

FEDERAL MARITIME COMMISSION

30th ANNUAL REPORT

for

Fiscal Year

1991



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

March 13, 1992

To the United States Senate and House of Representatives:

Pursuant to section 103(e) of Reorganization Plan No. 7 of 1961, and section 208 of the Merchant Marine Act, 1936, as amended, I am pleased to submit the thirtieth annual report of the activities of the Federal Maritime Commission for fiscal year 1991.

Additionally, section V.K of this report contains an Update on Remote Access - March 1992, to comply with the request of Congress to be kept informed on developments of reasonable restrictions on remote access to the Commission's *Automated Tariff Filing and Information System ("ATFI")*.

Sincerely,

A handwritten signature in black ink that reads "Christopher Koch". The signature is written in a cursive, flowing style.

Christopher L. Koch
Chairman

MEMBERS OF COMMISSION



*Christopher L. Koch
Chairman
Appointed 1990
Term Expires 1995*



*Rob Quartel
Commissioner
Appointed 1990
Term Expires 1994*



*William D. Hathaway
Commissioner
Appointed 1990
Term Expires 1993*



*Francis J. Ivancie
Commissioner
Appointed 1985
Term Expires 1992*



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

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*
- Inspector General *Tony P. Kominoth*
- Managing Director *Edward P. Walsh*
- Deputy Managing Director *Bruce A. Dombrowski*
- Deputy Managing Director *John Robert Ewers*
- Director, Bureau of
Trade Monitoring
and Analysis *Austin L. Schmitt*
- Director, Bureau of
Tariffs, Certification
and Licensing *Bryant L. VanBrakle*
- Director, Bureau of
Hearing Counsel *Seymour Glanzer*
- Director, Bureau of
Investigations *Wm. Jarrel Smith, Jr.*
- Director, Bureau of
Administration *Norman W. Littlejohn*

I

THE COMMISSION

A. HISTORY

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

B. FUNCTIONS

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

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

The Commission's regulatory responsibilities include:

- **Protecting shippers and carriers engaged in the foreign commerce of the U.S. from restrictive or non-market-oriented rules and regulations of foreign governments and/or the practices of foreign-flag carriers that have an adverse effect on the commerce of the U.S.**
- **Protecting the rights of U.S.-flag shipping companies to transport cargoes in the U.S. foreign oceanborne and foreign-to-foreign trades.**
- **Reviewing and monitoring agreements of common carriers and other persons engaged in the U.S. foreign commerce. These agreements include conference, pooling, joint service and space charter agreements.**
- **Receipt and review of tariff filings (but not the regulation of rate levels) by common carriers engaged in the U.S. foreign commerce.**
- **Regulating rates, charges, classifications, rules, regulations and tariffs of controlled carriers to ensure that such matters are just and reasonable.**
- **Regulating rates, charges, classifications, practices and tariffs of ocean common carriers in the domestic offshore trades of the U.S.**
- **Licensing international ocean freight forwarders.**

- **Bonding of non-vessel-operating common carriers ("NVOCCs").**
- **Issuing passenger vessel certificates evidencing financial responsibility of vessel owners or charterers to pay judgments for personal injury or death or to repay fares for the nonperformance of a voyage or cruise.**
- **Investigating discriminatory rates, charges, classifications, and practices of ocean common carriers, terminal operators, and freight forwarders operating in the foreign and/or domestic offshore commerce of the U.S.**

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

The 1984 Act is applicable to the operations of common carriers and other persons engaged in U.S. foreign commerce. It exempts agreements that have become effective under the Act from the U.S. antitrust laws (as contained in the Sherman and Clayton Acts). The Commission reviews and evaluates agreements to ensure that they do not exploit the grant of antitrust immunity, and to ensure that agreements do not otherwise violate the 1984 Act or result in an unreasonable increase in transportation cost or unreasonable reduction in service.

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

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

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

C. ORGANIZATION

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

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

In fiscal year 1991, the Commission was authorized a total of 230 full-time equivalent positions and had a total appropriation of \$15,893,793. 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 Commission addressed many challenges in fiscal year 1991, and continuously took the initiative to ensure that its regulation of the U.S. oceanborne commerce was efficient, equitable, and in step with its statutory mandate. The Commission was vigorous in its use of the FSPA and section 19 of the 1920 Act to combat restrictive trade practices by foreign governments. Several cases were initiated or further developed under these statutes. Similarly, enforcement efforts again proved extremely successful in identifying and curbing commercial malpractices, while establishing the framework for fair competition.

The Commission also made significant progress in its efforts to automate the filing and retrieval of tariff information. The system continues to be developed with the appropriate level of involvement by the maritime and information industries, and the necessary coordination with Congress and U.S. government agencies.

Additionally, the Commission reviewed many of its existing regulations to identify changes necessary to make them clearer and more current, and gathered data and information in support of the statutory review being conducted by the Advisory Commission on Conferences in Ocean Shipping.

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

A. RESTRICTIVE TRADE PRACTICES

The Commission was extremely active in addressing restrictive trade practices by foreign governments and other actions resulting in unfavorable conditions in U.S. shipping. Information orders were issued under both the FSPA and section 19 of the 1920 Act and, based on analysis of submissions received and trade conditions, further action was initiated in several trades.

In response to a petition alleging the existence of conditions unfavorable to shipping in the Venezuela trade, the Commission issued a Notice of Proposed Rulemaking pursuant to section 19. After affected interests filed comments, certain commitments were made by Venezuelan authorities. The matter was pending the Commission's consideration of the comments filed and the governmental activities at fiscal year end.

The Commission previously issued a Final Rule assessing a \$50,000 per-voyage fee on Maritima Transligna, S.A. ("Transligna"), an Ecuadorian-flag carrier, as a result of certain laws and decrees of the Government of Ecuador reserving liquid bulk cargoes for Ecuadorian-flag vessels. Transligna subsequently advised the Commission that it no longer operated an Ecuadorian-flag parcel tanker in the trade, so collection of the fee was not enforced. However, a petition for enforcement of the rule filed in December 1990 alleged that Transligna continued to operate in the trade with a changed operating identity. The Commission instituted a Fact Finding Investigation to look into Transligna's continued operations, as well as the granting of waivers for shipments under the Ecuadorian cargo reservation decrees.

The Commission also initiated a rulemaking proceeding to address Korean laws that preclude U.S. carriers from engaging in trucking operations in Korea and from directly contracting with railroads. Substantial commitments

subsequently were made by the Korean Government, which potentially resolve most of the involved issues. The Commission, therefore, suspended further action in this rulemaking and required the parties to submit additional comments in February 1992 and May 1992.

The Commission initiated a formal investigation under the FSPA after reviewing submissions of Japanese and U.S. carriers concerning charges paid into a fund known as the Japan Harbor Management Fund ("Fund"). The proceeding was discontinued on June 13, 1991, based on the U.S. carriers' representations that a new agreement substantially removed the adverse effect of the Fund, along with a commitment by the Japanese Minister of Transport that the Fund would be discontinued after March 31, 1992. Parties to the proceeding are required to report quarterly on payments to the Fund through April 1992.

Based on responses to an information demand order issued to U.S. and People's Republic of China ("PRC") flag carriers operating in the U.S./PRC trade, the Commission initiated an FSPA investigation into alleged PRC restrictions. Commercial and governmental consultations subsequently occurred, and the Commission's review of the reports from those negotiations revealed substantial PRC concessions and commitments. At the request of the U.S. carriers, the Commission extended the completion date of the investigation 90 days to February 19, 1992, to allow the parties time to experience, assess, and report on the PRC's implementation of its commitments.

The Commission required U.S. and Taiwan carriers to provide information regarding Taiwan restrictions affecting the conduct of the full range of intermodal and business operations in Taiwan. These restrictions were the subject of a prior FSPA proceeding in 1989, which was discontinued after assurances by Taiwan that its restrictive laws and regulations would be changed. However, Commission monitoring indicated that despite some progress, some restrictive barriers remained.

Based on the responses to the information demand order, the Commission initiated a formal FSPA investigation. A final Commission decision is due February 13, 1992.

B. ENFORCEMENT

The Commission's commercial enforcement program again was aggressive and successful. Key trades continued to be targeted, while major ad hoc actions also were investigated. The Commission also attempted to focus on specific types of malpractices that were prevalent in certain trades.

As in the recent past, the enforcement program was a collaborative effort of the Commission's trade specialists, economists, investigators, and prosecutors. The respective units worked together so that appropriate strategies and tactics were properly developed and all efforts appropriately coordinated. This approach facilitated all aspects of the program, from initial investigation and surveillance efforts, to evidence review and negotiations, to subsequent monitoring to ensure that malpractices do not recur or shift to some new scheme.

The Commission collected \$22,000,000 in civil penalties during fiscal year 1991, which again well exceeded its appropriated budget. Settlements were reached with entities from all segments of the industry, and covered the full range of U.S. foreign trades. The Commission's efforts remain guided by the overall objectives of obtaining statutory compliance and ensuring equitable trading conditions in oceanborne trades. The Commission continues to plan its programs so as to assist a trade in policing its activities with the carriers' own neutral body.

C. SURVEILLANCE

The Commission's surveillance program continues to be a logical and effective adjunct to its enforcement activities. Regular monitoring of industry trends and concerted carrier activities enables the Commission to more readily identify practices contrary to the shipping statutes. Effective surveillance also helps to identify potentially unfavorable trade practices by foreign governments.

The Commission further refined its programs for the in-depth review of selected critical trades in 1991. These programs integrate a number of surveillance factors, such as operator market share data, shipper identification, tariff rate levels and histories, review and analysis of agreements and periodic reports of agreement parties, investigation of possible malpractices or restrictions, etc.

Among the major projects completed this past year were: analyses and reports in the Japan, Korea, PRC and Venezuela trades; audits of selected major conference agreements under section 6(g) of the 1984 Act; an economic analysis of the impact of a major capacity reduction agreement; an annual report on controlled carrier activities; a report concerning the number, type, and trends in agreement filings in major trades; a paper on the relationship between bunker fuel oil prices and the prices of crude oil; and the development of trade data for various investigative initiatives.

D. TARIFF AUTOMATION

The Commission made further strides this fiscal year in reaching its objective of automating the filing of tariffs. See Chapter V. When the Automated Tariff Filing and Information System ("ATFI," "ATFI system," or "the system") is fully operational, tariff information will be filed and retrieved electronically, which will expedite the statutorily required filing

and facilitate the review and analysis of this information by the public and the Commission.

As the Commission began to move to full implementation, it issued numerous advisories to clarify various aspects of the system and address questions and concerns voiced by the industry. Interim Reports and Information Bulletins were issued periodically covering the basic features being considered by the Commission for ATFI, such as the use of algorithms to express certain charges and the transaction sets contained in the ATFI "Batch Filing Guide." The Third Interim Report, issued July 23, 1991, finalized most outstanding issues and paved the way for issuance of a proposed rule on September 9, 1991. This rule, Docket No. 90-23, *Tariffs and Service Contracts*, proposed a new Part 514 in Title 46 of the CFR to cover tariff and service contract filing regulations and ATFI user charges. Comments on that rule were scheduled to be filed early in fiscal year 1992, and it is expected that full-scale implementation of ATFI will begin later in fiscal year 1992.

E. REGULATORY REVIEW

The Commission spent considerable effort this past year reviewing its existing regulations to determine whether updating or refining was necessary, or if perhaps certain regulations had outlived their usefulness. The primary objective is to ensure that regulations clearly address current industry conditions, are consistent, and do not impose any unnecessary burdens on any entity involved in U.S. ocean shipping.

The Commission initiated proceedings to simplify and clarify its rules affecting marine terminal operators, passenger vessel carriers, and domestic offshore financial filing requirements, and continued its review of transportation intermediaries and various aspects of regulations in the domestic offshore trades. Rules also were drafted to implement the legislation requiring NVOCCs to be bonded.

In all of these instances, the Commission conducted a full-scale review, proposed action for public comment, and then completed action based on a thorough review of industry comments. The Commission remains open to public suggestions for additional action via petition for rulemaking, and plans to continue a review and assessment of its current regulations during fiscal year 1992.

F. SECTION 18 STUDY

The Commission submitted its Section 18 Report on the Shipping Act of 1984 ("Report") to Congress and the Advisory Commission on Conferences in Ocean Shipping ("Advisory Commission") in September 1989. The Report was the product of a five-year study by the FMC mandated by Congress in section 18 of the 1984 Act, and addressed a set of specific issues that Congress believed would be important in assessing the regulatory reforms embodied in the 1984 Act. The Report presented a thorough evaluation of the impact of the 1984 Act, and included extensive analyses and supporting data.

In fiscal year 1991, the Commission continued to gather data and information to update the Report. These data were useful to the Advisory Commission as it conducted its study. The Commission also provided professional and clerical staff support to the Advisory Commission. Commission economists provided extensive assistance to the Advisory Commission in compiling and analyzing data, and summarizing trade activities and trends.

The Advisory Commission is charged with conducting a comprehensive study of, and making recommendations concerning, conferences in ocean shipping. The study is required to address whether the Nation would be best served by prohibiting conferences, or by having closed or open conferences. The Advisory Commission's final report is to be submitted to the President and Congress by April 10, 1992.

III

SURVEILLANCE AND ENFORCEMENT

A. SURVEILLANCE

An integral part of the Commission's administration of the shipping statutes 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 Commission administers a variety of surveillance programs designed to afford the necessary degree of oversight in these areas.

The 1984 Act provides for statutory effectiveness of filed agreements following a brief waiting period, 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 general standard contained in section 6(g) of the 1984 Act. Once an agreement becomes effective, the Commission is responsible for maintaining surveillance over the parties' concerted activities in order to ensure compliance with the standards of the 1984 Act. To fulfill this statutory responsibility, the Commission has continued to direct its activities toward improving the breadth and effectiveness of its monitoring programs.

As in previous years, the Commission continued to refine its programs for monitoring the behavior of agreement parties in U.S. trades. These programs integrate a number of surveillance factors, including operator market share data, cargo tonnages of major-moving commodities, shipper identification, relevant tariff rate levels and rate histories, use of service contracts, agreement-document analysis, review of minutes of meetings held by agreement members and other reports

required by the Commission's rules, as well as investigation for existence of possible malpractices.

During fiscal year 1991, the Bureau of Trade Monitoring and Analysis ("BTMA") produced a number of monitoring reports and analyses. These included: (1) analyses and recommendations concerning possible unfair shipping practices in the Japan, Korea, Taiwan, PRC, and Venezuela trades; (2) 6(g) audits of selected major conferences agreements; (3) an economic analysis of the impact of a major capacity reduction agreement; (4) an annual report on controlled carrier activities; (5) a study on the manner in which independent action is utilized under various conference agreements with a view toward possible rulemaking; (6) an analysis of current agreement reporting requirements and the need for possible modification; (7) a report concerning the number, type and trends in agreement filings in major trades; (8) a rate-of-return analysis in a domestic rate case; (9) an analysis of responses to a section 15 order concerning an agreement restricting its members from competing with each other (a possible violation of section 10(c)(6) of the 1984 Act); (10) an analysis and recommendation concerning the payment of brokerage (Docket No. 90-25) and preparation of an order of discontinuance reflecting Commission action taken on the matter; (11) a regulatory impact analysis of the proposed interim rule implementing the 1990 Amendments; (12) an analysis of reports submitted by certain carriers regarding fees paid into the Japan Harbor Management Fund; (13) a study on the common carrier status of auto carriers; (14) a paper on the relationship between bunker fuel oil prices and the price of crude oil; (15) an economic analysis of the impact of the NVOCC Bonding Rule; (16) the development of trade data for investigative initiatives; (17) a profile of transpacific liner services; (18) the development of market share data for carriers in various trades; (19) a review of Commission rules governing the domestic offshore trade, in particular, financial information filing requirements and Commission procedures used to determine a reasonable rate of return; and (20) preparation of

an industry circular letter to carriers in the domestic offshore trade regarding financial filing requirements.

In fiscal year 1991, the Commission continued its ongoing auditing program of agreements to assess whether agreements on file are in compliance with the various statutory and regulatory requirements. During the year, BTMA audited all major conference agreements and all key agreements that file reports with the Commission. Other projects during fiscal year 1991 included the preparation of numerous carrier profiles, as well as conference profiles; and the issuing of monthly reports on the activities of controlled carriers. BTMA also routinely handled a variety of inquiries and complaints from shippers dealing with a wide range of problems and issues. Examples of these include antitrust issues; level of rates, surcharges and other accessorial charges; and rate disparities for different coastal regions.

B. ENFORCEMENT

Under the 1984 Act, the Commission placed greater regulatory emphasis on enforcement activity than existed under the predecessor statute. The enforcement functions are performed primarily by the Commission's Bureau of Hearing Counsel and Bureau of Investigations. (See Chapter VIII, I and J).

The Transpacific Malpractice Program is an example of a long-term program initiated by the Commission. The purpose of this program is twofold: (1) to obtain compliance with the 1984 Act; and (2) to establish an equitable trade environment for carriers, shippers and middlemen participating in the transpacific trades. The transpacific program involves both informal and formal investigations of violations of the 1984 Act. These investigations already have resulted in individual and comprehensive settlements with shippers, NVOCCs, vessel

operating common carriers and freight forwarders. Many of these entities provided disclosures of additional 1984 Act violations. In fiscal year 1991, primarily as a consequence of the Commission's investigation and enforcement efforts in the transpacific trades, the Commission collected nearly \$22,000,000 in civil penalties. It is anticipated that the transpacific enforcement program will continue to have an important impact during the next fiscal year and beyond.

Another long-term program, the transatlantic trade enforcement initiative, which began in 1987, continued through fiscal year 1991. Neutral-body self-policing, established as one result of the program, continued to operate effectively in the trade. Members of the Commission staff meet regularly with the participating neutral body and annually with the carrier members. The Commission is advised that this initiative is having a substantial beneficial impact on the shipping community.

To meet the needs of its expanded surveillance and enforcement role, the Commission has continued to augment its professional staff. The Commission also continues to provide training for professional employees at the White Collar Crime Training Program at the Federal Law Enforcement Training Center in Glynco, Georgia. The Program focuses on investigation of fraud-related offenses and offers an opportunity for the exchange of ideas regarding investigative strategies and techniques utilized by other Federal agencies. Training also has been provided to enhance litigation and negotiating skills essential to the Commission's enforcement program.

A joint support program between the Commission and the U.S. Customs Service ("Customs") has resulted in interagency coordination of effort on matters of mutual concern. This program was expanded during fiscal year 1991 to provide access for Commission staff to Customs' Automated Commercial System ("ACS"). Access to Customs' ACS data will enhance the Commission's capability in uncovering and deterring malpractices.

The Commission's greater emphasis on enforcement activity continues to increase the number of investigations of major violations conducted, which, in turn, results in significant civil penalties. (See Appendix E). It is anticipated that sustained enforcement activity will have an escalating deterrent effect on malpractices in the shipping industry.

IV

DEVELOPMENTS IN MAJOR U.S. FOREIGN TRADES

A. TRANSATLANTIC

In the transatlantic trades, ship operators have long encountered overcapacity, fierce competition and depressed freight rates. Carrier attempts to rationalize services and stabilize rates generated complaints from shippers fearing reduced services and higher freight rates. Carriers in the Canada-European trades (members of the Canadian, United Kingdom and Continental Westbound and Eastbound conferences) entered into an agreement in June 1991 to reduce capacity in the North Atlantic. The member carriers indicated that excess ship capacity, currency fluctuations, falling freight rates, and the general economic slowdown in North America and Europe had made reorganization essential to maintain service levels. According to The Journal of Commerce's Port Import Export Reporting Service ("PIERS"), westbound container traffic from Europe to the U.S. was plummeting at a rate of 17,000 TEUs (17 percent) per month during the first quarter of 1991, while U.S. outbound container traffic to Europe was rising at a pace of 11 percent. The *USA-North Europe Rate Agreement ("USANE")* (No. 202-011241) increased rates in May 1991 on some low-value commodities due to increased eastbound cargo flows aided by the depressed value of the dollar. A few independents followed the conference lead by introducing rate increases on eastbound freight. The weakness of European exports to the U.S. diminished the likelihood of rate increases on westbound sailings. PIERS data on North Atlantic container traffic, during the second quarter of 1991, between U.S. East Coast ports and Northern Europe indicated that Sea-Land Service, Inc. ("Sea-Land") had

increased its market share to 12 percent, followed closely by Hapag-Lloyd and Atlantic Container Line. Sea-Land also carried 14 percent of U.S. container imports from Northern Europe, followed by the same two carriers. The strong performance by these carriers reflected a growing demand for high-quality container services to support just-in-time distribution.

