

FEDERAL MARITIME COMMISSION

36th ANNUAL REPORT

for

Fiscal Year

1997



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	4
II. THE YEAR IN REVIEW	7
A. Trade Developments	7
B. Restrictive Trade Practices	10
C. Surveillance	12
D. Enforcement	13
E. Consumer Assistance	14
F. Tariff Automation	15
III. SURVEILLANCE AND ENFORCEMENT	
A. Surveillance	17
B. Enforcement	18
IV. DEVELOPMENTS IN MAJOR U.S. FOREIGN TRADES	
A. Transatlantic	21
B. Mediterranean	26
C. Middle East	27
D. Africa	28
E. Latin America and the Caribbean	29
F. Transpacific	35
G. Worldwide	38
V. AUTOMATED TARIFF FILING AND INFORMATION SYSTEM	
A. Introduction and Background	43
B. Early Studies on Tariffs	44
C. First Step in Tariff Automation	45
D. The Shipping Act of 1984	45
E. The Tariff Automation Task Force	46
F. ATFI: Feasibility Study of Tariff Automation and The ATFI Advisory Committee	47
G. Benefit Cost Analysis and Procurement Authority	49
H. Inquiry on the Functionality of ATFI and Presolicitation Conference	49
I. Remote Retrieval	53
J. Contract Award and Major Changes	55

K.	Docket No. 90-23	57
L.	Batch Filing Guide	59
M.	Miscellaneous Milestones	60
N.	Update on Remote Access - September 1997	63
VI.	THE FOREIGN SHIPPING PRACTICES ACT OF 1988	
A.	General	67
B.	Top Twenty U.S. Liner Cargo Trading Partners	68
VII.	SIGNIFICANT OPERATING ACTIVITIES BY ORGANIZATIONAL UNIT	
A.	Office of the Secretary	73
B.	Office of Administrative Law Judges	77
C.	Office of the General Counsel	81
D.	Office of Equal Employment Opportunity	95
E.	Office of Inspector General	99
F.	Office of the Managing Director	103
G.	Bureau of Economics and Agreement Analysis	109
H.	Bureau of Tariffs, Certification and Licensing	117
I.	Bureau of Enforcement	131
J.	Bureau of Administration	135
APPENDIXES		
A.	Organization Chart	145
B.	Commission Proceedings	146
C.	Agreement Filings and Status	147
D.	Tariff and Service Contract Filings and Special Permission Applications	148
E.	Civil Penalties Collected	149
F.	Investigations	150
G.	Statement of Appropriations, Obligations and Receipts	151



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

March 31, 1998

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-sixth annual report of the activities of the Federal Maritime Commission for fiscal year 1997.

Additionally, section V.N of this report contains an Update on Remote Access - September 1997, 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 "Harold J. Creel, Jr.", written over a horizontal line.

Harold J. Creel, Jr.
Chairman

MEMBERS OF COMMISSION*



*Harold J. Creel, Jr.
Chairman
Appointed 1994
Term Expires 1999*



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



*Joe Scroggins, Jr.
Commissioner
Appointed 1994
Term Expired 1995*



*Delmond J.H. Won
Commissioner
Appointed 1994
Term Expired 1997*

One vacancy as of February 4, 1996.

SENIOR COMMISSION OFFICIALS

Secretary	<i>Joseph C. Polking</i>
Chief Administrative Law Judge	<i>Norman D. Kline</i>
General Counsel	<i>Thomas Panebianco</i>
Director, Office of Equal Employment Opportunity	<i>Vacant</i>
Inspector General	<i>Tony P. Kominoth</i>
Managing Director	<i>Edward P. Walsh</i>
Deputy Managing Director	<i>Bruce A. Dombrowski</i>
Director, Bureau of Economics and Agreement Analysis	<i>Austin L. Schmitt</i>
Director, Bureau of Tariffs, Certification and Licensing	<i>Bryant L. VanBrakle</i>
Director, Bureau of Enforcement	<i>Vern W. Hill</i>
Director, Bureau of Administration	<i>Sandra L. Kusumoto</i>

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. 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 of the U.S. The passage of the Shipping Act of 1984 ("1984 Act") brought about a major change in the regulatory regime facing shipping companies operating in the U.S. foreign commerce.

B. FUNCTIONS

The principal statutes or statutory provisions administered by the Commission are the 1984 Act, the Foreign Shipping Practices Act of 1988 ("FSPA"), section 19 of the Merchant Marine Act, 1920 ("1920 Act"), and Pub. L. No. 89-777. Through fiscal year 1996, the Commission also administered the Shipping Act, 1916 ("1916 Act"), and the Intercoastal Shipping Act, 1933, which regulated common carriage in the U.S. domestic offshore commerce. The regulatory responsibility for U.S. domestic offshore commerce was transferred

to the Surface Transportation Board (“STB”) effective October 1, 1996, pursuant to the ICC Termination Act of 1995, Pub. L. No. 104-88, 109 Stat. 803 (1995).

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.**
- **Receiving and reviewing 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 foreign government-owned or -controlled carriers to ensure that they are just and reasonable.**
- **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.**

- **Licensing international ocean freight forwarders.**
- **Bonding non-vessel-operating common carriers ("NVOCCs").**
- **Investigating discriminatory rates, charges, classifications, and practices of ocean common carriers, terminal operators, and freight forwarders operating in the foreign 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, however, does not 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 or -controlled carriers.

Pub. L. No. 89-777 requires the operators of passenger vessels with 50 or more berths, who embark passengers at U.S. ports, to establish financial coverage to indemnify passengers in cases of death, injury, or nonperformance of transportation. The Commission certifies such operators upon the submission of satisfactory evidence of financial responsibility.

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 Economics and Agreement Analysis; Bureau of Tariffs, Certification and Licensing; Bureau of Enforcement; and Bureau of Administration. The Managing Director assists the Chairman in providing executive and administrative direction to the Commission's bureaus. These offices and bureaus are responsible for the Commission's regulatory programs or provide administrative support.

In fiscal year 1997, the Commission was authorized a total of 180 full-time equivalent positions and had a total appropriation of \$14,000,000. The majority of the Commission's personnel are located in Washington, D.C., with area representatives in New Orleans, Los Angeles, Miami and Seattle.

II

THE YEAR IN REVIEW

The Commission continued to be vigilant in pursuing its international trade and transportation responsibilities in fiscal year 1997. Specific emphasis was placed on protecting all in the industry from unjust activities or malpractices that impede the maintenance of equitable trading conditions.

The Commission monitored the dynamic changes occurring in international liner shipping so as to track developing trends and assist its ongoing surveillance and enforcement efforts. It was quick to react to unacceptable or illegal commercial activities that emerged as a result of competitive pressures. Additionally, the Commission addressed the practices or laws of several foreign governments which restricted trade or created undue adverse consequences for American entities or U.S. commerce. The agency also continued to provide information and assistance to all companies and individuals active in U.S. ocean commerce.

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 interest. This section of the report is a brief summary of the Commission's major activities and accomplishments during the year.

A. TRADE DEVELOPMENTS

International ocean shipping remains a vital link between the U.S. economy and the rest of the world. The Commission continually assesses trade developments so as to discern all commercial and economic factors relevant to its oversight role.

Overall, a noticeable trend is emerging throughout the liner shipping industry. More carriers are participating in operational alliances with each other to expand their global capabilities. Consequently, shippers, ports, intermediaries, and niche carriers are being affected by this trend, and are structuring their operations around these carrier alliances.

Cargo volume in the transatlantic trade showed significant improvement as U.S. liner imports from North Europe grew by 8 percent, while exports increased by 11 percent. The improved conditions shifted the liner cargo trade balance in favor of U.S. exports for the first time since 1992. China Ocean Shipping Co. ("COSCO"), Kawasaki Kisen Kaisha, and Yangming Marine Line entered the trade as non-conference competitors through a series of space charter and cooperative working agreements. Additionally, Hanjin Shipping Co. Ltd., plans to withdraw from the *Trans-Atlantic Conference Agreement* ("TACA") by the end of 1997 and continue operating in the trade as an independent carrier. Under its acquisition plans for DSR-Senator, Hanjin will gradually integrate that carrier into its own operations. Also, American President Lines plans to enter the transatlantic in 1998, upon the completion of its acquisition by Neptune Orient Lines. Two additional carriers, Canada Maritime Services Ltd. and Cast Line, also are planning to enter the trade in conjunction with Lykes Bros. Steamship Co.

On regulatory matters, the Commission issued three orders to collect information and commence formal proceedings against certain transatlantic carriers concerning their space charter agreements. In Europe, attempts to resolve the European Commission's ("EC") latest Statement of Objections against TACA broke down with the EC's rejection of TACA's settlement offer. The EC may issue a revised statement or a final decision early next year, but matters most likely will be resolved in the European Courts.

U.S. imports from the Mediterranean region grew during the fiscal year, prompted by a strong demand for consumer goods from Italy and Spain. Exports to the region also were up as several nations,

including Turkey, Italy and Spain, consumed U.S. raw materials and agricultural products. An environment of intense competition and falling freight rates led to the dissolution of the *South Europe America Conference*, and the formation of a new, but smaller rate agreement, the *United States South Europe Conference*.

Trade between the U.S. and Middle East nations experienced sporadic growth in the latter half of the fiscal year. U.S. imports from Oman, Saudi Arabia, and Israel grew, as did U.S. exports to the United Arab Emirates, Saudi Arabia, and Israel. The eruption of violence and a breakdown of the peace process continues to threaten economic stability and growth in this region.

U.S. imports from Africa grew by 17 percent in fiscal year 1997, and U.S. exports rose by 8.6 percent. The improved trade conditions prompted some carriers to expand their liner services, while a sharp decline in freight rates led many carriers to withdraw from the *American West Africa Freight Conference*. Inadequate port facilities and chronic congestion continued to trouble the African trade, although some port improvements were initiated.

Economic reforms aimed at industrial privatization and trade liberalization continued to stimulate growth in trade between the U.S. and Latin America. Gains were made in such U.S. exports as machinery, equipment, and chemicals, while manufactured goods such as paper, fabrics, and aluminum products were increasingly imported from Latin America. Despite increased trade growth, overcapacity prompted carriers to rationalize their services by actively entering into vessel sharing, space chartering, and cooperative working agreements.

The volume of U.S. imports from Asia started out strong in fiscal year 1997, but was followed by a seasonal slump. In the outbound direction, cargo volume was stable until the sharp depreciation of Asian currencies against the U.S. dollar placed U.S. exports at a competitive disadvantage in the Asian markets. Agreement activity among carriers in the transpacific focused on

overcapacity, competition between conference and non-conference carriers, and concerns over the possibility of service contract deregulation. After filing an amendment to reinstitute their inbound capacity management program, carriers in the *Transpacific Stabilization Agreement* withdrew the amendment after the Commission requested additional information. Conference carriers of the *Asia-North America Eastbound Rate Agreement* revised their service contract procedures to allow two or more members to enter into contracts with shippers. And the independent, Peoples Republic of China (“PRC” or “China”) state-owned carrier, COSCO, joined the outbound discussion agreement, the *Westbound Transpacific Stabilization Agreement*, as a non-conference participant. The PRC implemented rate regulations for ocean liner shipping in its bilateral foreign trades through the Shanghai Shipping Exchange. The regulations are not applicable to the trade between the U.S. and the PRC.

B. RESTRICTIVE TRADE PRACTICES

One of the Commission’s primary missions is to identify and eliminate protectionist practices of other countries that favor their domestic companies and discriminate against U.S. trade interests in ocean shipping. The Commission has been extremely successful in attaining this goal, consistently resolving trade obstacles and issues to the satisfaction of affected U.S. parties.

The Commission actively had been monitoring the adverse effects of restrictive port practices in Japan, and implemented retaliatory action this past fiscal year. After proposing a \$100,000 per voyage fee on Japanese liner operators in November 1996, the Commission issued a final rule making these sanctions effective on April 14, 1997. The most problematic condition involves a “prior consultation system,” which requires a mandatory process of negotiation and preapprovals on even the simplest of carrier operational activities. This system essentially is operated by the Japan Harbor Transportation Association, which the Commission

found suppressed competition, disrupted the business operations of its detractors, and otherwise imposed operational restrictions. These conditions have resulted in unreasonably high costs and inefficiencies.

The final rule was postponed to encourage attempts at diplomatic resolution, but it eventually became effective on September 4, 1997. Fees began accruing against the Japanese carriers, with the first payments due October 15, 1997. The Japanese carriers advised the Commission that they did not intend to pay the fees owed, and in response, the Commission announced its intention to bar or detain Japanese vessels at U.S. ports. After extensive and high-level bilateral negotiations, documents were concluded which contained a far-reaching commitment to reform Japanese port practices. In light of these developments, the Commission accepted \$1.5 million in compromise of the higher amount that was due for the month of September from the Japanese carriers. The Commission will continue to monitor developments on this important matter and is prepared to act should it become necessary in fiscal year 1998.

The Commission continues to review information collected from shipping lines serving Brazil regarding Brazilian practices that preclude U.S.-flag carrier operation of a bonded warehouse in Brazil, and restrict U.S. carriers' ability to operate in the cross-trades between Brazil and other South American countries. Additionally, in fiscal year 1997, the Commission collected information regarding tax and cargo preference legislation in Brazil which would severely disadvantage U.S. carriers relative to their Brazilian counterparts. In fiscal year 1998, the Commission will determine what, if any, action is appropriate concerning these Brazilian restrictive practices.

The Commission also continued to review issues in the China trade. The Chinese had committed to allow U.S. carriers to offer consolidation services in the PRC through wholly-owned subsidiaries, and the Commission is monitoring this situation to assure that this commitment is implemented. The Commission also is reviewing the establishment of the Shanghai Shipping Exchange,

which is a combination freight exchange and regulatory body in the PRC. The Commission is collecting and analyzing information to ensure that the Exchange does not impede or disadvantage U.S. carriers.

C. SURVEILLANCE

The Commission monitors market activity and behavior to ensure continued compliance with statutory and regulatory requirements. These efforts help to identify unreasonable or unjustly discriminatory trade practices that need to be addressed by some form of compliance or enforcement action.

This past fiscal year, the Commission implemented new reporting rules and regulations for carrier agreements filed under the 1984 Act. The new regulations revised the agreement information form, and instituted new requirements for the submission of quarterly monitoring reports. The new regulations separate carrier agreements into three classes, depending on an agreement's authority and market share. The monitoring report requirements vary by class, but can include market share, cargo, revenue, and service data. The Commission classified over 200 agreements in fiscal year 1997, and notified the parties of their classification status and applicable monitoring report requirements.

Other major monitoring and research projects undertaken in fiscal year 1997 included: an economic analysis and testimony regarding the Commission's Japanese port practices case; an analysis of a carrier agreement proposal to reinstitute a capacity management program in the inbound transpacific trade, supporting the agency's successful effort to eliminate that program; preparation of Commission orders concerning possible statutory violations by certain carriers in the North Atlantic; reports on carrier strategic alliances in ocean shipping; and an economic analysis on the pricing practices of a controlled carrier in the transpacific and transatlantic trades.

D. ENFORCEMENT

The Commission's enforcement program is aimed at obtaining compliance with applicable statutes, and ensuring that equitable trading conditions exist in all U.S. ocean trades. It works in unison with our ongoing monitoring and surveillance efforts to achieve these goals.

In fiscal year 1997, the Commission completed its merger of the former Bureau of Investigations and the former Bureau of Hearing Counsel into the new Bureau of Enforcement. This new bureau enables closer coordination between our investigatory and prosecutorial units, and facilitates inter-office efforts on major trade initiatives or programs designed to address serious malpractices.

The Commission also completed its first full year without district offices, the last three having been closed in fiscal year 1996. We have maintained a presence in Los Angeles, Miami, New Orleans, and Seattle through area representatives. These representatives serve the other major port cities and transportation centers within their respective areas, providing liaison between the Commission and the maritime industry, collecting and analyzing intelligence, and assessing industry conditions and practices.

In fiscal year 1997, the Commission investigated suspected malpractices by ocean carriers, cargo interests, and middlemen in the transpacific trades, where fraudulent cargo descriptions and measurements were a significant focus. We also conducted malpractice investigations in the South American, Central American and Caribbean trades, and continued to monitor the impact of settlement agreements reached with TACA in the North Atlantic through periodic reports and semiannual meetings with the conferences' members. The Commission also commenced two formal investigations in 1997 involving alleged unfiled agreements among carriers in the U.S./North Europe trades. These proceedings were the outgrowth of an earlier section 15 investigative order by the

Commission directed at possible restrictions on space chartering by TACA and its members.

The Commission collected approximately \$1,940,000 in civil penalties this past fiscal year, covering a wide range of malpractices in several trades. Settlements were reached with all segments of the maritime industry, including carriers, cruise operators, shippers, forwarders, and NVOCCs. The Commission continues to focus on actions that result in unfair treatment or have a negative effect on competition. Voluntary compliance consistently is sought, and the assessment of penalties is used to curb serious malpractices and deter violators who knowingly ignore U.S. law.

E. CONSUMER ASSISTANCE

The Commission consistently has been dedicated to being timely and responsive to the public. In line with Administration initiatives to improve consumer advocacy, as well as new statutory requirements, *e.g.*, the Small Business Regulatory Enforcement Fairness Act ("SBREFA"), the Commission upgraded this program this past fiscal year.

The Secretary's Office and the Office of Informal Inquiries and Complaints and Dockets ("OIIC") are the primary units responsible for public assistance. Information or documents regarding docketed proceedings or other Commission business are readily available from the Secretary. This past fiscal year, a good deal of this information was placed on the Commission's Internet home page. This has significantly enhanced the public's ability to obtain routine information or forms. The Commission plans to add to its home page as time goes on. Additionally, OIIC continued to serve as the agency's ombudsman and consumer advocate. That office responds to routine inquiries, initiates contacts on behalf of aggrieved parties, and serves as an intermediary on various types of informal disputes. The Office also offers assistance on matters beyond the strict limits of the Commission's responsibility, *e.g.*,

assisting the cruising public with problems incurred on a particular voyage or with a certain operator. In fiscal year 1997, OIIC assisted over 3,000 consumers and interested parties, and was instrumental in obtaining \$158,964 in monetary remunerations.

