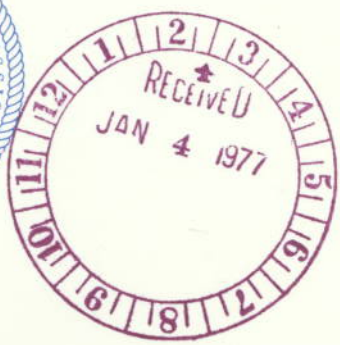
FEDERAL MARITIME COMMISSION



14th Annual Report

FOURTEENTH ANNUAL REPORT

of the

FEDERAL MARITIME COMMISSION

Fiscal Year Ended June 30, 1975

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FEDERAL MARITIME COMMISSION

WASHINGTON, D.C.

June 30, 1975 1/

Helen Delich Bentley, Chairman

James V. Day, Vice Chairman

Ashton C. Barrett, Member

Clarence Morse, Member

1/ As of June 30, 1975, one vacancy existed on the Commission due to the resignation of Commissioner George H. Hearn.

SCOPE OF AUTHORITY AND BASIC FUNCTIONS

The Federal Maritime Commission was established as an independent agency by Reorganization Plan No. 7, effective August 12, 1961. Its basic regulatory authorities are derived from the Shipping Act, 1916; Merchant Marine Act, 1920; Intercoastal Shipping Act, 1933; Merchant Marine Act, 1936; Public Law 89-777 of November 6, 1966; and Public Law 92-500. 1/

The Commission is composed of five Commissioners appointed by the President with the advice and consent of the Senate. The Commissioners are appointed for 5-year terms, with not more than three of the Commissioners being appointed from the same political party. The President designates one of the Commissioners to be the Chairman, who also serves as the chief executive and administrative officer of the agency.

The statutory authorities and functions of the Commission embrace the following principal areas: (1) Regulation of services, practices, and agreements of common carriers by water and certain other persons engaged in the foreign commerce of the United States; (2) acceptance, rejection, or disapproval of tariff filings of common carriers engaged in the foreign commerce of the United States; (3) regulation of rates, fares, charges, classifications, tariffs, regulations, and practices of common carriers by water in the domestic offshore trades of the United States; (4) licensing independent ocean freight forwarders; (5) investigation of discriminatory rates, charges, classifications, and practices in the waterborne foreign and domestic offshore commerce;

1/ As implemented, insofar as the Commission is concerned by Executive Order 11735, dated August 3, 1973.

(6) issuance of certificates evidencing financial responsibility of vessel owners or charterers to pay judgments for personal injury or death, or to repay fares in the event of nonperformance of voyages or cruises; (7) issuance of certificates evidencing financial responsibility of vessel owners, charterers and operators to meet the liability to the United States for the discharge of oil and hazardous substances; and (8) rendering decisions, issuing orders, and making rules and regulations governing and affecting common carriers by water, terminal operators, freight forwarders, and other persons subject to the Commission's jurisdiction.

The Commission's headquarters is located at 1100 L Street, N.W., Washington, D.C. 20573. Field offices are located as follows:

Atlantic District	6 World Trade Center Suite 603 New York, New York 10048
Pacific District	681 Market Street, Room 618, San Francisco, Calif. 94105
Pacific District (Southern California)	Post Office Box 3184, Terminal Island Station, San Pedro, Calif. 90731
Gulf District	Post Office Box 30550 610 South Street, Room 945, New Orleans, La. 70190
Puerto Rico Office	Post Office Box 3168 Old San Juan Station Old San Juan, Puerto Rico 00904

HIGHLIGHTS OF THE YEAR

Fiscal year 1975 saw the continued effect of world-wide inflation on ocean carrier activities as reflected in fuel costs and capital investment.

The year also witnessed an ever-growing impact on world shipping by state-owned fleets, particularly those of the Soviet Union.

Containerization continued apace with more and more carriers converting to container operations and terminals overhauling their facilities to accomodate them.

The Commission continued its efforts to bring some order to the haphazard growth of intermodalism and the destructive effect of rebating and other malpractices.

State-Owned Fleets

There is a growing impact being made on world trade by state-owned fleets of the Soviet Union and other eastern European countries. This impact is being felt in many trades where these carriers are cross traders. Typically, they will enter the trades with rate structures pegged considerably lower than existing carriers particularly with respect to high-rated cargo. This threatens the stability of conference and independent rate structures alike and provides fertile ground for the growth of malpractices.

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Many conferences have made overtures to these carriers to join them as members. In this fashion, the conferences hope to bring the cross traders under their rate structure, thus alleviating the downward pressure on conference rates. At the end of the fiscal year, some of these efforts appeared to be succeeding.

Code of Conference Conduct

The rising discontent of developing countries with conference practices has culminated in a movement within the United Nations to establish a world-wide "code of conference conduct." This code would have as its keystones the allocation of cargoes by flag and closed conferences. It is these concepts with which the United States disagrees, it being our position that such actions reduce the competitive position of third-flag carriers. Accordingly, the United States has announced its position that it would not ratify the code in its present form.

Foreign Discrimination

There is a continuing trend among foreign countries to enact laws and decrees restricting access to their trades in one manner or another. Since this inevitably affects the foreign commerce of the United States, the Commission has for some years maintained surveillance over such edicts and, where necessary, has exercised its authority under section 19 of the Merchant Marine Act, 1920. Briefly, that provision authorizes the Commission to take countervailing action against foreign discrimination.

In furtherance of this responsibility, the Commission published its General Order 33 implementing section 19. The regulations specify what conditions are unfavorable to shipping and the manner in which the Commission will proceed to counter discrimination.

Containerization

Containerization of cargoes as a technological advance is now a major consideration in virtually every area of the world. Sophisticated services operate between the United States and all industrialized nations. Additionally, containerization is slowly being introduced into South America and Africa.

Minibridge Operations

One outgrowth of the container revolution is the "minibridge" operation. The "minibridge" is a system whereby cargo is moved from an inland point of origin to a foreign destination under a division of revenues between the land and water carrier. It is a competitive tool used by ocean carriers to compete for cargo at ports they do not service directly.

Minibridge tariffs have proliferated to the point where they now exist for traffic between the Atlantic, Gulf, and Pacific coasts and Europe and the Far East. Not surprisingly, this has generated a significant amount of litigation in the courts and before the Commission instigated primarily by port and labor interests which contend that minibridge constitutes an unlawful diversion of cargo.

Intermodal Legislation

The potential benefits of containerization and intermodalism are not being realized fully because of the fragmented regulation of door-to-door systems.

For the past several sessions of Congress, the Commission has proposed legislation which would provide for single-factor rates under a through bill of lading. Until this goal is achieved, it will not be possible for the transportation industry to partake fully of the benefits of containerization.

Commonwealth of Puerto Rico as Carrier

During the fiscal year, a novel situation arose in the domestic commerce. The Commonwealth of Puerto Rico under the name of Puerto Rico Maritime Shipping Authority (PRMSA) purchased the three principal carriers in the Atlantic and Gulf-Puerto Rico trades - Sea-Land Service (and its related company Gulf-Puerto Rico Lines), Seatrain Lines, and Transamerican Trailer Transport. Thus, the bulk of cargo in the Puerto Rican trades is now being transported by one carrier.

The Commonwealth has not yet assumed operating control but has contracted with wholly-owned subsidiaries of Sea-Land to manage the operation of ships and shoreside facilities. Several proceedings have been instituted into the matter of the agreements between the Commonwealth and the former carriers and as to PRMSA's rate structures. Particularly in the latter case, the Commission will be faced with unique propositions of law.

Self-Policing

A new trend is emerging in the all important area of self-policing of conferences. In both the European and Far East trades, extensive systems have been established in an attempt to identify malpractices and punish the miscreant lines. The Commission has supported these efforts wholeheartedly and is keeping a close surveillance to determine if these efforts are successful in resolving the questionable practices alleged to be rampant in these trades.

U. S. OCEANBORNE COMMERCE IN REVIEW

Intermodalism

It is difficult for intermodal regulation to keep pace with intermodal operations. As when intermodalism was first implemented, we have three regulatory agencies, the Interstate Commerce Commission, the Civil Aeronautics Board, and the Federal Maritime Commission concerned. These three agencies with their separate jurisdictions deal with intermodalism as effectively as they can in view of the fact that legislation delineating the intermodal authority of each and/or all of these agencies has never been enacted. New and proposed legislation with respect to intermodalism is covered elsewhere herein.

The Commission's actions with respect to the implementation of intermodalism by conferences and carriers have changed somewhat over the years. In 1968, the Commission issued its first decision regarding intermodalism in Docket No. 68-8, Disposition of Container Marine Lines Through Intermodal Container Freight Tariffs Nos. 1 and 2, FMC Nos. 10 and 11, 11 F.M.C. 476. Container Marine Lines, (CML) in early January 1968, filed two tariffs, one naming rates from points in the United Kingdom via the port of Felixstowe to points in the United States via the Port of New York. The other tariff applied in the opposite direction. CML withdrew these publications and replaced them with revised tariffs on February 23, 1968, scheduled to become effective May 6, 1968. The revised tariffs deleted the references

to any inland service in the United States. However, the inland rates to and from the United Kingdom points via the Port of Felixstowe were retained.

The Commission found that the intermodal service provided by CML was not within the scope of the conference agreement nor was there any conflict between CML's port-to-port portion of intermodal rates and the port-to-port conference rates. Accordingly, CML's tariffs were accepted for filing subject to certain modifications thereto.

In 1969, the Commission issued a decision in Docket No. 69-33, Atlantic & Gulf/West Coast of South America Conference Agreement No. 2744-30 et al., 13 F.M.C. 121, granting intermodal authority to nine conferences in the Latin American trade. The agreements gave the conferences intermodal authority and prohibited member lines from negotiating, establishing, publishing or filing intermodal rates outside of the conference agreement framework. The Commission considered that if member lines were free to pursue their own way on intermodal matters, conference action could be frustrated. It was also recognized that a conference by inertia, opposition by a few members, or otherwise could effectively stifle the desire of its progressive members from instituting intermodal service. To balance these two extremes, approval was limited to 18 months with the proviso that if the conferences did not achieve any results during the first 12 months, then the member lines could negotiate intermodal rates.

The Latin American/Pacific Coast Steamship Conference, in Agreement No. 8660-5 introduced a new approach to intermodalism which was approved by the Commission in 1972. This modification authorizes the conference to enter into arrangements with other modes of transportation for the establishment of rates, charges, and practices relating to through intermodal movements. However, any member desiring to establish for itself a through-movement rate, route, arrangement or bill of lading is required to first present the matter to the conference. Only in the event the conference is unable or unwilling within 90 days to establish the ends sought by the proposing line, shall that line be free to act unilaterally. The conference at any time has the power and authority to adopt through-movement provisions, and thereafter to require the adherence of the said member line to the conference action.

On May 28, 1975, the Commission approved for an unlimited period of time, the requests for extension of intermodal authority of six of the Latin American Freight Conferences that were the subject of Docket No. 69-33, covered above. The six agreements contain intermodal authority quite similar to that in effect in Agreement No. 8660-5.

Such language assures that individual carrier initiative will not be stifled. However, the conferences shall, at any time, retain the authority to adopt through movement provisions, and from and after the time of such adoption, to require any member line to adhere to the conferences' action.

Of the 29 conferences and rate agreements that have intermodal authority, six have implemented same by filing intermodal tariffs with the Commission. Three cover the United Kingdom trade, one covers the North Europe-United Kingdom trade, one covers the Japan trade, and one the Hong Kong trade.

During the seven years from consideration of intermodalism in Docket No. 68-8, six conferences have filed tariffs implementing intermodal rates. When compared with the numerous individual carrier intermodal tariffs on file, discussed elsewhere herein, conference implementation of intermodal service has been slow.

A number of conferences have filed agreements prohibiting the implementation of intermodal service by member lines. The Commission has been subjecting any approval of intermodal authority to the removal of such prohibitive language. Subsequent thereto, the conferences have requested additional time in order to submit intermodal language which they anticipate will meet the requirements of the member lines as well as comply with the Commission's position that intermodal authority should not be used to frustrate the individual line's implementation of intermodalism.

The Steamship Operators Intermodal Committee continues to act in behalf of its member lines (container carriers) as authorized by the Commission in approving its basic agreement. With Atlantic, Gulf, and Pacific Coast Regional Committees, it represents the varied geographic interests of the lines. In May 1973, the Committee finalized the Uniform Intermodal Interchange Agreement which sets forth the rules under which water, rail, and highway carriers

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interchange containers in the United States. The drafters of this agreement were representatives from the Committee, the Association of American Railroads, the truck industry's Equipment Interchange Association, and Federal officials. More recently, the Committee has been working on uniform free time and per diem charges on containers.

Development of Containerization

In order to keep container inventory and expenses as low as possible, carriers enter into container interchange agreements. Nineteen such agreements have been approved by the Commission authorizing the parties to interchange containers, container chassis, and/or related equipment. Four agreements have been entered into which provide that one carrier may lease the containers and related equipment of the other party for a per diem charge.

Seven carriers in the Far East trade have entered into an agreement to lease and/or interchange containers. In the case of the leasing of containers, the parties are to provide the per diem charges assessed to the Commission upon its request.

Another source of containers is the companies, other than common carriers by water, who own and lease containers to common carriers and shippers. For a fee, usually a per diem fee, a carrier can lease such containers to supplement its own supply. As only one of the parties involved, the common carrier, is subject to the Shipping Act, 1916, such transactions are not subject to Commission jurisdiction.

In view of the limited number of LASH and Seabee vessels in operation in relation to container vessels and vessels that can accommodate some containers, only three barge interchange agreements have been filed with and approved by the Commission.

The Japanese carriers have extended to the United States Atlantic Coast their method for assuring that their containerships are operated with maximum utilization. Under this sort of space chartering arrangement, no money is involved, only a system for accounting for the spaces actually used by each participant, and each vessel is available to each of the groups. This sort of arrangement reduces the overall cost of operation, allows more frequent calls for each participant and benefits the shippers by assuring an available vessel for their cargoes. The Japanese lines now have three such agreements in effect between Japan and the West Coast and one between Japan and the Atlantic Coast.