One of the earliest attempts to bring about stability in the North Atlantic was through the Eurocorde Agreements in 1985. *The Eurocorde I Agreement* (No. 202-010833) is a discussion agreement with binding ratemaking authority covering trade between the U.S. Atlantic Coast and Europe. Its current membership includes two conference parties, *The North Europe-USA Rate Agreement* ("NEUSA") (No. 202-011242) and USANE, and the independent carriers Polish Ocean Lines, Mediterranean Shipping Co., and Orient Overseas Container Line ("OOCL"). *The Eurocorde Discussion Agreement* ("EDA") (No. 202-010829) is a non-binding ratemaking discussion agreement in the same trade among the same parties, and two additional independent operators, Evergreen Line, and Lykes Bros. Steamship Co., Inc. ("Lykes"). A decision by A.P. Moller-Maersk ("Maersk") to join NEUSA, on October 1, 1990, resulted in complaints by European shippers and the Competition Directorate (DG IV) of the European Commission ("EC"). The Competition Directorate and European Community shippers were concerned about the potentially lower level of competition in the trade following the Maersk decision. A final decision in the case has not been made. The European Community Shipowners' Association has also raised the issue of shipping consortia and conference inland transport with the Competition Directorate, submitting that it creates constraints and uncertainty for the shipping industry already under pressure due to a depressed market and severe foreign competition.

Despite its market share of 88 percent, EDA does not appear to have resulted in an appreciable increase in rates in the European trades. In general, vessel overcapacity and trade

imbalances in the North Atlantic appear to have created a shippers' market where independent action rates and favorable service contracts have largely diminished the impact of general rate increases imposed by conference and independent carriers. Bunker surcharges are now based on a shipper-supported formula and generally reflect prices for bunker fuel. EDA carrier currency adjustment factors have tended to be in line with the depreciation of the U.S. dollar. In general, the service requirements of shippers continue to be satisfied by both EDA and non-EDA carriers.

The twelve-member European Community continued its progress toward the establishment of a single internal market by the end of 1992. The European Community internal market system has necessitated the creation of an integrated transportation network to replace the highly regulated and fragmented air, trucking, and maritime transport systems in Europe. The European Community adopted four regulations in 1986, based on Articles 85 and 86 of the Treaty of Rome, to establish a uniform shipping policy. These rules are designed to ensure free and non-discriminatory access to cargoes for European Community shipowners, to secure fair competition on a commercial basis for shippers and ports in the European trades, and to eliminate the restrictive maritime practices of foreign carriers and governments, thereby ensuring that the European Community trades remain open. The European Community shipping regulations are expected to serve as a foundation for the establishment of a European regulatory agency. The internal market system is expected to result in greater access for non-national flag carriers to European Community cargoes. Nonetheless, there are concerns that European Community accession to the United Nations Code of Conduct for Liner Conferences could result in quotas for the carriage of European cargoes; EC competition policy may lead to conflicts with U.S. shipping laws; and that a European Community-wide cabotage zone might limit the internal carriage of cargoes to European Community vessels. U.S. and other foreign carriers have been seeking to enter into joint ventures with European Community-based companies to be

established in Europe before the dismantling of trade barriers increases competition in the European Community. Sea-Land has entered into a joint venture with Frans Maas, a large transportation and distribution concern in the Netherlands, to expand its European presence by 1992. Nippon Yusen Kaisha ("NYK"), the most important Japanese shipping company, reportedly has also begun to establish a distribution network based at several European sites by acquiring local forwarding or transport companies and by establishing centers in the European Community for 1992.

The nations of Eastern Europe, and the Republics of the former Soviet Union, embarked on economic and political changes away from centralized government controls toward market economic systems based on world prices and convertible currencies. Evidence of these changes was apparent in several bilateral trade agreements negotiated between the former East Bloc countries and the European Community, its members, and also with the U.S. During the past year, the former Soviet Union began to decentralize such sectors as merchant shipping. Soviet and East European carriers increasingly entered into joint ventures with Western companies to finance vessel modernization programs. The former East Bloc shipping companies also began to seek new trade opportunities, and additional cargoes, to maximize hard currency earnings in support of their operating needs and domestic economic development. The U.S. and the USSR signed a trade agreement in June 1990 which provides for mutual most-favored-nation status when ratified by both governments and it enters into force. A bilateral U.S.-Soviet maritime agreement was also concluded last year enabling the carriers of both nations to participate in their respective foreign trades. In 1991, Baltic Shipping Company ("Baltic"), a Soviet-controlled carrier, began operating a new service between U.S. Great Lakes ports and Northern European ports and a service between the U.S. Gulf Coast and Northern Europe. Baltic planned to expand its U.S. operations to offer service between the East Coast and Northern Europe in September 1991. The Soviet Far Eastern Shipping Company, also a controlled carrier,

planned to begin service between the Far East and the U.S. Pacific Northwest in the near future.

It is expected that the decentralization of the shipping industries, in particular those of Poland and the former USSR, will result in less state ownership and control of their carriers, perhaps moderating concerns about their operations in the U.S. and other foreign liner trades. The liberalization of decisionmaking and application of new domestic laws for joint ventures should facilitate the task of Soviet and East European carriers desiring to enter into working relationships with Western companies or to join liner conferences. The rapid transformation of shipping in the former USSR may result in a loss of competitive advantage for Soviet carriers over foreign companies. It has been reported that Soviet carriers will be required to make payments in hard currency for home port services involving international cargoes and also, henceforth, to pay world market prices for Soviet bunker fuel. Nonetheless, serious concerns exist that decentralized control of Soviet shipping could force these carriers to seek to develop new foreign markets by undercutting rates to generate hard currency revenues. On the other hand, the opening up of Soviet ports to foreign carriers and the general aging of the Soviet fleet may result in increased foreign carriage of the former USSR's export and import trade as its merchant marine declines in importance. Sea-Land has been working with Soviet transportation authorities on a series of projects, including a joint venture agreement to modernize the Trans-Siberian Railway system to develop the Soviet landbridge as a competitive alternative to the all-water route between Europe and Asia. Sea-Land also has initiated connecting carrier agreements with both Baltic and Black Sea Shipping Company. Moreover, as changes in Eastern Europe progress, the area's lack of modern port facilities is resulting in a steadily increasing flow of cargo traffic moving through Western European ports, including Hamburg, where container movements are expected to increase up to 500 percent by the end of this decade.

Carriers in the transatlantic trades continue to participate in service rationalization arrangements. In this highly competitive trade area, carriers are sharing space, and thereby increasing service frequencies, to avert heavy capital investment or the deployment of added vessel capacity. A number of new service rationalization agreements became effective during fiscal year 1991 including:

Tricontinental Service Agreement (No. 203-011305), a cooperative working arrangement permitting space chartering and sailing authority. Under this agreement, Cho Yang Shipping Co. ("Cho Yang") shares vessels, equipment and terminals with Deutsche Seereederei Rostock GmbH ("DSR")/Senator Linie GmbH & Co., K.G. ("Senator") in a round-the-world service, including the trade between the U.S. and North Europe. The two parties market their services separately.

Information System Agreement (No. 203-011330) is a cooperative working agreement between P&O Containers, Ltd. ("P&O Containers"), American President Lines, Ltd. ("APL"), Sea-Land and Maersk in the trade between all U.S. ports and points and all foreign ports and points.

TMM/ACS Space Charter and Sailing Agreement (No. 232-011335) between Transportacion Maritima Mexicana S.A. de C.V. and Star Shipping A/S permits the parties to charter space on each other's vessels, coordinate sailings, utilize common terminals, jointly negotiate terminal and stevedoring arrangements and interchange equipment in the trade between U.S. Atlantic and Gulf ports and U.S. points via such ports and Northern European ports and points via such ports.

WALLNYK Joint Service -- Wallenius Lines Space Charter and Cooperative Working Agreement (No. 217-011332) is an agreement between the parties concerning the movement of cargoes suitable for carriage in roll-on roll-off vessels in the trade from U.S. Atlantic and Gulf Coast ports and Puerto Rico,

including inland points via those ports, to ports and points in the United Kingdom, Eire and Continental Europe.

P&O Containers Limited, Nedlloyd Lijnen, B.V., Sea-Land Service, Inc./The Shipping Corporation of India, Limited ("SCI") Space Charter Agreement (No. 232-011316) permits SCI to charter space on the Econship-class vessels operated by the remaining three parties under Agreement No. 203-011171 in the trade between U.S. Atlantic ports and ports in Europe.

Space Charter Agreement (No. 217-011307) between Compagnie General Maritime, Sea-Land, P&O Containers and Nedlloyd Lijnen, B.V. is an agreement in the trade between U.S. North Atlantic ports and ports in North Europe. The latter three parties are participants in Agreement No. 203-011171.

Several significant joint service agreements also became effective during the fiscal year. These agreements include:

DSR/Senator Joint Service Agreement (No. 207-011302) between DSR and Senator is an agreement between the two carriers to operate between ports or points in the U.S. and ports or points in Europe and in other countries.

WALLNYK Eastbound Atlantic Joint Service Agreement (No. 207-011333) between Wallenius Lines AB and NYK is an agreement utilizing roll-on roll-off vessels from U.S. Atlantic and Gulf Coast ports and Puerto Rico, and inland points via those ports, to ports and points in the United Kingdom, Eire and Continental Europe.

American Auto Carriers/NOSAC Joint Service Agreement (No. 207-011315) is an agreement between American Auto Carriers, Inc. and Norwegian Specialized Autocarriers in the trade between U.S. Atlantic ports, and ports in Europe, the United Kingdom, Eire, and the Islands of the Atlantic.

B. MEDITERRANEAN

The United States Atlantic/Gulf-Mediterranean trade is served by two superconferences which have maintained declining but still dominant market positions. The inbound trade is served by the *South Europe-U.S.A. Freight Conference ("SEUSA")* (No. 202-010676). The corresponding outbound subtrade is served by the *U.S. Atlantic and Gulf/Western Mediterranean Rate Agreement ("AGWM")* (No. 202-011102), and has a companion pooling agreement, the *U.S.A./South Europe Pool Agreement ("USSEPA")* (No. 212-011234), which authorizes the parties to pool revenue and to cross-charter space. The inbound/outbound U.S. Pacific Mediterranean subtrades continue to be served by the *Mediterranean/North Pacific Coast Freight Conference* (No. 202-008090).

During the fiscal year, as with the previous year, the strength of both SEUSA and AGWM was tested. Although both conferences continue to consist of virtually all the principal carriers in the Mediterranean trade, several non-conference carriers offer regular service on these routes. In addition, during the fiscal year, conference membership dropped with the withdrawal of Costa Lines (Conship Container Line) from AGWM, and Jugolinija from SEUSA. Both carriers continue to serve their respective subtrades as independents.

The Mediterranean trade continues to be characterized by chronic overtonnaging. In addition to the general worldwide problem of overtonnaging, there are several peculiarities of the Mediterranean trade which have led to its overtonnaging problem. As the continental European infrastructure continues to expand as a result of progress towards the European single market and in response to shippers' needs, the ongoing competition from North European ports as a viable alternative to the Mediterranean market provides added competition. The Mediterranean is a logical collection point for feeder cargo and

attracts a number of carriers for cargo whose ultimate destination may be other than Mediterranean ports, further contributing to the cargo space available. The Mediterranean is also a natural link from the U.S. to the Middle East and Far East; thus several worldwide carriers also operate in the Mediterranean trade, adding additional pressure to the overcapacity problem.

Evergreen Marine Corp. ("Evergreen") withdrew one of its vessels from the joint service it operates between the U.S. and the Mediterranean with Italia di Navigazione and Compagnie Generale Maritime and redeployed the vessel in its westbound round-the-world trade. Since the carriers will maintain the same amount of space on the three ships remaining in the service, Evergreen's move is one of operational efficiency rather than a decrease in capacity. Currently, industry reports indicate that the withdrawal of vessels and the corresponding capacity from the overtonnaged westbound Mediterranean trade are expected in early 1992. Mediterranean carriers believe the key is to remove unprofitable assets from the lagging westbound trade. That also means removing the same assets from the more balanced eastbound trade, possibly resulting in a more pronounced effect on eastbound overcapacity.

At the conclusion of fiscal year 1990, the dissolution of the westbound pool-sharing agreement, combined with the resignation of Farrell Lines, Inc., from the eastbound and westbound conferences, cast a veil of uncertainty over the future for pooling agreements in either direction in the Mediterranean trades. As a device which set minimum market shares and service obligations for SEUSA members, reports indicate that the pool never quite achieved its goal: bringing stability to a volatile marketplace.

Due to the nature of the outbound trade, USSEPA (outbound pool) has survived. Since the eastbound conference was formed in 1988, export trade from the U.S. to the Mediterranean has steadily increased, while westbound cargo

has decreased. Early fiscal year 1991 industry reports speculated about the continued survival of USSEPA, yet at the conclusion of the year, both AGWM and USSEPA remained in effect.

Significant new agreements filed during the fiscal year include a new conference agreement and one discussion agreement. The *Israel Trade Conference Agreement* (No. 202-011346) was filed among Farrell Lines, Inc., Lykes, and Zim Israel Navigation Co., Ltd. Upon implementation of the agreement authority by the agreement parties, the agreement will consolidate the two existing conferences in the trade, i.e., the Israel Eastbound Conference and the Israel Westbound Conference.

The Mediterranean/Puerto Rico Conference and P&O Containers filed a 90-day discussion agreement (No. 203-011342) in the trade from Mediterranean ports and points in Continental Europe to ports and points in Puerto Rico. The parties are authorized to discuss and exchange information on rates, charges, service contracts and related matters. Any agreement reached between the parties is based on voluntary adherence.

C. AFRICA

Trade with Africa remained depressed, especially in the West African sector, where conferences were experiencing a loss of volume in the first part of fiscal year 1991. However, the prospects for increased trade were improved because the U.S. repealed the Comprehensive Anti-Apartheid Act and resumed trade with the Republic of South Africa ("RSA"). Other countries which had trade sanctions against RSA are also removing them.

D. TRANSPACIFIC

During fiscal year 1991, transpacific carriers were confronted with imbalanced cargo flows, with U.S. liner exports filling more than 90 percent of the available westbound vessel space, but with U.S. imports covering only approximately 70 percent by year end. While the westbound trade witnessed strong cargo volume growth and, consequently, a marked improvement in freight revenues, this did not offset the effects of the depressed movement of high-value containerized imports into the U.S. Overall, carrier revenues did not grow, since the majority of U.S. export shipments are lower-value products, which typically move at relatively low freight rates.

The strong growth in U.S. liner exports to the Far East was fueled by a relatively low-value dollar and the Persian Gulf conflict, which injected large volumes of westbound military cargo. Meanwhile, the economic recession in the U.S. dampened U.S. demand for imports from the Far East.

Conference carriers competing for market share in the overtonnaged eastbound market made ample use of service contracts and introduced numerous rounds of Independent Action ("IA") rates. IAs were especially prevalent from January 1991 through March 1991. In the first quarter of 1991, the eight members of the *Asia North America Eastbound Rate Agreement* ("ANERA") (No. 202-010776) filed an estimated 3,000 IAs. ANERA did introduce, however, a general rate increase ("GRI") of \$200 per 40-foot container on May 1, 1991.

The Transpacific Stabilization Agreement ("TSA") (No. 203-011223), a cooperative working agreement among the parties to three conferences serving the eastbound transpacific trade and five major independent operators, and designed to manage containership capacity, was modified to lower the maximum allowed capacity for the parties (combined) to 82 percent from 85 percent of their actual capacities in the

trade. The impact of the amendment, effective February 4, 1991, was limited, since TSA carriers operated at approximately 70 percent of their combined actual capacity.

TSA was further modified to allow for voluntary slot chartering of vessel capacity among the parties on an as-needed, as-available basis, especially on short or no advanced notice. This amendment became effective March 15, 1991.

In the westbound trade, carriers belonging to the *Transpacific Westbound Rate Agreement ("TWRA")* (No. 202-010689) began a commodity-specific rate increase system in December 1990, systematically targeting commodities and increasing rates at different times and by different amounts. The system is in contrast to the typical GRI, under which most commodities are increased by identical percentages or dollar amounts at one time. Since January 1991, the conference has implemented specific increases ranging from 5 percent to 8 percent on commodities such as waste paper, carpets, tobacco, hay and lumber.

It is particularly noteworthy that TWRA, which generally refrains from entering into service contracts with shippers, entered into a service contract with a major U.S. shipper. The form of the contract, too, is noteworthy, because rate structures, service schedules, and governing rules are set forth within the overall contract on an individual basis for each participating member line (not every TWRA member is party to the contract). Generally, conference service contracts set forth common rates and service levels for participating members as a group, which identically apply for each participating line.

TWRA's membership declined to eight carriers as two Korean-flag carriers, Hanjin Shipping Co., Ltd. ("Hanjin") and Hyundai Merchant Marine Co., Ltd. ("Hyundai"), resigned effective January 3, 1991. Hanjin, one of the largest transpacific shipping lines, cited two reasons for leaving: the formation of a new space chartering and space sharing agreement (discussed later) with Taiwan-based Yangming

Marine Transport Corp. ("Yangming"), a non-conference member, for all-water service from Asia to the U.S. East Coast; and the need for more flexibility in responding to the entry of another Korean-flag carrier, Cho Yang, into the transpacific trade. Cho Yang, as a new carrier, was expected to offer very competitive rates initially to build market share.

Hyundai's departure from TWRA was a competitive response to the resignation of Hanjin, a carrier with nearly twice Hyundai's cargo volume in the trade. Specifically, Hyundai cited the difficulty it would face protecting its position in the Korean market as a conference carrier. Hyundai, like Hanjin, also mentioned the entry of Cho Yang as a second reason for leaving the conference.

Cho Yang began serving U.S. routes in January 1991, including the trade between the U.S. and the Far East, as part of the *Tricontinental Service Agreement* (No. 203-011305), which became effective December 10, 1990. A second party to the Tricontinental Service Agreement, a cooperative working arrangement which permits space chartering and sailing authority, is the *DSR/Senator Joint Service Agreement* ("*DSR/Senator*"), a joint service agreement between DSR and Senator, which became effective November 11, 1990. Under the Tricontinental Service Agreement, Cho Yang shares vessels and equipment terminals with DSR/Senator in a round-the-world service. The parties market their services separately.

In a move described by the involved carriers as designed to promote stability in the transpacific trade, TWRA and major independents formed the *Westbound Transpacific Stabilization Agreement* ("*WTSA*") (No. 203-011325). The independent carriers to WTSA are Hanjin, Hyundai, OOCL, Transportacion Maritima Mexicana, S.A. de C.V. and Yangming. This agreement went into effect on May 4, 1991, and authorizes the parties to exchange information, discuss market information, and discuss and agree upon rates on the movement of westbound cargo. The parties are not authorized, however, to adopt common tariffs or service contracts.

In a further effort to achieve more economical use of their vessels, the parties to WTSA, with the exception of Evergreen and Hyundai, entered into the *Transpacific Space Utilization Agreement ("TSUA")* (No. 217-011324). Under TSUA, the parties are authorized to charter space on each other's vessels as the need arises.

Prompted by the depressed rate levels and overcapacity in the eastbound trade, several leading conference carriers have formed coordinated sailing and vessel sharing alliances designed to improve revenues and to achieve better utilization of assets. Rather than reduce overall capacity, the carriers, under these agreements, are able to provide multiple weekly sailings and to realize important operating economies. The vessel sharing and sailing agreements also afford carriers the ability to reach what is becoming an increasingly segmented Far East-U.S. trade, with many more distinct load centers. Strong growth in Southeast Asia and the future potential that exists in the region, in particular, has contributed to the development of these new arrangements.

The *American President Lines, Ltd./Orient Overseas Container Line Inc. Reciprocal Slot Exchange and Coordinated Sailing Agreement* (No. 203-011340) entered into by APL and OOCL, effective September 9, 1991, is the most recent example of this type of agreement. The agreement authorizes the parties to charter space on each other's vessels, establish sailing schedules, service frequency, and port rotations. The agreement makes it feasible for APL and OOCL each to offer five weekly sailings to and from the Far East, including Southeast Asia ports. Previously, APL provided three transpacific sailings a week, and OOCL two.

As a second example, the *Neptune Orient Lines, Ltd., Nippon Liner System, Ltd., and Nippon Yusen Kaisha Space Charter and Sailing Agreement in the Far East, South East Asia, Australasia, South West Asia and Mid-East-U.S. Pacific Coast Trades* (No. 232-011337), effective August 17, 1991, authorizes Neptune Orient Lines, Ltd. ("NOL") and NYK to charter space

from each other and to coordinate vessel scheduling. (NYK acquired Nippon Liner System, Ltd., formerly a third party to the agreement, on October 1, 1991.) The main benefits of the agreement service, which utilizes 21 vessels, are four (instead of three) fixed-day weekly services, including one direct call service (for the first time) between Singapore and Seattle and Oakland, and three sailings every week to/from the main Japanese market. Additional weekend departures out of Hong Kong and faster transit times to/from South Korea are also provided. Other agreements of this type are discussed below.

The KL, MOL, and HMM Space Charter Agreement in the Far East-U.S. Pacific Northwest Trades (No. 217-011331) authorizes Kawasaki Kisen Kaisha, Ltd. ("K Line") and Mitsui O.S.K. Lines, Ltd. ("Mitsui") to charter space to Hyundai in the trade between the Far East and Oregon and Washington. The agreement, effective June 16, 1991, allows K Line and Mitsui to charter up to 500 20-foot equivalent units to Hyundai on any of their vessels operated in the trade.