The Commission's area representatives also act as contacts for the public throughout the regions they serve. They answer regulatory questions and serve as liaisons to the industry on a regular basis. This past fiscal year, they helped many shippers locate and/or obtain the release of cargo, provided regulatory information to all segments of the industry, and informally settled disputes without the need for formal procedures.

The Commission continues to be active in moving against unscrupulous or ill-intentioned operators, and worked with a variety of aggrieved parties in their efforts to obtain release of their cargo or monetary reimbursements. Similarly, the Commission provided extensive advice to the cruising public regarding questionable or uncertified operators, and explained the procedures to be followed in obtaining refunds from failed operations or canceled voyages. The Commission also established a program aimed at helping small businesses to achieve compliance with Government regulations. This program began in fiscal year 1997 pursuant to SBREFA, and will be refined and fully operational next fiscal year.

F. TARIFF AUTOMATION

The Commission's automated tariff filing system enables tariff matter to be created on the filer's own computer and transmitted to the Commission's Automated Tariff Filing and Information System ("ATFI") by discreet individual filings or by publisher through a "batch filing" process. This system has been operational since 1994, and permits the Commission to function in a paperless tariff environment.

At the end of fiscal year 1997, there were 40 firms certified for batch filing. The Commission received 777 new electronic tariffs in fiscal year 1997, and closed the year with 4,738 tariffs in the ATFI system. This is an increase of 72 tariffs compared to the prior fiscal year. Additionally, the Commission received over 10,500 new service contracts in fiscal year 1997, an approximate 12 percent increase from the prior year, and almost 29,000 amendments to service contracts, which represent a 225 percent increase. Those tariffs and all essential terms of service contracts are available on a 24-hour basis to the 4,809 entities with ATFI access capability. The Commission continually adds new locations to the ATFI system, and ended the fiscal year with 323,514 locations in this database.

The Commission continued its Memorandum of Understanding ("MOU") with the STB regarding the filing of U.S. domestic offshore tariffs in ATFI. Jurisdiction over the domestic trades was transferred from the FMC to the STB in October 1996. The MOU permits these tariffs to continue being filed in ATFI, and sets up specific protocols for STB access and administration. The Commission continued to offer the STB advice and assistance on the operation and use of the ATFI system, and interacted with the contractor for STB on domestic filing issues. The MOU provides for annual STB reimbursements to the FMC for contract and other costs the FMC incurs.

The Commission also agreed on a 1-year contract extension with its present contractor, to obtain maintenance of the present system through September 30, 1998. The Commission again determined to defer recompetition of the contract, to include refinements and enhancements in line with technological advances, given our budgetary constraints and the possibility of legislative action to alter present tariff filing requirements.

III

SURVEILLANCE AND ENFORCEMENT

A. SURVEILLANCE

The systematic surveillance of carrier activities and commercial conditions in the U.S. liner trades is an integral part of the Commission's responsibilities under the 1984 Act. Such surveillance helps ensure that carriers operating in the U.S. trades comply with the statutory standards of the 1984 Act and the requirements of relevant Commission regulations. To that end, the Commission administers a variety of monitoring programs and other research activities designed to keep informed of current trade conditions, emerging commercial trends, and carrier pricing and service activities.

The importance the Commission attaches to its ongoing monitoring activities is a direct consequence of the removal, under the 1984 Act, of the Commission's previous broad discretion to disapprove agreements. 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 when additional information from filing parties is deemed necessary and requested. Finally, if the Commission determines that an agreement, by virtue of a reduction in competition, is likely to unreasonably increase transportation costs or decrease transportation service, it may seek injunctive relief in the U.S. District Court for the District of Columbia.

As a consequence of the Commission's limited authority to block agreements from taking effect, the need for adequate and timely evaluation of post-implementation agreement activity has increased considerably. The Commission's monitoring program provides such an evaluation through its examination of carrier competition including market share, concentration, entry conditions, general rate and service conditions, as well as pricing trends, vessel utilization, service contracting activity, and shipper complaints.

In fiscal year 1997, the Bureau of Economics and Agreement Analysis prepared a variety of economic analyses and reports on the activities and practices of carriers operating in the U.S. international trades. Projects included: (1) an economic analysis and testimony regarding FMC sanctions on Japanese-flag vessels in connection with Docket No. 96-20, *Port Restrictions and Requirements in the United States/Japan Trade*; (2) an analysis of a carrier agreement proposal to reinstitute a capacity management program in the inbound transpacific trade; (3) Commission orders on possible statutory violations by certain carriers in the North Atlantic; (4) reports on carrier strategic alliances in ocean shipping; (5) studies and reports on ocean freight rate trends and market conditions in major liner trades; (6) an economic analysis on the pricing practices of a controlled carrier in the transpacific and transatlantic trades; (7) a market-share analysis in support of a specific enforcement effort; and (8) classification of agreements, review and analyses of waiver requests and data submissions in connection with the new agreement reporting regulations.

B. ENFORCEMENT

The 1984 Act establishes an integrated system for the regulation of the shipping and related industries in furtherance of the statutory declaration of policy to ensure a nondiscriminatory, efficient, and economic ocean transportation system for the benefit of international trade of the U.S. The enforcement program represents a major area of Commission activity. A major goal of the program is to achieve compliance with the provisions of the 1984 Act.

Compliance, in turn, provides the pathway to the statutory objectives of the 1984 Act. Enforcement is a traditional means to achieve compliance through deterrence.

Fiscal year 1997 was the first full year of operation for the Commission's new Bureau of Enforcement, which was formed by merging the former Bureaus of Investigations and Hearing Counsel. The new Bureau provides for closer coordination between investigations and prosecutions, and streamlines the management of these two related functions.

The Commission maintains a presence in Los Angeles, Miami, New Orleans and Seattle, through an area representative based in each of those cities. These representatives also serve the other major port cities and transportation centers within their respective areas. Coverage of the North Atlantic region is the responsibility of the Bureau's staff in Washington, D.C.

Cooperation between the Commission's area representatives and the U.S. Customs Service ("Customs"), with respect to the exchange of investigative information, continues to be beneficial to both agencies and recently has expanded. Customs information permits Commission personnel to become more selective in determining which entities should be investigated for violations of the 1984 Act.

During 1997, the Commission developed evidence of extensive malpractices, particularly fraudulent cargo descriptions and measurements, in the transpacific trades. Other trades were also the subject of malpractice investigations, including the South American, Central American and Caribbean trades. These investigations included improper shipper practices, such as various forms of secret rebates and absorptions, misdescription of commodities and misdeclaration of measurements, as well as carriage of cargo by and for untariffed and unbonded NVOCCs.

During fiscal year 1997, the Commission collected \$1,943,349.04 in civil penalties. Settlements were reached with many different segments of the industry (*e.g.*, carriers, cruise operators, shippers, forwarders) operating in the U.S. foreign trades (*See* Appendix E).

IV

DEVELOPMENTS IN MAJOR U.S. FOREIGN TRADES

A. TRANSATLANTIC

In fiscal year 1997, liner trade conditions between the U.S. and North Europe improved significantly from last fiscal year's trade results. Fueled by sustained, strong U.S. consumer spending and a firm U.S. dollar relative to certain European currencies, containerized imports from North Europe recovered during the fiscal year after two consecutive years of contraction. During the fiscal year, liner imports from North Europe jumped 14 percent to register a positive 8 percent growth over the 6 percent decline in the previous period. The increase in liner imports consisted largely of consumer goods, including automobile parts, and alcoholic and non-alcoholic beverages from Germany; woodenware from Sweden; fish from Norway and Iceland; furniture and toys from Denmark; and computer goods from Finland. Declining timber land and rising paper prices in the U.S. supported demand for imported paper, which helped generate a 15 percent increase in imported paper from Scandinavia during the second quarter of 1997. Solid U.S. demand and softer currencies among certain European Union members and Poland are expected to support a sustained recovery in European imports over the next two years. Year-end projections anticipate a 10 percent increase in the volume of U.S. imports from North Europe.

After last year's lull, U.S. liner exports accelerated well beyond previous forecasts. U.S. liner exports to North Europe gained momentum during fiscal year 1997, ending the period with a solid 11 percent increase in liner export volume over the previous period's 2 percent gain. Contributing to this surge has been the continued competitiveness of U.S. goods resulting from higher U.S. industrial

productivity. In addition, the U.S. dollar's strength has helped boost the competitiveness of European goods abroad, which in turn has created greater demand for U.S. industrial materials in Europe. Increased paper output by Finland and Sweden generated a 43 percent surge in the demand for U.S. kaolin and china clay, a component of coated paper. Resins and synthetic rubber were major U.S. exports to Belgium, while medical equipment and supplies, construction-related goods, logs and lumber, and beer and ale led shipments to the United Kingdom ("U.K."). Other commodities with notable gains included logs and lumber to Germany, shellfish and forest products to Sweden, and frozen fish to Norway. U.S. trade to Europe is expected to out-pace Asia-bound trade through 1999. The export-led economic recovery in Germany and Belgium, combined with stronger U.K., Norway and Finland currencies, has, and is expected to continue to generate demand for U.S. goods. In addition, as Russia expands its manufacturing base, increased demand for U.S. industrial inputs is expected to continue. Year-end forecasts project a 10 percent increase in the volume of U.S. exports to North Europe.

Usually the inbound route from North Europe tends to be the stronger of the two trade legs, but the last few years have seen a move towards an overall balance as U.S. exports began to catch up with imports. During fiscal year 1997, and for the first time since 1992, U.S. liner cargo exports to North Europe exceeded liner cargo imports by more than 15,000 TEUs. Overall, trade conditions and cargo volumes were better than expected in both directions, with carriers reporting favorable utilization levels.

Favorable rates and trade conditions in the U.S./North Europe trade over the last several years, a result of unprecedented carrier solidarity and relatively slow capacity growth, caught the attention of a number of carriers not yet operating in the trade. Three new operators, China Ocean Shipping Co. ("COSCO"), Kawasaki Kisen Kaisha ("K Line") and Yangming Marine Transport, entered the trade in mid-February 1997, together providing a fixed-day, weekly non-conference service through a series of space chartering and cooperative working agreements (Nos. 203-011560, 232-011561, and

232-011562). Their entry into the trade has been closely watched by both shippers and incumbent operators. Both conference and non-conference carriers refrained from reacting across-the-board to rate actions taken by the newcomers and instead made adjustments to selected service contracts and tariff rates.

Contrary to earlier expectations, *Trans-Atlantic Conference Agreement* ("TACA") (No. 202-011375) officials maintain that its overall market position and revenue levels were not eroded adversely by the entry of the new independents. Stronger than normal cargo growth during the first half of 1997, as well as continued strong cargo growth during the normally slow summer season, compensated for market-share losses and helped to absorb the independent carriers' new services. Nevertheless, TACA's collective market share continued to decline during the fiscal year. Eastbound market share fell another 4 percentage points to 64 percent, while westbound market share fell 2 percentage points to 66 percent.

In addition to the added competition presented by the entry of the non-conference tripartite, 1998 will hold many competitive uncertainties for TACA. The resignation of Hanjin Shipping Co. from TACA in the wake of its acquisition of DSR-Senator Lines GmbH (currently a TACA member) will be TACA's most immediate concern. Hanjin is scheduled to resign from TACA effective December 31, 1997, and thereafter will provide a non-conference carrier service in the trade. With Hanjin departing to operate as an independent carrier, and its eventual total merger with DSR-Senator, TACA will certainly face more external competition in the future. Further competitive pressures will come from the expected entry into the trade by APL Ltd. (formerly American President Lines before its acquisition by Neptune Orient Lines ("NOL") in September 1997). Reports indicate that APL intends to develop and establish with its partners a strong presence in the transatlantic trade beginning in 1998. Industry sources also indicate that the new service will involve adding an unspecified amount of new capacity to the trade, an action that could upset current capacity supply/demand conditions.

Added competitive pressure in the transatlantic trade during 1998 is also anticipated from the planned entry of Canadian Pacific Ltd. ("CP Ships"), which is already a well established liner carrier in the Canadian trades. After its acquisition of financially troubled U.S.-flag carrier Lykes Line in July 1997, CP Ships is now a shipping conglomerate consisting of Canada Maritime Services Ltd., Cast Lines, Contship Container Lines Ltd., and Lykes. Lykes will be operating alongside Canada Maritime and Cast Lines as a new series of services are developed during 1998 that will call at most U.S. East and Gulf Coast ports and major European ports.

In October 1997, TACA carriers proposed a more ambitious 1998 Business Plan. For 1998, TACA plans to raise both westbound and eastbound tariff and service contract rates by \$95/TEU and \$120/FEU. This represents an increase of 6 percent to 7 percent over 1997 rates. Given the potential entry of a number of formidable carriers into the trade, as well as potential TACA membership changes during 1998, it is unclear how successful TACA will be in implementing this rate increase.

During 1997, the Commission issued three orders in connection with its inquiry into space/slot chartering between and among carriers in the transatlantic trades. Two orders commenced formal adjudicatory proceedings to determine whether certain carriers may be in violation of the 1984 Act and/or FMC regulations by failing to file true and complete copies of their space/slot chartering agreements, or by operating under the terms of agreements not on file with the Commission. The third order requested additional documents and information related to other possible unfiled agreements in these trades. These actions were an outgrowth of the Commission's section 15 order issued in 1996 to TACA and its members, inquiring into possible conference restrictions on space chartering in the transatlantic trades. These matters were pending at the close of fiscal year 1997.

In addition to the Commission's close scrutiny of TACA and its members' activities, TACA continued to undergo examination by

the EC. The EC issued a formal Statement of Objections against TACA in May 1996, alleging it had violated EC competition rules through its service contracting practices, price-fixing and agreement on inland European transport services, collective activities concerning equipment exchange, and agreement to set maximum freight forwarder compensation levels. EC competition regulators were prepared to publish a supplementary Statement of Objections, but delayed that action when TACA attempted to improve the efficiency of its inland transport services. However, in July 1997, attempts to resolve the EC's objection against TACA broke down with the EC rejecting TACA's settlement offer. The dispute will now resume both in court and under normal EC administrative proceedings. It is expected that the EC will issue either a revised Statement of Objections refining their arguments, or a final decision in early 1998. The case then will be resolved in the European courts.

The dispute concerning the November 1996 decision by the EC to lift TACA's and its predecessor's, the Trans-Atlantic Agreement ("TAA"), immunity to fines was appealed by TACA and is now before the Court of First Instance of Luxembourg. Both sides in this case are reportedly preparing written submissions, but a court date for the first hearing has not been set.

Complicating matters further is the issue of whether inland European rate-fixing by shipping conferences is exempt under EC law. The court action concerning the intermodal ratemaking authority of TACA/TAA has been suspended until a test case decision has been made on the now defunct Scandinavian, United Kingdom, North Continent, Arabian Gulf ("SUNAG") Conference. The SUNAG decision could set a precedent in European law that may resolve similar cases now pending, including those against TACA/TAA. Oral arguments have been heard by the court-appointed Advocate General, and a decision is expected in April 1998. As Europe's highest court, decisions rendered by the Court of Justice are final and not subject to appeal.

B. MEDITERRANEAN

The Mediterranean countries experienced a sharp cyclical downswing in 1996 due to a decline in exports and weak domestic demand. Export shipments from the U.S. to the region picked up in the first half of 1997 as the economies of Spain, Italy, and Portugal began to rebound. The Italian economy is rebounding, as a fall in the lira has propelled exports and monetary and fiscal austerity have pushed inflation down to the level required to join the European Monetary Union. Low inflation and strengthening economic outlooks are also stimulating growth in Spain and Portugal. Imports from the region to the U.S. have shown strong growth in the first half of 1997 as the U.S. economy continues to show steady growth.

Trade from the Mediterranean grew strongly in the second quarter 1997. Robust demand and the relatively weak Italian lira and Spanish peseta stimulated a large 22,000 TEU increase. Consumer goods, namely furniture, vegetables, wine and oil, were the largest gainers. Imports from Italy accounted for nearly two-thirds of the gain, with Spain supplying the rest. Traffic in fiscal year 1998 is expected to grow 17 percent before slowing down. Weak currencies in Italy and Spain will continue to be driving forces.

Exports to the Mediterranean also grew strongly in the second quarter of 1997. An export-led expansion in Italy and Spain and rising cotton demand in Turkey triggered a 12,000 TEU increase. Turkey-bound traffic, which accounted for nearly 40 percent of the increase, was dominated by cotton. Logs, lumber and frozen fish led the growth in Italy and Spain. Overall, growth is expected to reach 15 percent in 1997.

Competition in the liner shipping markets has become so intense that the conference in the trade, the *South Europe America Conference* ("SEAC") (No. 202-011456) disbanded. Citing low market share and falling rates, the members could not reach a consensus on steps to improve their situation. In anticipation of the

demise of the conference, several carriers (Sea-Land Service, Inc., A.P. Moller-Maersk Line, and P&O Nedlloyd) filed a new rate agreement, *The United States South Europe Conference* (No. 202-011587).

C. MIDDLE EAST

The economies of the Middle East region were generally anemic, with the exception of Saudi Arabia. Israel experienced a slowdown in growth, with rising unemployment. However, industrial production remains strong, particularly in the metal, machinery, and electrical sectors. Economic reform is a top priority in Saudi Arabia. Privatization is gaining momentum in a number of key sectors of the economy. As a result, foreign investment should pick up. However, a 10 percent drop in oil prices is having a negative effect on the economy, and growth is expected to fall off in 1997 because the economy is so dependent on the oil sector.

Imports from the Middle East were flat during 1996. However, there was a pickup during the first two quarters of 1997, posting a 12 percent gain in the second quarter of 1997. A large increase in import traffic came from Oman, whose recent success in the non-oil sectors should keep imports from this nation growing. Growth from Saudi Arabia came from a rise in aluminum scrap-recovered beverage cans. Imports from Israel saw growth in a number of sectors such as furniture, fabrics, and hardware. The violence in this region threatens hopes for continued economic growth and is reflected by a reduction in investment activity.

