18th annual report

of the FEDERAL MARITIME COMMISSION

fiscal year ended september 30, 1979

THE MEMBERSHIP

MEMBERS	APPOINTED	CURRENT TERM EXPIRES
Richard J. Daschbach Chairman (D) New Hampshire	August 24, 1977	June 30, 1982
Thomas F. Moakley Vice Chairman (D) Massachusetts	November 4, 1977	June 30, 1983
James V. Day Commissioner (R) Maine	February 12, 1962	June 30, 1984
Leslie L. Kanuk Commissioner (D) New Jersey	April 21, 1978	June 30, 1981

MR. DASCHBACH

MR. MOAKLEY

MR. DAY

DR. KANUK

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Federal Maritime Commission
Washington, D.C. 20573

Office of the Chairman

TO THE SENATE AND THE HOUSE OF REPRESENTATIVES:

I am pleased to submit to you the annual report of the Federal Maritime Commission for Fiscal Year 1979, pursuant to section 103(e)(2) of Reorganization Plan No. 7 of 1961 and section 208 of the Merchant Marine Act, 1936.

Fiscal Year 1979 has been one of progress and productivity for the FMC. The Commission settled 56 rebating cases totalling over $4.9 million in civil penalties during the year, nearly half the FMC's annual budget. Sixteen of those settlements were reached with foreign-flag carriers for fines of over $3 million. Our enforcement efforts produced well over one settlement weekly during the past fiscal year.

In addition to the number of illegal rebating cases settled, the Commission issued more final decisions in Fiscal Year 1979 than in any previous year in the FMC's history. We also issued more decisions in special and informal dockets and processed more agreements than ever before.

I look forward to even greater progress during the coming year toward our goal of making the Federal Maritime Commission a more efficient and responsive regulatory agency.

Sincerely,

Richard J. Daschbach
Chairman

II. THE COMMISSION

History and Functions

The Federal Maritime Commission was established as an independent regulatory agency on August 12, 1961 by Reorganization Plan No. 7. The Shipping Act, 1916, and subsequent laws governing the regulation of the U.S. domestic offshore and foreign waterborne commerce are enforced under the jurisdiction of the FMC.

Major responsibilities of the Commission include:

1) The regulation of ocean carrier ratemaking in our foreign and domestic offshore trades;
2) Investigation of discriminatory rates and practices among shippers, carriers, terminal operators, and freight forwarders;
3) Licensing of independent ocean freight forwarders;
4) Passenger vessel certification; and
5) Certification of vessels to ensure financial responsibility for pollution by oil and hazardous substances.

The Commission's most visible activities occur through its enforcement of section 15 of the Shipping Act. Section 15 exempts ocean carrier conferences from the Sherman and Clayton antitrust laws. In order to prevent abuses of concerted ratemaking authority, the FMC evaluates all agreements between or among entities subject to the Shipping Act.

The functions and authority of the FMC are very often confused with those of the Interstate Commerce Commission and the Maritime Administration. The FMC, unlike the ICC, has very limited authority to set rates or to disapprove tariffs already lawfully filed in the U.S. foreign commerce. The FMC also does not have authority to limit entry into the U.S. ocean commerce.

The Maritime Administration, under the U.S. Department of Commerce, is a promotional agency which develops, subsidizes, and promotes the U.S.-flag merchant marine. The FMC is strictly regulatory and has no responsibility for promoting the U.S.-flag merchant marine or ship-building industry. The FMC can, however, protect the U.S.-flag fleet to the extent that the maintenance of a competitive U.S. merchant marine serves the general public interest.

In spite of these restrictions, the Commission is responsible for ensuring stability and equity in the U.S. ocean commerce. Since over 95 percent of U.S. foreign trade is waterborne, the Commission's importance in protecting the shipping public and the consumer, as well as promoting efficiency and economy in our foreign commerce, cannot be overemphasized.

Administration

There are five Commissioners on the FMC, each appointed by the President with the consent of the Senate to serve five-year terms. Not more than three of the members may belong to the same political party.

The President designates one Commissioner as Chairman, the chief executive and administrative officer of the agency.

The FMC has a total authorization of 361 employees, with the majority of its personnel located in the Commission's Washington, D. C. headquarters. The Commission also has five district offices, located in New York, Chicago, San Francisco, New Orleans and Hato Rey, Puerto Rico, with sub-offices in Los Angeles, Savannah and Miami.

The Commissioners oversee all activities in the agency's twelve bureaus and offices. The responsibility for the FMC's daily activities and operations is divided among these offices as follows:

- o The Office of the Managing Director is responsible for the direct administration of Commission staff, activities and programs. The Managing Director coordinates and directs staff activities to ensure the timely accomplishment of Commission goals and objectives.
- o The Office of the General Counsel advises the Commission on legal issues and provides it with legal counsel on matters under consideration. The General Counsel's office also reviews and approves the legality of proposed Commission rules, renders formal and informal written opinions on pending adjudicatory matters, and prepares draft decisions and orders for ratification pursuant to Commission action. The General Counsel's office also concludes settlements of Shipping Act violations and represents the Commission in most matters before the courts.

- The Administrative Law Judges conduct hearings and render decisions in formal rulemaking and adjudicatory proceedings. The Commission has seven administrative law judges under the direction of a Chief Judge. Proceedings which come before the administrative law judges include the approvability of section 15 agreements, adjudication of discriminatory practices between various parties subject to the Shipping Act, adjudication of shipper complaints under section 18(b)(3) of the Act, and domestic rate cases.

  During Fiscal Year 1979, the Office of ALJ's issued 113 initial decisions, 75 of which were subsequently adopted by the Commission. Fifty-four of the decisions rendered during FY 1979 were pending Commission consideration at the end of the reporting period.

- The Office of the Secretary functions similarly to that of a clerk of court. Its responsibilities include: (1) preparing the Commission agenda for weekly meetings; (2) receiving and processing formal complaints involving alleged violations of shipping laws; (3) issuing orders and notices of Commission action; (4) maintaining all official files and records of Commission proceedings; (5) administering the Freedom of Information and Government in the Sunshine Acts; (6) responding to information requests from the Commission staff, the ocean shipping industry, and the public; and (7) providing copies of decisions of the administrative law judges, Commission reports, publications, and miscellaneous documents to interested parties.

During Fiscal Year 1979, the Secretary's Office was involved in the conclusion of 70 special docket proceedings, as well as 117 informal dockets, which involve claims against carriers for less than $5,000. They also assisted the Commission in the issuance of 65 other final decisions in formal proceedings, including eight final rules.

- o The Bureau of Hearing Counsel often represents the public interest in the Commission's docketed proceedings or participates as trial counsel in formal adjudicatory dockets, rulemaking, and other proceedings which are initiated by the Commission. They serve as hearing counsel, where intervention is permitted, in formal complaint proceedings instituted under section 22 of the Shipping Act. The Bureau of Hearing Counsel also furnishes legal advice on special Commission projects and often participates in matters of court litigation by or against the Commission.
- o The Bureau of Ocean Commerce Regulation plans and administers regulatory programs which address nearly all facets of the FMC's activities. It is the largest office in the Commission, employing 88 personnel. The Bureau's major responsibilities include the analysis and review of all agreements filed under section 15 of the Shipping Act, the evaluation of dual rate contract systems, and the analysis of foreign and domestic tariff filings. Responsibility for the ongoing analysis of trade patterns, conference activities, self-policing contracts, pooling statements, and operating reports represent a substantial portion of the Bureau's duties.

During the past fiscal year, the Bureau of Ocean Commerce Regulation processed 373 section 15 agreements.

o The Bureau of Industry Economics gathers and analyzes financial, economic, environmental, and energy data required for the effective performance of the Commission's regulatory duties. The Bureau is functionally divided into four operating sections: the Offices of Economic, Financial, and Environmental Analysis, and the Office of Data Systems.

During the past fiscal year, the staff of the Office of Economic Analysis completed a study of the impact of ocean shipping on the U.S./Virgin Islands trade and also prepared Commission studies examining current and prospective trade conditions and shipping relationships in the North Atlantic, North Pacific and South American trades.

The Office of Financial Analysis also participated in the revision of Commission General Order 11, the Commission's new rules on reporting requirements for vessel operating and non-vessel-operating common carriers in the domestic offshore trades.

The Office of Environmental Analysis reviewed 113 formal docketed proceedings to determine which required energy and environmental assessment. It also examined 77 special dockets and 101 informal dockets.

- The Bureau of Enforcement systematically monitors the U.S. ocean commerce in an effort to curtail illegal rebating and other malpractices by carriers, shippers, consignees and other persons subject to the Shipping Act. Enforcement is carried out through the investigative functions of the FMC's District Offices, which are strategically located to cover maritime activities in areas surrounding our major port cities. As previously indicated, the Commission settled 56 rebating cases totalling $4,983,000 in civil monetary penalties for Fiscal Year 1979.
- The Bureau of Certification and Licensing certifies vessels under various Federal anti-pollution laws to ensure liability for spills of oil and hazardous substances. The Commission has jurisdiction over 26,000 vessels in its administration of section 311 of the Federal Water Pollution Control Act (FWPCA), the Trans-Alaska Pipeline Authorization Act (TAPAA), and the Outer Continental Shelf Lands Act Amendments of 1978 (OCSLA). The Bureau also has responsibility for the licensing and regulation of independent ocean freight forwarders and the certification of passenger vessels for liability incurred by casualties or non-performance of scheduled voyages.

  During Fiscal Year 1979, the Commission revoked 188 outstanding freight forwarder licenses and 59 applications were denied. At the end of the fiscal year, 1,359 forwarders held licenses issued by the Commission.

- The Office of Budget and Program Analysis is responsible for optimal utilization of physical, fiscal, and manpower resources. That office formulates recommendations and interprets budgetary policies and programs, prepares budget justifications for the Congress and the Office of Management and Budget, and administers systems of internal control for agency funds. The Office of Budget and Program Analysis is also responsible for the FMC's financial management policies, procedures, and planning, and performs ongoing evaluation of agency workload, productivity, and the effectiveness and efficiency of agency programs.
- The Division of Office Services provides most physical resources for the Commission and its field offices. Some of the services performed include printing, duplicating, mail room services, building services, safety programs, and records storage and retrieval.
- The Office of Personnel plans and administers personnel management programs including recruitment, placement, employee training and development, employee relations and equal employment opportunity.

In 1979, the Equal Employment Opportunity Commission ranked the Federal Maritime Commission seventh among all Federal agencies in employment of handicapped persons with targeted disabilities. The Office of Personnel has instituted a highly competitive system of recruiting and evaluating candidates for the Commission's attorney vacancies. The Office of Personnel also is responsible for administration of most provisions of the Senior Executive

Service (SES) program and other recent OPM initiatives aimed at improving the quality, diversity, training, and career development of government managers and supervisors. Finally, the Office of Personnel has begun converting to the OPM mandated Factor Evaluation System (FES) of position classification.

III. FISCAL YEAR 1979 IN REVIEW

Changing attitudes and values within both the U.S. government and the world shipping community exerted strong pressure on the Federal Maritime Commission's policies and activities during the past fiscal year.

The cost and effectiveness of regulatory agencies has become the focus of increasing scrutiny throughout the government, leading to a growing demand for regulatory reform. At the same time, recent political developments in world liner shipping have underscored the need for a different type of reform, aimed at revising U.S. shipping statutes to meet changing policies and practices in the world marketplace. These two powerful forces played a major role in shaping government regulation of ocean shipping during Fiscal Year 1979.

Clamor for reform of government regulation has been fueled by widespread allegations of bureaucratic delay and insensitivity, burdensome reporting requirements, and excessive paperwork among government agencies.

The Federal Maritime Commission has directly attacked the problem of regulatory inaction and unresponsiveness. During Fiscal Year 1978, the Commission issued a record 193 final decisions. During Fiscal Year 1979, the Commission exceeded that mark by rendering 252 final decisions. In the past two years, the FMC has decided more cases than in the ten previous years combined.

In August, 1977, the Commission had pending over 20 docketed proceedings that were over five years old. Today the FMC has none.

The Commission has taken steps to lessen the burden of government regulation in other ways not reflected in the agency's annual summary of decisions.

During Fiscal Year 1979, the FMC formed a committee to reduce paperwork burden that has now prepared final recommendations for the Chairman and the Comptroller General on areas where the agency can reduce unnecessary reporting requirements as well as cut down on internal memoranda and paper flow.

Throughout the year, draft Commission orders were consistently screened for clarity and plain English, and efforts to reduce burdensome regulations were exemplified by the rules for vessel and non-vessel operating common carrier reporting requirements in the domestic offshore trades published shortly after the end of the fiscal year.

The FMC also played an active role on the U.S. Regulatory Council, analyzing the cost/effectiveness of major Commission regulations for inclusion in the Council's biennial Regulatory Calendar.

The Commission has increased utilization of informal docket proceedings in which freight overcharge cases can be quickly decided without lengthy and expensive formal hearings. During Fiscal Years 1978 and 1979, the FMC decided over 200 special and informal docket proceedings resulting in $1,990,000 in refunds of freight charges to shippers, the consumers of ocean transportation services.

The agency continues to amend its Rules of Practice and Procedure to provide stricter internal deadlines for Commission decisions, limit needless interventions that serve to lengthen adjudicatory proceedings, reduce frivolous petitions for reconsideration and stay of Commission orders, and eliminate unnecessary and frequent requests for time extensions by parties to Commission proceedings, one of the greatest sources of regulatory delay.

The Commission adopted other measures to increase its responsiveness during the past year. The implementation of P.L. 95-475, the domestic rate law signed by President Carter in October, 1978, places a time limit on Commission consideration of rate proceedings in the domestic offshore trades and provides shippers with a means for obtaining refunds if rates are found to be unjust and unreasonable.

The FMC made widespread use of the 'Notice of Inquiry' throughout FY 79, a rulemaking-type proceeding specifically designed to solicit public comments on major maritime issues before the Commission has embarked on formal action. This format was used to solicit input on the possible impact of ratification of the United Nations Code of Liner Conduct (UNCTAD) on the U.S. ocean commerce, areas of maritime activity that should be exempted from the Commission's regulation, and the feasibility of extending neutral body self-policing to independent liner operators.

Finally, the transition to "government in the sunshine," inaugurated by Senator Lawton Chiles' Government-in-the-Sunshine Act in 1977, has nearly been completed. During 1977, the Commission considered 260 out of 360 agenda items, or 70%, in open session. That figure increased to slightly over 80% during Fiscal Year 1978. By the end of Fiscal Year 1979, the Commission was considering over 90% of all agenda items in open session, and the FMC should soon complete its transition to the principles of the new law, deciding only rare and exceptional cases behind closed doors.

