FEDERAL MARITIME COMMISSION

34th ANNUAL REPORT

for

Fiscal Year

1995

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

March 31, 1996

To the United States Senate and House of Representatives:

Pursuant to section 103(e) of Reorganization Plan No. 7 of 1961, and section 208 of the Merchant Marine Act, 1936, as amended, I am pleased to submit the thirty-fourth annual report of the activities of the Federal Maritime Commission for fiscal year 1995.

Additionally, section V.N of this report contains an Update on Remote Access - September 1995, to comply with the request of Congress to be kept informed on developments of reasonable restrictions on remote access to the Commission's *Automated Tariff Filing and Information System ("ATFI")*.

Sincerely,

Harold J. Creel, Jr.
Chairman

MEMBERS OF COMMISSION

*William D. Hathaway**
Chairman
Appointed 1990
Term Expires 1998

Ming C. Hsu
Commissioner
Appointed 1990
Term Expires 1996

Joe Scroggins, Jr.
Commissioner
Appointed 1994
Term Expired 1995

Delmond J.H. Won
Commissioner
Appointed 1994
Term Expires 1997

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

* *Chairman Hathaway retired on February 3, 1996.*
** *Harold J. Creel, Jr., assumed the Chairmanship on February 4, 1996.*

SENIOR COMMISSION OFFICIALS

Secretary . . . . . *Joseph C. Polking*

Chief Administrative Law Judge . . . . *Norman D. Kline*

General Counsel . . . . . *Robert D. Bourgoin*

Director, Office of
Equal Employment Opportunity . . . *Mary A. Jackson*

Inspector General . . . . . *Tony P. Kominoth*

Managing Director . . . . . *Edward P. Walsh*

Deputy Managing Director . . . . . *Bruce A. Dombrowski*

Director, Bureau of
Economics and
Agreement Analysis . . . . . *Austin L. Schmitt*

Director, Bureau of
Tariffs, Certification
and Licensing . . . . . *Bryant L. VanBrakle*

Director, Bureau of
Hearing Counsel . . . . . *Vern W. Hill*

Director, Bureau of
Investigations . . . . . *Norman W. Littlejohn*

Director, Bureau of
Administration . . . . . *Sandra L. Kusumoto*

I

THE COMMISSION

A. HISTORY

The Federal Maritime Commission ("Commission" or "FMC") was established as an independent regulatory agency by Reorganization Plan No. 7, effective August 12, 1961. Prior to that time, the Federal Maritime Board was responsible for both the regulation of ocean commerce and the promotion of the United States ("U.S.") Merchant Marine. Under the reorganization plan, the shipping laws of the U.S. were separated into two categories -- regulatory and promotional. The responsibilities associated with promotion of an adequate and efficient U.S. Merchant Marine were assigned to the Maritime Administration, now located within the Department of Transportation. The newly-created FMC was charged with the administration of the regulatory provisions of the shipping laws.

The Commission is now responsible for the regulation of oceanborne transportation in the foreign commerce and in the domestic offshore trade of the U.S. The passage of the Shipping Act of 1984 brought about a major change in the regulatory regime facing shipping companies operating in the foreign commerce of the U.S.

B. FUNCTIONS

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

Merchant Marine Act, 1920 ("1920 Act"), and Pub. L. No. 89-777.

The Commission's regulatory responsibilities include:

- **Protecting shippers and carriers engaged in the foreign commerce of the U.S. from restrictive or non-market-oriented rules and regulations of foreign governments and/or the practices of foreign-flag carriers that have an adverse effect on the commerce of the U.S.**

- **Protecting the rights of U.S.-flag shipping companies to transport cargoes in the U.S. foreign oceanborne and foreign-to-foreign trades.**

- **Reviewing and monitoring agreements of common carriers and other persons engaged in the U.S. foreign commerce. These agreements include conference, pooling, joint service and space charter agreements.**

- **Receipt and review of tariff filings (but not the regulation of rate levels) by common carriers engaged in the U.S. foreign commerce.**

- **Regulating rates, charges, classifications, rules, regulations and tariffs of controlled carriers to ensure that such matters are just and reasonable.**

- **Issuing passenger vessel certificates evidencing financial responsibility of vessel owners or charterers to pay judgments for personal injury or death or to repay fares for the nonperformance of a voyage or cruise.**

- **Regulating rates, charges, classifications, practices and tariffs of ocean common carriers in the domestic offshore trades of the U.S.**

- **Licensing international ocean freight forwarders.**

- **Bonding of non-vessel-operating common carriers ("NVOCCs").**

- **Investigating discriminatory rates, charges, classifications, and practices of ocean common carriers, terminal operators, and freight forwarders operating in the foreign and/or domestic offshore commerce of the U.S.**

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

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

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

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

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

The Commission carries out its regulatory responsibilities by conducting informal and formal investigations. It also holds hearings, considers evidence and renders decisions, and issues appropriate orders and implementing regulations. The

Commission also adjudicates disputes involving the regulated community, the general shipping public, and other affected individuals or interest groups.