U.S. exports to the Middle East also remain flat, though there was an increase during the second quarter of 1997 which counterbalanced a drop in the first quarter. Shipments to Saudi Arabia and the United Arab Emirates accounted for the largest gains. Furniture was a strong mover in the Saudi Arabian/U.S. trade. Apple exports were also strong throughout the region as a result of a good crop and intensified marketing efforts by producers. Exports to Israel showed a minimal gain, as the breakdown of the peace process stunts

economic growth in the country. Demand for poultry throughout the region continues to decline. The suspension of poultry subsidies in the U.S., combined with a stronger dollar, has put American producers at a disadvantage.

D. AFRICA

Growth rates of African countries, measured by gross domestic product, were very low in fiscal year 1997. Thirty countries had positive growth rates, but many were below the median rate of 2 percent. Countries with higher than the median rate included Egypt with 5 percent and the Ivory Coast with 6.5 percent, while Kenya and Nigeria had rates of 3.1 and 4.4 percent, respectively. South Africa fell below last year's rate of 3.1 percent to 2.1 percent.

International financial organizations played a significant role in financing development projects throughout the African continent. The World Bank and its affiliate, the International Development Association, approved loans of over \$1.7 billion to finance 49 projects. This was a sharp decline from the 1996 loans of \$2.74 billion. Lending by the International Finance Corporation amounted to \$385 million for 73 projects, doubling the \$191 million loaned in 1996. However, direct private investment declined by 27 percent from 1996 to \$2.1 billion, less than 3 percent of all direct private investment worldwide.

Trade between the U.S. and Africa increased in fiscal year 1997. Imports from Africa reached 69,277 TEUs, an increase of over 17 percent from 1996. Exports to Africa showed an increase of 8.6 percent over 1996 to 112,335 TEUs. South Africa, Egypt and the Ivory Coast were the main trading partners of the U.S. The U.S. continued to export mainly high-tech goods, along with machinery, spare parts, electrical and electronic components, and medical equipment and supplies.

New shipping services included an East Africa/South Africa to U.S. East Coast service by South Africa Independent Line. Maersk also started a new container service to connect with its vessels from North America, South America, the Middle East and West Africa. OT Africa Line added a third ship to its West African service and resumed calls at Monrovia, Liberia, which were suspended because of the civil war. Safbank Line also added Port Elizabeth to its weekly service to Southern Africa. South Africa negotiated bilateral shipping agreements with forty countries, and new services to the area are expected to increase.

Freight rates, especially in the Southern Africa trades, dropped considerably below the previous year's rates, mainly because Maersk reduced rates by an average of 40 percent and other carriers followed its lead. Port-to-port rates in the high-volume pet food trade, for example, were reduced from \$4,500/FEU to \$2,200/FEU. Toward the end of fiscal year 1997, the *American West African Freight Conference* (No. 202-007680) lost most of its members, apparently due to differences in rate policy. Through independent action, members frequently undercut the conference rates.

African ports continued to be inefficient and expensive because of congestion, poor equipment and labor unrest. However, some improvements were made. The port of Mombasa received \$14.5 million from Felixstowe Port Consultants for improvements under an agreement with the consultants to manage the port. In the Ivory Coast, the port authority privatized all port operations and refurbished its terminal at a cost of \$10 million.

E. LATIN AMERICA AND THE CARIBBEAN

After a period of slow growth in 1995 followed by a gradual return to moderate growth in 1996, most Latin American economies began growing strongly during 1997. Privatization projects and the expansion and liberalization of the energy sectors through Latin America meant strong U.S. exports of machinery, equipment, and chemicals. Increased manufacturing resulted in greater imports of

paper and paperboard, fabrics, and aluminum products, while higher incomes increased electronic products and grocery imports. On the east coast of South America, the relaxing of stringent import restrictions on Argentine beef has opened new northbound opportunities, particularly important since beef is a high-valued refrigerated cargo. Bananas and other fruits and coffee still account for the majority of U.S. imports. Similarly, Central America and northern South America have increased the variety and quantity of melons, fruits and vegetables being exported.

The growth in perishables traffic from Latin America in 1997 was partly the fruition of research and investment into the development and implementation of improved refrigeration technologies. These technologies now allow the transport to the U.S. of fragile but high-valued cargo like Chilean stone fruits and broccoli from Guatemala, as well as an increased ability to handle bananas from the Dominican Republic and melons and mangoes from Central America. Longer refrigeration times as a result of computer-controlled reefer containers have also permitted perishables to move on vessels destined to continue on to Europe. Since these vessels carry cargo destined to both the U.S. and Europe, the carriers are achieving better vessel utilization and have passed much of the benefit back to shippers in terms of lower rates. Lower rates, in turn, have increased the quantity demanded, encouraging carriers to dramatically increase the number of reefer containers available to the trade. Some carriers have gone so far as to reposition existing, and in some cases to build new, specialized reefer vessels for this trade area. Agreements containing pendulum services covering the U.S., Europe and South America increasingly are becoming the norm rather than the exception in the Atlantic.

Brazil is the largest South American trading partner with the U.S., accounting for more than 65 percent of the imports from, and 50 percent of the exports to, the east coast of South America. Export growth to Brazil, mirroring the general trend, grew only slightly in 1996, but regained speed in 1997. Imports actually declined in 1996, but recovered and began to grow again in 1997.

Another major development in the South American trade involves the improvement of its port facilities. In what is widely regarded as a watershed event, the Terminal de Containers at the port of Santos, Brazil's largest container port, was privatized. However, at present the cost of moving a container through Santos is estimated to be \$500, with vessel waiting time reaching more than 10 days during periods of heavy congestion during 1997. The goal is to improve conditions at the port in order to lower the container handling cost and eliminate excessive vessel waiting time.

On the west coast of South America, there are similar port development and modernization programs. The port of Ilo (important as the principal port serving Bolivia) in Peru has been privatized, and the port of Callao (Peru's largest port) recently has awarded a concession to a private terminal operator which proposes to raise the port's capability from 250,000 to almost 1 million tons a year.

Central America has also seen major changes recently. Evergreen Marine Corporation, Ltd. recently has opened a hub at Coco Solo, near the Caribbean end of the Panama Canal. Similarly, Maersk has opened the Manzanillo International Terminal on the Caribbean end of the Canal. Having these terminals permits these carriers to split their Caribbean feeder services into north and south feeders. Cargo which previously would have gone to Miami is now able to be transshipped as soon as it exits the Panama Canal, saving shippers time and lowering the costs to carriers.

The Caribbean port of Freeport in the Bahamas has begun offering strong competition to the ports of Miami and Jacksonville, especially for transshipment cargo to and from Europe. Privately owned and operated, the port is trying to take advantage of its non-U.S. status, which allows faster customs clearance and inspection, and its geographic location to become a major hub. As of now, Freeport appears to be attracting new cargo rather than taking cargo from the U.S. ports. For example, Mediterranean Shipping Company ("MSC"), a recent entrant in the east coast of South America trade with 12- to 14-day sailings using 1,200-TEU vessels, has opted to use

Freeport. Similarly, a five-carrier agreement made up of parties active in the U.S. trades has introduced a weekly service utilizing 2,400-TEU vessels between Europe and the east coast of South America. Given the expansion of the trade between South America and Europe, there appears to be a large amount of such non-U.S. cargo to pass through Freeport without disadvantaging either Miami or Jacksonville.

APL joined with the trade's biggest carrier, Crowley American Transport, Inc., to initiate a U.S. East Coast to east coast of South America service. Initially the *APL/Crowley Space Charter and Sailing Agreement* (No. 203-011517) provided service only to Brazil, but it was extended subsequently to Argentina. APL did not commit vessels, instead opting to use Crowley's space.

Maersk and Sea-Land ended their arrangement with the Transroll-Sealand Joint Service, *Maersk/SL/VCL/TSL Agreement* (No. 232-011500) when the Joint Service disbanded, and expanded the scope of their service to the east coast of South America by forming the *U.S./East Coast South America Agreement* (No. 203-011583), which allows them to agree on rates or service items on a non-binding basis. In an effort to integrate this service with cargo transiting the Panama Canal, Maersk and Sea-Land also entered into the *Maersk/SL/VCL Agreement* (No. 203-011582) with Venezuelan Container Lines to coordinate sailings between the U.S. and the Caribbean, Central America, and South America. They have also initiated a triangle service between Europe, the U.S. East Coast, and the east coast of South America.

Transroll formed a new joint company with Navieras called Transroll Navieras Express, Inc. ("TNX"). TNX then joined a service, *Grupo Libra - Nacional/TNX Vessel Sharing Agreement* (No. 203-011590), with Grupo Libra (formerly Nacional Line). The parties will use six 1,200-TEU vessels in a U.S. East Coast to east coast of South America weekly service.

Columbus Line and Ivaran joined with Brazil-based Alianca to form a U.S. East Coast to Brazil service called the *Columbus/Alianca/Ivaran Agreement* (No. 203-011504). Columbus also added a new 1,136-TEU vessel to its east coast of South America service. This is a smaller vessel, but provides Columbus with significantly more refrigerated container capacity.

Empresa Lineas Maritimas Argentinas, S.A., the Argentine government carrier, has pulled out of the trade and is selling its six vessels -- four 1,220-TEU container ships and two reefer ships.

East coast of South America rates were generally stable throughout 1996, but began to fall during 1997. Toward the end of the third quarter, rates were falling quickly northbound and slowly southbound. Historically, east coast rates have tended to follow Brazilian trade flows, such that as trade increased during 1997, rates normally would increase. Yet the large amount of container capacity made available by carriers during 1997 overcame the increased cargo available. Furthermore, the *Inter-American Freight Conference* ("IAFC") (No. 202-009648) took an aggressive stance on the entrance of MSC into the trade as an independent. MSC entered the trade with discounted rates for NVOCCs, causing the IAFC to cancel a proposed \$150/TEU and \$300/FEU rate increase on general department store merchandise and FAK cargoes.

Rates to and from the west coast of South America also declined. In an effort to increase carrier cooperation, the *West Coast of South America Agreement* (No. 202-002744) and the *West Coast of South America Discussion Agreement* ("WCSADA") (No. 203-011426), agreements covering the trade between the U.S. East and Gulf Coasts and the west coast of South America, filed similar amendments authorizing their members to aggregate volumes of cargo under their individual service contracts. Shortly thereafter, the *South America Independent Lines Association* (No. 202-011576), a new agreement made up of previously independent members of the WCSADA and the *South America Pacific Coast Rate Agreement* (No. 202-011465), filed amendments allowing their members to discuss

and agree on terms and conditions of service contracts, including aggregating contract volume amongst themselves as well as in conjunction with members of the WCSADA. These amendments were intended to permit the conference to offer shippers the additional service of being able to use any carrier in the trade and still have that cargo volume count toward the minimum required volume in the shipper's service contract. Associated with this service offering was a \$300 rate increase. Shippers did not accept this additional service at the \$300 cost, and managed to convince some carriers to break ranks and offer individual service contracts. In certain cases, rates actually fell to less than they were before the proposed \$300 rate increase.

Similar to WCSADA *et al.*, the Venezuelan American Maritime Association (No. 202-006190) and *Colombia Independent Carrier Agreement* (No. 202-011572) filed amendments allowing their members to discuss and agree on the terms and conditions of service contracts, including aggregating contract volumes between their members and members of the respective discussion agreements to which they are a party, the *Venezuela Discussion Agreement* (No. 203-011383) and the *Colombia Discussion Agreement* (No. 203-011367). These discussion agreements also were amended to allow their non-conference members to aggregate contract volumes with members of the above conferences. Contracts employing the volume aggregation option had not been filed with the FMC by the end of fiscal year 1997.

In March 1997, the parties to the *U.S. Atlantic and Gulf/Southeastern Caribbean Agreement* (No. 202-007540-069) responded to the Commission's request for additional information concerning an amendment to the agreement which would allow members to operate independent NVOCCs in the conference trade but require these NVOCCs to use only conference members. Subsequently, the parties deleted the pertinent language from the Agreement.

F. TRANSPACIFIC

The transpacific trade lanes contain the largest import and export markets in the U.S., and fiscal year 1997 saw mixed results in terms of volume and rate levels. In the import trades, increased cargo volume accompanied the 1996 holiday season, but did not continue into the start of 1997. However, by year-end inbound volume had rebounded, due to lively U.S. consumer spending, and surpassed even the carriers' growth expectations. Rate erosion continued from the previous year, but appears to have hit bottom. Westbound, cargo volumes and rates, which had been relatively stable, have decreased as a result of devaluations in Asian currencies which make U.S. goods more expensive.

Organizationally, there are two inbound conferences, the *Japan-United States Eastbound Freight Conference* ("JUSEFC") (No. 202-011528), which collectively sets rates for the Japan to U.S. sub-trade, and the *Asia-North America Eastbound Rate Agreement* ("ANERA") (No. 202-010776), which does the same for the rest of the Far East to U.S. trades and the Indian Subcontinent/U.S. trades. The membership of the two conferences is essentially the same. In addition to these two conferences, there is a larger grouping composed of the members of ANERA and JUSEFC and four major non-conference carriers that operate in the trade. This grouping, the *Transpacific Stabilization Agreement* ("TSA") (No. 203-011223), is a discussion agreement. It authorizes voluntary price and service coordination between the conference and non-conference lines in the trade. The TSA has a market share of approximately 85 percent of the inbound transpacific trade.

The organizational structure of carriers in the outbound (export) trades is similar. The conference is the *Transpacific Westbound Rate Agreement* ("TWRA") (No. 202-010689), whose membership is essentially the same as the inbound conferences, and whose geographical scope covers the U.S. to Asia trade, including the Indian Subcontinent. The larger discussion agreement with non-

conference lines is the *Westbound Transpacific Stabilization Agreement* ("WTSA") (No. 203-011325). WTSA's membership is almost identical to TSA's, except that one TSA line, Yangming, is not a member of WTSA. Consequently, WTSA's market share has been in the 80 percent range.

Until September 1997, there was only one major line, COSCO, that did not participate in either of the transpacific discussion agreements, although a number of smaller lines set their prices independently of these agreements. At that time, however, COSCO joined WTSA, which is expected to increase that agreement's market share to 90 percent of the outbound trade.

For carriers operating in the eastbound transpacific trades, fiscal year 1997 began with what was a short-lived holiday season recovery with increased vessel utilization. However, new tonnage additions in early 1997 and seasonal slackening of cargo volumes combined to continue rate erosion. TSA announced a general rate increase of \$100 - \$150/FEU, but was not able to obtain that amount in contract negotiations with shippers.

The westbound transpacific trades, which had enjoyed relatively strong cargo volumes and rates, suffered a reversal of fortunes in 1997. The reversal can be attributed to slumping U.S. commodity exports (*i.e.*, wastepaper, hay, forest products, and scrap metal) as a result of increased European, Australian and Asian competitors. Currency devaluations in Southeast Asia have made U.S. goods relatively more expensive, thus limiting the volume exported.

Three factors often cited in discussions of the declining rate levels in the transpacific trades are excess slot capacity, uncertainty concerning the deregulation of service contracts, and fierce competition between conference and independent lines as a result of the closing of the service differential. Agreement activity generally has reflected these factors. In October 1996, TSA attempted to reinstitute the capacity management program, which it indefinitely

suspended in 1995. The FMC requested additional information from the agreement parties concerning the program, and held in-depth discussions with them regarding the possible harmful competitive consequences of this proposal. Subsequently, TSA withdrew the amendment reinstating the program.

ANERA amended its agreement to make service contracting more flexible and more conducive to global contracts. Specifically, that agreement now allows two or more conference lines to enter into service contracts with shippers subject to a majority vote of members, and permits crediting of cargo in the inbound Japan trade under ANERA service contracts, subject to certain restrictions.

Several agreement filings were made in order to consolidate carriers' operations. One of the Korean carriers, Hanjin, announced in late 1996 that it planned to purchase a majority share of DSR-Senator, and filed an agreement setting forth broad areas of coordination and rationalization of their current services in the U.S. trades. The parties continue to operate under separate names. In mid-year, the Singapore carrier, NOL, announced its intention to purchase American President Lines, a U.S.-flag carrier. In order to allow the two carriers to use space on each other's vessels until the merger becomes final, the carriers filed a space charter agreement, *APL/NOL Cross-Utilization Agreement* (No. 217-011585), for service in the transpacific trades. The merger is expected to be completed early in fiscal year 1998.

Given trade conditions, including the rate decline in the inbound transpacific trades over the last several years, the Commission continues to focus resources on the market behavior of COSCO, a PRC government-owned and -controlled carrier. COSCO has been one of a handful of aggressive independents charging low rates (and for a number of particular commodities is the lowest-rated carrier). COSCO competes strongly with the other non-conference independents in the transpacific trades, although it has not established itself as the carrier with the lowest rates across the board.

G. WORLDWIDE

Fiscal year 1997 was marked by considerable structural change in the liner industry at both the company level and at the level of conferences and discussion agreements. A combination of overtonnaging, expansion of major lines' global service networks into new trade lanes, and perhaps most of all the prospect of legislative changes to conferences' ability to regulate service contracting, has affected considerably both the current and future outlook for conferences.

Most notable among this year's changes was a series of consolidations that included NOL's purchase of American President Lines, Hanjin's purchase of a majority holding of DSR-Senator, and CP Ship's purchase of Lykes. In addition, P&O Nedlloyd's post-merger consolidation and its subsequent decision to join the Grand Alliance, and APL/NOL's later decision to join a revised Global Alliance, created new lineups in two of the four existing global strategic alliances. Hanjin's purchase of its fellow alliance member cemented its dominance of that alliance (which includes Cho Yang Shipping Co.).

The new Global Alliance will reportedly be composed of APL/NOL, Mitsui O.S.K. Lines, Ltd. ("MOL"), and Hyundai Merchant Marine Co., Ltd. The last of these has traditionally been an independent operator. Orient Overseas Container Line, Inc., an original member of the Global Alliance, will be joining the Grand Alliance.

At the same time that mergers and the reshuffling of alliances were concentrating and reordering the industry, important shifts were occurring at the conference and discussion agreement level as well. Two years of rate decreases that reportedly resulted in an overall average revenue decline of \$750 - \$1,200/FEU (a 30 percent-plus fall in rates) have raised questions concerning the future of the inbound transpacific rate conference, ANERA. It also led to structural changes in the TSA, a discussion agreement composed of 15

conference and non-conference lines with a combined market share of about 85 percent of the transpacific import trade. Those changes suggest that high market-share discussion agreements may become, at least in the transpacific trades, the main vehicle for trade-wide cooperation among carriers.