The elimination of the Commission's regulatory backlog, in conjunction with its efforts to reduce unnecessarily burdensome regulation on the ocean shipping industry and increase public responsiveness, has dispelled the myth that all government agencies can be characterized by excess, secrecy, and inaction. All government agencies are accountable to the public they serve, and the FMC is aware of its responsibility to provide that public with prompt and responsive action.

The Commission has an equal responsibility to respond to recent commercial, political, and technological developments in the U.S. ocean commerce in order to maintain effective regulation of the liner shipping industry. The FMC has consequently played an active role in assisting the Congress in the development of maritime legislation addressing current problems in our foreign ocean commerce and participating in the preparation of maritime regulatory reform proposals designed to make sweeping revisions in the Shipping Act, 1916, in order to update its provisions to address current commercial needs.

Working with the Congress, the FMC took several important steps during the past fiscal year to promote efficiency, equity, and economy in our ocean commerce. During Fiscal Year 1978, the Congress passed amendments to the Intercoastal Shipping Act, 1933, and the President signed them into law as P.L. 95-475 on October 18, 1978. As previously noted, these amendments have greatly expedited Commission decisions in domestic rate cases and provided a basis for refunds to shippers in the U.S. domestic commerce who have paid rates found by the Commission to be unjust and unreasonable.

Recent events have shown that other governments have often been playing by different rules than our own. This has been especially true in liner shipping, where foreign government influence has increasingly been exerted over an historically commercial industry.

The Ocean Shipping Act of 1978 (P.L. 95-483), enacted by the Congress and signed by President Carter on October 18, 1978, has given the Commission new power to protect the U.S. ocean commerce from predatory rate practices by state-controlled carriers.

Before the so-called "Controlled Carrier Act" was enacted, state-controlled carriers posed a serious threat to privately-owned competitors such as the U.S.-flag merchant marine. It has been difficult for commercial steamship lines to compete with Eastern Bloc carriers which are backed by the resources of their governments' treasuries, seek political and even military objectives in their operations in the U.S. foreign commerce, and are not constrained by the traditional profit motive that is an integral part of our free enterprise system.

Since P.L. 95-483 became law, the Commission has identified and classified over twenty steamship lines as state-controlled carriers subject to the provisions of the new statute and has requested justification for the rates of five state-owned carriers. In the first major proceeding under the new statute, the Commission suspended over 300 individual rates of a state-controlled carrier as non-compensatory. Most of these rates were ultimately withdrawn by the carrier or disapproved by the Commission. Privately-owned steamship lines in the U.S. foreign commerce have indicated that predatory rate-cutting has begun to diminish since the enactment of the controlled carrier law.

Many new carriers have entered the U.S. ocean commerce, which has no entry restrictions, in recent years. The resultant overtonnaging has increased pressure on steamship lines to resort to deceptive trade practices, particularly secret kickbacks known as rebates, in order to compete for cargo.

During the past two years, Congressional support for strong anti-rebating legislation and the Commission's own efforts to curb malpractices in our foreign trades have begun to bring this problem under control.

The Shipping Act of 1979 Amendments (P.L. 96-25) were overwhelmingly passed by both Houses of Congress in June, 1979, and subsequently signed by President Carter. They increase civil monetary penalties for illegal rebating fivefold and authorize the Commission to assess or compromise these penalties. The Commission has previously exercised compromise authority but has never been empowered to assess its own penalties.

This new law also dramatically enhances our ability to curb illegal rebating by authorizing suspension of a carrier's tariffs for rebating or failing to cooperate with FMC investigations into malpractices. Tariff suspension effectively precludes an ocean common carrier from trading in the U.S. ocean commerce.

The Commission achieved 56 rebating settlements yielding $4,983,000 in civil monetary penalties during Fiscal Year 1979, a total which equalled nearly half its FY 79 budget (penalties collected are turned over to the U.S. Treasury). Sixteen of these fifty-six settlements were achieved with foreign-flag carriers and produced fines totalling nearly $3.5 million, despite the difficulty often encountered in overcoming foreign blocking statutes and obtaining sufficient documentation and disclosure of illegal rebating from carriers operating under foreign flags.

The FMC's 56 settlements during the past fiscal year compare favorably to the 34 anti-rebating cases settled during Fiscal Year 1978 and the three settlements achieved in Fiscal Year 1977, when the agency's campaign against illegal rebating was inaugurated.

This trend reflects an increasingly successful and vigorous enforcement program which promises to achieve even greater impact in the future due to tougher anti-rebating sanctions, recent court cases that have taken a hard line on illegal rebating activities, and the cumulative effect of increasing numbers of shipper and carrier disclosures. The Commission's goal of eventually eliminating unfair and deceptive trade practices from the U.S. foreign commerce has now become attainable.

Despite substantial progress in attacking specific problems in the U.S. foreign trade, the Commission has long recognized the need for comprehensive reform of U.S. maritime regulatory statutes, particularly the Shipping Act, 1916, in order to address recent developments in the world marketplace and reflect changing public attitudes toward the role of government in commercial activities.

In January, 1978, Chairman Daschbach created a Statutory Review Committee comprised of senior agency officials to conduct a thorough review and analysis of the Commission's governing statutes.

On July 19, 1979, the Commission submitted its draft Revised Shipping Act to the House Merchant Marine and Fisheries Committee, reflecting the broadest proposed revision of the Commission's statutory mandate in the agency's history.

The Commission's draft statute embodies its basic philosophy that government must tailor regulation to those areas where it is clearly necessary, effective, and productive and should minimize regulatory burdens imposed upon industry and the public.

The FMC's draft Revised Shipping Act vests the Commission with authority to exempt from its jurisdiction any maritime activity that it has determined no longer requires government regulation. The statute would create categories of presumptively approvable agreements, concurrently eliminating the need for many of the adjudicatory hearings now conducted by the Commission.

The FMC also believes that it should provide the maritime industry with predictability in its decision-making, and the draft Revised Shipping Act would establish the clear standards for approval of section 15 agreements that are essential to consistent regulation of ocean shipping.

The draft statute would grant complete antitrust immunity to concerted activities within the Commission's jurisdiction, serving four important functions: 1) eliminating the duplicative and burdensome imposition of antitrust regulation on maritime regulation; 2) creating a regulatory environment conducive to rationalization of ocean transportation services, which should increase efficiency, promote energy conservation, and reduce transportation costs in the U.S. foreign commerce; 3) permitting the formation of shippers' councils, thus increasing the competitiveness of U.S. importers and exporters in world markets; and 4) encouraging the development of intermodal agreements and fostering the growth of more efficient, economical, and innovative transportation services.

Finally, the Commission's proposal would allow greater flexibility in responding to the trend toward increasing government influence and the allocation of cargo shares on a national-flag basis in the world marketplace, encouraging comity with foreign trading partners by granting presumptive approvability to commercial arrangements evolving from government-to-government bilateral maritime agreements.

The FMC is also taking steps to re-align its internal organization to enable the agency to effectively carry out new statutory responsibilities and continue to expedite its decision-making process. The Special Task Force on Commission Organization, chaired by Vice Chairman Moakley, is completing recommendations for reorganization of existing agency functions to ensure that new statutory objectives are achieved with the greatest possible efficiency, effectiveness, and economy. It is expected that these recommendations will be implemented during 1980.

In addition to its regulation of ocean carrier ratemaking, the Commission has also been vested with collateral obligations to certify passenger vessels to ensure that their operators have sufficient financial resources to cover claims for casualties or non-performance of scheduled cruises and, more recently, to provide certification of vessels to ensure financial responsibility for pollution by oil and hazardous substances.

During the past fiscal year, the Commission substantially completed its recertification of over 24,000 vessels under the broadened liability provisions of new water pollution statutes. The Commission also maintained its perfect record for its passenger vessel certification program. Since the FMC was vested with authority for administering P.L. 89-777, no passenger has lost a single cent because vessel operators were unable to meet the financial obligations required by the FMC.

Considerable activity also took place in the Commission's regulation of the independent ocean freight forwarding industry. The FMC began imposing tougher sanctions on forwarders and applicants for forwarding

licenses who violated Commission regulations designed to protect shippers, who must entrust large sums of money to forwarders, from unscrupulous trade practices and irresponsible fiscal conduct.

More importantly, the Commission began the preparation of new rules which would provide the first substantive changes in FMC regulation of the forwarding industry in eighteen years.

Despite fluctuations in popular sentiment regarding the proper role of government in commercial activities, regulation of the ocean common carrier industry remains a necessary prerequisite for efficiency, stability, and equity in the U.S. liner trades.

However, current pressures for regulatory change have served to focus the Commission's efforts to develop regulations that will achieve maximum public and commercial benefits at minimum cost. This aspiration can be realized by meeting the following goals:

1) Creating a regulatory environment conducive to achieving national economic objectives;
2) Mandating continued improvement in providing the maritime industry and the public with consistent, timely and responsive actions and decisions;
3) Limiting regulation to those areas where it is clearly necessary, effective, and productive; and
4) Establishing clear parameters of regulation within which the maritime industry can operate with optimal commercial freedom, flexibility, and success.

The Commission is proud of its accomplishments during the past fiscal year because they have been achieved while maintaining a high degree of cost-consciousness and a program of fiscal austerity. The Commission expects even greater progress and productivity during the coming year, and it remains committed to work with the Congress to ensure the continued exercise of financially responsible and commercially responsive regulation.

IV. FOREIGN COMMERCE

Agreements

Under section 15 of the Shipping Act, 1916, the Commission is responsible for evaluation, approval, and continued surveillance of agreements between parties subject to the Act, including the application of specific criteria in evaluating an agreement's approvability. The Commission's consideration of these agreements is perhaps its most visible activity. The anticompetitive effect of any agreement received by the Commission must be weighed against its potential benefits.

During Fiscal Year 1979, 373 agreements were processed under section 15. Of these agreements, 147 were between common carriers by water in the foreign commerce, 140 were terminal agreements, 61 were labor management agreements and 25 involved activities in the domestic offshore trades.

The surveillance of approved agreements involves a constant review of operations under that agreement and any subsequent modifications to determine whether it continues to meet the requirements of section 15 and the applicable General Orders of the Commission. Agreements must conform to the latest Commission regulations and court decisions. Several conference agreements that remain active were originally filed with the Commission nearly sixty years ago and have been modified as many as 100 times or more.

The Commission analyzes reports filed by parties to agreements to ensure that the parties are not engaged in activities beyond the scope approved by the Commission. The impact of these activities upon competit and the shipping public is also measured on an ongoing basis for signific

changes or trends. Data regarding the Commission's processing of agreement reports during Fiscal Year 1979, categorized by type of report, appears in Appendix D.

Tariffs

All carriers and conferences who maintained tariffs on file with the Commission were required to update or re-publish their tariffs to meet the standards imposed by the Commission's new General Order 13 (46 CFR 536) effective January 1, 1979. The Commission experienced a large influx of new and revised tariffs filed in order to comply with G.O. 13. Many other tariffs were no longer being utilized, and in some cases carriers failed to respond to the new filing and format requirements. An order to show cause why tariffs should not be cancelled if they were inactive or the carrier had failed to comply with the new regulations was issued. It is estimated that approximately 450 tariffs will be removed from the Commission's files when the proceeding is concluded.

Terminals

Marine terminals operated by private parties or state or local governments are currently subject to the Commission's jurisdiction if they provide services in connection with common carriers by water. Agreements entered into between terminal operators and other persons subject to the Shipping Act (e.g., for the lease of property, dock or berthing space, or for services to be performed for carriers) may require the approval of the Commission under section 15 of the Act.

The advent and subsequent rapid growth of containerization and intermodalism have generated numerous agreements between terminal operators and carriers. In an effort to reduce regulatory burden upon the industry, the Commission decided to review certain types of terminal

agreements to determine whether they may be exempted from the FMC's regulation under section 35 of the Act. This review focused particularly upon nondiscriminatory, nonexclusive and non-preferential leases of real terminal property where all users are charged equal terms based upon prevailing tariff charges, and terminal leases or arrangements between parties otherwise subject to the Commission's jurisdiction solely involving facilities located in foreign countries. These categories of agreements were included in the Commission's Docket No. 79-18, Exemption From Provisions of the Shipping Act, 1916, and the Intercoastal Shipping Act, 1933, which was initiated on March 22, 1979 in order to solicit comments on various maritime activities that should be exempted from the Commission's jurisdiction.

Significant Commission Activities Affecting The U.S. Foreign Commerce

Bunker Surcharges

Oil prices skyrocketed to record levels in 1979 and carriers were faced with extraordinary fuel price increases and unpredictable shortages in the worldwide supply of bunker fuel.

As a result, carriers in all United States trades requested special permission to advance the effective date of bunker surcharges statutorily filed on 30-and 90-day notices as required under sections 18(b) and 14(b), respectively, of the Shipping Act, 1916. The Commission decided to accept dual rate bunker surcharge filings which provide for a 30-day notice period, while unanimously adopting motions initiating rulemaking proceedings in Docket No. 79-46: Expedited Surcharges for Recovery of

Carriers' Increased Fuel Costs in the Foreign Commerce of the United States and Docket No. 79-58: Dual Rate Contract Systems in the Foreign Commerce of the United States.

In Docket No. 79-46, the Commission decided that ocean carrier ratemaking conferences (there are nearly fifty) with contract rate systems were within the law in applying bunker fuel surcharges on less than a 90-day notice. It was decided that the additional charges were beyond the carriers' control. Consideration was also given to a rulemaking which would modify Article 14 of the Uniform Merchant's Contract to specify the circumstances and justification required for a bunker surcharge imposed on shortened notice.

Currency Surcharges

Carriers and conferences continue to publish currency surcharges when they feel that they are warranted. Most currency surcharges are published by carriers in the U.S./Europe and U.S./Far East trades. One of the Commission's regulatory responsibilities is to ensure that all surcharges which allegedly result from a particular economic condition are proportionally related to the added expense incurred by the carrier or conference so that transportation costs are not increased to a level where international trade is impeded.

The Commission is considering a proposed rulemaking which would establish procedures and tariff filing requirements under which carriers and conferences in the U.S. foreign commerce may publish and file currency adjustment factors in their ocean freight tariffs on not less than

15 days' notice in response to changes in the value of the tariff currency used. The proposed rule, which would replace the FMC's General Order 19, would establish a simplified and uniform procedure, applicable to all carriers and conferences, for the publication and filing of currency adjustment factors. Existing Commission rules involving currency surcharge increases on shortened notice apply only to dual rate contracts and have not been utilized.

Self-Policing

The final rule in Docket No. 73-64: Additional Provisions and Reporting Requirements Applicable to Self-Policing Systems Under General Order 7, became effective on January 1, 1979. The rule amends the self-policing provisions contained in the Commission's General Order 7 and provides for more effective self-policing by conference and other ratemaking agreements through the use of neutral body policing entities.

