

FEDERAL MARITIME COMMISSION

26th Annual Report for Fiscal Year 1987





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Office of the Chairman

Federal Maritime Commission
Washington, D.C. 20573

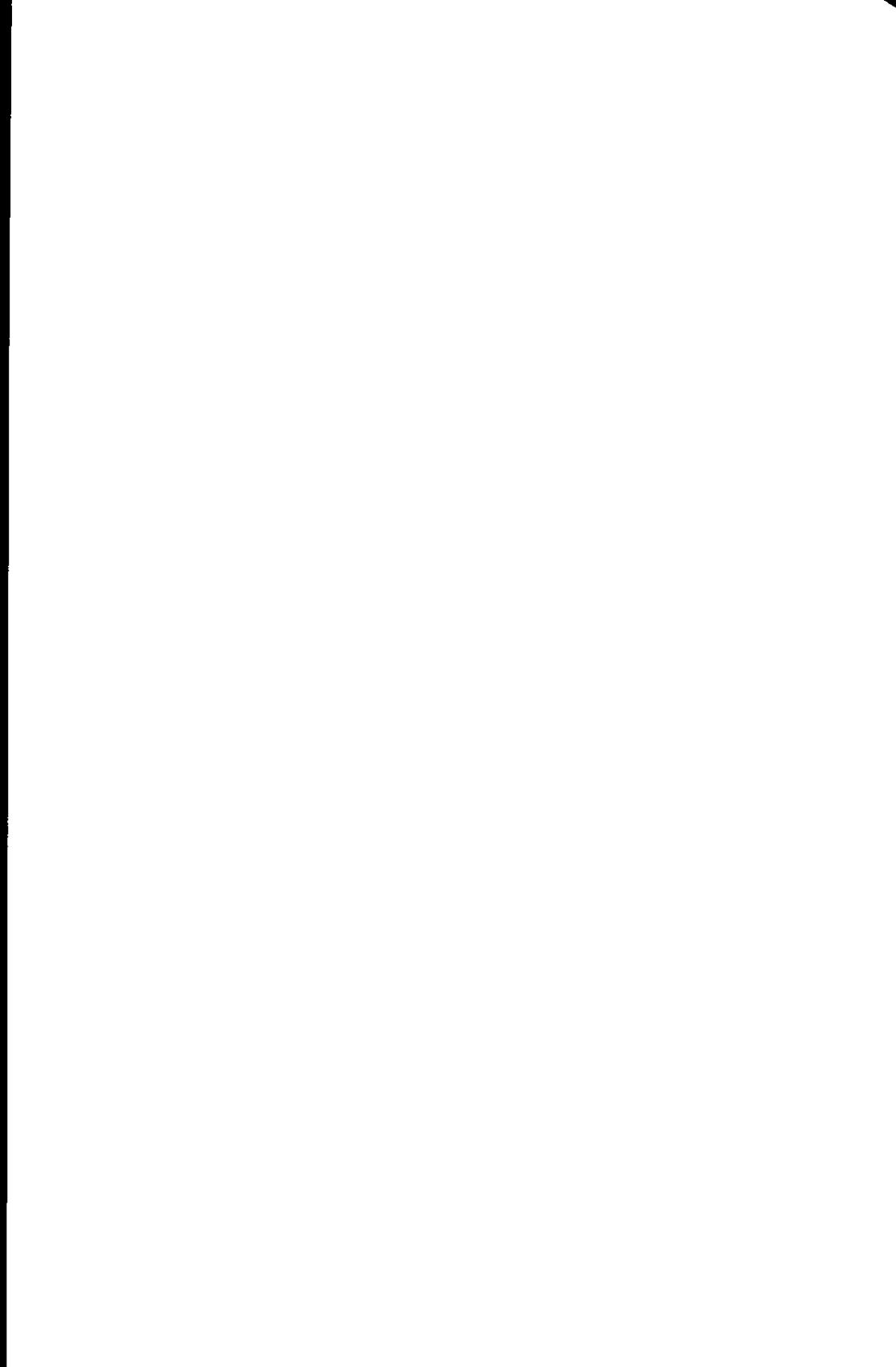
To the United States Senate and House of Representatives:

Pursuant to section 103(e)(2) of Reorganization Plan No. 7 of 1961, and section 208 of the Merchant Marine Act, 1936, as amended, I am pleased to submit the twenty-sixth annual report of the activities of the Federal Maritime Commission for fiscal year 1987 (ending September 30, 1987).

Sincerely,

Edward J. Philbin

Edward J. Philbin
Acting Chairman



MEMBERS OF THE COMMISSION



Edward V. Hickey, Jr.
Chairman
Appointed 1985
Term Expires 1991
(R) Virginia



James J. Carey
Vice Chairman
Appointed 1981
Term Expires 1990
(R) Illinois



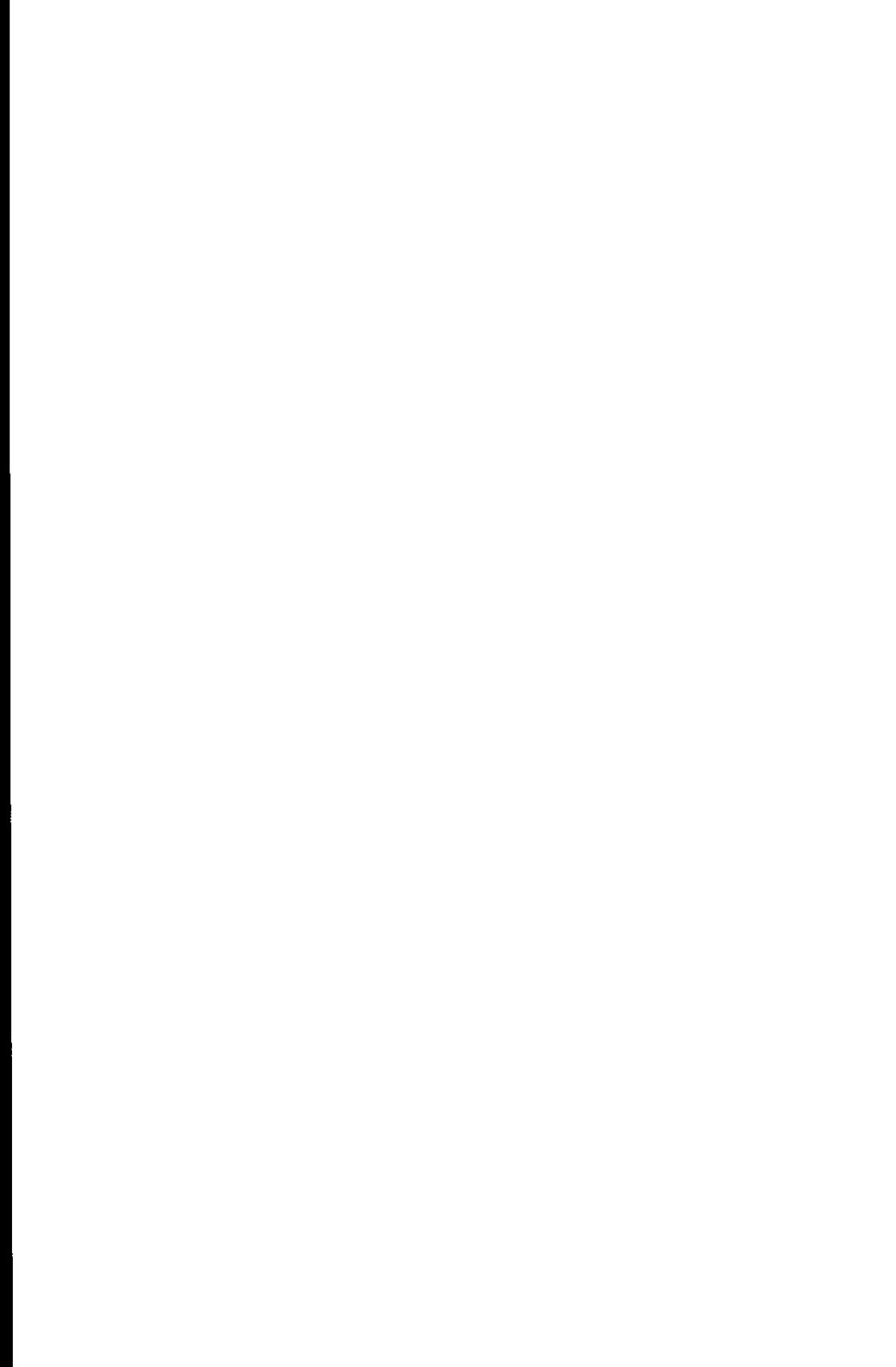
Edward J. Philbin
Commissioner
Appointed 1985
Term Expires 1989
(R) California



Thomas F. Moakley
Commissioner
Appointed 1977
Term Expires 1988
(D) Massachusetts



Francis J. Ivancie
Commissioner
Appointed 1985
Term Expires 1992
(D) Oregon



SENIOR COMMISSION OFFICIALS

Secretary.....Joseph C. Polking
Chief Administrative Law Judge.....Charles E. Morgan
General Counsel.....Robert D. Bourgoin
Director, Office of
 Equal Employment Opportunity.....Mary A. Jackson
Managing Director.....Edward P. Walsh
Director, Bureau of Trade Monitoring.....Austin L. Schmitt
Director, Bureau of Domestic Regulation.....Robert G. Drew
Director, Bureau of Economic Analysis....Robert A. Ellsworth
Director, Bureau of Hearing Counsel.....Seymour Glanzer
Director, Bureau of Investigations.....Wm. Jarrel Smith, Jr.
Director, Bureau of Administration.....John Robert Ewers



I

THE COMMISSION

A. HISTORY

The Federal Maritime Commission was established as an independent regulatory agency by Reorganization Plan No. 7, effective August 12, 1961. Prior to that time, the Federal Maritime Board was responsible for both the regulation of ocean commerce and the promotion of the U.S. Merchant Marine. Under the reorganization plan, the shipping laws of the United States were separated into two categories -- regulatory and promotional. The responsibilities associated with promotion of an adequate and efficient U.S. Merchant Marine were assigned to the Maritime Administration, now located within the Department of Transportation. The newly-created Federal Maritime Commission was charged with the administration of the regulatory provisions of the shipping laws. The Commission is now responsible for the regulation of oceanborne transportation in the foreign commerce and in the domestic offshore trade of the United States. The passage of the Shipping Act of 1984 brought about a major change in the regulatory regime facing shipping companies operating in the foreign commerce of the United States.

B. FUNCTIONS

The principal statutes or statutory provisions administered by the Federal Maritime Commission are the Shipping Act of 1984, the Shipping Act, 1916, the Intercoastal Shipping Act, 1933, and section 19 of the Merchant Marine Act, 1920.

The Commission's regulatory responsibilities include:

- Reviewing and monitoring agreements of common carriers and other persons engaged in the U.S. foreign commerce. These agreements include conference, pooling, joint service and space charter agreements.
- Receipt and review of tariff filings (but not the regulation of rate levels) by common carriers engaged in the U.S. foreign commerce.
- Protecting shippers and carriers engaged in the foreign commerce of the United States from restrictive or non-market-oriented rules and regulations of foreign governments and/or the practices of foreign-flag carriers that have an adverse effect on the commerce of the United States.
- Protecting the rights of U.S.-flag shipping companies to transport cargoes in the foreign-to-foreign trades.
- Regulating rates, charges, classifications, rules and tariffs of foreign government controlled carriers to ensure that such matters are just and reasonable.
- Regulating rates, charges, classifications, tariffs and practices of ocean common carriers in the domestic offshore trades of the U.S.
- Licensing of international ocean freight forwarders.
- Issuing passenger vessel certificates evidencing financial responsibility of vessel owners or charterers to pay judgments for personal injury or death or to repay fares for the nonperformance of a voyage or cruise.
- Investigating discriminatory rates, charges, classifications, and practices of ocean common carriers, terminal operators, and freight forwarders operating in the foreign and/or domestic offshore commerce of the United States.

The 1984 Act exempts agreements that have become effective under the Act from the U.S. antitrust laws (as contained in the Sherman and Clayton Acts). The Commission

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

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

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

The Commission conducts informal and formal investigations to carry out its regulatory responsibilities. It also holds hearings, considers evidence and renders decisions, and issues appropriate orders and implementing regulations. The Commission also adjudicates disputes involving the regulated community, the general shipping public, and other affected individuals or interest groups.

C. ORGANIZATION

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

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

In fiscal year 1987, the Commission was authorized a total of 214 full-time equivalent positions and had a total appropriation of \$11,947,000. The majority of the Commission's personnel are located in Washington, D.C. with field offices in New York, San Francisco, Los Angeles, New Orleans, Miami, Houston, and Hato Rey, Puerto Rico.

II

THE YEAR IN REVIEW

The year 1987 was significant for the Federal Maritime Commission because it so clearly reflected the agency's new emphasis on aggressive enforcement initiatives. This realignment of priorities was largely made possible by the enactment of the Shipping Act of 1984, which de-emphasized the pre-implementation processing responsibilities of the agency, and accentuated the Commission's monitoring and enforcement capabilities and objectives. The Commission's resources have been redirected accordingly to lend greater vigor and support to its enforcement programs. At the same time, the Commission has increased its efforts to combat foreign practices that unreasonably create unfavorable conditions in our foreign trades, pursuant to the Commission's authority under section 19 of the Merchant Marine Act, 1920. These efforts aim to ensure an open and level playing field for all participants in the U.S. foreign commerce. The Commission also made substantial progress during fiscal year 1987 in long-range projects such as its automated tariff filing program, and data collection and analysis for the report required by section 18 of the 1984 Act.

The Annual Report is structured as an office-by-office synopsis of the activities and achievements of the Commission's bureaus. This section of the Report provides a brief summary of some of those major accomplishments.

A. ENFORCEMENT

The Commission's stepped up enforcement program has been bolstered by an increased emphasis on organized intelligence gathering and in-depth investigative techniques. Computer programs which help to identify carriers and their market shares in a particular trade area aid the Commission staff in targeting areas that are in need

of surveillance or investigation. The Commission's effectiveness in its enforcement activities has been further enhanced by stronger headquarters direction of the Commission's various district offices, and the establishment of a new district office in Houston, Texas.

These enforcement efforts have been successful in uncovering serious trade malpractices. The Commission's most significant accomplishment in this regard in fiscal year 1987 was its Trans-Atlantic Trade Initiative, which resulted in the establishment of a unique self-policing program for the group of carriers involved, a series of disclosures of certain transactions in the trade, and payment to the Commission of \$2,000,000. The objectives of this initiative were to achieve compliance with the shipping acts and to bring about stability in the Trans-Atlantic Trades.

In addition to the payment received as a result of the Trans-Atlantic Trade initiative, the Commission also compromised or assessed \$2,435,050 in civil penalties during the fiscal year.

B. RESTRICTIVE FOREIGN PRACTICES

Fiscal year 1987 was the most active year in the history of the Commission in terms of efforts aimed at identifying and correcting unfavorable conditions in U.S. foreign commerce. The Commission issued orders pursuant to section 15 of the 1984 Act to carriers active in the U.S. trades with Japan, Korea, Taiwan and the People's Republic of China, soliciting information about the carriers' operations in U.S. trades within those countries in an effort to identify foreign government trade restrictions that impact adversely on those operations. That information is in the process of being reviewed and analyzed to determine whether action under section 19 of the Merchant Marine Act, 1920, is necessary in those trades.

Foreign governmental trade barriers in Colombia and Peru were the subjects of formal Commission proceedings initiated under section 19. The proceeding concerning Colombia was discontinued when the Government of Colombia agreed to provide the complaining party free access to cargo in the trade. In the Peru matter, the Commission issued a proposed rule which would suspend the tariffs of Peruvian-flag carriers in response to a Peruvian cargo reservation decree reserving 100% of imports and exports for Peruvian carriers; at fiscal year's end, the Commission was closely monitoring diplomatic efforts to resolve the controversy. These proceedings typify most section 19 actions, which, though they frequently include the proposal of serious sanctions to combat the particular restrictive practices, have historically been terminated upon the foreign government's discontinuance of the offending practices.

C. ATFI

Substantial progress was made toward automating tariff filings, which are currently received and processed manually. (During fiscal year 1987, the Commission received approximately 746,800 tariff pages.) The feasibility of automating this system was determined by the Commission's private-sector contractor, and the Commission proceeded with plans for a cost benefit analysis and the preparation of a Request for Proposals for a prototype automated tariff filing system.

D. SECTION 18 STUDY

The Commission continued with its preparation of the five-year study mandated by section 18 of the 1984 Act. Trade data is being collected through surveys and other methods, and procedures for analysis of the data are being refined. The Commission's staff is continuing to consult regularly with other Federal agencies and with various industry groups to ensure the accuracy and appropriateness of the efforts to date.

E. OTHER COMMISSION PROCEEDINGS

During the fiscal year, the Commission issued a number of significant decisions, including one in the "50 Mile Container Rules" case, and several rulemaking proceedings which further implemented the 1984 Act, based upon the Commission's experience with the Act to date.

A more detailed description of the initiatives and achievements of the Commission during fiscal year 1987 follows.

III

SURVEILLANCE AND ENFORCEMENT

A. SURVEILLANCE

An integral part of the Commission's administration of the Shipping Act, 1916, and the Shipping Act of 1984 is the systematic surveillance of carrier activity and trade conditions to ensure continuing compliance with statutory standards and the requirements of the Commission's rules. The Bureau of Trade Monitoring has two Offices of Monitoring (Trade Groups I and II), which administer a variety of surveillance programs designed to afford the Commission the necessary degree of oversight in these areas.

The 1984 Act provides that, unless a given agreement is rejected for technical reasons or for failure to conform with the mandatory conference agreement provisions in sections 5(b) and 5(c), or is contrary to the standards of section 6(g) of the Act, the agreement should be permitted to take effect, with the Commission maintaining surveillance over the parties' concerted activities. In order to satisfy this statutory requirement, as well as the need to detect possible activity proscribed by the 1984 Act, the Commission has directed the activities of the Bureau of Trade Monitoring toward improving the breadth and effectiveness of its monitoring programs.

During fiscal year 1987, the Commission significantly refined its programs for the in-depth review of selected critical trades. These programs integrated a number of surveillance factors, including operator market share data, cargo tonnages of major-moving commodities, shipper identification, relevant tariff rates and rate histories, use of service contracts, agreement-document analysis, and investigation for existence of possible malpractices. In

January of 1987, the Bureau of Trade Monitoring prepared a comprehensive in-depth surveillance report analyzing the Brazil/United States trades. This report carefully analyzed the factors affecting trade conditions, and interpreted the role Brazilian Government policies have played in the development of bilateral shipping relations. In March 1987, the Bureau of Trade Monitoring completed its Japan Trade Study, a staff review of the crucial factors affecting this key foreign trade area.

A major development in January was the completion of the First Quarterly Monitoring Report. This new internal publication of the Bureau of Trade Monitoring, which is updated on a regular quarterly schedule, is intended to provide the Commission with timely trade information in a manner that effectively addresses trade problems as they arise. Each edition features timely trade news updates, agreement activity analyses, market share data for key subtrades, and special reports on issues critical to effective surveillance. Three editions of this report were released during the fiscal year.

In July, the Bureau of Trade Monitoring completed an update of the Mediterranean Monitoring Report originally issued during the previous fiscal year. The update, which was included as a supplement to the Third Quarterly Monitoring Report, featured an analysis of market share and rate activity for 1986 and part of 1987.

Also, work was completed on the first of a series of Controlled Carrier Monitoring Reports. This Report, which is also prepared for internal Commission use, provided an analysis of the market shares held by controlled carriers in a number of key subtrades, an analysis of the special permission activities of controlled carriers during the first half of 1987, and a number of individual carrier profiles.

Other activities completed by the Commission's monitoring offices during the past fiscal year include: a preliminary economic analysis under section 6(g) of the 1984

Act of a proposed United States/Peru equal access agreement; a detailed study of predatory pricing and nonprice predatory activity under the standards of section 10(c)(3) of the 1984 Act; an economic analysis of carrier operations in the U.S./Colombian trades; preliminary economic analysis of the penetration of U.S. markets via Montreal by certain third-flag carriers; an inquiry into India/United States trade conditions; an economic analysis of the potential impact of the Trans-Atlantic Revenue Apportionment Agreement; and an inquiry into service contract activity in the inbound Far East trades.

B. ENFORCEMENT

The Commission has also determined that under the Shipping Act of 1984, greater regulatory emphasis must be placed upon enforcement activity. Accordingly, in order to concentrate its efforts and provide better coordination of long and short term enforcement initiatives, the Commission established an Enforcement Program Board consisting of Directors and Deputy Directors of the Bureaus of Investigations, Hearing Counsel, Trade Monitoring and Domestic Regulation, which have technical or substantive responsibility for compliance with the Shipping Acts.

The Trans-Atlantic Trade initiative, commonly referred to as "North Atlantic Amnesty," is an example of a long term program recommended by the Enforcement Program Board to the Commission. The purpose of this initiative was to help achieve stability in those trades and to bring about compliance with the Shipping Acts. Under an amnesty agreement between the Commission and 13 carriers, the carriers agreed to establish an enhanced neutral-body self-policing program to meet that purpose. In addition, the carriers agreed to make disclosures concerning methods of past rate malpractices and to make payments to the Commission totaling \$2,000,000.

To meet the needs of its expanded surveillance and enforcement role, the Commission augmented its professional investigative and legal staff. The Commission also provided training for professional employees at the White Collar Crime Training Program at the Federal Law Enforcement Training Center in Glynco, Georgia. The Program focused on investigation of fraud-related offenses and offered an opportunity for the exchange of ideas regarding investigative strategies and techniques utilized by other Federal agencies.

The greater emphasis by the Commission on enforcement activity resulted in a significant increase in the assessment and compromise of civil penalties (See Appendix E) and in the number of investigations of major violations conducted during the fiscal year. It is anticipated that sustained enforcement activity will have an escalating deterrent effect on malpractices in the shipping industry.

IV

DEVELOPMENTS IN MAJOR U.S. FOREIGN TRADES

A. TRANSATLANTIC

The Transatlantic trades continue to be plagued by overcapacity. November witnessed the financial collapse and subsequent withdrawal from the trades of conference operator United States Lines. The departure reduced annual capacity by approximately 180,000 twenty-foot equivalent units. However, the effect of this departure on trade overcapacity was dampened by the entry of Nedlloyd Lines into the Atlantic and the more recent additions of newcomers such as Senator Line, American Transport Line, Container Express Lines, South Atlantic Cargo Shipping, Milwaukee Liner Service, and Topgallant Group, Inc. Also, Maersk Line recently announced plans to enter this market. Finally, planned expansions announced by operators already serving the trade, most notably Dart Container Line, may further exacerbate the disequilibrium.

