

FEDERAL MARITIME COMMISSION

32nd ANNUAL REPORT

for

Fiscal Year

1993



TABLE OF CONTENTS

| | |
|--|----------|
| LETTER OF TRANSMITTAL | v |
| MEMBERS OF COMMISSION | vii |
| SENIOR COMMISSION OFFICIALS | ix |
| I. THE COMMISSION | |
| A. History | 1 |
| B. Functions | 1 |
| C. Organization | 5 |
| II. THE YEAR IN REVIEW | 7 |
| A. Tariff Automation | 8 |
| B. Trade Developments | 9 |
| C. Restrictive Trade Practices | 11 |
| D. Enforcement | 12 |
| E. Surveillance | 13 |
| III. SURVEILLANCE AND ENFORCEMENT | |
| A. Surveillance | 15 |
| B. Enforcement | 18 |
| IV. DEVELOPMENTS IN MAJOR U.S. FOREIGN TRADES | |
| A. Transatlantic | 21 |
| B. Mediterranean | 27 |
| C. Middle East | 30 |
| D. Africa | 32 |
| E. Latin America and the Caribbean | 34 |
| F. Transpacific | 37 |
| G. Worldwide | 44 |
| V. AUTOMATED TARIFF FILING AND INFORMATION SYSTEM | |
| A. Introduction and Background | 45 |
| B. Early Studies on Tariffs | 47 |
| C. First Step in Tariff Automation: Issues | 50 |
| D. The Shipping Act of 1984 | 51 |
| E. The Tariff Automation Task Force | 52 |
| F. ATFI: Feasibility Study of Tariff Automation and The ATFI Advisory Committee | 56 |
| G. Benefit Cost Analysis and Procurement Authority | 64 |
| H. Inquiry on the Functionality of ATFI and Presolicitation Conference | 64 |
| I. Remote Retrieval | 69 |

| | | |
|-----------|--|-----------|
| J. | Contract Award and Major Changes | 72 |
| K. | Docket No. 90-23 | 74 |
| L. | Batch Filing Guide | 78 |
| M. | Miscellaneous Milestones | 79 |
| N. | Update on Remote Access - December 1993 | 81 |

VI. THE FOREIGN SHIPPING PRACTICES ACT OF 1988

| | | |
|-----------|---|-----------|
| A. | The Statute | 89 |
| B. | Actions Taken | 89 |
| C. | Top Twenty U.S. Liner Cargo Trading Partners | 91 |

VII. SIGNIFICANT OPERATING ACTIVITIES BY ORGANIZATIONAL UNIT

| | | |
|-----------|---|------------|
| A. | Office of the Secretary | 97 |
| B. | Office of Administrative Law Judges | 101 |
| C. | Office of the General Counsel | 105 |
| D. | Office of Equal Employment Opportunity | 119 |
| E. | Office of Inspector General | 123 |
| F. | Office of the Managing Director | 127 |
| G. | Bureau of Trade Monitoring and Analysis | 131 |
| H. | Bureau of Tariffs, Certification and Licensing | 139 |
| I. | Bureau of Hearing Counsel | 155 |
| J. | Bureau of Investigations | 159 |
| K. | Bureau of Administration | 165 |

APPENDIXES

| | | |
|-----------|--|------------|
| A. | Organization Chart | 183 |
| B. | Commission Proceedings | 184 |
| C. | Carrier Agreement Filings and Status | 185 |
| D. | Tariff and Terminal Filings and Status | 186 |
| E. | Civil Penalties Collected | 187 |
| F. | Investigations | 188 |
| G. | Statement of Appropriations, Obligations and Receipts | 189 |



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

March 31, 1994

To the United States Senate and House of Representatives:

Pursuant to section 103(e) of Reorganization Plan No. 7 of 1961, and section 208 of the Merchant Marine Act, 1936, as amended, I am pleased to submit the thirty-second annual report of the activities of the Federal Maritime Commission for fiscal year 1993.

Additionally, section V.N of this report contains an Update on Remote Access - December 1993, to comply with the request of Congress to be kept informed on developments of reasonable restrictions on remote access to the Commission's *Automated Tariff Filing and Information System ("ATFI")*.

Sincerely,

A handwritten signature in black ink, appearing to read "W.D. Hathaway", written over a horizontal line.

William D. Hathaway
Chairman

MEMBERS OF COMMISSION*



*William D. Hathaway**
Chairman
Appointed 1990
Term Expired June 30, 1993*



*Francis J. Ivancie
Commissioner
Appointed 1985
Term Expired June 30, 1992
- Holding Over*



*Ming C. Hsu
Commissioner
Appointed 1990
Term Expires June 30, 1996*

**2 Vacancies as of September 30, 1993.*

***William D. Hathaway assumed the Chairmanship on April 5, 1993. His term expired on June 30, 1993, but he is holding over and the President has nominated him for the term expiring on June 30, 1998. His confirmation is pending in the Senate.*

SENIOR COMMISSION OFFICIALS

- Secretary *Joseph C. Polking*
- Chief Administrative Law Judge *Norman D. Kline*
- 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 United States ("U.S.") Merchant Marine. Under the reorganization plan, the shipping laws of the U.S. were separated into two categories -- regulatory and promotional. The responsibilities associated with promotion of an adequate and efficient U.S. Merchant Marine were assigned to the Maritime Administration, now located within the Department of Transportation ("DOT"). The newly-created FMC was charged with the administration of the regulatory provisions of the shipping laws.

The Commission is now responsible for the regulation of oceanborne transportation in the foreign commerce 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 1993, the Commission was authorized a total of 229 full-time equivalent positions and had a total appropriation of \$18,300,000. The majority of the Commission's personnel are located in Washington, D.C., with field offices in New York, San Francisco, Los Angeles, New Orleans, Miami, Houston, and Hato Rey, Puerto Rico, consisting of personnel from the Bureau of Investigations.

II

THE YEAR IN REVIEW

The Commission successfully addressed numerous challenges in fiscal year 1993. Particularly noteworthy was the implementation of our Automated Tariff Filing and Information System ("ATFI" or "System") after years of analysis, testing, and consultation with the System's primary filers and users.

The Commission continued several actions pursuant to section 19 and the FSPA to combat unfavorable practices of foreign governments. The Commission also continued its active surveillance of trade activities so as to identify practices or trends that may adversely affect positive competition. Our enforcement program fostered neutral-body self-policing programs that could operate with minimal government intervention. And, agreements with potential major impacts were analyzed and monitored for their ongoing impact on the U.S. foreign trade.

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

A. TARIFF AUTOMATION

After extensive analysis, design, development, testing, and collaboration with all affected parties, ATFI became operational when the Commission officially began to accept electronic tariff filings in February 1993. The President had signed Pub. L. No. 102-582 in November 1992, which mandated the electronic filing of tariffs, eliminated most prior restrictions on public retrieval, and imposed a 46-cent-per-minute fee for direct remote access and secondary computer access via commercial tariff services. The Commission issued a final rule in May 1993 which implemented these provisions, and also required third-party vendors to submit for approval their plans for collecting secondary-user charges. The Commission also issued amendments to its Interim ATFI Rule for the purpose of permitting essential terms of service contracts to be filed in "full-text format." Two further rounds of comments to the interim rules addressed technical or operational concerns, which continue to be reviewed. Additionally, software and instructional materials were designed and continue to be developed to assist all filers in correcting problems prior to filing and minimizing errors and rejections.

To ensure an orderly transition to the electronic environment, the Commission established an implementation schedule for the conversion of tariff matters based on trade areas and operations. Seven time frames were established, with the last closing December 31, 1993. While filing of official tariff data began slowly, the industry demonstrated the capability and willingness to comply with the system's new requirements. Those who had difficulty in converting petitioned the Commission for temporary exemption from the electronic filing requirements. The Commission received approximately 75 petitions, representing 1,300 carriers/conferences, all of which were granted. During fiscal year 1993, over 1,500 tariffs

were filed electronically. Ultimately, we expect approximately 3,500 tariffs to be in the ATFI system.

The last optional phase of the major ATFI contract expires towards the end of fiscal year 1994. The Commission has begun preparation for the recompetition of this contract, to ensure the continued operation and maintenance of the ATFI system.

B. TRADE DEVELOPMENTS

Various trends identified in the recent past continued in the major U.S. ocean trades during 1993.

Carriers in the transatlantic trade, in order to address continual overcapacity, effectuated different types of rationalization agreements involving the number and type of vessels deployed, space chartering, and sailing itineraries/port calls. The major focus in the transatlantic was the *Trans-Atlantic Agreement*, or TAA. TAA is a conference of 15 carriers operating between the U.S. and Northern Europe. TAA was filed in April 1992, and was permitted to become effective in August 1992 after the parties made several changes and corrections to agreement provisions the Commission found offending. Due to its market share and unique structure, TAA received continuous Commission scrutiny to ensure that the carriers did not increase costs or reduce service in an unreasonable manner. Additionally, the European Commission has voiced objections concerning TAA's structure for setting rates, capacity management program, and joint inland rate actions. European shippers have complained about TAA to the European Commission, which is reviewing the matter.

In the Mideast trades, new or expanded services were initiated to the Arabian Peninsula and Persian Gulf in anticipation of a reconstruction boom following the Gulf War.

Despite a significant increase in the shipment of oil field and construction equipment, traffic never met carrier expectations. Rationalization agreements were developed to enable carriers to operate more effectively, and a discussion agreement was formed involving most major carriers in hopes of forming a new conference. Similarly, the Mediterranean ("Med") trade witnessed a host of new entrants into an already overcrowded market. The Med continues to be viewed as a natural crossroad to Europe, Africa and Asia, so several carriers adjusted their service patterns so that they could continue to serve this trade. Rationalization agreements also were implemented throughout the year.

The transpacific saw carriers implement new joint services, expand their networks, and cooperate or merge with other carriers to take advantage of economies of scale in marketing and cargo solicitation. The *Trans-Pacific Westbound Rate Agreement* and the *Asia North America Eastbound Rate Agreement* initiated numerous rate and service contract actions in attempts to win major accounts. Independent carriers also initiated rate and service contract actions, and implemented service changes enabling them to slightly increase their market share both inbound and outbound.

Certain governments in Central and South America implemented policies to bolster trade, and several carriers either added tonnage or initiated new services in fiscal year 1993. This added to the overcapacity that resulted from huge additions of tonnage in 1992. As in other trades, several sailing, space charter, or cooperative working arrangements were filed as carriers sought the most effective means of continuing viable services.

C. RESTRICTIVE TRADE PRACTICES

The Commission has been extremely successful over the years in using its authority under section 19 of the 1920 Act and the FSPA to combat foreign government actions that restrict commerce or unduly harm U.S.-flag carriers.

The Commission previously began formal section 19 proceedings to address the Republic of Korea's ("ROK") laws and regulations that were hindering the operations of U.S. carriers and precluding U.S. consolidators from conducting business in the ROK. Final rules were issued in each proceeding implementing countervailing measures in response to the ROK restrictive practices. The Commission delayed the effective date of each in light of commitments by the ROK to eliminate the offending restrictions. The proceeding involving consolidators was discontinued in September 1993 based on actions by the ROK to implement its commitments to open trade to U.S. freight forwarders and NVOCCs. The effective date of the rule involving carrier restrictions continues to be delayed pending assessment of ROK actions based on reports to be received from the involved national-flag carriers.

The Commission also addressed certain obstacles to trade imposed by the Peoples Republic of China ("PRC") under the FSPA. In discontinuing its investigation of trade practices in the PRC, the Commission noted the significant concessions and commitments made by the PRC in resolving a number of the practices under scrutiny in the investigation. The Commission determined to monitor developments regarding inland trucking and tariff recognition by PRC agents during 1993. Bilateral talks between the U.S. and PRC included each of these issues. Further talks are scheduled, which the Commission will monitor closely.

The Commission continuously has been monitoring various restrictions that were negatively affecting U.S. carriers in the trade with Taiwan. The Commission is monitoring the progress being made to amend Taiwan's highway laws to allow U.S. carriers to move their ocean containers inland via their own trucking services. Taiwan legislation opening the trucking market to U.S. carriers remained pending.

D. ENFORCEMENT

The Commission's enforcement program continues to place a major emphasis on neutral body self-policing as the means of enhancing fair competition in the U.S. foreign commerce. Specific enforcement actions and the assessment of penalties naturally do not cease -- the Commission collected \$2,063,436 in civil penalties in fiscal year 1993. This amount, although sizable, does not approach the \$20 million figures of the past few years. We believe that the residual deterrent effects of our recent enforcement activities and ongoing industry self-policing have reduced malpractices. Nonetheless, as malpractices are identified, the Commission does proceed with the appropriate enforcement action.

Regarding self-policing, the compliance agreement in the transatlantic trade remains the model. Actions under that effort continued to operate effectively this past year under a newly-filed agreement. The Commission meets regularly with the neutral body and the involved carriers. Our reports indicate that this initiative has had a positive impact on the shipping community. The Commission continues to pursue effective neutral-body self-policing mechanisms in the transpacific, the Med, and Central/South America. Effectuation of a compliance type agreement in the transpacific would complete our efforts in that trade, which previously resulted in significant monetary payments and numerous disclosures of malpractice activity. The Commission was concentrating its efforts on a

transpacific self-policing program at year end. Similarly, we believe we have made substantial progress in the Med trade and hope to see an effective self-policing initiative developed in that trade early in fiscal year 1994. Our efforts in Central/South America are in the initial stages, but again, the Commission holds out hope that an appropriate self-policing agreement can be established in that trade as well.

The Commission's enforcement program again this year was a joint effort involving its investigators, economists, transportation specialists, and attorneys. On-line access to the Commission's ATFI system should facilitate both investigative groundwork and data analysis/manipulation. Additionally, we have continued our liaison efforts with other Government agencies. Of particular import is our joint program with the U.S. Customs Service ("Customs"), with whom we interact regularly on matters of mutual concern. Commission access to Customs' automated systems has greatly improved our ability to uncover and deter malpractices.

E. SURVEILLANCE

In fiscal year 1993, as in past years, the Commission worked to upgrade the efficiency and effectiveness of its monitoring of trade conditions and carrier behavior. The various monitoring projects conducted each year assist the Commission in identifying potentially troublesome foreign trade practices and support its enforcement efforts.

Commission monitoring activities in fiscal year 1993 were dominated by efforts to research, analyze, and evaluate the ongoing impact of TAA. The price increases and limitations on service contracts instituted by TAA raised Commission concern about whether the Agreement was in violation of the 1984 Act's section 6(g) general standard regarding significantly anticompetitive agreements. In reviewing and monitoring TAA's

impact, the Commission analyzed the periodic operating reports filed by TAA, trade-volume and market-share data, and rate increases under the section 6(g) general standard. These efforts focused on the effect TAA was having on the shipping public.

In addition to monitoring TAA, other major surveillance and monitoring efforts included: an analysis of periodic reports filed with the Commission by the Transpacific Stabilization Agreement ("TSA"), and an update on TSA carriers' average revenue through the end of 1992; an annual report on the activities of controlled carriers; a report on European Commission developments concerning shipping issues; an analysis of carrier reports regarding the payment of fees to the Japan Harbor Management Fund; a report for the State Department and the Maritime Administration concerning market share and major commodities carried in the Japan, ROK, Taiwan and PRC trades; an analysis of the potential impact of a joint service agreement in the Papua New Guinea and Solomon Islands trade; and the collection of market-share data for various trades.

III

SURVEILLANCE AND ENFORCEMENT

A. SURVEILLANCE

An integral part of the Commission's responsibilities under the 1916 Act and the 1984 Act is the systematic surveillance of carrier activity and trade conditions. The goal of Commission surveillance activities is to ensure that carriers operating in the U.S. trades comply with the statutory standards of the applicable Acts and the requirements of Commission rules. To that end, the Bureau of Trade Monitoring and Analysis ("BTMA") administers a variety of monitoring projects designed to apprise the Commission of current trade conditions, keep abreast of emerging commercial trends in the industry, and maintain effective oversight of carrier service and pricing activities.

The 1984 Act provides that, unless rejected under relevant statutory authority, agreements filed with the Commission shall become effective on the 45th day after filing or the 30th day after notice in the *Federal Register*, whichever is later. Agreements can be rejected for technical reasons or for failure to include statutory provisions in the agreement language. Also, the Commission may extend the original 45-day period for an additional 45 days if that is necessary for obtaining additional information and documentary material. Finally, if the Commission determines that an agreement is "substantially anticompetitive" in possible violation of section 6(g) of the 1984 Act, it may seek appropriate injunctive relief by bringing suit in the U.S. District Court for the District of Columbia. These provisions, however, represent a removal of the Commission's previous broad discretion to disapprove agreements.

As a consequence of the reduction in its power to block agreements from taking effect, the Commission has established a systematic trade monitoring program to ensure that concerted actions by carriers in the U.S. trades do not violate the prohibited act restrictions of the 1984 Act or become so anticompetitive as to result in unreasonable reductions in transportation service or unreasonable increases in transportation costs. Under the 1984 Act, the importance of monitoring post-implementation agreement activity has become much more important; and BTMA's monitoring program has been reviewed continuously and refined to improve its efficiency and effectiveness. The current program involves ongoing examination of carrier competition (including market share and entry conditions), rates and revenues (including economic trends, service contract activity, and any shipper complaints), and service conditions (especially as they may relate to capacity management programs).

In fiscal year 1993, BTMA's program included the production of a variety of economic analyses of, and reports on, carrier behavior in the U.S. trades. These included: (1) an analysis of the periodic reports filed with the Commission by the Trans-Atlantic Agreement ("TAA") and of trade conditions in the North Atlantic; (2) a report on reasonableness of TAA rate increases under the section 6(g) general standard; (3) development of trade volume and carrier market-share data in the transpacific and transatlantic trades; (4) preparation of Commission briefings updating TAA activities; (5) an annual report on the activities of (foreign government) controlled carriers; (6) an analysis of the controlled carrier status of two Chinese carriers; (7) an analysis of carrier reports regarding the payment of fees to the Japan Harbor Management Fund; (8) the development of trade data for use by the Bureau of Investigations ("BOI"); (9) reports of shipper interviews conducted as part of BTMA's shipper outreach effort; (10) an analysis of the effects of a decision by two inbound New

Zealand conferences to consolidate; (11) preparation of comments and questions regarding potential FSPA concerns in the Japan trade; (12) an analysis of the potential impact of a joint service agreement in the Papua New Guinea and Solomon Islands trades; (13) an analysis of periodic reports filed with the Commission by the Transpacific Stabilization Agreement ("TSA"); (14) an update on TSA carriers' average revenue through the end of 1992; (15) a report for the Department of State and the Maritime Administration concerning market share and major commodities in the Japan, ROK, Taiwan, and PRC trades; (16) a semiannual report on the impact of the Commission's filing exemption for marine terminal operator service agreements; (17) the development of trade fact sheets for major U.S. trades; (18) a report on European Commission developments concerning shipping issues; (19) a report on the activities of the Inter-American Discussion Agreement; and (20) the collection of market-share data for a variety of trades.

