities were auto parts, beer, and furniture, while the top U.S. container exports to the region included used cars, auto parts, and woodpulp. The cargo volume carried by MSC, Hapag Lloyd, Maersk Line and ONE accounted for 63 percent of the

total trade.

To improve service reliability, members of THE Alliance (Hapag Lloyd, ONE, and Yangming) redeployed excess vessels from the Mediterranean to North Europe, after THE and OCEAN Alliance members combined their two MED services under a vessel sharing agreement. No other major service changes were implemented. By the end of the fiscal year, the amount of vessel capacity had grown by 5 percent, and the utilization of capacity was 89 percent in the inbound direction and 56 percent in the outbound direction. As reported by Drewry, in the stronger inbound direction, freight rates on the spot market rose to a high of \$2,308 per FEU, an increase of 16 percent from the preceding period.

Looking forward, trade growth may be affected by the 25 percent tariff that the U.S. imposed on selected goods from European nations, and any retaliatory tariffs that the EU may impose on U.S. goods. The EU will also render a decision on whether to renew its block exemption regulations for consortia agreements between liner shipping carriers,

which is due to expire in April 2020. The block exemption applies a market share threshold of 30 percent, which most of the present alliance agreements have exceeded. While there is opposition to the exemption from shipper groups, it is anticipated that the EU will renew the exemption for another 5 years with certain amendments.

## INDIAN SUBCONTINENT AND MIDDLE EAST

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### Combined 2.6 Million TEUs

The Indian Subcontinent and Middle East regions combined accounted for 7.5 percent of total U.S. container trade volume in FY 2019, with the Indian Subcontinent being the larger of the two. The Indian Subcontinent alone (exports and imports combined) grew by 12 percent, totaling over 1.8 million TEUs. Top imports from this region include linens and clothing. The U.S. imported 1.08 million TEUs from the Indian Subcontinent, an increase of 13 percent from the prior year. U.S. container export cargo to this region grew as well, expanding by 10 percent to 777,000 TEUs. Wastepaper and cotton are the leading U.S. exports to the region. The Indian Subcontinent region comprises the countries of Bangladesh, Burma, India, Nepal, Pakistan and Sri Lanka.

In the trade between the U.S. and the Middle East, U.S. container export volumes grew by 4 percent (582,000 TEUs), while container

The U.S. saw strong growth in its trade with the Indian Subcontinent, as U.S. container exports increased by 10% and U.S. container imports increased by 13%

imports to the U.S. from the region increased by 11 percent (284,000 TEUs). The Middle East region includes a range of countries in Western Asia from Israel, Lebanon, and Syria in the West to Afghanistan in the East. The U.S. exports more goods to the Middle East than it imports, with U.S. container exports exceeding imports by a ratio of 2 to 1. Motor vehicles and forage products were the top U.S. exports to the region, while plastics and aluminum were the top imported commodities from the Middle East.

## CENTRAL AMERICA AND THE CARIBBEAN

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### 2.2 Million TEUs

The Central America and Caribbean regions collectively accounted for 6 percent of total U.S. import and export container cargo in FY 2019 at 2.2 million TEUs. Nations in Central

America are Belize, Costa Rica, El Salvador, Guatemala, Honduras, and Panama, while the Caribbean are those island nations in the West Indies and Caribbean Sea, including the Bahamas, Dominican Republic, and Jamaica.



Of the two regions, trade between the U.S. and Central America was considerably higher in volume at 1.5 million TEUs (4 percent of total trade), while trade between the Caribbean and the U.S. was 738,032 (2 percent of total U.S. trade), imports and exports combined.

In FY 2019, U.S. container exports to Central America increased by 12 percent to 626,674 TEUs, and container imports increased by 2 percent to 880,806 TEUs. Paper products accounted for the largest share of U.S. containerized exports. Other major exports included cotton, grocery products, used automobiles and fabrics. On the import side, fresh fruit made up a majority of container imports from the region. Roughly two-thirds of fresh fruit imports consisted of bananas. The second largest commodity imported from this region was apparel. The major carriers serving the trade

participate in the Central America Discussion Agreement (CADA); these are 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. container exports of mainly food, consumer goods, and manufactured products increased by 10 percent to 553,715 TEUs. Container imports to the U.S. were unchanged at 184,317 TEUs. Container exports exceeded imports by a ratio of about 3 to 1. Carriers in the U.S./Caribbean trade participate in two rate discussion agreements covering geographically discrete trades: (1) the ABC Discussion Agreement (covering Aruba, Bonaire and Curacao), and (2) the Caribbean Shipowners Association.

## SOUTH AMERICA

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### 2 Million TEUs

In FY 2019, the liner trades between the U.S. and South America represented 6 percent of total import and export container volume, at 2 million TEUs. South America includes all nations within the continent. Container import growth to the U.S. from South America increased by 8 percent to 1.1 million TEUs, and U.S. container exports grew by about 7 percent to 942,554 TEUs. The top export commodities to South America included automobile parts and chemical products, while bananas, wood, and coffee were among the top import commodities. Brazil and Chile are the largest U.S. liner trading nations on the continent, accounting for over 50 percent of the container cargo moving in the trade.