C. ORGANIZATION

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

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

In fiscal year 1995, the Commission was authorized a total of 205 full-time equivalent positions and had a total appropriation of $18,531,000. The majority of the Commission's personnel are located in Washington, D.C., with field offices in New York, Los Angeles and Miami, staffed by personnel from the Bureau of Investigations. Field offices in San Francisco, New Orleans, Houston and Hato Rey, Puerto Rico, were closed on September 30, 1995, due to reduced agency funding.

II

THE YEAR IN REVIEW

The Commission continued the active administration of its international trade and transportation responsibilities in fiscal year 1995. A major emphasis again was the protection of U.S. trades from unfair foreign shipping practices, and ensuring that U.S. importers and exporters were afforded fair and reasonable treatment in the U.S. oceanborne trades.

The Commission monitored developments in U.S. foreign trades to identify relevant trends and to ensure that past successes in deterring malpractices did not wane. A major enforcement effort in the North Atlantic trades was completed, culminating in rate advantages for shippers and the addition of procompetitive provisions to the agreement of the involved conference. The implementation of these positive changes will be closely monitored in fiscal year 1996 to ensure that they achieve the beneficial results intended. Additionally, the Commission's automated tariff filing system completed its first full year of operation as authorized filers became fully familiar with the system and the number of tariff filings increased.

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

A. TRADE DEVELOPMENTS

The international ocean shipping industry continues to be a vital link between the U.S. economy and our overseas trading partners. The Commission continually assesses trade developments to identify all commercial and economic factors relevant to its oversight of U.S. oceanborne commerce.

The transatlantic trades experienced a dramatic shift in trade flows last year. Economic expansion in Eastern Europe, combined with a weak U.S. dollar and enhanced U.S. productivity, contributed toward a healthy increase in U.S. liner exports. U.S. imports from Europe, meanwhile, achieved minimal growth over the previous year, as the dollar's depreciation restrained consumer demand for foreign goods. Carriers serving the transatlantic trades continued to combine their services through vessel and container slot sharing agreements to reduce costs and improve service quality to shippers. The Trans-Atlantic Conference Agreement ("TACA") continued to command the Commission's attention in 1995. The Commission and the Conference agreed to a settlement, disposing of a number of Commission proceedings initiated against TACA to investigate alleged malpractices and anticompetitive behavior. In return for discontinuing the Commission investigations, TACA agreed, among other things, to suspend its 1995 rate increase (saving shippers an estimated $60-70 million in freight costs), and to allow its member lines to take independent action ("IA") on conference service contracts for one year, commencing January 1, 1996. TACA also agreed to make changes to its agreement provisions regarding members' right to IA and service contracting with shippers. On the other side of the Atlantic, the TACA carriers filed an appeal of the European Commission's ("EC") earlier ruling that its agreement did not meet EC criteria for a block exemption and was, therefore, illegal -- a decision is not expected on TACA's appeal until next year at the earliest. The

EC also issued new rules stating that if shipping consortia meet certain market share ceilings, and include the use of IA and other mandated provisions, they will be granted a block exemption from the European competition laws.

U.S. exports to the Mediterranean were also up sharply in 1995, due to a revival of European demand and a generally weaker dollar. Imports from the Mediterranean grew significantly early in 1995, but slowed later in the year as European products lost their competitive advantage due to rising currency values in Europe. Most types of new ocean carrier agreements implemented in the Mediterranean during 1995 were the result of carriers' continuing pattern of rationalizing their shipping services. The ongoing development of containerization, along with the presence of more rationalized carrier services, increased the number of feeder services established in the Mediterranean.

Liner shipping in the Middle East recovered somewhat from the overcapacity problems that existed in 1994. Improvement was due in large part to the recovery of most major economies, an enhanced trade in manufactured goods, and a continuing trend toward containerization. The emergence of global alliances for major carriers operating in the East/West trades stimulated demand for sophisticated feeder services within the Middle East. The trend toward rationalization and restructuring of liner shipping service also was apparent in this region last year.