Meanwhile, despite significant weakening of the United States dollar vis-a-vis certain European currencies, the demand for westbound liner service continues to be much stronger than in the eastbound direction. Since most carriers provide round-trip service, they face the uneconomical proposition of shipping full containers westbound and less-than-full or empty containers eastbound on the return leg. The conferences in these trades, the U.S. Atlantic-North Europe Conference (ANEC) and the North Europe-U.S. Atlantic Conference (NEAC), have responded in several ways. Major independents, namely Evergreen Line and Polish Ocean Line, have been urged to become full-fledged conference members. However, these carriers prefer their current stabilization arrangements, which are referred to as the Eurocorde agreements, which provide for voluntary discussion and agreement with the conferences on rates and service contracts.

Eurocorde partnership has been extended to include American Transport Line, Mediterranean Shipping Co., and South Atlantic Cargo Shipping. Although this second-best approach to collaborative rate setting has become popular, the evidence relating to the original Eurocorde arrangements, involving only Evergreen Line and Polish Ocean Line, indicates little impact on trade stability. Of course, the expanded Eurocorde membership and corresponding increase in market share might prove to be more successful.

Lines operating in the North Europe Transatlantic trades have been losing cargoes to carriers serving the Mediterranean trade. For instance, freight that usually moves from North Europe ports has occasionally been diverted to Marseilles. Presumably, the recent Atlantic Westbound Stabilization Agreement (No. 206-011150) was drawn up in response to this outside competitive pressure. The agreement authorizes members of the South Europe/U.S.A. Freight Conference, North Europe-U.S. Atlantic Conference, and North Europe-U.S. Gulf Freight Association, to agree upon rates, service contract terms and practices. The region involved is the inbound trade to the U.S. Atlantic and Gulf from North European and Mediterranean ports.

Another measure contemplated by the conferences was the introduction of the Trans-Atlantic Revenue Apportionment Agreement (TARA) (No. 212-011045). This agreement would have resulted in the averaging and apportionment of certain net revenues among conference operators. Although the prospective scope of the agreement would have included the entire trade between U.S. Atlantic ports and points, and ports and points in Northern Europe, it would have at first been limited to four eastbound commodities. However, TARA was canceled before it was ever implemented. It deserves mention here because it was decidedly both innovative and controversial. Unlike traditional pooling agreements, TARA did not provide for assigned cargo shares and over- and under-carriage penalties. Instead, TARA employed "a net revenue per cargo unit" concept and provided for equalization of such net

revenues for all members. Although TARA was allowed to go into effect, the FMC made clear its intention to monitor its impact very closely. Finally, the European Commission, in response to a complaint against TARA by the European Shippers' Councils, had announced that it would conduct an investigation into the anti-competitive aspects of the agreement.

Another significant development was Dart Line's announcement of its intention to resign from NEAC. Dart's withdrawal, which is scheduled to become official on January 1, 1988, will come after eighteen years as a conference member. Dart will, however, retain its membership in ANEC.

The North Europe Pacific Freight Conference witnessed a decline in membership to five carriers as a result of the August resignation of Trans Freight Lines (TFL). TFL's resignation coincides with its late-September decision to enter into a conference rate agreement with Nedlloyd Lines. This conference, known as the North Europe United States Pacific Rate Agreement (No. 202-011132), permits the two operators to agree upon rates, charges, practices, and conditions of service between Western U.S. ports and points and North Europe, via U.S. Atlantic and Gulf interchange ports. Basically, the move reflects the fact that TFL's cargo to the West Coast moves primarily intermodally, through U.S. Atlantic and Gulf Coast ports, rather than along an all-water route.

In addition to the developments discussed above, other significant agreement activity transpired:

The Europact Agreement (No. 206-011139) permits parties belonging to the North Europe-U.S. Pacific Freight Conference, the North Europe-U.S. Gulf Freight Association, and the North Europe-U.S. Atlantic Conference to discuss and agree upon rates, practices, and conditions of service. The scope of this agreement includes the inbound trade routes from Europe to the United States. Adherence to any accord reached is voluntary, and parties are authorized to take immediate independent action.

The Amercorde Agreement (No. 206-011140) provides the Pacific Coast European Conference, the Gulf European Freight Association, and the U.S. Atlantic-North Europe Conference with authority similar to that of Europact. The scope covers the outbound trade from the United States to Europe.

The American Transport Line/Regency Navigation Co., Ltd., Space Charter Agreement (No. 203-011143), allows the parties to charter space on each other's vessels operating in the trade between the United States and Europe. Also permitted is container and equipment interchange, as well as cooperation in the rationalization of vessel sailings and schedules.

Gulfway (No. 203-011141) authorizes the parties to agree upon rates, practices, and conditions of service in the trade between the United States Gulf and various European nations. The parties include: Lykes Bros. Steamship Company, Inc., Hapag-Lloyd, Sea-Land Service, Trans Freight Lines, Gulf Container Line, Compagnie Generale Maritime, Nedlloyd Lines and South Atlantic Shipping. Adherence to any accord reached among the parties is voluntary.

The Atlantic Express Line/American Transport Line, Inc., Space Charter Agreement (No. 217-011119), permits American Transport Line, Inc., to charter space on Atlantic Express Line's vessels in the U.S.-Europe trades, and provides for coordinated sailings, equipment interchange, and terminal rationalization.

The Mediterranean Shipping Co., S.A./American Transport Line, Inc. Space Charter Agreement (No. 217-011118) permits cross-chartering in the U.S. Europe trades, and authorizes equipment interchange, as well as rationalization of sailing schedules.

The Pacific-Europe Bridge Agreement (No. 206-011120) permits the inbound and outbound conferences between Europe and the U.S. Pacific Coast to discuss and agree upon matters pertaining to rates, rules, shipper negotiations, policing, and space chartering.

B. MEDITERRANEAN

Toward the end of 1986, chronic overcapacity and severe competitive pressures from Evergreen Marine Corporation (Evergreen) threatened the survival of the South Europe-U.S.A. Freight Conference (SEUSA) in the trade to the Atlantic and Gulf from the Mediterranean. The conference, until March known as the Mediterranean-U.S.A. Freight Conference (MEDUSA), responded by reducing the independent action notification period to two days in the Italian subtrade and inviting major independent operators to assume complete conference and revenue pool membership.

The reduction of the independent action notification period afforded member lines the ability to promptly adjust transportation rates in response to the reduced prices offered shippers by independent rivals. This flexibility encouraged members to retain conference affiliation. More significantly, in January, Evergreen joined the conference. In addition, Maersk Line and Trans Freight Lines elected to extend conference participation to include the fiercely competitive Italian range. Previously, the latter two conference carriers had operated as independents in this geographic market. Furthermore, all three carriers consented to join the revenue pool. Subsequently, in April, the scope of the pool was extended to include both the French and Spanish ranges. However, one final measure, in the form of an amendment which would have required all conference members to participate in the pool, was withdrawn.

The new agreement configuration combined with expanded pool membership has considerably strengthened the conference. As evidence of this additional vigor, over the course of the year, transportation rates appear to have gradually increased.

As noted above in the discussion of Transatlantic Trades, a more recent development designed to deal with intransit carriers serving adjacent trade routes and,

therefore, having the potential to impact on rate levels, is the Westbound Stabilization Agreement (No. 206-011150) among members of SEUSA, the North Europe-U.S. Atlantic Conference, and the North Europe-U.S. Gulf Freight Association.

In the eastbound trade, in an attempt to stabilize rates, five lines established a new rate-making body. The conference, known as the U.S. Atlantic and Gulf/Western Mediterranean Rate Agreement (No. 202-011102) includes Costa Line, Sea-Land Service, Farrell Lines, Trans Freight Lines, and Nedlloyd Lines. The trade has been without a conference since the U.S. Atlantic and Gulf/Italy, France, and Spain Freight Conference terminated its agreement as of May 1, 1986. The agreement permits the carriers to publish a common tariff. Furthermore, in order to control service contract activity, the agreement prohibits individual members or groups of members from negotiating or entering into service contracts which cover cargo carried within the scope of the conference. However, members retain the option of not participating or limiting the extent of their participation in conference service contracts.

In addition to the developments discussed above, other significant agreement activity occurred:

The Western Mediterranean Stabilization Agreement (No. 203-011148) authorizes SEUSA and Ocean Star Container Line to agree upon rates, rules, and practices. Cargo moving under one party's service contracts may be counted under volume requirements in the other party's service contracts. The agreement's scope encompasses liner trade from western Mediterranean nations to the United States Atlantic and Gulf.

The Lykes Bros. Steamship Co., Inc./Italia di Navigazione S.p.A., Space Charter Agreement (No. 217-011093), permits Lykes to provide space chartering opportunities and terminal services in the trade between the South Atlantic-Gulf ranges and the Mediterranean.

The Greece/U.S. Stabilization Agreement (No. 203-011147), entered into by the Greece/U.S. Atlantic and

Gulf Conference and Ocean Container Line, authorizes concerted rate action and uniform rules and service contracts. The liner traffic involved is that moving from Greece to the U.S. Atlantic and Gulf.

C. AFRICA

The African trades were characterized by an increase in conference activity, caused primarily by the devaluation of the dollar and economic reform policies taking place in Africa. The most significant improvement in U.S. trade relations took place with the North African countries of Morocco, Algeria and Tunisia, whose governments moved towards deregulation of the private sector and expanded involvement in international markets. The recent increase in energy prices also contributed to the ability of the three countries to increase their imports of U.S. products.

Statistics from the U.S. Department of Commerce indicate that 1986 U.S. exports to Morocco were \$486 million, an increase of 74 percent over the previous year. Exports to Algeria also rose, increasing from \$430 million in 1985 to \$452 million in 1986, while arrangements for increased future exports to Tunisia were established.

During fiscal year 1987, The United States South and East African Conference agreed to a new system of extending shippers credit by no longer requiring a shipper's credit agreement. A member may now extend credit to bona fide shippers without prior conference approval.

General Line, a Nigerian-based carrier, established a new liner service between the U.S. Atlantic and Gulf and West Africa. Mediterranean Shipping Company began an independent service from North Europe to South Africa, using the Port of Antwerp as a relay point for its already existing transatlantic service to North America.

In conjunction with Global Container Line's connecting carrier agreement, American President Lines (APL) implemented fortnightly sailings to ports in West Africa.

The agreement provides for containers to be transshipped over Fujairah to APL's West Africa Express service and ultimately its transpacific routes.

In other activities, the Maritime Administration rejected a request by Farrell Lines to reconsider apportioning the nation's Essential Trade Route system. The agency recently modified 30 previously-established routes into eight major trade areas. Farrell sought to have the agency expand the scope of the West Africa routes to include ports in Central and South America and/or South and East Africa.

The following summarizes major agreement developments in the African trade for fiscal year 1987:

The Armada/GLTL East Africa Service Agreement (No. 207-010640-001) requires Armada/Great Lakes/East Africa Service, Ltd., and Great Lakes Transcaribbean Line GmbH to remain under their current agreement until March 1, 1988, and restricts the use of the agreement trade name in the event of the agreement's dissolution.

The South and East Africa/U.S. Conference Agreement (No. 202-008054-025) was modified to permit the Bank Line, Ltd., Lykes Bros. Steamship Co., Inc., and South Africa Marine Corp. Ltd., to charter vessel space on each other's ships.

D. TRANSPACIFIC

Serious problems of overtonnaging and cargo imbalance continued to affect the transpacific trades during 1987. Nevertheless, certain developments portend a far healthier competitive situation in the near future. USL's withdrawal was probably the single most important factor impacting on the trade. Although a devastating blow to the U.S. merchant marine, USL's withdrawal and accompanying bankruptcy have led surviving carriers to anticipate a more congenial competitive situation, particularly in the eastbound trades. The USL round-the-world service operated in the eastbound

direction only, and added the enormous capacity of its giant Econships to what was already a highly competitive trade.

During 1987, the outbound Transpacific Westbound Rate Agreement (TWRA) succeeded in stemming the series of carrier defections that had reduced its market power during the previous two years. Only USL withdrew during fiscal year 1987, and that action, of course, did not result in additional nonconference competition. The inbound Asia North America Eastbound Rate Agreement (ANERA), on the other hand, lost two important Korean-flag carriers, Hyundai Merchant Marine Co., Ltd., and Hanjin Container Line, Ltd., in addition to USL's withdrawal. Both Korean carriers remain active in the transpacific trades, and their combined market shares exceed 25 percent in the inbound trade from Korea. Both carriers continue membership in the TWRA, a fact that may relate to the continuing fragility of outbound rate structures.

Although the TWRA encompasses all outbound trades from the United States to Asia, the inbound ANERA scope excludes Japan. Conference activity in the trade from Japan to the United States occurs under the aegis of two other conferences, the Transpacific Freight Conference of Japan and the Japan/Atlantic and Gulf Freight Conference. Neither conference experienced any membership changes other than the resignation of USL.

Inbound, service contracts proliferated during 1987, but, unlike earlier years, these contracts were negotiated on the conferences' behalf rather than by individual conference carriers. Individual conference carrier contracts were prohibited by amendments to the relevant conference agreements toward the end of the 1986 fiscal year. Outbound, the TWRA prohibited individual carrier contracts during 1986, but did not initiate conference contracts at any time during 1987.

American Transport Line, a service of Crowley Maritime Corporation, instituted a small westbound round-the-world service during 1987, while Senator Line of West Germany

initiated a larger service in both directions. ABC Containerline, a Belgian carrier, began calling at Singapore en route to the U.S. Atlantic and Gulf Coasts from Australia. In addition, Hanjin has agreed to take over Korea Shipping Corporation in an attempt to save the failing carrier. The two lines will not merge at this time, but will continue to operate parallel North American services.

The pending disposition of USL's Econships remains a major source of uncertainty in this trade, as well as others. The massive potential capacity that those vessels could reintroduce to the transpacific complicates projections concerning overtonnaging, trade imbalances, and rate patterns in the medium and long terms.

In the Hawaiian trades, in which USL had been the major competitor of Matson Navigation Company, Sea-Land Service, Inc., made known its intentions to acquire certain USL vessels and assume that carrier's competitive role. This matter was pending before the Maritime Administration at the close of the fiscal year.

A number of major agreements were filed during 1987:

The Hyundai/Hanjin Space Charter Agreement (No. 217-011023) permits the two Korean-flag carriers to charter space on each other's vessels. The agreement covers the trade between U.S. and Canadian West Coast ports, and ports and points in Hong Kong, Macao, Taiwan, Japan and Korea.

The Far East/Caribbean Discussion Agreement (No. 203-011122) permits ANERA and Nedlloyd Lines to discuss and agree upon rate and service matters in the inbound trade from the Far East (except Japan) to Puerto Rico and the Virgin Islands.

ANERA (No. 202-010776-014) amended the terms of its agreement to provide for a cut-off of conference information to carriers that have tendered notice of resignation.

The "K" Line/Hyundai Space Charter Agreement (No. 217-011146) allows "K" Line to charter space to Hyundai for the carriage of cargo from Korea to Puerto Rico.

The Bali Hai Service (No. 207-011138) is a joint service of Mitsui O.S.K. Lines, Ltd., Nippon Yusen Kaisha, and the China Merchant Steam Navigation Co., Ltd. The Service was formed to serve the trade between Japan and Korea and Pago Pago, American Samoa, and between Pago Pago and other South Pacific ports.

TWRA (No. 202-010689-027) amended its agreement to prohibit members from entering into loyalty contracts.

E. LATIN AMERICA AND THE CARIBBEAN

USL's bankruptcy and subsequent withdrawal from active service had a major impact on this trade as well during fiscal year 1987. This event ended USL's dominance of the U.S. market share in Latin America, and opened the trade to other carriers.

San Francisco-based Crowley Maritime Corp. purchased USL's South America service, eliminating Crowley's \$3.9 million creditor claim against USL's parent company McLean Industries, Inc. USL's liabilities to Crowley were caused by its charter of three Crowley 2,088-TEU containerships, which were subsequently returned to Crowley's American Transport Line, Inc. (AmTrans) subsidiary. As part of the settlement, AmTrans leased four additional Lancer-class vessels USL had used in the trade, and agreed to pay the former carrier a portion of its future South American trade revenues.

In June, AmTrans introduced upgraded weekly service to Venezuela and Brazil, although it had not yet deployed the Lancer-class ships. The move was seen as a tactic by Crowley to gain an early lead over competitors in the trade. However, other carriers also sought to fill the void caused by USL's departure by expanding their southbound services.

Sea-Land Service (Sea-Land) submitted a bid to purchase USL's transpacific trade, and planned to initiate sailings to the East Coast of South America. The entry of Sea-Land's transshipment service into the Inter-American

Freight Conference signified a moderation of Latin American government policy favoring direct-call service. Officials from Brazil and the U.S. had recently concluded a revised and extended 3-year bilateral maritime agreement, reflecting Brazil's commitment to make more government cargo available to non-Brazilian flag carriers.

Other increases in service included the hotly-opposed participation by Lykes Bros. Steamship Co. and Farrell Lines, which entered the U.S. Gulf and East Coast of South America trades. Both carriers joined the important Brazilian and Argentine pools, which authorize carriers from the direct trading partners to split southbound cargo, while allocating 40 percent of northbound trade to each national-flag carrier group and the remaining 20 percent to third-flag carriers.

By mid-year, the total number of U.S.-flag carriers entering the Latin American trade was four. A Brazilian carrier, Netumar Lines, began offering monthly service to U.S. South Atlantic ports, thus enabling it to increase its share of cargo movements between the U.S. and Brazil. Venezuelan Container Line, a subsidiary of H.L. Boulton & Co., also sought to benefit from USL's departure by introducing a fortnightly service between Charleston, South Carolina, and Punto Cabello, Venezuela. Columbus Line, a West German subsidiary of Hamburg-Sud., established sailings between U.S. Atlantic ports and the East Coast of South America.

In other activities, the Southeastern Discussion Agreement permitted the Gulf/Southeastern Caribbean Conference to meet with competitor Trailer Marine Transportation Corp. in order to exchange information and agree upon rates and charges, while refraining from issuing common tariffs. The agreement exemplifies the type of extra-conference stabilization and innovative rationalization recently seen in the Mediterranean and North Atlantic trades. It provides for specific rate activity rather than broad rationalization, which has tended to limit the rate-enforcing ability of conferences required to operate with independent action.

Tecmarine Lines, a U.S.-owned firm incorporated in the Cayman Islands, introduced a new monthly service in the New Orleans/Caribbean trade. The company will operate three self-sustaining containerships in the trade.

The following summarizes major agreements in the Latin American trade for fiscal year 1987:

The Crowley Caribbean Transport/American Transport Line, Inc., Space Charter Agreement (No. 213-011059-001) permits exchanges of cargo space and equipment, as well as coordination of sailing schedules and destinations from the U.S. Atlantic and Gulf to Central and South American ports.

The U.S./Jamaica Discussion Agreement (No. 203-011063-002) allows for voluntary information exchanges between R.B. Kirk-Connell & Bro., Ltd., and Crowley Caribbean Transport, Inc., in the trade from the U.S. Atlantic & Gulf to Jamaica.

The Transnave-Navconsa Space Charter & Sailing Agreement (No. 213-011018-001) permits the parties to charter space and coordinate sailings on two of each other's vessels. The scope of the agreement covers trade from Florida to Ecuador and Panama.

The ELMA/A. Bottachi Space Charter Agreement (No. 217-011047) provides for cross-chartering cargo space by each party in the trade between the U.S. Atlantic and Gulf to ports in Brazil, Uruguay and Argentina.

The U.S. Atlantic & Pacific/Colombia Equal Access Agreement (No. 204-010066-011) was modified to admit Lykes Lines.

The Tecomar S.A./Concorde Line Space Chartering Agreement (No. 217-011079) authorizes Concorde Line to cross-charter cargo space with Tecomar, S.A., in the Gulf of Mexico.

The Trailer Marine Transport Co./Interline Connection, Inc., Space Charter and Rationalization Agreement (No. 232-011121) permits exchanges and joint operation of cargo space, equipment, terminal facilities and stevedoring. The

agreement also provides for coordination of sailings from Puerto Rico to the Leeward and Windward Islands.

The Central America Discussion Agreement (No. 203-011075-004) permits voluntary rate and rule discussions among the U.S./Central American Liner Association and four independent carriers.

The CCNI-TNE Space Charter Agreement (No. 217-011149) allows cross-chartering of cargo space and use of each other's equipment in the trade from the U.S. Atlantic and Gulf to Chile and Ecuador.

The Ecuador Discussion Agreement (No. 203-010999-001) was modified to authorize the participation of Transportes Navieros Equatorianos Line in rate discussions with Naviera Consolidada S.A. and the U.S. Atlantic & Gulf/Ecuador Freight Association.

The U.S. Atlantic Coast/Brazil Agreement (No. 212-009847-018) and the U.S. Gulf & Brazil Agreement (No. 212-009848-020) were modified to provide for a new pooling period and establish minimum sailings and port calls commencing October 1, 1987 through December 31, 1988. The parties involved include Companhia de Navegacao Lloyd Brasileiro, Companhia de Navegacao Maritima Netumar, American Transport Lines, Inc., and Companhia Maritima Nacional.

The Naviera Pacific/Nedlloyd Lines Space Charter Agreement (No. 217-011151) permits the parties to cross-charter cargo space on each other's vessels between the U.S. Pacific Coast and Venezuelan ports.

The Brazil/U.S. Atlantic Coast Agreement (No. 212-010027-018) permits Companhia de Navegacao Lloyd Brasileiro, Companhia de Navegacao Maritima Netumar, American Transport Lines, Inc., A/S Ivarans Rederi, Empresa Lineas Maritimas Argentinas S.A., A. Bottacchi S.A. de Navegacion C.F.I.I., and Van Nievelt, Goudriaan and Co., B.V., to reallocate pool shares together with minimum sailings and port call requirements from October 1, 1987 through September 30, 1988.

The U.S./Central America Liner Association (No. 202-010987-003), among Crowley Caribbean Transport, Inc., Sea-Land Service, Inc. and Seaboard Marine Ltd., and the Aruba Bonaire Curacao Liner Association (No. 202-010950-001), among Genesis Container Line, Inc., Sea-Land Service, Inc., and King Ocean Service de Venezuela S.A., were both modified to permit their members to exercise independent action on the level of compensation paid to an ocean freight forwarder who is also a customs broker.