During fiscal year 1993, BOI initiated the NVOCC Review Program. This program was inaugurated to develop an understanding of industry practices in a number of areas. The areas of review included a number of issues but were specifically aimed at the handling of less-than-container-load and full-container-load cargo and the coloaded of such cargoes by, between and among NVOCCs. This program resulted in a recommendation that the Commission commence a rulemaking proceeding to deal with the evolving practices of NVOCCs in the coloaded of ocean shipments which they handled.

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 BOI. (See Part VII, Sections 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. The transpacific program will continue to have an important impact on the Commission's enforcement activities.

Another long-term program, the transatlantic trade enforcement initiative, which began in 1987, continued through fiscal year 1993. Neutral-body self-policing, established as one result of the program, continued to operate effectively in the trade under a newly-filed agreement. Members of the Commission staff meet regularly with the participating neutral body and annually with the carrier members. The Commission has been advised that this initiative is having a substantial beneficial impact on the shipping community.

Commission liaison and enforcement activities involve cooperation and coordination with other Government agencies. A joint support program between the Commission and Customs has resulted in interagency coordination of effort on matters of

mutual concern. This program was expanded during fiscal year 1993 to provide on-line access for Commission staff to Customs' ACS. Access to Customs' ACS data has greatly enhanced the Commission's capability in uncovering and deterring malpractices.

In fiscal year 1994, the Commission expects to expand significantly this interagency cooperation with Customs to include access to its Automated Broker Interface. This will further increase the amount and types of Customs' data that we will be able to review in connection with ocean transportation transactions.

The expanded access to the Customs databases together with on-line access to the Commission's ATFI System should increase significantly the amount and timeliness of investigative groundwork that we will be able to accomplish through electronic database manipulation.

BOI has initiated a new tariff integrity program entitled the Strategic Tariff Enforcement Program. This program is designed to involve both investigation of the tariff filing and adherence practices of common carriers as well as improper shipper practices, such as misdescription of commodity and misdeclaration of measurement, that undermine tariff integrity.

The Commission's enforcement activity in fiscal 1993 resulted in the collection of civil penalties in the amount of \$2,063,436. (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

The transatlantic trade has long been a difficult trade for shipowners to operate in because of persistent overcapacity, fierce competition, and depressed freight rates. Principal conference carriers operating in the transatlantic trades reported collective losses of \$400 million in 1992 primarily due to continued low vessel capacity utilization and depressed freight rates. These same carriers project their losses to be \$150 million in 1993. During fiscal year 1993, two established carriers withdrew from the transatlantic trades citing financial difficulties, while two other new carriers made attempts to enter the trade but later terminated their operations.

During fiscal year 1993, shipping trade conditions generally improved in the inbound trade, while the outbound trade continued to experience persistent overcapacity. After an initial improvement during the first half of 1992, outbound trade volumes declined through the end of 1992, dropping 5 percent overall for the year. This decline continued through the third quarter of 1993 with cargo volume dropping 17 percent. The improvements in cargo volumes established in the inbound trade early in 1992 were sustained through the end of the year with overall liner cargo volume up 15 percent. By the end of the third quarter of 1993, cargo volume inbound had increased 9 percent. This trade imbalance is largely attributed to both a slump in the demand for U.S. exports brought on by the European recession and the U.S. dollar's appreciation against

European currencies, thereby making European exports more attractive in the U.S.

In an effort to restore profitability, major carriers in the trade formed a new agreement, the *Trans-Atlantic Agreement* ("TAA") (No. 202-011375). TAA established a conference of 15 carriers in the trade between the U.S. and North Europe. TAA replaced two former conferences that operated separately in the eastbound and westbound sectors of the trade, the *USA-North Europe Rate Agreement* (No. 202-011241) and the *North Europe-USA Rate Agreement* (No. 202-011242).

As originally filed with the Commission on April 15, 1992, TAA was deficient in form and format. The original filing was withdrawn, and a corrected version was refiled on May 7, 1992. To analyze thoroughly TAA's overall impact, the Commission issued a formal Request for Additional Information on June 19, 1992. After an analysis of the carriers' response, the Commission informed TAA that it was prepared to seek a court order enjoining certain restrictive provisions relating to service contracts and membership withdrawal. TAA removed the offending provisions, and the Commission took no further action to prevent it from becoming effective on August 31, 1992.

TAA permits the carriers to discuss and agree upon rates, charges, and conditions of service in the trade. TAA also includes a unique membership provision that distinguishes between carriers that are members of a "rate committee" and those that are "non-rate committee" members. At present there are eight rate committee members including: A.P. Moller-Maersk Line ("Maersk"), Atlantic Container Line AB, Hapag Lloyd, A.G. ("Hapag Lloyd"), Nedlloyd Lijnen BV ("Nedlloyd"), Nippon Yusen Kaisha ("NYK Line"), Orient Overseas Container Line (U.K.) Ltd. ("OOCL"), P&O Containers Limited ("P&O Containers"), and Sea-Land Service, Inc. ("Sea-Land").

Seven other carriers are non-rate committee members of TAA and include: DSR/Senator Joint Service, Cho Yang Shipping Co., Mediterranean Shipping Co. ("Med Shipping"), Neptune Orient Lines Ltd ("NOL"), Polish Ocean Lines ("POL"), Mexican Line ("TMM"), and Tecomar S.A. de C.V. ("Tecomar").

TAA also permits the parties to implement a capacity management program ("CMP") under which they may limit the amount of conference vessel space in the trade by up to 25 percent. TAA further permits the parties to enter into other arrangements among themselves, including space chartering, rationalization of service, and the consolidation of individual cargo consignments.

Because of TAA's market share and its unique structure, the Commission subjected TAA to a comprehensive review when it was initially filed and continues to monitor it more closely than most other agreements. TAA has been placed under an intensive and continuous monitoring program that is designed to ensure that it remains in compliance with section 6(g) and other provisions of the 1984 Act.

TAA must submit quarterly reports on its carriers' service activities, capacity utilization, average revenue per TEU and other data relevant to the reasonableness of TAA's rates. The Commission monitors this information on an ongoing basis to assess the impact of TAA on market conditions in the transatlantic trade.

The TAA CMP currently operates only in the inbound trade, i.e., Europe to the U.S., and reduced capacity by an amount significantly less than the 25 percent reduction allowable under the agreement. Based on the Commission's monitoring information, the TAA carriers improved their capacity utilization without solely relying on the CMP. Instead,

carriers increased their efforts to rationalize services and downsize or permanently remove surplus vessel capacity from the trade. Capacity reductions implemented during the fiscal year do not appear to have resulted in a shortage of container space in either trade.

While TAA carriers succeeded in maintaining rate increases implemented early in 1993, these carriers also lost substantial market share.

Notwithstanding the FMC's actions regarding TAA, the Directorate General of Competition ("DG IV") of the European Commission challenged the validity of the agreement. DG IV believes that TAA fails to satisfy the criteria under which liner conferences are granted an exemption from the competition laws of the European Union ("EU"). DG IV submitted that a conference should have a common rate structure rather than two different types of carriers: structured members offering common rates and service contracts, and unstructured members who can quote different rates and negotiate individual service contracts. DG IV also is concerned about TAA's CMP -- operated in conjunction with common rate levels under the agreement -- and stated that this is not an appropriate type of activity for a conference under the EU competition laws.

Moreover, DG IV objected to TAA's provisions permitting member lines to agree on charges for inland transportation in Europe, submitting that the conference exemption from the EU competition laws is limited to port-to-port transportation. The most recent reports indicate that the European Commission has not found sufficient grounds to justify a suspension of TAA, an important goal of European shippers concerned about the alleged harm that TAA rate increases have had on their businesses. However, the European Commission is still reviewing TAA and has not reached a final decision about

whether it should be granted an exemption from the EU competition laws.

Carriers in the transatlantic trades continue to participate in service rationalization arrangements. Carriers are sharing space and thereby increasing service frequencies to avert heavy capital investment or the deployment of added vessel capacity. During fiscal year 1993, a number of service rationalization agreements became effective which underscore this trend toward greater rationalization and restructuring of services in the liner trades. These agreements are discussed below:

TMM/Tecomar Space Charter and Sailing Agreement (No. 232-011391) permits the parties to charter space on each other's vessels, coordinate sailings, share and jointly contract for services and supplies, and pool and lease containers from each other in the trade between U.S. Atlantic and Gulf ports and points, and ports and points in Mexico and Europe, including Scandinavian, United Kingdom ("U.K."), and Mediterranean ports.

Orient Overseas Container Line (U.K.) Ltd. and the VSA Party Space Charter and Sailing Agreement (No. 203-011394) permits the parties to charter vessels and vessel space among themselves, to agree on sailing schedules and vessel deployment, and to voluntarily agree on rates and service contracts between U.S. Atlantic and Gulf Coast ports, and inland points via those ports, and ports and points in North Europe.

A.P. Moller-Maersk Line and the VSA Party Space Charter and Sailing Agreement (No. 203-011395) permits Maersk and the VSA Party (Sea-Land, P&O Containers and Nedlloyd) to agree upon terms and conditions by which Maersk may make space aboard its vessels available to the members of the VSA Party for their use and for subcharter by them to OOCL. It also

permits the parties to agree upon deployment changes regarding Maersk's vessels, sailing schedules, port calls and port rotations, and to agree, on a voluntary basis, on rates and service contracts in the trade between the U.S. Atlantic and Gulf Coast ports and points via those ports, and ports and points in North Europe.

Maersk, OOCL, VSA Cooperative Working Agreement (No. 203-011396) permits the parties to discuss and agree upon matters involving deployment of vessels and their potential charter arrangements among the parties, vessel schedules, port calls, terminal use and to agree, on a voluntary basis, on rates and service contracts in the trade between U.S. Atlantic and Gulf Coast ports, and points via those ports, and ports and points in Northern Europe.

Nippon Yusen Kaisha, Hapag Lloyd, A.G., and Neptune Orient Lines, Ltd. Far East/United States/North Europe Space Charter and Sailing Agreement (No. 203-011398) permits the parties to charter and subcharter space among themselves, coordinate sailings and agree, on a voluntary basis, on rates and service contracts in the trade between ports and points in the Far East and North Europe, and ports and points in the U.S. Atlantic, Gulf and Pacific Coasts (including Alaska).

TMM/HL Space Charter and Sailing Agreement (No. 203-011401) permits TMM and Hapag Lloyd to charter space on each other's vessels and to rationalize sailings in the trade between the U.S. Atlantic and Gulf and both the Gulf Coast of Mexico and Europe.

MSC/POL Space Charter and Sailing Agreement (No. 232-011415) permits Med Shipping and POL to charter space to one another and agree upon sailing schedules and ports of call in the trade between U.S. Atlantic and Gulf ports, and points via such ports, and ports and points in Europe.

B. MEDITERRANEAN

The two major conferences in the Mediterranean ("Med") trades hold dominant market positions. The inbound trade is served by the *South Europe-U.S.A. Freight Conference* ("SEUSA") (Agreement No. 202-010676). The outbound trade is served by the *U.S. Atlantic and Gulf/Western Mediterranean Rate Agreement* ("AGWM") (No. 202-011102). A pooling agreement alongside AGWM, the *U.S.A./South Europe Pool Agreement* (No. 212-011234), authorizes the parties to pool revenue and to cross charter space. The U.S. Pacific/Med trades are served by the *Mediterranean/North Pacific Freight Conference* (No. 202-008090) in both the inbound and outbound directions.

The major eastbound and westbound trades between the U.S. and Europe experienced some recovery in terms of volume resulting from a gradual recovery of the U.S. economy. However, rates and profits were down in the trades due to widespread recession and persistent vessel overcapacity. Continuing losses forced some carriers to curtail their operations or to drop out of the trades altogether. The Med trade was again subjected to fierce competition and the entrance of newcomers during the year. Severe downward pressure was exerted on rates which deteriorated in both the eastbound and westbound directions. While some smaller or regional containership lines have dropped out of the Med trade, a traditionally overcrowded market, several other carriers -- Sea-Land, NYK Line, NOL, and Hapag Lloyd, among other companies -- reportedly view the Med as a natural crossroads to Europe, Africa and Asia. These mega-carriers have adjusted their round-the-world, or tri-continental, services to top off cargoes at such transshipment points as Cyprus while enroute to destination markets in North Europe, North America, and the Far East. These carriers are seeking to improve vessel utilization and to balance equipment flows by picking up Med

cargoes, without becoming captives of the area's low rates. Moreover, they can use Med ports in their westbound service aimed at U.S. and European imports from the Far East via the Suez Canal. The Med also provides an all-water link to the emerging markets in Eastern Europe, the former Soviet republics, and the Middle East. Farrell Lines Inc. ("Farrell") reportedly dropped out of the SEUSA conference due to persistent price-cutting policies by member lines and fears that the conference would adopt a CMP which may not be beneficial to Farrell.

Competition became so intense in the Med trade that some carriers could not raise rates soon enough to cover the rising costs of improved service. Many government-owned lines in Southern Europe, including national-flag carriers of France, Italy and Spain, scaled back sailing schedules in the face of recession, budgetary deficits, and increasing privatization. This situation reportedly has made it profitable for larger privately owned European, U.S. and Asian lines to deploy more vessels in the Med trade to pick up additional cargoes as part of their service to the rapidly growing markets of Asia and the Middle East. Following a pullout by Compagnie General Maritime, and Compania Trasatlantica Espanola's ("Spanish Line") curtailment of its services in the Med, Sea-Land, Maersk, and P&O Containers launched a joint expansion of their containership services between the U.S. and Southern Europe, the Middle East and India, sharing vessels, equipment, and port calls in the Med, Red Sea and Persian Gulf. More outsiders, Japanese and Korean carriers in particular, are considered likely to add stopovers in the Med to their Far East/Europe/U.S. services via the Suez Canal, regardless of intense competition in the market. SEUSA reportedly controls about 64 percent of the U.S./Med market. P&O Containers joined SEUSA in the spring of 1993, tightening the conference's control over the Med trade. Sea-Land reportedly is downsizing its shipping services primarily in intra-European feeder services

and its liner services to secondary destinations in the Med, including Adriatic ports. The Eastern Med has been a particularly competitive regional trade for a large conference carrier like Sea-Land with independent lines offering stiff competition.

U.S. exports to Italy, Spain, and Southern France have suffered due to recessions throughout Europe, and most recently from dollar appreciation having priced some U.S. products out of the market. Cargo volume for the AGWM Conference reportedly is down by 25 percent compared with 1992. Med markets are characterized as volatile in the best of times, but the AGWM Conference share of the total eastbound trade volume still approached 70 percent. SEUSA, its westbound counterpart, appeared to be holding its own in a generally weak market. Both Med conferences operate separately but have identical memberships. The current members of AGWM and SEUSA are Sea-Land, Nedlloyd, P&O Containers, Maersk, Italian Line, Evergreen Line ("Evergreen"), Lykes Bros. Steamship Co. ("Lykes"), and Zim Navigation. Six of the eight members -- except for Lykes and Zim Navigation -- are involved in a vessel sharing agreement ("VSA"). Maersk joined both conferences, and the Spanish Line exited the Med trade in the spring of 1993.

It should be noted that the TAA includes many of the same participants in the Med conferences. Cargo moving to or from inland European points can move through ports served by TAA or Med carriers. Moreover, the success of TAA in making rate increases stick has served to bolster rates to some Med areas. The Med conferences have relatively few service contracts, but independent action on tariff rates is widespread. The Med trade is described as a marketing nightmare for conference carriers due to the diffuse nature of the non-conference carriers. This situation is exacerbated by large carriers operating to or from the Middle East which stop to

load cargoes in the Med, a business which fluctuates with the fortunes of the Middle Eastern trade.

Rationalization of shipping services was the major factor underlying the types of agreements implemented in the Med during the year. These include *TMM/Tecomar Space Charter and Sailing Agreement* (No. 232-011391) which is described above and the *Western Mediterranean VSA/Maersk Space Charter Agreement* (No. 203-011402) which permits Maersk to charter space from the VSA Parties (Sea-Land, P&O Containers and Nedlloyd) in the trade between U.S. Atlantic Coast ports and the Mediterranean ports of France, Spain and the West Coast of Italy.

C. MIDDLE EAST

Several carriers initiated new or expanded existing services to the Arabian Peninsula and the Persian Gulf in anticipation of a reconstruction boom following the Gulf war. Initially, after the conflict, there was a general surge in shipments of oil field and construction equipment, and other goods. However, traffic in the region has not fulfilled carrier expectations, leading to rate declines of almost 30 percent since the war ended.

Prompted by extensive overcapacity and declining rates in the U.S./Middle East trade, several carriers filed a discussion agreement as a preparatory step to establishing a new conference in the trade. The agreement permits the carriers to discuss rates, capacity, and other common issues arising in the trade. These lines reportedly control over 90 percent of the traffic and include all of the major carriers and some smaller lines in the trade. The filing parties are Sea-Land, United Arab Shipping Co., National Shipping Co. of Saudi Arabia, P&O Containers, Maersk, Senator Line, Lykes, Waterman Steamship Corp., American President Lines ("APL"), Leif Hoegh and Co., A.S. (which later dropped out of the agreement), and Croatia

Line. Subsequently, the discussion agreement was amended to include the "8900" Lines Rate Agreement -- in the U.S. East Coast/Middle East trade -- and the West Coast/Middle East Agreement. The stated objective of the proposed new conference will be to raise rates by limiting capacity in the trade, an arrangement based on the TAA.

Other trade developments in the Middle East include the announcement of a cooperative weekly service between the U.S., Middle East and the Indian Subcontinent to be provided by Sea-Land, P&O Containers, and Maersk. Lykes canceled its regularly scheduled service in the Persian Gulf in July 1993, and reportedly plans to transship Gulf and Arabian Peninsula-bound cargo through Northern Europe. APL and Mexican Line filed a discussion agreement with the Commission in September 1993, to explore the possibility of a cooperative arrangement between the two carriers in the transpacific trade that would encompass ports and points in the Indian Subcontinent and the Middle East.