All conference agreements and other ratemaking agreements approved under section 15 of the Shipping Act, 1916 (except two-party ratemaking agreements) are subject to the requirements of revised General Order 7. The new rule mandates that conference and other ratemaking agreements shall contain provisions describing a system for self-policing of members through an independent policing authority, including self-initiated investigations, as well as a more precise description of self-policing activities in semi-annual reports filed with the Commission. Information obtained by neutral self-policing entities must be available to the Commission and conference/rate agreements must contain certain

specific provisions describing the investigative and adjudicatory process involved in self-policing activities.

On September 30, 1979, there were 93 conference or other ratemaking groups subject to the requirements of G.O. 7. As of that date, 23 agreements were in full compliance with the Commission's self-policing rules, while 30 agreements filed amendments which have either been conditionally approved or are pending Commission action. Earlier this year, 16 agreements were found to be in total non-compliance with the Commission's rules and were served with orders to show cause why their agreement should not be disapproved for failure to be adequately policed under the requirements of section 15. Parties to several of these agreements have challenged the validity of certain provisions of the new self-policing rules in the U.S. Court of Appeals for the District of Columbia Circuit.

The Commission's staff has implemented a program to monitor compliance with the reporting requirements of revised G.O. 7. All but five agreements have submitted the required reports to date.

The self-policing rules permit an exemption from the independent policing authority requirement to allow officers or employees of the ratemaking agreement to act as head of or to be assigned to duties under the policing authority, if a convincing showing is made that such person or persons are not otherwise affiliated with any conference member, that an independent policing authority would constitute an undue financial burden, and that the trade involved has been free of malpractices for five years.

Audit Activity

The impact of concerted activity by ocean carriers upon their competitors, shippers, and the general public must be monitored to determine (1) whether the activity of the parties is conducted within the paramaters of applicable section 15 agreements approved by the Commission or other agency regulations; (2) whether the authority to take various actions conferred by approval of section 15 agreements has been utilized as contemplated by the Commission at the time of approval; (3) whether continued approval of the agreement in its present form is consistent with applicable Commission decisions and current policies; and (4) whether the activity of the participants, pursuant to the approved agreement, remains compatible with the criteria of approvability embodied in section 15 of the Act.

The Commission's staff has formulated a program of audit activity to cover specific target areas.

The general scope of an audit covers an analysis of the antitrust aspects of the agreement, a review of the operations of the conference's offices, a check of conference compliance with the terms of approved agreements and Commission General Orders, a review for possible malpractices, and an audit report to the Commission.

During Fiscal Year 1979, the staff began an Australian Trade audit involving six conference/rate agreements and one "discussion" agreement. Prior to initiation of the audit, meetings or briefings regarding its purpose and scope were held with representatives of the conference/rate agreements involved.

The audit of one specific conference activity in all trades - absorption practices - began by identifying agreement provisions which involve conference regulation or prohibition of absorptions by common carriers in the U.S. foreign commerce. Twenty-two letters were directed to conference/rate agreement representatives asking each to report on the absorption practices conducted under the agreement they represent.

Correspondence has also been initiated with two inactive freight forwarder conferences for purposes of determining whether or not continued approval of the agreements is warranted.

Monitoring of Controlled Carriers

When the Ocean Shipping Act of 1978 (P.L. 95-483) was enacted and signed into law on October 18, 1978, the Commission received a mandate to eliminate the predatory pricing practices of state-controlled carriers in the U.S. foreign commerce.

The staff's implementation of the new law began with the identification and classification of all state-controlled carriers operating in the foreign commerce of the United States. The Commission issued 78 orders under the authority of section 21 of the Shipping Act seeking information regarding the registry, ownership, and control of certain common carriers operating in our foreign commerce. On the basis of the responses received and other information independently developed by the Commission, over 20 steamship lines had been classified as state-controlled carriers

subject to the provisions of P.L. 95-483 by the end of Fiscal Year 1979. As new carriers enter the foreign commerce of the United States, the service of additional section 21 Orders will be carried out as needed.

The Commission also monitors changes of ownership, registry, and control of carriers, their entry and exit from conferences, and the opening of rates within conferences to which controlled carriers belong in order to keep stay apprised of those carriers which may become subject to the provisions of P.L. 95-483 and those which may become totally or partially exempt.

Section 18(c)(3) of the Act, which embodies the provisions of P.L. 95-483, authorizes the Commission to request from any controlled carrier a statement of justification which details the need and purpose of the carriers' tariff rates, charges, classifications, rules or regulations being applied in a particular trade. Utilizing this authority, the Commission has initiated five rate justification inquiries for the purpose of determining whether the rates, charges, and practices of certain controlled carriers are just and reasonable in accordance with the criteria set forth in section 18(c)(2) of the Act.

One of these rate justification requests resulted in the issuance of a March 2, 1979 Order of Suspension and To Show Cause served on the Far Eastern Shipping Company (FESCO) in Docket No. 79-10: Rates of Far Eastern Shipping Company, in which FESCO was ordered to show cause why over 300 of its commodity freight rates in the U.S./Australia-New Zealand, Philippines/United States, and U.S./Far East trades should not be disapprove by the Commission. The affected rates were suspended effective May 7, 1979, for a six-month period while the Commission analyzed FESCO's

justification in order to determine whether they should be disapproved. Most of FESCO's three hundred and five original rates under suspension have subsequently been disapproved.

One of the most significant restrictions on the activities of controlled carriers contained in P.L. 95-483 is the provision that their rates and charges shall not, without special permission of the Commission, become effective within less than 30 days following the date of filing with the Commission. As a consequence of this requirement, thirty-three special permission applications from controlled carriers were received and processed by the Commission's staff during Fiscal Year 1979. Twenty-three of those were granted, five were denied, four became moot during processing and one was withdrawn.

As an adjunct to the administration of the Controlled Carrier Act, proposed rules incorporating the strict tariff filing provisions of the new law were drafted for inclusion in the Commission's General Order 13, Publishing and Filing Tariffs By Common Carriers In The Foreign Commerce Of The United States 46 CFR 536. The public will be invited to comment on this rulemaking prior to final action by the Commission.

Finally, the Commission issued a section 21 order to the Soviet state-controlled carrier Baltic Shipping Company on April 17, 1978, requesting documents as part of the FMC's investigation into the carrier's rates and practices (Docket No. 78-36: Baltic Shipping Company - Rates and Practices in the U.S. Gulf Coast/North Europe Trade). Although Baltic furnished the FMC with some of the requested information, the Commission deemed their submission inadequate and subsequently served

the carrier with final Order and Notice of Default on January 17, 1979, finding Baltic to be in violation of section 21 of the Shipping Act.

As a result of Baltic's continuing non-compliance, the FMC voted on January 29, 1979 to adopt a rule under section 19 of the Merchant Marine Act, 1920, to suspend the carrier's tariffs. Although Baltic furnished the FMC with some additional documentation prior to the scheduled April 26, 1979 implementation of the section 19 rules, the Commission did not consider this submission sufficient to delay the effective date of its action.

Prior to actual implementation of the rules suspending Baltic's tariffs, Baltic's motion for stay of the Commission's action was granted by the D.C. Court of Appeals. In lieu of protracted litigation, which had been joined by the U.S. Departments of State and Justice on behalf of the Soviet carrier, the Commission's Office of General Counsel and Baltic Shipping Company executed a settlement agreement on May 23, 1979.

Under the terms of that settlement agreement, Baltic agreed to submit to the FMC information responsive to the previously unanswered demands of the section 21 order.

On October 10, 1979, the Federal Maritime Commission accepted Baltic's submissions as constituting compliance with the outstanding requirements of its section 21 order and withdrew its section 19 rule and its notice of default of the section 21 order.

The Commission's staff was subsequently directed to analyze Baltic's submissions to determine the type and extent of possible Shipping Act violations they may reveal. It is expected that the staff will report its findings to the Commission early in 1980, at which time the Commission will determine whatever penalties may be appropriate and the most feasible means of assessing them.

Collective Bargaining Agreements

Fiscal Year 1979 marked the first full year of Commission evaluation of selected maritime collective bargaining agreements pursuant to the Supreme Court's March 1, 1978 decision in Federal Maritime Commission v. Pacific Maritime Association (435 U.S. 40). In the PMA case, the Court determined that collective bargaining agreements as a class are not categorically exempt from the filing requirements of section 15 of the Shipping Act, 1916, stating that, "The Commission is the public arbiter of competition in the shipping industry."

In view of this decision, the Commission published an Advance Notice of Proposed Rulemaking in Docket No. 78-11, Exemption of Certain Collective Bargaining Agreements, on April 19, 1978. The notice solicited public comment on the nature, scope and operation of a rule to exempt certain collective bargaining agreements from the pre-implementation approval requirements of section 15 of the Shipping Act or to grant interim or conditional approval of such agreements under that section. However, because renegotiation of several major maritime collective

bargaining agreements was imminent at the time of the advance notice, it became necessary to clearly express Commission policy and establish procedures to enable industry compliance pending the adoption of a final rule in the proceeding.

On June 12, 1978, the Commission served an Interim Policy Statement -- Collective Bargaining Agreements (46 CFR 530.9), which established procedures for interim approval and/or temporary exemption of collective bargaining agreements in the maritime industry becoming effective after June 9, 1978.

The Commission's program to handle collective bargaining agreements consists of the following activities: 1) processing collective bargaining agreements filed after June 9, 1978 under 46 CFR 530.9; and 2) preparation of a proposed rule in Docket No. 78-11.

Under the first set of procedures, 137 "post-June 9" collective bargaining agreements, amendments, and supplemental agreements were filed during Fiscal Year 1979. Action was completed on 61 collective bargaining matters by September 30, 1979, an increase of approximately 79 percent over completions for the preceding year.

A proposed rule in Docket No. 78-11 was being drafted at the conclusion of the fiscal year, and the Commission was evaluating appropriate regulatory or legislative action to be taken in the first half of Fiscal Year 1980 to clearly define the FMC's jurisdiction over collective bargaining agreements and minimize the regulatory burden on participants in the negotiating process.

Container Leasing and Container Supply Fact Finding Investigation

On June 12, 1979, the Commission initiated Fact Finding Investigation No. 11 to examine carrier practices regarding the supply of cargo containers to the shipping community and the use of leased containers.

Since the advent of containerized shipping in the foreign trades of the United States almost 20 years ago, the problems of supplying containers to shippers have resulted in the establishment of various supply systems. Container pools of carrier equipment and the so-called "neutral pools" of containers owned by leasing companies exist at traffic centers and near the facilities of large shippers. Ocean carriers maintain interchange agreements with inland carriers to facilitate the movement of carrier equipment to and from ports.

While this arrangement appears satisfactory for large shippers, the Commission needs additional information about the economics involved in container leasing and supply systems. Some shippers have complained that container equipment has been unavailable to them and informal allegations of preferential treatment or discrimination have occasionally been received. Container leasing companies have complained on at least three occasions when conferences attempted to regulate the use of leased containers by their membership.

The fact finding investigation is designed to solicit input by all parties who are affected by container supply, particularly the thousands of shippers and consignees who ultimately bear the costs.

Intermodalism

Intermodal transportation involves the movement of goods over a route involving two or more modes of transportation. Intermodal tariffs, reflecting rates and charges for intermodal transportation services, are filed with both the Federal Maritime Commission and the Interstate Commerce Commission. Some jurisdictional conflicts have arisen from inconsistencies and conflicts between the laws administered by the two agencies. The Shipping Act, 1916 and the Interstate Commerce Act of 1887 never contemplated the need for uniform regulation of this relatively recent transportation innovation.

The Interagency Committee on Intermodal Cargo (ICIC) is comprised of representatives from the FMC, ICC, the Civil Aeronautics Board and the Department of Transportation who work under the guidance of the committee's Policy Review Board. The ICIC's current projects include the development of a model intermodal bill of lading and a study to determine the feasibility of uniform interagency tariff filing regulations. The uniform interagency rules program currently involves a comparison of the rules of the ICC with those of the FMC to determine where inconsistencies can be resolved.

At the end of Fiscal Year 1979, 41 conference and rate agreements had intermodal authority. Of these 41 agreements, 30 have implemented intermodal authority with the filing of tariffs. Conference cargo statistics show continued dramatic increases in the carriage of cargo by intermodal movements, particularly minibridge service, compared to carriage by all-water service.

Pooling and Equal Access Agreements

There were 19 active pooling agreements in effect at the end of Fiscal Year 1979. Bilateral pooling and equal access cargo sharing agreements generally reflect commercial and/or governmental accommodations designed to reduce the impact of restrictive cargo preference laws, import fees and quotas, and other impediments to market entry imposed by some of our trading partners. Continuous Commission surveillance to monitor the effect on service and competition between carrier participants is required.

Such agreements are common in the Latin American trades and the 15 pooling and equal access agreements in this commerce affect trade patterns between the United States and Argentina, Brazil, Chile, Colombia, and Peru. Twelve provide for cargo allocations of 50 percent to U.S.-flag carriers and 50 percent to the reciprocal national-flag carriers of the trading partner. The remaining three provide for allocations of 40 percent to U.S.-flag carriers, 40 percent to the carriers of the trading partner, and 20 percent to third-flag steamship lines.

Pools designed primarily to achieve basic economic efficiencies are being established in several trades. The Israel/U.S.A. Pool (No. 9233) has been in effect since December 22, 1966, and the U.S. Pacific Coast/Japan Pool (No. 10116) has been in effect since March 5, 1976. During the past year, the Italy/U.S.A./North Atlantic Pool (No. 10286) was approved on April 2, 1979, and the U.S. Atlantic Coast/Japan Pool (No. 10274) was approved October 1, 1979. The Calcutta and Bangladesh/U.S.A.

Pool (No. 10333-1) was pending before the Commission at the end of FY 79 and has subsequently been approved. Such pools should result in maximum utilization of the fuel, equipment, and vessels of the member lines, leading to increased fuel conservation, greater efficiency, and reduced transportation costs.

Nonexclusive Transshipment Agreements

Nonexclusive transshipment agreements are exempted by General Order 23 from the requirements of section 15. These agreements do not prohibit either carrier involved from entering into similar agreements with other carriers. The parties involved, however, must file these agreements as outlined in the General Order, and the applicable tariff must contain language required by the order. The filings are processed by the Commission staff and do not require full Commission review.

ANALYSIS BY TRADES

U.S. North Atlantic/Europe Trade

During Fiscal Year 1979 the North Atlantic trade continued to be dominated by the "big seven" containership operators: Atlantic Container Lines, Dart Containerline, Farrell Lines, Hapag-Lloyd, Sea-Land, Seatrain, and U.S. Lines. All seven are members of the Continental North Atlantic Westbound Freight Conference (CNAWFC). During 1979 many of these carriers announced changes in their vessel fleet which placed additional capacity in the trade. In addition to capacity changes made by the "big seven,"

smaller non-conference carriers in the trade have also been increasing their capacity through larger vessels, additional port calls, or additional sailings. One of the principal non-conference carriers involved in this expansion has been Trans Freight Lines (TFL).