F. MIDDLE EAST

The Middle East is a region where the growth and development of liner service is limited due to risks of war, poorly developed infrastructures and lack of attractive cargo. The year saw Scindia Steam Navigation Co., an Indian-flag carrier, pass into receivership after suffering continually from liquidity problems. It remains uncertain whether the Indian authorities will fold Scindia's operations into the state-owned Shipping Corporation of India or simply liquidate it. In the meantime, the Government of India is considering whether cargo preference schemes, subsidies or other devices should be employed to promote its own flag carriers. Indian shippers in general are opposed, as they prefer the superior service offered by foreign-flag carriers.

The fiscal year saw the filing of Agreement No. 202-011084, the India-Pakistan-Sri Lanka-Bangladesh/North America Stabilization Agreement, a self-described cooperative working arrangement which is in fact a conference. It covers Eastbound trade from ports and points in the Indian Subcontinent to ports and points in the United States and Canada. The agreement's membership consisted of American President Lines, A.P. Moller-Maersk Line, Ceylon Shipping Corporation and Sea-Land Service, Inc. This agreement, however, was canceled on October 31, 1987.

G. WORLD-WIDE

World-wide, the root cause of most distress in the liner sector and the impetus behind most new agreement activity is persistent overtonnaging. Although perhaps ameliorated somewhat by the withdrawal of USL's Econships from the major transatlantic and transpacific trades, any relief will be temporary, pending the eventual redeployment of these vessels and the entry of newly-built and expanded tonnage. Responses to this problem include various types of rationalization agreements and other agreements or modifications designed to lessen the effect of mandatory independent action on conference rate-setting abilities. No significant examples of agreements with world-wide scope were filed during the year. Regional agreements to address the overtonnaging problem have been described under their specific geographic subheadings where considered significant.

TARIFF AUTOMATION

The FMC has the responsibility under the shipping statutes to:

1. Accept the filing of common carrier tariffs and service contracts containing rates and charges governing transportation of cargo in U.S. waterborne domestic offshore and foreign commerce. (Marine terminal operators also file tariffs of their rates and charges.)
2. Ensure that tariffs and service contract data comply with basic statutory requirements before they are accepted for filing.
3. Maintain the official file of tariffs and service contracts and certify authentic and accurate tariff data to courts and other tribunals.
4. Make tariffs and the essential terms of service contracts available for public inspection.

Tariff filings continue to be manually received and processed by the Commission. This highly labor-intensive system is proposed to be replaced with an automated system, utilizing modern data processing techniques. The data base of the Automated Tariff Filing and Information System (ATFI) is intended to be the official tariff file of the Commission. Such a system will have the ability to capture, review, process, retrieve and manipulate tariff information in an automated environment that would be responsive to the needs of the Commission, private sector users, and other Governmental agencies, and would fully automate the existing manual manner in which the Commission and the public receive tariff information.

In FY 1987, a study by the FMC's private-sector contractor found that tariff automation was feasible and the FMC's Industry Advisory Committee agreed.

Also in FY 1987, the Commission obtained a private-sector contractor through GSA and other outside technical assistance for the development of cost benefit analyses and the preparation of a Request for Proposals for a pilot or prototype operation of the automated tariff system. The first benefit cost analysis was completed in FY 1987 and submitted to the Office of Management and Budget.

The electronic ATFI system, for which the FMC is seeking a prime contractor, will be run on the contractor's central computer with appropriate terminals at the FMC for tariff review, processing, and retrieval. The format of tariff data to be electronically filed is being developed in conjunction with the industry Transportation Data Coordinating Committee and will emphasize "tariff line items," as opposed to the tariff pages of the present system. "Tariff line items" are basically equivalent to commodity rate items in current paper tariffs and can be amended directly, without having to issue an entire revised page.

As recommended by the FMC's Industry Advisory Committee, standardized commodity or geographic coding will not be mandated at the beginning, but the system must have the capability to provide for these functions at the appropriate time. The system will also include the essential terms of service contracts.

Full implementation of the system will be in phases to allow commercial firms time to adapt their operations. Exemptions, at least on a temporary basis, will be granted to some types of tariff filers who are not economically able to use the electronic system.

The system will be as compatible as possible with existing computer equipment through the use of software for full connectibility. Filing of tariffs will be done primarily by using asynchronous terminals or microcomputers, dialing in with a modem to the FMC's data base. The filing software will provide on-line edit checks to ensure that the tariff information is correct and that basic statutory

provisions are complied with before the tariff can be officially on file. Such edit checks, for example, will be able to electronically identify improper effective dates, such as a rate increase on less than 30-days notice. Other problems for which rejection is warranted, such as unclear or conflicting tariff provisions, will still have to be handled by FMC staff and, if necessary, resolved at the Commission level. The system's computer capabilities, however, will facilitate this process also.

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

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

Once the tariff data is officially on file, the FMC will download the entire data base in "flat files", formatted onto computer tapes or other media which will be sold to any person at the relatively inexpensive, marginal cost of dissemination. This will satisfy the FMC's statutory duty of providing copies of tariffs at a reasonable charge. In order to keep up with a substantial number of rapidly changing freight rates in the shipping industry, interested persons must obtain these updated data-base tapes frequently. FMC will offer a subscription service to provide this capability.

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

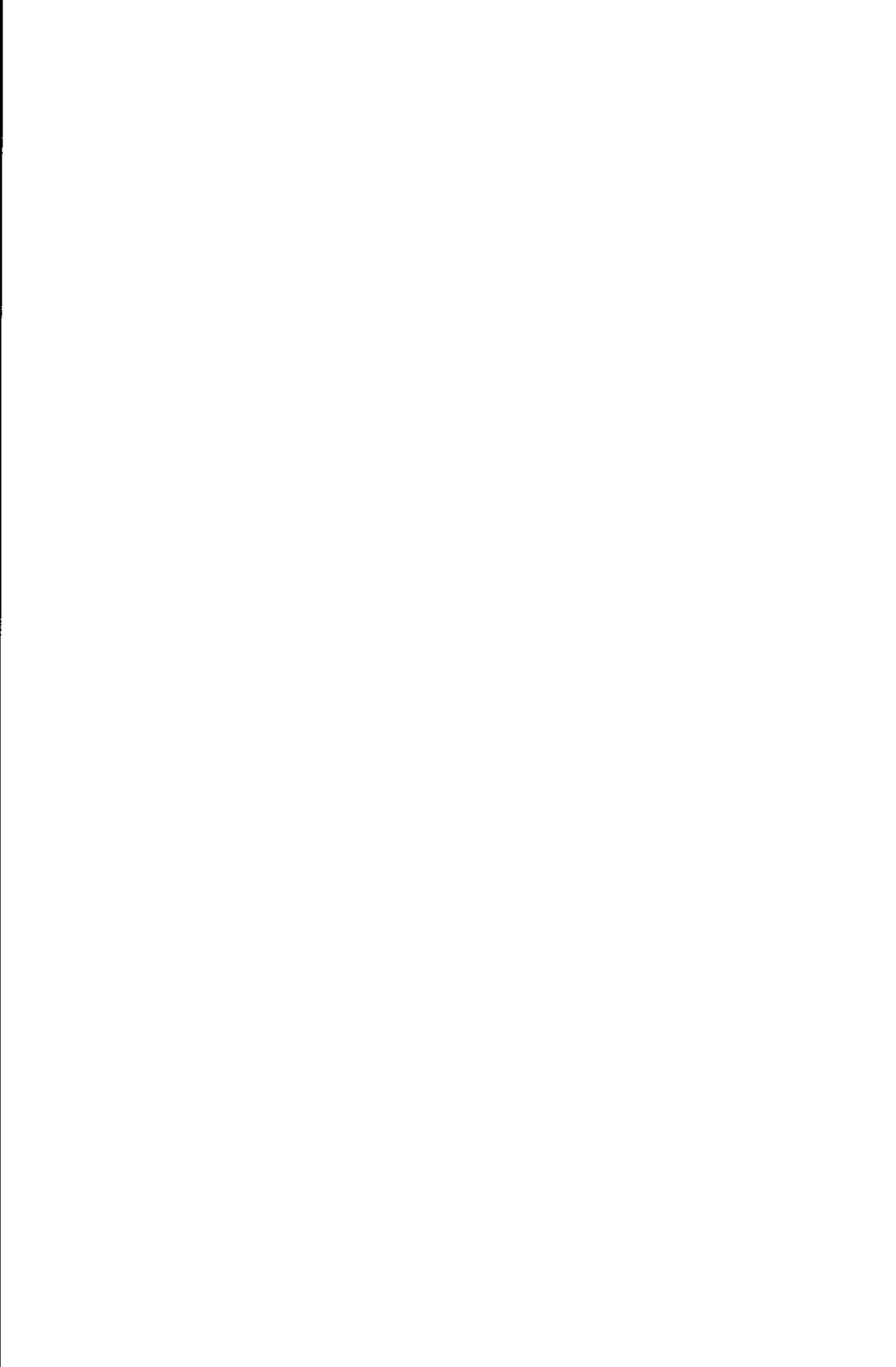
In order to carry out its statutory function of making tariffs and essential terms of service contracts available for public inspection, the FMC will continue to have a public reference room at its headquarters in Washington, D.C. Here, interested persons will be able to access a terminal on which information on a particular tariff will be brought up on the screen and scanned to find the necessary rates and rules. Paper copies of tariff data will still be available upon written request, especially for certification to courts and other tribunals for proceedings involving disputes over historical tariff rates.

Another retrieval feature being considered is remote access to the FMC data base by modem, almost any time of day, for retrieval of tariff information by any interested person. For example, the system could enable a shipper on the West Coast to retrieve data from the automated tariff system using a terminal or microcomputer equipped with a device (i.e., a modem) to enable data communications over public telephone lines. If this feature is included in the new system, members of the general public would only be able to perform relatively rudimentary retrievals, and essentially no analysis of the data. Specifically, members of the public may only be able to retrieve one tariff at a time, in its full format. To retrieve a tariff in this mode, the public user would have to specify the specific tariff of a particular carrier that is desired; the public user would not be able to search by keys (e.g., by route or commodity).

To ensure that the system will not compete with commercial tariff information firms, however, the FMC may leave the remote retrieval function to be performed entirely by existing tariff services for their clients, as they do now in a paper environment. This would still not prevent carrier and conference filers from remotely accessing their own tariffs on the FMC's data base for retrieval, as well as for filing. Moreover, carriers would not be precluded from remotely accessing ATFI for conference tariffs to which they belong in order to check the official freight rates that should be charged to their shippers; and any person can use the terminals in the FMC public reading room for tariff retrieval. However, carriers would have remote access to their competitors' tariff data only through the value-added vendors that will provide this service or through subscription to the entire data base.

The FMC will operate a prototype ATFI system for a period of at least six months to test it and improve its functionality and performance. Volunteers will be sought for this prototype operation, during which there will be public-comment rulemakings on the final format of electronic tariff data and for establishment of user fees.

The final system is scheduled to begin full operation in the Fall of 1989.



VI

SECTION 18 STUDY

A. SECTION 18: THE MANDATE FOR A FIVE-YEAR STUDY OF THE IMPACT OF THE SHIPPING ACT OF 1984

Section 18 of the Shipping Act of 1984 (hereafter referred to as the "Act") directs the FMC for a period of five years following its enactment to collect and analyze information concerning the impact of the Act upon the international ocean shipping industry. Congress specified that the information the FMC collects should include data on (1) increases or decreases in the level of tariffs; (2) changes in the frequency or type of common carrier services available to specific ports or geographic regions; (3) the number and strength of independent carriers in various trades; and (4) the length of time, frequency, and cost of major types of regulatory proceedings before the Commission.

Section 18(b) of the Act also states that the FMC shall consult with the Department of Justice (DOJ), the Department of Transportation (DOT), and the Federal Trade Commission (FTC) annually concerning data collection, and that these agencies "shall at all times have access to the data collected under this section to enable them to provide comments concerning data collection."

Within six months after expiration of the five-year period of data collection, the Commission shall report the information, with an analysis of the impact of the Act, to Congress, to the Advisory Commission on Conferences in Ocean Shipping (Advisory Commission) and to the DOJ, DOT and FTC. The Advisory Commission will be established by Congress at that time. The three aforementioned agencies will also submit their own analyses on the impact of the Act 60 days after the FMC submission.

The Act further specifies, in section 18(c), that the following three topics should be addressed in the above analyses:

- The advisability of adopting a system of tariffs based on volume and mass of shipment;
- The need for antitrust immunity for ports and marine terminals; and
- The continuing need for the statutory requirements that tariffs be filed and enforced by the Commission.

The Advisory Commission is charged with conducting a comprehensive study of, and making recommendations concerning, conferences in ocean shipping. The study shall specifically address whether the Nation would be best served by prohibiting conferences, or by having closed or open conferences. The Advisory Commission shall, within one year after its establishment, make its recommendations to the President and the Congress.

B. CONSULTATION WITH OTHER AGENCIES

Sources of information available to the Commission include tariffs and service contracts on file, published material (such as exchange rates compiled by the International Monetary Fund), Bureau of Census data, and information requested from carriers, shippers and ports. The choice of data to be collected for a period of several years before and after the Act depends partly on what can be obtained from the various sources and partly on the intended analysis.

It is expected that the analytical approach which will be adopted by the FMC will differ in some respects from the approach of the other agencies. It was the apparent intention of Congress to allow for a reasonable diversity by forming an Advisory Commission whose task, among other things, is to evaluate the separate opinions. The sharing of data was clearly intended to avoid the costly duplication of activity by the separate agencies.

Accordingly, the FMC will be the major repository for the data and will be given the responsibility for distributing it in an accessible and immediately usable form. There are, however, two limitations to an open distribution of information. First, portions of the Bureau of Census data have been obtained on the condition that any release of the information reveals nothing which can be traced to an individual carrier or shipper. The guidelines provided by the Bureau of The Census specify that quantities which are formed from three or fewer firms or which reflect a share by one firm of more than 90 percent of the total are to be regarded as traceable to a specific individual. An evaluation of such quantities may be made by the FMC without releasing the quantities themselves and without reference to the individuals to whom the quantities apply. In such cases it will, therefore, be necessary to share the evaluation, rather than the data.

The second limitation concerns a similar desire to maintain the confidentiality of responses to FMC surveys and requests for information from industry representatives. In all cases, except those which were otherwise agreed upon, the names of the respondents will be withheld from the released information and data. Similarly, data supplied by individual carriers, shippers, ports and other business enterprises within the international shipping industry will be presented in a form which does not reveal the information source.

C. FMC PROGRESS TO DATE

1. General

In February 1984, when it became clear that section 18 was likely to become part of the Shipping Act of 1984, the FMC prepared a preliminary operational plan which identified the major areas of anticipated activity. Progress since that date is reported under a similar list of major areas:

- Establish and maintain an Interagency Group of Representatives from the DOJ, DOT, FMC, and FTC.
- Identify major issues and problems.
- Work with the industry in acquiring sources of information, advice and opinion.
- Research the usefulness of analytical and statistical procedures which can be applied to the collected data.
- Continue the data collection effort.

2. The Interagency Group of Representatives

The FMC held its initial consultative meeting with the section 18 Interagency Group on June 8, 1984. Six additional meetings were held in FY 1984, seven meetings were held in FY 1985, three meetings were convened during FY 1986, and two meetings were held in FY 1987. Although a wide range of topics was discussed, from confidentiality problems of certain data sources to interpretations of what Congress intended under section 18, the discussions have become increasingly more specific regarding the nature of the intended analysis of the FMC and the information requirements of the other agencies in fulfilling their reporting obligations. At the first meeting in FY 1986, the FMC staff distributed to the members of the Interagency Group copies of certain data which have been compiled in electronically accessible files. Subsequent meetings were convened when substantial additions to the data-set became available. At the February 1987 meeting, the FMC distributed six reports on 1984 service levels to various ports. These reports were prepared by SEA Group, a subsidiary of Lloyd's of London. Results of the shipper, port, marine terminal operator, and carrier surveys were sent to each agency representative in July 1987.

3. Identify Major Issues and Problems

The FMC's initial assessment of the data collection mandate focused on sections 18(a)(1), (2), and (3) of the

new Act by examining the conceptual issues and problems associated with data collection pursuant to each section. Although specific tasks continue to be assigned on a section-by-section basis, the need for a more integrated approach became apparent during FY 1985. The need arose partly in response to the desire to automate the data-collecting tasks for the years following the establishment of the data files, and partly from the concern that all pertinent data should be listed and compiled now rather than at some later date when the information is no longer current. Accordingly, a decision was made to update the status report annually and to distribute copies of the report to various people in the international shipping industry who have expressed an interest in the progress of the study.

4. Section 18 Study Groups

Shortly after passage of the Act, the staff concluded that the collection of information in isolation might result in misleading or erroneous data. It was believed that it would be very beneficial if the methodology and the data collected by pursuing an agreed upon methodology could be verified by the affected parties. Thus, the staff contacted carriers, shippers, ports and other groups to see whether they would be interested in forming study groups to meet occasionally with the staff to help verify data.

These study groups have been instrumental in ensuring that the data collected are accurate and properly indicate the impact of the Act. Thus far, the most important functions of these groups have been to work with the staff to verify data collected to determine the impact of the Shipping Act of 1984 on freight rates. It is anticipated that these groups will provide information on service levels and other issues during the coming year. A brief description of the memberships and activities of each study group is discussed below.

(a) Carrier Study Group

Twenty-seven carriers, including most of the major U.S., European and Japanese liner operators, filed Agreement Number 10851, Advisory Commission Study Agreement, with the Federal Maritime Commission in December, 1985. This cooperative working agreement was filed with the FMC so that the members could obtain antitrust immunity for their collective actions.

The staff has held numerous meetings with the members of Agreement No. 10851, largely to seek their assistance in the rate gathering portion of the study. The Study Group, in some cases working in conjunction with the respective conferences, has provided or verified data on tariff rates, service contracts, intermodal rates and independent action rates. More recently, the meetings have focused on requests by the staff for the carriers to provide indexes of costs, revenue and utilization for the North Atlantic, Far Eastern and Australian trades. It is expected that such data will be forthcoming in late 1987.

Information provided by the Carrier Study Group indicates that a large share of certain selected commodities is carried under service contracts. Other commodities move primarily by single-factor intermodal (SFI) arrangements, which may include interior points' intermodal movements or intermodal arrangements between an interior point in the exporting (importing) country and a port in the importing (exporting) country. In addition, during specific periods of time, a third group of commodities has been subjected to extensive rate changes following independent action (IA) by one or more conference carriers. Independent action rates are rates, including terms and conditions of service, published in the conference tariff which are different from the common rate published in the tariff.

(b) Shipper Study Group

In April, 1986, a Shipper Study Group was formed, consisting of eleven members representing major U.S. corporations. At the time of this writing, the group has

been expanded to include twenty-three members. Membership includes representatives from major U.S. manufacturing corporations, the forest products industry, agricultural interests and major retailing firms.

The staff meets with the Shipper Study Group several times a year seeking information in various areas including verification of data contained in surveys, data on service requirements of shippers, information on how the ocean freight costs of shippers have changed over the past several years and other information believed useful for a proper determination of the impact of the Act. Thus far, the information provided by the Shipper Study Group has been very useful in ensuring that the staff is collecting valid data on freight rates, service levels and other areas being studied.

(c) Ports Study Group

The American Association of Port Authorities (AAPA) has established a Ports Working Group, made up of eleven representatives of ports from the three major coasts and the Great Lakes, to assist the FMC in compiling information for the section 18 study. The Ports Group has had two formal meetings to date and discussed the following topics:

- Section 18 information needs regarding the ports industry.
- Review of the 1986 survey results.
- Revisions for the 1987 survey.
- Explanation and pre-testing of additional antitrust immunity questions for future surveys.
- Participation by port representatives in Symposium II and on the Commission's section 18 Advisory Committee.

(d) Marine Terminal Operators Study Group

A Marine Terminal Operators Study Group has been established by the National Association of Stevedores (NAS). The Marine Terminals Working Group filed an Agreement (No. 224-011099), covering twenty-five non-port marine terminal operators, which went into effect on June 24, 1987.

Although no formal meetings have yet taken place, preliminary discussions with the NAS indicate that future Working Group discussions will focus on the antitrust immunities issue, how information concerning non-port marine terminal operations can be provided to the FMC, and review and comment on the annual surveys.

(e) Freight Forwarder Study Group

The forwarding industry has formed a Study Group comprised of nine representatives from the industry. This study group has been instrumental in assisting the staff to prepare a survey of industry members as to their views on the impact of the Act. It is expected that the group will also work with the staff in obtaining information on various issues which are of concern to the forwarding community.

(f) Other Study Groups

The staff has held discussions with members of the non-vessel-operating common carrier (NVOCC) industry and shippers' associations. Both groups have expressed an interest in forming study groups and should be operational in late 1987.

5. Continuation of Data Collection

(a) Section 18(a)(1)

Of greatest interest during FY 1987 was the compilation of tariff rates for the following country-to-country trades which were selected for the section 18 study:

Australia

U.S. Pacific Coast to Australia
U.S. Atlantic Coast to Australia
Australia to U.S. Pacific Coast
Australia to U.S. Atlantic Coast

Brazil

U.S. Atlantic Coast to Brazil
U.S. Gulf Coast to Brazil
Brazil to U.S. Atlantic Coast
Brazil to U.S. Gulf Coast

Italy

U.S. North Atlantic Coast to Italy
Italy to U.S. North Atlantic Coast

Japan

U.S. Pacific Coast to Japan
U.S. Atlantic Coast to Japan
Japan to U.S. Pacific Coast
Japan to U.S. Atlantic Coast

Taiwan

U.S. Pacific Coast to Taiwan
U.S. Atlantic Coast to Taiwan
Taiwan to U.S. Pacific Coast
Taiwan to U.S. Atlantic Coast

West Germany

U.S. North Atlantic to West Germany
U.S. South Atlantic to West Germany
West Germany to U.S. North Atlantic
West Germany to U.S. South Atlantic

(b) Section 18(a)(2)

Section 18(a)(2) of the Shipping Act of 1984 requires the FMC to collect and analyze information concerning "changes in the frequency or type of common carrier service available to specific ports or geographic regions." The tasks associated with such a study can be described as follows:

(i) Changes in the Quality of Service. A shipper, generally speaking, will be concerned with two broad indicators of service quality, i.e., frequency of service and speed of delivery (transit times). Other things being equal, most shippers would prefer direct services instead of having their goods transshipped, for the simple reason that, with every break in the transportation chain, the risk of delay or something going wrong increases. Also, shippers who are shipping high-value goods would require an operator which could provide quick transit times. For some shippers, the type of vessel employed is critical to the movement of their product, i.e., some shippers require roll-on/roll-off vessel service and not fully-cellular container service.