The market share of the West Coast of South America Discussion Agreement (WCSADA) was 9 percent outbound and 8 percent inbound. The two remaining members of WCSADA are Seaboard Marine and King Ocean Services. Carriers offering service independent of WCSADA included Dole Ocean Liner Express and Great White Fleet (a subsidiary of Chiquita Brands Intl. Inc.), which transport a high portion of proprietary cargo, such as fresh fruits and vegetables. Members of WCSADA also faced competition from other major carriers serving the trade through transshipment hubs in Mexico, Panama and the Caribbean. There are no active rate discussion agreements in the trade between the U.S. and the East Coast of South America.

## MEDITERRANEAN

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### 1.7 Million TEUs

Container volumes between the U.S. and the Mediterranean accounted for 5 percent, or 1.7 million TEUs, of the total U.S. container cargo in FY 2019. The Mediterranean region are those nations bordering the Mediterranean Sea, including South Europe, Turkey and Egypt. Compared to the prior period, container cargo growth was the strongest inbound. U.S. exports grew by 2 percent to 473,943 TEUs, while imports from the region rose by 11 percent to 1.3 million TEUs. The trade imbalance widened with import containers exceeding export containers by a ratio of 2.7 to 1. The top import commodities were wine, ceramic tiles, and furniture, while woodpulp, nuts, paperboard, and cotton were the top U.S. export commodities. A high concentration of cargo was moved by the major carriers, MSC, Hapag Lloyd, Maersk Line, CMA-CGM, and Zim, accounting for 87 percent of the total

container cargo in the trade. A new service string was added to the trade. After its space charter agreement with Hapag Lloyd was terminated, CMA-CGM joined with Marfret to form the MedCar service under the CMA-CGM/Marfret Mediterranean-Caribbean/US Gulf Vessel Sharing Agreement. In this service, the carriers deploy eight 6,900 TEU container-ships on a weekly rotation between Houston and ports in the Mediterranean, Caribbean, Central/South America, and Mexico. While vessel capacity was added by some carriers, others adjusted their services and removed capacity, including THE and OCEAN Alliance members under their vessel sharing agreement. By the end of the fiscal year, annual vessel capacity in the trade rose by 4 percent. As in North Europe, trade growth with EU nations in the Mediterranean may be impacted by the tariffs imposed by the U.S., and any retaliatory tariffs by the EU.

## AFRICA

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### 503,127 TEUs

In FY 2019, imports and exports combined between the U.S. and Africa were 503,127 TEUs, accounting for approximately 1.5 percent of all U.S. container volume. The Africa region includes all of the nations within the continent except Egypt, which is traditionally serviced via the Mediterranean. Compared to the previous period, U.S. container exports to nations in Africa increased by 17 percent to 365,237 TEUs, and U.S. container imports from the region increased by 11 percent to 137,890 TEUs. Consequently, U.S. container

exports exceed imports by a ratio of 2.6 to 1.

The top container U.S. exports to Africa included automobiles and poultry, while swimwear, cocoa beans and citrus fruit were among the top import commodities. Egypt and the Republic of South Africa are the largest two U.S. liner trading nations on the continent, accounting for about 50 percent of the total containerized cargo. MSC and Maersk Line, including its subsidiary, Safmarine, carried 66 percent of the total container cargo in the trade. Under the Southern Africa Agreement, MSC and Maersk continue to 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.

## AUSTRALIA AND OCEANIA

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### 445,962 TEUs

Oceania consists of Australia, New Zealand, and the South Pacific Islands. The liner trades between the U.S. and Oceania comprised just over 1 percent of total U.S. import and export cargo volumes combined in FY 2019, at 445,962 TEUs. The volume of U.S. container exports was 240,821 TEUs, and the top exported commodities included auto parts, general merchandise, and tires. U.S. container import cargo was 205,142 TEUs, and the top imported commodities included

wine and fresh or frozen meat products. The U.S. Pacific-Oceania Agreement is one of the major vessel sharing agreements that remains operational in the trade. In FY 2019, the agreement was amended to replace Hamburg Süd with Maersk Line after its acquisition and remove CMA CGM as a party, resulting in the combining of two vessel strings into a single string. The amendment also removed a restriction on operating in the trade outside of the agreement.

# TOP TWENTY U.S. LINER CARGO TRADING PARTNERS

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

The Commission derives its list of top-twenty trading partners from the Port Import Export Reporting Service (PIERS) database. The most recent complete calendar year of available data is 2018. The table on the next page lists the twenty foreign countries that generated the largest volume of oceanborne liner cargo in the bilateral trade with the United States in calendar year 2018. The figures in the table represent each country’s U.S. liner imports and exports combined in thousands of loaded TEUs.

Bilateral trade with the United States’ top-twenty liner trading partners represented approximately 80 percent of the nation’s total liner trade in 2018. The total volume of trade with our top-twenty liner trading partners increased by 4.9 percent year-to-year.