The transpacific trades were not the only place where conferences experienced significant erosion in rate-related agreement solidarity. In the Mediterranean trade, SEAC dissolved, leaving four of its members to form a new, smaller agreement. In the South American trades, new entry and the expansion of service by existing lines led to rate reductions. As in other trades, inter-American conferences' ability to support rate cooperation appears to be diminishing, and trade-wide discussion agreements with broader memberships have formed. In the Africa trades, the American-West Africa Freight Conference was reportedly close to disbanding by the end of the fiscal year.

Despite the entry of a new transatlantic service offered jointly by COSCO, K Line, and Yangming, and Hanjin's announcement that it will leave the conference at the end of 1997, the transatlantic's bi-directional conference, TACA, appears to be stable. Whether that continues to be the case next year, when Hanjin puts into place its announced capacity increases, and APL/NOL and MOL enter the trade, as they are generally expected to do, remains to be seen.

Much of 1997's merger activity, alliance shifting, and conference-level instability have been attributed to a combination of overtonnaging in key trades, new entry (driven by major carriers' global expansion) in others, and the industry's anticipatory reaction to legislative proposals that would significantly modify the 1984 Act's service contracting provisions. Although the proposed legislation underwent several revisions in fiscal year 1997, the final Senate version was not introduced for a floor vote. Uncertainty with respect to regulatory changes will likely continue.

Nevertheless, a number of industry commentators have opined that, even absent passage of the reform measures, carriers have already responded to potential deregulation in ways that create a virtually deregulated market. While such claims may overstate the case, fiscal year 1997 did see some significant changes with respect to conference service contracting. ANERA, for example, allowed shippers with 3,000 or more FEUs to negotiate conference contracts directly with their preferred carriers. TWRA continued to expand its contracting activity. Also, reports from the transatlantic trades suggest that NVOCCs are finding a more favorable contracting environment among conference lines than had been the case previously.

Considered from a geo-economic perspective, China was extremely prominent in fiscal year 1997. Hong Kong reverted to direct Chinese governmental control in mid-summer, heightening the centrality of China to international maritime commerce. With a large and growing import market, a dynamic export trade, and an expanding network of container ports, China is generally viewed as the world's premier trade growth area. Drawn by that growth, ocean carrier service to China and carrier-affiliated logistics operations within the country expanded rapidly in fiscal year 1997.

China's ocean connections with Taiwan are improving, and COSCO, long a strict independent in the U.S./Asia trades, joined WTSA, the westbound transpacific discussion agreement among TWRA members and the independent lines carrying U.S. exports to Asia.

Also growing, however, was shipper concern about the direction of China's maritime and intermodal regulation. In particular, the Shanghai Shipping Exchange's imposition of minimum rates in the Shanghai-to-Europe and Shanghai-to-Japan trades was greeted with strong disapproval by U.S. and foreign shippers' organizations. Minimum rates have not been imposed in the China/U.S. trades because, according to Chinese officials, the current tariff filing and enforcement regime under the 1984 Act is deemed an

adequate regulatory mechanism. Whether future enactment of current legislative proposals to end tariff filing with the Commission -- and presumably, some aspects of its current rate enforcement program -- would cause China to impose similar minimum rates in its U.S. trade remains a source of concern.

V

AUTOMATED TARIFF FILING AND INFORMATION SYSTEM ("ATFI")

A. INTRODUCTION AND BACKGROUND

The 1984 Act requires common carriers by water in the foreign commerce of the U.S. to file and keep open to public inspection their "tariffs" applicable to ocean transportation. The 1984 Act also 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 contains a schedule of rates, charges, and rules applicable to the transportation of cargo by a carrier or conference. 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 connection with a common carrier by water in the foreign or domestic offshore commerce.

The applicable statutes and implementing regulations require the Commission to ensure compliance with certain essential standards before tariff material is accepted for filing. Similarly, service contracts may be rejected by the Commission if they do not meet certain statutory and regulatory requirements. In order to ensure

compliance with the law, the statutes provide for 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.

The Commission uses the filed tariff and service contract data for surveillance and investigatory purposes and adjudicates 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. While tariff and service contract information is used for regulatory purposes, the statutory scheme is designed primarily 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 by the Commission. Prior to implementation of the ATFI system, the Commission was receiving up to a million paper pages of tariff matter per year.

The enormous amount of paper the Commission had to process with a limited number of employees 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, beginning in 1981 and continuing through early in calendar year 1983.

B. EARLY STUDIES ON TARIFFS

The Commission conducted a study to examine the validity of the premises upon which tariff filing requirements were based. The study contained three parts, which included an internal Commission analysis; interviews with shippers, exporters, and ocean freight forwarders; and interviews with ocean carriers and conferences.

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.

With the results of these two studies in hand, the Commission explored the issue of tariff automation, interviewing carriers, conferences, freight forwarders, shippers, and transportation service firms. This survey revealed these parties' overall belief that implementation of an automated system was overdue.

C. FIRST STEP IN TARIFF AUTOMATION

Recognizing the need and apparent industry support for tariff automation, the Commission undertook 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.* A number of replies were received. The commenters also raised questions of both a legal and policy nature which needed to be resolved before proceeding.

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 requirement 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, a special Tariff Automation Task Force was formed to gather additional information. In January 1985, it sent questionnaires to ocean carriers, NVOCCs, conferences, freight forwarders, and shippers on the use of tariff data and suggestions to improve the process.

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.

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, the Commission's need for automated filing and retrieval of tariff data, and the objectives of an automated system.

The report recommended the conduct of a feasibility study to 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 report concluded that the feasibility study should be contracted out, since the Commission lacked the necessary technical expertise. Because the Commission 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 or operating system.

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

The Commission entered into an interagency memorandum of understanding with the General Services Administration ("GSA") in August 1985 for the development of a feasibility study, 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, the Commission's ATFI Industry Advisory Committee was established.

Candidates for membership on the Committee were solicited. The nineteen industry members selected 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.

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 ATFI Advisory Committee met in several sessions between January and November 1986, during which it provided input to and reviewed the reports of the *Feasibility Study* Contractor. The final report of the Contractor was approved in principle by the Advisory Committee with a few suggested changes. In summary, the *Feasibility Study* identified key tariff filing, Commission tariff processing, tariff retrieval, and functionality requirements, and also identified key policy assumptions.

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 *Feasibility Study* stated:

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.

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 ("NOI").

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 NOI, 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. The 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, however, must 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.]

The Commission also explained in the NOI and in the draft RFP that remote access to the Commission's database by modem would be available any time of the day for retrieval of tariff information by any interested person.

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 OMB, concerning the functionality of "remote retrieval." 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.

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 contractors 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.

* * * * *

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).]

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 5-year system life also contained options for each subsequent Phase, *i.e.*, Development and Testing; Prototype Operation; and Full-scale Operation. The contract was worth approximately \$7M with the exercise of all options. 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.

The system's Prototype Phase (Phase IV) began in April 1990. As required by the 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. At about the same time, the Contractor and the Commission identified 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. 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, has 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 the 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 expired towards the end of fiscal year 1994. At that time, the Commission elected to continue its contractual arrangement with PRC Inc. on a limited basis, while it considered what approach it would use to select a contractor to design and develop an updated version of its ATFI system. Accordingly, the Commission negotiated extensions of the PRC Inc. contract that were limited to ongoing maintenance of the ATFI equipment and other necessities, while the Commission began the process of developing a formal procurement to select a contractor to design and develop additional and enhanced functions.

K. DOCKET NO. 90-23

On August 1, 1990, the Commission instituted Docket No. 90-23, in which it issued a second ATFI NOI - Advance 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 December 26, 1990, the Commission issued a first Interim Report, which considered the comments received and resolved the issues raised in the NOI.

On March 25, 1991, the Commission issued a Second Interim Report that responded to concerns of four electronic tariff filer firms which had raised concerns in testimony at the Commission's fiscal year 1992 authorization hearing held by the Subcommittee on Merchant Marine of the House Committee on Merchant Marine and Fisheries on February 28, 1991. These concerns were submitted to the Commission on March 8, 1991. The Second Interim Report clarified the matters raised.

The Commission's Third Interim Report in this proceeding was issued on July 23, 1991, and finalized most of the remaining issues listed in the August 1990 NOI, so that a Notice of Proposed Rulemaking could be issued.

The proposed rule in Docket No. 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. Part 514 is the sole, all-inclusive CFR part covering tariffs and service contracts filed into the Commission's electronic system. Other CFR parts which govern the filing of paper tariffs and service contracts were removed from the CFR, *i.e.*, Parts 515, 520, 550, 580 and 581.

Still further comments were invited, and an oral comment session was conducted by the full Commission. 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, *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. 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. 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.

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, among other things, 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., also are revised when necessary and made available to regular subscribers. This process is expected to continue throughout the life of the system.

M. MISCELLANEOUS MILESTONES

Certifications of firms for batch filing capability began in late fiscal year 1992. There now are 40 such certified firms.

On February 11, 1992, the Commission announced that ATFI implementation, previously scheduled for July 1992, would have to be postponed as a result of a GSA-required relocation of FMC headquarters offices. When it was learned that the move would take place in August 1992, Supplemental Report No. 2 and Order in Docket No. 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 filed electronically at different times in calendar year 1993. Carriers and conferences operating in the Worldwide/Asian & South Pacific trades were scheduled to file

first, followed by those in the European trades, the Africa/Mid East trades, the North American/Caribbean trades, and the Central/South America trades. Terminal operators and carriers in the domestic offshore trades filed last. Finally, the schedule provided for the beginning of the electronic filing of all essential terms of new service contracts.

Many filers were not ready to file during their designated periods, and were granted extensions of time. A total of 36 petitions representing 219 carriers/conferences were filed, 32 of which were granted enabling carriers to extend their filing deadline. 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. Those filers who did not meet the Commission schedule found themselves named in orders to show cause why their tariffs should not be canceled for failure to file timely in ATFI format. The Commission issued its last show cause order on this matter early in fiscal year 1995. All told, approximately 310 carriers had their paper tariffs canceled for failure to file in the new electronic format.

During fiscal year 1997, 777 new tariffs were filed in the ATFI system. This figure does not include the 21 STB tariffs that were filed in the ATFI system in fiscal year 1997. At the end of the fiscal year, there were 4,738 effective tariffs in the system, a net increase of 72 tariffs compared to fiscal year 1996. The filing of new tariffs has leveled off significantly since the completion of the conversion from paper to the electronic form.

Additionally, all essential terms of service contracts entered into after November 22, 1993, are electronically filed in ATFI. The Commission received 10,565 new service contracts in fiscal year 1997, which represented an approximate 12 percent increase from the prior year. And the practice of amending service contracts continued its increasing trend in fiscal year 1997. The 28,868

amendments received this fiscal year represent a 225 percent increase over the number filed just two years ago. All tariff and service contract essential term filings are available on a 24-hour basis to any of the 4,809 individuals and organizations, including government agencies, registered to access ATFI data. The number of ATFI registrants increased by approximately 400 this fiscal year.

The Commission has kept the ATFI user community updated by routinely and systematically revising the ATFI User Guides and issuing press releases and ATFI System News items. The Commission also continually adds new locations to the ATFI system, and ended the fiscal year with 323,514 locations in this database. Additionally, ATFI registration forms are among the many documents the Commission has made available electronically on the Commission's Internet home page.

In fiscal year 1996, the Commission published a final rule affording filers the option of submitting an abbreviated paper service contract which incorporates by reference the provisions filed in the electronic essential terms filing. This rule was intended to reduce Commission and carrier costs, and facilitate automation of the Commission's records. Unfortunately, a minimal number of filers has taken advantage of this option to date.

During fiscal year 1996, the Commission entered into an MOU with the STB regarding the filing of U.S. domestic offshore tariffs in ATFI. Legislation passed in fiscal year 1996 transferred jurisdiction over the U.S. domestic offshore trades from the FMC to the STB. The MOU permits these tariffs to continue being filed in ATFI, and sets up specific protocols for STB access and administration. The FMC also offers the STB advice and assistance on the operation and use of the ATFI system, as well as any particular aspects or actions related to the domestic offshore trades. The Commission remains the sole signatory to the ATFI contract and continues to deal with the Contractor on domestic issues on

behalf of the STB. The MOU provides for the STB to make annual reimbursements to the FMC for contract and other costs the FMC incurs.

The Commission also agreed on a one-year extension of the ATFI contract in fiscal year 1997, providing for its Contractor to maintain the system through September 30, 1998. The Commission's budgetary constraints again necessitated reductions in certain services and maintenance areas, which limits the system from operating at optimum efficiency. System integrity, accessibility and effectiveness, however, were not unduly compromised. Recompensation of the contract, to include refinements and enhancements in line with technological advances, continues to be held in abeyance given our budgetary constraints and the possibility of legislative action to alter present tariff filing requirements.

N. UPDATE ON REMOTE ACCESS SEPTEMBER 1997

Since 1986, during the *Feasibility Study*, both Congress and members of the public expressed concern over the use and accessibility of the ATFI system by all interested parties. (For a more detailed description of Congress' concerns, see the *33rd Annual Report* of the Federal Maritime Commission.) While tariff material was to be made available electronically through the Commission's ATFI system, Congress was concerned that ATFI not compete with private sector providers of information services. Congress expressed these concerns in section 2(b) of Pub. L. No. 101-92 which provided that: "The Commission shall impose reasonable controls upon the system to limit remote access usage by any one person."

This statutory restriction reflected similar language contained in H.R. Rep. 173 to H.R. 2991 (Pub. L. No. 101-162), the Commission's fiscal year 1990 Appropriations Act:

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

In response to this direction, ATFI's design, while allowing for remote retrieval of tariff data, limited tariff retrievers, but not filers, in the following two respects:

- 1. A tariff retriever would be limited to accessing a single, individual tariff per connection with the ATFI-host computer; and**
- 2. A tariff retriever would be limited to a certain time, such as 30 minutes, per connection to the ATFI computer.**

These restrictions were included in the ATFI system in preparation for the planned implementation of ATFI in 1992. As indicated herein, implementation was postponed until February 1993 because of the relocation of the Commission's headquarters offices. In the interim, on November 2, 1992, the President signed Pub. L. No. 102-582, section 502 of which (46 U.S.C. app. § 1707(a)) repeals the statutory restriction referenced above. (*See* section 2 of Pub. L. No. 101-92.) The major features of Pub. L. No. 102-582 are as follows:

- a. The Commission must make available the ATFI tariff data without time quantity or other limitation;
- b. A direct access charge of \$.46 per minute for tariff retrieval; and
- c. A secondary use charge of \$.46 per minute for the use of tariff data maintained by others in a database that has multiple tariff information obtained directly or indirectly from the Commission. (This secondary use charge had an expiration date of September 30, 1995.)

The Commission implemented the provisions of Pub. L. No. 102-582 by publishing regulations that required third-party vendors that wish to obtain the ATFI database on tape to submit a plan for collecting secondary user fees. With the expiration of the secondary use fee provisions on September 30, 1995, retrievers of ATFI data have direct access at a cost of \$.46 per minute. Fees for the secondary use of tariff data no longer are applicable.



VI

THE FOREIGN SHIPPING PRACTICES ACT OF 1988

A. GENERAL

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.

During fiscal year 1997, the Commission investigated potentially restrictive practices of the Governments of Brazil and China which may warrant institution of formal proceedings under the FSPA or other statutes. These matters included limitations on port access, intermodal services, forwarding and consolidation services in China, and Brazilian restrictions on warehousing and cross-trading with other South American nations, and possible unfair tax treatment of non-Brazilian vessels in that country.

B. 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 that generated the largest volume of oceanborne liner cargo for the most recent calendar year in bilateral trade with the United States."

The data that the staff used to derive the Commission's list of top twenty partners were furnished by the Bureau of the Census ("Census"). 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 Census supplies to the Commission are intended to exclude all non-liner shipments in accordance with this definition.

The export data are compiled primarily from Shippers' Export Declarations, while the import data are compiled from the import entry and warehouse withdrawal forms. These documents are required to be filed with Customs. These data are subsequently forwarded to Census. Both export and import statistics exclude: shipments between the U.S. possessions, shipments of mail or parcel post, exports and imports of vessels themselves, and other transactions such as military household goods shipments, bunker fuels and other supplies, in transit shipments through the U.S., etc.

The most recent year for which Census data were available to the Commission is calendar year 1996. The table on the next page gives the twenty foreign countries that generated the largest volume of oceanborne liner cargo in bilateral trade with the U.S. in 1996. 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 (1996)

Rank	Country	Tons (000's)
1	Japan	17,161
2	China (PRC)	11,452
3	Taiwan	7,286
4	South Korea	6,209
5	Germany	5,396
6	Hong Kong	4,530
7	United Kingdom (Incl. N. Ireland)	4,320
8	Brazil	4,217
9	Italy	3,956
10	The Netherlands (Holland)	3,119
11	Indonesia	3,116
12	France	2,984
13	Thailand	2,861
14	Belgium	2,687
15	Australia	2,017
16	Malaysia	1,938
17	India	1,864
18	Spain	1,821
19	Philippines	1,778
20	Venezuela	1,546

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 Twenty U.S. Liner Trading Partners in 1996 as in the preceding calendar year. In terms of ranking order, only minor changes occurred in the course of a year. As compared to the preceding year, the U.K.'s ranking rose from 8th to 7th; France, from 13th to 12th; and Malaysia, from 18th to 16th. Countries descending in rank due to a slowdown in trade growth include Brazil, from 7th to 8th; Thailand, from 12th to 13th; and Spain, from 16th to 18th.

Since the Commission began tracking the data in 1987, Japan has remained the U.S.'s top trading partner by volume. In this time, however, other countries among the top 20 have vastly exceeded Japan's rate of trade growth with the U.S. Throughout the 90s, policies aimed at reducing trade barriers and expanding economic growth, along with booming industrialization and consumer demand, have accelerated trade between nations, primarily with Asian countries. The volume of trade between the U.S. and Thailand, Indonesia, Malaysia, India, Hong Kong, and Brazil more than doubled since 1987. However, none of these countries have surpassed China's rapid rate of trade growth and advancement in rank among the top 20. Since 1987, the volume of trade between the U.S. and China grew by 412.4 percent. China ranked 7th among the top 20 U.S. liner cargo trading partners in 1987, and rose to second by 1994.