(ii) Analysis of Changes in Level of Service. Shippers, and especially ports, are concerned with the configuration of service patterns and the rotation of ports within the sailing schedule of carriers. For ports, being the first-port-in and/or last-port-out in a line's itinerary is of considerable importance. It is also important to importers and exporters when they will receive or send out their goods. Ports will also be concerned about the degree to which load-centering occurs.

(iii) Type of Carrier Service. In addition to assessing service quality, section 18(a)(2) also mandates the Commission to analyze the type of common carrier service available. This part of the study will be concerned with examining the output produced in any trade according to the types of ships deployed, e.g., fully cellular, roll-on/roll-off, conventional, etc. The Commission will also examine vessel output (i.e., DWT versus TEUs) by trade direction and by conference versus independent service.

Lloyd's of London reports, which are being prepared for the Commission, will document changes in U.S./Far East, Europe, Brazil and Australia port and regional service patterns. These data will be supplemental to the data received from ports, carriers or shippers. The staff plans to compare service quality levels in closed conference with open conference trades.

(c) Section 18(a)(3)

Section 18(a)(3) of the Shipping Act of 1984 is concerned with "the number and strength of independent carriers in various trades." The "number" of independents can be defined to mean the number of individual liner operators who are not members of a conference in various trades. The "strength" of independents, however, can be interpreted in several ways.

The intent is to measure strength in the following ways:

- Number of vessels operated by independent operators.
- Total capacity made available by independents (i.e., the number of vessels multiplied by the capacity per vessel).
- Value of cargo carried by independent operators.
- Tonnage of cargo carried by independent operators.

Since the number of vessels and the total capacity offered by independents and conference carriers will be discussed in the section 18(a)(2) report, this report will focus on changes in market shares determined by value and tonnage of cargo and numbers of conference and nonconference carriers. (Appendix H contains a sample of the 1985 market share results.)

(d) Section 18(a)(4)

Section 18(a)(4) requires the Commission to collect information concerning the length of time, frequency, and cost of major types of regulatory proceedings before the Commission. A major purpose of the Act was to establish a nondiscriminatory regulatory process for the common carriage of goods by water in the foreign commerce of the United States, with a minimum of government intervention and regulatory costs. The objective of section 18(a)(4) is, therefore, to determine if important elements of that purpose have been achieved. A procedure for collecting the relevant information is currently being devised.

6. Cost/Revenue Indexes

As part of the section 18(a) study, a formal request was made at the FMC/Agreement No. 10851 Carrier Policy Meeting on November 21, 1986, to the members of the Agreement for information on revenues, costs and capacity utilization. The staff indicated that it would be acceptable to receive such information in index form and suggested that appropriate aggregate indexes be constructed for the major U.S. trades. This request was discussed by the members of the Agreement and, during the course of the next four months, a considerable amount of effort was expended by all parties involved in devising an acceptable methodology for carrying out the work and defining precisely its scope.

It has been agreed that indexes should be constructed, if possible, for three trades, namely, the Australian, the Trans-Pacific and the Trans-Atlantic trades, for the period 1983-1988. The members of the Agreement invited the Department of Maritime Studies of the University of Wales (UWIST) to put forward a proposal to collect the data and prepare indexes which would be submitted to Commission staff members. This proposal was received on April 20, 1987 and was accepted by the lines in September. Shortly, work will begin on constructing the indexes for the Trans-Atlantic trade for the period 1983-1986.

7. Surveys

(a) Carrier Survey

The Federal Maritime Commission published the results of the 1986 Carrier Survey and an analysis of the participants' responses in its Summary of the 1986 Survey Results. Those results, along with a comparison of the results of the Shipper and Port Surveys, were discussed with members of the Carrier Working Group at a meeting on April 30, 1987.

Based on its experience with the initial Carrier Survey, the Commission staff revised some sections of the questionnaire. This year's version will contain a new section on excepted commodities. Also, because the Carrier Working Group members would like to see cross-tabulation of responses based on size of carrier, the FMC has included additional questions to determine whether a carrier responding to the survey is considered a large or small carrier. The 1987 Carrier Survey was mailed out in late September to 141 carriers in the U.S. liner trades.

(b) Shipper Survey

The Summary of the 1986 Survey Results also contained a presentation of shippers' responses to the 1986 Shipper Survey and a detailed analysis of the views they expressed. These results, along with a comparison of carrier, shipper and port responses to key issues, were the topic of a meeting between Commission staff and the Shipper Working Group on June 17, 1987. At that meeting, methods to improve the response rate to the 1987 Shipper Survey were discussed and the new survey was considerably reorganized and consolidated and includes a new section on excepted commodities. The section on conference behavior in the 1986 survey was eliminated because of the low response rate, and other sections have been rearranged or simplified for easier response. The section on port antitrust immunity was broadened to incorporate other maritime antitrust issues.

The 1987 shipper survey was mailed out during August, 1987, to approximately 2,200 shippers. The mailing list for this year's survey, while approximately the same size as last year's mailing, has been revised and between 25 - 30 percent of the shippers to be surveyed are different. Their names were provided by a number of associations whose members are involved in international shipping.

(c) Ports and Non-Port Marine Terminal Operators Surveys

These two closely related surveys have undergone very little change. The response rate for the port survey was considered good and there was little perceived need to alter the 1986 Port Survey. Questions were added to the 1987 survey to clarify aspects of the antitrust-immunities issue. The new port survey was released in mid-September, 1987, to 60 ports.

With the creation of a Marine Terminal Operators Working Group, it is expected that the participation of non-port marine terminal operators in the 1987 survey will improve substantially. The non-port terminal operators have expressed a special interest in the related issues of antitrust immunities and the need for tariff filing. The non-port marine terminal operator survey was also mailed out in mid-September, 1987, to 45 marine terminal operators.

(d) Freight Forwarder Survey

A new survey, a modified version of the shipper survey, has been prepared for use by the freight forwarding industry. It will be mailed out to approximately 1,600 freight forwarders in October, 1987. (Appendix I contains an outline of the survey topics.)

8. Section 18(c) Topics

Although a large percentage of the resources which are necessary for the completion of the section 18 study will be devoted to the tasks of data collection and analysis, as described in the previous sections of this report, tasks relating to section 18(c) are also receiving attention. Current plans specify completion of draft reports on the three topics during 1988.

(a) System of Tariffs Based on Volume and Mass of Shipment

The interpretation of the requirement, based partly on the legislative history of the Shipping Act of 1984, is that

it will involve a feasibility study for the establishment of a single tariff by each common carrier or conference for all cargo shipped in units of comparable size, weight, and handling characteristics. The tasks associated with such a study can be described as follows:

- Discussion of the probable intent of this requirement.
- Evaluation of cost-of-service and value-of-service elements in the current tariff system.
- Economic impact of requiring this system of tariffs.

(b) Antitrust Immunity for Ports and Marine Terminals

Under existing regulations, marine terminal operators may not agree to boycott or unreasonably discriminate in the provision of terminal services to any common carrier, but may otherwise file agreements with the Commission. These agreements may be entered into among themselves or with one or more ocean common carriers to discuss, fix, or regulate rates or other conditions of service. The issue is whether there is a continued need to provide antitrust exemption for such agreements in the new environment which the Act helped to create. Some of the tasks associated with the preparation of a report on the topic are:

- Legislative history of the antitrust immunity provision.
- Analysis of terminal agreements filed with the Commission.
- Economic analysis of the impact of eliminating antitrust immunity.
- Opinions of ports, terminal operators, and the shipping industry in general.

(c) Statutory Requirements that Tariffs be Filed and Enforced

The most controversial issue relating to tariff filing and enforcement concerns the extent to which the Commission

should "legalize" rates, which are set by the collective action of conference members, and insist that they be maintained. There are, however, other issues involved, some of which are directly related to the existence of a "legal" rate and others of which may be only indirectly affected by possible changes to the existing requirements. With all such issues, there is a definite need to clarify the purpose and objectives of tariff filing and enforcement. The following tasks have been designated for the preparation of a comprehensive report:

- **Legislative History of Tariff Filing and Enforcement.** What purpose and objectives can be discerned in the statutory requirements? Have the purposes and objectives remained unchanged since the Shipping Act, 1916?
- **FMC Rules on Tariff Filing and Enforcement.** Have the rules been effective in serving the purpose and objectives as determined from the above? Have the rules been consistently applied?
- **Alternative Arrangements for Tariff Filing and Enforcement.** Are alternative arrangements compatible with the purpose and objectives as described above?
- **Tariff Filing and Enforcement Practices of Foreign Governments.** The FMC, through the Department of State, sent a questionnaire to 137 countries soliciting information on their rules and regulations of common carrier tariffs. The responses to these questions will provide information on how the current practice in the United States compares to tariff requirements in other nations.
- **Theoretical Case for Tariff Filing and Enforcement.** What theoretical economic arguments may be made in support of maintaining the statutory requirements? What are the arguments against?
- **Analysis of the Economic Implications of Tariff Filing and Enforcement.**
- **Impact on the Tariff System of Service Contracts, Independent Action and Excepted Commodities.**

D. A SECOND CONFERENCE ON THE SHIPPING ACT OF 1984

The Federal Maritime Commission and the University of Southern California will co-sponsor a second conference on the Shipping Act of 1984 (Symposium II). Symposium II will be held in Long Beach, California on February 18-19, 1988. The purpose of the conference is to provide a public forum in which all segments of the shipping industry may exchange their views on the impact of the Act, four years after its enactment.

Representatives from industry, government and academia will discuss issues which must be addressed by the Commission and by the Advisory Commission on Conferences in Ocean Shipping.

An important objective of Symposium II is to obtain the current opinions of a broad cross-section of industry participants and its format is oriented more towards discussing issues rather than general opinions, as was the format for the first FMC-sponsored Symposium held in Norfolk, Virginia in 1986.

Another objective of the FMC/USC Symposium is to elicit information on government regulation of liner shipping in Europe, the Far East, and international forums such as UNCTAD. (Appendix J contains the program for Symposium II.)

E. SECTION 18 ADVISORY COMMITTEE

In an effort to bring together all segments of the industry, including the study groups, the Commission published a notice in the Federal Register of its intent to form an Advisory Committee. It is envisaged that the Advisory Committee will offer advice to the staff as to how it should proceed with its study and what specific issues are important topics for investigation. It is expected that the first meeting of the Advisory Committee will take place early in 1988.

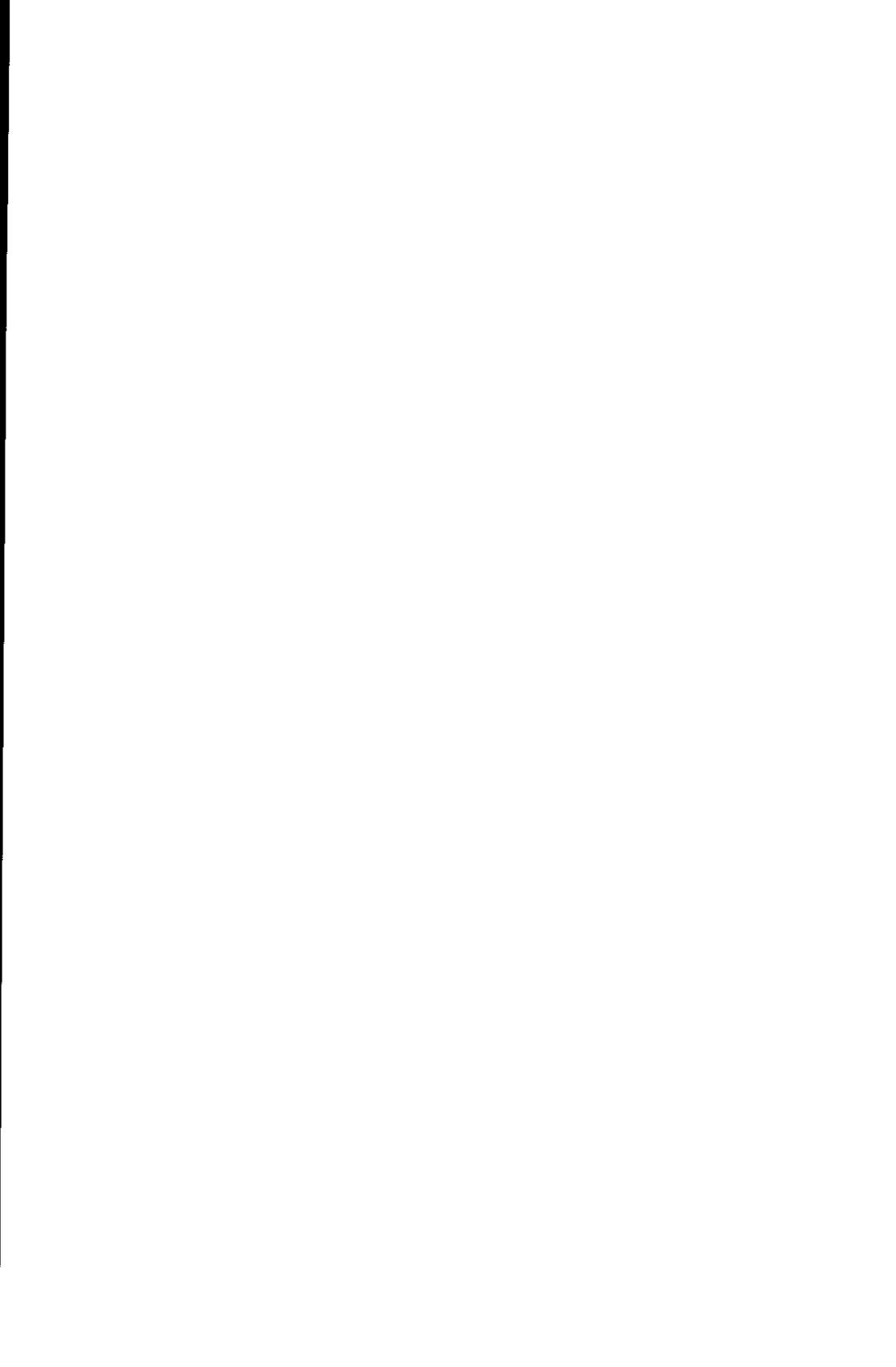
F. CONCLUSION

The data collection and analysis process are progressing according to schedule. Much of the success of the study will depend upon the continued cooperation of representatives of the various constituencies comprising the international shipping industry. The staff will look to these groups for advice and assistance on the data collection process, including sources and methodology.

VII

SIGNIFICANT OPERATING ACTIVITIES

BY ORGANIZATIONAL UNIT



A. OFFICE OF THE SECRETARY

1. General

The Office of the Secretary is responsible for preparing the regular and notation agenda of matters subject to consideration by the Commission and recording subsequent action taken by the Commission on these items; receiving and processing formal complaints involving violations of the shipping statutes and other applicable laws; issuing orders and notices of actions of the Commission; maintaining official files and records of all formal proceedings; receiving and responding to subpoenas directed to Commission personnel and/or records; administering the Freedom of Information, Government in the Sunshine, and Privacy Acts; responding to information requests from the Commission staff, maritime industry, and the public; authenticating publications and documents related to formal proceedings before the Commission; and compiling and publishing bound volumes of Commission decisions.

The Secretary's Office also participates in the development of rules designed to reduce the length and complexity of formal proceedings, the ongoing evaluation of the efficiency of the Commission's organizational structure, and implementation of legislative changes to the shipping statutes.

During fiscal year 1987:

- In connection with the Office's administration of the Freedom of Information Act, a rule was issued in Implementation of Freedom of Information Reform Act [Docket No. 87-5] 24 S.R.R. 107 (April 21, 1987). The rule revised the Commission's Public Information regulations regarding requests for agency enforcement records and the establishment and waiver of fees to be charged for search, review and duplication of records in response to Freedom of Information Act requests.

- The Office was responsible for issuing an amendment to the Commission's Rules of Practice and Procedure and rules implementing the Government in the Sunshine Act, which established a cutoff date for filing of comments, information, etc. on matters scheduled for consideration at an agency meeting: Filing of Comments Pertaining to Agency Meetings, [Docket No. 87-8] 24 S.R.R. 389 (July 14, 1987).
- The Secretary serves as the Commission's Privacy Act Officer and in connection with this activity, the Office published an updated Systems of Records as required pursuant to that Act. Certain systems of records were deleted and two new systems - FMC 26 Administrative Grievance File and FMC-27 Staffing Plan - were added.
- The Office embarked on a project to determine the most efficient and economical method for publication of the hardbound volumes of Commission decisions. Substantial savings in publication costs can be realized by transmitting data electronically to the Government Printing Office ("GPO") utilizing their Automated Composition System, and the Office of the Secretary has been working closely with GPO and other Offices within the Commission to develop automated methods for archiving and editing of appropriate materials to be included in each volume.
- The Office continued its efforts towards implementing new automated and non-automated systems for docket tracking and minute/docket retrieval. In addition, it is considering establishing a local area network system for the Office and this study will continue in fiscal year 1988.
- The Commission heard oral argument in 2 formal proceedings and issued decisions concluding 11 formal proceedings. Ten formal proceedings were discontinued or dismissed without decision (including determinations not to review Administrative Law Judge orders terminating proceedings). One case was also remanded back to the Administrative Law Judge. The Commission also concluded 125 special docket applications and 42 informal dockets which involve claims against carriers for less than \$10,000. During the same period the Commission issued final rules in 12 rulemaking proceedings.
- Four rulemaking proceedings were pending before the Commission at the end of the year. Final decisions in these matters are anticipated in fiscal year 1988.

2. Informal Dockets Activity

This activity is responsible for the initial adjudication of claims filed by shippers against common carriers by water engaged in the foreign and domestic offshore commerce of the United States. These claims must be predicated upon violations of the Shipping Act of 1984, or the Intercoastal Shipping Act, 1933, for which reparation of less than \$10,000 is sought. The vast number of claims received under this program constitute shippers' requests for freight adjustments arising from alleged overcharges by carriers. During fiscal year 1987, the Informal Docket Activity received 26 new cases. During the same period 42 informal docket claims were concluded.

3. Office of Informal Inquiries and Complaints

This Office coordinates the informal complaint handling system throughout the agency. A total of 1086 complaints and information requests were processed in fiscal year 1987, including those handled through the District Offices. Recoveries to the general public of overcharges, refunds and other savings amounted to more than \$128,600 as a result of the complaint handling activities. Since 1981, this Office has helped complainants recover over \$1,828,600.

The Office coordinated meetings between maritime industry representatives and Commission officials. It also supplied copies of procedures and dockets and responded to other information requests by the general public. During fiscal year 1987, this Office responded to 546 such telephone requests and inquiries. The Office maintained liaison with members of the President's Consumer Affairs Council in which it participated throughout the fiscal year.

B. OFFICE OF ADMINISTRATIVE LAW JUDGES

1. General

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

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

At the beginning of fiscal year 1987, 42 proceedings were pending before Administrative Law Judges. During the year, 129 cases were added, which included 3 proceedings remanded to Administrative Law Judges for further proceedings, and one proceeding which is being counted as two proceedings, inasmuch as two separate decisions will be issued. The judges held 12 prehearing conferences, held 3 completed oral hearings, and issued 9 initial decisions in formal proceedings and 119 initial decisions in special docket applications.

Cases otherwise disposed of involved 8 formal proceedings.

2. Commission Action

The Commission partially adopted 2 formal decisions, and one formal decision became administratively final. Special docket decisions in 2 proceedings were adopted, 5 decisions were partially adopted, and 100 special docket decisions became administratively final.

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

• Tariff Publication of Free Time and Detention Charges Applicable to Carrier Equipment Interchanged With Shippers and Their Agents [Docket No. 85-19].

The Initial Decision held that Equipment Interchange Agreements between FMC-regulated common carriers and unregulated inland carriers come under Commission jurisdiction and that pertinent portions of the agreements may be required to be filed in appropriate tariffs by the Commission, where the ocean common carriers' rates, charges and practices are affected; that the Commission should specifically define "free time and demurrage" and "free time and detention" in its regulations and such charges as set forth in the ocean carrier's tariff may not be amended by either the ocean carrier or shipper/consignee by separate agreement with third parties; that an exemption from filing Equipment Interchange Agreements under section 16 of the Shipping Act should not be granted; and that the proposed tariff filing rule is not a "major rule" as defined in Executive Order 12291, is exempt from the requirements of Regulatory Flexibility Act, and complies with the Paperwork Reduction Act.

• Palmetto Shipping & Stevedoring Company, Inc. v. Georgia Ports Authority [Docket No. 85-20].

Two vessel agents doing business at Savannah, Georgia, alleged that the Georgia Ports Authority was engaging in unlawful practices in violation of the Shipping Acts of 1916 and 1984 by requiring vessel agents to pay for certain terminal services instead of their principals, the vessel owners, by billing certain other services to the agents rather than to the cargo interest, and by certain other practices. The Initial Decision held that it was not unlawful for the port to look to local vessel agents for payment of their services and that the port's other billing practices did not violate law.

• The Secretary of the Army on Behalf of the Department of Defense v. The Port of Seattle [Docket No. 86-7].

The Initial Decision held that a particular tariff did not apply to certain shipments where the shipments required "sorting" which was without the definition of "direct transloading" set forth in the tariff; that the rate for railcar unloading was not included in the rate for ocean container stuffing; that where a military tariff provides for rates 5-1/3 times those charged under a commercial tariff for similar services, the practice is unjust and unreasonable within the meaning of section 10(d)(1) of the Shipping Act, 1984; that the military tariff rates cannot exceed by more than three times the commercial rate so that reparations of \$164,263.09, with interest were warranted; and that the shipper is not barred from asserting its claims by laches or collateral estoppel.

• A/S Ivarans Rederi v. Companhia de Navegacao Lloyd Brasileiro, et al. [Docket No. 86-9].

A party to a revenue pooling agreement in the Brazilian trade approved by the Commission alleged that the other parties to the agreement violated sections 10(a)(2) and (3) of the Shipping Act of 1984 by refusing to suspend the agreement for the year 1982 because of the failure of one carrier to maintain the required number of sailings and by requiring Ivarans to pay the other members over \$1 million as an overcarrier. The Initial Decision held that the agreement need not be suspended, that Ivarans owed the \$1 million to the other parties, and that an arbitral decision rendered in Brazil did not oust the Commission from jurisdiction.

• Distribution Services, Ltd. v. Trans-Pacific Freight Conference of Japan and its Member Lines [Docket No. 86-12].