The impact of the substantial capacity increases initiated and planned by the "big seven" and TFL will have a major impact on the trade, although the actual effect is difficult to assess without projecting the demand for this capacity. A study released last year by the Maritime Administration projected a capacity increase in the North Atlantic/South Atlantic-Northern Europe trade of 323,000 TEU's by 1981, representing a 42 percent increase in actual capacity employed in the trade. It is unlikely that cargo growth will be as substantial as the available supply.

Since the end of Fiscal Year 1979, the impact of the additional capacity in the North Atlantic trade has begun to create an imbalance of supply and demand. In early 1980, Seatrain withdrew from CNAWFC. It has recently been alleged that the trade has been exhibiting over 20 percent excess capacity and this, combined with the impact that TFL has had on the market, has resulted in what many are calling the first rate war in the North Atlantic since 1970.

U.S. North Pacific/Far East Trade

The North Pacific trade consists primarily of the liner trade between the U.S. West Coast and Japan, Korea, Taiwan and Hong Kong, which accounted for 82 percent of all U.S. imports from the Far

East during the period 1971-1978. During this period, U.S. imports from the Far East grew at a respectable 8.4 percent annual growth rate, which encouraged many liner operators to add additional tonnage to existing services or to initiate new services to the region. In 1978, however, this growth declined sharply to a 3.2 percent rate.

This slowdown was attributable to many factors, including the weakening of the U.S. dollar, which made imports relatively more expensive, the series of Orderly Marketing Agreements (quotas) which have been placed on items such as televisions, textiles and shoes, and other U.S. Government efforts to reduce the growth rate of exports from Asian trading partners to the United States.

In contrast to the modest increase of 3.2 percent in liner imports, liner capacity increased at an annual rate of approximately 11 percent in 1978. As a result, utilization rates (full containers per total container slots provided) fell from levels near 100 percent to the 80 to 85 percent range. In late 1979 some carriers were even reporting utilization rates well under 80 percent.

High levels of capacity utilization are critical in the ocean shipping industry, where a large proportion of the costs are fixed. It is therefore not surprising that financial difficulties have surfaced in the Pacific trades; States Steamship Co. went bankrupt in December, 1978 and reports of poor earnings by other carriers have been widespread.

New entrants in this trade during Fiscal Year 1979 include Hanjin Container Line (Korean), KMTC/NYK (a Korean/Japanese consortium), Lykes Brothers Steamship Line (U.S.), Ro/Lo Pacific Line (French and Scandinavian) and CSC Line (U.S.). These carriers have added over 100,000 TEU's to the estimated 1,100,000 TEU's already existing in the trade.

In addition, established carriers such as American President Lines (U.S.), Sea-Land Service, Inc. (U.S.), Zim Israel Navigation Company (Israel), Barber Blue Sea (Scandinavian), and FESCO (USSR) substantially increased the capacity offered during the past fiscal year.

The past fiscal year proved difficult for most liner operators in the North Pacific trade, and there are strong indications that some major steamship lines will exit the North Pacific conferences and further financial and rate instability will occur during 1980.

U.S./South American Trade

South American economic development was characterized by a moderate growth rate and relatively high levels of inflation during the past fiscal year. Increased trade liberalization appears prevalent among most South American nations, and liner trade is consequently expected to increase.

Government involvement plays an extensive role in the maritime industries of most South American nations. Government ownership, assistance, and cargo sharing are the principal manifestations of this

involvement. There is substantial capacity available to transport cargo in the South American trades, but containerization has been slow to develop and most of the available capacity is therefore in the form of breakbulk vessels.

In its South American Trade Study, the Commission's staff examined rate increases in the trade in an attempt to ascertain a correlation between the rate at which ocean transportation costs increased and the prevalence of bilateralism. Rate increases in the heavily bilateralized South American trades were generally found to be lower than those experienced in other trades.

Major Commission Decisions and Rulemaking

The Commission issued over two hundred decisions affecting the U.S. foreign commerce during FY 79. Some of the major or most representative decisions included the following:

Docket Nos. 78-51 and 78-52 -- Agreement No. 10349 - A Cargo Revenue Pooling and Sailing Agreement - Argentina/United States Atlantic Trade and Agreement No. 10346 - A Cargo Revenue Pooling and Sailing Agreement - Argentina/United States Gulf Coast Trade. The Commission approved pooling agreements in the Argentina/U.S. Atlantic and Argentina/U.S. Gulf trades on the condition that the shares allocated to third-flag carriers in the trade be open for competition.

Docket No. 76-14 -- Japan/U.S. Pacific Coast Pooling Agreement (Agreement No. 10116-3). The Commission approved a revenue and partial cost-sharing agreement among six Japanese-flag containership operators for an additional 18 months. The six participating carriers demonstrated that the agreement would contribute to greater stability in the trade, help curtail excess tonnage and would not be employed in a predatory fashion against competing carriers. The fact that the pool participants would separately market their services under individual trade names was found to be an important pro-competitive feature of the arrangement.

Docket No. 74-12 -- Agreement No. 9939-1 (Modification and Extension of a Pooling, Sailing, and Equal Access Agreement to Government-Controlled Cargo). The Commission approved for three years a bilateral agreement between Delta Steamship Lines, Inc., and Compania Peruana de Vapores providing for equal access to government-controlled cargo in the trade between Peru and U.S. West Coast ports.

Docket No. 74-5 -- Agreement No. 10066 - Cooperative Working Arrangement. The FMC found that an agreement between Delta Steamship Lines, Inc. and Flota Mercante Grancolombiana S.A. providing equal access to government-controlled cargo in the United States/Columbia trade was in the public interest and ordered it conditionally approved in order to maintain international harmony and to avoid potential international commercial conflict resulting from disruptive retaliatory action.

Docket No. 77-43 -- Agreement No. 10286, Italy-U.S.A. North Atlantic Pool Agreement. This reverse pooling agreement, which covers all cargo carried westbound from Italian ports to U.S. Atlantic ports north of Cape Hatteras, was approved by the Commission subject to several minor modifications. Proponents contended that the agreement would alleviate excessive overtonnaging and widespread rebating in the trade.

Docket No. 77-50 -- North Carolina Ports Authority v. Dart Containerline, Limited. The FMC cancelled an ocean carrier's tariff offering intermodal transportation of containerized tobacco products from Wilmington, North Carolina to European destinations via Norfolk, Virginia. The Commission found that the use of an intermodal through rate to absorb the full cost of motor carrier transportation between the adjacent container ports of Wilmington, North Carolina and Norfolk, Virginia, was an unjust and unreasonable device in violation of sections 16 and 17 of the Shipping Act, 1916. This determination was reached because the diverting carrier makes no vessel calls at Wilmington, the containerized cargo in question is first brought to Wilmington from inland locations at shipper expense, facilities available at Wilmington can adequately accommodate the diverted cargo, and no transportation efficiencies were found to be created by the diversion.

Docket No. 77-7 -- Combi Line Joint Service (Agreement Nos. 9929-2 et al.) The Commission approved a cross-charter arrangement and two joint service arrangements in the U.S. Gulf/Europe trades on the condition that the three European-flag carriers involved limit their combined containerized cargo carryings to 800 TEU's per week in each direction (averaged quarterly). Approval was based upon a finding by the Commission majority that the arrangement would increase carrier competition in comparison with existing agreements between the parties, continue useful LASH and container vessel services at improved levels of efficiency, and avoid overtonnaging the trade. A conventional vessel (breakbulk) service between two of the three parties was disapproved, and a second such service was limited to one vessel call per week.

Docket No. 77-4 -- Euro-Pacific Joint Service (Agreement Nos. 9902-3, et al.) The agreement, involving a joint service venture between European-flag common carriers seeking to operate modern containerships in the U.S. Pacific Coast/Europe trade under a common trade name through 1982, was approved by the Commission on the condition that only two of the three carriers seeking approval of the agreement participate in the proposed joint service and that the joint service carry no more than 800 twenty-foot container equivalents (TEU's) of cargo every ten days (averaged quarterly). The Commission found that the parties had failed to demonstrate the necessity for the third carrier's participation in the joint service and that the same transportation and other public benefits would flow from the use in the joint service of the containerships of the other two carriers, which had previously operated independently.

Docket No. 76-34 -- Tariff FMC 6, Rule 22 of the Continental North Atlantic Westbound Freight Conference; and Docket No. 76-36 Tariff Rules Concertedly Published Defining Practices of Conferences and Rate Agreement Members Regarding the Acceptance and Responsibility for Shipper-Owned or Shipper-Leased Trailers or Containers. The Commission held that tariff rules which defined shipper-owned or leased trailers/containers and established a uniform conference policy regarding these trailers/containers were within the scope of the conferences' previously approved section 15 agreements.

Docket No. 74-41 -- Agreement Nos. 8200 et al. between the Pacific Westbound Conference and the Far East Conference. The subject agreement would have extended an interconference ratemaking arrangement applicable to port-to-port transportation in the U.S./Far East trades. The agreement was found to provide insufficient added stability to the trade to justify its anticompetitive features and was disapproved by the Commission.

Docket No. 72-35 -- Pacific Westbound Conference - Investigation of Rates, Rules and Practices Pertaining to the Movement of Wastepaper and Woodpulp from United States West Coast Ports to Ports in Japan, the Philippines, Taiwan, Korea, South Vietnam and Thailand. The Commission determined that the Pacific Westbound Conference's ratemaking practices concerning woodpulp and wastepaper did not violate sections 15, 16 First, 17 or 18(b)(5) of the Shipping Act, 1916.

Docket No. 71-29 -- Baton Rouge Marine Contracts v. Cargill, Incorporated. The Commission found Cargill's charge to stevedores for the use of Cargill's services and facilities at its grain elevator at Port Allen, Louisiana, to be just and reasonable within the meaning of section 17 of the Act and in relation to the services rendered.

Docket No. 78-28 -- International Trade and Development, Inc. and Robert H. Wall, Inc. v. Sentinel Line and Anchor Shipping Corporation. It was determined that a simple breach of the contract of carriage will not establish a violation of sections 16 or 17 of the Shipping Act.

Docket No. 74-53 -- Agreement No. 17-34 -- Application of the Far East Conference for Intermodal Authority. The Commission disapproved an agreement which would extend the ratemaking authority of the Far East Conference to include inland points in the United States and the Far East. The Commission found the record devoid of any evidence of trade conditions or other need for the arrangement that would serve to outweigh its anticompetitive features. In disapproving the agreement, the Commission held that the extension of existing port-to-port conference ratemaking authority is not presumptively approvable.

Docket No. 76-63 -- Rulemaking Concerning the Filing of Section 15 Agreements - Filing of Agreements by Common Carriers and Other Persons Subject to the Shipping Act, 1916, is pending Commission action. The Commission earlier gave notice that it proposed to establish standardized

procedures governing the filing and disposition of agreements submitted to the Commission for approval pursuant to section 15 of the Shipping Act, 1916. On June 18, 1979, The Commission further revised the rule and invited further comment. The Commission's intent is to regularize the procedures employed in the processing of section 15 agreements, to expedite the disposition of agreements submitted for approval, and to improve the quality of information provided to the Commission in support of such agreements without creating an unnecessary regulatory burden upon the industry. The Commission staff is presently reviewing the comments submitted on the revised proposed rule.

Docket No. 79-46 -- Expedited Surcharges For Recovery of Carriers' Increased Fuel Costs in the Foreign Commerce of the United States. After a five-month investigation, the Commission determined that the dramatic rise in fuel oil prices, the severe reduction in fuel supply, and the OPEC pricing decisions constituted abnormal conditions not reasonably foreseeable and not subject to the control of carriers in the U.S. foreign commerce. After finding that these conditions impaired the ability of carriers to carry out their obligations under the Uniform Merchant's Contract, the Commission held that the imposition of bunker surcharges applicable to cargo carried under dual rate contracts on less than ninety days' notice was lawful under section 14(b) of the Shipping Act, 1916. This decision was issued on October 16, 1979, shortly after the end of the reporting period.

Docket No. 79-50 -- Notice of Inquiry Regarding the United Nations Convention on Code of Conduct for Liner Conferences. The Commission solicited comments from the maritime industry and the public on the transportation and economic consequences that implementation of the Liner Code would have on the U.S. foreign commerce. It is expected that most major maritime nations, with the exception of the United States, will have ratified or acceded to the Code by 1980 and it will subsequently be put into effect. The inquiry focused particularly upon those provisions relating to cargo allocation, shippers' councils, resolution of shipper/carrier disputes through voluntary international arbitration, and proposed intervals between general rate increases. Comments were compiled, summarized, and transmitted to the Congress for its consideration.

Docket No. 79-65 -- Certification of Company Policies and Efforts to Combat Rebating in the Foreign Commerce of the United States. The Commission issued proposed rules intended to implement the provisions of the Shipping Act Amendments of 1979 (P.L. 96-25) which mandate that the FMC require the Chief Executive Officer of every vessel operating common carrier by water in the foreign commerce of the United States to file periodic certification attesting to company policies and efforts to combat rebating. Discretionary authority is given to the Commission to require similar certification from any shipper, consignor, consignee, forwarder, broker, other carrier or other person subject to the Shipping Act, 1916. Fifteen comments were received from a total of twenty-nine

commentators. Shortly after the end of the reporting period, the Commission promulgated final rules implementing these provisions.

Docket No. 79-66 -- Compromise, Assessment, Settlement and Collection of Civil Penalties Under The Shipping Act, 1916 and The Intercoastal Shipping Act, 1933 (Amended). The Commission also issued interim regulations to implement those provisions of P.L. 96-25 which authorize the FMC to assess or compromise all civil penalties provided in the Shipping Act Amendments of 1979. These interim regulations have subsequently been slightly modified and issued as final rules.

V. DOMESTIC COMMERCE

Public Law 95-475, enacted on October 18, 1978 and implemented on January 16, 1979, amended the Intercoastal Shipping Act, 1933, allowing carriers in the domestic offshore trades to file annual general rate increases of up to five percent without being subject to suspension. The notice period for general rate increases over three percent was changed to provide for 60 days' notice instead of 30 days. Overall increases of less than three percent may still become effective on 30 days' notice.

For those rates which the Commission determines to suspend, the suspension period has been increased from four to six months (180 days). The new law provides for reparations to ratepayers of that portion of a general rate increase that is found to be unjust or unreasonable in a Commission proceeding. The Commission was also given specific time limits within which to conclude action on rate proceedings.

The primary purpose of the new law is to expedite the process by which the Commission reviews and takes final action on general rate increases or decreases in the domestic offshore commerce of the United States and to provide a vehicle enabling shippers to receive refunds for rates found to be unreasonably high.