Once again, poor economic conditions had a negative impact on trade growth in Africa. This trade also was affected by a trade imbalance where U.S. exports to the region exceeded imports by some 30 percent, creating considerable problems for shipping companies in backhauling empty containers. Additionally, many African ports lacked adequate equipment to facilitate loading and unloading of cargo. Labor unrest and

civil strife only served to exacerbate port congestion problems. Carriers attempted to address these problems through increased use of feeder services and rationalization of their services.

Despite experiencing slightly less economic growth in 1995, Latin America and the Caribbean achieved a net international trade surplus for the first time since 1990. U.S. trade with the region increased significantly, with U.S. imports increasing by 18 percent and exports by 20 percent. As in other less developed regions, ports in Latin America experienced severe congestion due mainly to inadequate facilities and insufficient landside storage areas for containers. As in other trades facing similar problems, carriers in this region entered into arrangements to rationalize their services so as to address port congestion and improve service options for shippers.

The transpacific trade lanes remained the largest market for U.S. exports and imports. The inbound trades experienced rapid growth through the middle of 1995, but faced an unexpected downturn at the beginning of the traditional holiday shipping season in July. Outbound trades maintained significant growth throughout the year as the relatively weak dollar added to increased demand for U.S. goods, especially higher-value agricultural products. The Commission initiated comprehensive inquiries into the reasonableness of conference rates and conference IA practices in the transpacific. As part of this review, the Commission obtained an indefinite suspension of a capacity management program that allowed carriers to reduce the container capacity they made available to the trade. There was minimal new agreement activity in the transpacific in 1995.

B. RESTRICTIVE TRADE PRACTICES

One of the Commission's major responsibilities is to appropriately address restrictive practices that have an adverse

impact on U.S. foreign commerce and U.S. entities operating in that commerce. Pursuant to section 19 of the 1920 Act and the FSPA, the Commission is charged with identifying and eliminating protectionist practices of foreign governments in ocean shipping that favor their domestic interests and discriminate against U.S. interests. Section 19 of the 1920 Act authorizes the Commission to implement rules and regulations applicable to the U.S. oceanborne trades to adjust or meet conditions unfavorable to shipping. The FSPA directs the Commission to address adverse conditions affecting U.S. carriers in any U.S. foreign trade with countervailing sanctions aimed at eliminating the adverse conditions.

The Commission continued the aggressive pursuit of its authority in the area of restrictive practices in 1995. Based on its ongoing monitoring efforts, continuing dialogue with affected maritime interests, and regular interaction with U.S. executive agencies, possible harmful practices were identified and appropriately addressed. The Commission pursued several matters in 1995 that may warrant formal proceedings under section 19 and the FSPA, the most prominent of which involve Japan and the People's Republic of China ("PRC").

The Commission demanded specific information from all carriers in the U.S./Japan trade regarding restrictions and requirements applicable to the use of port and terminal facilities in Japan. The Commission is focusing on: the "prior consultation" system, which requires discussions and operational approvals for port usage; mandatory weighing and measuring requirements; restrictions on Sunday work; and the disposition of funds previously collected from carriers serving Japanese ports. The Commission is seeking specific information about these practices and the role of the Government of Japan in port operations.

The Commission also is monitoring whether the PRC Government has carried through on a prior commitment made to the U.S. Government to permit freight forwarding and consolidation by wholly owned foreign-owned subsidiaries of U.S. carriers. Indications are that U.S. or foreign-flag carriers must form a joint venture with a Chinese company to engage in these operations. The Commission is reviewing this situation to determine if formal action is required to satisfactorily resolve it.

C. ENFORCEMENT

The Commission's enforcement program operates as a collaborative effort among its trade specialists, economists, investigators, and prosecutors, who jointly develop strategies for presentation to senior management. Relevant data and information then is developed, the necessary investigation and monitoring accomplished, and the appropriate enforcement action initiated. Subsequent to the completion of any enforcement action, follow-up monitoring is initiated to ensure that malpractices do not recur or shift to some new scheme.

The Commission's major investigation into matters in the North Atlantic trades was expanded and concluded in fiscal year 1995. Evidence developed in Fact Finding Investigation No. 21 persuaded the Commission to commence three adjudicatory proceedings directed at TACA and its members. In addition, the Commission issued section 15 orders to certain members of TACA and independent carriers in the North Atlantic trades to develop evidence on possible rate discussions between conference members or representatives and independent lines.

As previously discussed in more detail, all of the issues set forth in the fact finding and adjudicatory proceedings were the subject of settlement agreements which took effect in March

and May 1995, resulting in immediate, substantial freight savings to shippers and long-term improvements in the transatlantic shipping environment. The Commission continues to monitor the implementation of these settlement agreements to ensure that their intent is carried out.