The Initial Decision held that a particular description of traffic was subjected to undue and unreasonable prejudice and disadvantage in violation of sections 10(b)(10)(11) and (12) of the Shipping Act of 1984, where transloading

allowances were not given because the transloading occurred at the ocean carrier's facility or the shipper's, consignee's or NVOCC's place of business; that the provisions of the tariff are not justified where conference members in the exercise of their "business judgment" determined that it was necessary to forbid "in house" transloading; that the tariff was ambiguous and must be construed against the Respondents; that under the facts it is an unreasonable practice to deny the transloading allowance where an invoice had not been supplied; that reparations were due but the record does not allow one to compute them; that the evidence does not establish that the Respondents acted outside the terms of their conference agreement or engaged in a boycott so as to be liable for double damage under section 11(g), Shipping Act of 1984, and that where carriers were members of the conference during the period in question, they are proper party respondents, even though they are no longer members of the conference and were not involved with the shipments in issue.

• Agreement No. 003-010965 - Island Ocean Terminal Agreement [Docket No. 86-28].

In this investigation pursuant to sections 15 and 22 of the Shipping Act, 1916, the initial decision was concerned only with that part of the proceeding relating to the issue of the jurisdiction of the Commission. The initial decision found that the Commission has jurisdiction in personam over the proponent ocean common carriers operating in the domestic offshore trade between the United States mainland and Puerto Rico, and that the Commission has jurisdiction over the proposed terminal activities and related services in Puerto Rico of these proponents as contemplated by the subject agreement. It was further found that the proposed agreement did not pertain to ocean freight rates, and did not pertain to intermodal through rates between inland United States mainland points and ports in Puerto Rico.

Judges also issued initial decisions in Docket Nos. 84-31, 84-38, 86-14, and Special Docket Nos. 1353, 1395, 1418, 1435, 1447, 1448, 1451, 1453, 1454, 1455, 1457, 1459, 1460, 1461, 1466, 1467, 1468, 1469, 1471, 1472, 1473, 1474, 1475, 1476, 1477, 1478, 1479, 1480, 1481, 1482, 1483, 1484, 1485, 1486, 1487, 1488, 1489, 1490, 1491, 1492, 1493, 1494, 1495, 1496, 1497, 1498, 1499, 1500, 1501, 1502, 1503, 1504, 1505, 1506, 1507, 1508, 1509, 1510, 1511, 1512, 1514, 1515, 1516, 1517, 1518, 1519, 1520, 1521, 1522, 1523, 1525, 1526, 1527, 1528, 1529, 1530, 1531, 1532, 1533, 1534, 1535, 1536, 1537, 1538, 1539, 1540, 1541, 1542, 1543, 1544, 1545, 1546, 1547, 1548, 1549, 1550, 1551, 1553, 1553 (Remanded), 1554, 1555, 1556, 1557, 1558, 1560, 1561, 1562, 1563, 1564, 1565, 1565 (Remanded), 1566, 1567, 1568, 1569, 1571, 1573, 1574, and 1581 described under "Decisions of the Commission."

4. Pending Proceedings

At the close of fiscal year 1987, there were 35 pending proceedings, of which 6 were investigations initiated by the Commission. The remaining proceedings were instituted by the filing of complaints or applications by common carriers by water, shippers, conferences, port authorities or districts, terminal operators, trade associations, and stevedores.

C. OFFICE OF THE GENERAL COUNSEL

1. General

The Office of the General Counsel provides legal counsel to the Commission. The Office reviews for legal sufficiency staff recommendations for Commission action, drafts proposed rules to implement Commission policies, and prepares final decisions, orders, and regulations for Commission ratification. In addition, it provides written or oral legal opinions to the Commission, its staff, or the general public in appropriate cases.

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

The Office also has the responsibility for monitoring and reporting on international maritime developments, including practices of foreign governments which affect ocean shipping. In addition, this Office represents the Commission on U.S. Government interagency groups dealing with international maritime issues, and participates as a technical advisor on regulatory matters in bilateral and multilateral maritime discussions.

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

The following are representative of matters prepared by the Office:

2. Commission Actions

- Actions to Adjust or Meet Conditions Unfavorable to Shipping in the United States/Colombia Trade, [Docket 87-11], 24 S.R.R. 405 (July 23, 1987).

O.N.E. Shipping, Ltd. filed a petition requesting relief from the Commission under section 19(1)(b) of the Merchant Marine Act, 1920. O.N.E. alleged that the laws of Colombia prevented it from competing in the U.S./Colombia liquid bulk parcel tanker trade.

Upon consideration of the petition and comments received on the petition, the Commission issued a proposed rule which, if it had become final, would have suspended the tariffs of Colombian-flag carriers in the U.S./Colombia trade. Subsequent to the issuance of the Commission's proposed rule, the U.S. and Colombian Governments reached an agreement whereby the Government of Colombia provided O.N.E. free access to the unreserved portion of the U.S./Colombia liquid bulk trade, and freedom to participate on the same terms and conditions as all other carriers, including Colombian-flag, in the carriage of unreserved cargoes. As a result, O.N.E. Shipping, Ltd., withdrew its petition and the Commission subsequently withdrew its proposed rule.

- Actions to Adjust or Meet Conditions Unfavorable to Shipping in the United States/Peru Trade, [Docket No. 87-6], 52 Fed. Reg. 11832 (April 13, 1987).

Based on information received by the Commission from shippers and non-Peruvian carriers expressing concern about the implementation of a Peruvian cargo reservation decree reserving 100 percent of Peruvian import and export cargoes for Peruvian carriers, the Commission issued a proposed rule pursuant to section 19(1)(b) of the Merchant Marine Act, 1920 finding that unfavorable conditions appear to exist in the U.S./Peru trade. If the proposed rule becomes final, it would suspend the tariffs of Peruvian-flag carriers in the U.S./Peru trade unless those carriers receive authorization from the Commission to operate in the trade.

• Filing of Service Contracts and Availability of Essential Terms, [Docket No. 86-29], 24 S.R.R. 505 (September 9, 1987).

The Commission amended its service contract rules to address a problem it had been experiencing in obtaining service contract records in a timely manner and in a usable format. The rule defines service contract records and requires carriers and conferences to maintain such records in a readily accessible or retrievable manner for five years. In addition, service contract records must be submitted to the Commission within 30 days of a written request. Two other requirements of the rule have been indefinitely postponed. One requires service contract records to be maintained in the United States, unless a responsible official certifies that they will be made available. The other permits the Commission to cancel any carrier's or conference's right to maintain records outside the United States, if service contract records are not made available.

• Attorney's Fees In Reparation Proceedings, [Docket No. 86-27], 23 S.R.R. 1698 (February 26, 1987).

The Commission promulgated a final rule which specifies that the so-called "lodestar" method of computing attorney's fees shall be utilized in reparations cases under section 11 of the Shipping Act of 1984. The rule also specified the documentation necessary to establish the reasonableness of the attorney's fees sought and prescribed specific procedures for the processing of attorney's fees petitions.

• Implementation of the Equal Access to Justice Act in Formal Proceedings, [Docket No. 87-7], 24 S.R.R. 406 (July 29, 1987).

The Commission promulgated a final rule which implements the Equal Access to Justice Act. It provides for an award of attorney fees and other expenses to certain parties who prevail over the Federal Government in certain administrative proceedings.

• Miscellaneous Amendments to Rules of Practice and Procedure, [Docket No. 86-22], 23 S.R.R. 1622 (January 21, 1987).

The Commission amended its Rules of Practice and Procedure to: allow for appeals from Commission staff actions; establish a procedure for the filing of a brief of an amicus curiae in adjudicatory proceedings and authorize U.S. Government agencies to file amicus pleadings without first asking leave of the Commission; bring special docket procedures into conformity with the Shipping Act of 1984 and recent Commission decisions; and require persons requesting oral argument to set forth the specific issue they propose to address at oral argument.

• Filing of Tariffs By Marine Terminal Operators - Exculpatory Provisions, [Docket No. 86-15], 23 S.R.R. 1601 (December 18, 1986).

The Commission promulgated a final rule that prohibits marine terminal operators from including in terminal tariffs provisions that exculpate or otherwise relieve the operators from liability for their own negligence. Exculpatory clauses were found to be unfairly imposed by terminal operators through the exercise of greatly superior bargaining power resulting from public-utility-like market conditions for terminal facilities.

• "Neutral Container Rule" - U.S. Atlantic - North Europe Conference, [Docket No. 86-11], 23 S.R.R. 1507 (November 7, 1986).

The Commission initiated this proceeding to investigate the use of the so-called "neutral container system" in the North Atlantic trades. However, after the proceeding began, several container leasing companies that had been named "protestants" withdrew from the proceeding and requested that it be terminated. In light of the positions of all parties, the Commission determined to discontinue its investigation, but to informally continue to monitor the situation.

• Ariel Maritime Group, Inc. et. al., [Docket No. 84-38], 24 S.R.R. 517 (September 24, 1987).

Following remand and further proceedings in a Commission instituted investigation into unlawful practices by Ariel Maritime Group, a vessel agent, Interlink, an NVOCC, and other related companies and individual respondents, the Commission determined that all respondents had committed numerous violations of section 16, Initial paragraph, and section 18(b)(3) of the Shipping Act, 1916. The Commission found that respondents had misdescribed cargo and falsely reported weight and measurement of shipments made as an NVOCC, thus securing transportation at less than the rates and charges which should have been applied, and had, in many instances, charged the underlying shipper rates which were not reflected in its tariff. The Commission concluded that respondents had created and used a number of corporate entities to carry out these activities and to shield them from public scrutiny.

The Commission ordered individual and corporate respondents to cease and desist from violations of the Shipping Acts of 1916 and 1984, and assessed civil penalties totaling \$335,000 against each of the corporate and one of the individual respondents, jointly and severally.

• Arctic Gulf Marine, Inc.; Peninsula Shippers Association, Inc.; Southbound Shippers, Inc., [Docket No. 84-31], 24 S.R.R. 159 (May 6, 1987).

The Commission imposed maximum civil penalties for violations of section 2 of the Intercoastal Shipping Act, 1933 (failing to comply with tariff filing requirements), and section 15 of the Shipping Act, 1916 (entering into and carrying out unfiled and unapproved preferential cooperative working agreements). The fact that the respondents were no longer viable corporations would not be considered a mitigating circumstance or otherwise be used as a shield for the egregious violations of law that were committed. Alternative methods of collecting the penalties were ordered pursued.

- Service Contracts, [Docket No. 86-6], 24 S.R.R. 277 (June 23, 1987).

The Commission adopted a final rule that substantially revised its existing service contract regulations. These rules were based on the Commission's experience in processing thousands of service contracts since June, 1984, and on the suggestions of thirty-three commenters. Among other things, these rules clarify that: (1) the term "port range" encompasses only ports in the country of loading or unloading of the cargo; (2) service contracts cannot include foreign-to-foreign cargoes; (3) service contracts on exempt commodities can be voluntarily filed, but only if there is a tariff rate for the exempt commodity or a provision for rerating in the service contract; (4) "all or a fixed percentage" service contracts are prohibited; (5) the Commission must be given notice of certain changes that occur during the course of a contract; and (6) essential terms of a contract may not be modified during the course of a contract.

- Member Lines of the Transpacific Westbound Rate Agreement - Possible Violations of the Shipping Act of 1984, [Docket No. 85-18], 23 S.R.R. 1459 (October 9, 1986).

The Commission approved a settlement of an investigation of whether the member lines of the Transpacific Westbound Rate Agreement ("TWRA") had violated the independent action provisions of the Shipping Act of 1984 by collectively establishing and maintaining minimum tariff and service contract rates. Under the settlement, the TWRA member lines paid civil penalties totaling \$300,000 and agreed to take certain actions, including modifying their agreement, designed to safeguard the individual members' right of independent action.

• "50 Mile Container Rules" Implementation by Ocean Common Carriers Serving U.S. Atlantic and Gulf Coasts, [Docket No. 81-11], 24 S.R.R. 411 (August 3, 1987).

The Commission ruled that the publication and enforcement by ocean common carriers of the "50 Mile Container Rules," whereby cargo originating from or destined to points within 50 miles of Atlantic and Gulf Coast ports must be loaded or unloaded at the ocean piers by longshoremen, were unreasonable and unjustly discriminatory and therefore violated the Shipping Act, 1916, the Shipping Act of 1984 and the Intercoastal Shipping Act, 1933.

The Commission further ruled that, under the maritime statutes, the Rules could not be defended on the ground that they are the result of collective bargaining agreements between the carriers and the International Longshoremen's Association ("ILA") intended to preserve work for longshoremen. The Commission concluded that the proper accommodation for national labor policy under the shipping laws was in the construction of the remedy for shipping violations. The Commission, accordingly, limited the remedy to an order to cease and desist further publication and enforcement of the Rules.

The carriers and the ILA filed a petition for review with the U.S. Court of Appeals for the District of Columbia Circuit and immediately sought summary reversal of the Commission's decision. The court denied summary reversal, but stayed the Commission's cease and desist order pending full review.

• Notice of Inquiry Concerning Interpretation of Section 8(a) and Section 8(c) of the Shipping Act of 1984, [Docket No. 85-6], 24 S.R.R. 131 (May 6, 1987).

The Commission discontinued its inquiry concerning the interpretation of sections 8(a) and 8(c) of the Shipping Act of 1984 with regard to excepted commodities. The Commission determined that the issues raised generally were not subject to administrative resolution based on the record established in this proceeding. The Commission will include this record in the section 18 report to be submitted to Congress in 1989.

3. Litigation

• Petchem, Inc. v. FMC, D.C. Cir. No. 86-1288.

In a complaint proceeding (FMC Docket No. 84-28), involving a port's franchise system for tug and towing services, the Commission held that the vessel operators offering round-trip passenger cruises at U.S. ports are common carriers within the meaning of the Shipping Acts. This issue also was litigated in American Association of Cruise Passengers v. Cunard Line, Ltd. The Commission further held that, although it does not have jurisdiction over tug operators themselves, when a terminal operator, through an exclusive franchise agreement, has made carrier access to its facilities dependent upon employment of a particular tug service, the furnishing of tug service is transformed into a terminal function subject to Commission jurisdiction. On the merits of the case, the Commission concluded that complainant Petchem had not proven that respondent Port Canaveral's exclusive franchise system was unreasonable and unlawful under the Shipping Acts.

Petchem filed a petition for review in the U.S. Court of Appeals for the District of Columbia Circuit. The Canaveral Port Authority and other persons intervened in support of the Commission's disposition of the merits of Petchem's complaint, but continued to challenge the Commission's jurisdiction over the case. The case is pending decision.

• American Association of Cruise Passengers v. Cunard Line, Ltd., et al., D.D.C. Civ. No. 86-0571.

The Commission filed an amicus curiae memorandum in a private treble damage antitrust case in the U.S. District Court for the District of Columbia. The Commission urged that certain allegations in the plaintiff's complaint, if true, would constitute violations of the Shipping Act of 1984 and, therefore, were within the exclusive jurisdiction of the Commission rather than the court. The Commission therefore supported motions by the defendant passenger lines that these allegations should be dismissed by the court for

lack of jurisdiction or, alternatively, referred to the Commission.

The court denied the defendants' motion because it concluded that the ocean "cruises" offered by the lines are not common carrier passenger transportation within the 1984 Act. The court then denied defendants' motions to seek immediate review by the U.S. Court of Appeals. Because the Court's order is not binding on the Commission, it has not required any change in the agency's regulatory programs.

4. Legislative Activities

The Office of the General Counsel also represents the Commission in its dealings with Congress. In this regard, the Office drafts comments for the Commission on proposed legislation, drafts bills when necessary, prepares testimony for hearings, and responds to Congressional inquiries.

At the request of the House Subcommittee on Merchant Marine, drafting and technical assistance was provided on H.R. 1803, a bill "[T]o amend the Merchant Marine Act, 1920." The purpose of this bill was to strengthen the authority of the Federal Maritime Commission under section 19 of the Merchant Marine Act, 1920, to combat foreign maritime restrictions in the waterborne foreign commerce of the United States. This bill was ordered to be reported by the Merchant Marine and Fisheries Committee on June 9, 1987.

Comments were also submitted and assistance provided on H.R. 1290 and S. 1183. These bills addressed practices of foreign governments, carriers and others that unfairly discriminate against United States-flag carriers.

Further, during fiscal year 1987, testimony was prepared and coordinated for five Congressional hearings.

5. International Affairs

Several reports and recommendations were prepared and submitted to the Commission on matters arising under section 19(1)(b) of the Merchant Marine Act, 1920. These matters included communications on Peruvian cargo reservation laws and a petition by O.N.E. Shipping, Ltd., a U.S.-flag liquid-bulk carrier, concerning Colombian cargo reservation laws, (See Docket Nos. 87-6 and 87-11, respectively).

Further, pursuant to section 15 of the Shipping Act of 1984, the Commission sought information, in three separate inquiries, from carriers operating in the U.S./Korea trade, U.S./Taiwan trade and U.S./People's Republic of China trade, regarding laws, regulations and policies of those nations which may unfairly burden or restrict the operations of certain ocean common carriers, including U.S.-flag carriers, and the U.S. importers and exporters which depend upon their services. The Commission is assessing the impact of these nations' laws, regulations and policies to determine whether action under section 19 is warranted. Of particular concern to the Commission are indications that U.S.-flag and possibly other carriers are prevented from conducting shipping and ancillary activities in these trades.

In addition, in an ongoing inquiry into the impact of Japanese laws on shipping in the U.S./Japanese trade, rules and regulations restricting the movement of "high-cube", or 9' 6" high marine containers, over the roads within Japan, the Commission served orders pursuant to section 15 of the Shipping Act of 1984 on the ocean carriers serving the trade. Through two Supplemental section 15 Orders, the Commission sought to monitor the results of changes made in the applicable regulations by the Government of Japan shortly after the Commission initiated its inquiry to determine whether action under section 19 would be warranted.

The Office of the General Counsel participated in interagency groups and international maritime discussions, particularly as technical advisors to the Interagency

Maritime Policy Group, whose other members include representatives of the U.S. Departments of Transportation, State, Commerce, and Justice, and the Office of the U.S. Trade Representative. In addition, the Office served as liaison on international shipping matters between the Commission and other U.S. government agencies, as well as private parties. The Office also coordinated and participated in briefings of foreign visitors to the Commission.

Finally, under the Commission's controlled carrier program relating to the status of controlled carriers, a number of common carriers were classified as such during the fiscal year.



D. OFFICE OF THE MANAGING DIRECTOR

The Office of the Managing Director is responsible for the direct administration and coordination of Commission staff activities and programs to ensure the timely and proper achievement of Commission goals and objectives.

The Office provides direct administrative and technical supervision to the:

- Bureau of Trade Monitoring.
- Bureau of Domestic Regulation.
- Bureau of Economic Analysis.
- Bureau of Hearing Counsel.
- Bureau of Investigations.
- Bureau of Administration.

Additionally, the Office of the Managing Director furnishes administrative direction to the:

- Office of the Secretary.
- Office of the General Counsel.
- Office of Administrative Law Judges.
- Office of Equal Employment Opportunity

A significant achievement of the Office during FY 87 was the implementation of a Commission-wide reorganization plan which restructured the agency and enabled the Commission to more effectively meet its statutory mandate. Also, the Office established a working group of senior management officials which developed a more concerted and effective approach to the setting of enforcement priorities and formulated aggressive and comprehensive strategies to pursue violators of the shipping statutes.

The Office's other major emphases during FY 87 were the further strengthening and refinement of the Commission's investigative, monitoring and enforcement capabilities, the continued coordination of staff efforts regarding the development of the Automated Tariff Filing and Information (ATFI) System, and the streamlining of Commission staffing and procurement processes.



E. BUREAU OF TRADE MONITORING

1. General

The Bureau of Agreements and Trade Monitoring was reorganized to realign management and personnel responsibilities, to consolidate functions, and to facilitate program execution. The primary function of the resulting new Bureau of Trade Monitoring is to plan, develop and administer programs related to the regulation of concerted actions of common carriers by water under the standards of the Shipping Act of 1984 and the Shipping Act, 1916. The Bureau's major program activities include:

- Administration of comprehensive trade monitoring programs to identify and track relevant competitive, commercial and economic activity in each major U.S. trade, in order to keep the Commission and its staff apprised of current trade conditions, emerging trends and regulatory needs impacting on waterborne liner transportation.
- Systematic surveillance programs overseeing carrier activity in areas relevant to the Commission's administration of statutory standards.
- The processing and analysis of agreements involving common carriers.
- Support of formal Commission proceedings in the Bureau's areas of expertise.

2. Surveillance (See Chapter III)

3. Types of Agreements

(a) Conference and Ratemaking Agreements

Conference and ratemaking agreements provide for the collective discussion, agreement and establishment of ocean freight rates and practices by groups of ocean carriers. Such agreements are limited to a geographic area or trade route. The Commission's rules currently do not distinguish between conference and rate agreements for purposes of determining applicability of the so-called "mandatory provisions."

During fiscal year 1987, the Commission concluded the processing of 152 conference and rate agreements, including

amendments to existing agreements, pursuant to the Shipping Act of 1984. There were 60 conference/rate agreements in effect at the end of the fiscal year.

(b) Pooling and Equal Access Agreements

Pooling agreements are commercial arrangements among carriers in given trades which provide for the pooling and apportionment of cargo and/or revenues, generally for the purpose of stabilizing competitive conditions. These agreements often set forth sailing requirements and other features relating to overall service efficiency. Equal access agreements serve to formalize national-flag carrier access to cargo which is controlled by the governments of reciprocal trading partners as a result of cargo preference laws, import quotas or other restrictions.

At the conclusion of fiscal year 1987, there were 17 agreements in effect with pooling and/or equal access authority. Eleven agreements of this type have a significant impact on U.S. ocean liner commerce with Argentina, Brazil, Chile, Peru and Colombia. While the majority of these agreements continues to apply to the U.S./South American trades, carriers in other trades around the world are beginning to use this type of arrangement.

(c) Space Charter and Sailing Agreements

Space charter agreements authorize the chartering (or cross-chartering) of vessel space or container slots between or among vessel operators. The essential objectives are to give carriers access to vessel space in given trade routes beyond that which would otherwise be available; to facilitate the rationalization of overall fleet operations; and to reduce overtonnaging in given trades.

During fiscal year 1987, 24 space charter agreements and amendments were filed under the 1984 Act, and 68 were in effect at the conclusion of the fiscal year.

(d) Joint Service/Consortia Agreements

Joint service and consortia agreements generally establish a new and separate line or service to be operated by otherwise independent operators as a joint venture in a given trade. The resulting service operates as a single carrier, fixing its own rates, publishing its own tariffs and issuing its own bills of lading.

Six joint service/consortia agreements and amendments were filed during fiscal year 1987 and 23 such agreements were in effect at the conclusion of the fiscal year.