The Mitsui O.S.K. Lines, Ltd. and Kawasaki Kisen Kaisha, Ltd. Space Charter and Sailing Agreement in the Far East/West Asia/Mid-East-U.S. Pacific Coast Trades (No. 232-011327), effective May 5, 1991, authorizes Mitsui and K Line to charter space from one another and to rationalize sailings. Like the other space sharing arrangements, this agreement emphasizes service improvement rather than capacity utilization. The agreement involves 21 ships and a 50/50 reciprocal space sharing arrangement on each of the two carriers' Pacific Northwest and Pacific Southwest trade routes. The partners have been able to eliminate duplicate port calls, to double service frequency in Japan and other key Far Eastern markets, and to reduce transit times.

The Maersk/Sea-Land Pacific Agreement (No. 232-011321), effective April 11, 1991, permits Maersk and Sea-Land to charter space from each other and to agree upon sailing schedules, service frequency, ports to be served, port rotation, operation of feeder services and the type and size of

vessels to be operated in the transpacific trade. This arrangement utilizes a combined fleet of 18 vessels and enables the two carriers to provide one of the most comprehensive intra-Asian feeder services of any carrier operating in the transpacific. Consistent with the build up of manufacturing capacity in the low-cost regions in Southeast Asia, the Maersk/Sea-Land service concentrates many of its feeder services out of Singapore. Furthermore, whereas before Maersk offered only two transpacific sailings each week and Sea-Land three, each carrier now provides five sailings per week, as many as any other operation in the trade.

The *Yangming and Hanjin Cross Space Charter and Sailing Agreement* (No. 232-011312) authorizes Hanjin and Yangming to cross-charter space on each other's vessels, and to rationalize schedules and sailings in the trade between ports in Asia and ports in Australia and Europe via Asian ports and U.S. East Coast ports. Under the agreement, which became effective February 9, 1991, the parties provide a U.S. East Coast-Far East service, utilizing nine vessels making direct calls at New York; Wilmington, North Carolina; and Savannah, Georgia. The agreement resulted in a significant reduction in vessel capacity on the U.S. East Coast-Far East route. The net effect on the overall transpacific trade is negligible, however, since the two parties simply merged their previous separate U.S. East Coast schedules and redeployed the remaining tonnage to the U.S. West Coast for the carriers' respective, upgraded U.S.-Asia-Europe pendulum-type services.

E. LATIN AMERICA AND THE CARIBBEAN

Despite the overall recessionary conditions which have hampered trade worldwide, liner trading between the U.S. and the Latin America/Caribbean region experienced healthy growth in fiscal year 1991 as a result of favorable political and economic policies aimed at improving trade conditions, which

hold the promise for additional growth in the future. The most extensive gains in liner carriage occurred in U.S. export to South America, which increased by an exceptional 67.5 percent in fiscal year 1991 over the previous fiscal period. Liner imports from South America to the U.S. declined slightly by 2.1 percent in the same period, but the region continues to maintain a trade surplus in terms of the volume of its containerized cargo traffic with the U.S.

The impressive growth in U.S. exports to South America is largely due to the concerted efforts of U.S. and South American authorities in their work toward eliminating trade barriers and governmental restrictions through the introduction of more liberal trade policies. A notable case is Brazil. The administration of President Collor de Mello is in the process of reducing trade impediments to the Brazilian market by lessening import tariffs, quotas, and restrictive licensing practices, and also by partially deregulating the shipping industry. Brazilian shipping lines may now operate at their own discretion as conference members, independents, or in association with other carriers. Competition among Brazilian carriers in the international trades is no longer entirely predetermined by the government, nor are the country's coffee and cocoa exports exclusively reserved for shipment by conference carriers, as was formerly the case. Brazilian carriers established in the international trades can now more easily expand their operations, and ocean liner competition within the U.S./Brazil trade has increased under the country's new reform policies. Companhia Maritima Nacional, which had previously only been authorized to operate in the U.S. Gulf/Brazil trade, has expanded its services to include U.S. Atlantic ports. In a cooperative arrangement with Columbus Line, Empresa de Navegacao Alianca entered the U.S. market with a new service operating in the trade between U.S. Atlantic and Gulf ports, and South American Atlantic ports. Similarly, Transroll Navegacao has formed a joint service with Sea-Land in the trade between the U.S. and the West Coast of South America. Brazil's state-owned carrier, Lloyd Brasileiro, plans to resume service in the U.S. Atlantic/Brazil trade in a cooperative

arrangement with the Norwegian carrier, A/S Ivarans Rederi. Severe financial troubles resulting in the seizure of 11 vessels forced Lloyd Brasileiro to curtail many of its services throughout most of fiscal year 1991. The carrier was able to regain possession of its vessels after the Brazilian government agreed to an emergency loan of \$60 million dollars (U.S.).

Along with Brazil, other South American countries have taken major steps toward eliminating protectionism and advancing liberal trade policies aimed at promoting economic growth. The Peruvian government revoked its strict 50/50 cargo reservation laws and gave its national-flag carriers more freedom to make their own operational decisions regarding trade route selection, chartering, and vessel purchases. Similarly, an agreement recently signed between the U.S. and Venezuela allows for the unencumbered access of national- and third-flag carriers to reserved cargoes in the bilateral trade between the two nations. These encouraging maritime reforms in Peru and Venezuela were prompted by each country's overall desire to enhance trade growth and in part by the possibility of sanctions levied against the national-flag carriers of each country in cases pending before the FMC, in accordance with its authority under section 19 of the 1920 Act.

Fiscal year 1991 not only saw improvement in U.S. liner trading with South America, but with Central America and the Caribbean as well. A renewed sense of political and economic stability throughout Central America produced favorable growth in the regional trades with the U.S. U.S. containerized exports to the Central America/Caribbean region grew by 15.5 percent in fiscal year 1991 over the previous fiscal year, and containerized imports from the region to the U.S. exhibited similar growth, with a 15.3 percent gain for the same period.

Along with increased trading activity, the number of agreements filed by carriers serving the trade between the U.S. and the Latin America/Caribbean region also increased in fiscal year 1991, as compared to the previous period. Sailing and/or space chartering agreements accounted for the majority

in the trade, and consisted of the following six agreements: *CSAV/TNE Reciprocal Space Charter and Coordinated Sailing Agreement* (No. 232-011301); *FMG/PDN/CSAV/NACL Space Charter Agreement* (No. 217-011304); *Space Charter Agreement between Empresa Naveria Santa, Ltd. and Central America Shippers, Inc.* (No. 217-011306); *CCNI/Nedlloyd Cooperative Agreement* (No. 217-011322); *Space Charter Agreement between Sea-Land Service, Inc. and Ocean Express Lines, Inc.* (No. 217-011323); and *Thompson Shipping Co. Ltd./Cayman Islands Shipping Ltd. Space Charter Agreement* (No. 217-011343).

The following four cooperative working agreements also became effective in fiscal year 1991: *FMG/CSAV Cooperative Working Agreement - Atlas* (No. 203-011308); *FMG/CSAV Cooperative Working Agreement - Carat* (No. 203-011309); *CSAV/SSI Cooperative Working Agreement* (No. 203-011314); and *Columbus/Alianca Agreement* (No. 203-011334). In addition, a new pooling agreement and two joint service agreements became effective in the trade, namely: *Neptuno/CSAV Service Agreement* (No. 212-011319); *Empremar/MSC Agreement* (No. 207-011339); and *Transroll/Sea-Land Joint Service Agreement* (No. 207-011341).

F. MIDDLE EAST

Two space charter and sailing agreements and one conference agreement were implemented in the Middle East during fiscal year 1991: *Space Charter Agreement between Neptune Orient Lines, Ltd. and Nippon Yusen Kaisha Line, Ltd.* (No. 217-011345); *NOL, NLS and NYK Space Chartering Sailing Agreement* (No. 232-011337); and *Israel Trade Conference Agreement* (No. 202-011346).

Adjustments to established trade and shipping patterns were necessary because of the disruptions caused by the Persian Gulf conflict. Saudi Arabian ports experienced overcrowding

which forced alternative entry at the ports of Aqaba, Jordan, and the United Arab Emirates ports of Port Rashid and Jebel Ali. Expansion plans were undertaken at both these ports with the addition of gantry cranes, ground equipment, and new container freight station facilities. Since ports in Kuwait were closed because of war damage, cargo was diverted to ports in Saudi Arabia.

Carriers serving the region responded by adding capacity and changing service in some situations. The National Shipping Company of Saudi Arabia expanded its service by committing its entire fleet of eight roll-on roll-off vessels to the U.S./Middle East trade. This enabled the company to offer sailings every ten days. Lykes also increased its service by adding a second ship. Other carriers which expanded their services to the region include Sea-Land, Compagnie Maritime d'Affretement, and Joint Container Service. Joint Container Service is a container-carrying consortium operating under a slot charter agreement among Cunard Ellerman, Nedlloyd, Hapag Lloyd, United Arab Shipping Company, and P&O Containers.

G. WORLDWIDE

World liner shipping markets, particularly in the U.S. trades, continued to be somewhat sluggish during 1991. This situation resulted in an accelerated rationalization and restructuring of liner services. The competitive environment was basically a continuation of trends already underway during the past two years. Any significant improvement in the liner trades is likely to be largely dependent on the success of trade stabilization agreements, but only after improvement in the rate of economic growth in the major industrialized nations is realized.

In general, the situation in the transatlantic liner shipping market remained one of economic recession with liner vessel

capacity high and depressed rates prevailing. In the transpacific, the westbound trade witnessed strong cargo volume growth, while eastbound container movements were depressed. Carrier vessel utilization levels were accordingly relatively high westbound and comparatively lower eastbound. The Europe-Far East liner trade experienced depressed rates and unsatisfactory levels of ship capacity utilization in 1991. These market developments were responsible for accelerated rationalization and restructuring of vessel services, particularly in the Pacific where several carriers agreed upon a reinforced TSA and entered into vessel sharing agreements through mutual slot charter arrangements and the establishment of joint company operations. Similar initiatives were noted in other liner trades, except the Middle East where carriers failed to experience an expected sharp increase in liner cargo carriage in the aftermath of the conflict in the Persian Gulf.

Over the last year, certain countries were considering the elimination of some cargo reservation laws to enhance the competitiveness of their national-flag carriers and ocean shipping industries. In particular, Brazil adopted regulations liberalizing shipping, offshore support services and ports. At the same time, the Andean Pact nations reportedly agreed to consider removing cargo reservation laws, between member countries, as a step toward improving the competitiveness of their national-flag shipping. However, in Africa, where cargo reservation and protectionism remain important elements of government shipping policy, no noticeable trend toward increased liberalization of maritime transport is readily apparent. African countries have continued to favor the unilateral application of cargo sharing and other provisions of the United Nations Code of Conduct for Liner Conferences. In fact, African countries reportedly have concluded, on the basis of their understanding of the results of recent Liner Code review conferences, that they would be justified in extending the Code to the entire trade rather than to conference traffic alone. This prospect is an issue of concern to the major industrial shipping nations.

V

AUTOMATED TARIFF FILING AND INFORMATION SYSTEM ("ATFI")

A. INTRODUCTION AND BACKGROUND

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

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

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

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

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

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

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

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

While the first U.S. maritime regulatory body was established in 1916, it was not until 1961 that carriers in the U.S. foreign commerce were required to file tariffs containing all the rates, charges, and rules applicable to their shipments.² The number of tariffs and amendments filed with the Commission has steadily grown until, in fiscal year 1991, there were 1,268,086 tariff pages received and 5,854 service contract filings in the U.S. foreign commerce. At the end of the fiscal year, there were 6,946 foreign tariffs on hand at the Commission.

The enormous amount of paper to be processed by a limited number of employees led the Commission in the early 1980s to consider modern technology as a means of alleviating the paperwork burdens on both the government and the shipping industry, as well as enhancing the effectiveness of Commission regulation. A systematic exploration of this subject area by the Commission commenced with a series of studies.

B. EARLY STUDIES ON TARIFFS

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

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

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

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

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

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

While conducting this three-part study, the Commission also began an internal study of the impact of filing activity upon the Commission itself. The internal study revealed that during a six-month period, July-December 1981, a total of 212,458 permanent filings were received at the Commission. Thirty out of several hundred filers accounted for 47 percent of the total volume. The internal study also found that, based upon first quarter fiscal year 1982 actual expenses, the

estimated annual cost of examining and maintaining the tariff filings of the 30 major filers was \$158,000.

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

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

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

C. FIRST STEP IN TARIFF AUTOMATION: ISSUES

Recognizing that there was a need and apparent industry support for tariff automation, the Commission's next step was to determine if any parties were interested in developing an appropriate system. On November 14, 1983, the Commission published in the *Commerce Business Daily* a Notice of Inquiry entitled "*Sources Sought for 'Paperless' Federal Maritime Commission Electronic Filing, Storage and Retrieval Systems for*

Tariffs." Of the 31 replies received, 15 were considered to be responsive or partly responsive to the notice (i.e., indicated interest in being considered to develop the automated tariff system and/or described their qualifications). The comments also raised questions of both a legal and policy nature which needed to be resolved before proceeding with additional phases leading to the eventual adoption of an electronic tariff system. The major questions raised were:

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

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

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

4. What copyrights are involved in tariff data?

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

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

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

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

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

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

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

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

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

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

D. THE SHIPPING ACT OF 1984

On March 20, 1984, the 1984 Act was enacted. Even though the continued need for various tariff requirements had been questioned by certain government agencies and by the private sector during hearings on the Act, section 8 continued the requirements to file and abide by tariffs. Service contracts were authorized as an alternative to a tariff. While service contracts were required to be filed confidentially with the Commission, their essential terms had to be filed with the Commission in tariff format for availability to the general public.

E. THE TARIFF AUTOMATION TASK FORCE

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

- **Tariffs were used by virtually all, usually on a daily basis, and mostly in paper form.**
- **Most, with the exception of shippers, were satisfied with the current tariff form. Those not satisfied indicated a desire for an automated system.**
- **Most of the respondents obtained data from commercial tariff services, but many used carrier/conference subscriptions. Carriers were the predominant users of Commission files, while a large number of freight forwarders, NVOCCs and shippers went directly to ocean carrier representatives for tariff information. They indicated that these sources met their needs; however, those suggesting improvements generally favored automation which could provide more timely and accurate data.**
- **A majority of the respondents used publicly available standardized commodity coding systems, e.g., *Schedule A, Tariff Schedules of the United States Annotated, Standard International Trade Classification, Schedule B, and Standard Transportation Commodity Code.* Most respondents**

did not use standardized geographic coding systems, nor did they see a need for them.

- **Freight forwarder and shipper respondents showed the greatest degree of willingness to use more than one type of coding system.**
- **Practically all ocean carrier and conference respondents believed that it would be advantageous to file data with the Commission in an automated fashion. The NVOCC respondents thought it might be too expensive.**

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

- **Most respondents in the Commission's operating bureaus felt that automated tariffs would increase the quality of their work, as well as their productivity.**
- **Sixty-two percent of the respondents felt that hard copy was unnecessary if tariffs were accessible via machine-readable form. Reasons cited for paper copies were the need for evidence in court, exhibits for enforcement reports, and a backup system in case of computer malfunction.**
- **Forty percent said that a standard commodity classification code would increase both their efficiency and quality of work, while an additional 21 percent responded that it would increase only their efficiency but not their quality of work. Responses were similar regarding a standard geographic code.**

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

- **The automated system will operate in the private sector to the extent possible.**
- **The system will be financially self-sufficient through the assessment of user charges for access to the information.**
- **Access by the Commission will be without cost.**
- **The integrity of the system will be ensured by the Commission through the development and ownership of software which will control entry into the system.**
- **A means will be constructed to minimize the monopolistic control of a single company operating the system, and effort should be made to preserve existing satellite companies now engaged in dissemination of tariff data.**
- **Contractual arrangements for electronic filing may not curtail the ability of the public to have access to tariff documents now routinely available in public document rooms or otherwise.**

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

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

2. Single database -- one contractor designs and operates a single database of tariffs for the Commission. After review and acceptance of the data, tariff information would then be made available to users for a fee, a portion of which would offset the cost of the contract to the Commission. Rather than grant the contractor a total monopoly over tariff information, however, the report indicated that it would seem more advisable for the contractor to supply only the raw data, perhaps on a subscription basis. The purchasers of the data would save on input costs to their system and obtain quicker access to the information in an electronically-usable form. Each purchaser could purchase electronic data, design its own software for providing the data in usable form, and sell the data to other users. Hard copy and/or microfiche pages could also be made available for sale by the contractor.

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

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

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

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

Early in 1985, the Commission determined the need and importance of not only soliciting, but also considering in a public arena, the opinions of all interests that might be affected by the automation of tariff filing. For that purpose and pursuant to the provisions of the Federal Advisory Committee Act, 5 U.S.C. app. I, 1-15, the Commission's ATFI Industry Advisory Committee was established.

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

On November 11, 1985, the Commission published in the *Federal Register* (50 Fed. Reg. 47,447) its Notice of the Formation of the ATFI Advisory Committee and announced the first meeting on December 6, 1985 (50 Fed. Reg. 50,013). FMC Commissioner Edward J. Philbin was designated

Chairman of the Committee. The nineteen industry members represented three ocean carriers, three steamship conferences, two NVOCCs, three freight forwarders and the National Customs Brokers and Forwarders Association, three ports and the California Association of Port Authorities, two exporters and importers and the American Association of Exporters and Importers, two information service firms, and the Information Industry Association.

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

- Is it desirable that it operate in the private sector?
- Can it be structured so as to be financially self-sufficient through the assessment of user charges for access to the information?
- Is it possible to achieve cost-free access to the system for the Commission?
- Can the integrity of the system be ensured by the Commission through the development and ownership of software which will control entry into the system?
- What means can be devised to minimize the possibility of monopolistic control by any single company that might operate the system, and to minimize interference with the operations of commercial companies currently engaged in the dissemination of tariff data?
- Can the system operation be structured to maintain public access to tariff information now routinely made available in public document rooms or otherwise?

- **Can system operation be structured to complement public access under the Freedom of Information Act?**
- **Can a system be structured so that the burden imposed upon tariff filers to comply with the technical requirements of filing tariffs in an automated system will be minimized?**

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

- **The Commission is to retain final authority to reject filings that do not comply with agency requirements, and is to determine the public availability of information pursuant to the Freedom of Information Act and other statutes.**
- **The system must permit the maintenance of historical records that can be retained, retrieved and reproduced for legal evidentiary purposes and to comply with requirements for retention of government records.**
- **The system must obviate unauthorized modification or tampering with data, yet allow the identification and authorized correction of errors.**
- **All fees for the use of the system (filing, retrieval or data reproduction) are to be reasonable and not prevent, deter or impair full public use.**

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

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

- To educate each segment of the shipping industry about the needs and goals of the other segments in such a process.
- To investigate the possible applications of existing and foreseeable automated data processing technology to accommodate such needs and goals.
- Then, if feasible, to formulate the necessary compromises of the needs and goals of each industry segment to design a system which is acceptable and beneficial to all industry segments.

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

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

1. Key Tariff Filing Requirements

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

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

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

2. Key Commission Tariff Processing Requirements

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

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

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

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

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

(f) Route tariff filings.

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

3. Key Tariff Retrieval Requirements

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

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

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

(d) Link tariff information to other data sources.

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

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

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

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

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

4. Key Functionality Requirements

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

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

- (c) Security (e.g., user identification and passwords).
- (d) Special analyses for Commission (e.g., rate indices).

5. Key Policy Assumptions

(a) Commission will provide public access to the system via terminals in a public terminal room at the Commission. Commission will make copies of the database available to third-party vendors, who could then resell the data (or value-added services) on a retail basis.

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

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

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

The *ATFI Feasibility Study* concluded:

Tariff automation appears to offer significant benefits to the maritime industry and to the Commission; tariff automation appears to be politically feasible; and the potential costs of tariff automation appear to be within the reasonable range, when balanced against the benefits that would accrue and the practical limits in the budgetary process.

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

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

G. BENEFIT COST ANALYSIS and PROCUREMENT AUTHORITY

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

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

H. INQUIRY ON THE FUNCTIONALITY OF ATFI and PRESOLICITATION CONFERENCE

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

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

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

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

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

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

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

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

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

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

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

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

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

b. Retrieval and Analysis by the Public

. . . Commission would also allow remote access whereby a member of the general public could access the automated tariff system from remote locations. For example, the system would enable a shipper on the West Coast to retrieve data from the automated tariff system using a terminal or microcomputer equipped with a device (i.e., a modem) to enable data communications over public telephone lines.

However, members of the general public would only be able to perform relatively rudimentary retrievals, and essentially no analysis of the data. Specifically, members of the public would only be able to retrieve one tariff at a time, in its full format. To retrieve a tariff, the public user would have to specify the specific tariff of a particular carrier that is desired: the public user would not be able to search by keys (e.g., by route or community).

Commission has imposed these restrictions based on a careful analysis of applicable federal policies and precedents. Commission does not want to compete with third-party services for the provision of sophisticated retrieval and analysis of tariff data for shippers, carriers, and others in the private market. . . . In the absence of tariff automation -- i.e., the status quo -- Commission will make available copies of tariffs to members of the public only if they can specify the particular tariff desired. A user fee is assessed for this service. Commission would not expand these services after tariff automation is implemented. . . . However, Commission would help ensure that third-party services can provide such services. [Pages IV-8 and 9.]