The top-twenty list has been comprised of nearly the same trading partners since 2009. Several changes in ranking occurred among the top-twenty countries during 2018, however. Most notably, Vietnam passed both Japan and South Korea to become the U.S.’s second-largest trading partner, with containerized traffic increasing by 17 percent. Turkey is the only new entrant to the top twenty, growing its trade with the U.S. by 9 percent during the year. China remained the U.S.’s top trading partner in 2018, with over 13 million TEUs moving between the two countries. India (#5) and Malaysia (#15) saw the highest growth among the top twenty, with each country increasing its trade by 20 percent. Japan (#4) and Hong Kong (#14) were the only two countries to see their container trade with the U.S. decline, with decreases of 2 percent and 5 percent respectively. Countries in Asia make up half of the U.S.’s top twenty partners, while six European countries make the list. South America and Central America each contribute two countries to the top twenty.

Vietnam, India, Italy, the Netherlands, Malaysia, Chile, and Turkey climbed up in the rankings, while South Korea, Japan, Taiwan, Germany, Brazil, Hong Kong, Guatemala, and the United Kingdom slipped down.

## TOP TWENTY U.S. LINER CARGO TRADING PARTNERS (CY2018)

Rank	Country	TEUs (000)
1	China (PRC)	13,274
2	Vietnam	1,565
3	South Korea	1,503
4	Japan	1,340
5	India	1,243
6	Taiwan (ROC)	1,224
7	Germany	1,101
8	Thailand	770
9	Indonesia	767
10	Belgium & Luxembourg	726
11	Italy	664

Rank	Country	TEUs (000)
12	Brazil	637
13	Netherlands	563
14	Hong Kong <sup>1</sup>	539
15	Malaysia	505
16	Guatemala	458
17	Chile	433
18	United Kingdom	431
19	Honduras	359
20	Turkey	346

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

# FOREIGN SHIPPING PRACTICES ACT

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

The Commission, both through Commission action and through OGC, informally pursued several matters involving potentially restrictive foreign practices. This included the examination of restrictive foreign legislation and regulations. No formal section 19 or 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. As of the end of fiscal year 2019, four controlled carriers operated in the U.S. trades. All four controlled carriers are subsidiaries of COSCO SHIPPING Holdings Co., Ltd.:

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





# FORMAL INVESTIGATIONS, PRIVATE COMPLAINTS AND LITIGATION

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

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

The following summarizes the results of docketed proceedings concluded during FY 2019 by the OALJ and the Commission:

## **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 and from the terminal via shuttles. On June 16, 2014, Complainants filed a complaint alleging that Respondents' tariff imposing charges on Complainants' shuttles

violated three sections of the Shipping Act.

In 2014, the ALJ dismissed claims under two sections of the Act but allowed claims alleging an unreasonable preference or prejudice under 46 U.S.C. § 41106(2) to proceed. The ALJ subsequently dismissed these claims. Complainants filed exceptions to the ALJ decision, and in January 2017, the Commission affirmed the dismissal of the complaint.

The Complainants petitioned for review in the D.C. Circuit. Oral argument was held on March 12, 2018, and on May 11, 2018, the Court vacated the Commission's January 2017 decision and remanded the case to the Commission for further proceedings. The Commission in turn remanded the case to the ALJ to address all remaining issues. In

November 2018, the ALJ on remand found Complainants had not proved that Respondents violated § 41102(c) and again dismissed the complaint. Complainants filed exceptions to the remand decision, and the matter is pending before the Commission.

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

Complainant alleges that Respondents violated the Shipping Act in transporting three vehicles from Georgia to West Africa. The ALJ found that Respondents had violated 46 U.S.C. § 41102(c) and awarded Complainant reparations. The Commission reviewed the ALJ decision, but while review was underway, one of the Respondents filed for bankruptcy. Because of the bankruptcy, the Commission stayed the proceeding. In October 2017, the Commission learned that the Respondent had received a Chapter 7 bankruptcy discharge. The stay was lifted. Meanwhile, the same Respondent was indicted in federal court. In May 2019, the Respondent pleaded guilty to fraud and identity theft. The matter is pending before the Commission.

### **Crocus Investments, LLC v. Marine Transport Logistics, Inc. [Docket No. 15-04]**

Complainants allege that Respondents overcharged them and transferred custody of three boats to a storage facility without their consent in violation of 46 U.S.C. § 41102(c). They also allege that one of the Respondents violated 46 U.S.C. § 40901(a) by providing ocean freight forwarder services without a license from the Commission. The ALJ dismissed the claims for lack of jurisdiction and on substantive

grounds. Complainants filed exceptions to the ALJ decision. On July 16, 2019, the Commission affirmed the ALJ decision except as to the § 41102(c) claim with respect to one boat and a limited time period, which the Commission remanded for further consideration. The Commission also denied Complainants' petition to reopen the proceeding and submit new evidence. The matter is pending before the ALJ.