(e) Cooperative Working Arrangements

Cooperative working arrangements run the gamut from discussion agreements, which authorize the participants to discuss competitively sensitive trade matters, to specialized inter-carrier operational undertakings, which do not precisely fit the other categories reported above. Fifty cooperative working agreements, and amendments to effective agreements, were filed during fiscal year 1987, and 83 such agreements were in effect at the conclusion of the fiscal year.

4. Future Plans and Proposed Activities

During the coming year, the Bureau anticipates increased involvement in the compilation and analysis of data for the five-year study mandated by section 18 of the Shipping Act of 1984.

The Bureau's overall monitoring program will continue to focus on the systematic oversight of carrier and trade activity in areas relevant to the administration of the standards of the Shipping Act of 1984. To this end, the Bureau has developed a series of monitoring reports to provide a framework and methodology for the in-depth monitoring of key subtrades, analyzing rate and service activity under the standards of sections 5, 6(g) and 10 of the Act. The Bureau's quarterly monitoring reports provide periodic trend analyses of agreement activities and other topics; its trade studies provide an overview of trade

conditions between the United States and selected countries. The Bureau's controlled carrier reports support the Commission's activities under section 9 of the Act. Also, specific monitoring of selected carrier agreements will be continued. In addition to periodic updates to various ongoing monitoring reports, the Bureau plans to expand the breadth of these reports by providing analyses on additional subtrades. In aggregate, the Bureau's trade monitoring reports and studies provide an up-to-date and detailed interpretation of evolving carrier and agreement activity, and changing trade conditions, under the Act's standards. The report/study program develops a factual basis that allows the Commission to isolate and identify activity that may contravene the Act's standards for appropriate follow-up by the Bureau or the Commission itself, as warranted by the circumstances of each case.

The Bureau anticipates continuing pre-effectiveness analysis of newly-filed agreements to determine if an agreement is likely to raise any section 5, 6(g) or 10 issues, or policy issues; the preparation of recommendations to the Commission on more complex agreements or issues; and the disposition of routine agreements under authority delegated by the Commission.

In support of the Bureau's monitoring efforts, there is planned continued maintenance of databases for the Work-in-Process System (WIPS) and the Required Reports Profile System (RRPS); continued changes in current programs for the systems; and the development of programs for additional functions. It is also anticipated that the Bureau will become more involved in projects related to various investigative issues.

Finally, the Bureau's support of formal Commission proceedings will continue. The Bureau's degree of involvement will, of course, turn on the number and subject matter of the proceedings initiated during the next fiscal year.

F. BUREAU OF DOMESTIC REGULATION

1. General

The Bureau of Domestic Regulation plans, develops, administers and analyzes programs and activities in connection with pricing by common carriers by water, conferences of such carriers, and terminal operators in the foreign and domestic offshore commerce of the United States; reviews and maintains both new and amended tariff filings, rejecting those which fail to conform to the Commission's regulations; approves or disapproves special permission applications involving requests to deviate from certain tariff filing rules; processes service contracts and essential terms publications filed by ocean common carriers and conferences of such carriers; initiates recommendations, in collaboration with other offices of the Commission as warranted, for formal action and proceedings by the Commission; and plans, develops, and administers programs for processing, evaluating, and monitoring agreement activity of marine terminal operators. The Bureau is also responsible for the licensing of ocean freight forwarders under the provisions of the Shipping Act of 1984, and, under Public Law 89-777, the certification of owners and operators of passenger vessels in the United States trade with respect to the financial responsibility of such owners and operators to satisfy liability incurred by non-performance of voyages or resulting from passenger injury or death. The Bureau develops long-range plans, new or revised policies and standards, and rules and regulations, with respect to its program activities.

During fiscal year 1987, the Bureau underwent substantial organizational and personnel changes. The changes included major realignment of management personnel due to retirements and reassignments, internal reorganization and consolidation of functions, transfer of responsibilities, and program changes. As a result of these

changes, a new organization emerged from the former Bureau of Tariffs: the Bureau of Domestic Regulation. Under the Bureau's new Office of Terminal Operations, marine terminal agreement processing was consolidated with the marine terminal tariff responsibilities, facilitating overall surveillance of the marine terminal industry. Also, a separate organizational unit, the Tariff Control Center, was established for the specific purpose of administering and maintaining the Commission's public tariff library of over 5000 tariffs. The Office of Carrier Tariff and Service Contract Operations is responsible for administering the Commission's tariff and service contract programs, as well as the Bureau's automated data processing functions, and the Office of Freight Forwarder and Passenger Vessel Operations is responsible for the licensing of ocean freight forwarders and the certification of passenger vessels. Thus, the new Bureau of Domestic Regulation is responsible for all tariffs filed by ocean common carriers and terminal operators; marine terminal agreements; service contracts; the licensing of ocean freight forwarders; and the certification of passenger vessels for financial responsibility.

2. Foreign Commerce, Tariff, and Service Contract Activity

(a) Service Contracts

The Shipping Act of 1984 permits carriers and conferences to enter into service contracts with shippers and/or shippers' associations. A service contract is defined in the Act as ". . . a contract between a shipper and an ocean common carrier or conference in which the shipper makes a commitment to provide a certain minimum quantity of cargo over a fixed time period, and the ocean common carrier or conference commits to a certain rate or rate schedule as well as a defined service level--such as, assured space, transit time, port rotation, or similar service features; the contract may also specify provisions in the event of nonperformance on the part of either party."

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

The essential terms of a service contract include:

- **The origin and destination port ranges or geographic area;**
- **The commodity involved;**
- **The minimum volume;**
- **The line-haul rate;**
- **The duration;**
- **Service commitments; and**
- **Liquidated damages for nonperformance, if any.**

The variables which can be prescribed in service contracts are almost infinite, thereby giving carriers and shippers significant freedom to tailor transportation arrangements suitable to their commercial needs.

During the fiscal year, the Commission revised its regulations governing the filing of service contracts through the promulgation of 46 CFR Part 581, which became effective on July 27, 1987. The revised regulations reflect the Commission's experience in dealing with the large number of service contracts that have been filed since the Shipping Act of 1984 was enacted. They are intended to ensure that service contracts more fully comply with all statutory requirements and the intent of Congress, and to update and streamline the service contract filing process.

The revised regulations reaffirmed that a shipper cannot commit all or a fixed portion of its cargo without the resulting arrangement becoming a loyalty contract. In addition, they clarified the statutory concepts relating to

parties to, duration of, and geographical scope of contracts. The revised regulations provided additional filing requirements to facilitate Commission surveillance and availability of terms to similarly situated shippers. They also refined procedures involving the essential terms publications and statements, contingency clauses, termination, and rejection of filings by the Commission.

In a separate rulemaking proceeding, the Commission amended its rules governing service contracts to enhance its surveillance of service contract activity by addressing problems the Commission had experienced in obtaining adequate service contract records. The amendment defines service contract records and requires ocean common carriers and conferences to maintain these records in a readily accessible or retrievable manner for a period of five years from the termination of each contract. Further, the amendment provided that service contract records must be made available to the Commission within 30 days from the date of a written request.

During fiscal year 1987, the Bureau received 4,475 service contracts totaling approximately 67,000 pages. These contracts were filed by 73 individual ocean common carriers and 28 conferences. The contracts involved approximately 5,000 shippers and the entire scope of the U.S. foreign commerce, both inbound and outbound.

(b) Controlled Carriers

A controlled carrier is an ocean common carrier whose operating assets are directly or indirectly owned or controlled by the government under whose registry the vessels of the common carrier are operated. Section 9 of the Shipping Act of 1984 (46 U.S.C. app. 1708) provides that no controlled carrier may maintain rates or charges in its tariffs filed with the Commission that are below a level that is just and reasonable, nor may any such carrier establish or maintain unjust or unreasonable classifications, rules or regulations in those tariffs. In

addition, such rates, charges, classifications, rules, or regulations of a controlled carrier may not, without special permission of the Commission, become effective sooner than the 30th day after the date of filing with the Commission.

The Bureau of Domestic Regulation monitors the tariff filings of controlled carriers to assure that the required notice for rate increases and decreases is given. During fiscal year 1987, controlled carriers filed approximately 7,000 tariff pages. The Bureau also acted on twelve special permission applications filed by controlled carriers.

(c) Common Carrier Anti-Rebate Certification (ARC) Program

Every common carrier by water in the foreign commerce of the United States and ocean freight forwarder is required by section 15(b) of the Shipping Act of 1984 (46 U.S.C. app. 1714) and 46 CFR Part 582, to file a sworn Certification of Company Policies and Efforts to Combat Rebating in the Foreign Commerce of the United States. This certification is to be filed with the Secretary of the Commission annually and is to be signed by the Chief Executive Officer of the common carrier or ocean freight forwarder. Section 15(b) and 46 CFR 582.1(b) provide that failure to file the required certification may result in a civil penalty of \$5,000 for each day the violation continues. The information obtained under the anti-rebating program is used to maintain continuous surveillance over common carrier activities and to provide a deterrent against rebating practices.

Revised regulations governing the filing of anti-rebating certifications became effective on October 28, 1986. These revised regulations eliminate duplications and establish a uniform anti-rebating rule for ocean common carriers, non-vessel-operating common carriers and ocean freight forwarders. The rule also specifies the time period covered by the anti-rebating certification and provides a uniform due date for submission of the certification.

An automated program was implemented to insure the receipt of certifications from all those required to file. During the year, 2300 certifications were filed in a timely manner. Appropriate enforcement action is being considered with respect to 500 non-filers and 100 late filers.

(d) Inactive Tariffs

During fiscal year 1987, the Bureau of Domestic Regulation undertook a comprehensive survey of foreign commerce tariffs currently on file with the Commission. The purpose of this survey was to identify tariffs of firms which appeared to be inactive or no longer operating as carriers in the waterborne foreign commerce of the United States. Inactive tariffs reflect inaccurate information and serve no useful purpose while adding to administrative cost. A carrier was deemed to be inactive if it had not amended its tariff during the preceding twelve month period, had not filed the required anti-rebating certification, and could not be contacted by mail or telephone. As a result of this survey, an order to show cause why 408 carrier tariffs should not be canceled was prepared. It is anticipated that this order will be served early in fiscal year 1988, and will lead to the cancellation of a significant number of inactive tariffs during the coming fiscal year.

(e) Tariff Processing

During fiscal year 1987, the Bureau of Domestic Regulation received and reviewed 680 new foreign tariffs, of which 86 were rejected. In addition, 746,841 tariff pages amending existing tariffs and 106 special permission applications were processed. The program of microfiching canceled tariffs and canceled pages to active tariffs is continuing. During fiscal year 1987, approximately 520,000 canceled tariff pages were recorded on microfiche.

3. Domestic Tariff Activity

(a) Authority

Sections 17 and 18(a) of the Shipping Act, 1916, and section 2 of the Intercoastal Shipping Act, 1933, require the filing of rates, charges and rules describing practices of common carriers operating in the U.S. domestic offshore commerce. The Bureau of Domestic Regulation must ensure that these tariffs comply with statutory requirements and rules pertaining to tariff filing by domestic offshore carriers. The Commission's regulations also require the filing of annual reports of financial and operating data by vessel-operating common carriers in the domestic trades.

(b) Inactive Tariffs

During fiscal year 1987, the Bureau of Domestic Regulation undertook a program, similar to that with respect to foreign tariffs, to identify tariffs of firms which appeared to be inactive or no longer operating as carriers in the domestic offshore waterborne commerce of the United States. As a result of this program, an order to show cause why 100 carrier tariffs should not be canceled was prepared. It is anticipated that this order will be served early in fiscal year 1988, and will lead to the cancellation of a significant number of inactive tariffs during the coming fiscal year.

(c) Tariff Processing

During fiscal year 1987, 46 new domestic offshore tariffs were received and reviewed. In addition, 39 domestic special permission applications were processed. The Bureau also processed over 5,000 tariff pages amending existing tariffs.

4. Marine Terminal Activities

Marine terminals, operated by both public and private entities, provide facilities and labor for the interchange of cargo between land and sea carriers, and for the receipt and delivery of cargo to shippers and consignees. During fiscal year 1987, the Bureau processed 193 agreements and agreement modifications relating to port and terminal services and facilities. Five hundred and eighteen such agreements were in effect at the conclusion of the fiscal year.

The Commission is also charged with processing certain labor-management agreements pursuant to the Maritime Labor Agreements Act of 1980 (P.L. 96-325, 94 Stat. 1021). This Act provides that such agreements, to the extent they provide for the funding of collectively bargained fringe benefit obligations on other than a uniform man-hour basis, regardless of the cargo handled or type of vessel or equipment utilized, shall be deemed effective upon filing with the Commission. During fiscal year 1987, 8 labor-management agreements of this type were filed.

On December 24, 1986, the Commission published in the Federal Register its final rule in Docket No. 86-15 prohibiting terminal tariffs from containing provisions that exculpate or otherwise relieve marine terminal operators from liability for their own negligence, or that impose upon others the obligation to indemnify or hold harmless the terminals from liability for their own negligence. Approximately 400 marine terminal operators were furnished a copy of this rule and requested to comply by February 23, 1987. However, extensive review of terminal tariffs and further notification of specific violations were necessary to achieve satisfactory compliance with the rule. In some cases, compliance efforts are still continuing.

On May 19, 1987, the Commission published in the Federal Register its final rule in Docket 85-10 exempting marine terminal agreements (except terminal conference, inter-conference, joint venture and discussion agreements)

from the waiting period requirement of the Shipping Act of 1984 and from the approval requirement of the Shipping Act, 1916. Seventy-nine agreements became effective pursuant to the exemption by the end of the fiscal year.

By Federal Register Notice of May 14, 1987, the Commission continued a moratorium on the assessment of penalties against certain unfilled terminal service agreements pending completion of a fact-finding investigation to determine whether such agreements are subject to the Commission's jurisdiction and, if so, whether they should be exempt from filing requirements. In this regard, the Commission instituted Fact-Finding Investigation No. 17, which was still in progress at the end of the fiscal year.

The Bureau carried out its responsibilities with respect to terminal tariffs with the receipt and review of 4,200 terminal tariff pages filed during fiscal year 1987.

5. Freight Forwarders

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

Congressional findings in 1961, focusing on malpractices within the ocean freight forwarding industry, led to the enactment of section 44 of the Shipping Act, 1916 (46 U.S.C. 841b), which vested the Commission with authority for the licensing and regulation of independent ocean freight forwarders. At that time, malpractices in the export trades were rampant. Given the importance of maintaining a favorable climate for U.S. businesses,

especially small businesses which lack the expertise to do their own exporting, Congress found that licensing and limited oversight of ocean freight forwarders was necessary to eliminate secret, illegally preferential rebates, and to ensure that unscrupulous, incompetent and financially irresponsible persons were prevented from operating as ocean freight forwarders. Although the number of licensed ocean freight forwarders has increased since 1961, forwarder-initiated malpractices are now more the exception than the rule.

The continued maintenance of fiduciary responsibility, technical qualifications, and the financial responsibility of an ocean freight forwarder are currently assured by means of a license issued by the Commission and a surety bond which is required to be maintained on file with the Commission. Once issued, a license need not be renewed. However, Commission approval for a change in the business form of a licensee or a license transfer to another person is required. The amount of the bond depends upon the number of offices through which an ocean freight forwarder provides services. The basic bond amount is \$30,000.00. It is increased by \$10,000.00 for each unincorporated branch office of a forwarder. Each separately incorporated office of a forwarder is required to obtain its own license.

With the enactment of the Shipping Act of 1984, the Commission's regulatory responsibilities over the forwarding industry are now found in section 19 of that Act. Under this statute, the basic licensing requirements remain essentially in place. However, the prohibition against export shippers receiving a license has been eliminated, i.e., they no longer have to be "independent." Licensed forwarders are barred from collecting compensation from carriers on shipments in which they have a beneficial interest. Also under the statute, agreements by and among forwarders engaged in foreign commerce of the United States are no longer required to be filed with the Commission for approval. Hence, such agreements are afforded no anti-trust immunity.

The Shipping Act, 1916, as amended, does not require persons operating as forwarders in the domestic off-shore trades of the United States to obtain a license to do so, nor are such entities required to file a surety bond.

During fiscal year 1987, the Commission received one hundred fifty-six applications for ocean freight forwarder licenses, in addition to the nine applications pending from fiscal year 1986. Ninety of these applications were approved; one was withdrawn during the processing stage; and forty-two incomplete applications were returned to the applicants. Thirty-two applications were pending at the close of the fiscal year. Ninety-eight previously-issued licenses were revoked, primarily due to the forwarder's failure to maintain a valid surety bond as required by statute.

In addition to applications for new licenses, in fiscal year 1987 the Commission received one hundred applications requesting approval of license transfers and other organizational changes. Two such applications were carried over from the previous fiscal year. Seventy of these requests were approved during fiscal year 1987. Two requests were administratively closed because the applicants did not pursue the action. Thirty requested actions were pending at the close of fiscal year 1987.

On-site compliance investigations are conducted as part of the Commission's effort to ensure that licensed ocean freight forwarders comply with the provisions of the shipping statutes and the Commission's regulations. During the year, one hundred twenty-three investigative reports were reviewed by the Bureau. Eighty-two of these reports resulted in the issuance of warning letters or referral to the Bureau of Hearing Counsel for the assessment of appropriate civil penalties. Thirty-four cases were determined to require no formal corrective action. Seven reports were pending review at the close of fiscal year 1987.

Other activities during the year included:

- The processing of 1,053 surety bond actions including new bonds, riders to bonds and cancellations of bonds;
- The review and processing of 36 informal complaints concerning, in the majority of cases, the non-payment of freight charges by forwarders to carriers;
- The issuance of 75 new licenses and the reissuance of 10 ten revoked licenses after new surety bonds were obtained;
- The review of 6 Dunn and Bradstreet reports; and
- The receipt of information about 9 claims, totaling in excess of \$208,000, that were filed against forwarder bonds.

During the fiscal year, the Commission acted on a Petition for Rulemaking filed by the National Customs Brokers and Forwarders Association of America, Inc. (NCBFAA) to amend six areas of the Commission's ocean freight forwarder rules (46 CFR Part 510). The NCBFAA petition was denied in all respects. NCBFAA then filed a Petition for Reconsideration of the denial of its rulemaking request. Upon review, the Commission determined to reject the petition for reconsideration.

The Commission also had under review at the close of fiscal year 1987 a Petition for Declaratory Order filed by the Old Republic Insurance Co., the Surety Association of America, and the NCBFAA, to end a controversy and remove any uncertainty which might exist concerning the maximum potential liability of a surety under a freight forwarder bond. The issue to be decided is whether a surety's liability under a forwarder's bond is limited to the \$30,000 face amount of the bond or carries with it an open-ended liability to be derived by multiplying said face amount by the number of shipments, bills of lading, claims, occurrences, or periods covered by the bond.

At the end of the fiscal year, there were 1559 licensed ocean freight forwarders, approximately 1% fewer than the total number of licensees at the close of fiscal year 1986.

6. Passenger Vessel Certification

The Commission is responsible for administering sections 2 and 3 of Public Law 89-777 (46 U.S.C. 817d and 817e), which have been implemented by the Commission's regulations found in 46 CFR 540 - "Security for the Protection of the Public." Owners, charterers, and operators of American and foreign vessels having berth or stateroom accommodations for fifty or more passengers and embarking passengers at United States ports must establish financial responsibility: (1) to meet any liability incurred for death or injury to passengers or other persons on voyages to or from United States ports; and (2) to indemnify passengers for nonperformance of transportation to which they would be entitled under ticket contracts. Upon the submission of evidence of financial responsibility in accordance with Subpart B of 46 CFR 540, the Commission will issue a Certificate of Financial Responsibility to Meet Liability Incurred for Death or Injury to Passengers or Other Persons on Voyages [Certificate (Casualty)]. Upon submission of similar evidence in accordance with Subpart A of 46 CFR 540, the Commission will issue a Certificate of Financial Responsibility for Indemnification of Passengers for Nonperformance of Transportation [Certificate (Performance)].

With respect to the Certificate (Casualty), financial responsibility must be established in accordance with a schedule provided in section 2 of Public Law 89-777 and Commission regulations. An applicant operating more than one vessel must evidence financial responsibility under the casualty provisions for its largest vessel. The extent of financial responsibility required under section 3 of Public Law 89-777 for the issuance of a Certificate (Performance) is determined by the Commission, taking into account factors such as the number of vessel accommodations, fare structure, collection policy, sailing schedule, itinerary, and past experience. The maximum amount of coverage required with respect to performance is \$10 million (except as a self-insurer, which could require a greater amount).

The certificates must be presented to United States Customs officials at the port or place of departure of the vessel from the United States. Under the law, the U.S. Customs Service will refuse clearance of a vessel if it does not have proper certificates on board, and until such time as the Commission confirms compliance with the law.

During fiscal year 1987, the Commission received 90 applications for passenger vessel certificates. Of these, 25 were new applications for performance certification, 19 were new applications for casualty certification, and 46 were applications for amendments to existing certificates. At the close of fiscal year 1987, 26 applications were pending. Holders of passenger vessel certificates have filed with the Commission evidence of financial responsibility in excess of \$220 million for performance certification and \$1 billion for casualty certification.

7. Automated Database Systems

The Bureau of Domestic Regulation maintains several automated database systems. These are: (1) the service contract system; (2) the regulated persons index; (3) the tariff profile system; (4) the microfiche system; and (5) the ocean freight forwarder system. The service contract system provides certain key service contract data, such as geographics, shipper names, commodities and rates. The regulated persons index assigns a discrete number to each person the Commission regulates and provides their address and business name. The tariff profile system lists key data contained in tariffs on file with the Commission. The microfiche system provides a means of locating canceled tariffs which have been microfiched. The ocean freight forwarder system provides pertinent data necessary for the tracking of licensees, including surety bond information.

8. Shippers Associations

The Shipping Act of 1984 recognized shippers' associations for the first time as entities in international ocean transportation. They are defined in the Act as groups of shippers which, on a non-profit basis, consolidate their cargoes to secure volume rates or enter into service contracts. The Act expressly requires that the carriers and conferences negotiate with shippers' associations. It also provides that such associations can enter into service contracts on behalf of their members. Shippers' associations have not been granted antitrust immunity under the 1984 Act. In fiscal year 1987, 47 service contracts were filed involving 19 shippers' associations. Since the Shipping Act of 1984 became effective, a total of 25 shippers' associations have entered into a total of 104 service contracts with certain carriers and conferences.

9. Financial Analysis

The Bureau of Domestic Regulation provides accounting and financial expertise to help ensure the reasonableness of rates for the transportation of cargo and other services provided by common carriers in the domestic offshore waterborne commerce of the United States. The Bureau also provides technical assistance to other activities within the Commission. Such assistance is being provided to Commission attorneys with respect to a formal Commission proceeding involving terminal charges.