Agreements

One of the primary functions of the Federal Maritime Commission is to discharge its obligations under section 15 of the Shipping Act, 1916 to evaluate concerted rate-making and related agreements in the U.S.

ocean commerce. Most of these agreements involve ocean carrier conferences operating in the U.S. foreign trades. Those agreements filed in the domestic trades generally involve terminal leasing arrangements, berthing agreements, and similar activities rather than ratemaking.

In Fiscal Year 1979, the Commission processed 25 agreements involving the U.S. domestic offshore trades.

Tariffs

The Commission's program for implementation of revised tariff filing rules during the past fiscal year, designated as General Order 38, proved to be successful. Its success was largely due to seminars, including audio-visual presentations and explanations by FMC staff, which were conducted in various cities to familiarize carriers with the major changes and requirements of the new rules. Tariff filings in the domestic trades increased approximately 50 percent during the fiscal year as carriers submitted new or revised tariff filings to comply with the new rules. The increased workload was handled by existing staff.

Commission's Filing Requirements

Effective January 1, 1979, all carriers and conferences who maintained tariffs on file with the Commission were required to republish or update their current tariffs to meet the standards imposed by the Commission's new General Order 13 (46 CFR 536).

Terminals

The responsibility for 619 terminal tariffs published by terminal operators in accordance with the Commission's General Order 15 was transferred from the Office of Agreements to the Office of Tariffs during Fiscal Year 1979.

Significant Commission Activities In The Domestic Offshore Trades

ANALYSIS BY TRADE

U.S. Mainland/Puerto Rico-Virgin Islands Trade

Strong competition continued in the Puerto Rico trade during FY 1979. Early in the year, both the Puerto Rico Maritime Shipping Authority (PRMSA) and Trailer Marine Transport Corporation (TMT) began a series of reductions in the South Atlantic/Puerto Rico trade area. A change in PRMSA's service to the port of Charleston, South Carolina resulted in a reduction of their rates at this port to the lower level and provisions applicable to Jacksonville and/or Miami, Florida. TMT, in fear of losing its share of cargo moving through Jacksonville and Miami, retaliated. The subsequent series of changes became the subject of a Commission investigation and rate parity was eventually restored between these carriers in their South Atlantic/Puerto Rico services.

A competitive flare-up occurred later in the year as TMT and Sea-Land Service, Inc. (Sea-Land) vied for round-trip movements of sugar. Both carriers reduced rates on northbound movements of sugar cane by more than 50 percent; the southbound refined sugar rate reduction was approximately nine percent. These actions were alleged to be the result

of a refinery fire in Puerto Rico and the round-trip movement was justified as the product of negotiations intended to make it feasible to refine raw sugar in Port Wentworth, Georgia and to return the refined sugar to Puerto Rico, thus keeping the shelf product at a competitive price. An investigation was initiated primarily to determine whether the rates were compensatory. Both Sea-Land and TMT, however, cancelled the proposed provisions, returning sugar rates to levels in effect before the proposed reductions.

Changes in operating conditions and the overall economy found the carriers in the Puerto Rico and the Virgin Islands' trade filing general rate increases. On May 1, 1979, general rate increases of five percent were instituted by Gulf Caribbean Marine Lines, Inc. (GCML), PRMSA, Sea-Land, and TMT. All four carriers operate in the United States/Puerto Rico trade. Several protests were filed against the subject increases. All became effective as scheduled, but further Commission investigation was initiated into some aspects of Sea-Land's and TMT's proposed changes. In the Virgin Islands' trade, Interisland Intermodal Lines (IIL), which operates between Puerto Rico and the Virgin Islands, also filed a five percent general rate increase. After consideration of support data and protests, the FMC permitted IIL's increase to become effective June 1, 1979 without investigation.

PRMSA entered the trade between Puerto Rico and the U.S. Virgin Islands on June 8, 1979, with service performed by tug and barge. PRMSA entered this trade at the rate level of International Marine Transport Services, Inc. (IMTS), which had filed Chapter XI Bankruptcy. IMTS eventually discontinued service and the Puerto Rico/Virgin Islands trade

continued to be served by two carriers, PRMSA and IIL, which remained the dominant carrier. Upon inaugurating this service, PRMSA's rates were set below the level of IIL and at the close of this fiscal year PRMSA's rates remained below those of IIL.

During the past fiscal year, a new carrier service was initiated by Amber Line, Ltd. (AMBER) for service between Staten Island, New York and the U.S. Virgin Islands. The service, which became effective February 22, 1979, was to be performed by two chartered vessels carrying 20-foot and 40-foot containers. However, Amber notified the Commission on July 25, 1979, that it did not intend to conduct further operations as a common carrier and it subsequently cancelled its domestic offshore tariffs effective August 23, 1979.

At the close of Fiscal Year 1978, Sea-Land had initiated a percentage rate discount for shippers who did not require insurance. A staff review was performed in order to determine the general status of insurance provisions maintained by carriers serving the domestic offshore trades. During the review period, TMT and PRMSA filed similar insurance discount provisions. However, both carriers cancelled their proposed provisions prior to the scheduled effective date. Sea-Land also subsequently withdrew its percentage rate discount.

West Coast/Hawaii Trade

The U.S. West Coast/Hawaii trade has one dominant water carrier, Matson Navigation Company, which carries a major portion of this trade's cargo. Since October 31, 1978, Matson Navigation Company has twice

increased its overall rates by 2.9 percent. As of September 30, 1979 Matson also had in effect a 5.90 percent bunker surcharge increase to cover the increased costs of fuel.

Matson's overall rate increase in the U.S. West Coast/Hawaii trade amounted to 11.7 percent over the rate levels in effect on January 1, 1979.

The remaining carriers who serve the U.S. West Coast/Hawaii trade have generally maintained similar rate levels to those of Matson.

Bunker Surcharges

The dramatic and unpredictable surge in oil prices created sharply increased fuel costs for carriers operating in the domestic offshore trades, most of whom requested special permission from the Commission to file bunker surcharges. On June 6, 1979, the Commission determined that there was good cause to allow the filing of tariff amendments containing bunker surcharges constituting general rate increases on thirty days' notice rather than the usual 60 days so that carriers would be able to meet escalating fuel costs. The 30-day notice period reflects an appropriat balance between the concerns of shippers paying increased rates and the needs of carriers burdened by increasing oil prices.

Domestic Circular Letter No. 1-79 granted continuing outstanding special permission to establish and amend a bunker surcharge in tariff publications on 30 days' notice to the Commission. It also established modified reporting requirements designed to facilitate rapid implementation while ensuring that bunker surcharges are set at levels which recover

only the increased costs of fuel and do not result in windfall revenues to the carriers. The financial stability of steamship carriers serving the domestic offshore commerce of the United States was thus preserved while the Commission concurrently protected the consumer from unfair pricing practices.

Major Commission Decisions and Rulemaking Affecting The Domestic Offshore Trades

Docket No. 75-57 -- Matson Navigation Company - Proposed Rate Increases in the United States Pacific Coast/Hawaii Domestic Offshore Trade; Docket No. 76-43 -- Matson Navigation Company - Proposed Rate Increases in the United States Pacific Coast/Hawaii Domestic Offshore Trade. These cases established important methodological precedents in the determination of a reasonable rate of return for carriers in the domestic offshore trades. They also established a clear remedy for shippers who pay a rate increase that is determined to be unreasonable after it goes into effect.

Docket No. 79-55 -- Matson Navigation Company - Proposed Bunker Surcharge in the Hawaii Trade. The Commission considered a proposed bunker surcharge of 4.43% in the U.S. West Coast/Hawaii trade and determined that a just and reasonable surcharge would be 4.24%. In this proceeding, the Commission made significant determinations regarding the proper method of allocating increased fuel costs to the tariffs affected by a proposed bunker surcharge and clarified the mechanism for adjusting overrecovery of fuel charges. The Commission

decided that the primary method for protecting shippers from paying unreasonable surcharges would be to establish that, in the event of a carrier's overrecovery of fuel costs, there would be guaranteed future reductions on subsequent surcharges. However, in any case where application of current overrecoveries to future fuel cost needs did not afford sufficient relief to overcharged ratepayers, shippers would not be precluded from seeking direct reparations under section 22 of the Shipping Act.

Docket No. 78-47 -- Rules of Practice and Procedure - Implementation of P.L. 95-475 Requirements. Section 502.67 of the Commission's procedural regulations were amended to specify the strict time limitations applicable to rate investigations in the domestic offshore commerce under section 3 of the Intercoastal Shipping Act, 1933, as amended by P.L. 95-475. Among the new provisions is the requirement that carriers filing general rate increases or decreases must submit all their supporting documents at the time they file their tariff.

Docket No. 73-3 -- Sea-Land Service, Inc., Seatrain Lines, Inc. Transamerican Trailer Transport, Inc. Gulf Puerto Rico Lines, Inc., Puerto Rico Maritime Shipping Authority v. Acme Fast Freight of Puerto Rico, et al. The Commission held that the failure of certain non-vessel operating common carriers by water to pay applicable demurrage charges subjected the property of the shipping public to vessel-operating common carriers' liens, and that this practice resulted in the

respondents' failure to establish, observe and enforce just and reasonable practices in connection with the receiving, handling or delivering of property, in violation of section 18(a) of the Shipping Act, 1916.

Docket No. 78-46 (G.O. 11, Revised) -- Financial Reports of Common Carriers by Water in the Domestic Offshore Trades. During Fiscal Year 1979, the Commission issued proposed rules governing ocean common carrier reporting requirements in the domestic offshore trades in accordance with the provisions of P.L. 95-475.

On January 14, 1980, the FMC promulgated final rules which 1) establish methodologies that the Commission intends to follow in evaluating rates in the domestic offshore trades filed by vessel operating common carriers subject to the provisions of the Intercoastal Shipping Act, 1933, and 2) provide for the orderly acquisition of data.

The methodology employed in each case will depend on the nature of the relevant carrier's operations and financial structure. In evaluating the reasonableness of a VOCC's overall level of rates, the Commission will use return on rate base as its primary standard. However, the Commission may also employ other financial methodologies in order to achieve a fair and reasonable result.

Docket No. 78-46 (G.O. 42) - Financial Exhibits and Schedules - Non-Vessel Operating Common Carriers in the Domestic Offshore Trades. The Commission also proposed rules governing the reporting requirements of NVOCC's in the U.S. domestic commerce during Fiscal Year 1979. On

January 14, 1980, the Commission issued final rules publishing substantive guidelines for determing what constitutes a just and reasonable rate of return or profit for NVOCC's in the domestic offshore trades and to provide for the orderly acquisition of data in the event the Commission institutes a formal investigation and hearing.

The final rules for NVOCC's establish data reporting requirements which substantially comport with the Commission's regulations concerning financial reports by VOCC's in the domestic offshore trades, which were issued concurrently.

The NVOCC rules, promulgated in accordance with the provisions of P.L. 95-475, eliminate the annual reporting requirement and the reports which had been submitted concurrently with every general rate change. The methodology adopted by the Commission includes the utilization of operating ratio as the comparative test of reasonableness.

VI. CERTIFICATION ACTIVITIES

The FMC's Bureau of Certification and Licensing administers laws designed to ensure financial responsibility for environmental pollution problems and passenger vessel operations in the U.S. ocean commerce, and it regulates the activities of various participants in ocean cargo movements in order to protect the public from unscrupulous trade practices or irresponsible fiscal activities.

Primary responsibilities include certification that:

(1) the operators of foreign and domestic vessels using U.S. waters are financially able to meet specified levels of liability for any water pollution they may create; (2) the operators of foreign and domestic passenger vessels boarding passengers at U.S. ports are financially able to meet liabilities resulting from death or injury or from non-performance of scheduled transportation; and (3) persons engaging in the business of ocean freight forwarding in the export commerce of the United States are properly bonded and qualified to do so.

Water Pollution

The Bureau implements section 311(p)(1) of the Federal Water Pollution Control Act, section 204(c) of the Trans-Alaska Pipeline Authorization Act, and section 305(a)(1) of the Outer Continental Shelf Lands Act Amendments of 1978. Pursuant to those laws, vessel operators are required

to maintain on file with the Commission insurance, bonds or other evidence of financial responsibility which will guarantee reimbursement to the United States and other damaged parties in the event of pollution from oil or other hazardous substances identified by the Environmental Protection Agency. A Certificate of Financial Responsibility (Pollution), which is issued to each vessel covered by acceptable evidence of financial responsibility, must be presented for examination to the Coast Guard and/or Customs Service upon demand. Failure to present a valid certificate results in detainment of the vessel until compliance with the law is effected. Approximately 24,000 vessels carry valid certificates issued under these three above-mentioned laws.

During Fiscal Year 1979, the Commission substantially completed a recertification of approximately 24,000 vessels under the Clean Water Act of 1977, which amended the Federal Water Pollution Control Act. Because the 1977 amendments increased and broadened the liability of vessel operators who discharge pollutants into U.S. waters, new evidence of financial responsibility providing coverage for that new liability was required to be filed with and processed by the Commission. The Commission has also completed a certification program pursuant to section 305(a)(1) of the Outer Continental Shelf Lands Act Amendments of 1978. That new responsibility was delegated to the Commission by the President on February 26, 1979, and concerns those vessels carrying oil produced on the Outer Continental Shelf. In order to complete that program, it was necessary for the Commission to issue and implement new regulations under General Order 41 (46 CFR 544).

Docketed Proceedings/Rulemaking

Docket No. 78-57 -- Financial Responsibility for Outer Continental Shelf Oil Pollution. The Commission adopted regulations (46 CFR Part 544) which: (1) require the owners and operators of vessels transporting oil produced at Outer Continental Shelf facilities to demonstrate the ability to meet the additional financial liability imposed by P.L. 95-372 for the discharge of oil during such transportation; and (2) provide for the issuance of certificates evidencing vessel operator compliance with the new statutory requirements.

Passenger Vessels

The Commission's jurisdiction over passenger vessel operations primarily involves the implementation of sections 2 and 3 of Public Law 89-777. Those sections apply to owners, charterers and operators of U.S. and foreign-flag vessels which have berth or stateroom accommodations for 50 or more passengers and which board passengers at U.S. ports.

These vessel operators are required to maintain on file with the Commission evidence of their financial ability to meet statutorily prescribed amounts of liability in the event of death or injury to passengers and to reimburse passengers in the event of non-performance of a voyage or cruise.

Vessels covered by acceptable evidence of financial responsibility are issued Certificates of Financial Responsibility (Casualty and Performance) which must be presented for examination to the United States Customs Service. Over 100 vessels are covered by certificates from the Commission under Public Law 89-777.

At the end of the reporting period, the Commission was considering a proposed rulemaking proceeding to amend its passenger vessel regulations (46 CFR 540). The contemplated change would increase the maximum amount of financial responsibility required to be shown by passenger vessel operators from $5 million to $10 million for indemnification of passengers in the event of non-performance of a scheduled voyage or cruise. This increase reflects the inflationary impact on passenger fares and insurance rates which has occurred since 1967, when the $5 million figure was established by the Commission. Since that time, most passenger vessel fares have doubled.