### **Ovchinnikov vs. Hitrinov [Docket No. 15-11] consolidated with Nurgazinov v. Khitrinov [Docket No. 1953]**

Complainants allege that Respondents violated the Shipping Act and Commission regulations by not releasing or delivering three vehicles shipped from the United States to Finland. During litigation, counsel for the parties moved for sanctions against each other. The ALJ denied the sanctions motions, and on March 9, 2017, the ALJ dismissed Complainants' claims. Respondents filed exceptions with respect to sanctions. Complainants filed exceptions with respect to the dismissal of their claims. This matter is pending before the Commission.

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

Complainants in these four consolidated cases allege that Respondents violated multiple provisions of the Shipping Act for nearly two decades by secretly agreeing and conspiring to fix, raise, and stabilize prices and allocate customers and market share in the roll on/roll off shipping trade. Complainants allege that Respondents' illegally inflated charges were passed along to them, either directly as freight charges or indirectly in the purchase

prices of vehicles. Complainants sued on their own behalf and on behalf of similarly situated members of a class. In May 2018, the ALJ dismissed the claims as time-barred and for lack of standing and also provisionally ruled that the Commission does not have the authority to adjudicate class actions. Complainants appealed. The matter is pending before the Commission.

### **MAVL Capital Inc. v. Marine Transport Logistics, Inc. [Docket No. 16-16]**

Complainants allege that Respondents violated 46 U.S.C. §§ 41102(c), 41104(3), and 41104(10) in connection with the storage and shipment of several vehicles. The ALJ dismissed certain of the claims for lack of jurisdiction and failure to state a claim. Complainants filed exceptions to the ALJ's decision, and, subsequently, petitioned for leave to supplement the record. The matter is pending before the Commission.

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

Complainant alleges that Respondent violated the Shipping Act by releasing goods to a consignee before it had received the original bills of lading and permission to release from Complainant. The ALJ found that Respondent released cargo without the original bill of lading in violation of 46 U.S.C. § 41102(c) and awarded Complainant reparations. On March 7, 2019, the Commission vacated the ALJ decision and remanded the case so that the ALJ could determine whether Respondent's acts or omissions occurred on a "normal, customary, and continuous basis." The matter is pending before the ALJ.

### **Lima v. Fastway Moving and Storage, Inc. [Docket No. 17-03]**

Complainant alleges that in the course of shipping his household goods from the United States to Brazil, Respondent allowed illegal items to be combined with Complainant's shipment, failed to comply with tariff or service contract rates, and knowingly accepted cargo without a tariff, bond, insurance or surety, all in violation of 46 U.S.C. §§ 41102(c) and 41104. In January 2018, the ALJ entered a default judgment in Complainant's favor and awarded Complainant reparations. On June 24, 2019, the Commission vacated the ALJ decision with respect to § 41102(c) but affirmed in all other respects and awarded Complainant reparations of \$39,041.38.

### **CMI Distribution Inc. v. Service by Air, Inc., Radiant Customs Services Inc. (formerly known as SBA Consolidators, Inc.) and Las Freight System Ltd. [Docket No. 17-05]**

On May 23, 2017, Complainant filed a complaint alleging violations of 46 U.S.C. §40901 for acting as an OTI without holding a license issued by the Commission; 46 U.S.C. §41102(c) for failing to observe just and reasonable practices; 46 U.S.C. §41104(2)(c) for failing to provide services in accordance with rates, charges, and rules contained in a published tariff; and 46 U.S.C. §40501 for failing to maintain a tariff showing all rates, charges, rules and practices. Respondent Las Freight System Ltd. did not respond to the complaint. On May 24, 2019, an initial decision was issued. The decision dismissed with prejudice the claims against Radiant Customs Services Inc. and LAS Freight Systems Ltd. The other Respondent, Service by Air, Inc.,

was ordered to cease and desist from operating as an NVOCC without a license and to pay reparations to the Complainant. This proceeding is pending before the Commission.

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

On July 21, 2017, Complainant filed a complaint against Respondent alleging violations of 46 U.S.C. §§41106(2), 41106 (3), and 41102(c) due to leasing decisions made by Respondent. On August 17, 2017, Respondent filed its answer denying the allegations, asserting that its actions were justified because it acted in accordance with the Shipping Act, and raising affirmative defenses. On April 17, 2018, an initial decision was issued granting a motion to partially dismiss the complaint, dismissing the claim for reparations with prejudice, and dismissing the claims for violation of 46 U.S.C. §§41106(3) and 41102(c) without prejudice. This first initial decision was appealed and is pending before the Commission. On March 25, 2019, a second initial decision was issued dismissing with prejudice the remaining claims against Respondent. This second initial decision is also pending before the Commission.

### **Calstar Group LLC f/k/a Carlisle Transportation Products, Inc. and CTP Transportation Products, LLC v. UTI, United States, Inc.; UTI United States, LLC; and DSV Air & Sea, Inc. [Docket No. 17-08]**

On August 31, 2017, Complainants filed a complaint against Respondents alleging that they violated 46 U.S.C. §41102(c) by failing to establish, observe and enforce just

and reasonable regulations and practices; 46 U.S.C. §41104(2), by charging rates higher than reflected in their published tariff and/or service agreements; and 46 U.S.C. §41102(4), by charging unfair and discriminatory fees. On December 8, 2018, Respondents filed a motion to dismiss the complaint. On May 18, 2018, an Initial Decision was issued dismissing Complainants' section 41102(c) claim but denying Respondents' motion to dismiss in all other respects. On September 13, 2018, a joint petition for approval of settlement and dismissal of this proceeding was received from the parties. On October 17, 2018, an order was issued granting the joint petition by the parties and dismissing this proceeding with prejudice.