The trend toward rationalization and restructuring of shipping services was also apparent in the Middle East. The *U.S./Arabian Gulf Agreement* (No. 203-011403) permits Maersk, P&O Containers, and Sea-Land to charter vessels and space, and to rationalize sailings in the trade between the U.S. Atlantic and Gulf and the Red Sea Coast of Saudi Arabia, the Arabian Gulf and the Goa/Karachi range of the Indian Subcontinent. The agreement also permits voluntary rate authority and the withdrawal of vessels or vessel capacity in the trade.

The *Red Sea/Arabian Gulf/Indian Subcontinent Discussion Agreement* (No. 203-011408) permits the parties to meet, discuss, and exchange information on rates, charges, service items and other matters in the trade from ports and points in

the U.S. to ports and points in the Middle East and the Indian Subcontinent.

The *Middle East Sea-Land/Nedlloyd Space Charter Agreement* (No. 203-011412) permits Nedlloyd to charter space from Sea-Land in the trade from U.S. Atlantic and Gulf ports, and inland U.S. points via such ports, to ports on the Mediterranean Sea, the Red Sea Coast of Saudi Arabia, ports on the Arabian Gulf, and Bombay, India. The parties may also discuss and agree upon rates, terms and conditions of service in the trade.

The *APL/TMM Discussion Agreement* (No. 203-011428) permits the parties to discuss rates, costs of service and other matters of mutual concern in the trade and various subtrades between ports and points in the Far East, Indian Subcontinent, Middle East, and ports and points in the U.S.

The *Global Container Lines/Bosco Atlantic Lines Agreement* (No. 203-011429) authorizes the parties to charter space to or from each other, rationalize sailings, discuss rates, charges, service items, and other matters pertaining to the transportation of cargo in the trade between ports and points in the U.S. and ports and points on the Red Sea, Persian Gulf, Central and South America, Africa, India, Pakistan, Bangladesh, Sri Lanka, Singapore, Indonesia and Thailand.

D. AFRICA

Liner shipping companies increased services to Africa during fiscal year 1993 in response to prospects for increased trade, especially with Southern Africa. Projected increases hinged on expected high growth rates in the Republic of South Africa ("South Africa") following the removal of anti-apartheid sanctions. South Africa is also an important transshipment point for trade with Namibia, Botswana and Lesotho. Namibia,

a former South African protectorate, very rich in natural resources, is also expected to achieve significant economic growth.

Lykes increased its services to Western and Southern Africa following a 17 percent increase in its U.S./Africa trade in 1992. The company opened a sales office in Durban to replace its agency status in Johannesburg. It added to its available cargo capacity through a VSA with Safbank Line. Together they operate eight vessels sailing every nine days. Lykes and Safbank Line plan to add four more vessels, bringing the total to twelve, and they plan to shift to a weekly service.

Four other carriers increased services or started new ones to South Africa during 1993. Wilhelmsen Line, the dominant carrier in the West Africa trade, started a service to Cape Town and Durban with three ships sailing every two weeks. Wilhelmsen Line gained much of the price-sensitive exports of low-valued commodities to South Africa by pricing its service 5 to 10 percent lower than other carriers. RSA Line, a subsidiary of Baltic Shipping Co., upgraded and improved its fortnightly service by adding a third vessel and changing its arrival/departure schedule from fortnightly to every ten days. China Ocean Shipping Company also entered the trade with four multipurpose ships making calls at Durban and Port Elizabeth. Hoegh-Ugland Auto Liners started a service by relaying cargo between North America and West Africa via Le Havre, France. The company operates two vessels in a fortnightly service. Also, during the year, Med Shipping provided the most frequent service, a fixed-day, weekly arrival/departure. Med Shipping plans to increase its service by a slot charter agreement with another carrier. Among the other carriers serving this sector of the African trades are: Torm Lines, Maersk, P&O Containers, Sea-Land, Farrell, America Africa Line, and Evergreen.

The East African region, which includes Burundi, Kenya, Malawi, Mozambique, Ruanda, Somalia and Ethiopia, generates much less trade than the Western and Southern regions. The East African region is served by some small shipping companies and subsidiaries of large companies such as Maersk, P&O Containers and Mitsui OSK Line ("MOL"). During fiscal year 1993, trade was very depressed. Despite this, *The United States/Southern and Eastern Africa Conference* (No. 202-011259) implemented a general rate increase of 5 percent. The conference claimed that it was forced to seek the general rate increase because of higher stevedoring costs, port charges and increased vessel operating expenses.

The major agreements which became effective in this trade in fiscal year 1993 are as follows: *United States/Canary Islands and West Africa Carrier Discussion Agreement* (No. 203-011393); the *Global Container Lines/Bosco Atlantic Lines Agreement* (No. 203-011429); and an amendment to *U.S.A./Southern and Eastern Africa Discussion Agreement* (No. 203-011233-005) which added Southern Africa to its geographic scope. The *Trans-Pacific American Flag Berth Operators Agreement* (No. 202-008493-021) was also amended to include, among other things, African countries bordering on the Red Sea.

E. LATIN AMERICA AND THE CARIBBEAN

Latin America and the Caribbean continued their economic growth in fiscal year 1993, but at less significant rates than in 1991 and 1992. Venezuela, for instance, which had growth rates of 10.4 percent and 7.3 percent in 1991 and 1992 respectively, achieved a rate of only 3 percent. In the other countries, rates averaged 5 percent. Brazil, with the largest economy in the region, averaged 4 percent. The sharp decline in coffee prices was an important factor contributing to low growth rates. Overproduction and the lack of a coffee

agreement with quotas exerted downward pressure on coffee prices.

U.S. trade with the region, especially with Brazil, continued to grow. In fiscal year 1993, in terms of value, U.S. exports to Brazil increased by \$2.6 billion over 1992. The increased trade was due mainly to trade liberalization measures instituted by Brazil in 1992. Measures it undertook included: increased government spending, a reduction of interest rates, and a reduction of import duties. The U.S. International Trade Administration reported that these policies resulted in a 4.6 percent increase in Brazil's worldwide imports, valued at \$8.96 billion.

Signs of protectionist tendencies emerged in Brazil towards the end of fiscal 1993, when a bill to reimpose cargo preference laws, using the UNCTAD Code system of 40:40:20 for both conference and liner trades, was introduced in the Brazilian Congress. However, this bill lacks widespread support.

Other regional developments included: (a) the signing of a free trade agreement between Colombia, Mexico and Venezuela; (b) adoption of a new economic policy in Guyana, which, following a change of government, decided to promote private enterprise instead of state-ownership; and (c) extension of the bilateral maritime agreement between the U.S. and Venezuela for eighteen months.

During fiscal year 1993 the imbalance in trade continued. Volumes moving south remained approximately half of northbound volumes. However, southbound volumes are growing at a faster rate.

The trade was plagued by severe overcapacity because of the large increases in shipping capacity in 1992 when many

carriers responded to favorable trade conditions by adding vessels. Maersk was one new carrier in the service which added four vessels in a weekly service between the U.S. East Coast and Panama, Colombia, Chile, Peru and Bolivia. In the other sector, Zim Navigation, another new carrier in the trade, added three vessels between the U.S. East Coast and Argentina, Brazil, Paraguay and Uruguay. In July 1993, Mexican Gulf Line initiated a new weekly container service between U.S. Gulf ports and Tuxpan, Mexico, with one 276-TEU vessel. The company plans to add more capacity later.

Companies leaving the trade or reducing service failed to significantly alleviate the overcapacity conditions. Nedlloyd and NYK Line both withdrew in 1993. Lloyd Brasileiro and Empresa Naviera Santa provided reduced service. However, overall, the increase in capacity prompted a reduction in freight rates.

Crowley American Transport ("Crowley") added capacity by doubling its sailing to two per week in a direct service between Puerto Rico and the U.S. East Coast. Pan American Independent Line added two vessels in its U.S. East Coast/Argentina, Brazil, Paraguay, Uruguay, and Venezuela service. National Line increased its capacity through the addition of two ships and a space charter agreement with Crowley. Ivaran Line replaced two of its vessels with much larger ones and added two more between the U.S. East Coast and Argentina, Brazil, Paraguay, Uruguay, and Venezuela. In the Brazil/U.S. East Coast service, Columbus/Alianza Line added one vessel to its service.

New agreements implemented in 1993 were: *The Cayman Islands Agreement* (No. 203-011385); *TMM/Tecomar Space Charter and Sailing Agreement* (No. 232-011391); *Empremar/CTE Joint Service Agreement* (No. 207-011397); *TMM/HL Space Charter and Sailing Agreement* (No.

203-011402); *Sea-Land/CACL Space Charter Agreement* (No. 232-011413); *The Bermuda Discussion Agreement* (No. 203-011418); *Thompson/CIS Agreement* (No. 232-011417); *The Lykes/Linabol Cooperative Agreement* (No. 232-011425); *The West Coast of South America Discussion Agreement* (No. 203-011426); and the *Agreement for the Settlement and Mutual Release of Claims Between AmTrans and Nacional Relating to the Brazil/U.S. Gulf Pool Agreements for Pool Years 1987-1991* (No. 203-011430).

F. TRANSPACIFIC

In the Pacific, fiscal year 1993 began with increasing rates and vessel utilization eastbound, and stagnant volumes and rates westbound. By the fall of 1993, rates eastbound had risen, stabilized, and fallen (yielding a net rise for the year), and rates westbound had fallen. Underlying these shifts was the strengthening U.S. economy and the building economic decline in Japan.

The commodity mix of exports from the U.S. is comprised mostly of primary materials used as inputs in the production of finished goods. Thus, paper and paperboard, newspaper, raw cotton, chemicals, and lumber account for a large part of U.S. exports. U.S. imports tend to be finished goods including shoes, toys, electronic equipment, furniture, automobile parts, and sporting goods. Imported goods, therefore, tend to be higher valued than exported goods.

In the eastbound trade, high cargo volumes began in the summer of 1992, lasted into the fall, slacked off in the winter, and resumed again in the summer of 1993. By the summer of 1993, a space shortage threatened as many U.S. retailers and manufacturers began stocking for the winter holiday season. Many carriers, especially lower-priced independent carriers, had to juggle ship sizes and schedules to meet the increased

demand. Several carriers changed their port rotation to provide faster direct service from the busiest Asian ports to the U.S. West Coast.

In response to the increasing vessel utilization, the eastbound carriers making up the *Transpacific Stabilization Agreement* ("TSA") (No. 202-011223) initiated a \$200 per 40-foot container rate increase. By year end, however, as intra-conference competition heated up, rates on electronic goods and auto parts began to fall. Nor could the carriers maintain higher rates for footwear shipped by large shippers, who were able to obtain favorable service contracts. Tariff rates on footwear for small and medium-size shippers generally held until shortly after the service contracting period ended (service contracts are typically negotiated in April and May), when many conference carriers began offering independent actions. Kawasaki Kisen Kaisha Ltd. ("K Line"), MOL, OOCL, and NOL were identified as being particularly aggressive.

The *Asia North America Eastbound Rate Agreement* ("ANERA") (No. 202-010776) offered large footwear shippers a two-year service contract, the normal term being one year. ANERA also targeted the high-profile, high-volume general department store merchandise importers who had been patronizing independent lines. Although ANERA could not maintain the \$200 rate increase, it was able to sign service contracts with many of the large importers using single-year contracts containing larger minimum-volume commitments.

Total westbound winter cargo exports were down in 1993. Wastepaper cargo volumes were particularly weak, mostly because of the economic strain in some foreign markets, oversupply in some areas, and the development of competing sources of supply. This led to wastepaper rates falling dramatically. Similarly, foreign sources of supply for resins cut resin exports and, consequently, resin rates. Cotton rates also

fell when shipments booked by mid-March were only 43 percent of the cotton expected to be exported by that time of the year. The filing of lower rates by one carrier was quickly followed by several other carriers with the net result that winter revenues for all carriers dropped.

It is common on the westbound trade for cargo flows to drop during the summer when Asian manufacturers typically reduce their purchases of American raw materials. Demand then usually picks up in the late fall when Asian production picks up. This cycle held in 1993, although the economic conditions in some Asian countries, particularly Japan, worsened, causing lower-than-normal demand for outbound cargo. However, despite the reduced cargo flow, carriers in the *Trans-Pacific Westbound Rate Agreement* ("TWRA") (No. 202-010689) reported being able to maintain a 70 percent capacity utilization rate.

In July, anticipating a late summer cyclical increase in demand, the TWRA carriers determined to restore rate levels and proposed rate increases to take effect in August. Yet by the end of August, many of these rate increases had been largely eroded through independent actions. Partially in response to this weakness in westbound rates, at their September meeting the TSA carriers (all of the TWRA carriers are also TSA members) met and agreed to further limit space from 8 percent to 10 percent. Agreement on specific rate increases could not be reached, however, and no increases were announced.

Changes in the westbound trade forced several rate and service responses by TWRA. In an effort to restore volumes lost by the decrease in the amount of their normal cargo moving, TWRA made a major shift in policy by offering a service contract to lumber shippers from the Pacific Northwest. These shippers had been using mostly breakbulk carriers at

tariff rates. TWRA also initiated new surcharge levels, lowering the bunker fuel and Taiwan currency surcharges, maintaining the currency surcharges for Korea and Singapore, and increasing the Japanese currency surcharge rates several times throughout the year.

The overall trade picture in the Pacific is changing. As the higher-valued eastbound cargo increasingly dominates the transpacific trades, Pacific carriers are lowering their transit times. The trend has been most pronounced for cargo coming from Southeast and Central Asia. Sea-Land and Maersk started another string of ships aimed at moving cargo to and from Singapore to the U.S. West Coast in 16 days, and from Hong Kong in 12 days. This represents a shift from the North Asia countries of Korea and Japan, who used to be the main source of high-value goods demanding fast service, to the Southeast Asia countries, whose lower labor and production facility costs have been enticing producers to move southward.

Carriers have increased their available slots in several different ways. The NYK Line, NOL, Hapag Lloyd pendulum joint service from Asia to Europe began in April, offering shippers a through service from Asia to the U.S. West Coast, through the Panama Canal to the U.S. East Coast, and then on to Europe. K Line, on the other hand, offered nonstop service from Singapore, Hong Kong, and Taiwan to the U.S. West Coast, skipping the traditional "last-out" stops in Japan. This comes in part because of the worsening recession in Japan, and the growing allure of Singapore, in addition to Hong Kong and Taiwan, as transport hub for the new manufacturing centers in Southeast Asia and China.

Despite the relative slump in cargo westbound, total container volume (both inbound and outbound) actually increased in 1993. The U.S.-flag conference carriers APL and Sea-Land carried almost twice as many import containers as

export containers in the U.S./Asia markets (excluding military and household goods), while independent and/or foreign-flag carriers like Evergreen and NYK split their lifts approximately fifty/fifty. According to reports of the Port Import Export Reporting Service, a service of *The Journal of Commerce*, comparing the spring of 1993 to the spring of 1992, the carriers growing the fastest were Cho Yang (67 percent), NOL (39 percent), and Yangming Marine Transport (35 percent). Sea-Land, Evergreen, Maersk, APL, and Hanjin Shipping retained their standing as the top five shipping lines, measured by second quarter imports and exports of TEUs. Of these five, Hanjin Shipping showed the biggest increase, with growth of 23 percent over the second quarter 1992. Evergreen grew 8 percent, Maersk 5 percent, Sea-Land 4 percent, and APL 2 percent. The share of cargo moved by conference carriers fell slightly by 0.1 percent to 53.5 percent outbound, and by 1.4 percent to 54.2 percent inbound. Shippers cite the increased, conference-like service offered by non-conference carriers, such as Hyundai Merchant Marine, Hanjin Shipping and Evergreen, for the independents' increased market share. Some shippers said that lower rates notwithstanding, they preferred to use independent carriers because of their much simpler system for quoting rates.

Even the smaller trades have been showing signs of growth. Trial voyages by Far Eastern Shipping Co. ("FESCO") between Tacoma, Washington and Vladivostok, Russia, turned out profitably enough for FESCO to seek authority to establish scheduled service on the route. FESCO is proposing to start the service with a pair of large roll-on/roll-off ships that can also move container traffic. APL also announced establishing commercial service to and from the Russian Far East. Exports to the Russian Far East include consumer goods, capital equipment for processing lumber and seafood, building materials and food products. Commodities coming from Russia include lumber and seafood.

Carriers are meeting the increased inbound cargo volumes by expanding their networks and cooperating or merging with other carriers to be able to take advantage of economies of scope and scale in marketing and cargo solicitation. Hapag Lloyd joined TSA in January 1993, under an amendment to the TSA (No. 202-011223-007). TWRA (No. 202-010689-053) submitted an amendment which permits the parties to include service contracts in the India Subcontinent trade to ports in the Far East. An amendment to ANERA (No. 202-010776-082) expands the geographic scope of the subcontinent section to include U.S. Atlantic and Gulf Coast ports.

Trade between Asia and Mexico is also expanding. APL's Mexico subsidiary APC de Mexico, based in Mexico City, has helped the company capitalize on its international cargo transportation business south of the border. In an effort to expand its access to Mexican ports and shippers, APL has also announced the establishment of closer ties with TMM. An agreement, the *APL-TMM Discussion Agreement* (No. 203-011428), permits the parties to discuss rates, costs of service and other matters of mutual concern in the trade and various subtrades between ports and points in the Far East, Indian Subcontinent, Middle East, and ports and points in the U.S. Adherence is voluntary.

Mexican Line and EAC Lines Trans Pacific Service, Ltd., filed an agreement (No. 232-011372) to permit the parties to charter space to one another, and to rationalize their respective services in the trade between U.S. West Coast ports and inland points via such ports, and ports and points in the Far East, including other Pacific Basin ports and points via transshipment.

Other agreements of interest in the Pacific include the *NGPL - Joint Service Agreement* (No. 207-011386), filed in October 1992. This agreement provides service in the trade between Papua New Guinea, the Solomon Islands, and other

Asian ports and ports in the U.S. and its territories and possessions via transshipment at ports in the Far East. *Nippon Yusen Kaisha, Hapag Lloyd, A.G., and Neptune Orient Lines, Ltd. Far East/United States/North Europe Space Charter and Sailing Agreement* (No. 203-011398) was filed and permits the parties to charter and subcharter space among themselves, coordinate sailings and agree, on a voluntary basis, on rates and service contracts in the trade between ports and points in the Far East and North Europe, and ports and points in the U.S. Atlantic, Gulf, and Pacific Coasts, including Alaska.