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

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

I. REMOTE RETRIEVAL

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

During the period June-December 1988, the Commission reassessed the functionality of the ATFI system, especially in the area of remote retrieval. This process involved a dialogue with officials of Congress and the Executive Branch. Technical revisions were made to the RFP to reflect new funding

exigencies and legal requirements. In October 1988, the Commission issued to some 200 potential offerors a second draft RFP for comment on the technical revisions. However, the Commission remained concerned about the questions on remote retrieval and stated in the letter transmitting the second draft RFP:

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

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

The controlling question is: In designing the functionality of its ATFI system, has the Commission properly considered and balanced competing interests, such as (1) the system's utility to shippers, carriers and other members of the shipping public, and (2) the future role of private-sector information services? The Commission believes it has.

In October 1986, a year before the Commission heard of any complaints about "remote retrieval," its private-sector contractor issued "A Comprehensive Study of the Feasibility of an Automated Tariff System." This report accurately describes the proposed functionality of the ATFI system in terms sufficiently precise for private-sector firms to fully understand for the purpose of submitting proposals. This public report was considered and discussed by the Commission's Industry Advisory Committee at the time and there were no objections to 'remote retrieval'

More importantly, with the approval of the Commission and the Advisory Committee, the Feasibility

Study Report suboptimized ATFI's public retrieval functions as an accommodation to private-sector information firms.

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

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

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

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

Accordingly and after further analysis, the Commission believes that it has sufficiently considered all policies and conflicting interests involved in the proposed system and has struck a proper balance in retaining the functionality of ATFI as originally devised in the Feasibility Study, and as further refined in the RFP. [December 23, 1988 (53 Fed. Reg. 52,785).]

See also Section K, *Update on Remote Access - March 1992*, below.

J. CONTRACT AWARD and STATUS

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

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

The contract for the five-year system life also contained options for each subsequent Phase, i.e., Development and Testing, Prototype Operation, and each year of Full-scale Operation, the letter of which is scheduled to begin in fiscal year 1992. If all options are exercised, the contract will be worth approximately \$5M.

Work on Phase I began on September 5, 1989, and during fiscal year 1990 the Contractor finished Phases I and II, as well as Phase III - Development and Testing. Later in the fiscal year, Commissioner Donald R. (Rob) Quartel, Jr., was put in charge of the Commission's Committee on Automated Data Processing ("ADP Committee") and the ATFI project.

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

functionality requirements of the system. Analysis of this software promised that it would be a decided improvement.

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

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

Under the license agreement, sign-on screens will show the copyright notice, as follows: © 1990. *Data Exchange International, Inc. Unpublished. All rights reserved under the copyright laws of the United States. See 48 CFR §§ 27.408(b) and 52.227-14.* The Commission does not in any way endorse this or any other commercial product, and clause H.9.1 of the prime contract requires any commercial tariff services performed by an affiliate of the Contractor to be completely separate from contract performance. Accordingly, the cosponsored approach, allowed and encouraged by the FAR § 27.408, and as implemented by the Commission's contractual

arrangements, complies with the language in H.R. Rep. No. 31, 101st Cong., 1st Sess. 5-6 (1989): "In addition, the Commission, in establishing the ATFI system, should take all appropriate steps to ensure that the private contractor is precluded from gaining an unfair advantage over other private companies in the provision of value-added services." On July 19, 1990, the contract was modified to incorporate these changes.

On August 1, 1990, the Commission instituted Docket No. 90-23, in which it issued a second ATFI Notice of Inquiry ("NOI" - Advanced Notice of Proposed Rulemaking) requesting further public comment on some of the basic features being considered for ATFI and how they may impact current paper tariff practices. On September 5, 1990, a public demonstration of the system was held.

Public comments on the NOI were submitted by 22 firms in October 1990 and analyzed by the Commission. On December 26, 1990, the Commission issued a first Interim Report ("First Interim Report") which considered the comments and resolved the issues raised in the NOI.

The proposed refinements and resolution of tariff policy issues contained in the fiscal year 1990 contract modification also required revision of the File Transfer Formats and Code Reference Tables ("Transaction Set") originally issued in March 1990. Accordingly, the first Interim Report of December 1990 appended the ATFI "Batch Filing Guide" (containing, *inter alia*, transaction sets, file transfer formats, data dictionary, and code reference tables). On February 19, 1991, Supplement # 1 to the "Batch Filing Guide" was released (and mailed out) in the form of an Information Bulletin ("IB" 3-91) and was also distributed to over 100 attenders of public ATFI demonstrations in Washington, D.C. On April 11, 1991, Supplement # 2 to the "Batch Filing Guide" was issued as IB 11-91. Supplement # 3 was issued on July 23, 1991, as IB 20-91.

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

IBs 9-91 and 24-91, both containing technical questions and answers, were issued on April 10, 1991, and September 18, 1991 (after a September 12, 1991, technical meeting for the public), respectively.

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

The proposed rule in Docket 90-23, *Tariffs and Service Contracts*, was issued on September 9, 1991 (56 Fed. Reg. 46,044), as a new Part 514 of Title 46 CFR, with the deadline for comments being October 31, 1991. The supplementary information to the proposed rule contains tables showing where the Commission's reports addressed and decided the major policy issues listed in the NOI and the sources in the current CFR of portions of proposed Part 514. The proposed rule also indicated that the "Batch Filing Guide" would be incorporated by reference.

At the end of fiscal year 1991, the Commission was analyzing comments to the Third Interim Report and expecting comments to the proposed rule.³ It is expected that full-scale implementation will begin in fiscal year 1992.

In addition to public demonstrations of, and opportunity for informal written comments on, the ATFI system, as well as training, information bulletins and other informal releases,⁴ the Commission, as noted above, has used two major vehicles in this proceeding for identifying, discussing, and deciding the major policy issues, and for implementation of those decisions. The (interim) reports (three interim reports and an expected final report) provide opportunity for extensive discussion of the issues, while the traditional rulemaking (proposed, interim and/or final, as here), is/will be the succinct document for implementation of the policy decisions. For a history of the Commission's reasoning, as well as reference to the numerous rounds of voluminous comments, both types of the Commission issuances should be consulted.

K. UPDATE ON REMOTE ACCESS MARCH 1992

Since the 1986 *ATFI Feasibility Study* (See Sections F, H, and I, above), the Commission's ATFI system has been designed to accommodate remote filing and retrieval of tariff data through modems to and from the off-site host processor (minicomputer). However, to avoid competition with private-

³ The Reports and rulemaking documents in Docket 90-23, as well as the "Batch Filing Guide" (as updated), can be found in Pike and Fischer, *Shipping Regulation*.

⁴ During fiscal year 1991, the Commission held several public demonstrations of the ATFI system, for about 200 people, and four one-week training sessions, each for approximately 15 people from private industry involved in tariff filing.

sector tariff services, the design contemplates restrictions on remote retrieval, such as the ability to retrieve only rudimentary information, "one-tariff-at-a-time."

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

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

Congress explained this provision as follows:

Concern has been expressed over the use and accessibility of the ATFI system by all interested parties. In particular, the remote retrieval function will permit the public to dial into the system (by modem) and obtain a particular carrier's rates on a requested commodity in a given trade.

* * *

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

* * * * *

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

Both the House Merchant Marine and Senate Commerce Committees also requested to be kept informed on developments on reasonable restrictions. Accordingly, a March 1990 Update on Remote Access was included in the Commission's 28th Annual Report to Congress, and this section continues that practice.⁵

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

. . . In implementing this system, the Committee expects the Commission to develop procedures that will ensure that ATFI will not * compete with private sector providers of information services. As the Commission's 1986 Feasibility Study recommended, remote access to the system should be only rudimentary with essentially no analysis of the data. In addition, the procedures governing the system should provide that the user be able

⁵ The *Update on Remote Retrieval* was included in the Commission's December 1990 *Interim Report* in Docket No. 90-23, *Notice of Inquiry on Ocean Freight Tariffs in Foreign and Domestic Offshore Commerce* (the second ATFI Notice of Inquiry), with appended "Batch Filing Guide." In fiscal year 1991, the Commission provided extensive opportunity for more public comment, as well as public demonstrations and training during the Prototype Phase.

to access the system on a limited number of items before automatic log-off.

[* S. Rep. No. 101-144 to H.R. 2991 added the word "unfairly," otherwise the language is identical.]

The ATFI Contractor, working with the Commission staff, has developed reasonable controls and procedures governing remote access to accommodate the intent of Congress, as described above. These, however, will be subject to further changes as development of the system progresses and even after experience during prototype and full operation.

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

For remote retrieval of tariff data, the design calls for specification by the user of a particular tariff desired to be accessed, after consulting a table of contents at log-on. To identify the sought-after Tariff Line Item ("TLI"), there will also be various help functions, such as commodity indexes, before bringing up the item on the screen.

Because tariffs will continue to have separate "Rules" sections governing the applicability of the rate, these sections of the same tariff may also be accessed. Moreover, where the tariff filer has a separate "Rules" or "Bill-of-Lading" tariff, instead of an all-inclusive "section" in the same tariff, these types of governing tariffs may also be accessed during the same session. In order to be able to accurately determine the applicability of a rate, these unique types of tariffs will be the only clarification to the "one-tariff-at-a-time" limitation.

When the system first becomes operable, it is intended that the retriever will be automatically logged-off a session after a particular time, such as 30 minutes. The period of time established should allow sufficient exploration of all the

applicable rules and, perhaps, another TLI, if there was a mistake in selecting the first TLI. After experience, this time limit can and will be adjusted upward or downward.

Software and instructional materials are being developed to assist in correcting as many problems as possible before tariffs are filed. This should minimize errors and rejections. In order that a carrier can determine that a filing session has been successful, however, it will be allowed access to (only) its own filing in the non-public review file and to consult a special message screen developed for this purpose. The fewer the errors, the easier it is for all concerned.

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

The Commission's rulemaking in Docket No. 90-23 will address remote retrieval issues and comments submitted by the public. The final or interim rule is expected momentarily. If there are any other controls or procedures governing remote access, the Commission will continue to keep Congress promptly apprised.

VI

SECTION 18 STUDY

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

In September 1989, the FMC submitted the Section 18 Report on the Shipping Act of 1984 ("Report") to Congress and the Advisory Commission on Conferences in Ocean Shipping ("Advisory Commission"). The Report presented a detailed evaluation, including supporting data and analyses, of the impact of the 1984 Act on the international shipping industry. It was the product of a five-year study by the FMC mandated by Congress in section 18 of the 1984 Act, and addressed a set of specific issues that Congress believed would be important in assessing the regulatory reforms embodied in the 1984 Act. In particular, the FMC was required by section 18(a) of the 1984 Act to collect and analyze 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 FMC regulatory proceedings.

Congress also identified three specific topics in section 18(c)(3) of the 1984 Act that the FMC should address in its Report: (1) the advisability of adopting a system of tariffs based on volume and mass of shipment; (2) the need for antitrust immunity for ports and marine terminals; and (3) the continuing need for the statutory requirement that tariffs be filed with and enforced by the FMC.

The Report was also transmitted to the Department of Justice ("DOJ"), DOT and the Federal Trade Commission. The three aforementioned agencies also submitted their own analyses on the impact of the 1984 Act to Congress and to the Advisory Commission.

In fiscal year 1991, the FMC continued to gather data to update the information contained in the Report. These data may be useful to the Advisory Commission as it conducts its study. The FMC also provided staff support to the Advisory 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, submit to the President and to Congress a final report containing a statement of findings and conclusions, including recommendations for such administrative, judicial and legislative actions as it deems advisable. The report is due April 10, 1992.

For more details on the FMC's Report, see the Annual Reports for previous fiscal years.

VII

THE FOREIGN SHIPPING PRACTICES ACT OF 1988

A. THE STATUTE

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

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

B. ACTIONS TAKEN

In January 1991, the Commission issued an information demand order pursuant to the FSPA on the subject of restrictions imposed by the PRC affecting the operations of U.S.-flag carriers in the U.S./PRC trade. Despite assurances made in the course of discussions between the U.S. and the PRC, the Commission was concerned about the apparent lack of progress in easing these restrictions, which include limitations on U.S. carrier branch office activities, non-recognition of U.S. carrier tariffs, restrictions on port service and inland operations, and excessively high or discriminatorily applied charges for various PRC-controlled services.

In July 1991, on the basis of responses to the information demand order issued to U.S. and PRC-flag carriers operating in the U.S./PRC trade, the Commission initiated an investigation under the FSPA into alleged PRC restrictions. During the pendency of the investigation, commercial and governmental consultations occurred, and the Commission's review of the reports from those negotiations revealed substantial PRC concessions and commitments. At the request of the U.S. carriers, the Commission invoked section 10002(c)(2) of the FSPA and extended the completion date of the investigation 90 days to February 19, 1992, to allow the parties time to experience, assess and report on the PRC's implementation of its commitments.

On April 15, 1991, the Commission issued an order under the FSPA requiring Japanese and U.S. carriers serving the U.S./Japan trade to provide information concerning charges imposed on carriers serving Japanese ports paid into a fund known as the Japan Harbor Management Fund ("Fund"). The Commission subsequently initiated a formal investigation under the FSPA. The proceeding was discontinued on June 13, 1991, based on the U.S. carriers' representations that a new agreement had been reached which substantially removed the adverse effect of the Fund, along with a commitment by the Japanese Minister of Transport that the Fund would be discontinued after March 31, 1992. Parties to the proceeding are required to report quarterly on payments to the Fund through April 1992.

In February 1991, the Commission issued a supplemental information demand order pursuant to the FSPA requiring U.S. and Taiwan carriers to provide information regarding Taiwan restrictions that appear to preclude U.S.-flag carriers from conducting a full range of intermodal and business operations in Taiwan. These restrictions were the subject of a prior FSPA proceeding in 1989, which was discontinued after assurances by Taiwan that its restrictive laws and regulations would be changed, and the U.S. carriers themselves did not

advocate sanctions. Commission monitoring indicated that, despite some progress, some restrictive barriers remained.

Based on the responses to the information demand order, in October 1991, the Commission initiated a formal FSPA investigation. A final Commission decision is due February 13, 1992.

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

Section 10002(g)(1) of the Omnibus Trade and Competitiveness Act of 1988 requires the Commission to include in its annual report to Congress "a list of the twenty foreign countries which generated the largest volume of oceanborne liner cargo for the most recent calendar year in bilateral trade with the United States."

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

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

military household goods shipments, bunker fuels and other supplies, intransit shipments through the U.S., etc.

The most recent year for which Census data were available to the Commission is calendar year 1989. The table on the next page indicates the twenty foreign countries which generated the largest volume of oceanborne liner cargo in bilateral trade with the U.S. in 1989. The figures in the table represent each country's total U.S. liner imports and exports in thousands of long tons.

Top Twenty U.S. Liner Cargo Trading Partners (1989)

<u>Rank</u>	<u>Country</u>	<u>Tons (000's)</u>
1	Japan	16,006
2	Taiwan	8,352
3	Republic of Korea	5,633
4	Federal Republic of Germany	4,252
5	China (PRC)	3,397
6	United Kingdom (Incl. N. Ireland)	3,240
7	Italy	3,084
8	The Netherlands (Holland)	2,606
9	France	2,422
10	Hong Kong	2,390
11	Brazil	2,197
12	Belgium	2,115
13	Australia	1,794
14	Spain	1,686
15	Thailand	1,559
16	Indonesia	1,494
17	Philippines	1,207
18	India	1,161
19	Singapore	1,152
20	Sweden	873

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

The top twenty trading countries were the same in calendar year 1989 as in the previous year; however, their rankings did change slightly. PRC displaced Italy as the fifth-ranked country for 1989, and Italy slipped to the seventh position. In 1988, PRC was ranked as the sixth top trading partner with the U.S. in terms of liner cargo. The United Kingdom moved upward to the sixth position in 1989 from the seventh in 1988. The rankings for France and Hong Kong are reversed in 1989 from what they were in the previous calendar year. The rankings of the top 11 through 20 countries changed moderately between the two years.

In 1989, Census separated the import and export data for the countries of Belgium and Luxembourg into two distinct groups under a new system of four-digit country codes. Prior to this point, the two countries were combined under the same three-digit country code. Total liner cargo moved between the U.S. and Luxembourg amounted to almost 94,000 long tons in 1989. The exclusion of the Luxembourg data caused Belgium's ranking among the top twenty countries to drop by one position.

VIII

**SIGNIFICANT
OPERATING
ACTIVITIES**

BY

ORGANIZATIONAL UNIT

A. OFFICE OF THE SECRETARY

1. General

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

The Secretary's Office also participates in the development of rules designed to reduce the length and complexity of formal proceedings, and participates in the implementation of legislative changes to the shipping statutes. During fiscal year 1991:

- **The Commission heard oral argument in two proceedings and issued decisions concluding nine formal proceedings. Eighteen formal proceedings**

were discontinued or dismissed without decision, while fourteen initial decisions of an Administrative Law Judge became administratively final without Commission review. The Commission also concluded 167 special docket applications, 50 informal dockets which involve claims sought against carriers for less than \$10,000, and 34 applications to correct service contracts. During the same period, the Commission issued final rules in four rulemaking proceedings.

- Nine rulemaking proceedings and three formal petitions were pending before the Commission at the end of the year. Final decisions in these matters are anticipated in fiscal year 1992.
- The office began converting docket records to microfiche to save the expense of long-term retention in longer storage facilities.

2. Office of Informal Inquiries and Complaints and Informal Dockets

This Office coordinates the informal complaint handling system throughout the Commission. A total of 1,575 complaints and information requests were processed in fiscal year 1991. Recoveries to the general public of overcharges, refunds and other savings attributable to the complaint handling activities amounted to \$126,435. Since 1982, this Office has helped complainants recover over \$2,500,000.

The Office coordinated meetings between maritime industry representatives and Commission officials, and supplied copies of procedures, dockets and other information requested by the general public. During fiscal year 1991, this Office responded to 910 such telephone requests and inquiries. The Office maintained liaison with members of the President's

Consumer Affairs Council, in which it participated throughout the fiscal year.

In addition, the Office is responsible for the initial adjudication of reparation claims for less than \$10,000 that are filed by shippers against common carriers by water engaged in the foreign and domestic offshore commerce of the U.S. These claims must be predicated upon violations of the 1916 Act, the 1984 Act, or the 1933 Act. The vast number of claims received under this program constitute shippers' requests for freight adjustments arising from alleged overcharges by carriers. During fiscal year 1991, 22 claims were filed, while 32 pending cases were carried over from the previous year. During the same period 47 informal docket claims were concluded by the Office, while one other became a formal docket. There were 5 pending cases at the close of the fiscal year.

During fiscal year 1991:

- **The Office helped develop a cooperative interagency program designed to improve service to individuals with complaints against cruise operators. Implementation of this program has helped ensure that each complaint is processed by the agency best equipped to deal with the type of problem at issue.**

- **The Office actively assisted in the resolution of a series of disputes arising in connection with carrier equipment detention charges.**

B. OFFICE OF ADMINISTRATIVE LAW JUDGES

1. General

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

Administrative Law Judges have the authority to administer oaths and affirmations; issue 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 1991, 53 proceedings were pending before Administrative Law Judges. During the year, 242 cases were added, which included 3 proceedings remanded to Administrative Law Judges for further proceedings. The judges held 14 prehearing conferences, held 3 formal oral hearings, formally settled 5 proceedings, dismissed or discontinued 24 proceedings, and issued 2 initial decisions in formal proceedings, 1 initial decision in an informal proceeding, and 175 initial decisions in special docket applications.

2. Commission Action

The Commission adopted one formal decision, and one formal decision became administratively final. Special docket

decisions in 152 proceedings became administratively final, and 1 special docket decision was partially adopted.

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

Judges also issued initial decisions in Special Docket Nos. 1721, 1721R, 1751, 1832, 1837, 1840, 1841, 1843, 1851, 1854, 1858, 1859, 1864, 1865, 1866, 1867, 1870, 1871, 1872, 1873, 1875, 1876, 1877, 1878, 1879, 1880, 1881, 1882, 1883, 1884, 1885, 1886, 1887, 1888, 1889, 1890, 1891, 1892, 1893, 1894, 1895, 1896, 1897, 1898, 1899, 1900, 1901, 1902, 1904, 1905, 1906, 1907, 1908, 1909, 1910, 1911, 1912, 1913, 1915, 1916, 1917, 1918, 1919, 1920, 1921, 1922, 1923, 1924, 1925, 1926, 1927, 1928, 1929, 1930, 1931, 1932, 1933, 1934, 1935, 1936, 1937, 1938, 1939, 1940, 1941, 1942, 1943, 1944, 1945, 1946, 1947, 1948, 1949, 1950, 1951, 1952, 1953, 1954, 1955, 1956, 1957, 1958, 1959, 1960, 1961, 1962, 1963, 1966, 1967, 1968, 1969, 1970, 1971, 1972, 1973, 1974, 1975, 1976, 1977, 1978, 1979, 1980, 1981, 1982, 1983, 1984, 1988, 1989, 1990, 1991, 1992, 1993, 1994, 1995, 1996, 1997, 1998, 1999, 2000, 2001, 2003, 2004, 2005, 2006, 2008, 2010, 2011, 2012, 2013, 2014, 2017, 2018, 2019, 2020, 2021, 2024, 2025, 2026, 2032, 2033, 2034, 2036, 2037, 2038, 2039, 2041, 2042, 2043, 2044, 2050, 2051, 2052, 2053, 2061, and 2064 described under "Decisions of the Commission."