The International Council of Containership Operators' membership consists of common carriers by water owning or operating container vessels in the U. S. foreign commerce. The Council, which operates under a discussion agreement, is concerned with long-range maritime industry planning with respect to a broad range of factors such as environmental controls, intermodal regulations, technological developments, fuel and energy requirements, monetary and fiscal policies, port development, and other governmental programs which affect maritime activities. Since the implementation of this agreement, the parties have dealt with such subjects as the Suez Canal,

the fuel crisis, the danger of overtonnaging and regulatory problems. They are concerned with future demands for containerships, the energy problem, legislation, and the problem of interface among shippers, terminal operators and steamship lines.

LASH/Seabee and Roll-On/Roll-Off Services

During fiscal year 1975, there was relatively little Section 15 activity involving LASH/Seabee services. The number of companies employing the system remained the same, six American flag and one foreign flag. LASH services are still primarily conducted off the U. S. Gulf, South Atlantic, and Pacific Coasts.

On December 30, 1974, a U. S. Flag line and a Venezuelan flag line entered into an agreement under which the U. S. flag line would furnish a fortnightly service of four LASH barges to Puerto Cabello and four to Maracaibo and Maracaibo Lake ports in the U. S. Gulf-Venezuelan trade. This is an innovation in that trade.

One significant Section 15 activity involving LASH services during fiscal 1975 was the modification of the Gulf/United Kingdom Conference to extend its scope to points on inland waterways tributary to its ocean ports in both the United States and the United Kingdom in order to accommodate the LASH operators in this trade. As a consequence, all of the LASH operators joined the conference.

Also, near the close of the year, an application was filed to expand the scope of a cooperative agreement among four LASH operators in order to cover the service areas of three other operators who

desire to join the agreement. The purpose of the agreement is to allow the parties to exchange barges and other equipment, and to jointly establish, operate and share in port and towing services and facilities in order to reduce the tremendous capital expenses involved in such service.

With respect to roll-on/roll-off services (RORO), one new agreement was approved between two automobile carriers in the United Kingdom/U. S. Pacific Coast trade for the purpose of increasing the automobile carrying capacity in this trade.

Also, the flexibility of RORO service appears to be especially useful in those Latin American countries where there is a lack of adequate shoreside handling equipment for loading and unloading service. Recently, a new agreement was approved for the purpose of introducing a new RORO service into the Guatemalan trade.

Trends in Trade

A major purpose of shipping conferences is to organize groups of shipping lines serving a particular trade area in such a way as to control competition among members to allow them to compete more effectively with nonmembers. Their effect on internal and independent carrier competition and anticompetitive authority necessitate their regulation.

UNCTAD

Because there has been considerable discontent among governments of developing countries, as well as among independent carriers, with

the structure and restraints inherent in liner conferences, the United Nations Conference on Trade and Development (UNCTAD) has held several meetings relative to the practices and deficiencies of the conference system, mostly at the urging of the developing nations. The meetings, attended by representatives of approximately 70 countries, have resulted in the development of a "Code of Practice for the Regulation of Liner Conferences."

The Commission has been actively involved in the meetings held under the auspices of UNCTAD and has supported many of the proposals of the Code. However, the United States is not, at this time, taking steps to ratify the Code, in part, because of the Code's insistence on cargo sharing between ships of trading partners and the resultant reduction of the competitive effects of third flag carriers and because the Code favors the concept of closed conferences.

Conference Entry

It is the responsibility of the Commission under the Shipping Act, 1916, to determine that all conference agreements affecting the foreign commerce of the United States contain reasonable and equal terms and conditions for the admission and readmission of all qualified common carriers by water. Section 15 of the Act and the Commission's own General Order 9 clearly require the admission of all qualified carriers in conferences. Nevertheless, on occasion, a conference may, for reasons of overtonnaging and the maintenance of an existing rate structure, or because of pressure from shipper councils or direct or covert government intervention, attempt to bar

the entry of an otherwise qualified carrier. The Commission is presently involved in just such a matter as it concerns the northbound trade from Australia to our East Coast. The matter is being handled as a complaint under Section 22 of the Shipping Act, 1916.

While the Commission has a mandate to support the concept of open conferences, it is interesting to note that at least one U. S. flag carrier had made a strong suggestion that the United States reassess its policy of open conferences which often results in a dramatic and increasing incursion of third flag carriers in our trades with concomitant overtonnaging and rate instability.

Shipper Councils

Shipper councils are becoming a much more potent factor in international trade. In Australia, Japan, and India, to name a few, shipper councils often exercise powerful influence on the actions of conferences to effect rate changes, admit new members, provide service to specific ports and various other conference actions. The Australian conferences are required to first negotiate rate increases with the Australian Shippers Council and consider the views of the council before admitting new members. The Japanese Shippers Council has sought agreement from the two inbound Japanese conferences to amend the conference's exclusive patronage contract systems to clarify and reduce the amount of damages that are to be paid in instances where a shipper has breached the terms of contract. Conferences in the Indian trades are under constant pressure from the All-Indian

Shippers Council concerning rate levels. The Commission exercises no regulatory control over the actions of shipper councils, however, it must consider and carefully weigh their influence as it concerns the activities of conferences operating in our foreign commerce.

Pooling and Equal Access

Bilateral pooling and equal access cargo sharing agreements continue to be of major concern to the Commission because of preferences inherent in such arrangements and concomitant restrictions on third flag service and because of their effect on competition and service between carrier participants. This is particularly true in the Latin American trades where such agreements are common and affect trade patterns between the United States and Argentina, Brazil, Chile, Colombia, Guatemala, Peru, and Venezuela. Lower duties for goods imported on national vessels, higher port dues for foreign ships, preference for national vessels in their own ports, and laws and decrees fixing shares of imports and exports for a country's own vessels are but a few examples of preference rules.

In recognition of the highly anticompetitive nature of such agreements, the Commission continues to follow a policy of limiting their terms of approval and maintains constant surveillance of the activities of the agreement participants through the filing of meaningful report data.

Foreign Discrimination

Pursuant to Section 19 of the Merchant Marine Act, 1920, the Commission is "authorized and directed in aid of the accomplishment of the purpose of this Act" to make rules and regulations affecting shipping in the foreign trade for the purpose of adjusting or meeting conditions unfavorable to shipping in the foreign trade which arise out of foreign laws, rules, or regulations or from competitive methods or practices employed by owners, operators, agents or masters of vessels of a foreign country.

In response to this mandate and because of certain existing laws and decrees of foreign nations which could give rise to conditions unfavorable to shipping in our foreign commerce, the Commission promulgated "Regulations To Adjust Or Meet Conditions Unfavorable To Shipping In the Foreign Trade," General Order 33. The Order became effective December 2, 1974. The regulations set forth the conditions which are unfavorable to all shipping, not just U. S. shipping, in the foreign trade of the United States. In particular, it should be noted that the reservation of cargo to national flag or any other vessels without equal access is considered an unfavorable condition. The Order clearly indicates that any discrimination in the foreign trade of the United States is unfavorable and is subject to action or regulation by the Commission. Regulatory action will be taken by the Commission on its own motion or upon petition from any person. The Commission is hopeful that due notice will be taken of the Order by all who would attempt to place any of those conditions considered as unfavorable in the Order on shipping in our foreign trades.

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Soviet Expansion

Soviet maritime expansion is being closely monitored by the Commission. In their maritime negotiations with the United States, the Soviet Union aims for 100 percent reservation of ocean transports between our countries for American and Soviet vessels. Similar bilateral agreements exist with other countries. Consequently, it is anticipated that the Soviets can do quite well with or without the UNCTAD Code. However, it would seem that the Code would offer them the best of two possible worlds. For example, support of the Code would reap political advantage with the LDCs. At the same time, because they are in control of their own export and import trade they can direct any desired percentage of cargoes to their own ships. The Code may also act as official encouragement for the Soviets to engage more heavily in cross trading.

Cross trading is a matter of major concern because experience from certain trades shows that Soviet liner operators with different cost criteria offer rates far below what U. S., Japanese and other conference carriers can afford to quote. The Far Eastern Shipping Co. (FESCO), the Soviet operator in the Trans-Pacific/Far East trade, typically quotes rates 15 percent below conference rates and in some instances at least double that figure. In May 1975, FESCO became a member of the Far East Discussion Agreement and thereby joined with 23 other carriers in discussing the merits of a major pooling agreement in the Pacific trades. Then on July 16, 1975, it was admitted to membership in the Far East Conference covering the trade from U. S.

Atlantic and Gulf ports to the Far East. FESCO began service to the U. S. West Coast in 1971 with three ships. It now has approximately eighteen ships.

Chinese Growth

The merchant fleet of the People's Republic of China (PRC) has one of the highest growth rates in the world. However, its own fleet represents only a part of its maritime interests. Through subsidiary shipping companies in Hong Kong and Macao, the PRC controls about 1.5 million deadweight tons of merchant ships under Somali and Hong Kong flags to serve its economic and political interests. Its ships serve some 70 nations and call at more than 140 ports in Europe, the Mediterranean, East and West Africa, Japan (its largest trading partner), other parts of Asia and Oceania, North America, Latin America and the Caribbean, principally Cuba.

During the past few years China has imported large quantities of grain from Canada, Australia and the United States. Imports also consist of technological equipment to assist in developing its industrial sector. Goods brought in most likely will be limited to those considered essential to make the country's economy as self-reliant as possible.

At the present time, competition from the PRC merchant fleet is more in the realm of potential rather than actuality. There are no PRC conference members in our foreign commerce. However, the PRC Far East Enterprising Company, Ltd. (FARENCO), maintains some

independent tariffs with the Commission covering the trade from Chinese ports to ports on the U. S. Atlantic, Gulf, Great Lakes, and Pacific Coasts.

Canadian Diversion

The Commission has been concerned for some time by the diversion via Canadian ports of cargoes moving to and from the heartland of the United States. We have felt it likely that this diversion was based on other than natural economic factors and that it might be so substantial as to cause injury to the foreign commerce of the United States. Carriers serving our ports also share this concern and through their conference organizations entered into the Canadian American Working Agreement, Agreement No. 10090, with the counterpart Canadian conferences serving the trades between Europe and the U. S. and Canadian North Atlantic. Agreement No. 10090 binds the signatory conferences to apply the port-to-port rates of the conference serving the North American country from or to which the cargo is moving, regardless of whether it actually moves through that country's ports. In other words, port-to-port rates are eliminated as a possible vehicle to effect cargo diversion.

Agreement No. 10090 exempts all U. S. traffic destined to or originating west of 76° West Latitude from the agreement. The parties insisted on this exemption before implementing the agreement. The Commission approved this restricted application purely as a preliminary arrangement and has advised the parties that they should

be prepared to include the entire United States within the ambit of Agreement No. 10090 by October 31, 1975, the date the current approval shall expire, unless extended.

Self-Policing

One of the major trends in the United Kingdom-Continental Europe trade has been the upgrading of self-policing systems in order to better control malpractices. In general, more elaborate procedures have been adopted either through subscription to the regional self-policing system of the Associated North Atlantic Freight Conferences or through establishment of similar procedures.

Another trend in this as well as other trade areas has been the development of agreements among container carriers such as cross-chartering arrangements and other cooperative arrangements for promoting greater vessel utilization and reducing the number of port calls in order to conserve fuel and reduce operating costs while providing adequate service to all ports and areas served.

In the Latin American trade, as in the United Kingdom-Continental trade, cross-charter and straight space charter arrangements are coming into vogue. In some instances such arrangements are intended to increase the efficiency and reduce the operating costs of the carriers involved. In other cases they are designed to upgrade the services of state-owned or national flag carriers and to increase the participation of less developed countries in the transport of their own foreign commerce.

Freight Rates and Surcharges in Foreign Commerce

The spiriling cost of doing business in U. S. foreign commerce as a result of inflation again gave rise for the need for additional revenue and numerous carriers and conferences were forced to raise their rate structures. In addition, there was a need to either continue the imposition of old surcharges or implement new surcharges because of the many problems faced by the carriers.

Surcharges

The Commission has long recognized the necessity of carriers and conferences to impose surcharges upon cargo moving to specific foreign ports as a result of certain unforeseen situations or conditions which increase vessel operating costs such as labor difficulties, port congestion, warlike conditions, currency fluctuations and increases in bunker prices. However, the Commission is not unmindful that surcharges added to the base rate may have an adverse affect on the ability of an exporter to sell his goods in the foreign marketplace. Therefore, whenever a surcharge is imposed the filing entity is requested to provide complete details as to the need therefor.

Whenever a surcharge involves port congestion the Department of State is asked to provide data regarding current conditions at the affected port. Further, the Commission subscribes to certain trade journals and periodicals which, among other things, set forth the existing conditions at congested ports. During the past fiscal year

waiting time for berths at congested ports ran from five to in excess of one hundred days. In general, through the cooperation of the concerned carriers, congestion surcharges have not been maintained beyond the period of need.

The sudden and varying fluctuations of the currencies used throughout the world since the British pound was devalued in 1967 has resulted in the filing of currency surcharges in many trades. The carriers find this necessary since the acceptance of a devalued currency for freight payments results in a financial loss in the international money market. The Commission's staff in reviewing exchange rates determines the extent to which currency surcharges are valid. Whenever the published surcharge is inconsistent with the data available the carrier or conference publishing the surcharge is requested to make an appropriate adjustment. Under the present merchants' freighting contracts which provide ninety days' tariff notice of rate increases to contract signatories, currency surcharges may not be implemented before the passage of that time. Recognizing that this could result in a financial hardship to carriers, the Commission at the close of the year approved a rule under which currency surcharges could become effective on 15 days' notice under specified conditions. However, in return for publication of a surcharge which would increase shipper costs, the rule would require a reduction in the surcharge whenever exchange rates would so warrant.

Although fuel oil prices were unsteady for a while prior to the fall of 1973 it was at that time that prices commenced to skyrocket. The astronomic increases in price caused all carriers to publish

surcharges to account for the added cost. Many surcharges were increased after the initial publication. Although shippers recognized the need for additional carrier revenue to cover added fuel oil costs the carriers and conferences publishing surcharges were asked to justify the level based upon a Commission formula. Although most surcharges appeared to be justified some did not and downward adjustments were required to be made. When the price of fuel appeared to be stabilized the Commission again requested that the surcharges be justified. As a result of this second request the surcharges in excess of 400 tariffs were reduced in major U. S. trades. When it appeared that there would be no reduction in the escalated price of fuel the carriers and conferences commenced to roll the surcharges into their rate structures. Once again the Commission sought justification of the surcharges in order to insure that only the amount of money required to cover the added cost would be put into the rate structure. With the exception of two conferences, all filing entities cooperated with the Commission. The Commission issued order to the recalcitrant conferences and by the close of the year one of them submitted data indicating the need for a reduction which was accomplished. The remaining conference had published a reduction after the Commission issued its order. The data submitted under the order was being examined at the close of the year to determine whether the reduction was sufficient.