The Bureau continued to monitor the activities of carriers in the domestic offshore commerce of the United States. The effort involved the receipt and review of financial and operating data submitted in compliance with 46 CFR Part 552.

10. Support Activities

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

Investigative activities require substantial tariff research and supporting documentation which is provided by Bureau staff. Automated data bases, such as the regulated persons index and service contract system, are utilized for initial data identification purposes and actual hard copy of relevant material is retrieved and provided to the Bureau of Investigations and/or the appropriate field office. During fiscal year 1987, the Bureau also assisted in a major enforcement initiative to combat malpractices in the Trans-Atlantic trade.

The Commission's field offices are also provided with general data lists of regulated persons situated in specific field office jurisdictions. This data assists not only with investigative efforts, but serves localized public needs for information concerning Commission-regulated industries.

During the past fiscal year, the Bureau has also supported the Commission's section 18 five-year study of the effects of the Shipping Act of 1984 by providing the raw tariff rate data which is tracked to study pricing behavior in the liner shipping industry.

Exercise of the Commission's section 19 authority to respond to complaints concerning discriminatory actions by foreign flag carriers and governments in the U.S. liner trades is contingent upon identification of appropriate foreign operators in a particular trade. The Bureau has assisted in this capacity during fiscal year 1987 in cases involving Taiwan and Peru.

Specialized accounting personnel within the Bureau were called upon to provide expertise in several docketed matters.

11. Rulemaking and Docketed Proceedings

The Bureau of Domestic Regulation initiates or provides staff support for formal rulemaking and Commission docketed proceedings. During fiscal year 1987, the Bureau was involved with: Truck Detention at the Port of New York -

Increase in Penalty Charges, Docket No. 86-20, to increase the level of charges at the Port; Marine Terminal Agreements, Docket No. 85-10, consideration of exemption of certain types of terminal agreements from the filing and waiting periods contained in the shipping statutes; Filing of Agreements by Persons Subject to Shipping Act, 1916 and Shipping Act of 1984 - Exculpatory Provisions in Marine Terminal Agreements and Leases, Docket No. 86-32; Automobile Measurement Rule, Docket 87-1, to eliminate or revise mandatory tariff rules on automobiles in the domestic offshore trades; Filing of Tariffs by Marine Terminal Operators-Exculpatory Provisions, Docket No. 86-15, to prohibit certain tariff provisions that exculpate or otherwise relieve marine terminal operators from liability; Volga Forwarders Services, Inc. - Application for an Ocean Freight Forwarder's License, Docket No. 86-10, to determine if the applicant possessed the necessary experience and character to be licensed as an ocean freight forwarder; Service Contracts, Docket No. 86-6 and Filing of Service Contracts and Availability of Essential Terms, Docket No. 86-29, general revisions of the Commission's rules on service contracts and their essential terms; Compliance with Agreement No. T-3363 Between City of Los Angeles and Matson Terminals, Inc., Docket No. 87-15, to determine if parties have operated in accordance with terms of the agreement; Rates, Charges and Services Provided at Marine Terminal Facilities, Fact Finding Investigation No. 17, jurisdiction over certain marine terminal industry practices; and Malpractices in the Trans-Atlantic Trades, Fact Finding Investigation No. 16, to implement the Commission's amnesty program.

G. BUREAU OF ECONOMIC ANALYSIS

1. General

The Bureau of Economic Analysis provides economic, statistical and financial analysis in support of the Commission in its statutory mission. The Bureau also augments the Commission's planning capabilities and enhances the agency's responsiveness to new developments and trends in U.S. ocean commerce and the liner shipping industry.

Major activities of the Bureau include:

- Preparing the five-year study required by section 18 of the Shipping Act of 1984 as to the impact of the Act on the international ocean shipping industry;
- Coordinating the input of various industry study groups which were organized to assist the staff in gathering information and trade data for the section 18 study;
- Assisting Commission legal staff in the preparation of testimony or recommendations in various areas such as restrictive trade practices in foreign countries and rate increases in the domestic offshore trades;
- Forecasting trade developments and world economic trends;
- Preparing special reports on economic and financial developments in liner shipping;
- Participating in the planning process to evaluate the feasibility of automating tariffs; and
- Providing information in response to Commission needs for economic, political, and trade data.

2. Section 18 Study

The Bureau's major project during FY 1987 was the continuing effort to fulfill the requirement for the collection and analysis of data required by section 18(a) and drafting the reports required by section 18(c) of the Shipping Act of 1984. A comprehensive review of the progress to date in this five-year study is set forth in Chapter VI on the section 18 study.

3. Future Plans and Proposed Activities

For the coming year, the Bureau of Economic Analysis plans to increase its effort to collect and analyze the data needed to comply with the mandated five-year study, as required by section 18 of the Shipping Act of 1984.

Specifically, the staff will concentrate its efforts on analyzing the information obtained from conferences on service contracts, intermodal rates, and independent-action rates. These data are being collected for the major-moving commodities in each of the trades under study.

It is also planned that a third survey will be sent to carriers, shippers, freight forwarders, NVOCCs, shippers' associations, and ports and terminal operators in 1988. The intention has been to conduct annual surveys of each of the industry groups, at least until 1989. These subjective views of the impact of the Act will supplement the quantitative data being collected.

It is anticipated that drafts of the reports required under section 18(c) will be prepared during the coming fiscal year and, thereafter, circulated to other components of the Commission for review.

The Federal Maritime Commission and the University of Southern California will sponsor a second conference (Symposium II) on the Shipping Act of 1984 to be held in Long Beach, California on February 18-19, 1988. The theme of the conference will be "The Shipping Act of 1984: A Debate of the Issues." The stated purpose of Symposium II is as follows:

The Shipping Act of 1984 revised the system for regulation of international shipping.

It was expected that the new Act would significantly alter the competitive situation in the liner shipping trades and, as a consequence, have wide-reaching impacts on all segments of the industry.

Now that almost four years have passed since enactment of the Act, it is appropriate to have a public forum to receive the views of those in the industry who have been affected by the Shipping Act of 1984.

The objectives of the conference are to:

- Elicit information on the current status of various sectors of the shipping industry;
- Explore the impacts of expected global changes in the industry on U.S. trade and shipping; and
- Exchange views on current theories and practices of government regulation in international transportation.

In July 1987, the Federal Maritime Commission published a Notice in the Federal Register of its intent to establish an Advisory Committee. The purpose of this Committee will be to make continuing recommendations on the conduct of the section 18 study. The Committee is to be comprised of representatives of interests affected by the Shipping Act of 1984, including representatives of conferences, ocean common carriers, other common carriers, freight forwarders, shippers, shippers' associations, ports, non-port marine terminal operators, and other transportation service firms. It is anticipated that the first meeting of the Advisory Committee will be convened in early 1988.

H. BUREAU OF HEARING COUNSEL

The Bureau of Hearing Counsel participates as trial counsel in formal adjudicatory (docketed) proceedings, non-adjudicatory investigations, rulemaking proceedings when designated by Commission Order, and other proceedings initiated by the Commission. The Bureau's attorneys serve as Hearing Counsel, when intervention is permitted, in formal complaint proceedings instituted under section 22 of the Shipping Act, 1916, and section 11 of the Shipping Act of 1984.

In addition to the formal proceedings in which the Bureau participates as a party, the Bureau monitors all other formal proceedings in order to ascertain that major issues affecting the shipping industry and the general public, as distinguished from purely private disputes between litigating parties, are adequately developed. The Bureau also participates in an advisory capacity in the development of Commission rules and regulations. On request, the Bureau furnishes advice to the staff. On occasion, the Bureau may participate in court litigation by or against the Commission. Bureau attorneys provide legal advice to the Bureau of Investigations during field investigations and review enforcement reports completed by that Bureau.

When appropriate, the Bureau of Hearing Counsel prepares and serves notices of violations of the shipping statutes and regulations, and may compromise and settle civil penalties arising from those violations. The Bureau also acts as prosecutor in formal Commission proceedings that may result in assessment of civil penalties.

At the close of fiscal year 1986, 46 investigations of possible violations prepared by the Bureau of Investigations were pending final resolution by the Bureau of Hearing Counsel. During fiscal year 1987, 46 new reports of possible violations were received from the Bureau of Investigations. Forty-five such cases were compromised, settled, administratively closed, or referred for formal proceedings. As a result, 47 investigations of possible violations were pending resolution by the Bureau of Hearing Counsel on September 30, 1987.

During fiscal year 1987, the Bureau participated in the compromise or assessment of \$2,435,050, as set forth in Appendix E. Appendix E does not include special enforcement initiatives which are discussed in Chapter III.

At the close of fiscal year 1986, the Bureau was party to 15 formal proceedings. During the year, the Bureau participated in 6 new formal proceedings, and 13 proceedings in which the Bureau was participating were completed. Accordingly, the Bureau was party to 8 formal proceedings on September 30, 1987. The Bureau also provided advice to the Commission's staff concerning more than 42 projects during the fiscal year.

During fiscal years 1984 and 1985, a new operating plan was developed for the Bureau. This plan, fully implemented in fiscal years 1986 and 1987, enhanced the Bureau's functions as legal advisor to the Commission staff by providing for closer coordination with other bureaus and offices. As a consequence of this new operating plan and the Bureau's role in the Commission's enhanced enforcement program, it is anticipated that there will be a marked increase in all areas of Bureau activity in the next several fiscal years.

I. BUREAU OF INVESTIGATIONS

The Bureau of Investigations monitors the activities of ocean common carriers, non-vessel-operating common carriers, freight forwarders, passenger vessel owners and operators, and ports and terminals, as an integral part of the Commission's responsibility for the regulation of U.S. ocean commerce. The Bureau performs this function to ensure compliance with the statutes and regulations administered by the Commission and conducts investigations of alleged violations. These violations can include, but are not limited to, the following:

- Carrier and shipper malpractices, such as illegal rebating of freight charges, and misclassification, misdescription or misdeclaration of cargo shipments;
- Unlawful common carrier rates in U.S. foreign and domestic offshore trades;
- Unlawful agreements among carriers or other persons subject to the Commission's jurisdiction; and,
- Unlicensed ocean freight forwarder activity.

The Bureau maintains a staff of 41 personnel located in the Headquarters Office in Washington, D.C., and District Offices in the major port cities of Houston, Los Angeles, Miami, New Orleans, New York, San Francisco and Hato Rey, Puerto Rico. In addition to monitoring and investigative functions, each District Office represents the Commission within its jurisdiction; provides liaison between the Commission and the maritime industry and the shipping public; and assesses industry-wide conditions for the Commission.

The Bureau focused its resources in fiscal year 1987 on the identification and investigation of industry malpractices, with a special emphasis on the major trade routes. The Bureau conducted 140 investigations and special inquiries, of which 46 were forwarded to the Bureau of Hearing Counsel for enforcement action. (See Chapter III.)

A total of 140 surveillance matters were conducted in fiscal year 1987, including audits of selected service contracts, freight forwarder compliance checks, and audits of non-vessel-operating common carriers.

In fiscal year 1987, the Commission opened a District Office in Houston, Texas, to address the large and growing number of regulated persons and the increased volume of oceangoing container traffic in the Houston/Galveston area. The Houston Office has jurisdictional responsibility for Texas, Colorado, New Mexico, Oklahoma, and Kansas.

The complement of investigators was increased in fiscal year 1987, with the hiring of new investigators in Los Angeles, New York and San Francisco, and a District Director in Miami. Additional hiring is planned for fiscal year 1988.

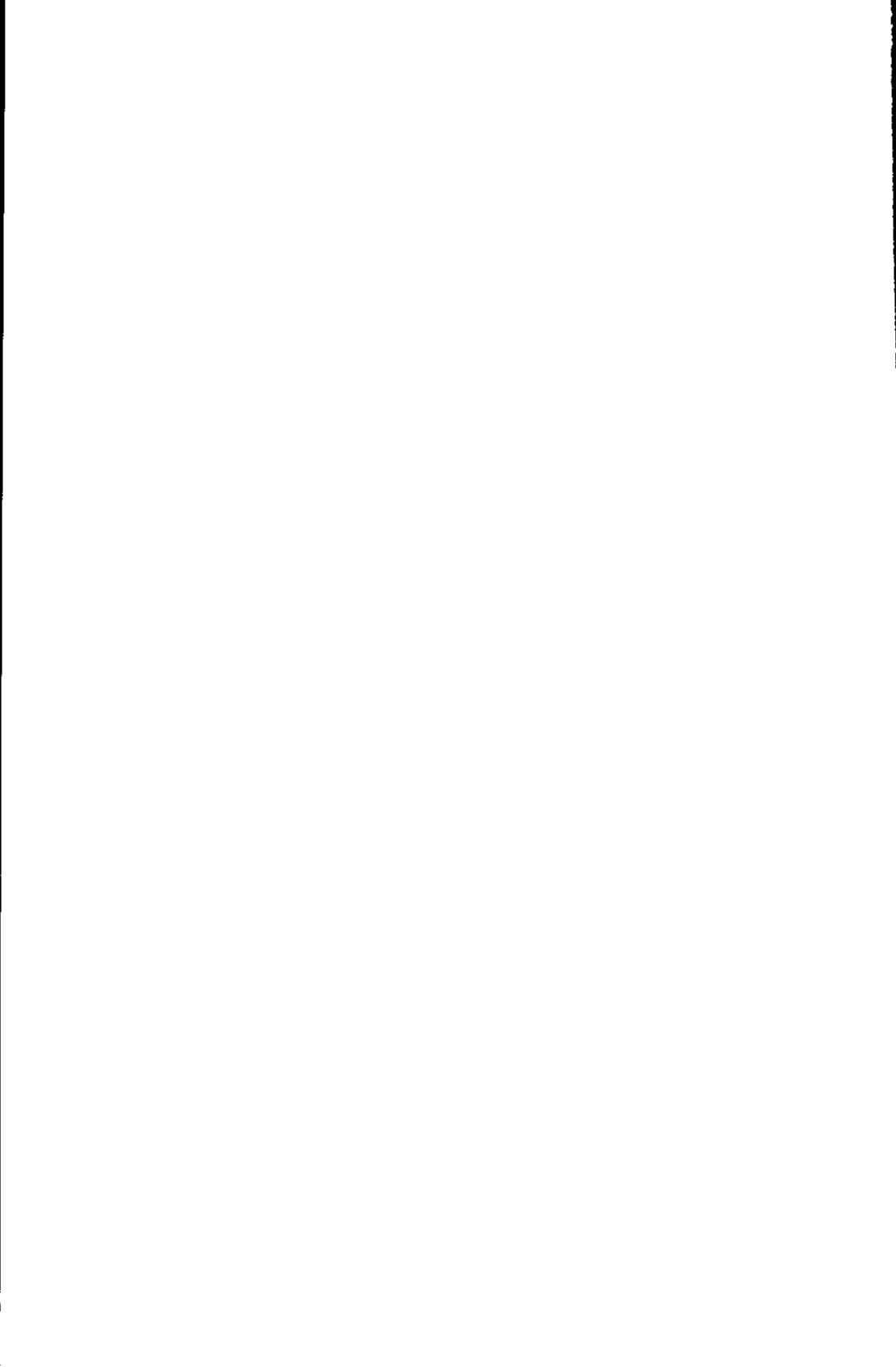
As a part of the Memorandum of Understanding with the U.S. Customs Service, joint briefings were conducted in the field for the staffs of the Commission's District Offices and the Customs Regional Offices to review the roles and responsibilities of each organization. These meetings resulted in the sharing of industry intelligence and the development of important leads. Training is scheduled in fiscal year 1988 for Commission investigators on the utilization of Customs' Automated Commercial System (ACS) in FMC investigations.

The investigative staff participated in the White Collar Crime Training Program at the Federal Law Enforcement Training Center, in Glynco, Georgia. In addition to improving the investigators' skills in fraud detection, the Program provided an opportunity for them to discuss investigative strategies and techniques with guest lecturers and investigators from other Federal law-enforcement agencies. The investigative staff is scheduled to attend the two-week Computer Crime/Data Processing Training Program offered by the Center in fiscal year 1988.

The industry expert hired in August, 1986, provided technical assistance to the Bureau through July, 1987. The

focus of his activities was the development of proposals to better target major malpractices and the implementation of new investigative strategies. He was rehired in September, 1987, for a one-year term, to advise the Bureau and provide otherwise unavailable expertise and guidance in the planning, coordination, and evaluation of the Bureau's target malpractice program in the Pacific trades. The expert, who reports to the Bureau Director, is working out of the San Francisco District Office.

At the beginning of fiscal year 1987, there were 305 field investigations and surveillance matters in progress. During the year, 285 new investigations and surveillance matters were initiated, providing 590 cases on hand and scheduled for inquiry. Completed investigations and surveillance activities totaled 400, leaving 190 cases pending at the end of the fiscal year. Appendix F summarizes the Bureau of Investigations' activities.



J. BUREAU OF ADMINISTRATION

The Bureau of Administration is responsible for the direct administration and coordination of the:

- Office of Administrative Services
- Office of Budget and Financial Management
- Office of Personnel
- Office of Special Studies

During FY 1987, the Office of the Director of the Bureau became responsible for the tariff automation program.

The Director of the Bureau was also the Executive Secretary of the ATFI Industry Advisory Committee; Commission delegate to the Administrative Conference of the United States; and Commission representative, as Chief Management Official, to the Small Agency Council.

In FY 1988, the Director of the Bureau will also be Executive Secretary of the Commission's Section 18 Study Industry Advisory Committee.

Most other functions and achievements of the Bureau are reflected in the narratives under the Bureau Offices, as follows:

1. Office of Administrative Services

(a) General Office Responsibilities

The Office of Administrative Services directs and administers a variety of management services functions that principally provide administrative support to the regulatory program operations of the Commission. The Director of the Office of Administrative Services reports directly to the Director, Bureau of Administration.

The office's support programs include communications, procurement of administrative goods and services, property management, space management, printing management, mail and

records services, reproduction and graphics services, facilities and equipment maintenance, and transportation. The office's major functions are to secure and furnish all necessary supplies, equipment and services required in support of the Commission's mission and to formulate regulations, policies, procedures, and methods governing the use and provision of these support services in compliance with the Federal Acquisition Regulations (FAR), the Federal Property Management Regulations (FPMR), and other appropriate Federal guidelines.

(b) Office Program Objectives

The program objectives of the Office of Administrative Services are to:

- Execute Commission contracts and administer these and any other procurement matters which obligate the Government to expenditures of funds;
- Control and administer the Commission's acquisition, utilization, inventory, maintenance, and disposition of property;
- Develop and coordinate a comprehensive telecommunications program for Washington headquarters and at all Commission field offices, which includes installation and maintenance of all telecommunications equipment and features;
- Administer programs for improvement of the workplace environment and other space utilization operations for headquarters and field locations, which include planning; negotiating; drafting and interpreting architectural drawings and specifications; and assigning space to, and providing furnishings for, offices;
- Manage the receipt, storage, issuance and inventory of all supplies, forms and accessories required in support of Commission operations;
- Coordinate and control all printing, duplicating, copying, and graphics services, whether provided in-house or by outside sources;
- Regulate receipt, distribution and dispatch of mail;
- Coordinate the use of the building's physical facilities at headquarters with respect to maintenance, security and parking;

- Arrange for transportation services for all Commission locations;
- Conduct safety inspections and coordinate the Commission's emergency evacuation program;
- Manage the retention, transfer, and disposal of Commission records; and
- Direct the Commission's participation, development and goal setting under the Small Business Act.

(c) Major Office Achievements

During fiscal year 1987, the Office of Administrative Services:

- Arranged for construction alteration of office space within the Offices of the Managing Director and the Secretary, along with the Bureaus of Investigations, Hearing Counsel, Trade Monitoring and Domestic Regulation;
- Directed the renovation of Commission interior space at the headquarters location to include painting of all offices, recarpeting of floors and the introduction of system furnishings;
- Coordinated the renovation of two Commission-controlled conferencing facilities at the headquarters location;
- Redesigned the telecommunication systems within the Bureaus of Trade Monitoring, Hearing Counsel and Domestic Regulation;
- Revised the Commission's parking program to increase the availability of spaces and issued new permanent parking permits;
- Improved the Commission's in-house copying capabilities through up-grading of equipment and features;
- Conducted administrative support surveys to improve services provided to field locations in Miami, Houston, New York, Los Angeles and San Francisco;
- Expanded the transportation program in the field locations of Los Angeles, Houston and Puerto Rico;
- Modified the supply operation procedures to provide faster turnaround of requisitions and a new listing of in-stock items and forms;

- Established an office program to survey the Commission's field locations; and
- Revised the Small Business set-aside provision of the Commission's procurement program, ensuring a larger small business participation in the Government's procurement process.

(d) Office Prognosis

In fiscal year 1988, the Office plans to conclude most of the initiatives begun in 1987 relative to the Office's structure and staffing concerns. Additional studies will be conducted relating to the establishment of (1) a suitable project/assignment tracking system of Office functions, (2) a comprehensive training and career development program for Office personnel, and (3) appropriate operating procedures for the Office of Administrative Services.

2. Office of Budget and Financial Management

(a) General

The Office of Budget and Financial Management administers the Commission's financial management program and is responsible for optimal utilization of the Commission's physical, fiscal, and staffing resources. The Office is charged with interpreting government budgetary and financial policies and programs, and developing annual budget justifications for submission to the Congress and the Office of Management and Budget. The Office also administers internal controls systems for agency funds, travel and cash management programs, and the Commission's imprest fund.

(b) Objectives

The objectives of the Office are to:

- Submit annual budget justifications and estimates to OMB and the Congress;
- Execute the budget to ensure appropriated funds are properly expended;
- Prepare regular financial reports to aid management decisions;
- Administer the control system over workyears of employment;
- Collect all fees and forfeitures due the Commission;
- Process payments to vendors as efficiently and expeditiously as possible;
- Make certain resources are used properly to avoid fraud, waste, error, and abuse;
- Process travel orders and vouchers within established time limits;
- Review internal controls and accounting procedures to ensure they conform to existing regulations and develop procedures to correct deficiencies; and
- Administer the Commission's Imprest Fund program.