4. Pending Proceedings

At the close of fiscal year 1991, there were 88 pending proceedings, of which 4 were investigations initiated by the Commission. The remaining proceedings were instituted by the filing of complaints or applications by common carriers by water, shippers, conferences, port authorities or districts, terminal operators, trade associations, and stevedores.

C. OFFICE OF THE GENERAL COUNSEL

The General Counsel provides legal counsel to the Commission. This includes reviewing for legal sufficiency staff recommendations for Commission action, drafting proposed rules to implement Commission policies, and preparing final decisions, orders, and regulations for Commission ratification. In addition, the Office of the General Counsel provides written or oral legal opinions to the Commission, its staff, or the general public in appropriate cases. The General Counsel also represented the Commission before the Courts.

1. Decisions and Rulemakings

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

Appeals of Tariff Rejections, [Petitions Nos. P6-90, P7-90 and P8-90], 25 S.R.R. 1419 (April 2, 1991).

The Commission granted petitions filed by a number of ocean carrier conferences seeking a ruling on the proper rating of "split shipments." Split shipments are multiple containers or pieces of cargo received by a carrier on different days for shipment under a single bill of lading. The issue arose out of an FMC regulation requiring that all tariffs must provide that the rates applicable to a given shipment are those published and in effect when the cargo is received by the carrier. In granting the conferences' petitions, the Commission held that, in the case of split shipments, the lawful rate is that published and in effect when the full bill of lading quantity has been received.

Petition for Exemption from the NVOCC Tariff Filing Requirements Under the Shipping Act of 1984, [Petition No. P5-91], ___ S.R.R. ___ (September 23, 1991).

The International Federation of Freight Forwarders Associations and 22 individual NVOCCs have petitioned the Commission, pursuant to section 16 of the 1984 Act, for an exemption for NVOCCs from the tariff filing requirements of section 8 of the 1984 Act. The Commission published notice of the filing of the petition and requested comment by interested persons by November 22, 1991. To assist the Commission's consideration of the petition, commenters were also requested to address an attached list of questions relating to the issue of NVOCC tariff filing. The Commission subsequently extended the due date for comments to January 21, 1992.

Petition of Agriculture Ocean Transportation Coalition for Rulemaking to Prescribe Standards for Terminal Handling Charge and Other Surcharges, [Petition No. P3-90], 25 S.R.R. 1404 (March 18, 1991).

The Petitioner requested that the Commission regulate the carrier practice of breaking out as separate charges "terminal handling charges" and other assessments, which Petitioner claimed are understood to represent unanticipated costs to carriers which are passed through to shippers. Petitioner argued that these surcharges often bear no relationship to the costs of the services for which they are assessed, and proposed that the Commission prohibit the inclusion of any profit margin by a carrier or conference in its surcharges. The Commission denied the petition because Petitioner presented an inadequate factual basis for the issuance of corrective regulations, and found that the proposed solution was unworkable in any event. However, the Commission determined to initiate a separate Notice of Inquiry for the purpose of gathering further information on the subject.

Petition of Evergreen Marine Corporation for Declaratory Order, [Petition No. P2-90], 25 S.R.R. 1425 (April 3, 1991).

Evergreen Marine Corporation ("Evergreen") initiated this proceeding by filing a petition for declaratory order seeking guidance concerning Global International Transport's ("GIT") attempt to access an Evergreen service contract. The Commission rejected Evergreen's petition ("1990 Order"), 25 S.R.R. 924, without prejudice to its being refiled. Subsequently, GIT filed a petition for reconsideration of the 1990 Order and later filed a petition to supplement the record. The Commission denied both of GIT's petitions. The Commission found that GIT was not a proper party to seek reconsideration of the 1990 Order and that, in any event, Evergreen's petition had become moot because of a decision in another docketed proceeding. The Commission further questioned whether any of the new facts alleged by GIT would have any relevance to the question of whether it had been improperly denied access to Evergreen's service contract.

In the Matter of Maritime Administration, Department of Transportation, Rules Affecting Foreign Commerce of the United States, [Petition No. P1-90], 25 S.R.R. 1632 (September 20, 1991).

In this petition, the Military Sealift Command ("MSC") of the Department of Defense contended that certain actions by the Maritime Administration, DOT, constituted a "rule or regulation" affecting shipping in the foreign trades within the meaning of section 19 of the 1920 Act and, accordingly, should have been subjected to pre-implementation review and approval by the Commission pursuant to its powers under that statute. Comments in opposition to MSC's petition were filed by DOT and by four ocean carriers. The Commission ruled that the constitutional doctrine of separation of powers barred it, as a quasi-legislative independent agency, from asserting section 19

jurisdiction over rules issued by Executive agencies such as DOT. The Commission further ruled that, as a quasi-judicial agency, it was similarly barred from resolving legal disputes between two Executive agencies.

MSC has filed a petition for reconsideration, which is pending before the Commission.

Actions to Adjust or Meet Conditions Unfavorable to Shipping in the United States/Venezuela Trade, [Docket No. 91-22], 56 Fed. Reg. 22,685 (May 16, 1991).

In response to a petition alleging the existence of conditions unfavorable to shipping in the foreign oceanborne trade between the U.S. and Venezuela, the Commission issued a Notice of Proposed Rulemaking pursuant to section 19 of the 1920 Act. Affected interests filed comments on the Proposed Rule. Subsequently, following governmental discussions, certain commitments were made by Venezuelan authorities. The matter is now pending the Commission's consideration of the comments filed and the governmental activities.

Actions to Address Adverse Conditions Affecting United States Carriers That Do Not Exist For Foreign Carriers in the United States/Japan Trade, [Docket No. 91-19], [Order Discontinuing Proceeding and Requiring Reporting], 25 S.R.R. 1505 (June 13, 1991).

The Commission issued an order under the FSPA requiring Japanese and U.S. carriers serving the U.S./Japan trade to provide information concerning charges imposed on carriers serving Japanese ports paid into a fund known as the Japan Harbor Management Fund ("Fund"). See Order Requiring Information, 25 S.R.R. 1187. Based on the responses to this order, the Commission subsequently initiated a formal investigation under the FSPA. The proceeding was discontinued on June 13, 1991, based on the U.S. carriers'

representations that a new agreement had been reached which substantially removed the adverse effect of the Fund, along with a commitment by the Japanese Minister of Transport that the Fund would be discontinued after March 31, 1992. Parties to the proceeding are required to report quarterly on payments to the Fund through April 1992.

Bonding of Non-Vessel-Operating Common Carriers,
[Docket No. 91-1], 25 S.R.R. 1679 (October 8, 1991).

On January 15, 1991, the Commission published an Interim Rule to implement the 1990 Amendments. The Interim Rule added a new Part 583 to Title 46 of the Code of Federal Regulations, and amended two existing Parts -- 580 and 581. New Part 583 established various requirements applicable solely to NVOCCs. It required that all NVOCCs operating in the foreign commerce of the U.S., except those engaged exclusively in transporting used military household goods and personal effects, obtain a surety bond of \$50,000. In addition, NVOCCs not domiciled in the U.S. must designate a resident agent for service of process. If that resident agent cannot be served, the Interim Rule provided alternative service on the Secretary of the FMC. The Rule further provided procedures for the suspension or cancellation of an NVOCC's tariff for failure to maintain a bond or resident agent. Appendix A to Part 583 contained Form FMC-48, the new bond form for NVOCCs.

The Commission received 65 comments on the Interim Rule. On October 8, 1991, the Commission adopted a Final Rule which contains several changes to the Interim Rule.

A provision relating to NVOCCs that exclusively transport used military household goods and personal effects was clarified so that civilian Department of Defense ("DOD") employees are clearly included within the exemption. In addition, this provision was amended to indicate that these NVOCCs may be

subject to other requirements, such as alternative surety bonding imposed by DOD.

Common carriers transporting cargo for a known NVOCC have an additional method by which to obtain proof that such NVOCC is in compliance with the tariff and bonding requirements of the 1984 Act. They can now consult a list of NVOCCs in compliance that will be published periodically by the Commission. The requirement in the Interim Rule that common carriers must ascertain the identity and status of every shipper tendering cargo was deleted from the Final Rule.

With respect to service contracts with NVOCCs, the Final Rule prohibits ocean common carriers and conferences from entering into service contracts with an NVOCC unless that NVOCC has a tariff and a bond as required by sections 8 and 23 of the 1984 Act. In addition, a shipper party to a service contract must certify its status on the signature page of the service contract. If this certification identifies the shipper as an NVOCC, the ocean common carrier or conference must obtain proof that the NVOCC is tariffed and bonded. Such proof can be obtained by consulting the list of NVOCCs in compliance published by the Commission or by reviewing a copy of the NVOCC's rule 24. The Final Rule further provides that if an NVOCC joins a shippers' association during the term of a service contract, that NVOCC must indicate its compliance to the ocean common carrier or conference party to the contract.

Credit Practices of Sea-Land Service, Inc. and Nedlloyd Linjen, B.V., [Docket No. 90-07], 25 S.R.R. 1308 (December 20, 1990).

The Commission determined that a carrier tariff provision extending credit exclusively to a particular class of shippers or description of traffic is an "undue or unreasonable preference or advantage" under section 10(b)(11) of the 1984 Act. The Commission ordered that the offending tariff provisions be canceled.

Definition of Shipper and Availability of Mixed Commodity Rates, [Docket No. 89-20], 25 S.R.R. 1372 (February 19, 1991).

The Commission discontinued this rulemaking proceeding which would have amended the definition of "shipper" and required that mixed commodity rates be made available only to shippers and shippers' associations, as defined. The Commission determined that the Proposed Rule was flawed in its attempt to define who is and is not a shipper. The Commission also considered that some of the objectives of the Proposed Rule were addressed in the recently enacted 1990 Amendments.

Inquiry Into Laws, Regulations and Policies of the Government of Ecuador Affecting Shipping in the United States/Ecuador Trade, [Docket No. 89-7], 25 S.R.R. 651 (January 16, 1990).

A petition for enforcement of the Commission's Final Rule issued January 16, 1990, in this proceeding, was filed in December 1990. The Final Rule had found unfavorable conditions to exist in the U.S./Ecuador trade as a result of certain laws and decrees of the Government of Ecuador reserving liquid bulk cargoes from the U.S. Gulf for Ecuadorian-flag vessels. The Final Rule assessed a fee of \$50,000 per outbound voyage from the U.S. to Ecuador on Maritima Transligras, S.A. ("Transligras"), an Ecuadorian-flag carrier. Although Transligras subsequently advised the Commission that it had sold the only Ecuadorian-flag parcel tanker it had been operating in the trade, the petition for enforcement alleged that Transligras continued to operate in the trade with a changed operating identity. The Commission instituted a Fact Finding Investigation in connection with the larger proceeding to look into the continued operations and corporate relationships of Transligras and related companies, as

well as the granting of waivers for shipments under the Ecuadorian cargo reservation decrees during the period following promulgation of the Final Rule.

***California Shipping Line, Inc. v. Yangming Marine Transport Corp.*, [Docket No. 88-15], 25 S.R.R. 1213 (October 19, 1990).**

California Shipping Line, Inc. ("CSL") filed a complaint against Yangming Marine Transport Corp. ("Yangming") based on Yangming's failure to provide CSL access to three service contracts. The Commission reversed in part an Initial Decision issued by an administrative law judge and denied any relief to CSL. The Commission found that CSL was not a "similarly situated shipper" within the meaning of section 8(c) of the 1984 Act because it did not adequately establish that it was able to meet the essential terms of each service contract to which it sought access. The Commission further found that NVOCCs could not be precluded from accessing a service contract merely because of their status. The Commission noted that carriers concerned about an accessing shipper's ability to meet the essential terms of a service contract could accept a performance bond in lieu of denying an access request. The Commission also emphasized that a shipper signatory to a service contract cannot permit other shippers to move cargo pursuant to its contract except under very limited circumstances.

2. Litigation

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

The following are representative of matters litigated by the Office:

Foreign-to-Foreign Agreements -- Exemption, No. 89-70530, Ninth Cir. (July 11, 1991).

The Commission held, in an order served on December 9, 1988, 24 S.R.R. 1448, that carrier agreements governing the carriage of U.S. exports or imports through Canadian or Mexican ports were not subject to the agreement filing and antitrust immunity provisions of the 1984 Act. Petitions for reconsideration were filed by "mixed commerce" conferences that serve U.S. as well as Canadian ports. The petitions argued that the entire conference agreement, not just those provisions dealing with U.S. port calls, were required to be filed with the Commission pursuant to the 1984 Act. The Commission rejected these arguments in an order served on October 11, 1989, relying on the 1984 Act's definition of a regulated "common carrier" and the legislative history of the definition. The Commission's orders were affirmed in all respects by the U.S. Court of Appeals for the Ninth Circuit in *Transpacific Westbound Rate Agreement v. FMC*, 938 F.2d 1025 (9th Cir. 1991).

Puerto Rico Maritime Shipping Authority -- Petition for Declaratory Order, ICC Docket No. MC-C-30168 (Nov. 20, 1990).

The Puerto Rico Maritime Shipping Authority ("PRMSA") sought a ruling from the Interstate Commerce Commission ("ICC") that a service it provided under ICC tariffs was true joint-rate, through-route transportation properly subject to ICC regulation. The service consisted of ocean movements between PRMSA's port terminals in Puerto Rico and its U.S. mainland port terminals, and truck movements confined within the U.S. terminal areas. The FMC filed comments opposed to

PRMSA's petition. Although the ICC declined to issue a broad rule that "inside-the-fence" motor operations cannot transform port-to-port service into joint through service, it did adopt the more narrow result urged by the FMC and held that PRMSA's truck movements were part and parcel of its vessel loading and unloading operations rather than line haul service and, accordingly, that PRMSA's service was subject to the FMC's exclusive port-to-port jurisdiction.

***A/S Ivarans Rederi v. United States*, 938 F.2d 1365 (D.C. Cir. 1991).**

The Commission determined that cargo in "alternate coast port service," carried by water from Brazil, discharged from a vessel at a U.S. Atlantic Coast port, then transported overland to a U.S. Gulf port, and moving under a bill of lading showing a Gulf port as the destination port, was not included in either Atlantic or Gulf revenue pooling agreements prior to modification of the Gulf Agreement in April 1986, which specifically placed revenue from such cargo into the Gulf Agreement. The U.S. Court of Appeals for the District of Columbia Circuit, in *A/S Ivarans Rederi v. United States*, affirmed the Commission decision, also holding that the question of the interpretation of the scope of the agreements did not require reference to arbitration prior to the Commission's determination.

***United States of America and Federal Maritime Commission v. Martyn C. Merritt, et al.*, S.D.N.Y., No. 88 Civ. 6253.**

The U.S. and the Commission sought enforcement of a Commission order assessing civil penalties totaling \$335,000 against Martyn C. Merritt and numerous corporations created and controlled by him and ordering Martyn C. Merritt and the named corporate defendants to cease and desist from violating sections 16, Initial paragraph and 18(b)(3) of the 1916 Act.

Although the violations occurred and the Commission's proceeding was initiated before passage of the 1984 Act, the cease and desist order was entered under the 1984 Act. The Court denied defendants' motion to dismiss the case and ordered the Commission's Order enforced.

United States of America and Federal Maritime Commission v. Eddins B. Taylor, Marcella Shipping Co., Ltd. et al., S.D. Florida, Civ. No. 91-0328 - Marcus.

The U.S. and the Commission sought judicial enforcement of a Commission cease and desist order issued and \$150,000 in civil penalties assessed by FMC against Marcella Shipping Co., Ltd. for violations of sections 8(a)(1) and 10(b)(1) of the 1984 Act, and predecessor provisions of the 1916 Act. The court entered a consent judgment against all named defendants, enjoining them from future violations of the 1984 Act. Additionally, the consent judgment requires Eddins B. Taylor and Marcella to pay the total amount of civil penalties owed to the Commission in the amount of \$150,000 plus interest.

3. Significant Ongoing Activity

Actions to Address Adverse Conditions Affecting United States Carriers in the United States/People's Republic of China Trade, [Docket No. 91-31], 56 Fed. Reg. 34064 (July 22, 1991).

On the basis of responses to information demand orders issued to U.S.-flag carriers operating in the U.S./PRC trade, the Commission initiated an investigation under the FSPA into PRC restrictions on U.S. carrier operations in the trade. Issues addressed in the investigation include full branch office status for U.S. carriers; recognition of carriers' tariffs; port service issues; intermodal and related services; and "doing business" costs in the PRC. During the pendency of the investigation,

commercial and governmental consultations occurred, and the Commission's review of the reports from those negotiations revealed substantial PRC concessions and commitments. At the request of the U.S. carriers, the Commission invoked section 10002(c)(2) of the FSPA and extended the completion date of the investigation 90 days to February 19, 1992, to allow the parties time to experience, assess and report on the PRC's implementation of its commitments.

Actions to Adjust or Meet Conditions Unfavorable to Shipping in the United States/Korea Trade, [Docket No. 91-24], 56 Fed. Reg. 2,631 (June 7, 1991).

The Commission initiated a rulemaking proceeding to address restrictions on U.S. carrier operations in the U.S./Korea ("ROK") oceanborne trade which are imposed by operation of Korean law. Specifically, U.S. carriers are precluded from engaging in trucking operations in Korea and from directly contracting with railroads. In light of substantial commitments made by the ROK which potentially resolve most of the issues, the Commission on October 30, 1991, suspended further action in this rulemaking and solicited additional comments from the parties in February 1992 and May 1992.

Notice of Inquiry Concerning Use and Effect of Surcharges by Common Carriers and Conferences, [Docket No. 91-14], ___ S.R.R. ___ (March 18, 1991).

The Commission initiated this proceeding to solicit comment on whether the use and effect of common carrier and conference surcharges warranted any agency regulatory action. Questions posed by the Commission include whether the breaking out of transportation costs into freight rates and surcharges obscure the ultimate costs or result in higher costs; whether they are calculated to include profit margins; and whether their use undermines the purpose and effectiveness of the tariff system.

The Commission determined at its November 13, 1991, meeting that the information received in the disparate responses to the inquiry did not support any broad-based rulemaking on the subject of surcharges, but that particular surcharge practices would be further examined by Commission staff. The Commission also determined that its ATFI proposal would resolve many of the shippers' present concerns.

4. Foreign Shipping Restrictions and Related Matters

Several reports, recommendations and rules were prepared and submitted to the Commission on matters arising under section 19(1)(b) of the 1920 Act. (See Docket Nos. 91-22 and 91-24, above). In addition, the Commission initiated a fact finding investigation in connection with a request for the enforcement of its Final Rule issued pursuant to section 19. (See Docket No. 89-7, above).

A number of reports, recommendations and draft orders were prepared and submitted to the Commission on matters arising under the FSPA and section 15 of the 1984 Act. The Commission issued several information demand orders pursuant to the FSPA and 1984 Act, requiring certain carriers in a number of U.S./Asian trades to provide information on laws, regulations, policies and practices of foreign governments or foreign entities which apparently restrict U.S. carriers' ability to conduct shipping and ancillary activities in U.S. trades with these countries or otherwise adversely affect U.S. carriers' operations.

Prior to the issuance of the Commission's section 19 Proposed Rule regarding conditions in the U.S./Korea trade, the Commission issued an information demand order requiring U.S. and Korean carriers operating in the trade to respond to questions on Korean restrictions on intermodal transportation

operations and the operation of terminals and trucking services. The Commission also issued an information demand order to U.S. and PRC carriers operating in the U.S./PRC trade. (See Significant Ongoing Activity, above, *Report on Laws, Rules, Regulations, Policies and Practices of the People's Republic of China Affecting Shipping in the United States/PRC Trade*, 25 S.R.R. 1347 (January 29, 1991). Based on the information received, the Commission initiated an investigation under the 1988 Act. See *Actions to Address Adverse Conditions Affecting United States Carriers in the United States/People's Republic of China Trade*, Notice and Order of Investigation, 25 S.R.R. 1572 (July 22, 1991).

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 DOT, DOJ, the U.S. Departments of State and Commerce, and the Office of the U.S. Trade Representative. The Office also coordinated and participated in briefings of foreign visitors including European Commission representatives to the Commission.

Finally, under the Commission's controlled carrier program, several common carriers were under consideration during the fiscal year for controlled carrier status.

D. OFFICE OF EQUAL EMPLOYMENT OPPORTUNITY

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

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

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

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

The Director, EEO arranges for counseling of employees who raise allegations of discrimination; provides for the investigation, hearing, fact-finding, adjustment, or early resolution of such complaints of discrimination; accepts or

rejects formal complaints of discrimination; prepares and issues decisions for resolution of formal complaints; and monitors and evaluates the program's impact and effectiveness.