### **Fiat Chrysler Automobiles NV, FCA US LLC, and FCA Italy S.P.A. v. Wallenius Wilhelmsen Logistics AS, Wallenius Wilhelmsen Logistics Americas LLC, Eukor Car Carriers Inc., Nippon Yusen Kabushiki Kaisha, NYK Line (North America) Inc., Mitsui O.S.K. Lines, Ltd., MOL (America) Inc., Kawasaki Kisen Kaisha, Ltd., "K" Line America, Inc. Compañía Sud Americana De Vapores, and Hoëgh Autoliners AS [Docket No. 17-09]**

On October 6, 2017, Complainants, three Fiat entities, filed a complaint alleging that Respondents, ocean common carriers that provide ocean transport of new, assembled motor vehicles using specialized roll-on/roll-off cargo ships, violated the Shipping Act from as early as 1997 and alleging that the violations are continuing. Respondents filed a motion to dismiss in this and four related cases. On May 7, 2018, an order was issued finding that the statute of limitations bars

reparations, except for violations that Fiat can establish that occurred within the statute of limitations period. The order was not appealed to the Commission and the parties engaged in discovery. On April 2, 2019, an initial decision was issued approving a confidential settlement with Mitsui and MOL. On April 2, 2019, and April 29, 2019, the Office of the Secretary issued Notices of Dismissal of three respondents. On May 31, 2019, the ALJ approved four settlement agreements with the remaining respondents. On July 2, 2019, the Commission issued a notice not to review.

### **Falcone Global Solutions, LLC v. Maurice Ward Networks, Ltd. d/b/a Maurice Ward Group; Maurice Ward & Co., BV.; and Maurice Ward & Co. S.R.O [Docket No. 18-04]**

On June 19, 2018, Complainant filed a complaint against Respondents alleging that they failed to establish, observe and enforce just and reasonable regulations and practices, in violation of 46 U.S.C. §41102(c), related to the transportation of Complainant's cargo; imposed and attempted to collect improper fees and charges not contained in the service agreement between the parties or in a tariff, in violation of 46 U.S.C. §41104(2); retaliated against Complainant in violation of 46 U.S.C. §41104(3), by withholding release of Complainant's containers when Complainant disputed those fees and charges; engaged in unfair practices by billing Complainant those inaccurate fees and charges, in violation of 46 U.S.C. §41104(4); and unreasonably refused to deal or negotiate in good faith, in violation of 46 U.S.C. §41104(10). The ALJ served an initial order, an order denying a motion for a more definite statement, and an order extending

time to file a responsive pleading. On October 31, 2018, a joint stipulation of dismissal was received from the parties. On November 7, 2018, the Office of the Secretary issued a notice of voluntary dismissal, discontinuing this proceeding.

### **Hanlon Sculpture Studio v. SAE Worldtrans Logistics f/k/a Worldtrans [Docket No. 18-09]**

On October 19, 2018, Complainant initiated this proceeding by filing a complaint alleging that Respondent violated 46 U.S.C. §41102(b), by failing to provide account pricing or explanation of the charges it billed to Complainant, and 46 U.S.C. §41102(c), by failing to enforce reasonable regulations and practices in connection with Complainant's property tendered to Respondent for shipping. On November 12, 2018, Respondent filed a motion to dismiss the complaint. On November 28, 2018, the ALJ issued an order denying Respondent's motion to dismiss. On December 11, 2018, a joint stipulation of dismissal was received from the parties. On December 17, 2018, the Office of the Secretary issued a notice of voluntary dismissal of this proceeding.

### **Logfret, Inc. v. Kirsha, B.V., Leendert Johanness Bergwerff A/K/A Hans Bergwerff, and Linda Sieval [Docket No. 18-10]**

On November 14, 2018, Complainant filed a complaint alleging Shipping Act violations by a corporation and two individual respondents. Complainant Logfret is an NVOCC that provides transport, logistics, and related shipping services to customers in the United States and worldwide and is an affiliate of Logfret B.V., a common carrier based in The Netherlands.

Respondents are Mr. Bergwerff, a Dutch national and Managing Director of Logfret B.V., and Ms. Sieval, a Dutch national and sales manager for Logfret B.V. The corporate respondent, Kirsha B.V., is a corporation in The Netherlands whose owner and managing director is Mr. Bergwerff, one of the individual respondents. On September 17, 2019, an initial decision was issued granting a motion to dismiss the proceeding based on a lack of personal and subject matter jurisdiction. The time for exceptions has not yet passed.