The domestic carriers are increasingly "going international" by expanding their cooperation with international carriers. *Hapag-Lloyd/Matson Cooperative Working Agreement* (No. 203-011414) establishes a transshipment arrangement between the parties for cargo moving between ports in Washington and Oregon and ports worldwide, with transshipment in California. The parties may also discuss and agree upon rates, terms, and conditions of service.

Finally, national-flag carrier interests are still important in the Pacific, with both the U.S. and the Japanese carriers meeting to discuss items of mutual interest. Amendments to the *U.S.-Flag Far East Discussion Agreement* (No. 203-010050-009) and *Japanese-Flag Far East United States Discussion Agreement* (No. 203-010905-004) permit the parties of both agreements to meet, discuss, and exchange information with one another. *Japanese-United States Flag Carrier Discussion Agreement* (No. 203-011427) permits the parties to Agreements No. 203-010050 and 203-010905 to meet and discuss matters of mutual interest which are common to the scopes of their respective discussion agreements.

G. WORLDWIDE

The trends identified last year in the worldwide liner shipping markets have continued during 1993 -- unbalanced traffic flows in major trades, decreased trade due to economic recessions, currency fluctuations, and overtonnaging. As a result, many operators continue to see their profitability eroded. This, in turn, continues to accelerate rationalization and restructuring of shipper services in all major trades.

Cooperation among carriers extended to the issue of electronic data interchange systems in conjunction with the two agreements with worldwide scope filed during the year. *The ATFI Working Group Agreement* (No. 203-011405) established an advisory group of common carriers, conferences and other agreements to pursue common industry approaches regarding the Commission's implementation of the ATFI System in the U.S./worldwide trades. *The Pacific Information Systems Agreement* (No. 203-011399) created a research and development program intended to develop information systems that will facilitate customers' access to and use of carriers' freight transportation services in the worldwide trades.

The refrigerated cargo ("reefer") market was one segment of the worldwide liner shipping market which saw improvement during the past year. This reefer growth was partly fueled by an increased demand for fresh fruits and vegetables throughout the year by consumers in the U.S., Japan, and Europe. New markets in Eastern Europe and the former Soviet republics also provided some expansion opportunities. Further, technological innovation has allowed some time-sensitive commodities previously moved exclusively by air to withstand the longer transit times by sea.

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 U.S. 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 In the ensuing years, the Commission has received up to a million pages per year. In FY 1993, 792,200 tariff pages were received, as well as 6,445 service contract filings. These numbers could have been higher if the Commission had not implemented its ATFI system on February 22, 1993.

It was because of the enormous amount of paper that the Commission had to process with a limited number of employees that led it to consider modern technology as a means of alleviating the paperwork burdens on both the government and the shipping industry. A systematic exploration of this subject area by the Commission commenced with a series of studies.

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

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.

Commission statutory functions, and that they could be more effectively used if the data were more accessible.

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 was 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. The Task Force gathered additional information, and in January 1985, sent questionnaires to 17 ocean carriers, 10 NVOCC's, 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 insured 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 ATFI 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 *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 *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 *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 ATFI Advisory Committee, in approving the *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, continues to be encouraged. An efficient tariff filing and retrieval network will promote fair competition and facilitate trade.

Accordingly and after further analysis, the Commission believes that it has sufficiently considered all policies and conflicting interests involved in the proposed

system and has struck a proper balance in retaining the functionality of ATFI as originally devised in the Feasibility Study, and as further refined in the RFP. [December 23, 1988 (53 Fed. Reg. 52,785).]

With respect to retrieval, however, section 502 of Pub. L. No. 102-582 (46 U.S.C. app. 1707a) of November 2, 1992, has established new criteria for providing for remote access. See Section N, *Update on Remote Access - January 1994*, below.

J. CONTRACT AWARD and MAJOR CHANGES

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

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

The contract for the five-year system life also contained options for each subsequent Phase, i.e., Development and Testing, Prototype Operation, and each year of Full-scale Operation. If all options are exercised, the contract will be worth approximately \$7M.

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

The last optional phase of the PRC Inc. contract expires towards the end of fiscal year 1994, and the Commission will seek proposals on a new contract, which will include ongoing maintenance of the ATFI equipment. The Commission also intends to explore adding other functions with a view towards making ATFI more efficient and functional, including enhancements resulting from improved technologies.

K. DOCKET NO. 90-23

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. After being provided the opportunity of seeing the system, 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.

On March 25, 1991, the Commission issued a Second Interim Report ("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.

The Commission's Third Interim Report ("Third Interim Report") in this proceeding was issued on July 23, 1991 (with notice of availability appearing on July 29, 1991, at 56 FR 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. Once ATFI is established and all tariff matter is being filed in electronic format, Part 514 will be the sole, all-inclusive CFR part covering tariffs and service contracts, and other CFR parts, currently governing various facets of tariffs and service contracts, will be removed from the CFR, i.e., Parts 515, 520, 550, 580 and 581.

The proposed new Part 514 reiterated and/or rephrased traditional regulatory policy, so that it could be adapted to the new electronic system. Also, in tracking the designed functionality, the proposed rule contained the following major features:

- **The Harmonized System of Commodity Coding, as modified for ATFI, had to be used for describing and codifying commodities.**
- **The essential terms of service contracts, as well as tariffs themselves, had to be filed and maintained in database format, rather than in textual format.**
- **Assessorial charges had to be expressed in algorithm (mathematical-formula) format.**

In order that the public could register in advance for use of ATFI for filing and/or retrieval, as well as obtain other important materials, the registration form and user-charge portions of the proposed rule were finalized in December of

1991 (56 Fed. Reg. 61,164), at about the same time as public comments to the entire proposed rule were submitted.

As suggested by the 1991 submissions, still further comments were invited, and an oral comment session was conducted by the full Commission on May 19, 1992. After consideration of all the comments, the Commission finalized the proposed rule in an interim rule of August 12, 1992 (57 Fed. Reg. 36,248). The interim rule addressed three major policy issues as follows:

- **The Harmonized Code provision for commodities was changed from mandatory to optional (or preferred), without prejudice to future rulemakings.**
- **As suggested by the commenters, the essential terms of service contracts could be filed in full-text, *vis-a-vis* the database format of the proposed rule, with some degree of standardization (e.g., rule numbers) and with the final format to be developed after another round of comments from the public.**
- **Algorithms need not (cannot) be developed for all possible assessorial charges, e.g., those that are not pre-determinable. The interim rule clarified the algorithm requirement and provided another option for linking textual rules to Tariff Line Items ("TLI"), i.e., the "dummy algorithm" or "null linkage." Under the full-text format for essential terms, no algorithmization would be possible.**

Further comments were invited by the interim rule publication, especially on suggestions for full-text filing of essential terms. As a result of these comments, the *First Interim ATFI Amendments* were issued on January 4, 1993 (58 Fed. Reg. 25), effective on February 3, 1993, and inviting two more

rounds of comments in 1993. The major subject of the *First Interim ATFI Amendments* was the "final format" for electronically filing essential terms so that they could be filed in "full-text" format. While certain standardization was retained, such as the numbers and subjects of the statutory-required terms, the new provision appeared to allow more flexibility in *filing* and, therefore, will make it easier for firms to file. On the other hand, the "full-text" format might make *retrieval* more difficult for the average shipper, so the format decision may have to be revisited after further experience.

The two 1993 rounds of further comments to the interim rules addressed almost solely non-rulemaking matters, but rather, technical or operational concerns which continue to be addressed and resolved, to the extent feasible.

L. BATCH FILING GUIDE

The proposed refinements and resolution of tariff policy issues contained in the fiscal year 1990 contract modification also required revision of the File Transfer Formats and Code Reference Tables ("Transaction Set") originally issued in March 1990. The NOI in Docket No. 90-23 also provided that the Commission would not make available to the public batch-filing software, but would distribute file transfer formats and code reference tables (in a batch filing guide) to facilitate formatting and transfer of tariff data and, if private-sector firms desired, the development of their own software.

Accordingly, the First Interim Report of December 1990 in Docket No. 90-23 appended the ATFI "Batch Filing Guide" (containing, *inter alia*, transaction sets, file transfer formats, data dictionary, and code reference tables). Since its first issuance, the "Batch Filing Guide" has been revised several times to reflect major system improvements, while, at the same time, attempting to provide the public with as much advance notice

of such changes as possible. Other parts of the ATFI User Guides, such as the "ATFI Fundamentals Guide," etc., are also revised when necessary and made available to regular subscribers. This process is expected to continue throughout the life of the system.

M. MISCELLANEOUS MILESTONES

Information Bulletins ("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. In fiscal year 1992, three more technical IBs were issued, i.e., IB's 05-92, 06-92 and 07-92.

Upon the resignation from the Commission of Rob Quartel in early fiscal year 1992, Commissioner Ming C. Hsu was appointed by Chairman Christopher L. Koch to be in charge of the Commission's ADP Committee and the ATFI project.

Certifications of firms for batch filing capability began in late fiscal year 1992. There are now well over 30 such certified firms, many of which are assisting carriers and conferences to convert their tariff matter to electronic form.

On February 11, 1992, IB 04-92 announced that ATFI implementation, previously scheduled for July of 1992, would have to be postponed as a result of a GSA-required relocation of FMC headquarters. When it was learned that the move would take place in August 1992, Supplemental Report No. 2 and Order in Docket 90-23, issued on August 12, 1992, provided a new implementation schedule, with filing requirements phased in by trade-areas/operations of the filers, beginning in early 1993.

The implementation schedule was refined on December 17, 1992 (at 57 Fed. Reg. 59,999) and was republished on May 28, 1993 (at 58 Fed. Reg. 31,522). This schedule provided that the official tariffs be electronically filed at different times in calendar year 1993 -- first, by carriers and conferences operating in the Worldwide/Asian & South Pacific trades; then, those in the European trades; the Africa/Mid East trades; the North American/Caribbean trades; the Central/South America trades; then, terminals and the domestic trades. Finally, the schedule provided for the beginning of the electronic filing of all essential terms of new service contracts. Many filers were not ready and were granted extensions of time. Others have not met the Commission schedule and found themselves named in orders to show cause why their tariffs should not be canceled for failure to file on time.

Even with the extensions, however, the Commission continued to target December 31, 1993, as being the date by which all filers should be in compliance.

Meanwhile, new Part 514, *Tariffs and Service Contracts*, established by the rulemaking in Docket No. 90-23, has been sufficiently finalized to provide guidance to ATFI users, especially the new filers, along with the systematically-updated ATFI User Guides (Batch Filing Guide, etc.), press releases, and ATFI System News. One of the most active areas of change involves the addition to the locations' database of new locations.

Additionally, 46 CFR Part 514, which will be the only tariffs and service contract rule (CFR part) after full implementation of ATFI, has been amended several times for non-ATFI related purposes, such as for filing requirements for Anti-Rebate Certifications in Docket No. 92-27. Other dockets not directly involving electronic filing but requiring amendment of Part 514, include Dockets Nos. 92-21, *Amendments to Service*

Contracts (57 Fed. Reg. 46,318); 92-34, *Domestic Offshore Filing Regulations -- Exemption Under Section 35 of the Shipping Act, 1916* (57 Fed. Reg. 44,697); 92-36, *Reduction of Notice Requirement for Tariff Increases in the Domestic Offshore Trades -- Exemption Under Section 35 of the Shipping Act, 1916* (57 Fed. Reg. 44,504); and 92-37, *Financial Responsibility for Non-Vessel-Operating Common Carriers* (58 Fed. Reg. 5,618).

New rules directly related to ATFI's electronic-filing requirements are the *Electronic Filing of Military Rates* (Docket No. 93-01 of May 17, 1993, at 58 Fed. Reg. 28,787) and *Implementation of Section 502 of Public Law 102-582* (Docket No. 93-03 of May 27, 1993, at 58 Fed. Reg. 30,709). For a more detailed analysis of the latter, see Section N, below.

N. UPDATE ON REMOTE ACCESS DECEMBER 1993

Since the 1986 *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-sector tariff services, the design originally contemplated restrictions on remote retrieval, such as the ability to retrieve only rudimentary information, "one-tariff-at-a-time."

A similar 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.³

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 user 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

³ Additionally, subsections (a) and (c) of section 2 of the Act of August 16, 1989 (46 App. U.S.C. 1111c), provided respectively: "(a) The Federal Maritime Commission shall require that complete and update electronic copies of the Automated Tariff Filing and Information data base are made available (in bulk) in a timely and nondiscriminatory fashion, and the Commission shall assess reasonable fees for this service consistent with section 552 of title 5, United States Code. [(b) See text.] (c) The Commission shall provide that any information from the Automated Tariff Filing and Information System that is made available to the public may be used, resold, or disseminated by any person without restriction and without payment of additional fees or royalties."

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, an "Update on Remote Access" was first included in the Commission's 28th Annual Report to Congress for FY 1989, and the practice has continued.⁴

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

⁴ The *Update on Remote Retrieval* was also 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 years 1991 through 1993, the Commission provided extensive opportunity for more public comment, as well as public demonstrations and training during the Prototype Phase.

that ATFI will not * compete with private sector providers of information services. As the Commission's 1986 Feasibility Study recommended, remote access to the system should be only rudimentary with essentially no analysis of the data. In addition, the procedures governing the system should provide that the user be able to access the system on a limited number of items before automatic log-off.

[* 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, had developed reasonable controls and procedures governing remote access to accommodate the intent of Congress, as described above. These, however, are subject to further modification as regulatory requirements change, even after experience during prototype and full operation. The regulatory requirements were substantially changed with the enactment of Pub. L. No. 102-582 on November 2, 1992. See below.

It is still intended, however, 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 various "help" tables at log-on. To identify the sought-after 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 also may 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 also may be readily accessed during the same session. There is no artificial limitation to "one-tariff-at-a-time," other than that dictated by the basic functionality of the system, itself.

The original design had intended that the retriever will be automatically logged-off a session after a particular time, such as 30 minutes. The period of time established would allow sufficient exploration of all the applicable rules and, perhaps, another TLI, if there was a mistake in selecting the first TLI. After experience, it was intended that this time limit would 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 free access to (only) its own filing 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 interim rules (issued on August 12, 1992, and January 4, 1993) in Docket 90-23, *Tariffs and Service Contracts*, have addressed remote retrieval issues and comments submitted by the public.

On November 2, 1992, however, the President signed Pub. L. No. 102-582, section 502 of which (46 App. U.S.C. 1707a) repeals section 2 of the Act of August 16, 1989 (46 App. U.S.C. 1111c -- *see* above), and directs that most of the restrictions on public retrieval of tariff data be removed from the ATFI system.

Accordingly, on February 8, 1993, the Commission issued a notice of proposed rulemaking in Docket 93-03, *Implementation of Section 502 of Public Law 102-582*. After public comments were submitted by March 10, 1993, a final rule was issued on May 27, 1993, becoming effective on June 28, 1993. In addition to repealing the restrictions of remote retrieval, the new law, as implemented by the final rule, contained the following major requirements:

- **Electronic filing of tariff material into ATFI by September 1, 1992.**
- **The Commission make available the ATFI tariff data electronically to any person, "without time, quantity, or other limitation."⁵**
- **A fee of 46 cents a minute for both:**
 1. **Direct remote access to ATFI, resulting in the lowering of the Commission-intended fee of 50 cents per minute; and**

⁵ The original ATFI design had intended that the retriever be automatically logged-off a session after a particular time, such as 30 minutes. The period of time established would allow sufficient exploration of all the applicable rules and, perhaps, another TLI, if there was a mistake in selecting the first TLI. After experience, it was intended that this time limit would be adjusted upward or downward. The new statutory provision, however, would not allow such a limitation.

2. Subsequent computer access by any person of ATFI data maintained by a commercial tariff service for its private customers. The Commission's implementing rules provide that third-party vendors desiring to obtain the ATFI database on tape must submit for approval a plan to collect this new, secondary fee from their customers and remit the fees monthly to the Commission. As of December 1993, three or four such firms have had their accounting/collection systems approved. Because not all electronic tariffs have become effective by the end of December 1993, however, there has been little demand for access to ATFI data, either remote or otherwise.

The statutory fees are scheduled to sunset automatically on October 1, 1995.

The Commission will continue to keep Congress apprised on the issue of remote retrieval.



VI

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 foreign carriers in the U.S., either under U.S. law or as a result of acts of U.S. carriers or others providing maritime or maritime-related services in the U.S.

B. ACTIONS TAKEN*****

The Commission did not initiate any actions under the FSPA in fiscal year 1993. Although it discontinued three FSPA proceedings in 1992, the Commission required certain named carriers to file periodic status reports during 1993 on conditions in the Japan, Taiwan, and PRC trades. Through these reports,

***** Other actions and proceedings dealing with restrictive foreign trade practices were pursuant to section 19 of the 1920 Act, and are discussed in the following part: Significant Operating Activities by Organizational Unit, Office of the General Counsel.

the Commission is monitoring the progress being made on commitments to resolve outstanding issues. The Commission can institute new proceedings regarding any of these trades if it determines that sufficient progress is not being made to address any outstanding issues adversely affecting U.S. carrier operations overseas.

In the Japan trade, the Commission continues to receive reports regarding the terminated Japan Harbor Management Fund. The Commission is monitoring expenditures made by the fund to ensure that monies are being spent on labor-related projects from which U.S. carriers serving Japan may receive some benefit.

Throughout the fiscal year, the Commission received reports from U.S. and Taiwan carriers on legislative developments on liberalizing the trucking market in Taiwan. The Commission is monitoring the progress being made to amend Taiwan's highway laws to allow U.S. carriers to move their ocean containers inland via their own trucking services. Legislation has been introduced in the Taiwan legislative body. At year's end, legislation opening the trucking market to U.S. carriers remained pending.