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 of matters for consideration by the Commission and preparing and maintaining the minutes of actions taken by the Commission on these items; receiving and processing formal and informal complaints involving violations of the shipping statutes and other applicable laws; receiving and processing special docket applications and applications to correct clerical or administrative errors in service contracts; issuing orders and notices of actions of the Commission; maintaining official files and records of all formal proceedings; receiving all communications, petitions, notices, pleadings, briefs, or other legal instruments in administrative proceedings and subpoenas served on the Commission or members and employees thereof; administering the Freedom of Information, Government in the Sunshine, and Privacy Acts; responding to information requests from the Commission staff, maritime industry, and the public; issuing publications and authenticating instruments and documents of the Commission; compiling and publishing bound volumes of Commission decisions; and maintaining official copies of the Commission's regulations. The 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 1997:

- **The Commission issued decisions concluding eight formal proceedings. Another 5 formal proceedings**

were discontinued or dismissed without decision, while 11 initial decisions of an administrative law judge became administratively final without Commission review. The Commission also concluded 98 special docket applications, and 18 informal dockets which involve claims sought against carriers for up to \$10,000. During the same period, the Commission issued final rules in five rulemaking proceedings and withdrew two proposed rules.

- **Special Docket Officers issued decisions in 49 proceedings during fiscal year 1997.**

Eight rulemaking proceedings and four formal petitions were pending before the Commission at the end of the year. Final decisions in these matters are anticipated in fiscal year 1998.

2. Office of Informal Inquiries and Complaints and Informal Dockets

This Office coordinates the informal complaint handling system throughout the Commission. A total of 2,047 complaints and information requests were processed in fiscal year 1997. Recoveries to the general public of overcharges, refunds and other savings attributable to the complaint handling activities amounted to \$158,964. Since 1988, this Office has helped complainants recover over \$1,750,000.

The Office facilitated communications among maritime industry representatives and Commission officials, and supplied materials and information requested by the general public. During fiscal year 1997, this Office responded to 1,039 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 commerce of the U.S. These claims must be predicated upon violations of the 1984 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 1997, nine claims were filed, while seven pending cases were carried over from the previous year. During the same period, 13 informal docket claims were concluded by the Office, and there were 3 pending cases at the close of the fiscal year.

During fiscal year 1997:

- **The Office cooperated closely with the staff of the Bureau of Enforcement with respect to the activities of several nonperforming NVOCCs. These efforts helped many customers of the concerned firms recover their apparent losses.**
- **The Office assisted the Bureau of Enforcement and the Seattle Area Representative in the recovery of multiple cargoes that had been abandoned by a failed NVOCC. Our combined efforts proved invaluable to hundreds of patrons of that firm, which had operated a service between the U.S. and the Philippines.**
- **The Office continued to broaden its outreach activities. Efforts in this area contributed to a wider variety in the types of complaints received.**

B. OFFICE OF ADMINISTRATIVE LAW JUDGES

1. General

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

ALJs 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 1997, nine formal proceedings and three special docket proceedings were pending before the ALJs. During the year, 65 cases were added. The ALJs formally settled 3 proceedings, dismissed or discontinued 6 proceedings, and issued 5 initial decisions in formal proceedings and 42 decisions in special docket proceedings. One special docket proceeding was withdrawn.

2. Commission Action

The Commission adopted 3 formal initial decisions, partially adopted 1 formal initial decision, vacated 1 formal initial decision, and adopted 43 special docket decisions of the ALJs.

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

***Compania Sud Americana de Vapores S.A. v. Inter-American Freight Conference, et al.* [Docket No. 96-14].**

In this proceeding, a carrier member of the Inter-American Freight Conference alleged that it was forced to pay a share of the winding-up expenses of an entity that had been hired by a Conference Section to perform administrative duties for the Conference Section, although there was no authority in the Conference's basic Agreement to hire the entity, which consisted of Conference members. Accordingly, complainant alleged that respondents had violated sections 10(a)(2) and 10(a)(3) of the 1984 Act, which prohibit carriers from operating outside their Agreement's authority, and complainant asked for a refund of its money and a cease and desist order. In the initial decision it was found that the respondents had the requisite authority to hire the entity and to assess the members of the Conference Section equal shares of the entity's expenses upon its dissolution, and the complaint, therefore, was dismissed.

***Application of Star Shipping A/S (d.b.a. Atlanticargo) for the Benefit of Lynden International* [Special Docket No. 3103].**

In this proceeding, the carrier Star Shipping Co. applied for permission to waive collection of a portion of the freight due (over \$9,700) on a shipment of wearing apparel that Star had carried from Florida to England. Star's application was submitted pursuant to section 8(e) of the 1984 Act, which authorizes the Commission to permit carriers to waive collection of portions of freight charges because of tariff-filing errors by the carriers which would otherwise increase transportation costs to shippers under applicable tariff law. The application was denied by the presiding judge because the error

in question, a mistaken rate quotation by the carrier's employee, was not the type of tariff-filing error that the law was enacted to remedy.

Application of U.S./Australia New Zealand Association (USANA) and Columbus Line for the Benefit of Kapiti Customs Brokers Limited [Special Docket No. 3106].

In this proceeding, a carrier and the Conference to which it belonged applied for permission to waive collection of over \$14,000 in freight charges in connection with a shipment of machinery that the carrier had transported from Georgia to New Zealand.

The applicants explained that the carrier had quoted a rate to the shipper, but the Conference by mistake filed the rate incorrectly for a different routing, causing the shipper additional costs. The initial decision granted the application pursuant to section 8(e) of the 1984 Act and additionally relieved the carrier applicants of the burden of having to file a special notice in the tariff, a requirement followed in previous cases of this type. Instead, a less onerous requirement, authorized by section 8(e)(3) of the 1984 Act, was ordered, by which applicants were to notify any other potentially affected shippers of the relief given to the involved shipper so that any such other shippers could be given the same relief.

4. Pending Proceedings

At the close of fiscal year 1997, there were 20 pending proceedings before the ALJs, of which 8 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, and 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:

Administrative Offset; Rulemaking [Docket No. 96-15], 61 Fed. Reg. 50444 (September 29, 1996).

The Debt Collection Improvement Act of 1996, Pub. L. No. 104-134, Chapter 10, section 31001, 101 Stat. 1321-358, was signed into law on April 26, 1996. The Act stipulates that before a federal agency may collect any delinquent debt by administrative offset, it first must either adopt, without change, regulations on administrative offset promulgated by the Departments of Treasury or Justice or the General Accounting Office ("GAO"), or prescribe its own regulations consistent with the aforementioned regulations.

To satisfy this requirement, the Commission adopted, without change, existing Treasury Department regulations governing administrative offset. The new Commission regulations, found at 46

CFR Part 505, were published in the *Federal Register* as a final rule on September 26, 1996, effective October 28, 1996.

Noncontiguous Domestic Trade Tariffs [Docket No. 96-04], 61 Fed. Reg. 5835 (Request for Comments, February 14, 1996), 61 Fed. Reg. 52494 (Notice, October 7, 1996).

The Commission issued a Notice jointly with the STB regarding the transfer from the Commission to the STB of tariff filing and rate regulation jurisdiction in the noncontiguous domestic trades, pursuant to the ICC Termination Act of 1995. In light of Congress' desire that the STB continue the Commission's practice of allowing carriers to file their tariffs electronically, the two agencies entered into an arrangement whereby the STB receives noncontiguous domestic trade tariffs filed through the Commission's ATFI system and reimburses the Commission for ATFI costs associated with receiving those tariffs.

Petition of South Carolina State Ports Authority for Declaratory Order [Docket No. 94-24], 27 S.R.R. 1137 (August 12, 1997).

South Carolina State Ports Authority ("SCSPA") filed a Petition For Declaratory Order to allow it to act without peril in issuing its FMC-filed tariff guidelines for the criteria it will apply to license stevedores and marine terminal operators ("MTOs") operating at SCSPA facilities. SCSPA alleged that "economic regulation" of stevedores and MTOs doing business or seeking to do business at public port facilities is necessary to protect the public investment in the facilities. Replies to the Petition reflected a division of views between stevedores and non-port MTOs, who opposed the proposals, and public ports, who supported the proposals. The Commission found that the proposed tariff rule for the licensing of stevedores raised issues, insofar as they arise under the Shipping Acts, that were

material issues of fact which could not be disposed of on the basis of the existing record, and it referred the matter to an ALJ for an evidentiary hearing. After a hearing, limited by the parties to submission of declarations, documents and arguments, the ALJ issued an Initial Decision ("I.D.") on May 31, 1996, finding the proposed guidelines prospectively in violation of the 1984 Act.

On August 12, 1997, the Commission vacated the I.D., and deciding the case *de novo*, found that, as proponent of the order, SCSPA had not met its burden of proving that the economic criteria for licensing stevedores was justified at the Port of Charleston, and that certain other proposed licensing criteria would be likely to result in unreasonable prejudice or preference of particular applicants or be unduly prejudicial to applicants who also compete against SCSPA in marine terminal operations. The Petition, therefore, was denied.

Amzone International, Inc. and Universal Cargo Management, Inc. v. Hyundai Merchant Marine Co., Ltd.
[Docket No. 94-17], 27 S.R.R. 1037 (January 13, 1997).

This proceeding was initiated by a complaint filed by Amzone International, Inc. and Universal Cargo Management Inc., against Hyundai Merchant Marine Co., Ltd., alleging violations of sections 8(c) and 10(b)(12) of the 1984 Act. The dispute centers on Complainants' attempts to "me-too," or access, a service contract between Hyundai and another shipper.

On April 28, 1995, the presiding ALJ issued an I.D. in which he both found that Universal had timely filed its access request, and "granted" Universal's complaint. Hyundai filed Exceptions to the decision, to which Universal replied.

The Commission decided to treat the Exceptions as an interlocutory appeal so that it could resolve a controlling question of law. The Commission then found timely Universal's request to access a service contract that the original parties had terminated 1

hour later. The Commission noted that the mutual termination of a service contract does not extinguish the rights of a shipper who has earlier requested access. The Commission further found that a contract termination must be filed and published before it can effectively cut off a shipper's right of access. The Commission then remanded the proceeding to the ALJ for further action on the remaining issues.

After soliciting opening and reply briefs from the parties, the ALJ, on June 6, 1996, issued a second I.D. in which he found that a service contract did exist between the parties and that this contract was subsequently breached by Hyundai. However, he then concluded that Universal's exclusive remedy for such a breach was to go to court or arbitration. Universal filed Exceptions to the decision, to which Hyundai replied. In a Second Remand Order, served October 23, 1996, the Commission held that it had not found that a binding service contract had come into existence, that it had not lost jurisdiction over the case, and that several issues remained to be decided. The case was remanded to the Chief ALJ for reassignment.

Subsequently, the parties reached a settlement and submitted a joint motion for approval of the settlement. On December 11, 1996, the Chief ALJ served an order approving the settlement and dismissing the complaint. On January 13, 1997, this dismissal became administratively final.

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:

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, Docket No. 92-52. The defendants had allegedly violated the 1984 Act by engaging in freight forwarding services without a license and bond; acting as an NVOCC without a tariff and bond; knowingly and willfully using an unfair device and means to obtain ocean transportation for less than the rates applicable; engaging in unfair practices in the adjustment and settlement of claims; and failing to establish, observe and enforce just and reasonable regulations and practices relating to or connected with receiving, handling, storing, or delivering property. The defendants also allegedly had engaged in fraud, deceit, and other unlawful conduct in booking or attempting to book cargo with ocean common carriers and NVOCCs, in using the names of licensed freight forwarders without their knowledge and consent, and in assuming fictitious names to conceal their true identities.

After entry of a preliminary injunction, and a Consent Order stipulating to violations of the injunction and permanently enjoining defendants from engaging in any ocean or trucking transportation-related activities, requiring full restitution to injured shippers, and terminating all of defendants' "800" telephone numbers, the defendant failed to appear for a hearing on July 14, 1994, on the Commission's motion to find defendant in contempt. The Court issued a bench warrant for Garcia's arrest. Garcia was taken into custody by Customs, upon action by Canadian immigration authorities returning Garcia to the U.S. on November 20, 1996. On February 21, 1997,

Garcia pled guilty to two counts of criminal contempt, and the U.S. District Court for the Middle District of Pennsylvania sentenced him to 3 months imprisonment (consisting of time served) and a year of probation with a special condition of release to a halfway house. Defendant made restitution of \$22,000 and agreed to continue to make restitution through the Consumer Affairs Division of the Office of the Attorney General for the Commonwealth of Pennsylvania. The Consumer Affairs Division is considering claims for distribution of the restitution funds.

***Sea-Land Service, Inc. v. FMC and USA*, D.C. Cir. No. 97-1083; *Military Sealift Command v. FMC*, D.C. Cir. No. 97-1084; and *American President Line, Ltd. v. FMC*, D.C. Cir. No. 97-1085.**

These consolidated cases are petitions to review the Commission's decision in Docket No. 90-08, *Military Sealift Command v. Sea-Land Service, Inc.*, issued December 10, 1996. The Commission found in that case that two vessel-sharing agreements between a U.S.-flag carrier and two foreign-flag carriers, whereby the foreign-flag carriers agreed not to use any vessel or space chartered from the U.S.-flag carrier to carry cargo subject to U.S. cargo preference laws, were allocations of a particular shipper within the meaning of section 10(c)(6) of the 1984 Act, but that the allocations were "required by the law of the United States" within the meaning of the "except" clause of section 10(c)(6) because they were required by orders of the Maritime Administration of the Department of Transportation, which orders had not been found unlawful by any court of competent jurisdiction.

On March 20, 1997, the Court of Appeals ordered all parties in these consolidated cases and in D.C. Cir. No. 93-1846, *Sea-Land Service, Inc. v. Federico Pena* (in which the FMC is not a party), to file motions to govern further proceedings of the consolidated cases and D.C. Cir. No. 93-1846. The latter case was brought to review orders of the Maritime Administration relating to the vessel-sharing

and charter arrangements between Sea-Land and the foreign-flag carriers. The FMC filed a joint Motion To Govern Proceedings with Sea-Land Service, Inc. and American President Lines. The briefs of all parties have been submitted. Oral argument in the consolidated cases and in No. 93-1846 was scheduled for November 12, 1997.

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, responding to Congressional requests for assistance, and preparing agency responses to requests from OMB on proposed bills and testimony.

During fiscal year 1997, 159 bills, proposals and Congressional inquiries were referred to General Counsel for comments. The Office also prepared and coordinated testimony for two Congressional hearings, and worked closely with Congressional staffs on proposed legislation that affected the Commission. In particular, the Office monitored the progress of and commented on various aspects of ocean shipping reform legislation that would amend the Commission's statutory mandate.

4. Significant Ongoing Activity

Port Restrictions and Requirements in the United States/Japan Trade [Docket No. 96-20], 27 S.R.R. 913 (February 26, 1997).

On February 26, 1997, the Commission issued a final rule to impose fees of \$100,000 per voyage on Japanese liner operators, in response to unfavorable restrictive practices in place in Japanese ports. The imposition of these sanctions was first proposed on November 6, 1996, pursuant to section 19 of the 1920 Act, after an extensive FMC investigation into Japanese port practices. The final

rule originally was scheduled to take effect April 14, 1997; after a postponement to allow diplomatic efforts at resolution, the final rule took effect on September 4, 1997.

In its decision, the Commission found a series of restrictive conditions involving the dominance of the harbor services industry in Japan by the Japan Harbor Transportation Association ("JHTA"), an association of Japanese waterfront employers. The Commission found that shipping lines in the U.S./Japan trades are not allowed to make operational changes, major or minor, without the permission of JHTA. That organization exercised its control through its administration of the "prior consultation" system, a mandatory process of negotiations and pre-approvals involving carriers, JHTA, and waterfront unions. No written criteria, explanations, or avenues for appeal were given for JHTA's decisions, and JHTA used its control over access to the prior consultation system to suppress competition and allocate work among its member companies. The Commission also found that JHTA used its authority to disrupt the business operations of its detractors, extract payment of unwarranted fees, and impose operational restrictions, such as Sunday work limits. As a result of these conditions, U.S. carriers and U.S./Japan trade were burdened with unreasonably high costs and inefficiencies.

The Commission found that the Government of Japan bore ultimate responsibility for JHTA's actions, as JHTA operates with the permission of, and under the regulatory authority and ministerial guidance of, the Ministry of Transport ("MOT"). Also, JHTA member companies are subject to MOT oversight and regulation, and their rates and business plans are subject to MOT approval. In ruling that the imposition of fees was warranted, the Commission found that repeated diplomatic efforts over the last several years by the U.S. and other major trading nations have failed to bring about necessary reforms.

The sanctions were originally scheduled to go into effect April 14, 1997. However, bilateral discussions covering many of the Commission's concerns were held between the U.S. Government and

the Government of Japan, concluding with the signing of a "Memorandum of Consultation" by the two governments on April 11. In the Memorandum of Consultation, the Government of Japan committed to a framework for reforming the prior consultation system by July 31, 1997. Based on this and other commitments, the Commission on April 13 postponed the effective date for the imposition of fees until September 4, 1997. When that date arrived, however, no reform plans for the prior consultation system had been agreed upon or implemented. Therefore, the Commission took no action to further stay the sanctions, and the fees began to accrue. Under the payment provisions set forth in the final rule, the Japanese carriers were due on October 15, 1997, to remit to the Commission the fees assessed for the month of September, which totaled \$4 million.

A number of important actions occurred relative to this proceeding in fiscal year 1998; because of the intense industry and international interest in these matters, and to present a complete depiction of the Commission's activities in this undertaking, this Annual Report includes a summary of those actions. On October 16, the Commission was informed that the Japanese carriers did not intend to pay the amounts owed. In response, therefore, the Commission announced its intention to put into effect the provisions of the final rule addressing non-payment of fees. Under these provisions, liner vessels operated by the Japanese carriers could be barred from or detained in U.S. ports, and be denied customs clearance, until their debts to the U.S. Government were satisfied.