The Commission's draft Revised Shipping Act, submitted to the Congress on July 19, 1979, also contained a proposal for a substantial increase in the statutory limits of liability for death or injury to passengers.

Freight Forwarding

Section 44 of the Shipping Act, 1916, vests the Commission with authority for the licensing and regulation of independent ocean freight forwarders. The ocean freight forwarding industry is comprised of individuals and corporations who serve export shippers by arranging for transportation of cargo by ocean common carriers for a fee. Because forwarders also are paid a commission by carriers for their services, they are required by law to be free of shipper connections in order to prevent unlawful indirect rebates to shippers.

A Congressional finding in 1961 that shippers were forming their own "dummy" forwarding firms in order to receive indirect rebates led to the enactment of section 44. The Congress also found that the licensing and regulation of forwarders would serve to eliminate unqualified and financially irresponsible forwarders whose practices were not conducive to a favorable export climate. The financial responsibility of a forwarder is assured by a $30,000 surety bond which is required to be maintained on file with the Commission.

The $30,000 surety bond reflects an increase over the $10,000 bond originally required. Inflation and the increased costs of ocean transportation clearly had rendered the original bond requirement inadequate to protect the interests of shippers and carriers served by forwarders.

During the past fiscal year, the licenses of 78 forwarders were revoked by the Commission for failure to meet this increased bonding requirement. One hundred and ten additional licenses were revoked during the year for other reasons, and 80 new licenses were issued. Fifty-nine applications for licenses were either denied by the Commission or withdrawn by the applicants. At the end of the fiscal year, 1359 forwarders held licenses.

Docketed Proceedings/Rulemaking

Docket No. 77-26 -- E. L. Mobley, Inc. -- Freight Forwarder Licensee. The Commission found a licensed independent ocean freight forwarder to have violated FMC regulations by falsifying forwarding documents and failing to timely pay over freight monies received from shippers to the carrier transporting their cargo. It was ordered that the corporate

officer responsible for this conduct be removed from the business for six months, the licensee be issued a civil penalty claim, and the licensee be further required to file periodic compliance reports.

Docket No. 77-19 -- Consolidated Forwarders Intermodal Corporation (Agreement No. 10239). The Commission held that a joint venture between 49 licensed ocean freight forwarders serving the Port of New York, designed to incorporate and operate a non-vessel operating common carrier service and a freight consolidation service, was an agreement subject to section 15 of the Shipping Act. Arguments by the Department of Justice and the 49 parties to the agreement that such incorporation and joint ownership agreements are merely "one-time acquisitions of assets" rather than "cooperative working arrangements" were rejected. The Commission identified several ongoing aspects of the joint venture and remanded the matter to an Administrative Law Judge for consideration of the agreement's approvability.

Docket No. 78-34 -- Concordia International Forwarding Corporation -- Freight Forwarder Application. The Commission denied an application for an independent ocean freight forwarding license on the ground that the applicant had engaged in the business of ocean freight forwarding before and during the pendency of its application in violation of section 44 of the Shipping Act, 1916. The fact that the applicant had not received compensation for these shipments was held not to be a defense. The Commission found that the expectation of retaining shipper accounts until a license was approved constituted "carrying on the business of forwarding for a consideration" within the meaning of section 1 of the Shipping Act.

During the past fiscal year, the Commission considered issuance of a proposed rule to revise General Order 4, which governs the licensing and operations of independent ocean freight forwarders. Shortly after the end of the reporting period, the FMC issued a proposed rule in Docket No. 80-13, Licensing of Independent Ocean Freight Forwarders.

Under the proposed rule, clarification and reorganization of existing regulations have been proposed and new requirements have been added. The major changes include: a requirement for licensing of branch offices; a minimum period of experience for qualifying individuals; the filing of anti-rebate certification; a prohibition against carriers compelling forwarders to guarantee payment of freight before monies have been advanced for this purpose by the shippers; a provision for the assessment of penalties in hearings on licenses; a time limit within which applications submitted after denial or revocation will be rejected; a revised payover rule; an increase in fees for licenses; and permission for forwarders to deduct compensation from freight payments under certain circumstances.

General Order 4 was originally issued in December, 1961. Commission and industry experience had indicated a need for clarification and updating of many aspects of the FMC's regulations in this area.

VII. LEGISLATION

Legislation To Amend The Intercoastal Shipping Act

H.R. 6503, a bill designed to amend the Intercoastal Shipping Act, 1933, was introduced during the 95th Congress by Chairman Murphy of the House Merchant Marine and Fisheries Committee and signed into law by President Carter on October 18, 1978 (P.L. 95-475).

P.L. 95-475 amended the provisions of the Intercoastal Shipping Act to revise the Commission's regulatory authority over general rate increases and decreases in the United States domestic offshore commerce. The law (1) permits ocean common carriers in the domestic offshore trades to file, without suspension, annual general rate increases or decreases of 5 percent or less during any 12-month period; (2) extends the period for which the Commission may suspend general rate changes over 5 percent to 180 days with the possibility of a 60-day extension; (3) provides for refunds to ratepayers in the event that an unsuspended portion of a general rate increase is found unreasonable; (4) requires the FMC to reach a final decision in general rate cases within 180 days, with a possible 60-day extension; and (5) clarifies the FMC's authority to award reparation to a complainant if he or she shows a rate to be unreasonable.

In addition to altering the Commission's suspension power, the enactment of P.L. 95-475 streamlines the FMC's decision-making process by placing tight controls on the time in which the Commission must render decisions under the Act, as well as providing shippers with greater parity in domestic rate proceedings heard by the Commission. The Commission actively supported the enactment of H.R. 6503, testifying before the House Merchant Marine Subcommittee in May, 1977, and again in August, 1978.

At the end of Fiscal Year 1979 the Commission was completing final rules covering vessel and NVOCC reporting requirements in the domestic offshore trades needed to provide the FMC with the financial data essential to the expedited rate proceedings contemplated by the new law. These rules were published in January, 1980.

Controlled Carrier Legislation

The FMC strongly supported the enactment of H.R. 9998, a bill to provide for the regulation of the rates and charges by certain state-owned carriers in the foreign commerce of the United States. H.R. 9998 was designed to strengthen the regulatory powers of the FMC to eliminate predatory rate-cutting by Soviet and other state-controlled carriers which threatened to disrupt operations in the U.S. trades and jeopardize the competitive viability of privately-owned ocean common carriers.

The Commission participated in the hearings on the controlled carrier bill before both the House Merchant Marine and Fisheries and Senate Commerce, Science and Transportation Committees and provided detailed trade information to the staff of these committees in order to assist the preparation of reports to the full House and Senate. Under the leadership of the respective committees, the bill passed both Houses of Congress by an overwhelming margin and was signed into law on October 18, 1978 as the "Ocean Shipping Act of 1978" (P.L. 95-483).

P.L. 95-483 (1) defines "controlled carrier" as one that is directly or indirectly owned or controlled by the government under whose registry it operates; (2) exempts controlled carriers operating in bilateral trades, conferences, and in trades served only by controlled carriers;

(3) requires controlled carriers to file all rate decreases as well as increases on 30 days' notice; (4) requires controlled carriers to submit rate justifications to the FMC within 20 days of their rate change requests; (5) permits the FMC to adjudicate the reasonableness of controlled carrier rates on the basis of costs, comparison with other carriers' rates, necessity of rates to assure movement of particular cargo, or other factors deemed appropriate by the FMC; and (6) permits the FMC to suspend controlled carrier rates for up to 180 days. The Ocean Shipping Act of 1978 also provides the President with the authority to request a stay of an FMC suspension order within 10 days of issuance of such an order if the President declares that a stay is necessary for reasons of national defense or foreign policy.

Anti-Rebating Legislation

The Shipping Act, 1916, prohibits common carriers by water in the foreign commerce of the United States from charging rates other than those in their published tariffs. With extensive overtonnaging in our trades, many carriers have been offering secret kickbacks, commonly called rebates, to attract more cargo for their ships.

H.R. 3055 was introduced on March 19, 1979 by Chairman Murphy of the House Merchant Marine and Fisheries Committee in an effort to eliminate that practice through tougher and more comprehensive sanctions. A companion measure, S. 199, was introduced in the Senate by Senator Inouye. A substantially similar bill, H.R. 9518, had been passed by the House and Senate during the 95th Congress but was later pocket-vetoed by the President. After hearings were held by the House Merchant Marine

and Fisheries Committee, the anti-rebating bill was again passed by both the House and Senate in early June, 1979. The President signed the measure on June 19, 1979 and it was designated Public Law 96-25.

The enactment of this law, which was supported by the Commission, (1) increases penalties for rebating to $25,000 per violation or per shipment; (2) provides, as an additional sanction for rebating, tariff suspension of up to 12 months; (3) permits the FMC to suspend tariffs for failure to comply with FMC subpoenas or discovery orders in formal rebating investigations; (4) requires certification by carriers (and shippers, forwarders, and NVOCC's as the Commission deems appropriate) that they are enforcing a policy against rebating and will cooperate in FMC rebating investigations; (5) requires the Secretary of State to negotiate a "regime of cooperation" with other maritime nations, most of whom do not formally prohibit rebating; (6) permits the Commission to assess all civil penalties under the Shipping Act; and (7) prohibits prosecution for a criminal conspiracy to rebate. The President is empowered to override prospective tariff suspensions within 10 days after receipt of the Commission's order.

In addition to previous testimony on H.R. 9518, the Chairman testified before the House Merchant Marine and Fisheries Committee in March, 1979 regarding the enforcement efforts of the FMC with respect to rebating in the U.S. foreign trades and testified in May, 1979 in support of H.R. 3055. The Commission also submitted a detailed written report in support of S. 199 to the Senate Commerce Committee.

The Federal Maritime Commission's "Revised Shipping Act"

In July, 1979, the Commission completed its review and revision of its governing statutes and adopted a revised Shipping Act, submitting it to the House Merchant Marine and Fisheries Committee on July 19, 1979. The "model" Shipping Act represented the product of an extensive eighteen-month analysis by senior Commission staff, who comprised the Statutory Review Committee headed by Chairman Daschbach. The revised Shipping Act prepared by the Statutory Review Committee provides for more prompt, economical, and equitable administration of Commission responsibilities, is more responsive to current problems in the U.S. ocean commerce, and reflects the FMC's efforts to reduce regulatory involvement in commercial shipping operations and minimize regulatory burden on the industry wherever appropriate. The Office of Legislative Counsel coordinated the work of the Committee.

The Revised Shipping Act (1) establishes clear regulatory policy objectives; (2) provides necessary redescription and reorganization of the agency's statutory obligations to reflect legislative changes since the enactment of the original Shipping Act; (3) clarifies and re-affirms complete immunity from the antitrust laws for activities subject to the Shipping Act; (4) delineates precise standards for approving section 15 agreements, including criteria for temporary and presumptive approval; and (5) modernizes regulations governing self-policing, patronage contracts, tariff filing, the Commission's enforcement authority, provisions for exemption from regulation, licensing of independent ocean freight forwarders, and related procedural matters. Chairman Daschbach has presented the Revised Shipping Act to both House and Senate Merchant Marine Subcommittees as an adjunct to his testimony on regulatory reform in the maritime industry.

H.R. 4769 "The Omnibus Bill"

On July 12, 1979, Chairman Murphy, Mr. Snyder of Kentucky and Mr. McCloskey of California introduced H.R. 4769, the "Omnibus Maritime Regulatory Reform, Revitalization, and Reorganization Act of 1979." The sponsors of the "Omnibus Bill" maintained that it would strengthen the maritime industry by reducing government regulation and allowing different segments of the industry to organize in ways that would provide for more efficient and profitable operations. The bill would (1) provide antitrust immunity for authorized conference activities and for shippers' councils and allow conferences to limit membership; (2) allow construction subsidies for ships to be sold to U.S. citizens but operated under foreign flags; (3) permit ships built or operated with subsidies to participate in trade between foreign countries in addition to trade between the United States and other nations; (4) grant operating subsidies for foreign-built ships if owned by U.S. citizens and operated under the U.S. flag (at present, operating subsidies may be given only to American-built ships); (5) revise tax laws that currently encourage American companies to register under foreign flags; and (6) establish a goal of 40 percent carriage of U.S. trade on U.S.-flag ships.

Enactment of H.R. 4769 in its original form would also have authorized the transfer of many FMC regulatory functions to a new Deputy Special Trade Representative for Maritime Affairs, including the FMC's current authority to issue regulations, suspend tariffs, and evaluate section 15 agreements. The Omnibus Bill would also provide for review of any major

FMC decision by the executive branch upon the petition of any aggrieved party. The bill has been subsequently revised to invest these powers in an Undersecretary of Commerce for Maritime Affairs rather than a Deputy Special Trade Representative, although the basic concept of transferring the independent regulatory functions of the FMC to an executive branch department and providing that executive agency with review power over FMC decision-making has been retained. Further modifications of all portions of the bill are expected during 1980, however.

Chairman Daschbach testified before the House Merchant Marine Subcommittee on July 19, 1979 with respect to Title II, the regulatory portion of the Omnibus Bill. While strongly supporting the bill's basic policy objectives, he encouraged subcommittee adoption of the Commission's own Revised Shipping Act. Unanimously endorsed by the Commission, the FMC's draft statute contains provisions needed to accomplish necessary changes in maritime regulation of our foreign commerce, particularly clarification of standards for the approval of section 15 agreements, the authority to exempt any category of activity from the FMC's regulatory jurisdiction, and a grant of absolute antitrust immunity to the liner shipping industry. The extension of the antitrust exemption permits the formation of shippers' councils, encourages the development of more efficient intermodal transport, and eliminates the confusion and conflict created by application of both maritime regulation and antitrust regulation to the U.S. ocean commerce.

On October 16, 1979, Chairman Daschbach again testified before the House Merchant Marine Subcommittee. Addressing the reorganization mandated by Title V of H.R. 4769, which would vest FMC regulatory authority in a Deputy Special Trade Representative for Maritime Affairs, the Chairman voiced the Commission's opposition to the plan and noted that the Commission instead concurred with recommendations made by the President in a July 20, 1979 letter to Congressman Murphy.

In his letter incorporating the findings of the Interagency Maritime Task Force, the President designated the Maritime Administration of the Department of Commerce as the Administration's chief spokesperson on maritime affairs, and reaffirmed the primacy of the FMC as the final authority in regulatory matters. The Chairman emphasized in his testimony that the President's recommendations thus designated the lead agencies in both the promotional (MARAD) and regulatory spheres (FMC) of U.S. maritime policy, preserving a clear and necessary distinction between the two. The Commission urged subcommittee members to include this recommendation in the final report on the Omnibus Bill.