(c) Achievements

During fiscal year 1987, the Office of Budget and Financial Management:

- Completed evaluation of user fees and submitted its report for Commission consideration;
- Established new uniform fees and guidelines for record search and duplication services provided by all Commission personnel (52 FR 13681);
- Collected and deposited \$3,176,236 from user fees, fines, collections, freight forwarder licensing and vessel certification fees;
- Received notification from the Treasury Cash Management Division that the Commission is operating under acceptable Treasury standards with regard to the acceleration of the collection process, timing of disbursements and minimizing cash balances held outside the Treasury;
- Revised internal regulation on Cash Management;
- Prepared Merit Pay and award calculations;

- Coordinated and prepared budget justifications and estimates for the fiscal year 1988 Congressional budget and the fiscal year 1989 budget to OMB;
- Participated in OMB and Congressional budget hearings;
- Managed the Commission's travel program;
- Prepared cost data and projections pertaining to: the establishment of an office in Houston, Texas; H.R. 1290; the Ocean Transportation Practices Act of 1987; and a formal investigation;
- Participated on an Agency Task Force for Handicap Accessibility;
- Provided management with information and analysis of positions in grades GS/GM 11-15;
- Participated in the tariff automation project;
- Developed FERS data for OMB and The Federal Home Loan Bank Board;
- Developed internal guidelines for relocation of employees;
- Conducted an audit of the New York District Office Imprest Fund;
- Completed a credit card inventory of FMC programs requested by OMB; and
- Completed a microfiche inquiry as requested by the Financial Management Service of the Treasury Department.

(d) Prognosis

During fiscal years 1988 and 1989, the Office of Budget and Financial Management will continue to update financial control procedures, refine the financial management system, improve processing payments, and pursue initiatives leading to economy and efficiency in budget and financial operations.

3. Office of Personnel

The Office of Personnel plans and administers personnel management programs, including recruitment and placement, position classification and pay administration, occupational safety and health, employee counseling services, employee

relations, performance appraisal, incentive awards, and retirement. The Director of the Office of Personnel reports directly to the Director, Bureau of Administration. Significant achievements during fiscal year 1987 are outlined below.

(a) Program Development

The Office of Personnel completed the task of analyzing the ramifications of legislation overhauling the Federal retirement system and conducted a massive program to disseminate information on the new law to Commission employees and make them aware of the options available under the new system. The program included one-on-one counseling sessions, special seminars, monthly videos and handouts, booklets and brochures, and a special series of information backgrounders highlighting salient features of the system. The Office successfully conducted two Thrift Savings Plan Open Seasons which resulted in a 57% participation rate.

The Office also completed Commission Orders on the new Performance Management System for GS, prevailing rate and SES employees, and Workforce Discipline and Adverse Actions; drafted Commission Orders on Occupational Safety and Health and the Senior Executive Service; amended Commission Orders on the Performance Management and Recognition System and Administrative Grievance System; and prepared a schedule for implementation of the President's Drug Free Workplace Program.

(b) Recruitment and Placement

The Office planned and coordinated the largest concentrated recruitment effort at the Commission since 1978. This effort encompassed nearly all occupations at a variety of grade levels, and nearly all of the Commission's organizational components. Close cooperation with the Budget Director, selecting officials and OPM was essential to this effort. Many positions were in the shortage or difficult-to-fill categories and required targeted special mailings of letters and announcements. Significant staffing actions included nation-wide recruitment efforts to fill

three SES positions and the preparation and submission of tentative SES selections to OPM Qualifications Review Boards for approval. The Office also worked closely with the Executive Resources Board to conduct an SES candidate development program.

(c) Employee Relations

The Office of Personnel continued to promote the use of the employee counseling services program to its employees in New York and Washington, D.C., and began to orient employees to the services provided by the new program contract. This confidential, voluntary program makes professional counseling and assistance available to employees at no charge. The Office continued efforts to enhance the working environment of all Commission employees, offering numerous programs including a refresher course for supervisors and seminars on smoking cessation, parenting, assertiveness, coping with holiday blues, and the dangers of cocaine. The annual comprehensive health fair was conducted. The Office ensured that Counseling services were provided to those employees contemplating retirement and included the offer to participate in a pre-retirement planning seminar. The Office of Personnel continued its efforts to educate supervisors concerning their responsibilities in the areas of employee conduct and performance, including the granting of within-grade increases and awards, and correcting discipline problems. In this connection, the Office issued memoranda discussing these matters and supervisory responsibilities, as well as recent case law of the Merit Systems Protection Board. Supervisors were informally counseled with respect to particular problems which they faced. In seeking to resolve performance or conduct-related problems, the Office worked closely with Commission legal advisors to ensure that employees affected by adverse actions were accorded their due rights. The Office also administered the agency's grievance procedure and continued the publication of an agency newsletter.

(d) Position Classification and Pay Administration

The Office completed the position classification work necessary to put in place a major reorganization of the Bureaus of Trade Monitoring and Domestic Regulation.

(e) Performance Appraisal

During the year, SES, PMRS, and non-PMRS performance appraisal milestones were charted and issued to all employees and supervisors; reminder memos and instructions covering mid-year progress reviews, performance appraisals, and the preparation of new performance plans were prepared and issued on schedule. A plan for the payment of PMRS performance awards for the FY 86 and FY 87 appraisal cycle was prepared jointly by the Personnel Office and the Office of Budget and Financial Management.

(f) Incentive Awards

The Office of Personnel administered the Commission's Incentive Awards Program. This included: action on internal awards; efforts to revitalize the Employee of the Month Award through articles in the agency newsletter; the development of a new suggestion form and revitalization of the employee suggestion program; and the nomination of several employees for external awards (e.g. the Jump Award; SES Rank Award; and a Voluntarism Award).

(g) Program Evaluation

The Office cooperated with the OPM staff in follow-up to agency assessment visits; audited all employee performance appraisals and progress reviews for sufficiency of documentation; assisted in the review of performance standards of PMRS employees by a Performance Standards Review Board; and audited each employee's payroll data to ensure that the information was adequately and accurately documented.

4. Office of Special Studies

The Office of Special Studies provides leadership and guidance for the agency's information resource management efforts and is responsible for management analysis activities and energy and environmental impact studies. The Office Director also served as the Agency Training Officer during fiscal year 1987.

(a) Information Resources Management

The Office of Special Studies provides automation planning and coordination of the information management efforts of the Commission. Studies are conducted to determine additional opportunities for automating labor-intensive operations wherever possible throughout the Commission. During the past fiscal year, weekly market surveys were conducted to determine the best values for micro-computer software and hardware acquisition, and a complete upgrade of all micro-computer software was accomplished. A physical inventory of micro-computer hardware and software was conducted and individual system components were upgraded or replaced with enhancements. Commercial data bases were rented that: assisted the agency in meeting the goals of the section 18 study; provided computerized legal and legislative research capabilities; aided in determining financial responsibility of applicants for licenses; and supplemented monitoring, surveillance and commodity tracking activities.

The Office operates under an Information Resources Management strategy that provides on-call user assistance whenever a hardware or software error occurs. Programming assistance is available to aid operating offices with higher level technical modifications of applications programs, and thorough on-site testing of new micro-computer hardware and software is conducted to determine means by which program office operations can be enhanced. During FY 1987, a significant amount of time was dedicated to providing technical support for the Automated Tariff Filing and

Information System cost benefit study and its technical system design. This activity involved liaison with GSA, OMB and private sector vendors; intensive reviews of applicable government information resources policy; and study of other agencies' acquisition strategies.

(b) Management Analysis Activities

The Management Analysis program includes conducting internal studies to: (1) assess efficiency, effectiveness, and economy in the use and management of agency resources, and (2) determine if desired program results and objectives are being effectively achieved. The Office of Special Studies is also responsible for obtaining clearances from the Office of Management and Budget (OMB) for recordkeeping and reporting requirements imposed on the public; carrying out other phases of the Paperwork Reduction Act of 1980; and coordinating Commission compliance with government-wide programs, such as productivity reporting and records management. During FY 1987, an automated data base was created to track OMB clearances required by The Paperwork Reduction Act. This tracking system provides program offices with advance notice of clearance expirations.

(c) Energy and Environmental Analysis

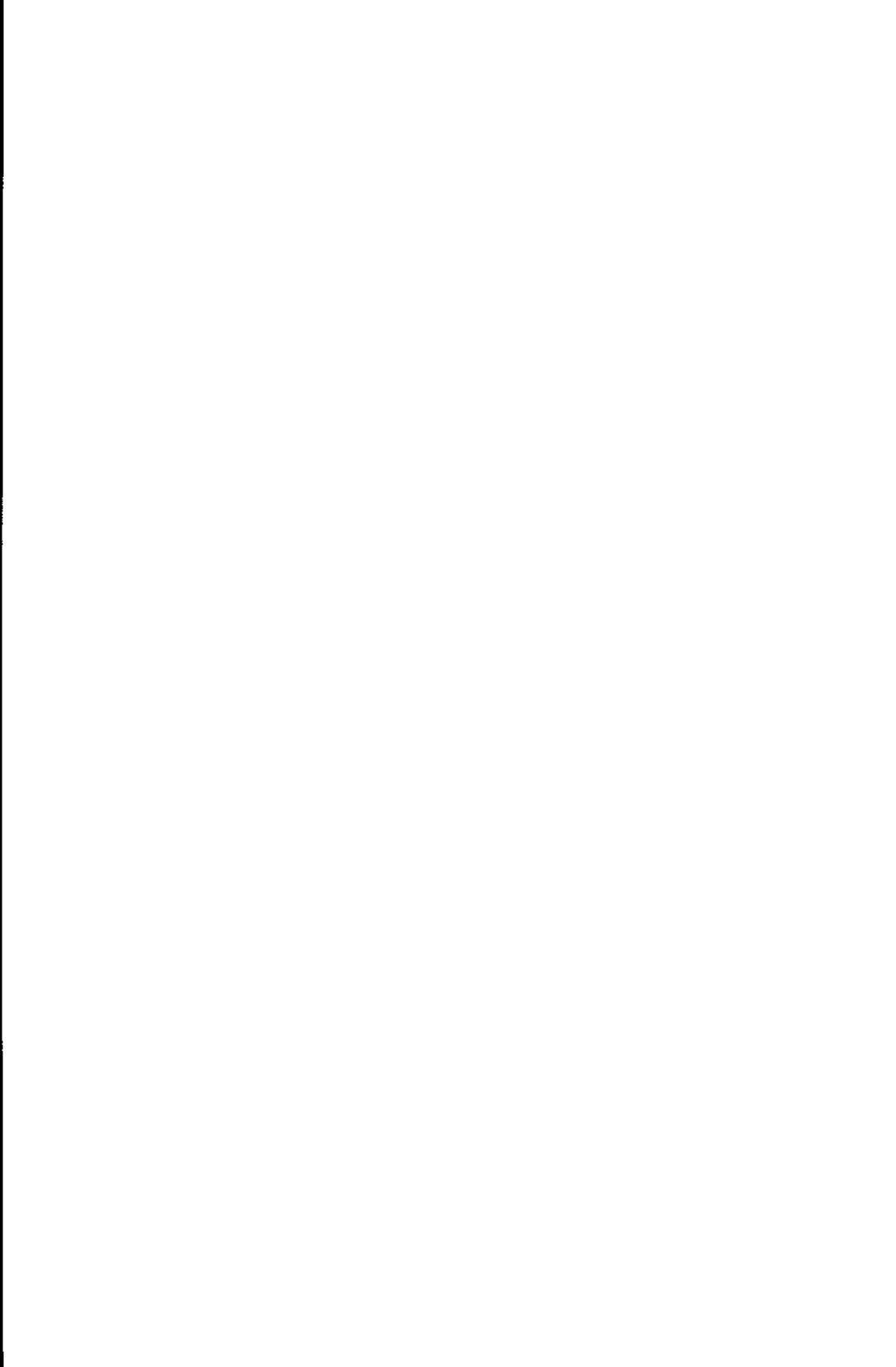
The Office ensures Commission compliance with the National Environmental Policy Act of 1969 and the Energy Policy and Conservation Act of 1975. These duties and responsibilities are to: (1) examine all Commission actions to determine whether the Commission's decisions will have a significant impact upon environmental quality or energy consumption; (2) issue environmental assessments and impact statements when appropriate; and (3) recommend to the Commission regulatory strategies which are consistent with national environmental goals or designed to promote energy efficiency and conservation.

(d) Training

During fiscal year 1987, computer-based instruction in micro-computer operations was available to all headquarters employees. Additional in-house micro-computer training courses were developed and conducted on the topics of Operating Systems, Word Processing, Financial Spreadsheets, and Micro-Computer Operations. During FY 1987, the Office of Special Studies initiated a bi-weekly micro-computer "users tips" newsletter which assisted the agency in training its employees in micro-computer operations.

A major training accomplishment was providing Equal Employment Opportunity training for nearly half of the Commission's managers and first-line supervisors. Training was also provided to SES candidates in accordance with their individual development plans, and ADP training was begun in the field offices. A wide range of off-the-shelf commercial training opportunities was made available to meet employees' career development needs. These needs were met by using government interagency training facilities, colleges and universities, and private sector training providers.

APPENDICES





APPENDIX B

COMMISSION PROCEEDINGS -- FISCAL YEAR 1987

Formal Proceedings

Decisions.....	11
Reconsiderations.....	0
Discontinuances & Dismissals.....	9
Not Reviewed.....	1
Remand.....	1
	—
Total.....	22

Special Dockets.....125

Informal Dockets.....42

Oral Arguments.....2

Rulemaking

Final Rules Issued.....12

APPENDIX C

**CARRIER AGREEMENT FILINGS AND STATUS
FISCAL YEAR 1987**

Carrier Agreements Filed in FY 1987
(including modifications)

Foreign and Domestic Commerce. 262

Carrier Agreements Processing Categories in FY 1987

Forty-Five Day Review. 165
Shortened Review 87
Exempt-Effective Upon Filing 91
Determination of No Jurisdiction 5
Formal Extension of Review Period 2

350

Carrier Reports Submitted for Commission Review

Shippers' Requests and Complaints. 57
Minutes of Meetings 1860
Pooling Statements 14
Operating Reports 20
Index of Documents 210
Consultations 53

2214

Carrier Agreements on File as of September 30, 1987

Conference 60
Interconference 13
Pooling & Equal Access 17
Joint Service 23
Sailing & Charter 68
Transshipment 18
Cooperative Working, Agency, & Equipment Interchange 83

282

APPENDIX D

TARIFF FILING AND STATUS - FISCAL YEAR 1987

Tariff Filings (Pages)

Foreign Filings.....	746,841
Domestic Filings.....	5,544
Terminal Filings.....	4,200
TOTAL.....	756,585
Foreign Rejections.....	8,962
Domestic Rejections.....	380

Tariff Publications

Foreign:	On Hand 10/1/86.....	5,377
	On Hand 10/1/87.....	4,530
Domestic:	On Hand 10/1/86.....	308
	On Hand 10/1/87.....	320
Terminals:	On Hand 10/1/86.....	445
	On Hand 10/1/87.....	487

Special Permission Applications

Total Received - Foreign.....	106
Granted.....	86
Denied.....	18
Withdrawn.....	2
Total Received - Domestic.....	39
Granted.....	35
Denied.....	3
Withdrawn.....	1

Investigation and Suspension Memoranda

Domestic:		
Completed.....		0
Pending.....		0

Service Contracts

Filed.....	4,475
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Terminal Agreements

Total Received.....	193
On Hand 10/1/86.....	385
On Hand 10/1/87.....	518

APPENDIX E

CIVIL PENALTIES COMPROMISED OR ASSESSED

FISCAL YEAR 1987

Ariel Maritime Group, Inc., <u>et. al.</u>	\$335,000
Bud Antle, Inc.	35,000
Coordinated Caribbean Transport, Inc.	300,000
Dunlop Tire Corporation	25,033
Eller & Company, Inc.	32,500
Epirotiki Lines, Inc.	10,000
Evergreen Marine Corp.	25,000
Great Pacific Cruise Lines	2,500
Guam Freight Forwarders and Consolidators	40,000
Harrington Company, Inc.	32,500
Hong Kong Islands Line America, S.A.	10,000
Kerr Steamship Co., Inc.	15,000
Navron, Romanian Shipping Company	15,000
Peninsula Shippers	1,308,000
Satin Air Freight, Inc.	20,000
Southbound Shippers	210,000
T.D.Y. Freight Services	5,000
Transconex, Inc.	7,500
Transway, Inc.	2,017
Travel Dynamics, Inc.	<u>5,000</u>
TOTAL	\$2,435,050

Note: An additional \$2,000,000 was collected in connection with the Commission's enforcement initiative in the North Atlantic Trades. See Chapter III.

APPENDIX F

FIELD INVESTIGATIONS -- FISCAL YEAR 1987

	Surveillance Actions	Other	Total
Pending 10/1/86	215	90	305
Opened FY 1987	145	140	285
Closed FY 1987	270	130	400
Pending 9/30/87	90	100	190

APPENDIX G

**STATEMENT OF APPROPRIATIONS, OBLIGATIONS AND RECEIPTS
FOR THE FISCAL YEAR ENDED SEPTEMBER 30, 1987**

Appropriations:

Public Law 99-591, approved October 30, 1986: For necessary expenses of the Federal Maritime Commission, including services as authorized by 5 U.S.C. 3109; hire of passenger motor vehicles; and uniforms or allowances therefor, as authorized by 5 U.S.C. 5901-5902; Provided, that not to exceed \$1,500 shall be available for official reception and representation expenses.....\$11,600,000

Public Law 100-71, Supplemental Appropriations Act of 1987, approved July 11, 1987 for expenses of the civilian pay increase and Federal Employee Retirement System.....\$347,000

Revised Appropriation \$11,947,000

Obligations and Unobligated Balance

Net obligations for salaries and expenses for the fiscal year ended September 30, 1987

\$11,946,000

Statement of Receipts: Deposited with the General Fund of the Treasury for the Fiscal Year Ended September 30, 1987:

Publications and reproductions, Fees and Vessel Certification, and Freight Forwarder Applications.....\$ 147,284

Fines and penalties..... 3,028,952

Total general fund receipts \$3,176,236

APPENDIX H

EXAMPLE OF MARKET SHARE DATA

U.S. ATLANTIC COAST EXPORTS TO THE UNITED KINGDOM
January to December 1985

North Atlantic/United Kingdom Freight Conference

Operator	Percent of tonnage*	Percent of value#
C1	13.78	25.97
C2	13.42	8.43
C3	12.20	18.02
C4	12.14	8.13
C5	9.98	17.15
C6	8.95	6.96
C7	1.79	0.53
Conference total with greater than 1% shares	72.26	85.19
Conference total with less than 1% shares	0.00	0.00
CONFERENCE SHARE	72.26	85.19
<u>Nonconference</u>		
NC1	8.97	5.14
NC2	4.30	1.57
NC3	1.71	0.22
NC4	1.68	0.66
NC5	1.50	1.05
NC6	1.35	1.15
NC7	1.28	0.15
NC8	1.16	1.40
Nonconference total with greater than 1% shares	21.94	11.34
Nonconference total with less than 1% shares	3.44	1.63
NONCONFERENCE SHARE	25.38	12.97
SHARES NOT ELSEWHERE CLASSIFIED	2.36	1.83
TOTAL FOR TRADE	100.00	100.00

*Tonnage is calculated in long tons.

#Value is calculated in thousands of U.S. dollars.

APPENDIX I

OUTLINE OF SURVEY QUESTIONS

Carrier Survey

Characteristics of Firm
Service Contracts
Shippers' Associations
Independent Action
Agreements
Intermodalism
Tariffs and Rates
Port Antitrust Immunity
Access to Cross Trades
Excepted Commodities
General

Shipper Survey

Characteristics of Firm
Service Contracts
Independent Action
Tariffs and Rates
Agreements
Service Levels
Intermodalism
Shippers' Associations
Antitrust Immunity
Excepted Commodities
General

Port Survey

Characteristics of Port
Competitive Environment
Antitrust Immunity
Port Development
Container Terminals
General

Marine Terminal Operator Survey

Modified Version of
Port Survey

Freight Forwarder Survey

Modified Version of
Shipper Survey

APPENDIX J

PROGRAM FOR SYMPOSIUM II

A Conference on the Shipping Act of 1984 sponsored by the Federal Maritime Commission and the University of Southern California

Place: Queen Mary - Long Beach, California

Date: February 18-19, 1988

Thursday, February 18

Session 1 FMC Findings on the Impact of the Shipping Act of 1984 Four Years After Enactment.

Results of industry surveys -- views on service contracts, independent action, antitrust immunity and tariff filing. Findings thus far on the impact of the Act on rates, service and competition.

Session 2 Tariffs and Independent Action

Should tariffs continue to be filed with the FMC? Is enforcement of tariff provisions a necessary function of government? Should they be based on volume and mass of shipment instead of other considerations? Does mandatory independent action on tariff rates and service matters ultimately weaken or strengthen the ability of conferences to work effectively? Would a longer notice period lessen criticism of independent action? Should conference loyalty contracts or other tying devices be granted antitrust immunity? Should any changes be made to the treatment of excepted commodities?

Session 3 Service Contracts

Are service contracts meeting the objectives of both carriers and shippers? What changes should be made to FMC rules and/or provisions of the Act? Should service contracts be confidential? Have the principles of common carriage been slightly disturbed or totally eroded? Should mandatory independent action be required on conference service contracts?

APPENDIX J (CONT'D)

Session 4 **Antitrust Issues for Carriers and Shippers**

Is antitrust immunity still needed in the liner industry? If continued, must conferences be open to all lines or would a closed structure permit efficiencies not otherwise obtainable? Are conferences still relevant in light of modern shipping practices? Should U.S.-based shippers' councils receive antitrust immunity?

Session 5 **Antitrust Issues for Ports and Non-Port Terminal Operators**

Is antitrust immunity needed for ports and marine terminal operators? What would be the consequence of ending antitrust immunity for ports and marine terminal operators?

Friday, February 19

Session 6 **State of the Liner Shipping Industry Four Years After the Passage of the Shipping Act of 1984**

How is the Act affecting the liner industry? What changes are recommended? How are changes in intermodal practice, management and ownership affecting the structure and operation of the industry? Is the industry undergoing rationalization or are the smaller companies being sacrificed on the altar of competition?

Session 7 **The Position of Shippers, Forwarders and Ports After Four Years of Experience with the Act**

How is the Act affecting shippers, forwarders and ports? What changes are recommended? Are shippers' associations functioning meaningfully? Is the balance between shipper/forwarder and carrier interests in need of change? Are shippers' councils an answer? Has the Act encouraged port load centers?

Session 8 **The Future of Liner Shipping and Regulation: A Reading of the Tea Leaves**

Is regulation the wave of the future or of the past? What is the state of shipping policy/regulation in the EC, UNCTAD, and Canada? Is the national-flag concept obsolete? What would be the consequences of total deregulation to all interests in this industry and to U.S. foreign trade? What are the chances of an international consensus on these matters?