### **Donna Katri Wynder v. Ryan Sims; Waters & Associates, Inc. dba Sunshine Global Transport; Mohammad Madi; Debra Caesh dba Sea & Shore Shipping Inc. [Docket No. 1962(F)]**

On November 16, 2018, Complainant filed a small claims complaint alleging that Respondents violated 46 U.S.C. §41102(c) of the Shipping Act in connection with a 2007 Cadillac Escalade ESV which Complainant tendered to Respondents for shipping. On November 19, 2018, Respondent Sims, Waters & Associates filed a notice of refusal to consent to adjudication of Complainant's claim under the Commission's informal procedures; this proceeding was thus converted from an informal proceeding to a formal proceeding. On

February 27, 2019, a stipulation of dismissal was received from the parties. On February 28, 2019, a notice of voluntary dismissal was issued, discontinuing this proceeding. On April 3, 2019, the Commission issued a notice not to review the voluntary dismissal.

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

On March 6, 2018, Claimant filed a small claims complaint alleging that Respondent violated 46 U.S.C. §41102(c) of the Shipping Act. On July 9, 2018, the small claims officer issued a Decision finding that Seven Seas violated 46 U.S.C. §41102(c) and granting reparations in the amount of \$48,200 to Claimant. On March 7, 2019, the Commission issued an order vacating and remanding the decision to the small claims officer for consideration consistent with the provisions of a newly issued interpretive rule. On July 2, 2019, a decision on remand was issued finding that Complainant failed to demonstrate a section 41102(c) violation under the interpretive rule. On July 31, 2019, the Commission issued a notice to review the decision on remand and the matter remains pending before the Commission.

## **RULEMAKINGS**

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### **Interpretive Rule; Shipping Act of 1984 [Docket No. 18-06]**

On September 7, 2018, the Commission issued a Notice of Proposed Rulemaking (NPRM) seeking comments on an interpretive rule to clarify the Commission's interpretation of the scope of 46 U.S.C. § 41102(c) (section

10(d)(1) of the Shipping Act of 1984). (83 FR 45367) Section 41102(c) prohibits common carriers, terminal operators, and ocean transportation intermediaries from failing to establish, observe, and enforce just and reasonable regulations and practices relating to or connected with receiving, handling, storing,

or delivering property.

The Commission received five comments, all of which supported the rulemaking. The Commission published a Final Rule in the Federal Register on December 17, 2018, which went into effect immediately. The final interpretive rule clarifies that in order to violate 46 U.S.C. § 41102(c), a regulated entity must be engaged in a practice or regulation on a normal, customary, and continuous basis and that such practice or regulation is unjust or unreasonable.

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

The Commission proposed minor changes to the requirements for ocean transportation intermediaries in a Notice of Proposed Rulemaking published on December 17, 2018. The proposed changes involved minor adjustments to the application and renewal procedures for licenses and registrations, such as changes to the form, type, and timing of information required to be submitted to the Commission. The Commission received three comments to the NPRM. The comments were generally supportive of the NPRM, though one commenter expressed concern about the proposed changes to the initial license period. After reviewing the comments, the Commission voted on May 1, 2019, to publish a final rule with minor changes from the NPRM, pending alignment of the final rule with updates to the associated information collection under the Paperwork Reduction Act. As of the end of fiscal year 2019, the Commission

was preparing to publish the Final Rule in the Federal Register.

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

On September 3, 2019, the Commission issued a Notice of Proposed Rulemaking (NPRM) seeking comments on a proposed rule that would modify the hearing procedures governing the denial, revocation, or suspension of an ocean transportation intermediary (OTI) license. Through this rule, the Commission is seeking to align these hearing procedures with other Commission proceedings, ensure a more streamlined process, and fulfill the need for more detailed procedural requirements. As of the end of fiscal year 2019, the comment period for the NPRM was open.

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

On September 13, 2019, the Commission issued a Notice of Proposed Rulemaking (NPRM) seeking public comment on its interpretation of the Shipping Act prohibition against failing to establish, observe, and enforce just and reasonable regulations and practices relating to or connected with receiving, handling, storing, or delivering property with respect to demurrage and detention. Specifically, the Commission is proposing guidance as to what it will consider in assessing whether a demurrage or detention practice is unjust or unreasonable. As of the end of fiscal year 2019, the comment period for the NPRM was open.

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

On September 26, 2019, the Commission voted to issue a Notice of Proposed Rulemaking (NPRM) to update the Commission's regulations to reflect FMC-specific provisions of the LoBiondo Act. The proposed regulatory changes would implement the statutory changes made by the LoBiondo Act with respect to: (1) certain nonpublic Commission meetings; (2) the types of persons required to be licensed as ocean transportation intermediaries and comply with relevant financial responsibility requirements; (3) prohibited acts by common carriers; (4) the confidentiality of third-party comments on filed ocean common carrier and marine terminal operator agreements. As of the end of fiscal year 2019, the Commission was preparing to publish the NPRM in the Federal Register.