In discontinuing its investigation of trade practices in the PRC, the Commission noted that there were significant concessions and commitments made by the PRC in resolving a number of the practices under scrutiny in the investigation. The Commission, however, remained interested in the unresolved matter of inland trucking by U.S. carriers, and determined to monitor developments during 1993. In April 1993, one U.S. carrier reported that it had received approval to operate a trucking service in the PRC in conjunction with a PRC entity. Notwithstanding the progress made on the trucking issue, the U.S. carriers again raised the serious problem they faced concerning tariff recognition by PRC agents. In July 1993, the

U.S. and PRC held intergovernmental talks regarding the renewal of the U.S.-PRC bilateral maritime agreement, which expires December 15, 1993. Also on the agenda of these talks were the trucking and tariff issues. Although no progress on the issues was made at the July meeting, further talks were scheduled for later in the year. The Commission will be following closely the progress made on outstanding issues during the second round of talks.

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

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

The data 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; the import data are compiled from the import entry and warehouse withdrawal forms. Both types of documents are required to be filed with U.S. Customs officials. These data are subsequently forwarded to Census. Both export and import statistics exclude: shipments between 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 1992. 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 1992. 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 (1992)

| <u>Rank</u> | <u>Country</u> | <u>Tons</u> <u>(000's)</u> |
|-------------|---|-------------------------------|
| 1 | Japan | 17,362 |
| 2 | Taiwan | 8,159 |
| 3 | China (PRC) | 5,815 |
| 4 | Republic of Korea | 5,623 |
| 5 | Germany | 4,891 |
| 6 | United Kingdom (Incl. N. Ireland) | 3,618 |
| 7 | Hong Kong | 3,297 |
| 8 | The Netherlands (Holland) | 3,098 |
| 9 | Italy | 2,947 |
| 10 | France | 2,589 |
| 11 | Thailand | 2,464 |
| 12 | Belgium | 2,432 |
| 13 | Brazil | 2,400 |
| 14 | Indonesia | 2,326 |
| 15 | Australia | 2,052 |
| 16 | Spain | 1,627 |
| 17 | Venezuela | 1,528 |
| 18 | Philippines | 1,385 |
| 19 | Malaysia | 1,316 |
| 20 | Singapore | 1,172 |

*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 same countries comprised the top ten U.S. liner cargo trading partners in both 1991 and 1992. Japan and Taiwan ranked first and second again in 1992. China (PRC) continued its ascent, by overcoming the Republic of Korea, to become the third largest liner trading partner in 1992. Rounding out the changes to the top ten countries were a one position ascent by the Netherlands (9th to 8th) and a similar descent by Italy (8th to 9th).

Of the remaining top twenty U.S. liner cargo trading partners, only Brazil and Spain maintained their 1991 positions in 1992. In positions 11 through 15, two pairs of countries changed places in 1992: Thailand switched places with Belgium, while Indonesia and Australia continued leapfrogging in positions 14 and 15. The Philippines and Venezuela traded places in positions 17 and 18. Singapore dropped to the 20th position in 1992. Malaysia entered the rankings for the first time in 1992, replacing Saudi Arabia (ranked 20th in 1991).

VII

**SIGNIFICANT
OPERATING
ACTIVITIES**

BY

ORGANIZATIONAL UNIT



A. OFFICE OF THE SECRETARY

1. General

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

The Secretary's Office also participates in the development of rules designed to reduce the length and complexity of formal proceedings, and participates in the implementation of legislative changes to the shipping statutes. During fiscal year 1993:

- The Commission heard 2 oral arguments and issued decisions concluding 15 formal proceedings. Another 23 formal proceedings were discontinued or dismissed without decision, while 13 initial decisions of an Administrative Law Judge became administratively final without Commission review. The Commission also concluded 211 special docket applications and 20 informal dockets which involve claims sought against carriers for up to \$10,000. During the same period, the Commission issued final rules in 14 rulemaking proceedings.
- Six rulemaking proceedings and one formal petition were pending before the Commission at the end of the year. Final decisions in these matters are anticipated in fiscal year 1994.
- Special Docket Officers issued decisions in 218 proceedings during fiscal year 1993.

2. Office of Informal Inquiries and Complaints and Informal Dockets

This Office coordinates the informal complaint handling system throughout the Commission. A total of 1,756 complaints and information requests were processed in fiscal year 1993. Recoveries to the general public of overcharges, refunds and other savings attributable to the complaint handling activities amounted to \$156,282. Since 1984, this Office has helped complainants recover over \$2,500,000.

The Office coordinated meetings between maritime industry representatives and Commission officials, and supplied materials and information requested by the general public. During fiscal year 1993, this Office responded to 749 such telephone requests and inquiries. The Office maintained liaison

with members of the President's Consumer Affairs Council, in which it participated throughout the fiscal year.

In addition, the Office is responsible for the initial adjudication of reparation claims up to \$10,000 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. Many of the claims received under this program constitute shippers' requests for freight adjustments arising from alleged overcharges by carriers, while a significant number pertain to the mishandling of personal effects shipments. During fiscal year 1993, 24 claims were filed, while 12 pending cases were carried over from the previous year. During the same period, 25 informal docket claims were concluded by the Office, while 1 other became a formal docket. There were 10 pending cases at the close of the fiscal year.

During fiscal year 1993:

- The Office participated in an interagency "hotline" discussion and working group. This committee of federal consumer specialists met regularly to exchange information on consumer referral techniques and telephone complaint and information processing.
- The Office successfully resolved a large number of claims involving statutory violations on the part of an untariffed NVOCC specializing in auto transport. The practices of this carrier have inflicted serious financial damage on many individual shippers.

- **The Office participated in the Interagency Expo for congressional staff. This Expo is held every two years to inform interested staff personnel of available complaint and inquiry referral facilities.**

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 1993, 32 proceedings were pending before Administrative Law Judges. During the year, twenty cases were added, which included one proceeding remanded to Administrative Law Judges for further proceedings. The judges held five prehearing conferences, held 38 days of oral hearing in phase one of the *Guam* case (Docket No. 89-26), formally settled ten proceedings, dismissed or discontinued sixteen proceedings, and issued ten initial decisions in formal proceedings, and one initial decision in an informal docket.

2. Commission Action

The Commission reversed in part one formal decision, and eight formal decisions and one informal decision became administratively final.

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

Save On Shipping, Inc. v. Puerto Rico Maritime Shipping Authority [Docket No. 92-12].

This proceeding concerned mainly the lawfulness of the "Alternate Port Service" Rule No. 17, in respondent's Tariff No. 2, FMC-F No. 9. Any rulings on other issues were withheld.

The subject complaint concerned seven shipments, including two from the Miami, Florida, area, moved overland to Jacksonville, Florida, and thence by water (respondent PRMSA) to Puerto Rico; and five shipments from Houston, Texas, moved overland to New Orleans, Louisiana, and thence by water (PRMSA) to Puerto Rico.

As to any reparation, and as to issues related to past times, these seven shipments were time barred from jurisdiction by the Commission. Thus, the remaining issue(s) concerned the future practices of respondent.

PRMSA did not offer in its tariff, and it did not provide, any direct service from Miami to Puerto Rico. Likewise PRMSA did not offer and did not provide direct service from Houston to Puerto Rico. But PRMSA did provide direct service to Puerto Rico from both Jacksonville and from New Orleans.

The limited record largely concerned the shipments from Miami. These two shipments from Miami actually moved, not from the dock and not from the water carrier's (PRMSA's) terminal at Miami, but from the railroad freight station of the Florida East Coast Railroad at Hialeah, Florida.

In PRMSA's tariff, "Alternate Port Service" was defined in part to be:

(a) From a port within the scope of this Tariff at which cargo is tendered to a port within the scope of this Tariff where Carrier provides a direct service call. . . .

The initial decision found that an indirect (alternate) service must not allow a water carrier any option to provide or not to provide such indirect service to similarly situated shippers. This decision did not specifically ask whether there could be an "alternate" service when there was no "direct" service.

It was concluded that tariffs must be definite and certain so as to avoid the possibility of undue and unjust discrimination among similarly situated shippers. It was also concluded that the PRMSA Alternate Port Service in its present form was unlawful.

4. Pending Proceedings

At the close of fiscal year 1993, there were 15 pending proceedings, of which 2 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. As described in more detail below, the General Counsel also represents the Commission before the courts and Congress and administers the Commission's international affairs program.

1. Decisions and Rulemakings

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

Motor Vehicle Manufacturers Association of the United States, Inc. and Wallenius Lines, N.A. -- Joint Application for Exemption from Certain Requirements of the Shipping Act of 1984 for Certain Limited Shipments of Passenger Vehicles, [Petition No. P7-92], 26 S.R.R. 1002 (July 8, 1993).

The Commission received a petition requesting exemption from the requirements of section 8(c) of the 1984 Act that the essential terms of service contracts be publicly filed and made available in tariff format, and be made available to similarly situated shipments. The petitioners sought the exemption for the carriage of 5,000 or more vehicles per year, consigned by

the original manufacturer for shipment on roll-on/roll-off vessels. The Commission concluded that the petitioners met their burden of demonstrating that the statutory exemption criteria had been met and the exemption justified. However, it found that a fuller exploration of the issues raised was warranted and referred the petition to an administrative law judge for an evidentiary rulemaking.

Petition of Evergreen Marine Corporation (Taiwan), Ltd. and Worldlink Logistics, Inc. for Declaratory Order, [Petition No. P6-92], 26 S.R.R. 605 (October 8, 1992).

The Commission denied a joint petition for a declaratory order concerning the enforceability of a service contract's bond provision. The Commission noted that declaratory orders are intended to provide guidance to persons who have not yet acted and who desire an opinion on proposed future conduct. In the instant case, the carrier had demanded a bond and the shipper was seeking a ruling on the application of the bond to itself.

Actions to Adjust or Meet Conditions Unfavorable to Shipping in the United States/Korea Trade, [Docket No. 92-42], 58 Fed. Reg. 50,521 (September 28, 1993).

In response to a petition by Direct Container Line ("DCL"), a California NVOCC, for relief pursuant to section 19 of the 1920 Act, the Commission issued a proposed rule to meet or adjust conditions alleged to be unfavorable to shipping in the U.S./ROK trade. DCL alleged that it and other U.S. firms were prevented from operating as NVOCCs or freight forwarders in the ROK as a result of the Korean Maritime Transportation Business Act. That Act prohibits the operation in the ROK of a maritime transportation business, such as an NVOCC or freight forwarder, which is less than 51 percent owned by ROK citizens or which is not represented by an ROK

citizen. The Commission issued a final rule finding the existence of conditions unfavorable to shipping as a result of the ROK Act. The rule would have suspended the license of each freight forwarder which is majority owned by ROK non-U.S. citizens; the tariff of each NVOCC whose principal place of business is in the ROK; and prohibited carriers in the U.S./ROK trade from paying freight forwarder compensation or brokerage on shipments from the ROK to the U.S. However, based on commitments made by the ROK Government in bilateral shipping talks in August 1992 to remove nationality-based restrictions on direct operations of U.S. forwarders and NVOCCs in the ROK by June 30, 1993, the Commission delayed the effective date of the sanctions imposed in the final rule to September 1, 1993, and subsequently further delayed the effective date to November 1, 1993. The proceeding was discontinued on September 28, 1993, based on actions by the ROK to implement its commitments to open the trade to U.S. freight forwarders and NVOCCs.

***Financial Responsibility for Non-Vessel-Operating Common Carriers*, [Docket No. 92-37], 26 S.R.R. 727 (January 22, 1993).**

The Commission issued a final rule implementing the Non-Vessel-Operating Common Carrier Act of 1991. The rule specifies the conditions under which the Commission will accept insurance and guaranties as evidence of an NVOCC's financial responsibility.

***Notice of Inquiry Concerning Various Regulatory Issues*, [Docket No. 92-35], 26 S.R.R. 610 (October 30, 1992), and 26 S.R.R. 632 (November 9, 1992).**

Pursuant to a Notice of Inquiry, the Commission solicited public comment on six issues, five of which pertained to service

contracts. The Commission discontinued consideration of four of these issues, deciding to: continue to accept the voluntary filing of tariffs and service contracts covering excepted commodities; retain current requirements concerning the filing of the statements of essential terms of service contracts; not define, by rule, the term "similarly situated shipper"; and not require conferences to have an ombudsman.

The remaining issue was whether the Commission should initiate a rulemaking to permit service contracts to be based on a percentage of a shipper's cargo. After considering public comments, the Commission decided not to initiate such a proceeding, primarily because the definition of "service contract" requires a shipper commitment to "a certain minimum quantity of cargo." The Commission further noted that other rule changes should assist small shippers.

Amendments to Service Contracts, [Docket No. 92-21], 26 S.R.R. 553 (October 8, 1992).

On October 8, 1992, the Commission adopted a final rule to allow the parties to a filed service contract to amend the contract's "essential terms," including the rate to be charged by the carrier and the shipper's minimum cargo volume commitment. The intent of the rule is to create a more flexible service contract system, so that service contracts are treated more like ordinary commercial contracts. The rights of similarly situated third-party shippers are protected by provisions in the rule stating that similarly situated shippers who had accessed the contract prior to the amendments have the option of either continuing under the original contract or accessing the amended terms, and that similarly situated shippers who had not previously accessed the contract may access the amended contract, in which case the shippers' minimum cargo volume obligation must be prorated according to the duration of the amended contract.

Actions to Address Adverse Conditions Affecting United States Carriers in the United States/People's Republic of China Trade, [Docket No. 91-31], 26 S.R.R. 163 (February 19, 1992).

The Commission initiated an investigation under the FSPA into certain conditions potentially adversely affecting the operations of U.S. carriers in the PRC. The issues designated were: full branch office status for U.S. carriers in the PRC; PRC recognition of U.S. carrier tariffs; port service issues; intermodal and related services; and "doing business" costs. Subsequent to the issuance of the order of investigation, commercial and intergovernmental discussions were held which resulted in apparent resolution of all issues of concern except for trucking rights. The U.S. carriers accordingly recommended termination of the proceeding, and chose not to pursue their prior complaints about trucking restrictions. The Commission terminated the investigation, but issued further orders requiring information pursuant to the FSPA regarding the remaining unresolved matters and the implementation and effectuation of the commitments and liberalizations made to date. The Commission continues to monitor developments in this trade.

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).

Based on carrier responses to an order to provide information concerning charges imposed on carriers serving Japanese ports in the U.S./Japan trade, which were paid into a fund known as the Japan Harbor Management Fund ("Fund"), the Commission 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. However, the Commission continues to receive filed reports on allocations or expenditures of the Fund, and continues to monitor other maritime trade practices in Japan.

***Consumer Electronics Shippers Association, Inc. v. Asia North America Eastbound Rate Agreement*, [Docket No. 91-17], 26 S.R.R. 766 (March 1, 1993).**

In a complaint proceeding brought before it by a new shippers' association, the Commission found that the respondent conference's failure to offer a service contract to complainant with the exact terms desired by complainant was not a violation of sections 10(b)(12) or 10(c)(1) of the 1984 Act.

***Seacon Terminals, Inc. v. The Port of Seattle*, [Docket No. 90-16], 26 S.R.R. 886 (April 14, 1993).**

This proceeding was initiated as a result of a complaint filed by Seacon Terminals, Inc. ("Seacon") against the Port of Seattle ("Port") alleging that the Port unlawfully excluded Seacon from the Port, refused to deal, and unlawfully discriminated against Seacon by giving its competitors more favorable lease terms, all in violation of the 1984 Act. After an administrative law judge issued an Initial Decision ("I.D.") finding that Seacon failed to establish any violations and dismissing the complaint, Seacon filed exceptions with the Commission. On April 14, 1993, the Commission issued a Report and Order adopting the I.D. in most major respects.

Memphis Forwarding Company, Inc. - Possible Violations of Section 19(d)(4) of the Shipping Act of 1984 [Docket No. 90-13], 26 S.R.R. 833 (April 13, 1993).

The Commission instituted this investigation to determine whether Memphis Forwarding Company, Inc. ("Memphis"), a licensed freight forwarder, received compensation in violation of section 19(d)(4) of the 1984 Act and FMC regulations, by having a beneficial interest in shipments which it forwarded and for which service it collected compensation. An administrative law judge found in his I.D. such an interest to exist and the violations to have occurred, and imposed a penalty. The Commission adopted the I.D. insofar that it found the violations to have occurred, but reversed the assessment of a penalty in light of the existence of mitigating 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:

United States v. Merritt and Ariel Maritime Group, Inc., No. 92-6123, (2nd Cir. January 21, 1993).

Martyn Merritt appealed the entry of an order by the U.S. District Court for the Southern District of New York, enforcing

the Commission's decision in Docket No. 84-38. The Commission had assessed penalties totaling \$335,000 against Merritt individually, jointly and severally with Ariel Maritime Group, Inc. and other Merritt-created and -controlled companies charged with multiple and repeated violations of the 1916 Act . The U.S. Court of Appeals for the Second Circuit affirmed the District Court's ruling that Merritt's challenge to the Commission's order could only be brought on direct appeal to the U.S. Courts of Appeal, which he had not taken. The Court of Appeals affirmed the view of the District Court and the Commission that substantive challenges may not be raised in defense of an action to enforce Commission penalty orders under the 1984 Act. In the related action in the District Court, continuing orders of garnishment of certain Merritt and Ariel assets were entered on June 2, 1993.

FMC v. Wilfredo Garcia, Virginia Scalabrino, and Abu W. Garcia Forwarding, Inc., et al., United States District Court, Middle District of Pennsylvania, Civil Action Number 3: CV-92-1760.

On December 7, 1992, the Commission filed an action seeking a preliminary injunction against defendants to enjoin violations of the 1984 Act pending the completion of a Commission administrative proceeding, FMC Docket No. 92-52. The defendants violated the 1984 Act by engaging in fraud, deceit, and other unlawful conduct including, but not limited to, booking or attempting to book cargo with ocean common carriers and NVOCCs, using the names of licensed freight forwarders without their knowledge and consent, receiving financial gain from their overseas shipments, and assuming fictitious names to conceal their true identities. The U.S. District Court granted the preliminary injunction. Upon information that defendants were violating the injunction, the Commission filed a Motion for an Order to Show Cause-Alleged Contempt for Violation of Injunction. The U.S.

District Court entered a Stipulations and Consent Order, which among other things prohibits defendants from violating any provisions of the 1984 Act. This Order also permanently enjoins defendants from engaging in any ocean or trucking transportation-related activities, requires full restitution to injured shippers, and terminated all of defendants' "800" telephone numbers. Defendants also admitted to all the factual allegations and violations in FMC Docket No. 92-52.