Significant accomplishments in fiscal year 1990 include the following: (1) continued to conduct EEO briefings for new employees which results in a better understanding of the EEO program and employee's inherent responsibilities with respect to the program; (2) planned, developed and coordinated extensive internal and external special emphasis programs for staff participation; (3) provided managerial workshop for District Director's annual conference; (4) provided in-depth technical support and EEO training for the FMC staff; (5) in concert with the FMC Office of Personnel, Federal EEO Coalition for Small Agencies and Fish and Wildlife Service developed and initiated a computerized referral system; (6) continued to utilize external sources for EEO counselor training at no cost to the FMC; (7) closed all extant formal complaints; (8) developed cooperative programs in the special emphasis arena with the Small Business Administration, Department of Veterans Affairs, National Park Service and Securities and Exchange Commission; (9) facilitated an EEO Congressional Workshop for Federal Asian Pacific American Council and initiated an EEO technical assistant group for Asian Pacific Americans; (10) chaired the Federal EEO Coalition of Small Agencies; (11) developed several information brochures to help assist FMC in their knowledge and understanding of the EEO arena; and (12) continued to utilize the early intervention system adopted for FMC which has worked exceptionally well this period, resulting in no filings of formal complaints of discrimination.

During fiscal years 1992 and 1993, the Office will continue its existing programs and initiate activities designed to increase management and employee understanding of EEO principles and responsibilities.

E. OFFICE OF INSPECTOR GENERAL

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

It is the duty and responsibility of the OIG to:

- **Provide policy direction for and to conduct, supervise, and coordinate audits and investigations relating to the Commission's programs and operations.**
- **Review existing and proposed legislation and regulations relating to the Commission's programs and operations and to make recommendations concerning the impact of such legislation or regulations on the economy and efficiency in, and the prevention and detection of fraud and abuse in, the administration of the Commission's programs and operations.**
- **Recommend policies for, and to conduct, supervise, or coordinate other activities carried out or financed by the Commission for the purpose of promoting economy and efficiency in the administration of, or preventing and detecting fraud and abuse in, the Commission's programs and operations.**
- **Recommend policies for, and to conduct, supervise, or coordinate relationships between the Commission and other Federal agencies, state and local governmental agencies, and nongovernmental agencies with respect to all matters relating to: the promotion of economy and efficiency in the**

administration of, or the prevention and detection of fraud and abuse in, programs and operations administered or financed by the Commission; and the identification and prosecution of participants in any fraud or abuse.

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

Significant accomplishments in fiscal year 1991 include the following:

1. Completed a major review of the contract to establish a local area network ("LAN") at the Commission.
2. Conducted an audit, in conjunction with the Office of Inspector General at the Office of Personnel Management ("OPM"), to determine the validity of claims filed by a health insurer against the U.S. Government.
3. Completed a number of operational reviews of Commission functions, as well as one significant investigation and various informal inquiries.
4. Finalized internal guidelines for the handling of audits and investigations. In addition, the Office issued a circular to all employees outlining the investigative function of the OIG. The circular sets forth procedures for the conduct of OIG investigations, the types of possible violative activities, and the responsibility of employees in the process. As part of the Commission-wide effort to review and update all Commission

orders, a revised Commission Order explaining the Inspector General function at the Commission was also issued.

5. Participated as an active member of the Coordinating Conference of the President's Council on Integrity and Efficiency ("PCIE"). The Inspector General also serves on a number of committees established by that body.

In fiscal year 1992 it is anticipated that a number of significant audits will be issued, as well as surveys and follow-up reviews. Investigations will be conducted as necessary. As part of the Office's ongoing program to inform employees of ways to improve the efficiency and effectiveness of government, as well as combat waste, fraud and abuse in Commission activities, informational circulars addressing specific topics will be issued. The Commission's Inspector General will continue his participation in the PCIE-Coordinating Conference which provides a forum for the exchange of views for the inspector general community.

F. OFFICE OF THE MANAGING DIRECTOR

The Office of the Managing Director, as a result of various Commission Orders, delegations of authority and other authorizations, is responsible to the Chairman for the direct administration and coordination of Commission staff activities and programs. This has been established 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 and Analysis.**
- **Bureau of Tariffs, Certification and Licensing.**
- **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.**

The Office also provides administrative advice to the:

- **Office of the Inspector General.**

The Office of the Managing Director is also responsible for the Commission programs of Audit Follow-up and Management (Internal) Controls, and is coordinating the review and updating of all Commission Orders. These functions were transferred to the Office of the Managing Director as part of a Commission reorganization during fiscal year 1991.

A significant achievement of the Office during fiscal year 1991 was the continued coordination of an enhanced enforcement program involving all operating Bureaus. A highlight of this program was the conclusion of a settlement agreement with thirty-five cargo interests in the transpacific trades. The settlement included a monetary payment to the Commission of \$18,964,857, disclosure of alleged wrongful or questionable trade practices, and agreement to cooperate with the Commission's continuing investigations of conditions in the transpacific trades. Plans were implemented for follow-up investigations based on disclosures in the transpacific trades, and the preliminary investigative cycles for new enforcement programs were implemented.

Additionally, the Office directed the staff's increased emphasis on restrictive trade practices by foreign governments. Monitoring and surveillance were more focused on such cases, and the staff participated in several matters where the Commission reviewed the effects of a foreign government practice. This activity will continue as a high priority. The Office also coordinated the efforts of the agency task force that drafted the Interim Rule, Final Rule, and related documents to implement the 1990 Amendments.

Also in fiscal year 1991, the Office coordinated staff assistance to Commissioner Ivancie in his review of the passenger vessel industry and coordinated staff participation on the Controlled Carrier-Foreign Practices Task Force, under Commissioner Hsu's oversight.

A Deputy Managing Director is the Contracting Officer for the Commission's developing ATFI system. The function was transferred from the Bureau of Administration to the Office of the Managing Director as part of the FMC reorganization during the fiscal year. ATFI is coordinated by the ADP Committee, which is chaired by a member of the Commission. The Committee makes recommendations to the Managing Director for forwarding to the Chairman. In fiscal

year 1991, the ATFI project was in Phase IV - Operation as a Prototype, and full operation will begin in fiscal year 1992.

The Office is currently:

- 1. Guiding the development of the agency's ATFI system; Commissioner Hsu recently was designated by the Commission Chairman as Chairman of the ADP Committee and, therefore, the lead Commissioner on the ATFI implementation effort, after Commissioner Quartel oversaw completion of the development stage;**
- 2. Directing, under the oversight of the Chairman's Office, follow-up activities relative to the report required by Section 18 of the 1984 Act, including coordination of any staff assistance provided to the Advisory Commission;**
- 3. Directing staff input to Commissioner Hathaway in his role as lead Commissioner on the ICC/FMC joint task force on regulation of the domestic offshore trades; and**
- 4. Guiding the continuing development of the Commission-wide LAN, which will ultimately be utilized for the ATFI system.**

The Office of the Managing Director's key objectives for fiscal years 1992 and 1993 are the continued coordination of staff efforts regarding the development of ATFI, further development of staff efforts to address restrictive practices of foreign governments and the enhanced enforcement program, and coordination of staff assistance to the Advisory Commission.

G. BUREAU OF TRADE MONITORING AND ANALYSIS

1. General

The primary function of the Bureau of Trade Monitoring and Analysis (formerly the Bureau of Trade Monitoring) is to plan, develop, and administer programs related to the oversight of concerted activity of common carriers by water under the standards of the 1984 Act and 1916 Act. Additionally, as part of the fiscal year 1991 reorganization of the Commission, the activities of the former Bureau of Economic Analysis were integrated into this Bureau. The Bureau of Trade Monitoring and Analysis' major program activities include:

- **Administering comprehensive trade monitoring programs to identify and track relevant competitive, commercial, and economic activity in each major U.S. trade in order to keep the Commission and its staff apprised of current trade conditions, emerging trends, and regulatory needs impacting on waterborne liner transportation;**
- **Conducting systematic surveillance of carrier activity in areas relevant to the Commission's administration of statutory standards;**
- **Developing economic studies and analyses in support of the Commission's regulatory responsibilities;**
- **Processing and analyzing common carrier and marine terminal agreements; and**

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

2. Surveillance

An integral part of the Bureau's mandate under the 1916 Act and the 1984 Act 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 administers a variety of surveillance programs designed to afford the Commission the necessary degree of oversight in these areas.

The 1984 Act provides for statutory effectiveness of filed agreements following a brief waiting period, 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 general standard contained in section 6(g) of the 1984 Act. Once an agreement becomes effective, the Commission is responsible for maintaining surveillance over the parties' concerted activities in order to ensure compliance with the standards of the 1984 Act. To fulfill this statutory responsibility, the Bureau of Trade Monitoring and Analysis has continued to direct its activities toward improving the breadth and effectiveness of its monitoring programs.

As in previous years, the Bureau continued this past year to refine its programs for monitoring the behavior of agreement parties in U.S. trades. These programs integrate a number of surveillance factors, including operator market-share data, cargo tonnages of major-moving commodities, shipper identification, relevant tariff rate levels and rate histories, use of service contracts, agreement-document analysis, review of minutes of meetings held by agreement members and other reports

required by the Commission's rules, and investigation for existence of possible malpractices.

During fiscal year 1991, the Bureau of Trade Monitoring and Analysis produced a number of monitoring reports and analyses. These included: (1) analyses and recommendations concerning possible unfair shipping practices in the Japan, Korea, Taiwan, PRC and Venezuela trades; (2) 6(g) audits of selected major conferences agreements; (3) an economic analysis of the impact of a major capacity reduction agreement; (4) an annual report on controlled carrier activities; (5) a study on the manner in which independent action is utilized under various conference agreements with a view toward possible rulemaking; (6) an analysis of current agreement reporting requirements and the need for possible modification; (7) a report concerning the number, type and trends in agreement filings in major trades; (8) a rate-of-return analysis in a domestic rate case; (9) an analysis of responses to a section 15 order concerning an agreement restricting its members from competing with each other (a possible violation of section 10(c)(6) of the 1984 Act); (10) an analysis and recommendation concerning the payment of brokerage (Docket No. 90-25) and preparation of an order of discontinuance reflecting Commission action taken on the matter; (11) a regulatory impact analysis of the proposed interim rule implementing the 1990 Amendments; (12) an analysis of reports submitted by certain carriers regarding fees paid into the Japan Harbor Management Fund; (13) a study on the common carrier status of auto carriers; (14) a paper on the relationship between bunker fuel oil prices and the price of crude oil; (15) an economic analysis of the impact of the NVOCC Bonding Rule; (16) the development of trade data for investigative initiatives; (17) a profile of transpacific liner services; (18) the development of market-share data for carriers in various trades; (19) a review of Commission rules governing the domestic offshore trade, in particular financial information filing requirements and Commission procedures used to determine a reasonable rate of return; and (20) preparation of an industry

circular letter to carriers in the domestic offshore trade regarding financial filing requirements.

The Bureau continued to be involved with the Advisory Commission. In fiscal year 1991, the Bureau (1) provided staff assistance to the Advisory Commission; (2) continued to collect information, on a scaled-down level, on the impact of the 1984 Act to ensure that current facts and data are available to the Advisory Commission and Congress; and (3) prepared reports updating certain chapters contained in the FMC's Section 18 report, which is being reviewed by the Advisory Commission.

In fiscal year 1991, the Bureau continued its ongoing auditing program of agreements to assess whether agreements on file are in compliance with the various statutory and regulatory requirements. During the year, the Bureau audited all major conference agreements and all key agreements that file reports with the Commission. Other projects the Bureau was involved in during fiscal year 1991 include the preparation of numerous carrier profiles, as well as conference profiles, and issuing monthly reports on the activities of controlled carriers. The Bureau also routinely handles a variety of inquiries and complaints from shippers dealing with a wide range of problems and issues. Examples of these include antitrust issues, level of rates, surcharges and other accessorial charges, and rate disparities for different coastal regions.

3. Types of Agreements

(a) Conference and Ratemaking Agreements

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

During fiscal year 1991, the Commission analyzed and processed 103 conference agreements, including modifications to existing agreements, under the 1984 Act. There were 70 conference 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 in the interest of increased efficiencies through stabilizing competitive conditions. These agreements often set forth sailing requirements and other requirements aimed at improving overall service efficiency. Equal access agreements serve to formalize national-flag carrier access to cargo which is controlled by the governments of reciprocal trading partners under cargo preference laws, import quotas, or other restrictions.

Thirty-four pooling and/or equal access agreements and amendments to existing agreements were filed in fiscal year 1991. The Commission had 23 effective agreements on file at the end of the fiscal year.

(c) Space Charter and Sailing Agreements

Space charter agreements authorize the chartering (or cross-chartering) of vessel space or container slots between or among vessel operators. The essential objectives of these agreements are: to facilitate carrier access to vessel accommodation on given trade routes beyond that which would be otherwise available; to facilitate the rationalization of overall fleet operations; and to reduce excess vessel capacity in given trades. These agreements also generally contain authority to rationalize sailings and to exchange equipment.

During fiscal year 1991, 47 space charter and sailing agreements and modifications were filed under the 1984 Act, and 120 were in effect at the end of the fiscal year.

(d) Joint Service/Consortia Agreements

Joint service agreements (also referred to as 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 joint service operates as a single carrier, establishes its own rates, publishes its own tariffs, and issues its own bills of lading; but its operation is strictly confined to the authority specifically set forth in its underlying agreement.

Nine joint service agreements and amendments were filed during fiscal year 1991, and 35 joint service agreements were in effect at the conclusion of the fiscal year.

(e) Cooperative Working Agreements

Cooperative working agreements ("CWAs") run the gamut from discussion agreements, which permit the participants to discuss competitively sensitive trade matters, to specialized inter-carrier operational undertakings which do not precisely fit the other categories mentioned. Eighty CWAs and amendments to existing CWAs were filed in fiscal year 1991. Ninety-nine CWAs were in effect at the end of the fiscal year.

(f) Marine Terminal Agreements

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

During fiscal year 1991, the Commission received 344 agreements and agreement modifications relating to port and marine terminal services and facilities. Of these, 339 agreements became effective upon filing under Commission

rules which exempt certain classes of marine terminal agreements from the waiting period requirements of the 1984 Act or the approval requirements of the 1916 Act. Agreements not entitled to the Commission's exemption provisions were processed under applicable statutory requirements. Two agreements were considered not subject to the Commission's jurisdiction. Approximately 725 terminal agreements were in effect at the end of the fiscal year.

(g) Other Agreement Activities

The Bureau's Agreement Profile System ("APS"), which was developed in fiscal year 1990 and further refined in fiscal year 1991, contains a wide range of data on each currently effective agreement. In addition to the agreement name and official Commission number assigned to each agreement, the database includes expiration dates, carrier participants, principal authority contained in the agreement, geographic scope, and names and addresses of agreement officials.

During fiscal year 1991, the Commission, in Docket No. 91-02, *Electronic Filing of Agreements Reports and Minutes*, amended its rules to allow for the electronic filing of agreement reports and minutes of meetings. The filing of these reports will be under the newly developed Electronic Filing of Agreement Reports and Minutes System ("EFARM"), which the Bureau maintains.

Also during fiscal year 1991, the Commission concluded an inquiry, Docket No. 90-6, *Notice of Inquiry -- Marine Terminal Regulations*, in which the Commission examined its existing regulatory requirements pertaining to the marine terminal industry. On the basis of the information developed in its inquiry, the Commission initiated a rulemaking proceeding to propose relaxing filing requirements for certain classes of routine agreements between marine terminal operators and common carriers, and to facilitate operational adjustments in marine terminal tariff provisions applicable to shippers and consignees.

4. Future Plans and Proposed Activities

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

The Bureau will continue to assess the impact of key issues facing the industry, to monitor developments in major trades, and to analyze agreement behavior under the standards of sections 5, 6(g), and 10 of the 1984 Act.

The Bureau will continue to collect and analyze market-share data in key conference trades. Using these data, the Bureau tracks trends in the various trades and anticipates areas ripe for closer scrutiny.

The Bureau plans to continue its 6(g) auditing program, refining the current framework and methodologies. This program is designed to evaluate the degree of anticompetitiveness generated by carrier agreements within the context of their commercial environments.

The Bureau anticipates that its involvement in FSPA cases will continue in 1992. At the end of fiscal year 1991, FSPA cases were pending in the PRC and Taiwan trades, and a section 19 case was pending in the Korean trade. The parties involved in the concluded FSPA case in the Japan trade are required to file periodic reports through 1992.

The Bureau plans to monitor closely the political developments in the Soviet republics and to assess the impact these developments may have on the Commission's controlled carrier program. The Bureau will continue monitoring the activities of all controlled carriers, preparing periodic reports, in support of the Commission activities under section 9 of the

1984 Act. Also, the Bureau plans to prepare an annual report on controlled carriers for 1991.

The Bureau anticipates considerable involvement in rulemakings during fiscal year 1992. At the end of fiscal year 1991, the Commission was reviewing a staff proposal for an advanced notice of proposed rulemaking dealing with financial reporting requirements for common carriers in the domestic offshore trades. Further, the Bureau hopes to address issues involving conference restrictions on members' right to take independent action in 1992. Finally, the Bureau is planning to examine the issues surrounding the filing of certain terminal agreements with a view toward proposing some type of filing exemption.

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

In support of its monitoring efforts, the Bureau will continue to maintain the databases used for the Work-in-Process System and the Required Reports Profile System, as well as develop new programs for additional functions as needed. The Bureau will be refining its EFARM system during the initial year of its implementation.

The Bureau will continue to update and refine its agreement database should it decide to reissue its publication *Carrier Agreements in the U.S. Oceanborne Trades*. Further, the Bureau plans to finalize appropriate programming to make its APS available to other components of the Commission through the Commission's LAN.

H. BUREAU OF TARIFFS, CERTIFICATION AND LICENSING

1. General

The Bureau of Tariffs, Certification and Licensing (formerly 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 marine terminal operators in the foreign and domestic offshore commerce of the U.S.; reviews and maintains both new and amended tariff filings, rejecting those which fail to conform to the Commission's regulations; approves or disapproves special permission applications involving requests to deviate from tariff filing rules; processes service contracts and essential terms publications filed by ocean common carriers and conferences of such carriers; prepares recommendations to the Commission on requests to correct clerical or administrative errors in the essential terms of service contracts; issues notices of intent to reject service contracts containing provisions which fail to conform to Commission regulations; and initiates recommendations, in collaboration with other offices of the Commission as warranted, for formal action and proceedings by the Commission.

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

Thus, the Bureau of Tariffs, Certification and Licensing is responsible for all tariffs filed by ocean common carriers and

marine terminal operators; service contracts; the licensing of ocean freight forwarders; and the certification of owners and operators of passenger vessels for financial responsibility.

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

2. Foreign Commerce

(a) Service Contracts

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

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

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

The essential terms of a service contract include:

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

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

Service contracts filed with the Commission must meet the necessary statutory and regulatory requirements. Specifically, service contracts which fail to contain mutually binding service and cargo commitments, or which contain meaningless liquidated damages provisions, are not accepted by the Commission. The Bureau also reviews service contracts to assess compliance with the commitment and liquidated damages standards set forth in Circular Letter 1-89 to ensure that service contracts do not contain so-called *force majeure* provisions which would allow the parties to terminate the contract, without appropriate damages, for virtually any reason. The Commission's position is that, to the extent that *force majeure* provisions excuse the parties from the contract's commitments for unclear or unspecified reasons, no meaningful commitment exists in the first instance.

Shippers' associations were recognized for the first time under the 1984 Act as entities in international ocean transportation. They are defined in the 1984 Act as groups of shippers which, on a non-profit basis, consolidate their cargoes to secure volume rates or enter into service contracts. The 1984 Act expressly requires that carriers and conferences negotiate with shippers' associations. It also provides that associations can enter into service contracts on behalf of their members. Shippers' associations have not been granted antitrust immunity under the 1984 Act. In fiscal year 1991, 56 service contracts were filed involving 27 shippers' associations.

In fiscal year 1991, the Bureau received approximately 5,900 service contracts covering the entire scope of the U.S. foreign commerce, both inbound and outbound. The Bureau also prepared recommendations on 34 requests to correct clerical or administrative errors in the essential terms of service contracts. The Commission approved 32 requests, while the other 2 requests were approved in part.

During fiscal year 1991, the Bureau continued a program to reject those service contracts which failed to provide meaningful service commitments, or which otherwise did not conform with the 1984 Act and the Commission's implementing regulations. Under this program, 654 notices of intent to reject service contracts were issued, and 3 contracts were ultimately rejected. Where the contract was rejected, the carrier was advised that any services performed under the contract would have to be rerated in accordance with the otherwise applicable tariff provisions for such services.

(b) Controlled Carriers

A controlled carrier is an ocean common carrier whose operating assets are directly or indirectly owned or controlled by the government under whose registry the vessels of the common carrier are operated. Section 9 of the 1984 Act (46 U.S.C. app. 1708) provides that no controlled carrier may maintain rates or charges in its tariffs filed with the

Commission that are below a level that is just and reasonable, nor may any such carrier establish or maintain unjust or unreasonable classifications, rules or regulations in those tariffs. In addition, such rates, charges, classifications, rules or regulations of a controlled carrier may not, without special permission of the Commission, become effective sooner than the 30th day after the date of filing with the Commission. Exceptions to these proscriptions include rates of controlled carriers of a state whose vessels are entitled by a treaty of the U.S. to receive most-favored-nation treatment.