War risk surcharges also receive Commission surveillance. As hostilities flare up in different areas of the world the carriers

and conferences publish war risk surcharges predicated on increases in insurance rates and crew bonuses. The Commission's staff monitors these surcharges as they are being filed making contact with the Maritime Administration and other sources to determine if the increase in insurance rates and other costs justifies the amount of surcharge filed. Whenever the cost is reduced the Commission promptly contacts the carriers requiring reduction or cancellation of the surcharges, as appropriate, in the event such has not already been accomplished.

Throughout the year war risk surcharges were applicable at ports in Vietnam, Cambodia, Lebanon, Lybia, Syria, Egypt, Greece, Turkey, and Cyprus.

Disparities

The Commission is one of the member agencies of the President's Interagency Committee on Export Expansion (PICEE) which was established by Executive Order 11753 on December 20, 1973. The formation of the Task Force on Ocean Freight Rate Disparities was authorized at the initial meeting of PICEE on January 22, 1974, and this Commission was designated Chairman for the Task Force. The purpose of the Task Force is to study the problem of ocean freight rate disparities including inbound-outbound disparities, as well as third country disparities. The action program established by the Commission was designed to: 1) establish and maintain contacts with the export community; 2) disseminate information and advice to exporters; 3) study specific commodity disparities to take corrective action within statutory

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authority; 4) establish and maintain liaison with the President's Export Council; 5) support a system of uniform commodity descriptions and codes for filing in tariffs; and 6) support legislative efforts to deal with the problem of ocean freight rate disparities.

The Task Force has maintained liaison with the President's Export Council and established a procedure whereby exporters can advise the Commission or the Council of any problems encountered in the private exporting sector. A program has been initiated to expand contact with the exporting community through six Regional Export Councils and forty-two District Export Councils as established by the Department of Commerce. The Commission individually, through formal investigation, has pursued resolution of inbound-outbound ocean freight rate disparities in the Far East and European trades. The Commission has been successful in resolving ocean freight rate disparities on numerous commodities. The continuous action program of the Task Force is being supported by the Commission in every respect.

SURVEILLANCE, COMPLIANCE, AND ENFORCEMENT

Agreements Review

Section 15 of the Shipping Act, 1916, provides that continued approval shall not be permitted any conference agreement which fails to provide certain terms and conditions for admission and readmission to conference membership, and withdrawal therefrom without penalty. It further provides that the Commission shall disapprove any such agreement after notice and hearing, on a finding of inadequate policing of the obligations under it, or for failure to adopt and maintain reasonable procedures for promptly and fairly hearing shippers' requests and complaints. Section 15 also clearly indicates criteria for approval of agreements.

During fiscal year 1975, 133 carrier agreements were processed under Section 15. A statistical table of receipts and total active agreements appears in Appendix A.

The surveillance of approved agreements involves a review of the basic agreement and modifications thereof in order to determine that it continues to meet the requirements of Section 15, the applicable Commission's General Orders, i.e., 6, 7, 9, 14, 17, 18, 23, and 24, and is in conformity with the latest Commission and court decisions. If the agreement is not in conformity with the above criteria, correspondence is undertaken with the parties to the agreement in an

attempt to have the agreement modified to bring it into conformity. Occasionally the parties comply only after the implementation of a formal proceeding. Under our surveillance program during fiscal year 1975, 211 agreements have been reviewed. One hundred one letters have been sent concerning certain of these agreements to determine if they are still in effect or should be canceled. One hundred nineteen agreements have been canceled. Our review program to date has concerned transshipment agreements almost exclusively. During fiscal years 1974 and 1975, a total of 364 such agreements were reviewed. In fiscal year 1976 our review program will cover the more complex agreements; consequently the number that will be reviewed will decrease.

The Commission receives reports filed by parties to agreements which it analyzes to determine that no malpractices are being committed by the parties, that the parties are not engaged in activities beyond the scope of their agreement, and the impact of their activities upon competitors and the shipping public.

Minutes of Meetings

It is the responsibility of the Commission to insure that the parties to Section 15 conference and ratemaking agreements are at all times complying with the Shipping Act, 1916, and with their approved agreement. In order to discharge this responsibility, the Commission must be fully and currently apprised of the manner in which conference operations are being and will be carried out. This requires that

meaningful and timely reports, such as minutes, be furnished. Upon the implementation of the proposed rules in Docket No. 73-5, (discussed elsewhere herein) the parties will summarize all discussions in their minutes whereas the parties now inform the Commission only with respect to matters discussed upon which they have taken action. This will enable the Commission to be better informed as to their activities.

As more discussion agreements are entered into, in its orders approving same, the Commission is imposing requirements that minutes of meetings between the parties and copies of data exchanged between the parties be filed with the Commission.

In fiscal year 1975, 1,923 minutes of meetings of conference, ratemaking, and discussion agreements were filed with the Commission and reviewed by the staff.

Shippers' Requests and Complaints

The phrase "shippers' requests and complaints" means any communication requesting a change in tariff rates, rules, or regulations, objecting to rate increases or other tariff changes, protesting alleged erroneous billings due to an incorrect commodity classification, incorrect weight or measurement of cargo, or other implementation of the tariff. Under Docket No. 73-5, it is proposed that the definition of shippers' requests and complaints be broadened to include the reporting of such other requests and complaints as those pertaining to carriers' "practices." Experience has shown that

reports of shippers' requests and complaints submitted to the Commission are almost always restricted to the reporting of requests relative to rate adjustments only, whereas conferences and rate agreements do receive complaints relative to carrier activities which have been established by concerted action of the participating lines in any conference or other ratemaking group.

In fiscal year 1975, 292 reports covering shippers' requests and complaints were filed with the Commission and reviewed by the staff.

Self-Policing Reports

These reports are intended to inform the Commission of the extent to which conferences and rate agreements are policing the activities of their member lines with respect to malpractices and breaches of agreements or tariffs. In order to insure that parties to such agreements are actively engaged in self-policing as required by Section 15, more stringent self-policing requirements have been incorporated in rulemaking proceeding (Docket No. 73-64) now pending before the Commission (covered elsewhere herein).

In fiscal year 1975, 182 semiannual self-policing reports were filed with the Commission and reviewed by the staff.

Pooling Statements

Pooling statements are filed with the Commission to keep it apprised of the activities of the parties to pooling agreements (the most anticompetitive type of agreement), providing it with data on

the financial settlements made between the parties pursuant to the terms of the pool formula in the basic agreement. Such statements are usually filed on a semiannual and/or annual basis. Additional time is needed when follow-ups are required on delinquent pooling statements to ensure compliance by the parties with the terms of their agreements. The majority of pool agreements cover the Latin American trades. They usually require the approval of the Latin American Government served in addition to Commission approval before they may be implemented. The policy of the foreign government involved and the conditions desired by the participating Latin American flag line (usually government-owned) have to be given due consideration in the processing of such agreements and in determining the frequency of the reports to be filed following the implementation of the agreement.

Fifty-one pooling statements were filed with the Commission for audit by the staff during fiscal year 1975. The pooling statements are becoming increasingly complex due to recently filed modifications to some agreements to effect various changes in the pool formulas, such as intricate overcarriage, undercarriage and average revenue per ton forfeiture provisions. There have been several occurrences of a time lapse between the due date and the actual filing of pooling statements which is caused, to a large degree, by the fact that settlement under the pool must be agreed to by all participants, including the foreign flag participant(s) and because of the increasing complexity of the agreements' pool formula.

Operating Reports

Reports being submitted by conferences with intermodal authority, by parties to such new agreements as space chartering agreements (primarily in the Japanese trade), by parties to cooperative working arrangements and sailing agreements, are categorized as "Operating Reports." In view of technological changes in the industry, it is expected that such reports will continue to increase in the future. These reports, in many instances, require a detailed analysis in order that the Commission be aware of the activities of the parties, and assured that their operations do not exceed the scope of their approved agreements.

Ninety-five operating reports were filed with the Commission and reviewed by the staff in fiscal year 1975.

Self-Policing

The Associated North Atlantic Freight Conferences under Agreement No. 9978 approved by the Commission, instituted an innovative self-policing system covering the activities of five (now seven) member conferences. Thereunder the Executive Director, or his duly authorized representative, in addition to performing self-policing activities based on complaints, may undertake investigations as he considers appropriate. In addition to self-policing and investigative authority covering member conferences, the agreement authorizes the Executive Director to perform cargo inspection services in order to determine that the contents of a shipment are as indicated on the bill of lading and that the proper charges are being assessed. The

Executive Director also has the authority to provide self-policing, enforcement and/or inspection services on behalf of nonmember carriers or conferences. This latter authority is being exercised by the use of individual contracts. The agreement further provides, with respect to cargo inspection that any carrier participating therein may appoint the Executive Director as its agent for collecting underpayments of freight and applicable tariff charges.

With respect to the Far East, Freight Conference Services, Inc., performs self-policing services for the Trans-Pacific Freight Conference of Japan/Korea, the Japan/Korea-Atlantic & Gulf Freight Conference, the Trans-Pacific Freight Conference (Hong Kong), the New York Freight Bureau (Hong Kong), and the Far East Conference. Freight Conference Services, Inc., also carries out surprise audit activity. It has offices in the Far East and the United States.

Nonexclusive Transshipment Agreements

General Order 23 exempts nonexclusive transshipment agreements (agreements which do not prohibit either carrier from entering into similar agreements with other carriers) from the requirements of Section 15. However, such agreements must be filed in the format outlined in the General Order and the involved tariff(s) must contain language required by the order. The Commission is relieved of reviewing such filings as they are processed at staff level as provided in General Order 23. Since the publication of this General

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Order, through June 30, 1975, 569 nonexclusive transshipment agreements have been filed with the Commission. As of June 30, 1975, 384 such agreements were in effect.

Domestic Agreements

During fiscal year 1975, 14 domestic offshore carrier agreements were filed for Commission consideration. A statistical table of receipts and total active agreements is set forth in Appendix A.

Terminal Agreements

During fiscal year 1975, 139 terminal agreements were filed for Commission consideration. A statistical table of receipts and total active agreements is attached as Appendix A.

Tariff Review

Foreign Rates

Tariffs and amendments thereto are critically examined by the staff, taking into account the requirements of:

- Section 18(b) and General Order 13 which prescribe tariff filing rules and regulations;
- Section 15 as to whether a tariff might require approval thereunder or whether rates and practices contained therein might extend beyond the Commission's authority;
- Section 14(b) and the various provisions of the dual rate contract systems as approved by the Commission;

- Sections 14, 16, and 17 which proscribe unjust discriminations and undue or unfair preference or advantage;
- General Order 4 which governs the rate or rates of compensation to be paid to licensed freight forwarders in a carrier's outbound tariff;
- General Order 8 which prescribes rules and regulations with respect to free time and demurrage on inbound shipments to New York;
- General Order 10 which governs tariffs publishing export rates on green salted hides; and
- General Order 26 which prescribes that tariffs indicating outbound rates at New York or Philadelphia must contain a rule regulating free time and demurrage at those ports.

General Order 13 prescribes the manner in which the tariffs of ocean carriers engaged in the United States foreign commerce must be filed to comply with section 18(b), Shipping Act, 1916. In April 1970, the Commission issued an amendment to this General Order to provide for the filing of intermodal tariffs in recognition of the technology making intermodal movements a practical service offering. This year the Commission approved a completely revised General Order 13, aimed at tariff simplification and standardization. These new rules also represent the limit to which the Federal Maritime Commission can reach under existing legislation to encourage the development of an intermodal network.

The number of tariffs on file with the Commission in the foreign commerce of the United States remained relatively stable throughout fiscal year 1975. This was due to the Commission's program to ascertain whether tariffs on file which had not been revised for several years were in an active status. Our inquiries resulted in 328 tariffs being canceled while only 320 new tariffs were accepted and filed furing the fiscal year.

During the fiscal year, the Commission received 259,511 foreign tariff filings, of which 3,650 were rejected. At the close of the fiscal year, there were 3,174 tariffs on file.

The Commission, under section 18(b), has the authority to waive the 30-day notice provision of all tariff filings submitted thereunder in the foreign trade "in its discretion and for good cause." In fiscal year 1975, the Commission received 111 special permission applications requesting waiver of the tariff filing requirements for a variety of reasons. Out of the 111 special permission applications processed, 64 were granted, 36 were denied, and 11 were withdrawn.

The Commission's activity in the area of tariffs is not limited to an examination to insure that the timeliness test of the statute is met. Programs have been instituted and maintained under which an examination is made of: 1) the various provisions of bills of lading; 2) conference tariffs to determine whether they are consistent with the authority granted under approved agreements; 3) all tariffs to insure that rates, rules or regulations do not unjustly discriminate between or among particular persons or ports or give

undue preference or advantage to any particular person, locality or description of traffic; 4) the level of freight forwarder compensation; 5) intermodal tariffs vis-a-vis port-to-port tariffs; and 6) any changes in trading area patterns and characteristics.

The Commission also continued during the year to meet with representatives of other government agencies to discuss and endeavor to seek resolution to problems of mutual concern.

Domestic Rates

The Commission's regulation over rates in the domestic offshore trades is prescribed by section 18(a) of the Shipping Act, 1916, and the Intercoastal Shipping Act, 1933. In the domestic offshore trades, unlike the U. S. foreign commerce, the Commission has authority to suspend a rate prior to its effectiveness and embark upon hearings to determine the reasonableness of the proposed rate or practice. In making recommendations to the Commission regarding the exercise of its suspension power, care must be taken to consider changing trade patterns as the shipping industry reacts to and anticipates: (1) shifting competitive positions; (2) labor relations; (3) other governmental actions; and (4) advancing technology.

During fiscal year 1975, there were 12,870 tariff pages filed, 986 of which were rejected for failure to comply with the Commission's regulations as prescribed by section 2 of the Intercoastal Shipping Act, 1933, and the Commission's Tariff Circular No. 3. In addition,

98 applications for special permission to waive the provisions of the Intercoastal Shipping Act, 1933, or the Commission's regulations were processed.