S. 1460, S. 1462, S. 1463

In July, 1979, Senator Inouye, Chairman of the Senate Merchant Marine and Tourism Subcommittee, introduced three bills, S. 1460, S. 1462, and S. 1463, dealing with regulatory reform in the maritime industry. S. 1460 and S. 1463 are amendments to the Shipping Act, 1916 focusing upon section 15 agreements, and their provisions are similar to those of the Commission's Revised Shipping Act. The main difference between the separate proposals is the method of Commission approval of section

agreements. The third bill, S. 1462, sets forth a method of implementing a policy of bilateralism in the United States liner trades.

Chairman Daschbach testified before the Senate Subcommittee on September 18, 1979, expressing agreement with the basic policy and substantive provisions of the three bills. The Chairman outlined points of similarity with the Commission's draft statute and noted areas where he believed the Commission's proposal offered alternative approaches worthy of consideration. Senator Inouye and Senator Warner have subsequently introduced a more comprehensive bill, "The Ocean Shipping Act of 1980," which provides for broad reform of current maritime regulation and proposes necessary changes strongly supported by the Commission.

Other Legislative Activities

Convention for a Code of Conduct for Liner Conferences

The proposed Convention for a Code of Conduct for Liner Conferences, commonly referred to as UNCTAD, contains provisions for cargo sharing in a suggested 40/40/20 ratio, which would place restraints on cross-trading while allocating specific cargo shares for national shipping lines. The Code also provides for closed conferences, shippers' councils, tying devices, deferred rebates, self-policing and arbitration of disputes involving rates and conditions of carriage. It embodies the so-called "European" approach to conference organization, relying heavily on commercial concepts with a minimum of government intervention.

The Chairman testified before the House Merchant Marine Subcommittee on April 26, 1979 with respect to the proposed Code. He urged that its provisions be carefully examined and analyzed, illustrated how the Code differs from U.S. law, and emphasized the Code's potential impact on U.S. shippers and carriers if it is ratified by most of our major trading partners.

In order to more fully examine possible ramifications of the Code's adoption, the Commission instituted Docket 79-50 - Notice of Inquiry Regarding the United Nations Convention on the Code of Conduct for Liner Conferences, soliciting public comment on the transportation and economic consequences of the implemented Code on U.S. foreign commerce. The Commission specifically invited comments on certain Code provisions that conflict with existing U.S. law and policy, such as shippers' councils, closed conferences and cargo allocation. Three carriers, a shippers' association, and two carrier associations replied. The majority urged U.S. ratification of the Code. They argued that U.S. failure to ratify the Code would exacerbate existing conflicts between U.S. maritime policies and those of our trading partners and thus would be detrimental to commerce and would harm the interests of U.S. shippers and carriers.

Jurisdiction Over Complaints Against Shippers

On October 30, 1979, Vice Chairman Moakley testified before the House Merchant Marine Subcommittee in support of H.R. 1715, a bill that would amend the Shipping Act, 1916 to give the FMC jurisdiction over complaints against shippers, clarify the Commission's authority to investigate violations of the Act by shippers, and prohibit shippers from paying less than applicable tariff rates. The Commission believes that certain complaints against shippers should be heard by the FMC rather than courts of varying jurisdictions in order to lend greater consistency to the decisions rendered. More importantly, the Commission has both the expertise and responsibility for administration of Shipping Act matters. Mr. Moakley offered an amendment to the bill specifying that a shipper would not be found in violation of the Act due to a mistake or inadvertent action.

VIII. COURT PROCEEDINGS

The Commission continued to experience a heavy litigation and enforcement claim schedule during Fiscal Year 1979. At the beginning of the fiscal year, there were 21 petitions to review orders of the Commission pending before various United States Courts of Appeals, and three cases appealing U.S. District Court decisions involving actions of the Commission were also pending. During the fiscal year, another 23 review petitions were filed. The Commission appealed one District Court ruling and appeared in an ICC proceeding on review in the Court of Appeals and three proceedings before the ICC. The Commission also was a party or participated in eleven actions in United States District Courts.

At the close of the fiscal year, 39 appeals were either pending briefs, argument or decision, and four cases awaited settlement or trial in the district courts. The following include a representative cross-section of cases involving statutes administered by the Commission which are pending as of September 30, 1979 or were decided during the fiscal year.

U.S. Court of Appeals

U.S. & FMC v. Atlantic Container Line, et al., D.C. Cir. Nos. 79-1931 and 79-2162; U.S. and FMC v. Philip E. Bates, et al., D. C. Cir. Nos. 79-1930 and 79-2171. On June 1, 1979, seven steamship lines and thirteen individuals were indicted by a federal grand jury for

violations of section 1 of the Sherman Act. The indictments alleged, inter alia, that the defendants had implemented agreements to "fix, raise, stabilize and maintain" price levels for the shipment of ocean freight in the U.S. foreign commerce that either were beyond the scope of Commission-approved agreements or should have been filed for approval de novo. The defendants pleaded nolo contendere to the indictments on June 8, 1979. The Commission then sought access to the grand jury proceedings for use "preliminarily to or in connection with a judicial proceeding" in accordance with Rule 6(e) of the Federal Rules of Criminal Procedure. On August 14, 1979 the Commission institued an adjudicatory proceeding to determine, inter alia, whether the practices alleged in the indictments violated section 15 of the Shipping Act (FMC Docket No. 79-83: Investigation of Unfiled Agreements in the North Atlantic Trade). Both prior to and subsequent to the institution of the FMC proceeding, the District Court denied access to the grand jury materials by orders dated July 17 and August 31, 1979. The Department of Justice and the Commission appealed these orders and the case is now in the briefing stage.

Council of North Atlantic Shipping Associations and New York Shipping Association v. FMC & USA, D.C. Cir. No. 78-1776. This proceeding challenges FMC orders in its Docket No. 73-17: Sea-Land Service, Inc. and Gulf Puerto Rico Lines, Inc. - Proposed Rules on Containers, and Docket No. 74-40: Puerto Rico Maritime Shipping Authority - Proposed Rules on Containers, declaring unlawful tariff regulations of certain

carriers in the United States/Puerto Rico trade requiring stuffing and stripping of containers originating from or destined to points within 50 miles of mainland ports by International Longshoremen's Association labor. These tariff rules had been found unlawful under sections 14 Fourth, 16 First, and 18(a) of the Shipping Act, 1916, and section 4 of the Intercoastal Shipping Act, 1933. The case had been held in abeyance pending the resolution of several cases also pending before the D.C. Circuit involving the validity under the National Labor Relations Act of certain collective bargaining agreement provisions which the tariff regulations purport to implement, and is now in the briefing stage.

New York Shipping Association v. FMC & USA, D.C. Cir. No. 78-1479; Zim-American Israeli Shipping Co., Inc. v. FMC & USA, No. 78-1871. These consolidated proceedings have been brought to review the Commission's orders regarding adjustments in assessments to fund benefits for maritime laborers and disposing of its Docket No. 69-57: Agreement No. T-2336 - New York Shipping Association Cooperative Working Arrangement. The New York Shipping Association challenges those orders to the extent that they require it to make further assessment adjustments in addition to those already ordered and upheld by the Court of Appeals for the District of Columbia Circuit (see 571 F.2d 1231), while Zim contests the Commission's decision to deny its claim for assessment adjustments on the grounds that such claim was both asserted in an untimely manner and waived. The proceedings have been briefed and are now pending oral argument.

In Reefer Express Lines v. FMC & USA, D.C. Cir. No. 78-2229 and A/S Ivarans Rederi v. FMC & USA, D.C. Cir. No. 78-2270, review is sought of the Commission's approval in Docket No. 78-51: Agreement No. 10349 - A Cargo Revenue Pooling and Sailing Agreement - Argentina/United States Atlantic Trade, and Docket No. 78-52: Agreement No. 10346 - A Cargo Revenue Pooling and Sailing Agreement - Argentina/United States Gulf Trade, of revenue pooling agreements in the northbound Argentina/U.S. Atlantic and Gulf trades. The consolidated proceedings are now in the briefing stage.

Dart Container Line Co. v. FMC & USA, D. C. Cir. No. 79-1932, is a challenge to the Commission's decision in Docket No. 77-50: North Carolina State Ports Authority; International Longshoremen's Association, AFL-CIO, Local 1426 and 1426-A, Warehousemen v. Dart Containerline Company, holding that Dart's practice of absorbing rates for inland transportation of tobacco between Wilmington, North Carolina, which it does not serve by water, and the Norfolk/Hampton Roads area, which it does, violates sections 16 and 17 of the Shipping Act, 1916. The case is now being briefed before the Court.

State of Alaska v. FMC, 9th Cir. No. 77-2921. The State of Alaska appealed a Commission decision not to suspend or investigate a rate increase filed by Foss Alaska Line. The Court held that decisions not to investigate or suspend rate filings under the Intercoastal Shipping Act, 1933, are not subject to review.

Ryoichi Takazato and Kanematsu-Gosho, Inc. v. FMC, et al., 9th Cir. No. 78-2193. The plaintiffs have sought declaratory relief in the form of a court order directing the Commission to quash an investigative subpoena that had been issued to them. The plaintiffs contended that the Commission's subpoena authority is limited to formal adjudicatory proceedings brought pursuant to section 22 of the Shipping Act, 1916. U.S. District Judge William H. Orrick disagreed and ruled in favor of a Commission motion for summary judgment on a counterclaim for enforcement of the contested subpoena. This case has been consolidated on appeal with U.S. v. Paper Fibre International, et al., 9th Cir. No. 77-3566, which appealed a Los Angeles District Court decision supporting the Commission's investigative subpoena authority. The consolidated cases have been briefed and are scheduled for argument on December 4, 1979.

USA v. FMC, D.C. Cir. No. 79-1299. This is an appeal by the Antitrust Division of the Department of Justice which challenges the FMC's authority to approve section 15 agreements among ocean carriers which permit the ocean carriers to establish, in connection with inland carriers regulated by the Interstate Commerce Commission, rates for through intermodal service. The case has been briefed and is now awaiting argument.

Trans Pacific Freight Conference of Japan/Korea, et al. v. FMC, D.C. Cir. No. 78-2172 and Sea-Land Service, Inc. v. FMC, D.C. Cir. No. 79-1062. These consolidated cases challenge the Commission's self-

policing rules under General Order 7, which require conferences and rate-making bodies to police their members' agreement obligations through a neutral body, and require the neutral bodies to make information they have collected available to the Commission upon request. The case has been briefed and will be argued soon.

In New York Foreign Freight Forwarders & Brokers Ass'n. v. ICC, 589 F.2d 696 (1978), the Court of Appeals for the District of Columbia Circuit upheld an ICC rule excluding FMC-regulated non-vessel operating common carriers by water (NVOCC's) from participating in international joint rates with ICC-regulated carriers. The FMC was one of five petitioners opposing the ICC rule.

In Trailer Marine Transport Corporation v. FMC & USA, 602 F.2d 379 (D.C. Cir. 1979), a proceeding brought to review the Commission's Docket No. 77-55: Trailer Marine Transport Corporation - Joint Single Rates, Puerto Rico, the Court of Appeals for the District of Columbia Circuit reversed the FMC's decision requiring the fling of joint rail/water rates in the U.S./Puerto Rico trade with the FMC. The Court held that the FMC had no jurisdiction to require filing or to regulate any part of joint rail/water rates in the domestic offshore trades. The Court remanded to the Commission the question of whether the agency should nevertheless require reporting of such joint rates and the FMC-regulated carrier's division of those rates for informational purposes because of their impact on FMC-regulated activities.

National Association of Recycling Industries, Inc. v. FMC, D.C. Cir. No. 79-1267. The appeal involves a challenge by the petitioners to a Commission decision upholding the lawfulness of conference rates on wastepaper and virgin woodpulp under section 18(b)(5) of the Shipping Act. The petitioners are also claiming that the Commission failed to meet its obligations under the National Environmental Policy Act of 1969. The Department of Justice also appeared in opposition to the Commission's position in this appeal. The case has been briefed and argued, and is now awaiting decision.

Interpool, Ltd. v. FMC, D. C. Cir. No. 79-1194. In this case, the petitioner container leasing companies are appealing a Commission decision that certain conferences were authorized under their approved section 15 agreements to publish new tariff rules stating conference policy on the use of shipper-owned or leased containers. The Department of Justice also opposes the Commission's order. The case has been briefed and is awaiting oral argument.

U.S. District Courts

Retla S.S. Co. v. Pan Ocean Bulk Carriers, et al., C.D. Cal. C.A. No. 79-1437-HP, is an action for treble damages and injunctive relief under sections 1 and 2 of the Sherman Act. Because the complaint involved allegations of noncompensatory rate levels employed by one ocean carrier against another in the U.S. foreign commerce, the Commission, pursuant to a request from the Court, submitted an amicus curiae brief.

The Court, adopting the Commission's position, referred to the agency all questions relating to the allegedly unlawful rates under the provisions of section 18(b), Shipping Act, 1916 for the purpose of conducting an investigation to be completed by June, 1980. That investigation is currently underway (FMC Docket No. 79-91: Pan Ocean Bulk Carriers, Ltd. - Investigation of Rates on Neo-Bulk Commodities in the Trade Between the United States and South Korea).

U.S. v. Deutsche Dampfschiffahrts, et al., S.D.N.Y. Cir. No. 77-2727. This civil penalty action was brought against the Atlantica Line joint service consisting of Germany's Hansa Line, France's Fabre Line and Italy's Fassio Service, for paying illegal rebates on over 269 shipments in the Mediterranean - U.S. trade. On October 22, 1979, the District Court assessed penalties of $1,345,000 against Atlantica, the largest fine ever imposed by a U.S. court for illegal rebating in the U.S. ocean commerce.

U.S. v. Open Bulk Carriers Ltd., at al., S.D. Ga., Civil No. CV-477-193 is a civil penalty action filed by the Justice Department against five defendants for allegedly combining cargo surreptitiously in order to obtain a lower freight rate than the applicable tariff rate on file with the Commission in violation of sections 15, 16, 18 and 44 of the Shipping Act, 1916 and Commission General Order 4. The case against the carrier defendant and two of the shipper defendants has been settled. The Commission has pending a motion for summary judgment against the remaining defendants, a shipper and a licensed freight forwarder.

U.S. v. Paper Fibres, Inc., et al., C.D. Ca., Civil No. 78-2294-WPA, is a civil penalty case brought against a shipper for the receipt of rebates from ocean carriers in violation of section 16 of the Shipping Act. Settlement negotiations have been unsuccessful, and the case is awaiting trial.

Other Adjudication

Ex Parte No. MC-105 - Single State Exemption - Ex-Water Traffic Proposed Rulemaking - This is an Interstate Commerce Commission rulemaking proceeding in which the ICC proposed exempting from regulation motor carriers engaged in operation solely within a single state. The proceeding involved operations with respect to the transportation of shipments in interstate or foreign commerce having a prior or subsequent movement by ocean carrier and moving by motor carrier only within the commercial zone of a port city or any portion of such commercial zone not extending beyond the boundaries of the state in which the port city is located. The Commission filed comments in support of the ICC's proposal. In lieu of the proposed exemption, the ICC established a simplified and expedited certification procedure for the affected carriers.