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

On September 26, 2019, the Commission voted to issue a Direct Final Rule amending its enforcement procedures. The Direct Final Rule would amend the process to: (1) provide notice to the subject of investigations and allow them the opportunity to respond before BOE recommends that the Commission take enforcement action; and (2) to require

Commission approval to initiate formal or informal action and Commission approval of proposed compromise agreements. As of the end of fiscal year 2019, the Commission was preparing to publish the Direct Final Rule in the Federal Register.

## **Petition of the World Shipping Council for an Exemption and Rulemaking [Petition No. P3-18]**

The World Shipping Council, a trade association of ocean common carriers, petitioned the Commission for an exemption from the service contract filing and essential terms publication requirements set forth at 46 U.S.C. § 40502(b) and (d), and further petitioned for the initiation of a rulemaking proceeding to amend the Commission's service contract regulations in 46 C.F.R. Part 530 consistent with the requested exemption. The Commission received three comments in favor of the petition and two comments opposed to the petition. On September 26, 2019, the Commission voted to grant in part and deny in part the petition by exempting ocean carriers from publishing essential terms of service contracts, as required by § 40502(d), but continuing to require ocean carriers to file service contracts pursuant to § 40502(b). The Commission also approved the issuance of a Notice of Proposed Rulemaking to adopt this regulatory relief, subject to the issuance of the order, and is finalizing both documents for publication.



# LEVERAGING TECHNOLOGY

Digital transformation and cybersecurity are the highest investment priorities for modernizing the Commission's information system infrastructure. The deployment of technologies, applications and systems to support the Commission's business functions and migration away from paper-based systems to automated computer systems continues. The FMC's automated information technology (IT) systems are used by the shipping public to file license applications, carrier and MTO agreements, and commercially sensitive operational data used by the Commission's economists to conduct mission-critical competition analysis. Planned information system infrastructure and architecture investments across all agency tasks and processes will streamline the Commission's core workflow and business functions to maximize productivity, expand research and analysis capabilities, and provide better public access to FMC information.

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

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

- IT Strategic Goal 1 – Manage and deliver quality IT systems and services critical for the FMC to fulfill its mission and support related administrative, business, and operational functions.
- IT Strategic Goal 2 – Maintain IT policies, procedures, and practices that support efficient and effective FMC business, administrative, and mission processes.
- IT Strategic Goal 3 – Expand on current progress to strengthen cybersecurity of FMC's networks and systems.
- IT Strategic Goal 4 – Ensure reliability and accuracy of federal information technology as required by statutes, government-wide requirements, directives, or guidance.

At the enterprise level, IT capital planning and investment control (CPIC) is informed through engagement with the FMC's Information Technology Advisory Board (ITAB). The ITAB is responsible for reviewing IT planning and the budget appropriate to support IT application development, business continuity and disaster recovery, information assurance and cybersecurity, data management and user support, as well as network and telecommunications systems maintenance.

The Commission continued progress on several key initiatives in 2019. During FY

2019, the FMC made significant progress in modernizing its information systems and information technology infrastructure components. The Commission deployed a new laptop-based personal computer infrastructure and network printer solution across the agency. The FMC strengthened its cybersecurity and infrastructure by implementing DHS binding operational directives and guidance. The FMC also installed a new Secure Sockets Layer Virtual Private Network (SSL VPN) to provide staff more secure remote access to the FMC's IT network.

During the fiscal year, the Commission also implemented a new Radio-Frequency

Identification (RFID) Inventory Asset Management System for the day-to-day inventory and tracking of IT equipment at FMC's headquarters and regional offices. This system will further secure and track the Commission's IT equipment.