Terminal Rates

All U. S. terminal operators serving common carriers by water are required to publish and file with the Commission tariffs specifying the rates, charges, rules and regulations governing the services offered at their facilities. Also, certain agreements between terminal operators and/or common carriers by water are required to be filed prior to their implementation for a determination by the Commission as to whether or not they qualify for the antitrust immunity accorded under section 15 of the Shipping Act, 1916.

In the course of fiscal year 1975, a total of 6,247 tariff filings were received from terminal operators. At the conclusion of the fiscal year, the Commission had a total of 560 active terminal tariffs on file.

Dual Rate Contract Systems

Activities with respect to exclusive patronage (dual rate) contracts authorized pursuant to Section 14b of the Shipping Act were fairly frequent during the fiscal year. A new contract was approved for the Pacific Coast/Indonesia Conference and an application for a new system was filed in behalf of the Scandinavia-Baltic/U.S. North Atlantic Westbound Freight Conference.

In addition to new systems, a number of existing systems were modified for various and sundry reasons. Significant among these were applications to extend the coverage of the contract to inland points in the foreign area to coincide with inland authority under the conference agreement.

A major development in the area of dual rate systems was the recent adoption by the Commission of new rules providing for greater flexibility in increasing rates on short notice due to de facto devaluations of tariff currency in relation to other operating currencies in a given trade. Previously, short notice increases were restricted to official devaluations because of the difficulty in regulating de facto devaluation. However, because of the increasing international monetary problems, carriers with dual rate systems, which normally require 90 days notice before rates can be increased were experiencing substantial revenue losses.

Domestic Commerce

Repeal of Section 6, Intercoastal Shipping Act, 1933

In October, 1974, the 93rd Congress approved Public Law 93-487. This law repealed section 6 of the Intercoastal Shipping Act, 1933, which provided for the carriage, storage or handling of property free or at reduced rates, for the United States, States or Municipal Governments, or for charitable purposes. In response to this Act of Congress, the Commission canceled Rule 25 of Domestic Tariff Circular

No. 3. Cancellation of this rule eliminated the short notice terms and conditions for filing of rates applicable to the transportation of U. S. Government personnel and property.

The Commission apprised all carriers in the domestic offshore trades of the Congressional and Commission actions and informed them of the need to either reissue in tariff form, or to cancel, all effective government tenders by a specified date.

NVO Workshop Seminars

Workshop seminars were conducted in San Francisco and Los Angeles during July, 1974. These seminars were designed for the discussion of the Commission's regulatory role in the domestic offshore trade and to provide technical assistance in tariff publication interpretation.

Included in the seminars were discussions of the Shipping Act, the Interstate Commerce Act, the Carriage of Goods by Sea Act, and the Harter Act. Also discussed were the Commission's tariff processing procedures, special permission application requirements, and suggestions designed to help eliminate costly, unnecessary tariff rejections.

Tariff Circular

A proposed revised Domestic Tariff Circular has been prepared. After more than twenty-seven years' experience with the regulations prescribing the filing of domestic tariffs, the new regulations constitute a massive overhaul. The proposed revision seeks to provide a document which is more responsive to the contemporary needs of the industry and the Federal Maritime Commission.

Automobile Guide

The 9th annual edition of the FMC guide on shipping automobiles, Automobile Manufacturers' Measurements, for the 1975 model year automobiles was published in late November, 1974. The response from the automobile industry was an improvement over prior years, with eighteen out of a total of 24 manufacturers submitting the necessary data.

Hawaii

Hawaii was the subject of numerous proposed increased rates during fiscal year 1975. Matson Navigation Company (Matson) proposed an increase of its automobile rates in the amount of 25 percent, which was suspended by the Commission. However, the Commission did allow a 12.5 percent increase in the rates upon consideration of the State of Hawaii's position that the automobile rates were too low. The matter is currently the subject of a docketed proceeding before the Commission. Later in the fiscal year, Matson filed a general increase amounting to approximately six percent, which the Commission placed under investigation.

Also suspended by the Commission were Matson's proposed increases applicable on paper products and related articles moving from the Pacific Northwest to Hawaii. Subsequently, the carrier requested and received special permission to cancel the suspended matter and reinstate the original rates, stating a desire to discuss the entire situation surrounding the rate levels for paper products with the involved shippers.

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Although the trade between the U. S. West Coast and Hawaii continues to be dominated by Matson, competition in this area was stimulated in the latter part of fiscal year 1975, with the filing by United States Lines, Inc., (USL) of an extensive, competitive commodity tariff. USL had previously filed its West Coast/Hawaii commodity tariff with the Interstate Commerce Commission and had only a single item, Freight, All Kinds tariff on file with the FMC.

In June, USL filed amendments to its Freight All Kinds and Foodstuffs provisions of its West Coast/Hawaii tariff, applicable to 40-foot containers. The proposed changes were protested by Matson, who had also filed similar provisions in order to remain competitive. The Commission ordered an investigation of each of the carrier's provisions to determine whether they are unlawful, unreasonable, discriminatory and/or preferential.

The recent decision of Matson to discontinue its roll on/roll off service between Los Angeles and Honolulu has generated some shipper protests. It is contended by Matson that the discontinuance is necessary and is aimed at a more efficient deployment of its fleet. While the carrier appears to be working with its shippers to alleviate any hardships caused by this realignment, some difficulties continue to persist and it is uncertain what the final resolution will be.

An aggressive ongoing program to halt wide spread cargo misdescription practices among West Coast nonvessel operating common carriers has been maintained. Although misdescriptions are unlawful

under section 16 of the Shipping Act, 1916, some operators have appeared to resort to this practice to avoid otherwise applicable higher tariff rates.

Puerto Rico

A 3.5 percent general rate increase was filed by a vessel operator in the U. S. Gulf/Puerto Rico trade, simultaneously with a .7 percent emergency surcharge reduction. The proposed increase was scheduled to become effective approximately six weeks after the carrier had effectuated a 4.6 percent general rate increase along with a .3 percent reduction of its bunkering surcharge.

The proposed tariff changes were suspended and made the subject of a formal proceeding. The suspension was based on the fact that the information submitted by the carrier in support of the proposed tariff matter was insufficient. The carrier subsequently submitted additional information which overcame the discrepancies and inadequacies of the data originally submitted. The Commission, therefore, upon further consideration, vacated its suspension order and allowed the tariff matter to go into effect.

The Puerto Rico Maritime Shipping Authority (PRMSA), serving the U. S. East Coast/Puerto Rico trade, filed its initial tariff with a scheduled September 1, 1974, effective date. PRMSA, who was in the process of acquiring the assets of Sea-Land Service, Inc., Seatrain Lines, Inc., and Transamerican Trailer Transport, Inc., had originally announced that its tariff would name rates the same or lower than

those offered by the three carriers. However, upon examination, the tariff, which contained some 515 pages, was found to contain increased costs to shippers due to the elimination of maximum trailer provisions and an increased level of LTL rates.

Approximately 25 protests were filed objecting to various aspects of the proposed tariff. Meetings were held with representatives of PRMSA in an effort to try to resolve the differences in the tariff and to consider specific protested matter. PRMSA agreed to postpone the effective date of the tariff in order to give further consideration to the necessary adjustments.

Thereafter, some 400 pages of amendments were filed to the tariff which required a thorough evaluation by the staff. Extensive examination and comparison of approximately 8,000 rates was accomplished in addition to an exacting comparison of added maximum per trailer charges. After further meetings with PRMSA representatives, additional adjustments were made and the tariff, as amended, became effective on September 16, 1974. The working cooperation between staff members and carrier representatives eliminated almost one hundred percent of the protests and anticipated problems. The ILA container rules in the tariff, however, were placed under investigation.

In January, 1975, PRMSA amended its tariff to provide an assessment of wharfage charges at the Ports of Baltimore and New York. The proposed charges were at the same level as those in effect for the ports of Charleston, Jacksonville and New Orleans. Protests opposing

the proposed charges were received and considered by the Commission, along with supportive data submitted by PRMSA. The Commission, upon review, permitted new wharfage charges to become effective.

In April, 1975, PRMSA filed amendments to extend its tariff application to the port of Miami. Generally, the Miami application was extended at PRMSA'a applicable Jacksonville rate levels. However, on certain specified commodities, new reduced rates were established at the level of PRMSA's only competition. The reduced rates for Jacksonville and their extended Miami application were suspended and placed under investigation.

Alaska

Four major Alaskan water carriers effectuated varying levels of general rate increases in early Spring of 1975. The building of the Alaska Pipeline has generated a large demand for mobile homes, building supplies, boats, and general commodities to be shipped to the western portion of Alaska for construction workers and their families. This demand has resulted in a need for additional equipment and increased operating costs to the carriers.

An application has been filed for renewal of a previously granted exemption from the Intercoastal Shipping Act, 1933, and the Shipping Act, 1916, for the carriage of goods, used in the building of the Alaska Pipeline, between all ports in the contiguous United States (except ports in the Mississippi River system above Baton Rouge, Louisiana) and the North Slope of Alaska. The application requests

that the currently effective exemption, which expires December 31, 1975, be extended for an additional three years.

Terminals

The marine terminal industry, whose role is to furnish the vital connection between the ocean carrier and the shipping public it serves, is also regulated by the Commission. In this connection, all U. S. terminal operators serving common carriers by water are required to publish and file with the Commission tariffs specifying the rates, charges, rules and regulations governing the services offered at their facilities. Also, certain agreements between terminal operators and/or common carriers by water are required to be filed prior to their implementation for a determination by the Commission as to whether or not they qualify for the antitrust immunity accorded under section 15 of the Shipping Act, 1916.

Aside from providing the traditional facilities necessary for handling breakbulk and bulk cargoes, the terminal industry also provides the pivotal point of land/sea interface in the intermodal scheme, a point at which the inherent technological advantages and efficiencies of intermodalism over traditional shipping systems can be best maximized. At this point, it appears that the first generation of terminal development and modernization to accommodate container and LASH/SEABEE transportation systems is about completed. Millions of dollars have been expended in the construction of new berths and

rehabilitation of older facilities. Container cranes and supporting upland handling areas for container traffic, mobile cranes and assembly areas for serving LASH/SEABEE barges, specialized berths for loading and unloading roll-on/roll-off cargo and rail interchange facilities either have been or are in the process of being constructed at virtually every major U. S. port.

As a matter of fact, it now appears that some ports are finding themselves faced with some degree of overcapacity in terms of container facilities. In view of this, the Commission was asked at the end of fiscal year 1975 to consider an agreement between two major waterfront proprietors which would coordinate the development of their port area so as to de-emphasize further construction of container terminal facilities and focus their efforts on the attraction of other types of cargo.

The involvement of our vast inland waterway system in waterborne foreign commerce is also continuing to grow due to the utilization of the recently inagurated LASH/SEABEE and miniship systems. Not only is cargo that once moved overland between coastal ports and inland destinations now moving directly to and from the American heartland, but the impetus towards the development of additional export-oriented industry is growing as well, due to the easier access to direct ocean transportation.

Rulemaking

The continuing trend of marine terminal operators to operate simultaneously as stevedores and operators of terminal facilities,

coupled with the tremendous increase in containerized movements and roll-on/roll-off vessels has resulted in the filing of agreements between terminal operators and water carriers providing for all-inclusive terminal/stevedoring services. Such agreements have raised jurisdictional problems inasmuch as the question of jurisdiction over the activities of entities acting strictly as stevedores has never been ruled on by the Commission. In order to provide guidance to the industry with respect to the section 15 filing requirements for these types of agreements, the Commission has decided to revise the proposed rules in Docket No. 71-75, Rules Governing the Filing of Agreements Between Common Carriers and/or "Other Persons" Subject to the Shipping Act, 1916.

In its November 11, 1974, order in Docket No. 73-30 (American Warehousemen's Association v. The Port of Portland), the Commission announced its intention of looking into the legal and practical consideration presented by ports' utilization and operation of inland distribution centers. It is expected that the Commission will promulgate a statement of policy in this regard during fiscal year 1976.

The Commission, in its final decision in Docket No. 70-3, (United Stevedoring Corporation v. Boston Shipping Association) considered the issues of (1) whether it has jurisdiction under section 15 over articles of incorporation or association and by-laws of a maritime trade association, one of whose purposes is multi-employer collective bargaining; and (2) whether it likewise has jurisdiction over agreements otherwise subject to section 15 but which are embodied in

a collective bargaining agreement. In its conclusions, the Commission, for the first time, adopted the concept of a "labor exemption" applicable to both collective bargaining agreements and those agreements setting forth the articles of incorporation and by-laws establishing maritime multi-employer collective bargaining units, provided certain criteria were met. In discussing the application of these criteria to the matters then before it, the Commission announced its concurrence with suggestions from parties that a section 35 rulemaking proceeding be considered "in order to exempt for the future this class of agreements from some or all of the requirements of section 15 of the Shipping Act, 1916, thereby not jeopardizing collective bargaining by any threat of a pre-approval implementation penalty." It is expected that this rulemaking proceeding will be promulgated during fiscal year 1976.

Agreements

Among the most significant and far-reaching developments in the domestic offshore trades in fiscal year 1975 were the events flowing from the establishment and operation of the Puerto Rico Maritime Shipping Authority (PRMSA). PRMSA was created by an act of the legislative assembly of the Commonwealth of Puerto Rico in June, 1974. PRMSA's basic goals are fourfold: (1) to rationalize service and introduce larger and more efficient equipment; (2) eliminate duplication of costs and facilities; (3) provide the necessary capital for a modernization program; and (4) provide a shipping service which is responsive to the needs of the community.

Thus, in the course of fiscal year 1975, PRMSA acquired from Sea-Land Service, Inc., Seatrain Lines, Inc., and Transamerican Trailer Transport, Inc., the vessels and facilities used by these carriers in the United States East and Gulf Coast - Puerto Rican trade. The creation of PRMSA also resulted in several agreements which affected the Puerto Rican trade.

Initially, PRMSA did not operate the common carrier operations itself and instead entered into a "Management Services Contract" with Puerto Rico Marine Management, Inc. (PRMM), a wholly-owned subsidiary of Sea-Land Service, Inc., to perform these functions. PRMM, in turn, retained another wholly-owned subsidiary of Sea-Land Service, Inc., Puerto Rico Marine Operating Company, Inc., to operate the vessels and facilities.