3. Legislative Activities

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

On November 2, 1992, the President signed the High Seas Driftnet Fisheries Enforcement Act, Pub. L. No. 102-582. Section 502 of this Act requires that tariffs and the essential terms of service contracts be filed with the Commission in electronic form, and established a 46-cent charge for each minute of computer access to the Commission's ATFI system and an additional 46-cent charge for each minute of access to ATFI-derived data maintained by private sector tariff services.

4. Significant Ongoing Activity

Actions to Adjust or Meet Conditions Unfavorable to Shipping in the United States/Korea Trade, [Docket No. 91-24], 26 S.R.R. 585 (November 18, 1992).

The Commission determined to initiate a rulemaking proceeding to address certain restrictions on U.S. carrier operations in the U.S./ROK trade which are imposed by

operation of ROK law. Specifically, U.S. carriers are precluded from engaging in trucking operations in the ROK and from directly contracting with railroads. In light of substantial commitments made by the ROK Government 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. Additional comments, due August 12, 1992, were solicited to address inter-governmental discussions held during the summer. The Commission decided, on the basis of those comments, that unfavorable ROK Government restrictions on U.S. carrier trucking operations existed in the trade, and accordingly issued a final rule imposing fees of \$100,000 per voyage on ROK-flag vessels calling at U.S. ports. Those sanctions were suspended, however, until June 1, 1994, in light of ROK Government commitments to eliminate or adjust those restrictions. U.S. and ROK carriers have been submitting periodic reports advising the Commission on developments in liberalizing ROK restrictions on truck and rail access.

Actions to Address Adverse Conditions Affecting United States Carriers in the United States/Taiwan Trade, [Docket No. 91-44], 26 S.R.R. 298 (May 13, 1992).

This proceeding under the FSPA was initiated by the Commission to investigate the existence of conditions unfavorable to shipping in the U.S./Taiwan trade arising from Taiwan Authorities' restrictions on U.S. carriers' operations. Specifically, the proceeding addressed U.S. carriers' ability to operate off-dock container terminals, obtain trucking licenses, register chassis, lease empty containers, and operate a shipping agency in Taiwan.

Substantial concessions were made by Taiwan Authorities during the course of the proceeding which resulted in resolution of the container leasing, shipping agency and off-dock container

terminal issues. The remaining restriction which was not resolved at the close of the statutorily-imposed time limit on the investigation was the lack of trucking authority for U.S. carriers. Accordingly, the Commission found that this restriction constituted an adverse condition under the FSPA, but declined to impose sanctions in reaching this decision. The Commission noted that legislation to address the trucking issue was introduced by the Taiwan Executive Yuan to the Legislative Yuan; that the majority of the issues raised in the proceeding were satisfactorily resolved; and that the U.S. carriers themselves requested that no sanctions be imposed.

The Commission ordered the U.S. and Taiwan carriers serving the trade to report on progress and developments in resolving this issue by November 13, 1992.

After reviewing the carriers' reports, the Commission noted that the anticipated legislation to remedy trucking restrictions has not been enacted and, apparently, no definitive schedule for passage of such legislation exists. The Commission directed the U.S. and Taiwan carriers in the trade to submit further reports to the Commission in 1993. At year's end, legislation to liberalize Taiwan's trucking restrictions remained pending.

5. Foreign Shipping Restrictions and Related Matters

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

During fiscal year 1993, the Office prepared and submitted several reports, recommendations, and rules to the Commission on matters arising under section 19 in the ROK trade. (See Docket Nos. 91-24 and 92-42, above). The Commission discontinued its proceeding and withdrew its final rule regarding ROK restrictions preventing U.S. companies from establishing forwarding/consolidation businesses in Korea. The Commission found that the ROK had amended its laws and regulations to open the forwarding/consolidation sector to foreign investment. The remaining issue under consideration by the Commission in the ROK trade concerns restrictions on U.S. companies' ability to own and operate inland trucking services in the ROK. Also, a forwarder association petitioned the Commission for relief under section 19 alleging that certain efforts by the ROK Government to establish a transportation operation in the U.S. would result in irreparable harm to non-Korean freight forwarders and customs brokers located in the U.S. and doing business with the ROK.

Although the Commission discontinued three FSPA proceedings last year, one in the Japan trade (Docket No. 91-19), one in the PRC trade (Docket No. 91-31), and one in the Taiwan trade (Docket No. 91-44), the Commission required certain named carriers to file periodic status reports on conditions in those trades. Through these reports, the Commission is monitoring the progress on commitments made to resolve outstanding issues. The Commission can institute new proceedings regarding any of these trades if it determines that sufficient progress is not being made to address any outstanding issues adversely affecting U.S. carrier operations overseas.

The Office also participated in interagency groups and international maritime discussions, particularly as technical advisors to the Interagency Maritime Policy Group, whose other members include representatives of the U.S. Departments of

Transportation, State, Commerce, and Justice, and the Office of the U.S. Trade Representative. The Office also coordinated and participated in briefings of foreign visitors, including European Commission officials.

Another responsibility of the Office is the identification and verification of controlled carriers under section 9 of the 1984 Act. Common carriers that are owned and controlled by foreign governments are required to adhere to certain tariff-filing requirements under the 1984 Act. The Office investigates and makes appropriate recommendations to the Commission regarding the status of potential controlled carriers. The Office, in conjunction with other Commission components, also monitors the activities of controlled carriers. In fiscal year 1993, the Office reviewed documents and information relating to the controlled carrier status of a number of carriers and recommended that the Commission classify two carriers as controlled carriers.

D. OFFICE OF EQUAL EMPLOYMENT OPPORTUNITY

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

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

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

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

The Director, Office of EEO, arranges for counseling of employees who raise allegations of discrimination; provides for the investigation, hearing, fact-finding, adjustment, or early resolution of such complaints of discrimination; accepts or rejects formal complaints of discrimination; prepares and issues decisions for resolution of formal complaints; and monitors and evaluates the program's impact and effectiveness.

Significant accomplishments in fiscal year 1993 include the following:

- 1. Continued to provide EEO briefings for new employees.**
- 2. Planned, developed and coordinated extensive internal and external special emphasis programs for FMC employee participation.**
- 3. Provided briefings to senior staff and district directors on the Civil Rights Act of 1991 and 29 CFR 1614.**
- 4. Resolved all informal complaints through the early resolution program, which created savings in investigative and settlement costs.**
- 5. Provided extensive counseling assistance to managers, supervisors and employees.**
- 6. Continued to utilize outside resources at no expense to the agency to upgrade the skills of Commission clerical and administrative staff and EEO Counselors.**
- 7. Assisted the Director, Bureau of Investigations, in the conduct of management reviews of district offices.**

8. Developed workshop materials for training senior executives, district directors, administrative staff and EEO Counselors.

9. Resolved several sensitive personnel problems throughout the Commission.

10. Began the development of outreach strategies in the administrative dispute resolution area and worked with several planning groups across government.

11. Continued to improve FMC's image and identity among Federal agencies and the community by developing cooperative programs in the special emphasis arena and working with community groups.

During fiscal years 1994 and 1995, 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.**

In fiscal year 1993, the OIG issued five audits in final and two operations reviews. The audits included reviews of the Bureau of Hearing Counsel, two District Offices (Houston and New York), the Commission's travel charge card program, and security features incorporated into the ATFI system. In addition, the OIG completed an extensive survey of another activity without initiating an audit. A number of informal and formal investigations were also conducted during the fiscal year.

Two of the audits completed were significant in their scope and impact. The OIG's review of the Commission's Bureau of Hearing Counsel dealt with procedures in connection with the receipt, review and settlement of investigative cases involving violations of the various shipping acts administered by the Commission. The ATFI review, which related to security features built into the system, was relevant because ATFI recently went on-line at the Commission.

In fiscal year 1993, the OIG continued its efforts to work with management to improve Commission programs and operations. This aspect of the OIG's work will take on an increased emphasis in fiscal year 1994 as the Office implements the various initiatives set forth in the National Performance Review ("NPR").

As required by the Government Auditing Standards, a peer review of the Commission's OIG was completed during the fiscal year with satisfactory results.

The Inspector General participates as an active member of the Executive Council on Integrity and Efficiency ("ECIE") and serves on a number of committees established by that body.

In fiscal year 1994, the OIG expects to complete a number of significant audits, as well as operational reviews, surveys and follow-up reviews. Investigations will be conducted as necessary. The NPR recommendations will also have an impact on the type of work that is completed and the manner in which this work is conducted. The Commission's Inspector General will continue his participation in the ECIE, which provides a forum for the exchange of views for the inspector general community.

F. OFFICE OF THE MANAGING DIRECTOR

The Managing Director, as senior staff official, is responsible to the Chairman for the management and coordination of Commission programs managed by the:

- **Bureau of Trade Monitoring and Analysis.**
- **Bureau of Tariffs, Certification and Licensing.**
- **Bureau of Hearing Counsel.**
- **Bureau of Investigations.**
- **Bureau of Administration.**

and thereby implements the regulatory policies of the Commission and the administrative policies and directives of the Chairman.

Also, the Managing Director provides administrative guidance to the:

- **Office of the Secretary.**
- **Office of the General Counsel.**
- **Office of Administrative Law Judges.**

and administrative assistance to the:

- **Office of Equal Employment Opportunity.**
- **Office of the Inspector General.**

This has been established to ensure the timely and proper achievement of Commission goals and objectives.

In addition, the Managing Director is the Audit Follow-up and Management (Internal) Controls Official for the Commission, and the Office manages those programs. The

Managing Director is the agency's Senior Procurement Executive, its Designated Senior Information Resources Management Official, and the Commission's Chief Operating Officer.

A Deputy Managing Director, reporting directly to the Managing Director, supervises the development of, and serves as Contracting Officer for, the Commission's ATFI system. 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 review and forwarding to the Chairman.

A significant achievement of the Office during fiscal year 1993 was the continued coordination of an enhanced enforcement program involving all operating Bureaus. The preliminary investigative cycles for new enforcement programs were implemented. The Office also intensified its coordination of the review and updating of all Commission Orders.

In fiscal year 1993, the ATFI system went into production. ATFI began accepting electronically filed tariffs by geographic scope on a staggered schedule on February 22, 1993; virtually all tariffs are to be filed within the system by the end of calendar year 1993.

The Office is currently:

- 1. Guiding the implementation of the agency's ATFI system under Commissioner Hsu's oversight.**
- 2. Managing the Commission's efforts with respect to the President's directives and OMB's guidance on streamlining government and management reform.**

- 3. Continuing its coordination of the Commission's enhanced enforcement program.**
- 4. Directing all staff efforts in cases involving restrictive practices of foreign governments.**
- 5. Coordinating the review and updating of all Commission orders.**

The Office's key objectives for fiscal years 1994 and 1995 are the continued coordination of staff efforts regarding the implementation of ATFI, including the solicitation and award process for a new ATFI contract; further development of staff efforts to address restrictive practices of foreign governments and the enhanced enforcement program; organization of staff action to implement Presidential directives with respect to streamlining and management reform; and coordination of staff efforts with respect to the review and development of regulations.

G. BUREAU OF TRADE MONITORING AND ANALYSIS

1. General

The primary function of the Bureau of Trade Monitoring and Analysis 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. The Bureau's major program activities include:

- **Administering comprehensive trade monitoring programs to identify and track relevant competitive, commercial, and economic activity in each major U.S. trade 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.**
- **Providing expert economic testimony and support in formal proceedings, particularly regarding unfair foreign shipping practices and domestic offshore rate-of-return cases.**

2. Surveillance

An integral part of the Bureau's responsibilities under the 1916 Act and the 1984 Act is the systematic surveillance of carrier activity and trade conditions. The goal of Bureau surveillance activities is to ensure that carriers operating in the U.S. trades comply with the statutory standards of the applicable Acts and the requirements of Commission rules. To that end, the Bureau administers a variety of monitoring projects designed to apprise the Commission of current trade conditions, keep abreast of emerging commercial trends in the industry, and maintain effective oversight of carrier service and pricing activities.

For a description of the Bureau's monitoring activities in fiscal year 1993, see the "Surveillance" subsection in Part III.

3. General Economic Analysis

In addition to research and economic analysis pertaining to its monitoring projects, the Bureau provides economic expertise for a variety of Commission projects. Bureau economists prepare testimony in domestic offshore rate cases and FSPA cases. They also provide assistance in formulating Commission rulemakings and prepare speeches and briefings for senior agency staff.

Projects the Bureau was involved in during fiscal year 1993 included: (1) a rate-of-return analysis of rate increases in the Hawaii trade; (2) an analysis of carrier responses to a section 15 order regarding competition restrictions in a cooperative working agreement in the Marshall Islands trade; (3) monthly reports on the activities of controlled carriers; (4) a regulatory analysis of the impact of the Commission's proposed ATFI system in terms of "major rule" criteria for a cost/benefit analysis and whether ATFI would have a significant economic

impact on a substantial number of small entities; (5) an updated analysis of the impact of the Commission's proposed ATFI system, including the added cost to secondary users imposed by section 502 of Pub. L. No. 102-582; (6) participation in the Commission's tariff review program under ATFI; (7) handling a variety of inquiries and complaints from members of Congress and shippers on a wide range of problems and issues, including antitrust issues, the level of rates, surcharges and other accessorial charges, rate disparities between different coastal regions, service contract issues and port service; (8) an analysis and advisory comment on the ATFI user-charge revenue estimates; (9) a report to consider possible reform in the rate-of-return methodology in the domestic offshore trades; and (10) research for and preparation of speeches and briefings for senior Commission officials.

4. Types of Agreements

(a) Conference and Interconference Agreements

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

During fiscal year 1993, the Bureau analyzed and processed 111 conference and interconference agreements, including modifications to existing agreements, under the 1984 Act. There were 66 conference agreements and 14 interconference 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 that 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 that is controlled by the governments of reciprocal trading partners under cargo preference laws, import quotas, or other restrictions.

Twelve pooling and/or equal access agreements and amendments to existing agreements were filed in fiscal year 1993, and there were 21 agreements of this type in effect 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 access to vessel space on given trades 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. In addition, a number of conferences and discussion agreements have included space charter and sailing authority within the scope of their agreements.

During fiscal year 1993, 21 space charter and sailing agreements and modifications were filed under the 1984 Act, and 133 were in effect at the end of the fiscal year.

(d) Joint Service 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.

Four joint service agreements and amendments were filed during fiscal year 1993, and 41 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 (e.g., capacity-reduction arrangements) that do not precisely fit the other categories mentioned. This category also includes voluntary ratemaking agreements. One hundred five CWAs and amendments to existing CWAs were filed in fiscal year 1993. There were 129 CWAs 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 Bureau is responsible for the review and processing of certain agreements related to the marine terminal industry.

During fiscal year 1993, the Bureau received 266 agreements and agreement modifications relating to port and marine terminal services and facilities. All terminal agreements became effective upon filing under Commission rules that 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. Four agreements were considered not subject to the Commission's jurisdiction. At the end of the fiscal year, 929 terminal agreements were in effect.

5. 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 and innovative programs and methods to enhance the Commission's effectiveness in administering the 1984 Act and the FSPA.

The Bureau will continue to assess the impact of key issues facing the industry, to monitor developments in major trades, and to analyze foreign agreements under the standards of sections 5, 6(g), and 10 of the 1984 Act and domestic agreements under the public interest standard of the 1916 Act.

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

The Bureau plans to enhance its section 6(g) monitoring program by refining the current framework and methodologies. This program will thereby better evaluate the degree of anticompetitiveness generated by agreements within the context

of their commercial environments, particularly those agreements containing capacity management programs.

The Bureau anticipates that its involvement in FSPA cases will continue in 1994. During fiscal year 1993, the Bureau participated in monitoring conditions relative to FSPA cases in the PRC and Taiwan trades, and a section 19 case in the ROK trade.

The Bureau plans to continue to monitor closely political developments relative to the Commission's controlled carrier program. The Bureau will continue monitoring the activities of all controlled carriers, in support of Commission activities under section 9 of the 1984 Act.

The Bureau anticipates further involvement in rulemakings during fiscal year 1994. During fiscal year 1993, the Commission promulgated rules dealing with issues involving financial information filing requirements for domestic offshore carriers; conference restrictions on members' right to take independent action; exemption of the filing of marine terminal agreements; and rules allowing more flexibility for ensuring the financial responsibility of NVOCCs.

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 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.

The Bureau will continue to analyze domestic offshore agreement filings under the public interest standards of the 1916 Act and make appropriate recommendations to the Commission for approval or disapproval.

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, and develop new programs for additional functions as needed. The Bureau will continue to pursue refinement of its Electronic Filing of Agreements and Minutes system.

H. BUREAU OF TARIFFS, CERTIFICATION AND LICENSING

1. General

The Bureau of Tariffs, Certification and Licensing 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; administers the NVOCC financial responsibility program by setting policies and guidelines and reviewing financial instruments that evidence financial responsibility; processes service contracts and essential terms publications filed by ocean common carriers and conferences of such carriers, issuing notices of intent to reject service contracts containing provisions which fail to conform to Commission regulations; prepares recommendations on requests to correct clerical or administrative errors in the essential terms of service contracts; 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. In addition, the Bureau assists in the planning and development of, and has

primary responsibility for, the program implementation of the Commission's ATFI system.

Thus, the Bureau is responsible for all tariffs filed by common carriers and marine terminal operators; financial responsibility for NVOCCs; 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 operating in the foreign commerce of the U.S. 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. Moreover, in fiscal year 1993, the Commission revised its rules to permit the amendment of service contract essential terms.

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 subject to rejection.

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 nonprofit 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 1993, the Report of the Investigative Officer in Fact Finding Investigation No. 20, *Service Contract Negotiations with Shippers' Associations and Non-Vessel Operating Common Carriers*, found no support for a rulemaking proceeding to clarify carriers' and conferences' obligations with respect to negotiating service contracts with shippers' associations and NVOCCs. During fiscal year 1993, 65 service contracts were filed on behalf of 85 shippers' associations.

In fiscal year 1993, the Bureau received 6,445 service contracts and 2,555 service contract amendments covering the entire scope of the U.S. foreign commerce, both inbound and outbound. Beginning on November 22, 1993, the Commission ceased accepting the essential terms of service contracts in paper format. After that date, all service contract essential terms must be filed in ATFI format. Under authority delegated to the Bureau Director, the Bureau approved 10 requests to correct clerical or administrative errors in the essential terms of service contracts. Based on a Bureau recommendation, the Commission denied one request to correct an administrative error in a service contract.

(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 monitors the tariff filings of controlled carriers to assure that the required notice for rate increases and decreases is given. The Bureau acted on one special permission application filed by controlled carriers during fiscal year 1993.