The likelihood of ship detentions added a new level of urgency to ongoing U.S.-Japan maritime negotiations (led by the Maritime Administration of the Department of Transportation, together with the Department of State). These negotiations ultimately proved successful. On October 24, 1997, before any ships were actually detained, U.S. and Japanese negotiators concluded documents which would constitute a historic, detailed and far-reaching commitment to reform Japanese port practices. In light of these developments, the Commission entered into an agreement with

Japanese shipping lines on fees assessed for the month of September, accepting \$1.5 million in compromise.

In November, once the documents agreed to by the negotiators were formally ratified by all necessary government and industry leaders, the Commission suspended the effectiveness of its final rule assessing sanctions. The Commission and Japanese carriers also executed a compromise agreement whereby the Commission -- in recognition of the substantial sums already paid by the carriers in this case and the signing of the port reform accords -- agreed not to collect those fees assessed on Japanese shipping lines during October and November 1997. The Commission kept the agency proceeding open, however, to monitor compliance with the commitments made by the negotiators, and to ensure that agreed-upon reforms are actually implemented.

Maryland Port Administration v. Federal Maritime Commission and USA, 4th Cir. No. 97-2418.

This proceeding seeks review of the Commission's decision in Docket No. 94-01, *Ceres Marine Terminals, Inc. v. Maryland Port Administration*. Ceres, an MTO, alleging violations of sections 10(b)(11), (b)(12), (d)(1) and (d)(3) of the 1984 Act and sections 16 and 17 of the 1916 Act, claimed that the Maryland Port Administration ("MPA") engaged in unjust preference and prejudice and unreasonable discrimination by failing to grant it equivalent lease terms and terminal facilities that it provided to an ocean common carrier in the latter's lease with the Port. MPA argued that ocean common carriers and MTOs are not similarly situated and thus, any disparate treatment was not unjust or unreasonable.

On October 10, 1997, the Commission vacated the I.D. and decided the case *de novo*. The Commission found that respondent MPA had violated sections 10(b)(11) and (12) of the 1984 Act by relying on a vessel call guarantee to justify granting more favorable lease terms to an ocean common carrier and refusing those same, or

substantially similar, terms to an MTO solely because of its status, where the vessel call guarantee did not provide to the Port any more security or assurances than the MTO could have provided, and section 10(d)(1) by imposing on an MTO rates and charges that were excessive in relation to the benefit received, particularly where the degree of disparity in the rates so greatly disfavored the party committed to moving substantially more cargo. The Commission also found that respondent violated sections 10(b)(11) and (12) by refusing to grant the MTO rates for its barge service that were comparable to those offered to another barge operator unless the MTO dropped its existing state court lawsuit and paid amounts allegedly due, and section 10(d)(1) by imposing on the MTO rates for its barge service that were excessive in comparison to the rates provided to the operator of another barge service for the same service and were not reasonably related to any legitimate goal of the port.

Respondent MPA has appealed the Commission's decision to the U.S. Court of Appeals for the Fourth Circuit in Richmond, Virginia, and Ceres has been granted leave to intervene in the proceeding. Petitioner's brief was due December 15, 1997; respondents' and intervenor's briefs were due January 26, 1998. Oral argument was scheduled for the week of March 2-6, 1998.

James J. Flanagan Shipping Corporation d/b/a James J. Flanagan Stevedores v. Federal Maritime Commission, et al., D.C. Cir. No. 97-1616.

This case is the result of a petition by James J. Flanagan Shipping Corporation to review the Commission's decision in Docket No. 94-32, *James J. Flanagan Shipping Corporation d/b/a James J. Flanagan Stevedores v. Lake Charles Harbor and Terminal District and Lake Charles Stevedores, Inc.*, served on July 30, 1997. The Commission found in that case that a supplemental rail car switching charge imposed by the respondent port and stevedore on the complainant stevedore violated section 10(d)(1) of the 1984 Act, because the complainant stevedore was not a user of the switching

service and derived no allocable benefit from it. The Commission further found that an increase in the port's pallet use charge from \$.75 to \$1.50 per ton did not violate the 1984 Act, because the increase was justified by expensive cleaning and construction costs.

On November 17, 1997, the Commission filed a motion to dismiss for lack of subject matter jurisdiction because the Commission's order was not final under the Hobbs Act. On January 12, 1998, the Court granted the Commission's motion and dismissed the case.

5. Foreign Shipping Restrictions and International Affairs

The General Counsel is responsible for the administration of the Commission's international affairs program. The General Counsel monitors potentially restrictive foreign shipping laws and practices, and makes recommendations to the Commission for investigating and addressing such practices.

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

In fiscal year 1997, the Commission investigated and addressed a number of potentially unfavorable or discriminatory shipping practices by foreign governments in Brazil and China.

With regard to China, the Office of the General Counsel continues to monitor a number of issues, including implementation of a Chinese commitment to allow U.S. carriers to offer consolidation

and logistics services in the PRC through wholly-owned subsidiaries. The Office also is reviewing the establishment of the Shanghai Shipping Exchange, a combination freight exchange and regulatory body recently established by PRC authorities, to ensure that its operations do not impede or disadvantage U.S. carriers serving the region.

The Commission continues to review information collected from shipping lines on certain policies or practices of the Government of Brazil which may contravene applicable U.S. law. In particular, the Commission seeks to ascertain whether the failure of Brazilian authorities to permit a U.S.-flag carrier to operate a bonded warehouse in Brazil created conditions unfavorable to shipping in the foreign trade under section 19 of the 1920 Act, or constituted adverse conditions affecting U.S. carriers that do not exist for Brazilian carriers in conflict with the FSPA. The Commission also inquired as to whether restrictions on U.S. carriers' ability to carry cargoes in the cross-trades between Brazil and other South American countries impair access of U.S.-flag vessels to ocean trade between foreign ports, in violation of section 13(b)(5) of the 1984 Act. The Commission also recently collected information regarding tax and cargo preference legislation in Brazil which may place U.S. carriers at a severe competitive disadvantage to their Brazilian counterparts. If information collected by the Commission points to violations of law, it may launch formal adjudicatory or rulemaking proceedings. Such proceedings could result in the imposition of sanctions, including imposition of per-voyage fees, limitations on sailings, and suspension of tariffs.

The Office of the General Counsel also participated in interagency groups and international maritime discussions, and coordinated and participated in briefings of foreign visitors.

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 1997, the Office reviewed documents and information relating to the controlled carrier status of a number of 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 1997 include the following:

1. **Provided briefings to senior staff.**
2. **Provided workshops on equal employment opportunity.**
3. **Provided counseling assistance to managers, supervisors and employees.**
4. **Reviewed and assessed all management and personnel human resource activity and actions.**
5. **Continued to utilize outside resources at no expense to the agency to upgrade the skills of clerical, administrative and EEO staff.**
6. **Developed information and materials for training senior executives, area representatives, and staff and EEO Counselors.**
7. **Planned and developed special emphasis programs for FMC employee participation.**
8. **Continued to improve FMC's image and identity among Federal agencies and the community by developing cooperative programs in the special emphasis areas.**
9. **Continued non-discrimination policy and programs in response to Pub. L. No. 103-123.**

During fiscal year 1998, the Office will continue all existing programs and initiate additional activities designed to increase an understanding of EEO concepts and principles.

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 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 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 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 1997, the OIG issued three audit reports in final, including a comprehensive review of the Commission's Bureau of Economics and Agreement Analysis, an evaluation of the workload and procedures for receiving and processing informal inquiries and complaints, and a review of the agency's billing and collection procedures.

During the year, various investigations, both formal and informal, were opened and pursued. Two formal investigations were referred to the Department of Justice for handling. Three other formal investigations were concluded without referral outside the agency.

The Office issued its initial 5-year strategic plan which outlines the OIG's assessment of its strategic direction through the end of fiscal year 2002. In this plan, the OIG has identified its mission, developed goals to support that mission, outlined strategies

for achieving goals, and set forth performance measures to determine the OIG's effectiveness in meeting these goals.

In fiscal year 1998, the OIG intends to conduct a comprehensive program of audits and reviews, with a continued high priority on program evaluations. The goal is to improve program operations while continuing to combat any waste, fraud and abuse that may exist in agency programs. These audits and reviews are tied to both the agency's and the OIG's strategic plans. In addition, the Office will conduct a peer review of another OIG as required by the GAO Government Auditing Standards.

The Inspector General is an active member of the Executive Council on Integrity and Efficiency ("ECIE") and regularly attends and participates at meetings held by that body. The ECIE serves as a forum for the exchange of views for the inspector general community and provides a base for the establishment of joint inspector general projects. It is anticipated that the Commission's OIG will participate in any such projects developed during fiscal year 1998.

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 Economics and Agreement Analysis.**
- **Bureau of Tariffs, Certification and Licensing.**
- **Bureau of Enforcement.**
- **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.**

Further, the **Office of Information Resources Management** reports directly to the Office of the Managing Director.

This management structure 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 Chief Information Officer, and the Commission's Chief Operating Officer.

The Deputy Managing Director is the Contracting Officer for the Commission's ATFI system. As the ATFI Contracting Officer, the Deputy Managing Director has direct responsibility for administration of this contract and planning for future ATFI requirements. Additionally, the Chairman has designated a member of the Commission as the Chairman of the Automated Data Processing ("ADP") Committee and responsible for ATFI oversight.

A significant achievement of the Office during fiscal year 1997 was the continued coordination of the Commission's new field operations structure. This required further development of plans for the Commission's activities in the field and the utilization of area representatives to carry out the Commission's enforcement and liaison activities within their areas of responsibility. Also, in response to several cruise line bankruptcies, the Office ensured that the public was kept informed of their rights under the Commission's statutorily required rules in this area. Further the Office managed the Commission's planning and actions with respect to the Government Performance and Results Act ("GPRR"), as well as the President's directives and OMB's guidance on streamlining government and management reform. Additionally, the Office oversaw the development of internal procedures and compliance strategies for implementation of Pub. L. No. 104-121, Small Business Regulatory Enforcement Fairness Act of 1996 ("SBREFA"). The Office continues to oversee a rulemaking process reviewing passenger vessel operators' financial responsibility requirements aimed at ensuring that adequate levels of coverage are maintained.

The Office's key objectives for fiscal years 1998 and 1999 are the further development of the Commission's enforcement program; the continued coordination of staff efforts regarding the maintenance of the ATFI system and planning for future ATFI requirements; completion of the passenger vessel operator rulemaking process;

organization of staff action to implement the GPRA, Presidential directives with respect to streamlining and management reform, and SBREFA; and continuing oversight of staff efforts to address restrictive practices of foreign governments.

Office of Information Resources Management

The Office of Information Resources Management (“OIRM”) administers the Commission’s information resources management (“IRM”) program under the Paperwork Reduction Act of 1995, as amended, as well as other applicable laws which prescribe responsibility for operating the IRM program. These IRM functions include: conducting IRM management studies and surveys; managing data telecommunications; developing and managing databases and applications; coordinating records management activities; administering IRM contracts; and developing Paperwork Reduction Act clearances for submission to OMB. The Office also is responsible for managing the computer security, and the records and forms programs. The Director of the Office serves as Senior IRM Manager, Forms Control Officer, Computer Security Officer, Records Management Officer, and ADP Coordinator for the ADP Committee. The Director of the Office also monitors the activities of the ATFI Contracting Officer's Technical Representative.

During fiscal year 1997, the Office:

- **Modified and enhanced the FMC home page.**
- **Developed an area on the home page to fulfill the Electronic Freedom of Information Act requirements for an “electronic reading room.”**
- **Published IRM newsletters and conducted Information Technology (“IT”) Group meetings to share current IT information with Commission employees.**

- **Coordinated technical, logistical, procedural and security issues related to the Commission's worldwide ATFI system and other database systems created, owned and maintained by the Commission.**
- **Furnished agencywide advice and coordination on records management, OMB clearances, collections of information, and IRM issues.**
- **Arranged for agencywide access to and training on the Internet .**
- **Upgraded the Commission's internal e-mail system to include external e-mail capabilities via the Internet.**
- **Continued coordinating and monitoring all contractor issues related to the implementation of the agency's optical imaging system.**
- **Coordinated the transfer of domestic tariff records from the Commission to the STB.**
- **Developed an Intranet prototype system.**
- **Continued to assist the FMC's Inspector General on audits of industry accounting procedures to ensure compliance with Pub. L. No. 102-582, and provided technical analysis of data collection.**

In addition to implementing ongoing Office programs and providing technical support for the ATFI program mentioned above, major initiatives for fiscal years 1998 and 1999 include: (1) providing guidance for the implementation of an agencywide Intranet site; (2) finalizing and submitting an electronic records management schedule to the National Archives and Records

Administration to include as appropriate Government Information Locator Service (“GILS”) records; (3) enhancing the FMC home page; (4) upgrading hardware and software for agencywide file servers; (5) conducting an agencywide records management audit; (6) maintaining liaison with the Government Printing Office to ensure that FMC's GILS entries remain current; (7) providing continued administrative support to agency components regarding IRM matters; (8) evaluating Commercial Off The Shelf software for Year 2000 compliance and for Commission use; and (9) establishing a “Help Desk” to provide assistance to FMC employees for questions related to IRM equipment, software and services.

G. BUREAU OF ECONOMICS AND AGREEMENT ANALYSIS

1. General

During fiscal year 1997, the Bureau reorganized and consolidated its internal office structure from three to two offices: the Office of Economics and the Office of Agreements and Information Management. A second Office of Economics was eliminated, and the employees were reassigned within the Bureau. The two current operating offices are under the supervision of the Bureau Director.

The primary function of the Bureau 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. 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, and to advise the Commission and its staff on current trade conditions, emerging trends, and regulatory needs affecting 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.**

- **Providing expert economic testimony and support in formal proceedings, particularly regarding unfair foreign shipping practices.**
- **Processing and analyzing common carrier and marine terminal agreements.**

2. Surveillance

The goal of the Bureau's surveillance activities is to ensure that carriers operating in these trades comply fully with the statutory standards of the applicable U.S. laws and Commission regulations. To that end, the Bureau administers a variety of monitoring programs and other research efforts designed to apprise the Commission of current trade conditions, emerging commercial trends, and carrier pricing and service activities.

For a description of the Bureau's monitoring activities for fiscal year 1997, *see* Section III. A, *Surveillance*.

3. General Economic Analysis

In addition to research and economic analysis pertaining to its monitoring programs, the Bureau provides economic expertise for a variety of Commission initiatives, including rulemaking proceedings. Bureau economists prepare testimony in fact-finding investigations and cases of unfair shipping practices under section 19 of the 1920 Act and FSPA. They also prepare speeches and briefings for senior agency officials.

Key projects the Bureau completed in fiscal year 1997 included: (1) an economic analysis and testimony regarding FMC sanctions on Japanese-flag vessels in connection with the Commission's Rule in Docket No. 96-20, *Port Restrictions and Requirements in the United States/Japan Trade*; (2) an economic analysis of a proposed agreement amendment to reinstitute a capacity

management program in the inbound transpacific trade; (3) in conjunction with other bureaus, preparation of Commission orders on possible statutory violations by certain carriers in the North Atlantic; (4) reports on carrier strategic alliances in ocean shipping; (5) comprehensive studies and reports on ocean freight rate trends and market conditions in major liner trades; (6) an economic analysis on the pricing practices of a particular controlled carrier in the transpacific and transatlantic trades; (7) a market share analysis in support of a specific enforcement effort; (8) an updated monitoring report of controlled carrier activities, and individual controlled carrier profiles; (9) classification of agreements and review and analyses of waiver requests and data submissions in connection with the new agreement reporting regulations; (10) updates to the Bureau's carrier agreement database with a compendium for publication in paper form or on diskette; (11) guidelines for determining the extent to which the regulatory flexibility reporting requirements apply to rulemakings; (12) revision of the Bureau's carrier agreement initial review process; (13) semiannual meetings with TACA representatives pursuant to the Commission's 1995 settlement agreement; (14) responses to inquiries and complaints from Congressional members and shippers, and for Congressional hearings on proposed legislative changes; and (15) preparation of speeches, testimony, 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 common carriers. These agreements typically are limited to a geographical area or trade route. Interconference agreements are between two or more conferences, and usually cover shared administration, or provide a forum for discussing issues of common interest.

During fiscal year 1997, the Bureau analyzed and processed 84 conference and interconference agreement filings, including modifications to existing agreements. At the end of the fiscal year, there were 32 conference agreements and 3 interconference agreements on file at the Commission.

Since fiscal year 1990, the number of conference agreements has declined by over 50 percent, reflecting for the most part the consolidation of conferences in common trade lanes. For example, in the North Atlantic trades there were as many as 12 separate conferences covering the various U.S./North Europe trade lanes. Today, one conference covers all U.S./North Europe trade lanes.

(b) Pooling and Equal Access Agreements

Pooling agreements are commercial arrangements among carriers in a given trade providing for the pooling and apportionment of cargo or revenues or both 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.

There were eight pooling and equal access agreements on file at the end of the fiscal year.

(c) Space Charter and Sailing Agreements

Space charter agreements authorize the chartering of vessel space or container slots between or among participating vessel operators. Sailing agreements provide for the rationalization of the parties' sailing schedules. Through effective management of their vessels and the space on those vessels, participants in these agreements are able to provide a high level of service at reduced

operating costs. These agreements also generally contain authority to exchange equipment.

During fiscal year 1997, the Bureau processed 62 space charter and sailing agreements and modifications. At the end of the fiscal year, there were 87 space chartering and sailing agreements on file.

Over the past several years two-thirds of all carrier agreement filings have been in the chartering/sailing and cooperative working agreement categories.

(d) Joint Service Agreements

Parties to joint service agreements operate as a joint venture under a single name in a specified trading area. The joint service issues its own bills of lading and sets its own rates as an individual entity.

Three joint service agreements were filed during fiscal year 1997. Nineteen joint service agreements were on file 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 that do not fit precisely within the other agreement categories. This category also includes voluntary rate discussion agreements.