While the above Management Services Contract was never formally filed for Commission action, a copy of the document was furnished to the staff on an informal basis. The Commission subsequently set the matter of the above contract down for an investigation and hearing (Docket No. 74-44) to determine, inter alia, whether the contract is subject to section 15 of the Shipping Act, 1916, and, if so, whether it should be approved, disapproved or modified. The proceeding will also determine whether the contract is complete in itself or whether it is but a part of an integrated, complex agreement between Sea-Land Service, Inc., et al., and PRMSA, which affects competition in the Puerto Rican trade in such a fashion as to come within the Commission's jurisdiction.

Water Pollution Financial Responsibility

The Commission is charged with the administration of the provisions of Section 311(p)(1) of the Federal Water Pollution Control Act.

Section 311(p)(1) of the Act requires domestic and foreign vessels over 300 gross tons, including certain barges of equivalent size, using any port or place in the United States, or the navigable waters of the United States including the Panama Canal, to establish and maintain with the Federal Maritime Commission evidence of financial responsibility to meet the liability to the United States to which such vessels could be subjected for the removal of oil or hazardous substances discharged into or upon United States waters.

The financial responsibility requirements with respect to oil have been in effect since April 3, 1971. The requirements with respect to hazardous substances will become effective when the Environmental Protection Agency establishes a list of such substances and determines what quantities of those substances constitute a harmful discharge. Although delays have been encountered by the Environmental Protection Agency, it is expected that the list of hazardous substances will be issued, and harmful quantities designated, during the next fiscal year.

Level of Responsibility

The evidence of financial responsibility must be in the amount of $100 per gross ton of a subject vessel or $14 million, whichever

is the lesser. Such evidence, usually in the form of insurance, is maintained to indemnify the United States Government for costs incurred in the removal of discharges from United States waters.

The Commission's regulations implementing the oil pollution financial responsibility requirements, General Order 27, provide for the certification of vessels having complied with the statutory financial responsibility requirements; set forth the procedures whereby the owners or operators of subject vessels may establish the required evidence of financial responsibility; and establish the qualifications required by the Commission for the issuance of Certificates, as well as the basis for denial, revocation, modification, or suspension of Certificates.

Enforcement Provisions

The Federal Water Pollution Control Act Amendments of 1972, enacted on October 18, 1972, provide that any vessel not in compliance with the financial responsibility requirements may be subjected to a fine not to exceed $10,000 and may be denied entry to or clearance from or be detained in United States waters. These enforcement provisions are administered by the United States Goast Guard and the United States Customs Service with the cooperation of the Federal Maritime Commission.

Coordination of Enforcement Procedures

The enforcement authority with respect to the financial responsibility requirements involves functions of the United States

Coast Guard and the United States Customs Service. Accordingly, it is necessary for the Commission to coordinate the enforcement activity with these two agencies to assure that subject vessels entering and leaving United States waters are in compliance with the financial responsibility requirements.

Enforcement under Section 311(p) provides for fines not to exceed $10,000, denial of vessel entry or detention of vessels by the Coast Guard, and refusal of clearance to foreign ports by the Customs Service. Over the past few years the three agencies involved have coordinated the enforcement program, and are continuously improving upon these procedures to assure that no properly certified vessel is unduly detained or delayed.

Hazardous Substances

The Federal Water Pollution Control Act Amendments of 1972 provide for the addition of hazardous substances as a class of pollutants for which vessel owners and operators must evidence financial responsibility. The addition of hazardous substances will not become effective, however, until the Environmental Protection Agency issues regulations designating hazardous substances.

Because of the addition of hazardous substances, all vessels previously certified as having evidenced financial responsibility for removal of oil must be recertified evidencing that they have met the financial responsibility requirements for hazardous substances, as well as oil. The Commission has issued General Order 31 implementing

this change. This new General Order is to become effective and replace General Order 27 in its entirety on the date the Environmental Protection Agency's list of hazardous substances becomes effective, and is intended to provide for the orderly compliance with the hazardous substance requirements by the more than 20,000 presently certified vessels.

Insurers Examined

Generally, vessel owners and operators elect to evidence financial responsibility by submission of evidence of insurance. Such insurance is written not only by American insurance firms but by underwriters throughout the world.

The Commission must analyze and determine the financial capabilities of the insurer before accepting any evidence of insurance executed by such insurer. During the fiscal year the Commission approved four independent foreign underwriters and the applications for three additional foreign insurers were pending at the close of the fiscal year.

Certificates Issued

During fiscal year 1975 applications were received covering 3,437 vessels; certificates were issued to 3,412 vessels; certificates covering 2,161 vessels were revoked for various reasons; and applications covering 90 vessels were withdrawn.

At the close of the fiscal year 22,612 vessels were covered by valid certificates, and applications involving certification of 609 vessels were pending processing.

The workload does not diminish once a vessel is certified. In fact, it increases due to changes of insurance companies by vessel operators, substitution of one type of evidence of financial responsibility by another, annual submission of financial data by self-insurers, transfer of ownership, charters, vessel name changes, and similar situations which necessitate daily updating and continuous servicing of records together with the revocation, recall, and the reissuance of numerous certificates.

Automatic Data Processing

An automated record retention system concerning the certification of vessels is operational. This system provides accurate and current lists of vessels, vessel particulars (i.e., type, flag, tonnage, registration number), owners and operators, and the underwriters covering each vessel. This system is a constant source of reference with respect to the enforcement procedures.

Recently, when a previously approved underwriter ceased to be acceptable to the Commission, the vessels covered by this insurer were immediately identified by the automatic data system and new acceptable coverage obtained from other underwriters. This automatic data information is constantly updated and verified, and plans have been developed to provide extensive analytical data for the Commission's regulatory needs.

Participation in Interagency Working Groups

The Commission staff is continually represented on interagency working groups. Most recently the Commission staff participated in a Government-wide group studying comprehensive pollution liability laws. At the end of the fiscal year, as a result of this group activity, a proposed Comprehensive Oil Pollution Liability and Compensation Act was prepared for submission to the Congress.

Ocean Freight Forwarders

Licensing

Since the enactment of the licensing statute, a total of 1,559 firms have been licensed, after a thorough investigation as to each being "fit, willing and able" properly to perform ocean forwarding functions in the public interest.

At the end of fiscal year 1975, there were 1,103 active licensed independent ocean freight forwarders. One hundred and thirty-six new applications were received and 112 were approved - an increase of 17 applications over fiscal year 1974.

Denials and Revocations

During fiscal year 1975, the Commission revoked 53 outstanding licenses for various reasons and 31 applications were denied or withdrawn.

Four cases, involving possible denial of application, suspension or revocation of existing freight forwarder licenses, were formally docketed for investigation and hearing.

Licensing Process Expedited

During fiscal year 1975 a major revision was made in the processing procedures of new applications for independent ocean freight forwarder licenses. The Office of Freight Forwarders was assigned the primary responsibility for the development of the required data necessary to determine if an applicant is fit, willing and able properly to perform ocean freight forwarding. This function is accomplished through telephonic interviews and correspondence initiated by the staff. This method, rather than field investigations, has resulted in the more expeditious gathering of the required material to process the applications. In some cases where personal contacts and investigation of records are required, a full field investigation is conducted by the appropriate Commission District Office. Formerly, all applicants were subject to field investigation.

Examination of Possible Forwarder Shipper Connections

There is a continuing examination of all licensed ocean freight forwarders to determine whether they may have unlawful affiliation or control relationships with export shippers or consignees in violation of substantive Commission regulations and the shipping statutes. Action is taken to resolve such problems either through voluntary compliance, or when necessary, full scale regulatory enforcement

actions. The most serious problem in this regard involves situations where a freight forwarder may be improperly affiliated with an export shipper or consignee located in foreign countries.

Automatic Data Processing System

An automatic data processing system which lists all licensed independent ocean freight forwarders was established in 1973. This compilation identifies the name, address, license number, affiliations and branch offices of all currently licensed freight forwarders; and is updated and reissued approximately every four months, for distribution to Commission Field Offices. The program maintains freight forwarder information on a current basis, and is an extremely useful tool in carrying out the Commission's regulatory program.

Rulemaking Proceedings

The Commission's rules applicable to licensed independent ocean freight forwarders are set forth in General Order 4. This Order is continually reviewed, analyzed and revised in order to keep the Commission's regulations in concert with the public interest and abreast of the many technical changes which continually occur in the industry. Proposed revisions are in process of being completed and a proposed rulemaking proceeding will be instituted.

Significant Proceedings

Among the freight forwarder cases decided by the Commission during the fiscal year one of the more significant was Docket No. 74-6, Hugo Zanelli d/b/a Hugo Zanelli & Co., wherein the Commission found

that the licensed forwarder was a purchaser of shipments to foreign countries in violation of sections 1 and 44, Shipping Act, 1916, and the Commission's General Order 4. This decision is being appealed in the United States Court of Appeals for the Fifth Circuit.

In Docket No. 74-10, Freight Forwarder Bids on Government Shipments at United States Ports, Possible Violations of the Shipping Act, 1916, and General Order 4, the Commission is continuing its investigation into the bidding practices of certain forwarders on General Services Administration forwarder contracts. Evidentiary hearings in this proceeding were held and completed during this fiscal year.

Passenger Vessel Certification

The Commission is charged with the responsibility of administering Sections 2 and 3 of Public Law 89-777 under which owners, charterers and operators of passenger vessels having 50 or more accommodations and embarking passengers at United States ports are required to establish their financial responsibility to meet their liabilities for death or injury to passengers and other persons on voyages to and from United States ports and to indemnify passengers in the event of nonperformance of voyages or cruises.

Certificates Issued

Fifty-one applications for certificates of financial responsibility were received by the Commission during the 1975 fiscal

year. Forty-six applications were approved which consisted of 13 new applications for Certificates of Financial Responsibility for Indemnification of Passengers for Nonperformance of Transportation and 14 new applications for Certificates of Financial Responsibility to Meet Liability for Death or Injury. The Commission also approved nineteen applications for amendments to existing certificates reflecting changes in ownership, chartering, corporate and vessel name changes and revision of corporate-ownership structures.

Certificates Revoked

Twenty-two certificates were revoked as vessels were retired from service, sold or laid-up because of adverse economic conditions. The downturn in the economy and high fuel costs and high costs of operations were severely felt by the passenger lines.

Significant Cases

The public benefit from the financial responsibility provisions of Public Law 89-777 was again demonstrated when Greek Line canceled scheduled sailings of the QUEEN ANNA MARIA and ceased operations. Greek Line had submitted a guaranty as its evidence of financial responsibility to indemnify passengers. Its guarantor was called upon to refund passage money paid by the passengers with respect to the canceled cruises.

In early July 1975 a somewhat similar situation confronted the guarantor of Incres Line when, due to operating difficulties of its VICTORIA, its cruise program was canceled.

On February 14, 1975, the Commission obtained a Consent Order in the United States District Court, Southern District of New York, against Wall Street Cruises which was ordered to refrain from advertising, arranging and offering passage on the VOLENDAM (which was to be renamed the CONSTITUTION) when the company failed to obtain a Certificate (Performance) from the Commission prior to such activities. Wall Street Cruises was also required to deposit $50,000 with the court as interim security to cover any deposits or fares received as a consequence of its unauthorized advertising and promotion.

Wall Street Cruises subsequently qualified for a Certificate (Performance) but canceled its plans for operating the CONSTITUTION. Monies collected from prospective passengers were refunded out of the performance bond required by the Commission.

Passenger Conference and Carrier Agreements

The Commission approved seven passenger conference and passenger carrier agreements during the 1975 fiscal year. These included modifications to conference agreements some of which permit limited joint activities between the International Passenger Ship Association and the Trans-Pacific Passenger Conference. At the close of the 1975 fiscal year, the Commission had pending before it Agreement No. 10071, filed by 27 passenger lines, which permits them to organize themselves as the Cruise Lines International Association (CLIA).

Field Activities

A field office is strategically located in each of three geographical areas - New York City for the Atlantic District, New Orleans for the Gulf District, and San Francisco for the Pacific District. The Commission also maintains an area office in San Juan, Puerto Rico. These offices represent the Commission within their geographical areas and provide liaison between the shipping industry and headquarters in Washington, D. C. They also furnish information, advice, counsel and access to Commission public documents for interested persons, handle consumer and other informal complaints, and investigate violations of the shipping statutes by carriers, terminal operators, forwarders, shippers and others.

New Program Areas

New and initial tariffs and increased freight rates must be filed with the Commission 30 days in advance of the effective date. However, the statutes provide that the Commission may for good cause shown allow an earlier effective date. The Commission annually receives hundreds of applications from carriers seeking authority to establish new or initial tariffs or increased rates on less then 30 days notice. A program was initiated to monitor carrier adherence to tariffs with particular reference to shipments affected by special permission applications.

Similar emphasis has been placed on agreements between carriers. A selected review of agreements and agreement modifications was initiated to determine whether carrier agreements have been implemented prior to approval.

Cargo surveillance was continued through the monitoring of import and export containerized and break-bulk shipments to detect misdescriptions, misdeclarations or other malpractices of carriers, shippers and consignees.

New Field Investigations

A principal function of the field offices is investigation of possible violations of section 15, 16, 18, and 44 of the Shipping Act, 1916, section 2 of the Intercoastal Shipping Act, 1933 and the rules and regulations promulgated by the Commission. New investigations initiated totaled 697 of which 244 were possible tariff or agreement violations by carriers, 186 were possible malpractices (unlawful rebates, misdescriptions, misdeclarations, mismeasurement, misweighing, etc.) by carriers, shippers, and others, and 267 were forwarder matters.

At the beginning of the fiscal year 440 cases were pending completion of investigation. With the addition of 697 new cases the filed offices had a total of 1,137 cases for handling. Investigations were completed in 600 cases leaving 537 pending at year's end.

Fines and Penalty Settlements

Fines and penalties totaling $176,000 for violations of the shipping statutes were imposed on 27 firms which included steamship lines, nonvessel operators, ocean freight forwarders and shippers-consignees. More than half this amount was collected pursuant to the Commission's authority under Public Law 92-416 and the Federal Claims Collection Act of 1966. The remainder was collected pursuant to penalty settlements negotiated by the Department of Justice or through court imposed fines. The penalties imposed on carriers were for unlawful activities such as operating without a tariff of rates published and on file with the Commission, charging freight rates different from those filed with the Commission and carrying out unapproved understandings or arrangements.