(c) Common Carrier Anti-Rebate Certification Program

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

of the tariffs of those carriers, and the suspension of the licenses of those ocean freight forwarders, who fail to file a certification. Furthermore, any application for an ocean freight forwarder license or initial tariff filing that does not include an anti-rebate certification in accordance with Part 582 shall be rejected.

A program supported by the Bureau's electronic databases is in place to ensure that common carriers and freight forwarders file their certifications. For the filing period ending December 31, 1992 approximately 3,400 certifications were filed. The tariffs of 61 common carriers were canceled, and the licenses of three freight forwarders were suspended for failing to file the required certification.

(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 1993, 417 new foreign paper tariffs were received and reviewed. The Bureau rejected 21 of these filings. In addition, approximately 766,000 pages amending existing paper tariffs were reviewed, including 30,000 which were in a certain database format as part of the prototype testing for the ATFI system. The Bureau also acted on 131 foreign special permission applications. Canceled tariffs and canceled pages of active tariffs were prepared for microfiche.

Effective on February 22, 1993, the FMC began to require tariff filings to be in ATFI format. The Commission established six phases, based upon trade lanes, during which all paper tariffs were to be converted to ATFI format. During the first phase, which began on February 22, 1993, and ended on June 4, 1993, all tariffs applicable to the Worldwide/Asian & South

Pacific trades were to be converted to ATFI format. The other phases, applicable to the European; Africa/Middle East; North American/Caribbean; and Central/South America trades opened and closed on a staggered basis throughout the balance of calendar year 1993.

(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. The Commission issued regulations requiring 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.

During fiscal year 1993, the Commission amended its regulations in response to the Non-Vessel-Operating Common Carrier Act of 1991 ("1991 Act"), 106 Stat. 60. The 1991 Act amended section 23 of the 1984 Act, 46 U.S.C. app 1721, to permit the Commission to accept, in addition to bonds, insurance or other surety as proof of an NVOCC's financial responsibility. The amended rule retains the \$50,000 minimum coverage.

Evidence of financial responsibility 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 1,900 bonds and one insurance policy are on file.

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 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 1993, 31 new domestic offshore paper tariffs were received and reviewed, of which four were rejected. In addition, four domestic special permission applications were processed. The Bureau also processed approximately 64,500 tariff pages amending existing paper tariffs, including 60,000 which were in a certain database format as part of the prototype testing for the Commission's ATFI system.

The Commission ceased accepting domestic paper tariffs effective December 31, 1993. After that date, all new tariffs and existing paper tariffs must be filed/converted in electronic form into the Commission's ATFI system.

(b) Financial Analysis

The Bureau 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 also monitors the activities of carriers in the domestic offshore commerce of the U.S. The effort involves the receipt and review of financial and operating data submitted in compliance with 46 CFR Part 552.

During the year, the Bureau reviewed tradewide increases in rates for the transportation of cargo between the U.S. Pacific Coast and Hawaii. Financial expertise is also provided with respect to the passenger vessel certification program.

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 its responsibilities with respect to marine terminal tariffs by reviewing approximately 5,000 terminal tariff pages filed during fiscal year 1993. At the end of the fiscal year, 511 terminal tariffs were on file with the Commission.

The Commission ceased accepting marine terminal paper tariffs effective December 31, 1993. After that date, all new tariffs and existing paper tariffs must be filed/converted in electronic form into the Commission's ATFI system.

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.

During fiscal year 1993, 293 new and amending license applications were received for processing. The Commission approved 267 applications. Eighty other applications were returned because of various deficiencies, and eight requests for a license were withdrawn by the applicants. Seventeen applications were on hand at the end of the fiscal year. One hundred sixty-one licenses were issued, while 97 licensees had their licenses revoked, mostly due to their failure to maintain a valid surety bond on file with the Commission. At the end of the fiscal year, 1,750 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, 109 investigative reports were received by the Bureau. Several 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. Sixty-four reports were determined to require no formal corrective action. The balance were pending review at the year's end.

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.* The maximum coverage amount with respect to nonperformance of transportation, except for self-insurers, is \$15 million. The amount applicable to self-insurers could be greater.

During fiscal year 1993, the Commission received 91 applications for passenger vessel certificates. During fiscal year 1993, 41 casualty certificates and 46 performance certificates were approved and issued to passenger vessel applicants. 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.

During fiscal year 1993, the Commission revised its passenger vessel operator financial responsibility rules to provide that: operators demonstrating a minimum of five years of operation in the U.S. trades with a satisfactory explanation of any claims for nonperformance of transportation need meet only net worth standards to qualify as self-insurers; and

operators qualifying for self-insurance may not use the sliding scale provisions of Part 540 to qualify for a Performance Certificate, Docket No. 92-50, *Financial Responsibility Requirements for Nonperformance of Transportation; Revision of Self-Insurance Qualification Standards*.

7. Automated Database Systems

The Bureau maintains several automated database systems. These are the: (1) Service Contract System; (2) Regulated Persons Index; (3) Microfiche System; and (4) 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 Microfiche System provides a means of locating canceled tariffs which have been microfiched. The Ocean Freight Forwarder System contains certain information concerning licensees, including surety bond information.

8. ATFI

The Bureau has also made significant contributions to the development and implementation of the ATFI system. The ATFI system is a computer-based system for the electronic filing, processing and retrieval of tariff data regarding the ocean transportation of cargo by common carriers in both the foreign and domestic commerce of the U.S. In the foreign commerce, in addition to tariff matter, the system provides for the electronic filing, processing and retrieval of the essential terms of service contracts. Bureau personnel have been involved in the acceptance testing and reviewing and designing numerous elements of the ATFI system.

The Commission launched its ATFI system on February 22, 1993. The system is computer-based and provides for the electronic filing, processing and retrieval of foreign and domestic tariffs, service contract essential terms, and amendments thereto. Information contained in the system is available to any interested person upon registration to ATFI. When ATFI is complete, the Commission will be paperless as to tariffs, service contract essential terms, and amendments to either.

To ensure an orderly transition from a paper environment to an electronic form, the Commission established an implementation schedule for the conversion of tariff matter based on trade areas and operations. The schedule provided a specified time frame ("window") for each trade area/operation to file. There are seven windows with the last window closing December 31, 1993. A number of carriers/conferences found that they could not convert and file their tariff(s) or service contract essential terms by the close of their window. These carriers/conferences filed a petition with the Commission for temporary exemption from the electronic tariff-filing requirements and requested permission to file in paper during the period of extension. The Commission received approximately 75 petitions, representing approximately 1,300 carriers/conferences during the fiscal year. The Commission granted all of the petitions.

A number of carriers whose tariffs were due to be filed by June 4, 1993, the close of the first window, failed to register and file their tariff(s) in electronic form. On September 28, 1993, the Commission issued an Order to 103 carriers in the Worldwide, Asian and South Pacific trade areas to show cause why their paper tariffs should not be canceled for failure to register and file a tariff in ATFI by the required date. None of these companies filed a petition for temporary exemption with the Commission. The Commission will, as necessary, institute

additional show cause proceedings against carriers that fail to convert their paper tariffs to ATFI format.

During fiscal year 1993, 1,521 tariffs, 89,974 rules, 93,342 commodity descriptions and 787,990 tariff line items were filed in ATFI. The Bureau also processed approximately 2,271 ATFI registration forms.

9. Support Activities

The Bureau 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. The 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 public needs for information concerning Commission-regulated entities.

10. Rulemaking and Docketed Proceedings

The Bureau initiates or supports formal rulemakings and Commission docketed proceedings. During fiscal year 1993, the Bureau participated in, developed or completed the following matters:

Amendments to Service Contracts, Docket No. 92-21. The Commission proposed and adopted a rule to allow the essential terms in service contracts to be amended.

Free Time and Demurrage Charges on Import Property at the Port of New York; Truck Detention at the Port of New York, Docket No. 92-29. The Commission issued an order suspending the requirements of Part 530.

Financial Responsibility Requirements for Nonperformance of Transportation; Revision of Self-Insurance Qualification Standards, Docket No. 92-50. The Commission proposed and adopted a rule to allow passenger vessel operators to qualify as self-insurers for performance certificates based solely upon net worth.

Motor Vehicle Manufacturers Association of the United States, Inc. and Wallenius Lines, N.A. - Joint Application for Exemption From Certain Requirements of the Shipping Act of 1984 for Certain Limited Shipments of Passenger Vehicles, Petition No. P7-92. The Commission considered subsequently denied petition to exempt certain shipments of passenger vehicles from the filing requirements of section 8 of the 1984 Act.

Service Contract Negotiations with Shippers' Associations and Non-Vessel Operating Common Carriers, Fact Finding Investigation No. 20. The Commission instituted nonadjudicatory investigation to develop a factual record on the service contract negotiation process, including the practical experiences of shippers' associations and NVOCCs in seeking to negotiate and execute service contracts.

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 may be 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 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 1993, 48 civil penalty cases were pending final resolution by the Bureau. During the fiscal year, 16 new civil penalty cases were initiated through the investigative activity of the Bureau of Investigations and the Commission's formal fact finding investigations. Fifty such cases were compromised and settled, administratively closed, or referred for formal proceedings. Fourteen civil penalty cases were pending resolution on September 30, 1993.

At the start of fiscal year 1993, the Bureau was party to eleven formal proceedings. During the fiscal year, the Bureau participated in three new formal proceedings. Seven proceedings in which the Bureau participated were completed. Accordingly, the Bureau was involved in seven formal proceedings at the end of the fiscal year.

At the beginning of fiscal year 1993, there were 59 requests for legal advice pending in the Bureau. Sixty-three requests for legal advice were received during the fiscal year, and 73 legal advice projects were completed. Accordingly, 49 legal advice matters were pending in the Bureau on September 30, 1993.

As a result of enforcement activity, the Commission collected \$2,063,436 in civil penalties in fiscal year 1993. Settlements were reached with many different segments of the industry (e.g., carriers, shippers, forwarders) operating in 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. Fact Finding Investigation No. 18 was instrumental in achieving significant settlements with carriers, Pacific cargo interests and NVOCCs in fiscal years 1990-1992. Additional settlements with Pacific cargo interests and carriers were achieved in fiscal year 1993. With these additional carrier settlements, virtually all of the carriers in the transpacific trades have agreed to participate in carrier self-policing in the Pacific. The establishment of tradeswide carrier self-policing programs continues to be an important goal for the Pacific enforcement program and for other U.S.-foreign trades as well.

In fiscal years 1994 and 1995, the Bureau will continue to pursue violations of the shipping statutes and to offer legal advice and support to the Commission staff as requested.



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 headquarters office in Washington, D.C., and district offices in the major port cities of New York; Miami; Hato Rey, PR; New Orleans; Houston; Los Angeles; and San Francisco. 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.**
- **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 1993, the Bureau initiated a major effort to investigate malpractices in the South American trade. This initiative involves all seven district offices in a comprehensive review of shipments in both the northbound and southbound trades to and from all major points in South America. The Bureau also continued to investigate malpractices in the other key trade routes, including the transatlantic, transpacific, Mediterranean, Central American and Caribbean trades, as well. The Bureau conducted a limited number of targeted investigations in the transpacific trades while assessing the efforts of the major carriers to forge a tradewide self-policing mechanism. In addition, the Bureau continues to monitor and investigate conditions in the North Atlantic trades as part of the Transatlantic Enforcement Initiative that began in 1987.

The Bureau conducted 298 investigations and special inquiries, including service contract audits, compliance checks, audits of NVOCCs and cruise line audits. Appendix F summarizes the Bureau of Investigations' activities. A total of 23 investigations were forwarded to the Bureau of Hearing Counsel for enforcement action. (*See Part III.*)

During fiscal year 1993, the Bureau also began a full-scale review of the tariff-filing and adherence practices of NVOCCs operating in the U.S. trades, to ensure compliance with new statutory requirements, and to demonstrate a commitment to fair competition among NVOCCs. Under this program, the district offices are auditing a cross section of NVOCCs that were selected for tariff compliance. The Bureau also continued

its effort to combat malpractices involving the provision of false bill-of-lading information to ocean carriers to obtain unlawful ocean freight reductions. The bill-of-lading malpractices investigated include misdescription of commodity; misdeclaration of weight, measurement, and count; misuse of service contracts; and misuse of equipment substitution allowances.

Coordination between the Commission's district offices and U.S. Customs' regional offices continued in fiscal year 1993, as a part of the Memorandum of Understanding between the agencies for the exchange of investigative information. During fiscal year 1993, the district offices greatly increased the level of information retrieval activities from Customs' ACS. This activity was facilitated by the installation of ACS hardware and software in the district offices through cooperative arrangements with Customs' regional offices and its headquarters personnel. This exchange of investigative information should continue to increase in fiscal years 1994 and 1995 as both agencies advance in automation and promote the electronic filing of regulatory information.

During fiscal year 1993, the Bureau continued to provide its staff with training in the use of the Commission's ATFI system. An intensive training course in ATFI filing and examination was provided at headquarters to selected Bureau personnel from the district offices and from headquarters. Bureau personnel also continued to receive training from Customs in the use of the ACS to obtain vessel manifest information. Training activities in fiscal years 1994 and 1995 will focus on management improvement, improved investigative skills, and the enhancement of data processing skills for all Bureau personnel. The Bureau also plans to continue its policy of participation in the Federal Law Enforcement Training Center's advanced training programs and to continue

supervisory and management training for senior investigative personnel.

Bureau resources in fiscal years 1994 and 1995 will continue to be directed toward malpractice programs in the major trade routes and the development of new efforts to deter unlawful shipping practices. The Bureau also will continue its numerous surveillance activities involving service contract audits, passenger vessel audits, freight forwarder compliance checks, NVOCC tariff audits and bonding compliance, and the collection and analysis of intelligence on industry practices.

The Bureau's various investigative and surveillance activities include a series of programs aimed at obtaining intelligence which will assist the agency in evaluating the competitive practices of ocean common carriers, NVOCCs, ocean freight forwarders, terminal operators and port authorities. Such information will be used to identify regulatory problems and the effectiveness of Commission regulations.

The Bureau's enhanced capability in the collection and analysis of intelligence provides the foundation for more efficient programs to uncover and deter increasingly sophisticated and disguised malpractices. The Bureau will continue to seek to enhance its level of investigative capability in the increasingly automated environment of the shipping industry.

K. BUREAU OF ADMINISTRATION

Office of the Director

The Bureau of Administration provides administrative support to the program operations of the Commission. The Bureau interprets governmental policies and programs and administers these in a manner consistent with Federal guidelines, including those involving information management, procurement, financial management, and personnel. The Bureau initiates recommendations, collaborating with other elements of the Commission as warranted, for long-range plans, new or revised policies and standards, and rules and regulations, with respect to its program activities. The Director, Bureau of Administration ("BOA"), 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 BOA are reflected in the narratives for these Offices, below.

The Chairman has designated the Deputy Director, BOA, as the Commission's Information Security Officer. The Information Security Officer is responsible for directing and administering the Commission's Information Security Program, which includes an active oversight and security education program to ensure effective implementation of Executive Order 12356. The Director is the Commission's Competition Advocate, as well as the Commission's representative, as Principal Management Official, to the Small Agency Counsel ("SAC"), and is a member of SAC's Executive Committee. The FMC training and development function is also administered

within the Office. The Training Officer provides employee development assistance and career counseling throughout the agency, provides technical assistance to the Executive Resources Board, and coordinates the activities of the Senior Executive Service ("SES") Candidate Development Program. The Training Officer also serves as a member of the SAC Training Committee. During the past year, the agency utilized a number of cost-free training opportunities available through the SAC and the Department of Justice.

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 ("FPMR"), 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 utilization, maintenance, inventory, 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, including the assignment of office space and provision of office furnishings.**
- **Manage the receipt, storage, issuance and inventory of all supplies, forms and accessories required in support of Commission operations.**
- **Coordinate and fulfill all printing, duplication, copying and graphic service requirements.**
- **Regulate the receipt, distribution and dispatching of mail.**
- **Coordinate the use of the building's physical facilities with respect to maintenance, security and parking.**

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

(c) Achievements

During fiscal year 1993, the Office:

- **Completed procurement actions to enable district offices to access U.S. Customs' ACS System.**
- **Implemented and expanded the FMC's recycling program.**
- **Coordinated with GSA for the possible need for additional space and for the redesign of existing space to accommodate potential additional staff in the New Orleans District Office.**
- **Completed space requirements packages for the possible relocation of the San Francisco District Office due to the expiration of the current lease in April 1994 and the relocation of the Miami District Office due to the expiration of the lease in November 1993.**

- **Negotiated with GSA and the headquarters building owners concerning construction deficiencies and alteration requirements that had not been accomplished since the August 1992 relocation.**
- **Completed the fiscal year 1993 PIERS contract.**
- **Developed and implemented a building evacuation plan for the Commission's headquarters location.**
- **Established a procurement professionalism program in accordance with an Office of Federal Procurement Policy directive.**
- **Coordinated with GSA and other building tenants concerning the installation of, and transition to, a new guard service for the headquarters building.**

(d) Future Plans

In fiscal year 1994, the Office's objectives include the following: complete the development and solicitation phases concerning outstanding contractual actions and award new contracts for court reporting services, ocean import and export data, and ADP equipment maintenance support; complete the development and revision of Standard Operation Procedures for all Office program areas; conduct studies and analyses of procurement activities in the areas of file maintenance and retention; restructure the Commission's acquisition numbering system; and conduct acquisition planning and staff training in accordance with the newly revised internal Commission order on procurement.