Carriers filed 129 CWAs, including amendments, in fiscal year 1997. There were 122 CWAs on file 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 reviewing and processing agreements related to the marine terminal industry.

During fiscal year 1997, the Bureau analyzed 71 terminal agreements relating to port and marine terminal services and facilities. Certain terminal agreements become effective upon filing under Commission rules that exempt certain classes of marine terminal agreements from the waiting period requirements of the 1984 Act. Terminal agreements not entitled to an exemption are processed under applicable statutory requirements. At the end of the fiscal year, 625 terminal agreements were on file with the Commission.

The number of marine terminal agreement filings has decreased significantly since fiscal year 1992. That year the Commission exempted terminal lease agreements from filing. Prior to that time the Commission was receiving approximately 340 terminal agreements a year. This fiscal year the Commission received 71 terminal agreements.

5. Overview of Agreement Filings

In fiscal year 1997, the Bureau received 405 agreements, including modifications to existing agreements, a 46 percent increase over the previous fiscal year. The Bureau also processed 405 agreements in fiscal year 1997, a 38 percent increase over 1996. Appendix C contains a breakdown of receipts and processing categories for the fiscal year.

At the end of fiscal year 1997, the Bureau had a total of 271 carrier agreements and 625 terminal agreements on file.

6. 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 analyzing market share, commodity, and revenue data submitted by agreement parties pursuant to the Commission's reporting requirements; reviewing agreement minutes submissions; and monitoring current developments and trade trends. Together with publicly available sources of trade information, the above data will be employed to assess the impact of key issues facing the industry in order to monitor developments in major trades and analyze agreements in the foreign trades under the standards of the 1984 Act.

The Bureau also will continue to furnish support and prepare economic testimony in formal Commission proceedings, including proceedings under section 19 of the 1920 Act and FSPA; provide analyses and recommendations on petitions, information demand orders, and Commission-initiated rulemakings, including major rule and small business impact analyses; perform pre-effectiveness analyses 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; prepare recommendations to the Commission on the more complex agreements and those agreements that raise policy issues; and process other agreement matters internally under authority delegated by the Commission.

H. BUREAU OF TARIFFS, CERTIFICATION AND LICENSING

1. General

The Bureau of Tariffs, Certification and Licensing is responsible for the review of all tariffs filed by common carriers, conferences of such carriers, and MTOs, as well as service contracts filed by carriers and conferences; ensuring that NVOCCs submit appropriate evidence of financial responsibility; the licensing of ocean freight forwarders; and the certification of owners and operators of passenger vessels for financial responsibility. In meeting these responsibilities, the Bureau:

- **Reviews and maintains both new and amended tariff filings, rejecting those which fail to conform to the Commission's regulations.**
- **Ensures that shippers, as a result of tariff filings, are not subjected to unjust, unfair or unreasonable discriminatory practices in the movement of cargo in the U.S. foreign commerce.**
- **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.**
- **Licenses ocean freight forwarders.**
- **Certifies 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.**
- **Assists in the maintenance of the Commission's ATFI system, and has primary responsibility for administration and review of all tariffs and service contract essential terms filed in the ATFI system.**

As part of its program responsibilities, the Bureau:

- **Develops long-range plans, new or revised policies and standards, and rules and regulations with respect to its program activities.**
- **Initiates recommendations for formal action and proceedings by the Commission in collaboration with other offices of the Commission as warranted.**
- **Cooperates with other Commission components with regard to enforcement of the Commission's regulatory requirements.**

- **Maintains several automated databases, including the Regulated Persons Index which contains the names, addresses, phone numbers, trade names, and other pertinent information on the persons the Commission regulates.**

Information concerning regulatory matters that the Bureau administers is available to the industry and the public at large through the Commission's home page on the Internet. Included in this information are the regulations that apply to ocean freight forwarders under 46 CFR Part 510; the tariff and service contract regulations under 46 CFR Part 514; passenger vessel financial responsibility requirements under 46 CFR part 540; anti-rebate certification requirements under 46 CFR Part 582; and financial responsibility requirements for NVOCCs under 46 CFR Part 583. Additionally, electronic, downloadable versions of forms that are used in support of the Bureau's regulatory programs are available on the home page, e.g., the freight forwarder application form, ATFI registration form, and the application for certification of financial responsibility.

In fiscal year 1997, the Bureau contributed to the Commission's efforts toward complying with the requirements of the Debt Collection Improvement Act of 1996, Pub. Law No. 104-134, whose purpose is to maximize the collection of delinquent debt owed to the Federal Government.

2. Foreign Commerce

(a) Foreign Tariffs

Section 8 of the 1984 Act (46 U.S.C. app. 1707) requires common carriers to file tariffs setting forth their rates, charges, rules and practices for transporting cargo in the foreign waterborne commerce of the U.S. Section 8 does not give the Commission the authority to regulate rate levels except with regard to controlled carriers. However, the Bureau reviews tariff filings and rejects tariff

matter which fails to comply with Commission regulations or statutory requirements. These rejections help protect shippers and fulfill the Commission's obligation to protect shippers from unfair and discriminatory practices.

During fiscal year 1997, the Commission received 733 new, complete tariffs from carriers and conferences operating in the U.S. foreign commerce. (Additional statistics concerning filings into ATFI can be found in the ATFI section below.) The Bureau also processed 246 foreign special permission applications (including six controlled carrier special permission applications) to deviate from the statutory provisions of the 1984 Act and/or the Commission's tariff filing regulations.

(b) Service Contracts

Section 8(c) of the 1984 Act (46 U.S.C. app. 1707) provides that ocean common carriers and conferences of such carriers operating in the foreign commerce of the U.S. may enter into confidential service contracts with shippers and/or shippers' associations. A concise statement of the essential terms of the service contract is publicly available through the Commission's ATFI system. The essential terms of any service contract must be offered to all similarly situated shippers for a period of at least 30 days from its filing.

Service contracts offer an alternative to transportation under tariff terms. Their flexibility enables contract parties to tailor transportation services to accommodate specific commercial and operational needs. During fiscal year 1997, the Bureau received 22 essential terms publications, 10,565 new service contracts, and 28,868 amendments. The Commission received 1,140 more contracts in fiscal year 1997 than it did in fiscal year 1996, and received 9,441 more service contract amendments than it did in fiscal year 1996. The service contract filings involved an estimated 37,828 shippers, 24 conferences, and 99 individual ocean common carriers. Of these

contracts, 167 contracts were filed on behalf of 84 shippers' associations.

(c) 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. During fiscal year 1997, the Bureau received six applications for special permission from controlled carriers. One of these requests, from COSCO North America, Inc., sought "blanket" special permission to be relieved of the controlled carrier advance notice filing requirements. The Commission denied the request after determining that the request was not adequately justified.

(d) 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. (Effective October 1, 1996, this was increased to \$5,500 pursuant to the Federal Civil Penalties Inflation Adjustment Act of 1990, Pub. L. No. 101-410, 104 Stat. 890, 28 U.S.C. § 2461.) 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 initial tariff filing or application for an ocean freight forwarder license that does not include an anti-rebate certification in accordance with Part 582 is returned. Carriers and freight forwarders that need to file their initial certification or a renewal can obtain a copy of the certification form directly from the Commission's Internet home page.

A program supported by the Bureau's electronic databases is in place to ensure that common carriers and freight forwarders file their certifications. Certifications were to be renewed during fiscal year 1997. At the end of the fiscal year, approximately 4,500 anti-rebate certifications were submitted. About 1,082 common carriers and/or freight forwarders were notified by mail and *Federal Register* notice that they had not filed the required certification. They were given 45 days to file the required certification, in order to avoid having their tariffs canceled and/or their freight forwarder license suspended. At the end of the fiscal year, 253 firms had not complied and were subject to tariff cancellation or license suspension.

(e) NVOCC Financial Responsibility

Section 23 of the 1984 Act (46 U.S.C. app. 1721) requires an NVOCC operating in the foreign commerce of the U.S. to file a bond,

insurance or other surety as proof of financial responsibility. The Commission's regulations require proof of financial responsibility in the amount of \$50,000. Evidence of financial responsibility obtained pursuant to this requirement is 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 2,450 bonds and one insurance policy are currently on file. The Bureau estimates that over 1,000 inquiries on surety bond matters were handled during the fiscal year.

3. Domestic Commerce

(a) Domestic Tariffs

The regulatory responsibility for U.S. domestic offshore commerce was transferred to the STB effective October 1, 1996, pursuant to the ICC Termination Act of 1995, Pub. L. No. 104-88, 109 Stat. 803 (1995). The FMC and STB entered into an MOU that provides for tariffs under the jurisdiction of the STB to continue to be filed in the Commission's ATFI system. The Bureau maintains administrative control in support of the STB's receipt and review of all domestic trade tariffs filed in the ATFI system. The Bureau provides the STB with advice on the operation and use of the ATFI system, ATFI administrative changes, reports, and news bulletins that affect domestic offshore tariff filings.

(b) Marine Terminal Activities

The Commission is responsible for the review of tariffs related to the marine terminal industry. Terminal tariffs cover the facilities, services and labor provided by both public and private entities in connection with the receipt and delivery of cargo from shippers and consignees, and the interchange of cargo between land and ocean carriers. The Bureau reviewed 22 new marine terminal tariffs, along with numerous amendments that were filed into the ATFI system during the fiscal year.

4. Passenger Vessel Certification

The Commission administers sections 2 and 3 of Pub. L. No. 89-777 (46 U.S.C. 817d and 817e), which are implemented by the Commission's regulations in 46 CFR 540 -- *Security for the Protection of the Public*. Pub. L. No. 89-777 requires certain persons to present the Commission with evidence of financial responsibility to indemnify passengers and other persons for death, injury or nonperformance of transportation for vessels which have berth or stateroom accommodations for 50 or more passengers and embark passengers at U.S. ports.

Upon the submission of satisfactory evidence of financial responsibility in accordance with Subpart A of 46 CFR 540, the Commission issues 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 issues a *Certificate of Financial Responsibility to Meet Liability Incurred for Death or Injury to Passengers or Other Persons on Voyages*. The program now encompasses about 135 vessels and 43 operators, which have evidence of financial responsibility coverage in excess of \$310 million for nonperformance and over \$1 billion for casualty. The certificates issued pursuant to this program are necessary for the Customs clearance of thousands of passenger vessel sailings annually. During fiscal year 1997, the Commission received 68 applications for passenger vessel certificates. During the fiscal year, 46 casualty certificates and 42 performance certificates were approved and issued to passenger vessel applicants.

The Bureau completed its review of comments following a Further Notice of Proposed Rulemaking aimed at protecting a higher proportion of passenger deposits and prepaid fares, Docket No. 94-06, *Financial Responsibility Requirements for Nonperformance of Transportation*. At the end of the fiscal year, a cost benefit analysis was being conducted for this proceeding.

During fiscal year 1997, the Bureau handled a variety of matters arising from an ongoing Chapter 11 bankruptcy proceeding involving a cruise line, which affected thousands of travelers. The Bureau monitored the situation, advised the Commission, provided guidance to the public and the travel industry, and responded to press inquiries concerning developments in this matter.

In fiscal year 1997, the Commission also informed Congress of: the reduced value of the statute's casualty coverage; the lack of protection for "cruises-to-nowhere" by vessels with fewer than 50 passenger berths; the lack of protection for tickets purchased in the U.S. for cruises embarking at foreign ports; and inflation's erosion of the penalties provided in Pub. L. No. 89-777.

The Bureau assisted in an investigation of an apparent violation of Pub. L. No. 89-777 arising from uncertificated advertising of the Royal Venture Cruise Line vessel SUN VENTURE, Docket No. 96-16, *Royal Venture Cruise Line, Inc. and Anastassios Kiriakidis, Possible Violations of Passenger Vessel Certification Requirements*. The Bureau also referred other apparent violations involving the passenger vessel operations' program to the Bureau of Enforcement.

5. Freight Forwarders

The Commission's regulatory responsibilities over the forwarding industry are found in section 19 of the 1984 Act. Ocean freight forwarders are persons who, in effect, hold themselves out to shippers as export departments for hire. Ocean freight forwarders operate in the export 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 1997, 387 new and amending license applications were received for processing. The Commission approved 245 applications, 103 applications were deficient and returned, and 9 applications were withdrawn. One hundred and six licenses were issued, while 60 licenses were revoked. At the end of the fiscal year, 2,007 licensed forwarders were operating under the Commission's jurisdiction. Applicants are continuing to use the revised form FMC-18, *Application for a License as an Ocean Freight Forwarder*. The streamlined form ended the requirement to submit financial data and reduced the applicant's estimated paperwork burden from 18 hours to 2 hours.

In fiscal year 1997, the Commission also considered a staff report which made recommendations with regard to the Commission's role with respect to the National Customs Brokers and Forwarders Association's Certified Ocean Forwarder ("COF") program. While certain legal impediments and statutory requirements prohibited the Commission from implementing some of the more expansive options that the Association initially proffered, the Commission determined that it would consider the successful completion of the COF exam as one factor in deciding whether an applicant meets the "experience" test for licensing. The Bureau's Director was named the Commission's liaison and advisor to the Association in connection with its COF program.

6. Automated Database Systems

(a) ATFI

ATFI, a computer-based system designed to increase efficiency, reduce processing time, and enhance service, provides for electronic filing, processing and retrieval of foreign and domestic carrier tariffs, marine terminal tariffs, service contract essential terms, and amendments thereto. The ATFI system provides carriers and conferences with greater flexibility in establishing price and service offerings by streamlining the process for filing tariffs containing

those offerings with the Commission as required by section 8 of the 1984 Act. The Commission launched the ATFI system on February 22, 1993. Through the use of the ATFI system, the Bureau has achieved a "paperless tariff environment." At the end of fiscal year 1997, there were 4,738 effective tariffs in ATFI (Appendix D shows the number of tariff objects filed in the ATFI system in fiscal year 1997).

(b) Other Databases

The Bureau maintains several automated database systems other than its ATFI system. 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, some of which is only available to the Commission's staff since it is made confidential by law. The Regulated Persons Index assigns a discrete number to each person the Commission regulates and contains, among other things, the address, telephone number, trade name of the person and bonding information. The Microfiche System provides a means of locating canceled tariffs and amendments which have been microfiched. The Ocean Freight Forwarder System contains certain information concerning licensees, including surety bond information. These databases provide support for many of the Commission's programs. Certain information contained in the databases is also available to the public.

7. Rulemaking and Docketed Proceedings

The Bureau recommends the initiation of, or supports, formal rulemakings and Commission docketed proceedings. During fiscal year 1997, the Bureau participated in the following matters:

Financial Responsibility Requirements for Nonperformance of Transportation [Docket No. 94-06].

In Docket No. 94-06, the Bureau prepared a Further Notice of Proposed Rulemaking to protect a higher proportion of passengers' deposits and prepaid fares. The Bureau analyzed the comments filed to the proposed rule and is awaiting the completion of a cost benefit analysis.

Royal Venture Cruise Line, Inc. and Anastassios Kiriakidis, Possible Violations of Passenger Vessel Certification Requirements [Docket No. 96-16].

The Bureau assisted in an investigation of an apparent violation of Pub. L. No. 89-777 arising from uncertificated advertising of the Royal Venture Cruise Line vessel SUN VENTURE. Bureau staff provided assistance to the Bureau of Enforcement and prepared testimony for presentation to the assigned ALJ. A final decision was issued which fined respondents \$110,000 for violating section 3 of Pub. L. No. 89-777 for offering and advertising passage on a vessel without first obtaining a Certificate of Financial Responsibility from the Commission.

SeaAir Cargo Agency, Inc. d/b/a SeaAir International Line, Possible Violation of Section 10(b)(1) of the Shipping Act of 1984 [Docket No. 96-10]; Haewoo Air & Shipping Co., Ltd., d/b/a Haewoo Shipping Co. Ltd., Possible Violations of Section 10(b)(1) of the Shipping Act of 1984 [Docket No. 96-11]; Comm-Sino Ltd. - Possible Violations of Sections 10(a)(1) and 10(b)(1) of the Shipping Act of 1984 [Docket No. 96-19].

The Bureau prepared rate analyses of bills of lading testimony for the Bureau of Enforcement's use in Docket Nos. 96-10, 96-11, and 96-19. The proceedings resulted in the assessment of civil penalties.

I. BUREAU OF ENFORCEMENT

The Bureau of Enforcement is the primary investigatory and prosecutorial arm of the Commission. It consists of the former Bureaus of Investigations and Hearing Counsel. The new Bureau provides for closer coordination between investigations and prosecutions, and streamlines the management of these two related functions. Attorneys of the Bureau of Enforcement serve as trial attorneys in formal proceedings instituted under section 11 of the 1984 Act, and in investigations instituted under the FSPA. Bureau attorneys serve as legal advisors to the Managing Director and other bureaus, and also may be designated Investigative Officers in nonadjudicatory fact finding proceedings. The Bureau monitors all other formal proceedings in order to identify major regulatory issues and to advise the Managing Director and the other bureaus. The Bureau also participates in the development of Commission rules and regulations. On occasion, under the direction of the General Counsel, attorneys from the Bureau may participate in matters of court litigation to which the Commission is a party.

Through investigative personnel, the Bureau monitors and conducts investigations into the activities of 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. Monitoring activities include: (1) service contract reviews to determine compliance with applicable statutes and regulations; (2) reviews of NVOCC operations, including compliance with bonding requirements; (3) post-licensing and routine compliance checks of licensed ocean freight forwarders to determine whether their operations conform with regulatory requirements; (4) audits of passenger vessel operators to ensure the financial protection of cruise passengers; and (5) various studies and surveys to support Commission programs. Investigations are conducted into alleged violations of the full range of statutes and regulations administered by the Commission, including: illegal rebating; misdescriptions or misdeclarations of cargo; illegal or unfiled

agreements; abuses of antitrust immunity; unlicensed freight forwarding; untariffed cargo carriage; unbonded NVOCC and passenger vessel operations; and various types of consumer abuses, such as failure of carriers or intermediaries to carry out transportation obligations, resulting in cargo delays and financial losses for shippers.