Shipper-consignee penalties were for accepting unlawful rebates of freight charges and undermeasuring and misdescribing shipments in order to pay lower freight charges.

Freight forwarders were penalized for conducting forwarding operations without a license, operation of unauthorized branch offices and allowing another firm to use their license.

Cargo Loss and Damage

The Commission published on July 1, 1974 final rules to become effective August 5, 1974, requiring domestic offshore carriers to file quarterly reports of cargo loss, damage and theft claims. However, on

July 31, 1974, the Commission postponed the effective date to consider petitions for reconsideration of the rules.

It was intended that the rules would be applicable to carriers serving U. S. foreign trades after experience had been gained in the domestic offshore trades. Ultimately, the rules would apply to 900 vessel operating and nonvessel operating carriers.

Executive Order 11836 dated January 27, 1975 directed the Department of Transportation to coordinate the activities of Federal departments and agencies relating to the prevention of cargo theft and to collect and analyze cargo loss data for all modes of transportation. The Executive Order recommends and urges that the Federal Maritime Commission, the Interstate Commerce Commission, and the Civil Aeronautics Board continue to cooperate with the Department of Transportation by developing cargo theft reporting systems and obtaining cargo loss data from carriers and others. The Interstate Commerce Commission and the Civil Aeronautics Board are already furnishing to the Department of Transportation cargo loss and damage data obtained from motor, rail and air carriers. Similar data from ocean carriers would complete the coverage of land, air and sea transportation.

Large numbers of steamship lines have filed petitions for reconsideration on jurisdictional and other grounds. The Commission is presently considering these petitions.

The Commission continues to participate in the 14-member Inter-Agency Committee on Transportation Security and in joint meetings of that Committee and the transportation industry counterpart - the Transportation Security Council.

Shippers' Requests and Complaints

General Order 14 requires conferences to file quarterly reports of shippers' requests and complaints received and to indicate the disposition made of each. During the year the conferences received and acted upon 7,920 requests and complaints of which approximately 65 percent were granted in whole or in part. The surveillance of this activity indicates the extent to which conferences are responsive to shipper requests. In the event a request is denied shippers may come before the Commission informally for assistance or seek resolution of their disputes through the filing of a formal complaint.

Informal Complaints

The Commission exercises much of its regulatory authority through the handling of complaints in an informal manner. The object of this process is to negotiate with the parties concerned to obtain a satisfactory solution to disputes in the least expensive way.

At the beginning of fiscal year 1975, 137 complaints were pending. During the year 563 new complaints were received and 464 were resolved leaving 236 pending on June 30, 1975.

SPECIAL STUDIES AND PROJECTS

Automation of Records of Section 15 Agreements

The Commission has included Section 15 and General Order 23 transshipment agreement records in its automated record detention system. From this program, detailed agreement information can be developed in a short period of time. This will assist the Commission in prompt analysis with respect to approved and/or pending agreements. It is anticipated that from this system the Commission's publication Approved Conference, Rate and Interconference Agreements in the Foreign Commerce of the United States will be published in the first quarter of fiscal year 1976. This publication is in great demand by industry, shippers, other governmental agencies and in house. We are adding three new categories of agreements therein, i.e., pooling, joint service, and major cooperative working agreements, which should be of additional assistance to the industry, as well as in house.

Currency Devaluation Provisions Under Dual Rate Contracts

Since 1971, the substantial and often sudden deterioration of the value of the dollar in relation to foreign currencies has caused carriers operating in the foreign commerce of the United States to sustain significant revenue losses due to the notice requirements of the Shipping Act, 1916, for effecting rate increases. This has been especially true with respect to those carriers and conferences having

dual rate contract systems which require 90 day's notice. Although most contracts provide for short notice increases in the event of governmental devaluation of the tariff currency, the Commission had ruled earlier that this did not apply to "de facto" devaluation or market fluctuations.

In light of this ruling and the fact that the exchange rate of the dollar is now subject to the normal market fluctuations, the Commission instituted a rulemaking proceeding to modify General Order 19 to establish a method whereby carriers and conferences with dual rate contracts could impose surcharges on short notice (minimum fifteen days) in the event of a substantial depreciation of the tariff currency in relation to other currencies in which operating expenses are incurred (Docket No. 73-53). The criteria for imposing and increasing such surcharges shall also apply to reductions in the event of appreciation of tariff currency. Such reductions will be beneficial to shippers. Amendment 1 to General Order 19 implementing this rule appeared in the Federal Register on July 7, 1975, with an effective date 30 days after the date of publication.

Self-Policing Activities

Studies were conducted on the status of self-policing activities by conferences and rate agreements in the foreign commerce of the United States for calendar year 1974. A detailed review was made of the self-policing reports filed semiannually by conferences and rate agreements with the Commission during July and January describing the

policing actions taken during the preceding six-month period. Where no self-policing actions were taken, a negative report was required to be filed by the respective conferences. A special study was conducted on self-policing activities in the United States trans-Pacific trades, particularly as it concerned the East Coast/Japan and West Coast/Japan trades, inbound and outbound. While reporting was positive and showed considerable policing activity in the inbound trades, rumors of malpractices, particularly rebates, persisted and the reports indicated some second and third violations by the same carriers.

The studies revealed that most self-policing reports filed with the Commission were negative. This is an indication (a) that a trade is free of malpractices or (b) there is faulty reporting. Similar previous studies revealed that the vast majority of conferences and rate agreements have filed only negative reports since the time self-policing reports were required to be filed with the Commission. This brings into question the adequacy of self-policing in many conferences and rate agreements, and supports the Commission's institution of a rulemaking proceeding (Docket No. 73-64) to modify General Order 7 to require more extensive self-policing procedures and more comprehensive reporting.

Standard Cost Accounting

The Commission continued its joint project with the Maritime Administration to develop a standard cost accounting system for the

U. S. steamship industry. The project consists of two phases: (1) The development of industry-wide cost accounting standards (UCAS); and (2) the development of a cost information reporting system (CIRS) to obtain cost data and operating statistics from carriers books and records, perform calculations and provide information. The UCAS phase was completed in the 1974 fiscal year. During 1975, CIRS was successfully designed and programmed for computer operations. The Commission will move forward with its rulemaking requiring the recurring input of carrier data within the system during the 1976 fiscal year. When the system becomes operational, FMC, MARAD and the carriers will have a mechanism to systematically, quickly and accurately determine applicable costs involved in shipping specific classes of cargo along the various trade routes. The system will be used by the Commission in the regulation of military rates.

Since the allocation of vessel operating expense under UCAS and CIRS is predicated upon a ton-mile formulation, the Commission has undertaken to develop comprehensive standard port-pair mileage tables which will be disseminated to the industry for reporting under CIRS. The project is intended to produce a more complete compilation of distance relationships than any presently available and will facilitate the expanded use of the port-pair system as a method of allocation of cost in the industry.

Information Systems

The Commission has been engaged in the development, implementation and operation of the Commission's computerized Marine Information

System (MARIS). The system is composed of a number of closely related subsystems through which data generated within the Commission has been encoded for automatic processing and retrieval, including information on tariffs, agreements, vessel certifications and freight forwarders.

These records are processed through integrated programming with current vessel and commodity movement data to provide a broad range of up-to-date information that hitherto has been unavailable from any source, including the types, itineraries, and operators of all vessels in the U. S. foreign commerce, and the volume of movement by commodity, vessel type and carrier between any combination of U. S. and foreign ports. The system screens cargo movements against tariff records to provide a more accurate determination of liner and non-liner cargo movements and to insure compliance with statutes requiring tariff filings for common carriage of ocean freight.

The vessel certification, tariffs and agreements subsystems were in operation at the outset of the fiscal year. During 1975, the freight forwarder and vessel and commodity subsystems were completed. In addition, a general inquiry subsystem was developed to facilitate flexible access to the data base and permit the simultaneous processing of multiple inquiries.

Although further refinements are contemplated for some of the subsystems, MARIS was virtually fully operational by the end of fiscal 1975.

Third-Flag Study

The Commission staff continued its studies relating to trade and traffic statistics in the U. S. waterborne commerce. With the growing penetration of the USSR merchant fleet in the U. S. liner trades, analysis was directed toward quantitating the market shares of Soviet and other third-flag carriers in the various U. S. foreign trades. In addition, staff studies of USSR maritime and trade practices and policies were conducted and briefing papers and reports were prepared, including a comprehensive article which will be published during the 1976 fiscal year.

Military Rates

The staff continued its review of cargo rates offered by commercial carriers to the Military Sealift Command under the RFP competitive bidding system. A broad range of rates and routes were selected for detailed cost analysis, including the U. S. West Coast to Korea, Hong Kong, Taiwan, and Japan and the U. S. East Coast to the United Kingdom, Continental Europe and the Mediterranean. Generally, it was found that the rates bid during the period were reasonable; and no further action was taken.

Claims

A special study was performed concerning the dollar amount of claims in dispute which may be submitted to Settlement Officers for hearing. As a result, the Commission acted to raise the dollar

threshold for referral of cases to Settlement Officers from $1,000 to $5,000. This action will relieve the caseload of Administrative Law Judges and avail shippers and carriers of a less costly procedure for settling claims.

Financial Reporting

A rule requiring the reporting of financial information by Non-Vessel Operating Common Carriers in the Domestic Offshore Commerce was published in final form on June 19, 1975, to become effective on July 21, 1975. This represents the culmination of a long-term staff program to develop a practicable financial reporting system for NVOCC's that will serve as a basis for the evaluation of the rate filings.

Puerto Rico Study

A Puerto Rico Ocean Transportation Study was conducted, which addressed itself to the possible ramifications of the acquisition by the Puerto Rican Marine Shipping Authority of the United States Mainland/Puerto Rico services of the three common carriers previously serving a major portion of the trade. The study included analyses of past and present traffic movements and a forecast of future demand for common carrier services in the trade.

Field Auditing

During the fiscal year, a reorganization plan was adopted which centralized the field audit functions of the Commission in the Office

of Financial Analysis at Washington. The objective of the plan was to provide improved coordination of the audit and financial analysis activities and more efficient utilization of the accounting staff. An effective audit and review program is essential to establish the credibility of financial information submitted by the carriers under the various Commission General Orders and in justification for rate changes in the domestic offshore trades.

Commodity Studies

The staff performed various commodity studies bearing upon rate levels, including studies of cotton movements from the U. S. Atlantic and Gulf to the Far East and an analysis of the economic effects of extended free time on OCP crude rubber shipments.

PROCEEDINGS BEFORE ADMINISTRATIVE LAW JUDGES

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

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

At the beginning of fiscal year 1975, 80 proceedings were pending before administrative Law Judges. During the year, 60 cases were added, which included 6 cases reopened and remanded to Administrative Law Judges for further proceedings. The judges held 60 prehearing conferences, conducted hearings in 28 cases, and issued 16 initial decisions in formal proceedings, and 6 initial decisions in special docket applications.

Cases otherwise disposed of involved 33 formal proceedings and 1 special docket application.

In proceedings not yet decided by the Commission, Administrative Law Judges issued the following decisions:

Docket No. 67-57 - *Significant Vessel Operating Common Carriers in the Domestic Offshore Trade: Reports of Rate Base and Income Account.* Rules were promulgated which will provide the Commission with additional information and costing techniques, thus facilitating determination of the costs of carrying a particular commodity.

Docket No. 73-66 - *Austasia Container Express, A Division of Austasia Intermodal Line, Ltd.—Possible Violations of Section 18(b)(1) and General Order 13.* Respondent, a non-equipment operating common carrier, which received cargo in Detroit and contracted for its transportation by truck to Windsor, Ontario; from there by rail to Vancouver, British Columbia; and thence by common carrier by water to destinations in Australia, was found not to be subject to the Shipping Act because it was enacted to regulate common carriers by water whose vessels call at United States ports.

Docket No. 73-72 - *Agreement No. 10056 - Pooling, Sailing and Equal Access Cargo Agreement.* The agreement establishing equal access to government controlled cargoes together with pooling provisions was found to result in benefits which outweigh considerations against approval.

Docket No. 73-73 - *Port of Houston Authority v. Lykes Bros. Steamship Co., Inc., et al.* Respondent common carriers by water accepting delivery at the point of unloading in some instances and at the ship's berthing space in other instances were found to be absorbing or paying cotton "heading" charges at the ports of Galveston and Corpus Christi in violation of the Shipping Act.

Docket No. 74-5 - *Agreement No. 10066 - Cooperative Working Arrangement.* The provision in an agreement which allowed each party to the agreement equal access to cargo which would otherwise be reserved by their respective governments for carriage aboard their national flag lines was found not to be subject to the Commission's jurisdiction under section 15 of the Shipping Act.

The provision in an agreement which established a cooperative working arrangement between the parties was found subject to the Shipping Act and approved.

Docket No. 74-31 - *Independent Ocean Freight Forwarder Application - Lesco Packing Co., Inc.* Application for license to operate as an independent freight forwarder was denied because applicant was not found fit, willing and able properly to carry on the business of forwarding.

Judges also issued initial decisions in Dockets Nos. 71-85, 72-30, 73-46, 73-78, 74-2, 74-9, 74-17, 74-37, 74-38, 74-52, Special Docket Nos. 462, 463, and 465, described under "Decisions of the Commission."

At the close of fiscal year 1975 there were 84 pending proceedings, of which 40 were investigations initiated by the Commission. The remaining proceedings were instituted by the filing of complaints by common carriers by water, shippers, conferences, port authorities or districts, terminal operators, trade associations, the Department of Defense, and instrumentalities thereof.

FINAL DECISIONS OF THE COMMISSION

In proceedings other than rulemaking the Commission heard six oral arguments and issued 22 decisions, two of which were remanded in part to the Office of Administrative Law Judge's. Ten proceedings were discontinued or dismissed without decision and two were referred to the Office of Administrative Law Judges for hearing.

The Commission also issued four decisions involving special docket applications and fifteen decisions involving informal dockets (claims against carriers in the amount of $1,000 or less).

Docket 70-53 - Levatino & Sons, Inc. v. Prudential-Grace Lines, Inc. Respondent carrier was found not to have discriminated against complainant unjustly in regard to furnishing terminal and fumigation facilities for handling of fruit and produce, and not to have given unlawful rebates or discriminated against complainant by virtue of settling claims brought by other shippers of fruit and produce. The proceeding was remanded for further hearings on question of whether unlawful shutouts of complainant's cargo occurred.