The Bureau of Tariffs, Certification and Licensing monitors the tariff filings of controlled carriers to assure that the required notice for rate increases and decreases is given. The Bureau acted on eight special permission applications filed by controlled carriers.

(c) Common Carrier Anti-Rebate Certification Program

Every common carrier by water in the foreign commerce of the U.S. and ocean freight forwarder is required by section 15(b) of the 1984 Act (46 U.S.C. app. 1714) and 46 CFR Part 582 to file a sworn *Certification of Company Policies and Efforts to Combat Rebating in the Foreign Commerce of the United States*. This certification is to be filed with the Secretary of the Commission annually on or before December 31 and is to be signed by the Chief Executive Officer of the common carrier or ocean freight forwarder. Section 15(b) of the 1984 Act and 46 CFR 582.1(b) provide that failure to file the required certification may result in a civil penalty of \$5,000 for each day the violation continues. In addition to the civil penalty provision, the Commission's regulations provide for the cancellation, upon 45-days' notice, of the tariffs of those carriers who fail to file a certification.

An automated program is in place to ensure that common carriers and freight forwarders file their annual certifications.

For fiscal year 1991, approximately 3,400 certifications were filed.

(d) Foreign Tariffs

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

During fiscal year 1991, 1,092 new foreign tariffs were received and reviewed. The Bureau rejected 73 of these new filings. In addition, approximately 872,000 pages amending existing tariffs were reviewed. The Bureau also acted on 126 foreign special permission applications. Canceled tariffs and canceled pages of active tariffs were prepared for microfiche.

(e) NVOCC Bonding

During fiscal year 1991, Congress enacted amendments to the 1984 Act imposing a bonding requirement on NVOCCs operating in the foreign commerce of the U.S. On January 15, 1991, the Commission published in the *Federal Register* (56 Fed. Reg. 1493) an Interim Rule to implement the 1990 Amendments. The Interim Rule became effective on April 15, 1991. The Interim Rule requires the filing of a surety bond in the amount of \$50,000 by every NVOCC operating in the foreign waterborne commerce of the U.S. A Final Rule, continuing this bonding requirement, was served by the Commission on October 8, 1991.

Surety bonds obtained pursuant to this requirement will be used to satisfy claims arising from transportation-related activities or penalties assessed by the Commission pursuant to section 13 of the 1984 Act. Under this program, approximately 1,600 bonds were received. The Bureau verified that all NVOCCs with tariffs on file had submitted a valid surety bond. Letters were sent to those NVOCCs with tariffs but without the required bond, advising them that continued noncompliance would result in the cancellation of their tariffs.

3. Domestic Commerce

(a) Domestic Tariffs

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

During fiscal year 1991, 53 new domestic offshore tariffs were received and reviewed, of which 11 were rejected. In addition, 38 domestic special permission applications were processed. The Bureau also processed approximately 7,000 tariff pages amending existing tariffs.

During fiscal year 1991, the Bureau of Tariffs, Certification and Licensing continued its program to identify tariffs of firms which appeared to be inactive or no longer operating as carriers in the domestic offshore waterborne commerce of the U.S. This program included the review of tariffs currently on file with the Commission for the purpose of identifying those inactive tariffs which should be made the subject of an order to show cause why the tariff should not be canceled.

(b) Financial Analysis

The Bureau of Tariffs, Certification and Licensing provides accounting and financial expertise to help ensure the reasonableness of rates for the transportation of cargo and other services provided by common carriers in the domestic offshore waterborne commerce of the U.S. The Bureau also

provides technical assistance to other components within the Commission.

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

During the year, the Bureau was involved in inquiries concerning bunker fuel surcharges in the Hawaii and Guam Trades, as well as rates for the movement of household goods from Hawaii to the U.S. Pacific Coast. Financial expertise is also provided with respect to the passenger vessel certification program.

Accounting assistance was provided to the Bureau of Hearing Counsel in connection with its enforcement program and litigation activities.

4. Marine Terminal Activities

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

The Bureau carried out responsibilities with respect to marine terminal tariffs by reviewing approximately 5,500 terminal tariff pages filed during fiscal year 1991. At the end of the fiscal year, 526 terminal tariffs were on file with the Commission.

During 1991, the Commission instituted a rulemaking proceeding in Docket No. 91-20, *Exemption of Certain Marine Terminal Services Arrangements*, to codify as an exemption the

previous waiver of penalties for failure to file certain tariff matters. This new exemption is not expected to impact the level of terminal tariff filings substantially, because much of the exempted tariff matter was not being filed previously due to the waiver of penalties.

5. Freight Forwarders

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

The Commission's regulatory responsibilities over the forwarding industry are found in section 19 of the 1984 Act. During fiscal year 1991, the Commission received 265 applications for new ocean freight forwarder licenses and for the approval of the transfer of licenses or other organizational changes. In addition, 95 applications were pending final action at the end of fiscal year 1990. Of these, 113 new license applications were approved, 5 were withdrawn, 2 were formally denied, and 49 were returned to applicants because of deficiencies which precluded processing. Sixty-seven applications for transfers or other organizational changes were approved, while six were withdrawn or returned because of deficiencies.

Also during fiscal year 1991, 99 new licenses were issued, and 3 licenses were reissued. In addition, 101 ocean freight forwarder licenses were revoked, due primarily to the licensees' failure to maintain the required surety bonds on file with the

Commission. At the end of the fiscal year, 1,616 licensed forwarders were operating under the Commission's jurisdiction.

On-site compliance investigations are conducted as part of the Commission's effort to ensure that licensed ocean freight forwarders comply with the provisions of the shipping statutes and the Commission's regulations. During the year, 51 investigative reports were received by the Bureau, while 11 reports were pending review at the beginning of the fiscal year. Thirteen of these reports resulted in the issuance of warning letters to licensees or referral to the Bureau of Hearing Counsel for the assessment of appropriate civil penalties. Forty cases were determined to require no formal corrective action, and nine reports were pending review at year's end.

Other activities during the year included:

- **The processing of over 600 surety bond actions pertaining to new bonds, riders to bonds and cancellations of bonds;**
- **The review and processing of nine informal complaints concerning, among other things, unlicensed forwarding, the non-payment of freight compensation by ocean carriers to forwarders, and the non-payment of freight charges by forwarders to carriers; and**
- **The receipt of information on 63 claims, totaling in excess of \$580,000, that were filed against forwarder bonds.**

An Order of Investigation (Docket No. 90-13) was served on April 19, 1990, to investigate the activities of Memphis Forwarding Co., Inc. ("MFC") to determine whether MFC had violated section 19(d)(4) of the 1984 Act and 46 CFR § 510.23(h) by collecting freight forwarder compensation on shipments in which MFC had a beneficial interest and whether, in the event MFC violated section 19(d)(4) of the 1984 Act,

MFC's freight forwarder license should be revoked or suspended. In August 1990, MFC voluntarily surrendered its license pending the outcome of the proceedings in Docket No. 90-13. A hearing schedule was established during fiscal year 1991 and a decision should be issued during fiscal year 1992.

6. Passenger Vessel Certification

The Commission is responsible for administering sections 2 and 3 of Pub. L. No. 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 U.S. 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 U.S. ports; and (2) to indemnify passengers for nonperformance of transportation to which they would be entitled under ticket contracts.

Upon submission of evidence of financial responsibility 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*. Upon the submission of similar evidence 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*. In fiscal year 1991, the maximum coverage amount with respect to nonperformance of transportation, except for self-insurers, was increased from \$10 million to \$15 million. The amount applicable to self-insurers could be greater.

During fiscal year 1991, the Commission processed 96 applications for passenger vessel certificates. Twenty-five were

initial nonperformance certificates, 27 were initial casualty certificates, and 44 were amendments to existing certificates. Holders of Pub. L. No. 89-777 passenger vessel certificates have on file with the Commission evidence of financial responsibility in excess of \$330 million for nonperformance and \$1 billion for casualty.

7. Automated Database Systems

The Bureau of Tariffs, Certification and Licensing maintains several automated database systems. These are the: (1) Service Contract System; (2) Regulated Persons Index; (3) Tariff Profile System; (4) Microfiche System; and (5) Ocean Freight Forwarder System. The Service Contract System contains certain key service contract data, such as geographics, and shipper names, which are kept confidential. The Regulated Persons Index assigns a discrete number to each person the Commission regulates and contains the address, telephone number and trade name of the person. The 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. Support Activities

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

Investigative activities require substantial tariff research and supporting documentation which is provided by Bureau staff. Automated databases, such as the Regulated Persons Index and the Service Contract System, are utilized for initial

data identification purposes and actual hard copy of relevant material is retrieved and provided to the Bureau of Investigations and/or the appropriate field office.

The Commission's field offices are also provided with general data lists of regulated persons situated in specific field office jurisdictions. Information on the more than 1,600 licensed ocean freight forwarders and approximately 50 passenger vessel owner/operators is also provided to the field offices. This data assists not only with investigative efforts, but serves localized public needs for information concerning Commission regulated entities.

The Bureau has also made significant contributions to those Commission components that have primary responsibility for the development and implementation of the ATFI System. Bureau personnel have been involved in the "acceptance testing" and reviewing and designing numerous elements of the ATFI system.

9. Rulemaking and Docketed Proceedings

The Bureau initiates or supports formal rulemakings and Commission docketed proceedings. During fiscal year 1991, the Bureau was involved with the following matters:

Docket No. 89-25, *Security for the Protection of the Public*, amended the surety bond and guaranty forms to afford greater flexibility for the Commission to consider surety bonds and guaranties which, because of the particular circumstances of the applicant, may differ from the standard prescribed language;

Docket No. 90-01, *Security for the Protection of the Public, Maximum Required Performance Amount*, increased the maximum amount for insurance, escrow, guaranty or surety bond required for indemnification of passengers for

nonperformance of transportation from \$10 million to \$15 million;

Docket No. 90-11, *Anti-rebating Certification - Tariff Cancellation and Rejections and License Suspension*, provides for the cancellation and rejection of tariffs of common carriers and for the suspension of ocean freight forwarder licenses for failure to file the required anti-rebating certifications;

Docket No. 91-20, *Exemption of Certain Marine Terminal Services Arrangements*, a rulemaking proceeding initiated by the Commission on May 15, 1991, proposes to exempt certain marine terminal services agreements between marine terminal operators and common carriers from the Commission's tariff and agreement filing requirements;

Docket No. 91-32, *Passenger Vessel Financial Responsibility Requirements for Indemnification of Passengers for Nonperformance of Transportation*, the Commission issued an advance notice of proposed rulemaking and notice of inquiry in August 1991, soliciting comments on specific recommendations made by the Investigative Officer in his report to the Commission on Fact Finding Investigation No. 19, *Passenger Vessel Financial Responsibility Requirements*; and

Docket No. 91-51, *Financial Reports of Carriers by Water in the Domestic Offshore Trades*, an advance notice of proposed rulemaking soliciting comments from the public on the issues to be addressed in a proposed rule concerning guidelines for determining what constitutes a just and reasonable rate of return or profit for common carriers in the FMC-regulated portion of the domestic offshore trades.

I. BUREAU OF HEARING COUNSEL

The Bureau of Hearing Counsel participates as trial counsel in formal adjudicatory (docketed) proceedings, non-adjudicatory investigations, rulemaking proceedings when designated by Commission order, and other proceedings initiated by the Commission. Bureau attorneys serve as trial attorneys, where intervention is permitted and appropriate, in formal complaint proceedings instituted under section 22 of the 1916 Act (46 U.S.C. app. 821), section 11 of the 1984 Act (46 U.S.C. app. 1710), and in investigations instituted under the FSPA (46 U.S.C. app. 1701). Bureau attorneys also are designated Investigative Officers in non-adjudicatory formal proceedings. 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/or the general public, as distinguished from issues deriving from private disputes between the litigating parties, are adequately developed. The Bureau also participates in an advisory capacity in the development of Commission rules and regulations. On occasion, the Bureau may participate in court litigation by or against the Commission.

On request, the Bureau furnishes legal advice to the staff. 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/or regulations, and may compromise and settle civil penalty allegations arising out of those violations. If settlement is not reached, the Bureau acts as prosecutor in formal Commission proceedings that may result in the assessment of civil penalties. The Bureau also participates, in conjunction with other

Bureaus, in special enforcement initiatives such as the Transatlantic Enforcement Initiative and the Transpacific Malpractice Program.

At the beginning of fiscal year 1991, 32 civil penalty cases were pending final resolution by the Bureau. During the fiscal year, 63 new civil penalty cases were initiated through the investigative activity of the Bureau of Investigations and the Commission's formal fact finding investigations. Fifty-two such cases were compromised and settled, administratively closed, or referred for formal proceedings. Forty-three civil penalty cases were pending resolution on September 30, 1991.

At the start of fiscal year 1991, the Bureau was party to ten formal proceedings. During the fiscal year, the Bureau participated in five new formal proceedings. Six proceedings in which the Bureau participated were completed. Accordingly, the Bureau was involved in nine formal proceedings at the end of the fiscal year.

At the beginning of fiscal year 1991, there were 72 requests for legal advice pending in the Bureau. Sixty-one requests for legal advice were received during the fiscal year, and 77 legal advice projects were completed. Accordingly, 56 legal advice matters were pending in the Bureau on September 30, 1991.

As a result of enforcement activity, the Commission collected almost \$22,000,000 in civil penalties in fiscal year 1991. Of that amount, almost \$19,000,000 was collected from a settlement reached with 35 cargo interests for alleged 1984 Act violations in the transpacific trades. Settlements were reached with many different segments of the industry (e.g., carriers, shippers, forwarders) and in the full range of the U.S. foreign trades.

In fiscal years 1987 and 1989, the Commission instituted two non-adjudicatory proceedings to investigate rebating and other rate malpractices: Fact Finding Investigation No. 16 in

the North Atlantic trades and Fact Finding Investigation No. 18 in the transpacific trades, respectively. Fact Finding Investigation No. 16 was instrumental in bringing about the North Atlantic amnesty agreement in fiscal year 1987 and in the establishment of an ongoing carrier self-policing program in the North Atlantic trades. Important additional settlements with carriers and shippers were achieved during fiscal year 1991 in the North Atlantic trades. Fact Finding Investigation No. 16 continues to pursue evidence of Shipping Act violations. Fact Finding Investigation No. 18 was instrumental in achieving settlements in excess of \$21,000,000 with Pacific cargo interests and NVOCCs in fiscal year 1991. Fact Finding Investigation No. 18 remains active, and it is anticipated that additional civil penalty collections will be forthcoming.

In fiscal years 1992 and 1993, the Bureau will continue to pursue violations of the shipping statutes and to offer legal advice and support to the Commission staff as requested. The Bureau will be involved to a significant extent in formal proceedings or other actions instituted by the Commission under the FSPA.

J. BUREAU OF INVESTIGATIONS

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

The Bureau maintains a staff of 42 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 investigative and surveillance functions, each district office represents the Commission within its jurisdiction, provides liaison between the Commission and the maritime industry and the shipping public, collects and analyzes intelligence of regulatory significance, and assesses industry-wide conditions for the Commission.

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

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

- **Illegal rebating by carriers and receipt of illegal rebates by shippers, NVOCCs, and shippers' associations;**
- **Misdescriptions and misdeclarations of cargo or other malpractices of carriers, shippers, consignees, and other persons;**

- **Activities of ocean common carriers who are parties to agreements whenever it appears that such agreements and modifications have been implemented prior to filing with the Commission or are being carried out in violation of the Shipping Acts;**
- **Failure by common carriers to file appropriate tariffs covering their rates and charges or to charge rates that are in effect and on file with the Commission; and**
- **Operating as an ocean freight forwarder without a license issued by the Commission or contrary to statute or regulation.**

The Bureau's surveillance activities include:

- **Review of service contracts to determine compliance with statute and regulation.**
- **Audits of NVOCCs.**
- **Post-licensing and routine compliance checks of licensed freight forwarders to determine whether their operations conform with regulatory requirements.**
- **Audits of passenger vessel operators to ensure the financial protection of cruise passengers.**

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

The Bureau assists the Bureau of Hearing Counsel in formal proceedings before the Commission, conducts studies

and surveys for use in program development and program revision, reports trade information, and recommends remedial action.

During fiscal year 1991, the Bureau continued to investigate malpractices in the major trade routes with special emphasis on the transpacific and transatlantic trades. The Bureau's efforts in the transpacific trades resulted in the development of a significant number of investigations into the practices of vessel-operating common carriers, NVOCCs, freight forwarders, and cargo interests. The investigative strategies employed in the Transpacific Malpractice Program are being applied to the ongoing Mediterranean Rebate and Malpractice Program and the Central American/Caribbean Malpractice Program, and will be applied to other malpractice programs now in the planning stage for implementation in fiscal years 1992 and 1993. The Bureau continues to monitor and investigate conditions in the North Atlantic trades as part of the Transatlantic Enforcement Initiative which began in fiscal year 1987.

The Bureau conducted 101 investigations and special inquiries of which 47 were forwarded to the Bureau of Hearing Counsel for enforcement action. (See Chapter III.) A total of 149 surveillance matters were conducted, including service contract audits, compliance checks, audits of NVOCCs and cruise line audits.

Coordination between the Commission's district offices and Customs' field offices continued in fiscal year 1991, as a part of the Memorandum of Understanding between the agencies for the exchange of enforcement information. During fiscal year 1991, training of the Bureau's investigators was conducted by Customs' staff on how to access information filed by the shipping community in Customs' Automated Commercial System ("ACS"). Currently, investigators obtain access to ACS through Customs' field offices. The Bureau will work to obtain access to ACS through each of the Bureau's district offices for fiscal years 1992 and 1993.

During fiscal year 1991, the Bureau continued to provide its investigators with formal training in fraud detection through participation in the White Collar Crime Training Program at the Federal Law Enforcement Training Center in Glynco, Georgia. In addition, all district office personnel were provided with training in the use of automated systems in support of Bureau operations.

At the beginning of fiscal year 1991, there were 251 field investigations in progress. During the year, 191 new field investigations were initiated, providing 442 cases on hand and scheduled for inquiry. Completed investigations totaled 250, leaving 192 cases pending at the end of the fiscal year. Appendix F summarizes the Bureau of Investigations' activities.

K. BUREAU OF ADMINISTRATION

Office of the Director

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 Information Resources Management.**
- **Office of Personnel.**

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

The Director is Agency Contact for the Federal Emergency Management Agency and Commission representative, as Principal Management Official, to the Small Agency Council ("SAC").

1. Office of Administrative Services

(a) General Office Responsibilities

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

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

(b) Objectives

The objectives of the Office are to:

- **Develop, execute and administer Commission procurement actions and contracts that obligate the Government to an expenditure of funds;**
- **Control and administer the Commission's acquisition, utilization, inventory, maintenance, and disposition of property;**
- **Develop and coordinate a comprehensive voice telecommunications program for all Commission locations, to include installation and maintenance of telecommunications equipment and features;**
- **Plan and administer programs for improvement of the workplace environment and other space utilization operations for all Commission locations, to include negotiating office space assignments, establishing workstation layouts, interpreting architectural drawings, and finalizing specifications;**

- **Manage the receipt, storage, issuance and inventory of all supplies, forms and accessories required in support of Commission operations;**
- **Coordinate and fulfill all printing, duplicating, copying and graphic services;**
- **Regulate receipt, distribution and dispatching of mail;**
- **Coordinate the use of the headquarters building's physical facilities with respect to maintenance, security and parking;**
- **Arrange for transportation services for all Commission locations;**
- **Conduct safety inspections and coordinate the Commission's emergency preparedness and evacuation plan;**
- **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) Achievements

During fiscal year 1991, the Office:

- **As part of the Commission's cost-saving initiative, performed an analysis of all telephone voice lines and related telecommunication equipment; submitted recommendations for reduction of expenditures; and performed the lead role in relinquishing one of the two Commission hearing rooms to GSA;**

- Renovated the sound system in the Commission's main hearing room;
- Arranged for a U.S. Postal Service security briefing for all headquarters employees to heighten awareness, and upgraded physical security procedures;
- In coordination with GSA, completed a space study and analysis of the New York, New Orleans, Miami, and Puerto Rico District Offices;
- In conjunction with GSA, completed a space management requirements analysis of the FMC's headquarters space for building lease purposes;
- Designed, coordinated, and implemented construction or renovation in several areas of the Commission to accommodate reorganizational changes;
- Coordinated installation of one 5-ton air-conditioning unit in the LAN control center, independent from the building's main cooling system;
- Coordinated with GSA and other building tenants for provision of physical security requirements in conjunction with installation of a new security force contract;
- Renegotiated, restructured, and realigned the FMC's photocopying services program; and
- Conducted a management analysis of Commission mail services and operating processes.

(d) Future Plans

In fiscal year 1992, the Office plans to conclude the initiatives begun in fiscal year 1991, along with finalizing objectives involving the following: coordinate and manage the probable FMC headquarters relocation; develop and solicit new contracts for court reporting services and PIERS access, update the Commission's telecommunications equipment to more state-of-the-art technology for better integration with the WITS and FTS2000 programs, within budget constraints; meet continually changing technological requirements in the administration of support services; and complete the organization of standardized Commission procedures relative to property actions and inventory control processes.