The Commission maintains a presence in Los Angeles, Miami, New Orleans and Seattle through an area representative based in each of those cities. These representatives also serve the other major port cities and transportation centers within their respective areas. Coverage of the North Atlantic region is the responsibility of the Bureau's staff in Washington, D.C. In addition to monitoring and investigative functions, area representatives represent the Commission within their jurisdictions, provide liaison between the Commission and the maritime industry and the shipping public, collect and analyze intelligence of regulatory significance, and assess industry conditions. 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.

The Bureau prepares and serves notices of violations of the shipping statutes and Commission regulations and may compromise and settle civil penalty demands arising out of those violations. If settlement is not reached, Bureau attorneys act as prosecutors in formal Commission proceedings that may result in settlement or in the assessment of civil penalties. The Bureau also participates, in conjunction with other bureaus, in special enforcement initiatives.

During 1997, the Bureau developed evidence of extensive malpractices, particularly fraudulent cargo descriptions and measurements, in the transpacific trades. Other trades were also the subject of malpractice investigations, including the South American, Central American and Caribbean trades. These investigations included improper shipper practices, such as various forms of secret rebates and absorptions, misdescription of commodities and misdeclaration of measurements, as well as carriage of cargo by and

for untariffed and unbonded NVOCCs. In the transatlantic trades, the Bureau worked closely with the Bureau of Economics and Agreement Analysis in developing evidence of possible unfiled agreements which led to formal proceedings in Docket No. 97-07, *Possible Unfiled Agreement Between Hyundai Merchant Marine Company, Ltd. and Mediterranean Shipping Co., S.A.*, and Docket No. 97-08, *Possible Unfiled Agreements Among A.P. Moller-Maersk Line, P&O Nedlloyd Limited and Sea-Land Service, Inc.*

The cooperation between the Commission's area representatives and Customs, with respect to the exchange of investigative information, continues to be beneficial to both agencies and recently has expanded. Customs personnel now can isolate shipments which enter U.S. commerce with a description other than that which had appeared on the ocean common carrier's manifest. This information permits Commission personnel to become more selective in determining which entities should be investigated for violations of the 1984 Act. As Customs refines its procedures, we expect this avenue of cooperation in the import and export trades of the U.S. to continue to increase.

In fiscal year 1997, the Bureau of Enforcement developed and implemented the Freight Forwarder Audit Program. This program reviews the operations of licensed ocean freight forwarders and assists them in complying with statutory requirements and with the Commission's rules and regulations

At the beginning of fiscal year 1997, 18 enforcement cases were pending final resolution by the Bureau. During the fiscal year, 40 new enforcement actions were commenced. Thirty were compromised and settled, administratively closed, or referred for formal proceedings. Twenty-eight enforcement cases were pending resolution at fiscal year's end.

At the start of fiscal year 1997, the Bureau was party to seven formal proceedings. During the fiscal year, the Bureau participated in twelve new formal proceedings. Seven proceedings in which the

Bureau participated were completed. Accordingly, twelve formal proceedings were pending at the end of the fiscal year.

At the beginning of fiscal year 1997 there were 99 requests for legal advice pending in the Bureau. Ninety-one requests for legal advice were received during the fiscal year, and 101 legal advice projects were completed. Accordingly, 89 legal advice matters were pending in the Bureau on September 30, 1997.

As a result of enforcement activity, the Commission collected \$1,943,349.04 in civil penalties in fiscal year 1997. Settlements were reached with many different segments of the industry (*e.g.*, carriers, cruise operators, shippers, forwarders) operating in the U.S. foreign trades. Civil penalty collections are listed in Appendix E. (*See Part III, Surveillance and Enforcement.*)

In fiscal years 1998 and 1999, the Bureau will continue to pursue fraudulent and anticompetitive practices and will continue to monitor major U.S. trades to the extent that resources permit. The closing of all seven of the Commission's district offices and the 66 percent reduction in Bureau personnel during the past two fiscal years may impact enforcement activity in fiscal years 1998 and 1999. However, the Bureau will continue to perform all of its enforcement and advisory functions, albeit on a more selective basis.

J. BUREAU OF ADMINISTRATION

Office of the Director

The Bureau of Administration ("BOA") 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 property 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, BOA, is responsible for the direct administration and coordination of the:

- **Office of Administrative Services.**
- **Office of Budget and Financial Management.**
- **Office of Personnel.**

Many of the functions and achievements of BOA are reflected in the narratives for these Offices below.

The Director serves as the FMC's Competition Advocate, challenging barriers to competition and reviewing procurement practices as specified in the FAR. The Director is the Commission's representative, as Principal Management Official, to the Small Agency Council ("SAC"). As the Chief Financial Officer, the Director provides program oversight for the agency's budget and financial management responsibilities, and ensures agency compliance with the Financial Integrity Act, the Antideficiency Act and the Debt Collection Improvement Act of 1996.

The Commission's Training Officer is located in the Office of the Director. The Training Officer provides employee development assistance and career counseling throughout the agency and provides

technical assistance to the Executive Resources Board. The Training Officer also serves as a member of the SAC Training Committee. FMC employees took advantage of several cost-free training programs through SAC. Computer software training and training required by statute were offered through an interagency agreement with the U.S. Department of Agriculture Graduate School.

The Office of the Director also has the responsibility 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 12958.

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 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 applicable Federal guidelines.

(b) Achievements

During fiscal year 1997, the Office:

- **Provided contracting guidance and assistance in support of the FMC's ATFI program.**
- **Revised Commission Order 112, *Procurement*, in line with changes to the FAR and other regulations.**
- **Arranged for the printing and distribution of the FMC's *35th Annual Report*.**
- **Arranged for the release of surplus property, including the donation of IT equipment to non-profit organizations.**
- **Developed Blanket Purchase Agreements to provide IT technical assistance to OIRM in support of its mission.**
- **Conducted a telecommunication line analysis and implemented a plan which resulted in significant annual savings.**
- **Conducted a space analysis and implemented alteration plans which resulted in significant savings.**
- **Implemented electronic commerce requirements in accordance with a Presidential Memorandum on streamlining procurements.**

(c) Future Plans

In fiscal year 1998, the Office's objectives include the following: (1) expand the automated property management system for use in other Commission activities for inventory control; (2) continue efforts to expand the Commission's electronic commerce program for paperless office interactions; (3) implement the International Merchant Purchase Authorization Card program for use of the government purchase card; (4) continue to implement the Electronic Funds Transfer program; and (5) continue to work with FMC activities regarding innovative support service approaches.

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 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.

(b) Achievements

During fiscal year 1997, the Office:

- **Collected and deposited \$3,239,158 from user fees and fine and penalty collections.**

- Prepared fiscal year 1998 OMB policy base line estimates, coordinated and prepared budget justifications and estimates for the fiscal year 1998 Congressional budget and the fiscal year 1999 budget to OMB, and participated in OMB and Congressional budget hearings.
- Prepared a variety of external reports such as: the Civil Monetary Penalty Report and the Current Asset Management Annual Certification (FY 1996 Cash Flow) (Department of the Treasury); the Report on First Class Airline Accommodations for FY 1996 (GSA); the Report on Financial Management Improvements (Joint Financial Management Improvement Program); the Annual Leave Year Report, and the Report on Workyears and Personnel Costs (Office of Personnel Management - "OPM"); the Annual Report on Occupational Safety and Health Program (Department of Labor); Annual Report for the Bureau of Economic Analysis Puerto Rico Planning Board; and the Annual Prompt Payment Report (OMB).
- Provided management with monthly status reports on workyears, funding, travel and receivables.
- Completed implementation of off-the-shelf travel manager software.
- Participated on a task force regarding implementation of the Debt Collection Improvement Act of 1996.

(c) Future Plans

During fiscal years 1998 and 1999, the Office will: (1) continue to develop and implement electronic commerce and automate the processing of purchase orders, obligations and payments in conjunction with the Office of Administrative Services and OIRM; (2) review procedures and controls for cash management; (3) continue to pursue initiatives to improve efficiency in budget and financial operations; and (4) continue to implement various requirements of the Debt Collection and Improvement Act of 1996.

3. 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 assistance, employee relations, workforce discipline, performance appraisal, incentive awards, employee benefits, career transition, retirement, and personnel security.

(b) Achievements

During fiscal year 1997, the Office:

- **Updated Commission Orders 64, *Employee Absence and Leave*, and 93, *Executive, Management and Supervisory Development*, and reissued guidelines for emergency arrival and dismissal procedures.**
- **Expanded family and medical leave policies, and reported on the agency's family-friendly programs in conjunction with the Family and Medical Leave**

Act and the Federal Employees Family Friendly Leave Act.

- **Conducted four Voluntary Early Retirement Open Seasons (three eligible employees retired early). Updated retirement eligibility lists, counseled and prepared annuity estimates for all eligible employees, and prepared periodic reports on the use of voluntary separation incentives and early retirement authority during fiscal year 1997.**
- **Monitored and modified Employee Assistance Program contracts for the agency and managed a very successful Annual Leave Transfer Program.**
- **Conducted the Federal Employees Health Benefits Program and Thrift Savings Plan Open Seasons, including sponsoring an annual Employee Health Benefits Fair. Sponsored Blue Cross/Blue Shield Service Days during which a representative met each month with employees on-site to assist them.**
- **Advised supervisors concerning their responsibilities in areas of employee conduct and performance. Charted performance appraisal milestones and issued reminders and instructions to supervisors and performance review board members concerning the performance appraisal process.**
- **Reviewed and began implementation of OPM's strategic plan for personnel automation and record keeping and coordinated agency implementation of the National Directory of New Hires Data Reporting Program with the Health and Human Services Office of Child Support Enforcement.**

- **Coordinated the agency's Combined Federal Campaign effort, which raised close to \$20,000.**
- **Developed and submitted the agency's Welfare-to-Work Plan in support of the President's initiative to hire welfare recipients.**
- **Prepared a number of recurring and ad hoc reports, including the annual Employee Assistance Program report, annual statistical and race/national origin reports in connection with the Luevano Decree, reports to GAO concerning staffing activity under Ramspeck authority and competitive conversions of political appointees, reports and plan certifications for all affirmative action programs, annual reports covering internal and external staffing activities under agency and interagency career transition assistance plans, the annual federal sector ready reserve mobilization screening program report, and executive and political appointees semiannual verification and pay and performance reports.**

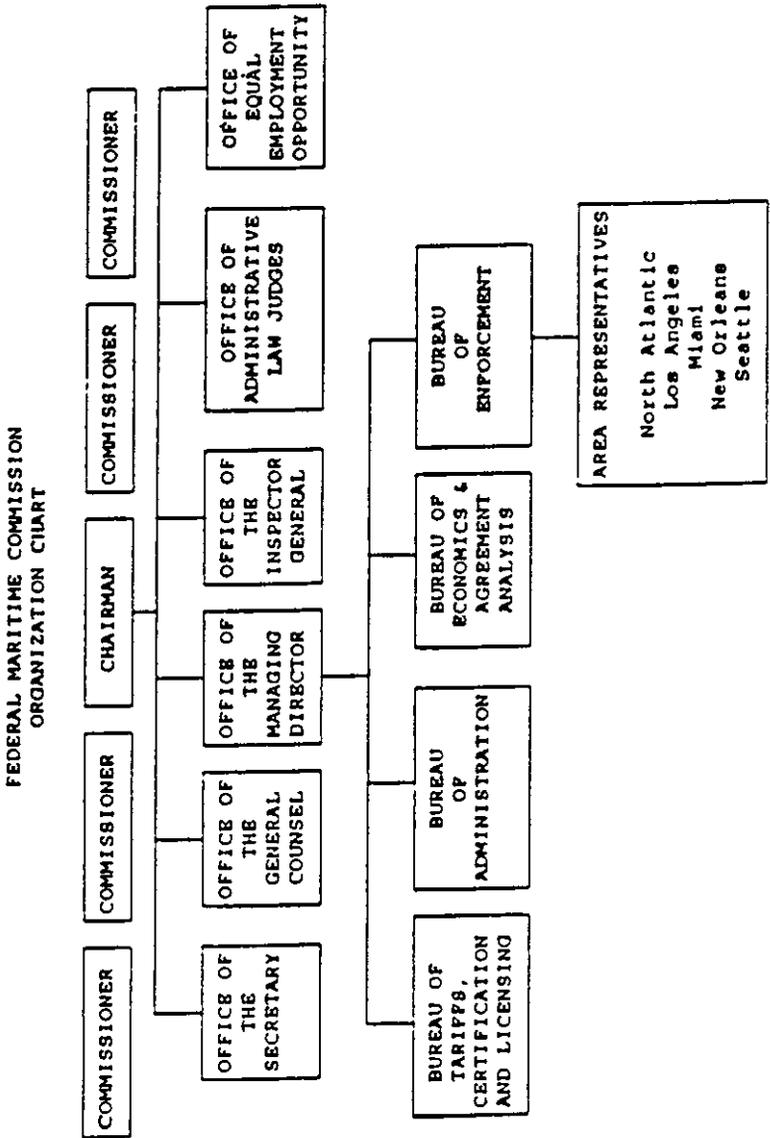
(c) Future Plans

During fiscal years 1998 and 1999, the Office will continue to advise the Commission on all personnel matters and ensure the maintenance of a sound and progressive personnel program. The Office will continue its review of personnel policies in order to implement provisions of the Commission's strategic and related performance plans, and will continue programs for, and provide guidance and career transition assistance to, current and former employees to assist those individuals impacted by downsizing.

APPENDIXES

APPENDIX A

ORGANIZATION CHART



APPENDIX B

COMMISSION PROCEEDINGS Fiscal Year 1997

Formal Proceedings

Decisions	8
Discontinuances & Dismissals	5
Initial Decisions Not Reviewed	11
Rulemakings - Final Rules	5
- Withdrawn	2
Total	31

Special Dockets 98

Informal Dockets 18

APPENDIX C

AGREEMENT FILINGS AND STATUS Fiscal Year 1997

Agreements Filed in FY 1997 (including modifications)

Carrier	334
Terminal	71
Total	405

Agreements Processing Categories in FY 1997

Forty-Five Day Review	72
Shortened Review	39
Exempt-Effective Upon Filing	229
Rejection of Filing	0
Formal Extension of Review Period	5
Terminations	56
Withdrawals	4
Total	405

Carrier Reports Submitted for Commission Review

Minutes of Meetings and Ad Hoc Reports	1,189
Monitoring Reports	664
Total	1,853

Agreements on File as of September 30, 1997

Conference	32
Interconference	3
Pooling & Equal Access	8
Joint Service	19
Space Chartering/Sailing	87
Cooperative Working, Agency, & Equipment Interchange	122
Terminal	625
Total	896

APPENDIX D

TARIFF AND SERVICE CONTRACT FILINGS AND SPECIAL PERMISSION APPLICATIONS Fiscal Year 1997

Electronic Tariffs in Effect* 4,738

Electronic Tariff Filings

*Tariffs (new)** 777
Rules 77,759
Commodity Descriptions 237,859
Tariff Line Items 2,847,208
Inland Tables 11,328
Tariff Records 2,499
Organization Records 1,949

Essential Terms Documents

New Service Contracts 10,565
Service Contract Amendments 28,868

Special Permission Applications

Foreign

Granted 212
Denied 22
Withdrawn 12

*Includes essential terms publications, foreign and marine terminal tariffs.

APPENDIX E

CIVIL PENALTIES COLLECTED Fiscal Year 1997

Alexander Air Express Inc.	\$20,000.00
Alliance Shippers Inc.	35,000.00
American Classic Voyages	35,000.00
Comm-Sino Limited Co.	50,000.00
F&D Loadline Corporation	35,000.00
Frederic Henjes Jr. Inc.	120,000.00
Galaxy Trading Inc.	15,000.00
Glacier Bay Park Concessions	8,500.00
Haewoo Air & Shipping Co.	50,000.00
Honorwell Shipping Ltd.	14,000.00
Hyundai Merchant Marine Co.	265,000.00
Inter-American Freight Co.	130,000.00
International Transportation Network Inc.	5,000.00
Kawasaki Kisen Kaisha, Ltd.	350,000.00
Longrow Shipping Ltd.	349.04
Ocean Concord USA	20,000.00
Ocean World Lines Inc.	380,000.00
Overcom Trade, Inc	20,000.00
Pacific Shipping Ltd.	12,500.00
Pactrans Marine Inc.	50,000.00
Phoenix International Freight	85,000.00
Schenker International Inc.	20,000.00
Seair International Line	38,000.00
South Seas Steamship Co. Ltd.	40,000.00
Speedmark Consolidation Services Ltd.	50,000.00
Three Hands Corp.	30,000.00
Trans Ocean Pacific Forwarding	35,000.00
Ulysses Cruises Inc.	30,000.00
Total Civil Penalties Collected	\$1,943,349.04

APPENDIX F

INVESTIGATIONS Fiscal Year 1997

<i>Investigations/Special Inquiries Opened:</i>		62
<i>Audits/Compliance Checks Opened:</i>		101
<i>Compliance Checks:</i>	100	
<i>Cruise Audits:</i>	1	
	<i>Total Openings:</i>	163
<i>Investigations/Special Inquiries Completed:</i>		54
<i>Audits/Compliance Checks Completed:</i>		84
<i>Compliance Checks:</i>	77	
<i>NVOCC Audits:</i>	4	
<i>Cruise Audits:</i>	3	
	<i>Total Completions:</i>	138

Sharp increase in Compliance Checks reflects the implementation of the Freight Forwarder Audit Program during FY 97.

APPENDIX G

STATEMENT OF APPROPRIATIONS, OBLIGATIONS AND RECEIPTS FOR THE FISCAL YEAR ENDED SEPTEMBER 30, 1997

APPROPRIATIONS:

Public Law 104-208: 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. 1111), 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. 5901-02; Provided, that not to exceed \$2,000 shall be available for official reception and representation expenses.

\$14,000,000

OBLIGATIONS AND UNOBLIGATED BALANCE:

Net obligations for salaries and expenses for the fiscal year ended September 30, 1997. **\$13,999,521**

STATEMENT OF RECEIPTS: Deposited with the General Fund of the Treasury for the Fiscal Year Ended September 30, 1997:

Publications and reproductions, Fees and Vessel Certification, and Freight Forwarder Applications	\$1,295,809
Fines and penalties	\$1,943,349
Total general fund receipts	\$3,239,158