Docket 71-29 - Baton Rouge Marine Contractors, Inc. v. Cargill, Inc. Imposition by grain terminal operator of certain charges on all stevedores including subsidiary of terminal operator was found not to result in unlawful preference or privilege. Assessment of charges and conditions upon stevedores for grain loading activities was found not to be reasonably related to economical and commercial benefits derived by the stevedores. The proceeding was remanded for further hearing on issue of achieving proper allocation formula for benefits received by stevedores and for establishing a proper charge.

Docket 71-54 - Pacific Westbound Conference - Application to Extend Dual Rate Contract System to Include OCP Territory. Application of respondent to extend its dual rate contract system to include OCP territory was found approvable under section 14 (b) of the Shipping Act since it accomplished the legitimate commercial objective of protecting the Conference from the inroads of nonconference competition.

Docket 71-85 - Independent Ocean Freight Forwarder Application - Air Mar Shipping Inc. Respondent independent ocean freight forwarder applicant was found fit, willing, and able to properly carry on the business of forwarding and a license was granted despite prior operations without a license in violation of section 44 of the Shipping Act, 1916.

Docket 71-93 - Viking Importrade Inc. and Bernard Lang & Co., Inc. - Possible Violations of section 16, First Paragraph, Shipping Act, 1916. The record did not sustain a finding that either licensed freight forwarder acting as customhouse broker or consignee of ocean shipment had violated the Act by obtaining or attempting to obtain transportation of property by water at less than rates otherwise applicable.

Docket 72-30 - Commodity Credit Corporation and AID v. Lykes Bros. Steamship Co., Inc. et al. War risk surcharges imposed by respondents on relief shipments to Lebanese ports were not violative of sections 15, 16, and 17 of the Shipping Act, 1916, because transportation factors such as risk and port congestion were present to justify the surcharges.

Docket 72-39 - Ocean Freight Consultants v. Royal Netherlands Steamship Co. In a report on reconsideration it was found that in a claim against a carrier for overcharge of ocean freight, carrier cannot depend on tariff provision requiring rating as cargo "N.O.S. as minimum"

of any bill of lading reflecting only trade name, inasmuch as such a rule is discretionary. Reparation granted inasmuch as unrefuted evidence showed the nature of the commodity shipped.

Docket 72-48 - Pacific Maritime Association — Cooperative Working Arrangements. International Longshoremen's and Warehousemen's Union and Pacific Maritime Association nonmember participation agreement was found subject to Commission jurisdiction under section 15 of the Shipping Act, 1916 because it conrols competition and was not entitled to "labor exemption" from the antitrust and shipping laws because it imposes terms upon entities outside the bargaining group.

Docket 72-61 - In the Matter of Agreement Nos. T-2455/T-2553 between Philadelphia Port Corp. and Delaware River Terminal and Stevedoring Co. Inc./Lavino Shipping Company. Agreements for the lease of all the modern full-container ship handling facilities within a port to a single operator were found subject to section 15 of the Act; to have been implemented prior to approval; to be so anticompetitive as to be detrimental to commerce in violation of section 15; unjustly preferential in violation of section 16, and to establish unreasonable practices in violation of section 17; and were disapproved subject to reopening of bids for a portion of the premises to other tenants.

Docket 73-24 - Agreement No. T-2635-2 Pacific Maritime Association Final Pay Guarantee Plan. An agreement providing a formula for assessment of PMA members to fund union pay guarantee plan to compensate longshoremen for reduced work opportunities caused by technilogical advances was found

approvable, and not to have subjected automobiles to any undue or unreasonable disadvantage within the meaning of section 16 Shipping Act, 1916. (The decision was later affirmed by the Commission in its Report on Remand of proceeding from Court of Appeals for the District of Columbia).

Docket 73-36 - Abbott Laboratories v. United States Lines, Inc. Shipper's claim for overcharge of ocean freight was denied because claimant did not satisfy burden of proof by failing to resolve doubts as to nature of cargo shipped.

Docket 73-44 - Kraft Foods v. Moore McCormack Lines, Inc. In claim by shipper for overcharge by carrier of ocean freight rate based on alleged error in weight or measurement of cargo, carrier tariff rule requiring such claims to be presented in writing before cargo leaves custody of carrier was found to bar recovery before the Commission when conditions of tariff rule have not been met.

Docket 73-46 - Pacific Islands Transport Line - Proposed General Rate Increases Between Pacific Coast and Hawaii and American Samoa. Respondent was found to have shown need for additional revenue and to have sustained burden of proof that its rate increases are just and reasonable within the meaning of section 18(a) of the Shipping Act, 1916.

Docket 73-50 - Campbell Soup Company v. United States Lines, Inc. Claim for reparation based on alleged unjust and unreasonable rates in violation of section 18(a) of the Shipping Act, 1916, was denied inasmuch as the allegation that the shipper, to qualify for tariff rates sought

would require violation of State law regarding highway weight limits, was determined to be unfounded.

Docket 73-74 - Modification of Article 4 Agreement No. 3302 - Association of West Coast Steamship Companies. In show cause proceeding designed to determine whether unanimity voting provision of ocean freight conference should be modified, evidence was determined insufficient for decision. The proceeding was referred to Administrative Law Judge for development of record and initial decision.

Docket 73-78 - Delaware River Port Authority v. Transamerican Trailer Transport, Inc. Mere solicitation without other inducements by ocean carrier of Philadelphia area cargo for movement through ports of Baltimore and New York was found not in violation of the Shipping Act, 1916, or Merchant Marine act of 1920.

Docket 74-2 - Merck Sharp & Dohme (I.A.) Corp. v. Flota Mercante Grancolombiana, S.A. - Claim by shipper for overcharge of ocean freight was denied where shipper failed to meet burden of proof that commodity shipped was other than that for which it was rated.

Docket 74-6 - Hugo Zanelli d/b/a Hugo Zanelli & Co. - Respondent, a licensed independent ocean freight forwarder was found to have acted as a purchaser and seller of certain shipments on behalf of Mexican consignees and to have obtained a beneficial interest in such shipments, in violation of sections 1 and 44 of the Shipping Act, 1916, and was ordered to cease and desist such activities.

Docket 74-9 - Consolidated International Corporation v. Concordia Line. In proceeding alleging violation of section 18(b)(3) of the Shipping Act, settlement agreement between shipper and carrier provided evidence sufficient to show cargo was misrated and settlement agreement approved.

Docket 74-37 - AMF Incorporated v. American President Lines - Claim by shipper against carrier for reparation on alleged overcharge of ocean freight was denied inasmuch as special rate provision of tariff sought to be applied was limited to ports enumerated therein which did not include port in question.

Docket 74-38 - Upjohn Company v. Sea-Land Service, Inc. Claim by shipper against carrier for reparation on alleged overcharge of ocean freight based on alleged ambiguity of tariff was denied. The fact that carrier erroneously rated cargo resulting in undercharge is not proof of tariff ambiguity and carrier is required to seek collection of undercharges.

Docket 74-52 - McDonnell Douglass Corporation v. Hapag-Lloyd North Atlantic Steamship Company. Claim by shipper against carrier for reparation on alleged overcharge of ocean freight was granted since carrier did not challenge merits of the claim, but defended only on basis of tariff rule requiring claims to be brought within 6 months. The six-month rule is no bar to bringing claim before Commission within 2-year statutory limitation period.

RULEMAKING

The following rulemaking proceedings instituted during fiscal year 1975, are still in progress.

Docket 72-43 - Criteria for Establishing Level of Military Rates Not Detrimental to Commerce of United States Under Section 18(b)(5), Shipping Act, 1916. Reopened upon remand from United States Court of Appeals for the District of Columbia Circuit.

Docket 75-6 - Policy and Procedures For Environmental Protection. The following rules were published during the fiscal year as a result of rulemaking proceedings.

General Order 32 - Quarterly Reports of Cargo Loss and Damage Claims - Docket 71-74. Effective date stayed pending reconsideration.

General Order 33 - Regulation to Adjust or Meet Conditions Unfavorable to Shipping in the Foreign Trade of the United States - Docket 72-62. Effective date stayed pending reconsideration.

General Order 11; Amendment 2 - Financial Reports by Common Carriers by Water in the Domestic Offshore Trades - Docket 73-15.

General Order 16, Amendment 12 - Rules of Practice and Procedure; Miscellaneous Amendments - Docket 74-11.

General Order 16, Amendment 11 - Rules of Practice and Procedure, Enlargement of Time for Commission Action Upon Protests Against Tariff Changes - Docket 74-13.

General Order 22, Amendment 5 - Freedom of Information Requirements and Procedures - Docket 75-1 .

General Order 16, Amendment 13 - Rules of Practice and Procedure; Informal Procedures for Adjudication of Small Claims - Docket 75-7.

General Order 34 - Filing of Tariffs By Terminal Barge Operators in Pacific Slope States - Docket 75-9.

The following rulemaking proceeding was referred to the Office of Administrative Law Judges for hearing and initial decision.

Docket 73-4 - Non-Vessel Operating Common Carriers of Used Household Goods; Exemption From Tariff Filing Requirements.

Four rulemaking proceedings were discontinued without adoption of final rules.

ACTION IN THE COURTS

There were pending before various U.S. Courts of Appeals at the beginning of fiscal year 1975 14 petitions to review orders of the Federal Maritime Commission, including the review of a District Court decision dealing with the enforcement of the Commission's subpoena authority. During the year 13 more petitions were filed to review Commission orders.

At the close of the fiscal year on June 30, 1975, thirteen appeal proceedings had either been completed or withdrawn and the remaining 14 were pending briefing, argument or decision. Two petitions for certiorari to review Circuit Court decisions involving Commission orders were denied by the Supreme Court during this period.

An injunction proceeding was also brought in District Court to obtain compliance by a cruise ship operator with financial responsibility requirements under the shipping statutes. The Commission assisted in three criminal actions instituted by the Department of Justice and participated as amicus and filed briefs in the appeal of two District Court decisions involving actions brought by private parties.

Significant Cases

Among the more important cases handled by the Commission were the following:

Delaware River Port Authority v. Transamerican Trailer Transport, Inc., has proceeded in the court in two stages. The first stage, reported at

501 F.2d 917 (3d Cir. 1974), reversed and vacated a preliminary injunction entered by a Pennsylvania District Court against an ocean carrier's solicitation of Philadelphia area cargo for shipment on its New York and Baltimore based vessels until such time as the Commission passed upon the validity of the practice under Sections 16 and 17 of the Shipping Act, 1916. The Commission participated as an amicus curiae and in support of the carrier. The Third Circuit Court held that because the complaint alleged a novel cause of action under the Shipping Act (mere cargo solicitation unaccompanied by the absorption of overland transportation expenses or other commonly recognized discriminatory practices) there could be no "substantial likelihood the plaintiffs would succeed on the merits of their complaint." The second stage of this litigation, Delaware River Port Authority, et al. v. F.M.C. et al., D.C. Cir. No. 75-1341, is still pending in the Circuit Court of Appeals for the District of Columbia, where the Commission is defending its final administrative decision denying the Port Authority's cargo diversion complaint as a matter of law.

State of Texas, et al. v. Seatrain International, S.A., Case No. B-74-202-CA (E.D. Tex.), concerned an action initiated by the State of Texas on behalf of some of its ports in the U.S. District Court to enjoin an ocean carrier from operating under certain intermodal rail/sea tariffs between the U.S. Gulf and Europe via Charleston, South Carolina pending completion of an FMC hearing on the legality of this intermodal movement under the Shipping Act. This intermodal service is known as "mini-bridge" service

and competes with all-water service from the Gulf. The Commission again opposed unjunctive relief as an amicus curiae on the grounds that mini-bridge cargo diversion was a case of administrative first impression. The District Court's order was appealed to the Fifth Circuit and a stay was issued. The Commission submitted an amicus brief supporting reversal and the matter is awaiting decision.

Commonwealth of Pennsylvania et al. v. Federal Maritime Commission, Civil No. CA-75-0363 (D.D.C 1975), was an action for a preliminary injunction against intermodal rail/water service ("mini-bridge") in the U.S. East Coast/Far East trade based upon the Commission's alleged failure to prepare an environmental impact statement prior to accepting Far East mini-bridge tariffs for filing in early 1972 and to adopt final agency regulations implementing the National Environmental Policy Act of 1969. The Court denied relief on several grounds including findings that the mandatory provisions of the Shipping Act took precedence over the Environmental Policy Act in this particular situation and the mere filing of a tariff has no significant effect upon the human environment. The Court also found failure to exhaust administrative remedies; lack of primary jurisdiction; and laches.

Cargill, Inc. v. Federal Maritime Commission, et al., and Baton Rouge Marine Contractors, Inc. v. Federal Maritime Commission, et al., D.C. Cir. Nos. 75-1018 and 75-1108, are consolidated proceedings challenging the Commission's decision in its Docket No. 71-29, Baton Rouge Marine

Contractors, Inc. v. Cargill, Incorporated, served January 7, 1975. The issues before the Court are: (1) the authority of a terminal to impose charges against a stevedore under a Commission-approved agreement between the terminal and a port; (2) the lawfulness of the utilization by the terminal of a wholly-owned stevedoring subsidiary; and (3) the propriety of certain specific charges assessed by the terminal against stevedores. The case is pending briefing and argument before the Circuit Court for the District of Columbia.

Pacific Maritime Association (PMA) v. Federal Maritime Commission, et al and International Longshoremen's and Warehousemen's Union v. Federal Maritime Commission, et al., D.C. Cir. Nos. 75-1140 and 75-1215, are consolidated proceedings challenging the Commission's order in its Docket No. 72-48, Pacific Maritime Association - Cooperative Working Arrangements; Possible Violations of Sections 15, 16, and 17, Shipping Act, 1916, served January 30, 1975, in which the agency found subject to its jurisdiction under Section 15, Shipping Act, 1916, that portion of a collective bargaining agreement which requires that non-members of PMA must adhere to certain provisions of the collective bargaining agreement before they can employ longshoremen in the PMA-ILWU joint work force. Briefs are now being prepared in this case, and it will then be scheduled for argument before the Circuit Court for the District of Columbia.