In ICC Ex Parte 359 - Water Carrier Regulation (Proposed ICC legislation) the FMC submitted comments on various ICC proposals with respect to deregulation of water carriers. In so doing the FMC limited its comments to those areas that involve its regulatory responsibilities. Action by the ICC with respect to the comments received is now pending.

IX. TRADE STUDIES

As part of its continuing effort to keep the maritime community and other interested parties apprised of trade conditions in the U.S. ocean commerce, the Commission's staff prepared North Atlantic, South American, and Virgin Islands' trade studies during the past year. The Commission has previously published similar economic analyses of the North Pacific, Hawaiian, and Alaskan trades.

The North Atlantic Trade Study focused upon both recent and anticipated ocean shipping developments between the United States and Western Europe.

The survey included economic forecasts for five Western European nations, as well as detailed analyses of cargo carriage on major North Atlantic trade routes, tonnage statistics, utilization levels, currency fluctuations, and rate disparities.

The report also detailed U.S.-flag cargo shares, conference shares, foreign-flag participation, and Eastern Bloc carriage in the U.S./North European trades. All section 15 conference, rate, joint service, and discussion agreements involving the North Atlantic trades were described in the study, which also discussed policy issues and legislative developments affecting the trade.

The Virgin Islands' Trade Study concentrated on current and prospective maritime developments in the trades between the U.S. Virgin Islands and the U.S. mainland, Puerto Rico, various Caribbean nations, Europe, and other trading partners.

The study included a description of the U.S. Virgin Islands' economy, fleet configuration in the Virgin Islands trade, a review of the region's ports and harbors, and an extensive economic analysis of the impact of ocean transportation on the islands' economy.

The report also provided a comprehensive listing and discussion of the flow of various commodities in the Virgin Islands' foreign and domestic trade, as well as a detailed survey of the attitudes of Virgin Islands shippers toward the quality of the ocean transportation services they utilize.

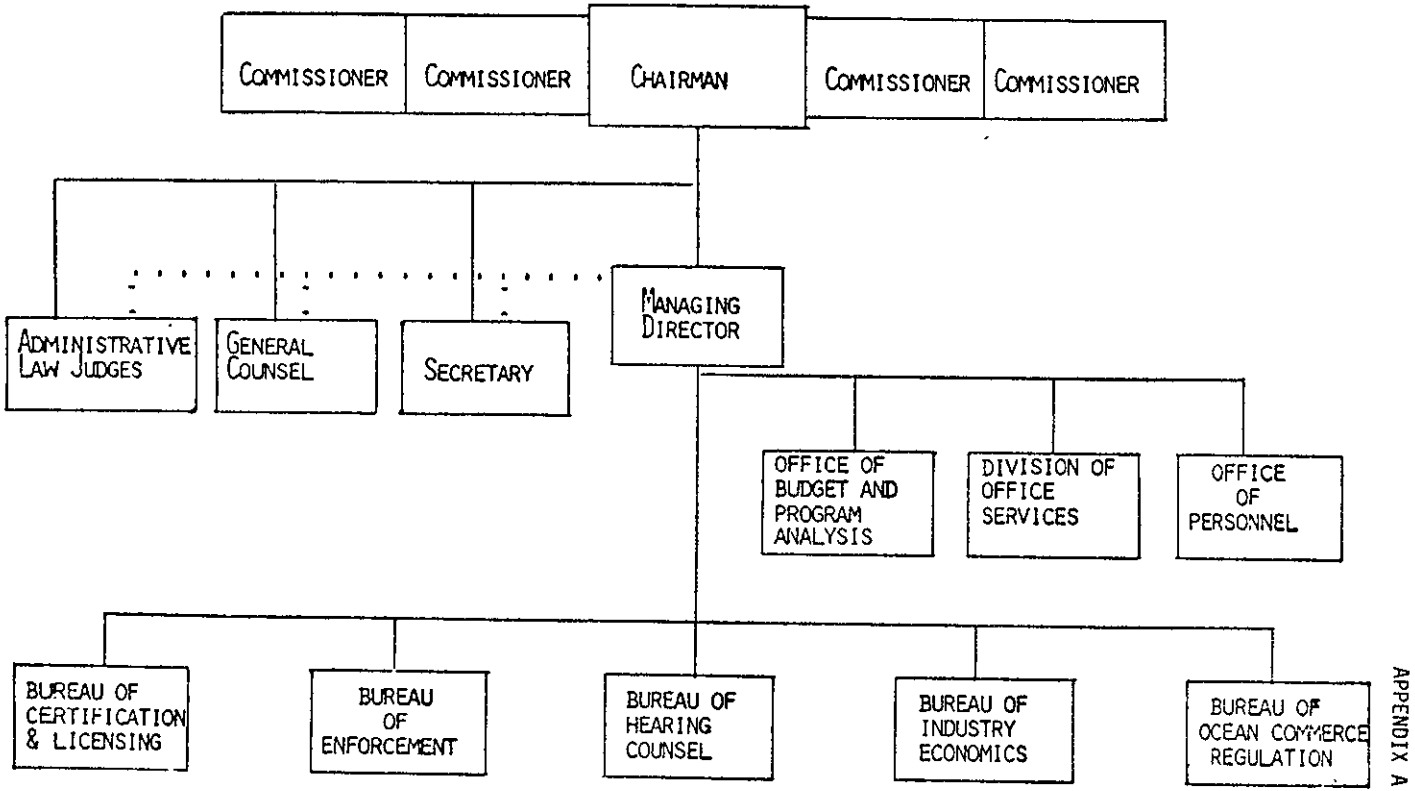
The most recent report was the South American Trade Study, released shortly after the end of the reporting period, which examined ocean shipping developments in the liner trades between the United States and the South American nations of Argentina, Brazil, Chile, Colombia, Ecuador, Peru and Venezuela.

That study included a description of U.S. trade relationships with South America, individual profiles of major South American trading partners, an economic review and forecast of commerce between the U.S. and the South American continent, and detailed summaries of U.S. liner import and export trade with our seven largest trading partners in the region.

The report also provided a comprehensive listing and discussion of carriers serving various South American trade routes, an analysis of U.S.-flag participation in the trade, and a synopsis of current issues and studies relevant to our ocean commerce with South America. All Commission-approved section 15 agreements covering the U.S./South American trade were also described.

Similar studies of other significant U.S. trades are planned for 1980, and existing analyses will be updated as necessary.

FEDERAL MARITIME COMMISSION



APPENDIX A

ADMINISTRATIVE DIRECTION . . . . . .

RICHARD J. DASCHBACH
CHAIRMAN

AUGUST 9, 1979

FIELD OFFICES

NEW YORK, N.Y.
NEW ORLEANS, LA.
SAN FRANCISCO, CA.
HATO REY, P.R.
CHICAGO, ILL.
MIAMI, FLA.
SAN PEDRO, CA.
SAVANNAH, GA.

APPENDIX B

GENERAL COUNSEL'S OFFICE
FEDERAL MARITIME COMMISSION
ENFORCEMENT CLAIMS

FISCAL YEAR 1979
AS OF SEPTEMBER 30, 1979

CLAIMS COMPROMISED UNDER PUBLIC LAWS 92-416 and 96-25

Rebate Claims	F.Y. 1979
No. Settled - Shippers	38
Civil Penalties - Shippers	$1,281,000
No. Settled - American Carriers	0
Civil Penalties - American Carriers	--------
No. Settled - Foreign Carriers	15
Civil Penalties - Foreign Carriers	$3,437,000
REBATING PENALTIES	$4,718,000
Non-Rebating Claims	
No. Settled	4
Civil Penalties	$ 86,500
COMPROMISED CIVIL PENALTIES	$4,804,500
COURT SETTLEMENTS OR FINES (REBATES)	
No. of Defendants	4
Civil Penalties	$ 265,000
TOTAL CIVIL PENALTIES	$5,069,500

CIVIL PENALTY SETTLEMENTS FOR
REBATING VIOLATIONS OF THE SHIPPING ACT, 1916
FISCAL YEAR 1979

NEVITT IMP. CORP.	$ 5,000	10-11-78
JAPAN LINE	365,000	11-07-78
SHOWA LINE, LTD.	252,000	11-07-78
MITSUI O.S.K.	510,000	11-07-78
YAMASHITA-SHINNIHON	375,000	11-07-78
NIPPON YUSEN KAISHA	512,000	11-07-78
KAWASAKI KISEN KAISHA	484,000	11-07-78
ACTION INDUSTRIES	70,000	11-17-78
LUDLOW CORPORATION	35,000	11-28-78
RIO DEL MAR, INC.	10,000	12-11-78
EUROPAM CORP. AND EUROPAM PAPER AND FIBRE CORP.	70,000	12-18-78
ARKAY IMPORT	10,000	12-20-78
H.R. ARDINGER & SON	2,500	12-28-78
ZALE CORP. BUTLER SHOE CORP. BUTLER SHOE CORP.	20,000	01-02-79
ZADOCORP	20,000	01-02-79
JASON/EMPIRE	40,000	01-02-79
ORIENTAL TRADING CORP.	40,000	01-03-79
TALLEY INDUSTRIES ADORENCE	30,000	01-03-79
LARIMI	15,000	01-08-79

APPENDIX B
(Cont.)

U.S. INDUSTRIES	130,000	01-18-79
W.R. GRACE	35,000	01-25-79
BRENTWOOD	7,500	02-07-79
COTTON IMPORT	25,000	02-16-79
TANDY	175,000	02-28-79
NEDLLOYD & HOEGH LINES	40,000	02-28-79
DIVERSIFIED INDUSTRIES	10,000	03-01-79
ANGEL-ETTS	5,000	03-06-79
CUNARD-BROCKLEBANK	105,000	03-08-79
BERG OCEANIC CORP. AND BERG MILL SUPPLY	105,000	03-09-79
D'AMICO LINES	9,000	03-12-79
ARA SERVICES, INC.	35,000	03-15-79
VIDA SHOES	10,000	03-19-79
SAM BRILLIANT COMPANY	95,000	03-21-79
CURTIS MATHES CORPORATION	10,000	04-05-79
MOD-MAID IMPORTS	5,000	04-20-79
MORSE ELECTRO PRODUCTS	35,000	05-09-79
ITALIAN LINES	75,000	05-23-79
HEIDELBERG	55,000	05-25-79
PREMIER BRANDS	5,000	05-25-79
ATLANTIC CONTAINER LINES	5,000	05-31-79
SIRCO	35,000	06-21-79
NISHIMOTO TRADING CO.	40,000	06-29-79
COMPANHIA DE NAVAGACAO LLOYD BRASILEIRO	70,000	06-29-79

APPENDIX B
(Cont.)

LELY CORPORATION	10,000	07-10-79
IMPERIAL INTERNATIONAL	6,500	07-18-79
MONSIEUR HENRI	12,500	07-18-79
SOUNDESIGN CORP.	195,000	07-13-79
KAUFMANN TRADING	15,000	07-23-79
TENNA CORPORATION	10,000	08-02-79
MR. CHRISTMAS	5,000	08-07-79
MELVILLE CORPORATION	35,000	08-10-79
ORIENT OVERSEAS CONTAINER LINE	500,000	08-17-79
LIGGETT GROUP INC.	5,000	08-28-79
HITACHI	32,000	08-29-79
BURLINGTON INDUSTRIES	35,000	09-04-79
KNUTSEN LINE	135,000	09-14-79
TOTAL ANTI-REBATING PENALTIES	$4,983,000	

APPENDIX C

BUREAU OF ENFORCEMENT
FIELD INVESTIGATIONS
FY 1979

INVESTIGATIONS	TOTAL	MAL-PRACTICES	TARIFF VIOLATIONS	FORWARDER AND OTHER MATTERS
Pending September 30, 1978	667	268	95	304
Opened FY 1979	923	339	135	449
Completed FY 1979	853	302	107	444
Pending September 30, 1979	737	305	123	309

APPENDIX D

STATISTICAL ABSTRACT OF FILINGS

SECTION 15 AGREEMENTS (including modifications):

Foreign Commerce	170
Domestic Offshore Commerce	22
Terminals	134*
Labor-Management	137

SECTION 14b DUAL RATE CONTRACTS (including modifications): 1

REPORTS REVIEW:

Shippers' Requests and Complaints	349
Minutes of Meetings	2,644
Self-policing of Conference and Rate Agreements	163
Pooling Statements	42
Operating Reports	36

APPROVED AGREEMENTS ON FILE AS OF SEPTEMBER 30, 1979:

Conference	76
Rate	38
Joint Conference	11
Pooling	19
Joint Service	27
Sailing	31
Transshipment	128
Cooperative Working, Agency, and Container Interchange	118
Dual Rate Contract Systems	60
Non-exclusive Transshipment	796
Domestic Offshore	12
Terminals	482
Labor-Management Approvals and Exemptions	89

*Includes 23 agreements determined not to be subject to section 15 of the Shipping Act, 1916.

APPENDIX D
(Cont.)

TARIFF FILINGS

Fiscal Year - 1979
October 1, 1978 thru September 30, 1979

Total Number of Tariff Filings Received	384,992
Total Number of Tariff Filings Rejected	7,984
Total Number of Tariffs On Hand 10/1/78	2,932
Total Number of Tariffs On Hand 10/1/79	3,043
Special Permission Applications received during Fiscal Year 1979	413

Granted	328
Denied	74
Withdrawn	13

APPENDIX E

STATEMENT OF APPROPRIATION AND OBLIGATION FOR THE
FISCAL YEAR ENDED SEPTEMBER 30, 1979

APPROPRIATION:	
Public Law 95-431, 95th Congress, approved October 10, 1978: 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. 59015902; Provided, that not to exceed $1,500 shall be available for official reception and representation expenses.....	$10,550,000
Public Law 9638; 96th Congress, approved July 25, 1979; Supplemental Appropriation Act, 1979 to cover increased pay cost	200,000
Appropriation availability.....	$10,750,000
OBLIGATIONS AND UNOBLIGATED BALANCE:	
Net obligations for salaries and expenses for the fiscal year ended September 30, 1979.....	10,474,700
Unobligated balance withdrawn by Treasury	$ 275,300
STATEMENT OF RECEIPTS: DEPOSITED WITH THE GENERAL FUND OF THE TREASURY FOR THE FISCAL YEAR ENDED SEPTEMBER 30, 1979:	
Publications and reproductions.....	24,117
Water Pollution application and certificate fees.....	1,046,129
Fines and penalties.....	4,546,074
Miscellaneous.....	8,274
Total general fund receipts.....	$ 5,624,594