2. Office of Budget and Financial Management

(a) General Office Responsibilities

The Office of Budget and Financial Management administers the Commission's financial management program 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 OMB. The Office also administers internal controls systems for agency funds, travel and cash management programs, and the Commission's imprest fund. The Director of the Office is the Commission's Chief Financial Officer.

(b) Objectives

The objectives of the Office are to:

- **Submit annual budget justifications and estimates to OMB and the Congress;**
- **Execute the budget to ensure appropriated funds are properly expended;**
- **Prepare regular financial reports to aid management decisions;**
- **Administer the control system over workyears of employment;**
- **Collect all fees and forfeitures due the Commission;**
- **Process payments to vendors efficiently and in accordance with the Prompt Payment Act;**
- **Process travel orders and vouchers within established time limits, and in accordance with Federal Travel Regulations;**
- **Administer the Commission's imprest fund program and manage the Commission's cash management program;**
- **Ensure resources are used properly to avoid fraud, waste, error, and abuse; and**
- **Continually review financial management internal controls and accounting procedures to ensure that they conform to existing regulations, and develop procedures to correct deficiencies.**

(c) **Achievements**

During fiscal year 1991, the Office:

- **Collected and deposited in the U.S. Treasury \$21,968,676 from user fees, fines, and penalty collections, and ocean freight forwarder license application and passenger vessel certification fees;**
- **Coordinated and prepared budget justifications and estimates for the fiscal year 1992 Congressional budget and the fiscal year 1993 budget to OMB;**
- **Participated in OMB and Congressional budget hearings;**
- **Provided the Cash Management Division of the Department of Treasury with data on the agency's participation in the electronic funds transfer of employee paychecks and allotments, as well as the agency's participation in the Diner's Club Credit Card System;**
- **Completed the Annual Report on Occupational Safety and Health Program;**
- **Assisted in the preparation of the Civil Monetary Penalty Report to OMB;**
- **Submitted to the Appropriations Subcommittees a reallocation request of funds from the expenses of ATFI to personal services;**
- **Revised the Commission Order on travel;**
- **Prepared a variety of external reports such as: Report on Financial Management Improvements (Joint Financial Management Improvement Program), Report on Analysis of Change for**

Updating Current Services Baseline for FY 1992 (OMB), Annual Prompt Payment Report (OMB), Report on Workyears and Personnel Costs (OPM), and Report on Cash Management Initiatives (Department of Treasury);

- **Provided management with monthly status reports on workyears, funding, travel and receivables; and**
- **Managed the Commission's travel and cash management programs.**

(d) Future Plans

During fiscal years 1992 and 1993, the Office will automate voucher preparation, continue to update financial control procedures, refine the financial management system, improve processing of payments, prepare OMB and Congressional budget submissions, and pursue initiatives leading to economy and efficiency in budget and financial operations.

3. Office of Information Resources Management

(a) General Office Responsibilities

The major functions of the Office of Information Resources Management are: planning and contract administration; telecommunications/database management and application development; and records management and OMB clearances. The Office is also responsible for ensuring compliance with the National Environmental Policy Act of 1969 and the Energy Policy and Conservation Act of 1975, which includes determining whether the Commission's decisions will have an impact upon environmental quality or energy consumption.

The Office is delegated responsibility to ensure that the Commission's information resources management ("IRM") program is administered in a manner consistent with the Paperwork Reduction Act of 1980, Pub. L. No. 96-511, as amended by the Paperwork Reduction Authorization Act of 1986, Pub. L. No. 99-500, and other appropriate Federal guidelines.

(b) Achievements

During fiscal year 1991, the Office:

- **Completed implementation of the Commission's LAN, which included cabling, evaluation, testing, debugging and installation of LAN-specific software, and connecting 187 microcomputers and associated PC-based LAN software and laser printers;**
- **Evaluated, tested and implemented major hardware and communication software components necessary for FMC access to the ATFI host computer located at McLean, Virginia; performed extensive testing of ATFI software on the host computer at McLean, Virginia; conducted ATFI source code validation on the Contractor's development computer located in Pittsburgh, Pennsylvania; participated extensively in ATFI acceptance, evaluation and acceptance of ATFI deliverables; and coordinated ATFI prototype training for the industry and FMC employees;**
- **Established, with the Office Director as Chairperson, the FMC Electronic Data Interchange (EDI) Committee; conducted meetings with representatives of numerous industry and legal entities to initiate discussions and work associated with conversion of ATFI data to EDI format;**
- **Engaged in meetings with Customs officials to establish a working relationship, which will allow**

FMC to benefit from Customs experiences implementing ACS and conversion of ACS data to EDI format; and explored telecommunications options for access to ACS;

- **Established an on-going, agency-wide, in-house computer training program and conducted 289 training units for FMC employees in Introduction to PCs, Disk Operating System, WordPerfect Office, WordPerfect, Basic Concepts of LANs, Office LAN Administration, Backup Procedures, and ATFI End-User;**
- **Performed system integration and testing of FMC-wide office automation technology -- microcomputers, printers, software and modems and installed this technology at the Commission's district offices; provided telephonic support and developed instructional manuals for use by district office personnel;**
- **Developed special communication software to allow electronic transfer of conference minutes and agreements by the industry;**
- **Acquired, tested and implemented desk top publishing; initiated evaluation of document storage and retrieval technology to assess the applicability, cost and benefit of such technology to the FMC in the future;**
- **Conducted an IRM technology trend analysis to identify and project technology requirements, both from a budget planning perspective, as well as needs;**
- **Provided OMB clearance support and guidance for the FMC;**

- **Forwarded and received approval from National Archives and Records Administration for the Commission's records schedule revisions; furnished records management advice to agency components and maintained records schedule;**
- **Initiated formulation of the Commission's Five-Year IRM Plan and Computer Security Plan; completed a Commission Order on *Information Resources Management*; and**
- **The Office Director functioned as staff to the ADP Committee Chairman; acted as Co-Contracting Officer's Technical Representative ("COTR") for Technical Matters on the ATFI PRC Inc. contract; served as COTR on several IRM-related contracts.**

(c) Future Plans

Major activities for the upcoming year include: finalize and publish an Information Technology Policy Handbook, the Commission's Five-Year IRM Plan and FMC Security Plan; conduct computer security training for all FMC employees; participate in implementation of the production ATFI system; provide ATFI-FMC-specific PC-based application development support; coordinate installation of back-up computer for ATFI system; begin work associated with development of EDI transaction sets for ATFI; complete work associated with gaining FMC access to the Customs ACS; initiate electronic records management program; complete district office LAN connectivity; perform the GSA IRM-triennial review; and install desk top publishing system on local area network.

4. Office of Personnel

(a) General Office Responsibilities

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

(b) Achievements

The Commission's Drug-Free Workplace policy was certified to Congress by the Secretary of Health and Human Services, as being in full compliance with Section 503 of the Supplemental Appropriations Act of 1987 and Executive Order 12564. Commission Order 116, *Drug-Free Workplace Program*, was subsequently issued to all employees. The Office prepared two letters: the General Notice Announcing Drug Testing (the 60-day notice) and the Individual Notice of Random Drug Testing (the 30-day notice), which were submitted for, and received, DOJ approval. Both letters were issued to employees, thus satisfying the notice requirements of the plan.

The Office prepared a new Commission Order 95, *Executive Resources Board*, which was issued during the fiscal year. The Office also developed a *Senior Executive Service ("SES") Recertification Plan* (Commission Order 118), *SES Staffing Forecast*, and *1992/1993 SES Candidate Development Program*.

The following Commission orders were redrafted during the year: Commission Order 54, *Clearance of Employee Accountability*; Commission Order 61, *Merit Staffing Program*; Commission Order 82, *Position Management*; and Commission Order 88, *Position Classification*.

The Office submitted a Points of Light/Volunteerism proposal to the Chairman; a plan was adopted and issued to employees.

The Office developed and implemented a Reservist Leave Bank Plan. The Office worked closely with OPM to implement the plan to collect leave donations for reservists who served on active duty during the Persian Gulf War.

The Office participated in numerous discussions of ways to achieve fiscal year 1991 budget reductions. These sessions produced proposals to freeze incentive awards, halt all but mandatory training, and delay promotions. These measures enabled the Commission to achieve budget reductions during the fiscal year.

The Office implemented pertinent portions of the Pay Comparability Act of 1990, such as geographic pay for New York, Los Angeles and San Francisco; new SES pay rates; and a new Administrative Law Judge pay system.

(c) Training

Because of the need to achieve budget reductions, the Office worked to identify no-cost training programs for the Commission's senior executives, SES candidates, and Performance Management and Recognition System ("PMRS") managers and supervisors. Many employees attended training provided at no charge by the SAC.

The Commission concluded an earlier SES Candidate Development Program by obtaining OPM Qualifications Review Board certification of the qualifications of its two remaining SES candidates.

On-site training offered agency employees included supervisory training required by the Drug-Free Workplace Program.

(d) Recruitment and Placement

Because of budgetary and personnel restrictions, recruitment and staffing activity was substantially reduced. However, the Office completed personnel matters associated with appointment of several new Commissioners. New appointees were briefed on benefits and all aspects of Federal employment.

The Office coordinated with the Advisory Commission at DOT and senior Commission management concerning effective ways to meet the staffing needs of the Advisory Commission. Officials were briefed on options, and negotiations were conducted to implement decisions.

The Commission maintained its high standing among all agencies in percentage of employees with targeted disabilities, and offered special salary rates to clerical employees in Washington, D.C., New York, Florida, and California.

The Office administered a Summer Youth Employment Program in cooperation with the District of Columbia Government. Five youths were employed during the summer.

(e) Employee Relations

Employee counseling services contracts in Washington, New York, Miami, San Francisco, and Los Angeles were closely monitored and supervisors and employees were advised of services provided by those contractors. New contracts were let for San Francisco, Los Angeles, and Washington, D.C.; and counseling services were extended to employees in the New Orleans and Houston District Offices. A bimonthly counseling services newsletter was distributed to all employees.

The Office offered a week-long retirement planning program; conducted a Health Benefits Open Season; sponsored the Annual Employee Health Fair; and made the *Check Book*

Health Benefits Guide available to employees at no charge. The Office also conducted two Thrift Savings Plan Open Seasons.

The Office worked closely with Red Cross to promote participation in the blood donor program by maintaining a system of program coordinators within each bureau and office. Two blood drives were held in cooperation with other agencies. CPR training was provided on site.

The Office continued to advise supervisors concerning their responsibilities in the areas of employee conduct and performance, including the granting of within-grade increases and awards, and correcting discipline and other problems. 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. All employee relations cases were successfully resolved.

The Office continued to operate its very successful Annual Leave Transfer Program. Since the first leave donation, approximately 66 employees have donated 3,391 hours of annual leave worth approximately \$50,000.

(f) Performance Appraisal

During the rating year, SES, PMRS, and Performance Management System ("PMS") performance appraisal milestones were charted by the Office; supervisors were issued reminders and instructions concerning midyear progress reviews, performance appraisals, and performance plans. Supervisors were required to certify that midyear progress reviews were conducted.

(g) Personnel Security

The Office completed its periodic review to determine the sensitivity of all positions. The Office commented on OPM proposals to overhaul the position sensitivity designation system and began using revised SF-85 and SF-86 investigation forms for requesting security investigations required by OPM. Major improvements were made to the program with implementation of a new system for tracking personnel investigations.

(h) Position Classification and Pay Administration

The Office issued decisions in a number of difficult and sensitive classification cases. These cases involved accretion of duties beyond established career ladders.

During fiscal years 1992 and 1993, the Office will continue to advise the Commission on all personnel matters and ensure the maintenance of a progressive personnel program within the Commission.

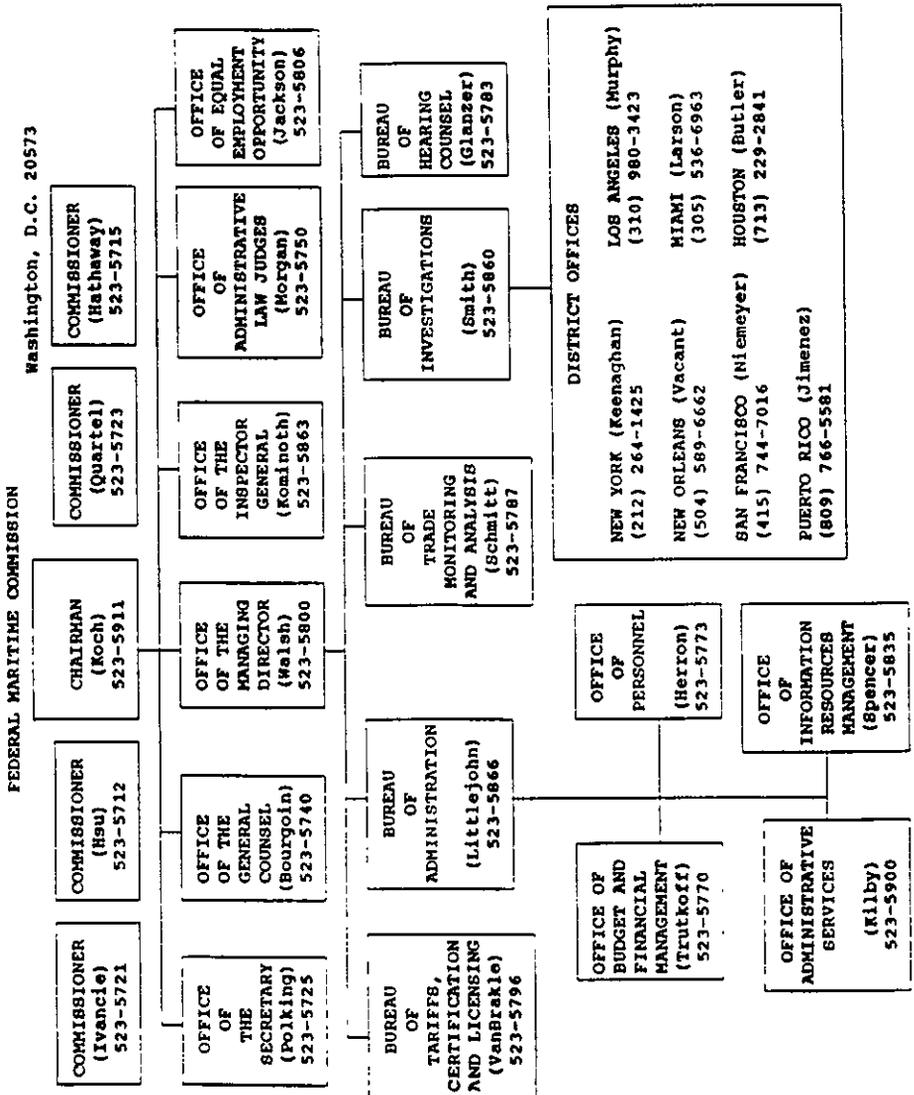
(i) Future Plans

Major activities for the coming year include: a complete revision of most of the major program plans published as Commission Orders; full implementation of the Commission's Drug-Free Workplace Program; a shift of training program responsibility to the Office of the Director, Bureau of Administration; and implementation of the SES candidate development program.

APPENDIXES

APPENDIX A

ORGANIZATION CHART



APPENDIX B

COMMISSION PROCEEDINGS Fiscal Year 1991

Formal Proceedings

Decisions	9
Discontinuances & Dismissals	18
Initial Decisions Not Reviewed	14
Rulemakings - Final Rules	4

Total 45

Applications to Correct Service Contracts 34

Special Dockets 167

Informal Dockets 50

Oral Arguments 2

APPENDIX C

CARRIER AGREEMENT FILINGS AND STATUS Fiscal Year 1991

Carrier Agreements Filed in FY 1991 (including modifications)

Foreign and Domestic Commerce 283

Agreements Processing Categories in FY 1991

Forty-Five Day Review 142
Shortened Review 44
Exempt-Effective Upon Filing 80
Rejection of Filing 1
Formal Extension of Review Period 6
Approved Under Shipping Act, 1916 0
273

Carrier Reports Submitted for Commission Review

Shippers' Requests and Complaints 46
Minutes of Meetings 1817
Pooling Statements 6
Index of Documents 146
Consultations 46
2061

Carrier Agreements on File as of September 30, 1991

Conference 70
Interconference 17
Pooling & Equal Access 23
Joint Service 35
Sailing & Charter 120
Cooperative Working, Agency, & Equipment Interchange 117
382

Terminal Agreements Received (including amendments) 344

On Hand 10/1/90 875
On Hand 10/1/91 725

APPENDIX D

TARIFF AND TERMINAL FILINGS AND STATUS FISCAL YEAR 1991

Tariff Filings (Pages)

Foreign Filings	1,253,015
Domestic Filings	9,513
Terminal Filings	<u>5,558</u>
TOTAL	1,268,086

Tariff Publications

Foreign:	On Hand 10/1/90	5,721
	On Hand 10/1/91	6,268
Domestic:	On Hand 10/1/90	321
	On Hand 10/1/91	193
Terminals:	On Hand 10/1/90	465
	On Hand 10/1/91	485

Special Permission Applications

Total Received - Foreign	126
Granted	92
Denied	25
Withdrawn	9
Total Received - Domestic	38
Granted	35
Denied	3
Withdrawn	0

Domestic Investigation and Suspension Memoranda

Completed	4
Pending	0

Service Contracts Filed 5,854

APPENDIX E

CIVIL PENALTIES COLLECTED Fiscal Year 1991

Bartel Shipping	\$ 14,500.00
Bayer AG	40,000.00
Benkan Corporation	65,000.00
Cyprus Industrial Minerals	2,000.00
Evergreen Marine Corp.	12,500.00
Foster Electric Co., Ltd.	445,000.00
Gunze Sanyo Inc.	21,400.00
Happy World American Inc.	13,500.00
Hermann Ludwig Inc.	21,000.00
International Gateway Inc.	25,000.00
Keihin Co. Ltd.	310,000.00
Kenwood Corporation	275,000.00
Kin Bridge Express Inc.	30,480.49
Komatsu Dresser Corp.	15,000.00
Kuraray Co. Ltd.	10,000.00
Lexzau, Scharbau & Co.	151,434.71
Marcella/Eddins Taylor.	54,000.00
Midas Maritime.	19,500.00
Mitutoyo Corporation	58,839.89
Nikko Co. & Nikko Ceramics	16,000.00
Okura & Co., Ltd.	20,000.00
Prudential Lines	2,500.00
Samband Line	19,500.00
Sea Cargo International, Inc.	35,000.00
Shimano Industrial Co. Ltd.	32,000.00
Shin Nippon Koki Co.	150,000.00
Showa Line, Ltd.	175,000.00
Stute Verkehrs GmbH	10,000.00
Sugiyasu Corporation	42,800.00
Takeuchi Iron Works Co., Ltd.	5,250.00
TEAC Corporation	138,088.00
TKM Limited	110,000.00
Trans-Intermodal Transport, Inc.	15,000.00
Trans Pacific Cargo Interests	18,964,857.00
Trans Pacific Carriers Agreement	350,000.00
Trans Senko Corporation	50.00
Unifast Inc./Shyh H. Lee.	14,000.00
Watanbe Co., Ltd	7,450.00
Yamazaki Mazak Corp.	100,000.00

Total Civil Penalties Collected

\$ 21,791,650.09

APPENDIX F

FIELD INVESTIGATIONS Fiscal Year 1991

	<u>Surveillance Actions</u>	<u>Investigations & Special Inquiry</u>	<u>TOTAL</u>
<i>Pending 10/1/90</i>	<i>92</i>	<i>159</i>	<i>251</i>
<i>Opened FY 1991</i>	<i>108</i>	<i>83</i>	<i>191</i>
<i>Closed FY 1991</i>	<i>149</i>	<i>101</i>	<i>250</i>
<i>Pending 9/30/91</i>	<i>51</i>	<i>141</i>	<i>192</i>

APPENDIX G

STATEMENT OF APPROPRIATIONS, OBLIGATIONS AND RECEIPTS FOR THE FISCAL YEAR ENDED SEPTEMBER 30, 1991

APPROPRIATIONS:

Public Law 101-515, approved November 25,1990: For necessary expenses of the Federal Maritime Commission as authorized by section 201(d) of the Merchant Marine Act of 1936, as amended (46 App. U.S.C. III), including services as authorized by 5 U.S.C 3109; hire of passenger motor vehicles authorized by 31 U.S.C. 1343 (b); and uniforms or allowances therefor, as authorized by 5 U.S.C. 5901-5902; Provided, that not to exceed \$2,000 shall be available for official reception and representation expenses.

\$15,894,000

Public Law 99-177, Balanced Budget and Emergency Deficit Control Act of 1985, approved December 12, 1985 -207

Revised Appropriation \$15,893,793

OBLIGATIONS AND UNOBLIGATED BALANCE:

Net obligations for salaries and expenses for the fiscal year ended September 30, 1991. \$15,893,618

STATEMENT OF RECEIPTS: Deposited with the General Fund of the Treasury for the Fiscal Year Ended September 30, 1991:

Publications and reproductions,
Fees and Vessel Certification,
and Freight Forwarder Applications \$162,158

Fines and penalties \$21,806,518

Total general fund receipts \$21,968,676