Federal Maritime Commission v. Port of Seattle (S.D. Wash., Civ. 22-72H2) Finding the Commission to be without jurisdiction to investigate certain consolidation services performed by the Port of Seattle on inbound ocean shipments, the District Court for the Western District of Washington denied the Commission's application for full enforcement of its discovery orders. The District Court's order of denial was appealed to the Court of Appeals for the Ninth Circuit where the case has been briefed, argued and is now waiting decision.

Federal Maritime Commission v. Wall Street Cruises, et al., (75 Civ. No. 722, S.D.N.Y.), involved a Commission action in the District Court to enjoin Wall Street Cruises from advertising and selling cruise ship tickets until the financial responsibility of this cruise ship operator was properly certified by the Commission under the passenger protection provisions of Public Law 89-777. In a consent order filed with the Court, Wall Street Cruises agreed to discontinue such practice until it had obtained proper Commission certification.

Non-Adjudicatory Matters

During the past fiscal year, the Commission has initiated 31 claims under the settlement and compromise authority of the Federal Claims Settlement Act of 1966, and Public Law 92-416. These claims were for alleged violations of Sections 15, 16, 18 and 44 of the Shipping Act, 1916, and Section 2 of the Intercoastal Shipping Act, 1933. However, the most common of the alleged offenses involved infractions of the tariff filing provisions under the shipping statutes. Settlements from the Commission's enforcement claims program resulted in collections of over $100,000.00 in fiscal 1975.

LEGISLATIVE DEVELOPMENT

Repeal of Section 6 of the Intercoastal Shipping Act, 1933

On October 26, 1974 President Ford signed into law H.R. 13561, which amended the Intercoastal Shipping Act, 1933 by deleting Section 6 thereof, and by amending Section 5 to insure that all the provisions of the Act are applicable to "the carriage, storage, or handling of property for the United States, state or municipal governments, or for charitable purposes."

Section 6 of the Act, originally intended to insure the right of interstate steamship carriers to compete with the railroads, has been a statutory anachronism for those engaged in the domestic offshore commerce since 1938. The favored parties in Section 6 — particularly the Department of Defense — had been shipping cargoes at such low rates that, in the words of Chairman Bentley testifying on H.R. 13561 before the Subcommittee on Merchant Marine of the House Merchant Marine and Fisheries Committee on July 10, 1974, "the domestic offshore unsubsidized fleet and its commercial users, are being called upon to subsidize the government." Chairman Bentley stressed that "there is no reason governmental or charitable shippers should be treated differently from commercial shippers."

Appearing before the Senate Commerce Committee's Subcommittee on Merchant Marine on August 9, 1974, Vice Chairman Day continued the Commission's support for Section 6's repeal by stating that its presence "conflicts with the free enterprise system and erodes the strength of the American merchant marine." Vice Chairman Day pointed to Military

Sealift Command cargoes enjoying up to a 40% rate advantage over commercial shipping rates, all to the ultimate detriment of the offshore American consumer.

Transporting Merchandise by Barge at Port of Sacramento

In the past Congress and the Commission sponsored and supported legislation which would eliminate unnecessary and fragmented duplication of Interstate Commerce Commission and Federal Maritime Commission regulation at the Port of Sacramento. The bill, H.R. 12208, which was enacted as P.L. 93-605, conferred on the Commission exclusive regulatory jurisdiction over the transportation of containers and containerized cargo moving by barge provided by the Port of Sacramento as a substitute service between that port and San Francisco.

Intermodal Transportation Legislation

The Commission has over the last several Congresses transmitted proposed legislation which would provide for the establishment of single-factor rates under a through bill of lading for the transportation of property in the foreign and domestic offshore commerce of the United States.

In the 92nd Congress extensive hearings were held on H.R. 15465 both in Washington and San Francisco, providing a valuable forum for many segments of the maritime industry and shippers to go on record regarding this vital issue. Many objections to the bill resulted in close

consultation between the Commission and the House Merchant Marine and Fisheries staff. Two new intermodal measures in the 93rd Congress — H.R. 12428 and H.R. 12429 — were once again subjected to close scrutiny. Appearing before the full House Merchant Marine and Fisheries Committee on August 13, 1974, Chairman Bentley reiterated the basic need for intermodal legislation: the present plethora of red tape and regulation deters the small and middle-sized American businessman from participating in the new technological advances of transportation. The intermodal shipping concept, developed by this nation, is not being fully utilized, the Chairman stated. In locating intermodal regulatory functions at the Federal Maritime Commission, Congress will have chosen the agency with expertise in foreign trading practices and shippers will be provided "a single expert regulatory forum that will not only act as a guardian of the public interest but also materially assist in the economic growth of our trade in overseas markets," Mrs. Bentley concluded.

The August 1974, hearings concentrated on various governmental witnesses, while private industry was heard from in December hearings.

The Committee, having narrowed down the intermodal bill alternatives to two, has before it in the first session of the 94th Congress H.R. 1069 and H.R. 1080. These two measures are the successors to H.R. 12428 and H.R. 12429 and it is hoped by all parties that legislative movement will occur this session of the Congress.

Minimum Rate Provisions for Non-National Flag Carriers in Foreign Commerce

S. 2576, the bill to provide for minimum rates by non-national ("third flag") carriers received close scrutiny in hearings during the second session of the 93rd Congress.

Chairman Bentley, appearing before the Senate Commerce Committee's Subcommittee on Merchant Marine on November 25, 1974, declared: "I am convinced that the Congress must enact legislation to insure that American-flag vessels will be able to fairly compete in the carriage of cargoes in the foreign commerce of the United States."

S. 2576, which would require the Commission to find rates of non-national flag carriers "compensatory," predictably caused suggestions for proposed changes and Chairman Bentley stressed that the Commission itself wanted to amend certain portions of the bill. The alarming fact of certain non-national flag carriers in the trans-Pacific trades offering rates 10 to 40% below conference levels, prompted Mrs. Bentley to call Congressional action "imperative."

S. 2576 was reintroduced into the 94th Congress as S.868. Hearings were concluded in April, 1975, when private industry advocates and opponents of the measure expressed their views. Foremost among those coming forth was labor-management committee which joined in a single statement of unanimous support for S. 868, terming it the basis for a "period of stability in world trade."

Proposed Studies of Regulatory Agencies

During the last session of the 93rd Congress focus was given to possible reform of the regulatory agencies. Many proposals were introduced, but two — Senate Joint Resolution 253 and S. 4145 — were given examination in hearings.

On November 20, 1974, Chairman Bentley appeared before the Subcommittee on Surface Transportation of the Senate Commerce Committee in opposition to SJR 253. This proposal would have created a large commission, with sweeping powers for a three year study period. Mrs. Bentley said FMC opposition was "not for the reason that it [SJR 253] attempts to examine in some detail the impact of independent regulatory agencies upon commerce; rather I feel that the complexities and expenses of such a commission would be unjustified in light of the result it would obtain." Chairman Bentley pointed out that the FMC has been "studied and restudied no less than five times in the last twenty-five years," and that discontinuance of any part of the Commission's regulatory authority would insure the decline of the American merchant marine in international world trade competition.

Qualified support was later given to certain provisions of S. 4145. No action was taken by the Congress on either measure.

In the 94th Congress several new bills were introduced, calling for the same study and possible reform. President Ford also held meetings with representatives of the various regulatory agencies on possible examination and reform of their powers.

Independent Ocean Freight Forwarders

On March 24, 1975, Commissioner Hearn appeared before the Subcommittee on Commodities and Services of the House Select Committee on Small Business and testified concerning the Commission's responsibility in regulating the independent ocean freight forwarder and the effect on the potential small business exporter. It was pointed out by Commissioner Hearn that the number of small businesses operating as freight forwarders was "quite substantial" and that the Commission, in recognition of the small businesses involved in this field, "has not imposed excessive or detailed reporting requirements." A thorough interchange on the role of foreign affiliated freight forwarders in the U.S. took place. Commissioner Hearn indicated that the Commission has not discovered any instances where these foreign forwarders have engaged in rate cutting, illegal rebates or other improper practices; however, continued vigilence by the Commission's investigative staff was assured in this entire area.

Freedom of Information Act Amendments

The Freedom of Information Act Amendments, P.L. 93-502, prescribing new access procedures for citizens seeking information from government agencies, were made applicable to the Federal Maritime Commission.

In compliance with the Section 3 of the Act, the Commission filed its first report to the Speaker of the House and President of the Senate before the prescribed date of March 1, 1975.

Privacy Act of 1974

The Privacy Act of 1974, P.L. 93-579, places the responsibility upon the Federal Maritime Commission to insure that employees of the agency are allowed access to information pertaining to that employee, thereby insuring that information's necessity and accuracy.

Rules and regulations were promulgated for the operational procedures required by the Act's September 1, 1975, effective date.

Legislation Studied

During fiscal year 1975, the Commission made studies of many bills that had been introduced in the Congress and advised the Office of Management and Budget and other departments and agencies on various legislative proposals submitted for comment.

ADMINISTRATION

During fiscal year 1975, Helen Delich Bentley continued to serve as Chairman. Other members were Ashton C. Barrett of Mississippi, James V. Day of Maine, George H. Hearn of New York, and Clarence Morse of California. Commissioner Day continued to serve as Vice Chairman.

On June 13, 1975, Chairman Bentley advised President Ford that she would not seek reappointment to the Commission upon the expiration of her term on June 30, 1975, but would serve until a successor was appointed; if the President so wished.

On June 3, 1975, Commissioner Hearn submitted his resignation to the President.

Statement of Appropriation and Obligation for the Fiscal Year Ended June 30, 1975

APPROPRIATION:	
Public Law 93-433, 93rd Congress, approved October 5, 1974: For necessary expenses of the Federal Maritime Commission, including services as authorized by 5 U.S.C. 3109; hire of passenger motor vehicles; and uniforms or allowances therefor, as authorized by 5 U.S.C. 5901-5902: Provided, That not to exceed $1,500 shall be available for official reception and representation expenses	$7,300,000
Public Law 94-32, 94th Congress, approved June 12, 1975: Second Supplemental Appropriations Act, 1975, to cover increased pay cost	100,000
Appropriation availability	7,400,000
OBLIGATIONS AND UNOBLIGATED BALANCE:	
Net obligations for salaries and expenses for the fiscal year ended June 30, 1975	7,295,576
Unobligated balance withdrawn by the Treasury	104,424
STATEMENT OF RECEIPTS: DEPOSITED WITH THE GENERAL FUND OF THE TREASURY FOR THE FISCAL YEAR ENDED JUNE 30, 1975:	
Publications and reproductions	15,495
Water pollution application and certificate fees	164,072
Fines and penalties	82,055
Miscellaneous	6,333
Total general fund receipts	267,955

APPENDIX A

Statistical Abstract of Filings

Fiscal Year 1975

Section 15 Agreements:

Foreign commerce	187
Domestic offshore	14
Terminal	139

Section 14b Dual Rate Contracts:

New systems (includes modifications)	16

Reports Review:

Shippers' requests and complaints	292
Minutes of meetings	2,046
Self-policing of conference and rate agreements	182
Pooling statements	51
Operating reports	95

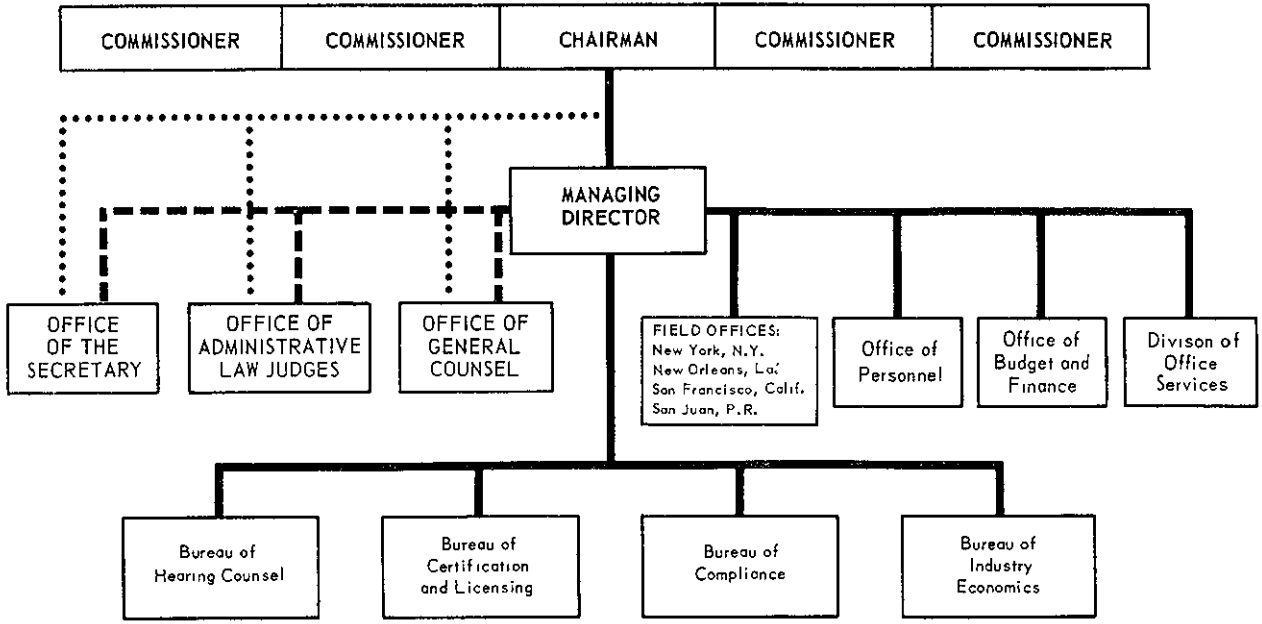
Approved Agreements on File as of June 30, 1975

Conference	81
Rate	40
Joint conference	10
Pooling	21
Joint service	45
Sailing	22
Transshipment	161
Cooperative working, agency and container interchange	120
Domestic offshore	43
Terminals	319
Dual rate contract systems	64
Nonexclusive transshipment agreements	384

Tariffs:

Tariff pages filed:	
Foreign	259,511
Domestic offshore	12,870
Terminal	6,247
Tariffs on file as of June 30, 1975:	
Foreign	3,174
Domestic offshore	255
Terminal	560

FEDERAL MARITIME COMMISSION



Technical Direction ••••••••••

Administrative Direction ▬▬▬▬

September 15, 1973

Helen Delich Bentley

Helen Delich Bentley

Chairman