2. Office of Budget and Financial Management

(a) General Office Responsibilities

The Office of Budget and Financial Management administers the Commission's financial management program, including fiscal accounting activities, fee and forfeiture collections, and payments; ensures that Commission obligations and expenditures of appropriated funds are proper; develops annual budget justifications for submission to the Congress and OMB; develops and administers internal controls systems that provide accountability for agency funds; administers the Commission's travel and cash management programs, as well as the Commission's Imprest Funds; ensures accountability for official passports; and assists in the development of proper levels of user fees. 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.**
- **Continually review internal controls and accounting procedures to ensure that they conform to existing regulations, and develop procedures to correct deficiencies.**

(c) Achievements

During fiscal year 1993, the Office:

- **Collected and deposited \$2,483,000 from user fees, fines and penalty collections, and ocean freight forwarder license application and passenger vessel certification fees (of this amount, \$242,000 is related to routine ATFI user fees and \$6,600 to ATFI fees collected under section 502 of Pub. L. No. 102-582.**
- **Coordinated and prepared budget justifications and estimates for the fiscal year 1994 Congressional budget and the fiscal year 1995 budget to OMB.**
- **Participated in OMB and Congressional budget hearings.**

- Provided the Cash Management Division of the Department of Treasury ("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 Diners Club Credit Card System.
- Assisted in the preparation of the Maritime Industry Assessments Reports (General Accounting Office); prepared a variety of external reports such as: the Civil Monetary Penalty Report (Treasury); the report on obligations for Major Information Technology Systems (OMB); the Annual Leave Year Report (Office of Personnel Management - "OPM"); the Annual Report on Occupational Safety and Health Program (Department of Labor); the Report on Financial Management Improvements (Joint Financial Management Improvement Program); the Annual Prompt Payment Report (OMB); the Report on Workyears and Personnel Costs (OPM); and the Report on Cash Management Initiatives (Treasury).
- Provided management with monthly status reports on workyears, funding, travel and receivables.
- Managed the Commission's travel and cash management programs.
- Finalized Commission Order 107, *Cash Management*; and revised Commission Order 57, *Overtime and Compensatory Time*, and Commission Order 107, *Official Passports*.
- Prepared procedures for processing ATFI-related receipts.

- **Prepared fiscal year 1994 policy baseline estimates for OMB.**
- **Provided training for two of the Commission's SES candidates, who were assigned to the Office as a part of their individual candidate development plans.**
- **Worked with OMB and Treasury representatives to develop procedures to borrow funds from the Treasury for fiscal year 1994 to complete the ATFI design and reimburse the Treasury with ATFI collections as authorized under section 502(g)(2) of Pub. L. No. 102-582.**

(d) Future Plans

During fiscal years 1994 and 1995, the Office will continue to update financial control procedures, refine the financial management system, improve processing of payments, prepare OMB and Congressional budget submissions, review the Automated Teller Machine program, assist in the update of user fees, pursue initiatives leading to economy and efficiency in budget and financial operations, and pursue the process of automating official and local travel requests and vouchers.

3. Office of Information Resources Management

(a) General Office Responsibilities

The major function of the Office of Information Resources Management ("IRM") is to administer the information resources management program under the Paperwork Reduction Act. Other functions include: management studies and surveys; data telecommunications/database management and application

development; records management; IRM contract administration; and development of Paperwork Reduction Act clearances for submission to OMB. The Office is also responsible for the computer security and records and forms management programs. The Director of the Office serves as Contracting Officer's Technical Representative on the ATFI Project, IRM Manager, Forms Control Officer, Computer Security Officer, Records Management Officer, and ADP Coordinator for the ADP Committee.

(b) Achievements

During fiscal year 1993, the Office:

- **On ATFI, continued extensive evaluation of ATFI software functionality on the host computer at McLean, Virginia, the FMC backup at Commission headquarters, and the contractor's development computer located in Pittsburgh, Pennsylvania; in accordance with the license agreement between the FMC and the subcontractor, conducted ATFI source code validation to ensure that it met stated requirements; coordinated and participated in ATFI software acceptance testing, review and acceptance of deliverables; coordinated ATFI training for FMC employees, and coordinated and participated in ATFI demonstrations to various other Federal agencies and Congressional committee staff; coordinated technical, logistical, procedural and security issues related to ATFI and other database systems created, owned and maintained by the Commission; coordinated and participated in ADP Committee and other meetings to address proposed ATFI-related rules, policy and human impact issues; served as FMC technical advisor during a contractor's performance of an ATFI stress test and**

security review; coordinated establishment of a configuration management plan which serves as the vehicle for decision-making regarding review and approval of ATFI software modification requests from the industry and Commission staff; developed a computerized invoicing system to address requirements of the Davis Law for collection of charges associated with use of ATFI data, and implemented procedures for evaluating industry accounting systems which will be used to track secondary use of ATFI data by their clients; and provided assistance to the industry regarding access and use of ATFI.

- Developed, tested, and implemented the X.400 Interagency E-mail.
- Upgraded the Commission's Local Area Network ("LAN").
- Implemented CD-ROM technology and Westlaw access and use in a LAN environment.
- Continued to fine-tune the Commission's LAN and established its interconnectivity with the remotely located ATFI host computer to further expand and enhance the Commission's computing resources.
- In accordance with the Computer Security Act of 1987's requirement for Disaster Recovery and Contingency Plans for Automated Information Systems, upgraded the Commission's computer which serves as backup to the Commission's ATFI system host computer.

- **Performed a Commission-wide document storage and retrieval study, and based upon results, recommended use of optical imaging.**
- **Reevaluated central point anti-virus software to ensure all FMC headquarters computers and network file servers are protected from viruses.**
- **Completed drafts of the Commission's IRM policy manual and the Commission's "Automated Information Systems Security Plan."**
- **Coordinated the Memorandum of Agreement between the Commission and U.S. Customs for fiscal year 1994 funding for district offices' access to Customs' ACS.**
- **Continued to provide OMB clearance support and guidance for the FMC to assure that the Commission's information collection requirements fully comply with the requirements of the Paperwork Reduction Act of 1980, as amended.**
- **Continued to furnish advice and coordination on records management issues.**
- **Provided extensive, Commission-wide, inhouse training in the following areas: PC-based application software, office LAN administration, records management, OMB clearances, and forms management.**
- **Recommended and acquired new technologies to upgrade the Commission's PCs to 486 technology and the windows environment.**

(c) Future Plans

In addition to implementing ongoing Office programs and providing extensive technical support for the ATFI program mentioned above, major initiatives for fiscal years 1994 and 1995 include: finalizing the Commission's Computer Security Plan, IRM Policy Manual, and the Five-Year IRM Plan; conducting in-house computer training, including training in computer security; initiating electronic records management; performing the GSA IRM-Triennial Review; implementing Internet Interagency E-Mail/files transfer capability; developing Commission-wide LAN-based multi-user database systems to decrease duplication of information and to provide agency-wide access to all Commission databases; converting ATFI transaction sets to UN/Edifact standard; and developing a statement of work for use in recompeting the ATFI contract.

4. Office of Personnel

(a) General Office Responsibilities

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

(b) Achievements

During fiscal year 1993, the Office:

- **Provided developmental opportunities for two of the Commission's SES candidates who were detailed to the Office as Acting Deputy Director of Personnel.**

- Worked with the Commission's Executive Resources Board to implement the Commission's SES Candidate Development Program and prepare a request to OPM to continue the Commission's current allocation of SES positions for fiscal years 1994 and 1995.
- Conducted a nationwide program to recruit investigators for the Commission's district offices, and filled transportation specialist, librarian, computer programmer and a variety of other positions at headquarters.
- Worked with the Commission's Drug Program Coordinator to implement fully the testing provisions of the Commission's Drug-Free Workplace Program.
- Finalized Commission Order 92, *Flexitime Program*, and revised Commission Order 91, *Employee/Visitor Identification Program*.
- Maintained close coordination with senior Commission officials, OPM, and others on all significant transition matters, preparing submissions and providing briefings and other assistance as required.
- Conducted research on personnel matters where necessary in order to provide senior management with background for decision-making on non-routine personnel issues.
- Concluded successful negotiations with the Government Printing Office Credit Union to allow headquarters Commission employees to join a

conveniently located credit union, and signed an agreement with the Department of State which allows Commission employees and their spouses to attend week-long retirement planning seminars.

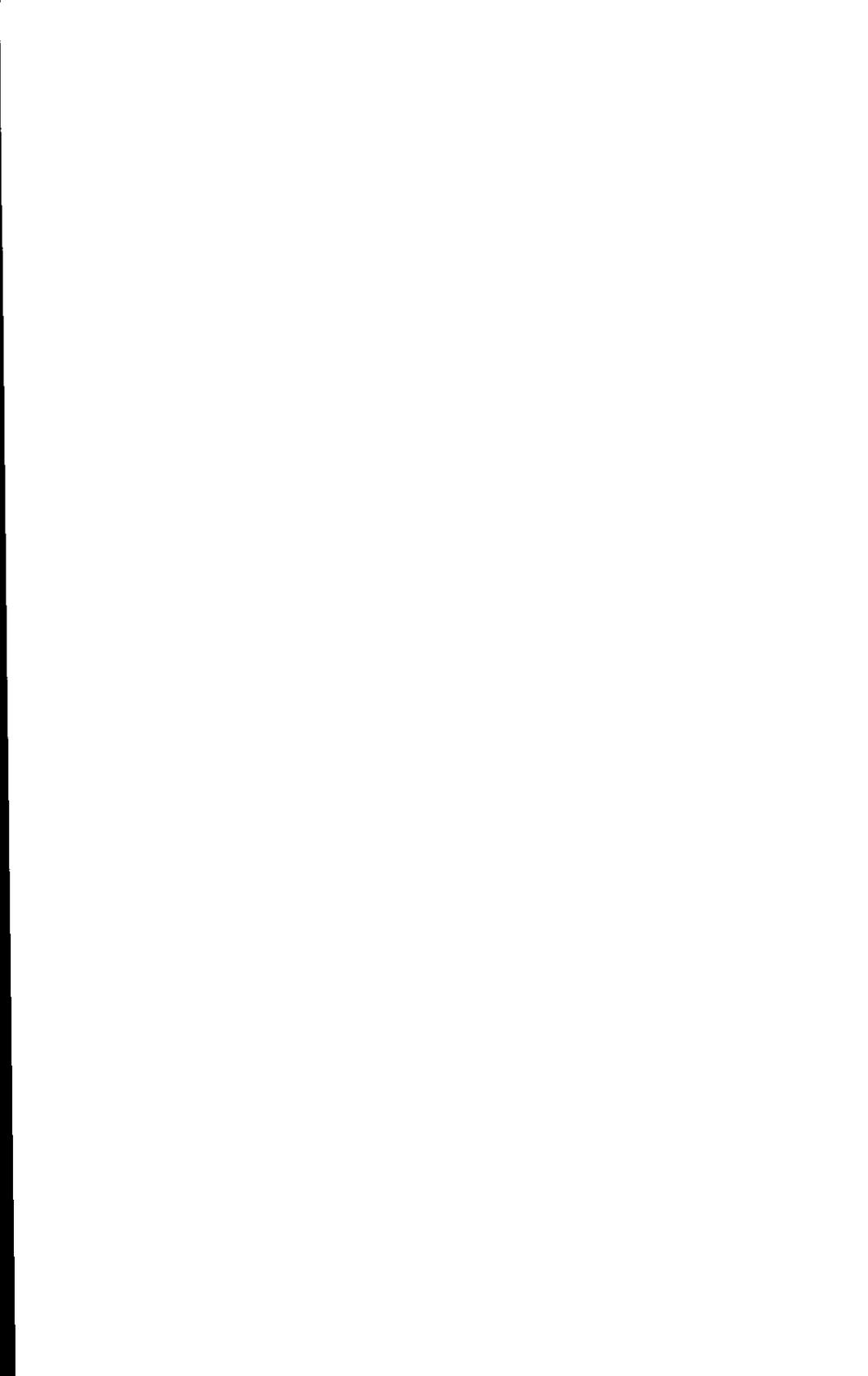
- Administered the largest Summer Youth Employment Program in many years in cooperation with the District of Columbia Government.
- Maintained the Commission's high standing among all agencies in percentage of employees with targeted disabilities, and offered special salary rates to clerical employees in Washington, D.C., New York, Florida, and California.
- Monitored employee counseling services contracts throughout the country, advised supervisors and employees of services provided by the contractors, and distributed a monthly counseling services newsletter to all employees.
- Conducted a Health Benefits Open Season and sponsored an annual Health Fair, conducted a Federal Employees Group Life Insurance Open Season, and conducted two Thrift Savings Plan Open Seasons.
- Continued to advise supervisors concerning their responsibilities to correct conduct and performance problems, and worked closely with legal advisors to ensure that employees affected by adverse actions were accorded their rights.
- Continued to operate a successful annual leave transfer program.

- **Conducted performance appraisal and incentive and performance awards programs.**
- **Conducted a successful Combined Federal Campaign by raising nearly \$21,000.**

(c) Future Plans

During 1994, the Office will continue to advise the Commission on all major personnel matters and ensure the maintenance of a sound and progressive personnel management program within the Commission. Major activities for the coming year include: implementation of the personnel aspects of the Commission's streamlining plan; implementation of a compressed workweek program; preparation of requests to OPM that the Commission's SES candidates be certified by a Qualifications Review Board for noncompetitive entry into the SES; and a review of all internal personnel policies with the intention of reducing such policies in accordance with streamlining guidelines.

APPENDIXES



APPENDIX B

COMMISSION PROCEEDINGS Fiscal Year 1993

Formal Proceedings

| | |
|--------------------------------------|----|
| Decisions | 15 |
| Discontinuances & Dismissals | 23 |
| Initial Decisions Not Reviewed | 13 |
| Rulemakings - Final Rules | 14 |

| | |
|-------------|----|
| Total | 65 |
|-------------|----|

| | |
|------------------------------|-----|
| <i>Special Dockets</i> | 211 |
|------------------------------|-----|

| | |
|-------------------------------|----|
| <i>Informal Dockets</i> | 20 |
|-------------------------------|----|

| | |
|-----------------------------|---|
| <i>Oral Arguments</i> | 2 |
|-----------------------------|---|

APPENDIX C

CARRIER AGREEMENT FILINGS AND STATUS Fiscal Year 1993

Carrier Agreements Filed in FY 1993 (including modifications)

Foreign and Domestic Commerce 254

*Agreements Processing Categories in FY 1993**

Forty-Five Day Review 107
Shortened Review 29
Exempt-Effective Upon Filing 121
Rejection of Filing 0
Formal Extension of Review Period 1
Approved Under Shipping Act, 1916 1

259

Carrier Reports Submitted for Commission Review

Minutes of Meetings** 1271
Operating and Ad Hoc Reports 50

1321

Carrier Agreements on File as of September 30, 1993

Conference 66
Interconference 14
Pooling & Equal Access 21
Joint Service 41
Sailing & Charter 133
Cooperative Working, Agency, & Equipment Interchange . . . 143

418

Terminal Agreements (including amendments)

Received 266
On Hand 10/1/92 833
On Hand 10/1/93 929

* Includes Terminal Agreements sent to the Commission.

** Docket No. 92-32, *Amendments to Agreement Recordkeeping Regulations*, eliminated the requirement for the filing of Shippers' Requests and Complaints, Consultations, and Index of Documents.

APPENDIX D

TARIFF AND TERMINAL FILINGS AND STATUS Fiscal Year 1993

Tariff Filings (Pages)

| | |
|------------------------|----------------|
| Foreign Filings | 792,200 |
| Domestic Filings | 65,570 |
| Terminal Filings | 5,001 |
| TOTAL | <u>862,771</u> |

Tariff Publications

| | | |
|------------|-----------------------|-------|
| Foreign: | On Hand 10/1/92 | 5,105 |
| | On Hand 10/1/93 | 5,355 |
| Domestic: | On Hand 10/1/92 | 228 |
| | On Hand 10/1/93 | 248 |
| Terminals: | On Hand 10/1/92 | 515 |
| | On Hand 10/1/93 | 511 |

Electronic Tariff Filings

| | |
|------------------------------|---------|
| Tariffs | 1,521 |
| Rules | 89,974 |
| Commodity Descriptions | 93,342 |
| Tariffs Line Items | 787,990 |

Special Permission Applications

| | |
|---------------------------------|-----|
| Total Received - Foreign | 132 |
| Granted | 117 |
| Denied | 10 |
| Withdrawn | 4 |
| Pending | 1 |
| Total Received - Domestic | 4 |
| Granted | 2 |
| Denied | 2 |
| Withdrawn | 0 |

Domestic Investigation and Suspension Memoranda

| | |
|-----------------|---|
| Completed | 1 |
| Pending | 0 |

Service Contracts Filed

| | |
|--|-------|
| | 6,445 |
|--|-------|

APPENDIX E

CIVIL PENALTIES COLLECTED Fiscal Year 1993

| | |
|---|---------------------------|
| Air Sea Transport Inc. | \$ 15,000.00 |
| Robert Barry & Barry Transf. | 15,062.24 |
| Carben, Inc. | 14,000.00 |
| Central American Produce | 30,000.00 |
| Chemical Tankers of America | 10,000.00 |
| China Ocean Shipping Co | 400,000.00 |
| Colonial Beef Company | 15,000.00 |
| Distribution Service Ltd | 225,000.00 |
| Dynamic Network Container | 5,000.00 |
| Freight Forwarders Inc. | 11,250.00 |
| Frutech International Inc. | 40,000.00 |
| Gulf Atlantic Transp. Corp. | 45,123.58 |
| Impex Services Inc. | 40,000.00 |
| L.C. Shipping Inc. | 6,500.00 |
| Prevor Marketing Int'l. | 20,000.00 |
| Sunkyong Ltd/Amer. Inc. | 150,000.00 |
| Transpacific Carriers Agreement | 1,000,000.00 |
| Turbana Corporation | 17,500.00 |
| Universal Cargo Management | <u>4,000.00</u> |
| Total Civil Penalties Collected | \$2,063,435.82 |

APPENDIX F

INVESTIGATIONS Fiscal Year 1993

Investigative Cases Opened: 295

Investigative Cases Completed:

Reports of Investigation 284

Enforcement Reports 14

—
Total Reports 298

Reports Referred for Action: 23

APPENDIX G

STATEMENT OF APPROPRIATIONS, OBLIGATIONS AND RECEIPTS FOR THE FISCAL YEAR ENDED SEPTEMBER 30, 1993

APPROPRIATIONS:

Public Law 102-140, approved November 12, 1991: 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.

\$18,300,000

OBLIGATIONS AND UNOBLIGATED BALANCE:

Net obligations for salaries and expenses for the fiscal year ended September 30, 1993. \$18,299,932

STATEMENT OF RECEIPTS: Deposited with the General Fund of the Treasury for the Fiscal Year Ended September 30, 1993:

| | |
|---|--------------------|
| Publications and reproductions, Fees and Vessel Certification, and Freight Forwarder Applications | \$ 156,900 |
| Routine ATFI program fees | \$ 242,000 |
| Other ATFI-related fees | \$ 6,600 |
| Fines and penalties | \$2,077,500 |
| | <hr/> |
| Total general fund receipts | \$2,483,000 |