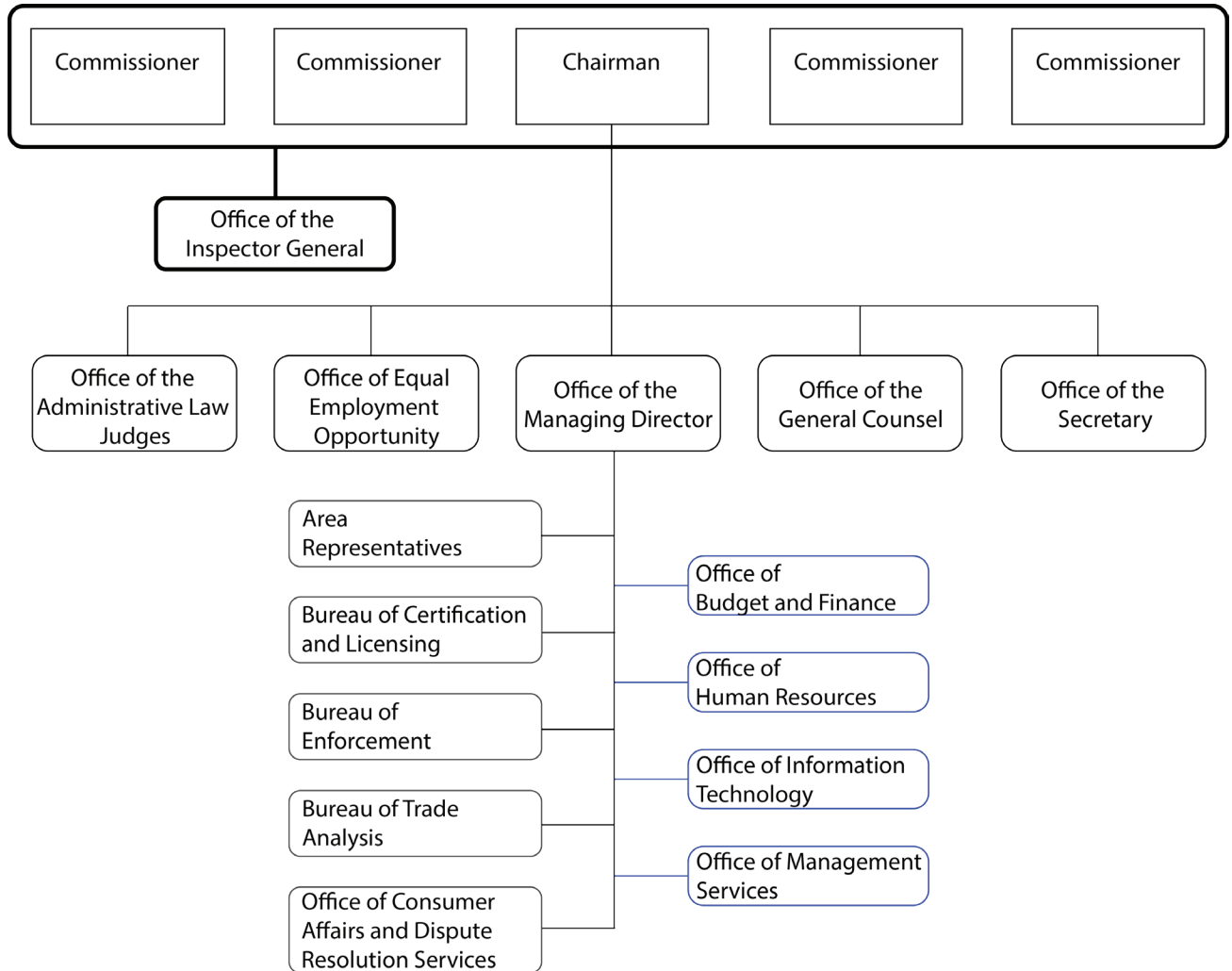
The FMC modernization of the agency's line of business (LOB) applications. The agency acquired internal IT skill sets and implemented an Agile development approach for software development. The Agile development model is being used to develop the agency's upcoming E-bonds application.





# APPENDICES

## A – FMC ORGANIZATION CHART



## B – FMC SENIOR OFFICIALS – FY 2019

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Chief of Staff.....	Mary T. Hoang
Counsel to Chairman Khouri.....	John A. Moran
Counsel to Commissioner Dye.....	Robert M. Blair
Counsel to Commissioner Maffei.....	Katharine Primosch
Counsel to Commissioner Sola.....	Cory Cinque
General Counsel.....	Tyler J. Wood
Secretary .....	Rachel E. Dickon
Chief Administrative Law Judge.....	Clay G. Guthridge*, Erin Wirth
Director, Office of CADRS.....	Rebecca A. Fenneman
Director, Office of EEO.....	Ebony Jarrett
Inspector General.....	Jon Hatfield
Managing Director.....	Karen V. Gregory
Deputy Managing Director.....	Peter King
Director, Bureau of Certification and Licensing.....	Sandra L. Kusumoto
Director (Deputy), Bureau of Enforcement.....	Benjamin K. Trogdon
Director, Bureau of Trade Analysis.....	Florence A. Carr

\*Retired June 1, 2019

# 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, \$27,490,000. Provided, that not to exceed \$2,000 shall be available for official reception and representation expenses.

Public Law 116-6	\$27,490,000
Total Budgetary Resources	\$27,490,000

## Obligations and Unobligated Balance:

Net obligations for salaries and expenses for the fiscal year ended September 30, 2019	\$27,339,179
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## Statement of Receipts:

Deposited with the General Fund of the Treasury for the Fiscal Year Ended with September 30, 2019	
Publications and reproductions, fees and vessel certification, and freight forwarder applications	\$231,042
Fines and penalties	\$660,125
Total general fund receipts	\$891,166

## D – AGREEMENT TYPES

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### Types of Agreements

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

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

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

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

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

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

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

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

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



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

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

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

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

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

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

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

## E – CIVIL PENALTIES COLLECTED

International Global Logistics, Inc	\$40,000
American Freight Logistics, INC.	\$85,000
Soonest Express, Inc.	\$60,000
Square Deal Shippers & Movers, Inc.	\$25,000
MTI Worldwide Logistics Corp.	\$50,000
KBL Container Line, Inc.	\$50,000
PDL International Pte Ltd. Sofrana Unilines (NZ) Ltd. and ANL Singapore Pte Ltd (dba Sofrana ANL Pte Ltd.) Pacific Forum Line (Group) Limited and Pacific Forum Line (NZ) Limited; and, Neptune Pacific Line, Inc. - Jointly	\$350,000
Total:	\$660,000