Other enforcement initiatives in fiscal year 1995 included a program directed toward NVOCCs with tariffs containing only generic "Cargo, N.O.S." rates, and their practice of charging rates for commodities not reflected in those tariffs. This effort has resulted in improvement of NVOCC tariffs and rating practices. The South and Central American trades continued to receive attention by the Commission in 1995. Progress in combatting rate malpractices in those trades was reflected by a settlement with a major carrier in the trades in March 1995. Several other matters in these trades are under active investigation or are the subject of initial enforcement actions which will be completed in fiscal year 1996.

The Commission collected $381,912.63 in civil penalties in fiscal year 1995. The residual deterrent effect of our prior enforcement actions has reduced malpractices in many trades. Nonetheless, our oversight of industry self-policing activity and our ongoing monitoring/surveillance programs indicate that several trades will require closer scrutiny to address potential malpractices that can have a negative impact on competition and trade. The Commission will remain vigorous in its enforcement of the ocean shipping laws, continuing to be guided by the dual objectives of obtaining statutory compliance and ensuring equitable trading conditions in the U.S. ocean commerce.

D. SURVEILLANCE

The Commission continuously seeks to enhance the breadth and effectiveness of its monitoring and surveillance

programs. Systematic oversight of market conditions and carrier/conference behavior helps to ensure continued compliance with statutory and regulatory requirements. These efforts help to uncover unreasonable or discriminatory actions in the U.S. ocean commerce, and assist in the identification of potentially unfavorable trade practices by foreign governments.

The practices of TACA were a primary Commission focus in early fiscal year 1995, with the practices of the Pacific conferences and discussion agreements gradually coming under increased scrutiny by the latter part of the fiscal year.

Other major monitoring and research projects undertaken in fiscal year 1995 included: an inquiry into the feasibility of codifying the Commission's section 6(g) guidelines; a proposed rule to update and expand the Commission's agreement information form and reporting requirements; a final rule changing the financial reporting requirements and the rate-of-return methodology used in the domestic offshore trades; an analysis of the reasonableness of a GRI in the Hawaiian trade; updating the Commission's existing user fees and implementing new service and filing fees; section 15 orders requiring carriers to provide information on surcharges in the transpacific and IA activities in both the transpacific and transatlantic trades; a critique of a Department of Agriculture study on the effects of conference pricing on agricultural exports; a report on U.S.-flag shares over 30 years for the Congressional Research Service; a cost-benefit analysis of a proposed increase in the financial guaranty required of passenger vessel operators; and periodic monitoring reports on key agreements in the major U.S. trade lanes and controlled carrier activities.

E. TARIFF AUTOMATION

As indicated in last year's Annual Report, the Commission's automated tariff filing system became fully operational in 1994, resulting in effectuation of essentially a paperless tariff environment. This past fiscal year the Commission completed several administrative actions regarding the Automated Tariff Filing and Information ("ATFI") system, and pursued the effective operation of the system. The Commission issued its last show cause order regarding the cancellation of carrier tariffs that had not been converted to the electronic filing format. An additional 191 carriers had their tariffs canceled for failure to file. In total, the paper tariffs of approximately 310 carriers were canceled for failure to file in the new electronic format. The Commission received 1,132 new electronic tariffs in fiscal year 1995, and closed the year with 4,552 tariffs in the ATFI system -- this represents a 21 percent increase over the end of fiscal year 1994. Those tariffs and all essential terms of service contracts are available on a 24-hours basis to the approximately 4,000 entities with ATFI access capability. The Commission continues to add new locations to the ATFI locations database, while at fiscal year end, 39 firms were certified for batch filing.

The Commission issued two rulemakings this fiscal year involving the ATFI system. Docket No. 95-01 proposed the elimination of those Parts in the CFR which contain the Commission's rules for filing paper tariffs. Since the ATFI system became fully operational, with all paper tariffs either converted or canceled, there no longer was a need for these rules, and they were eliminated by final rule in May 1995. In Docket No. 95-08, the Commission proposed a rule to permit an optional, abbreviated format for filing service contracts. The rule was proposed in an attempt to reduce duplication and minimize errors in filings given the fact that the essential terms

of all service contracts are filed in the ATFI system. A final rule is anticipated in fiscal year 1996.

The Commission exercised the option for its ATFI Contractor to maintain the system through fiscal year 1996. Recompetition of the contract to accomplish refinement of and enhancements to the system is being held in abeyance, given budgetary constraints and certain questions surrounding the future of tariff filing. Additionally, fees for the secondary use of tariff data expired on September 30, 1995, and no longer are applicable.

III

SURVEILLANCE AND ENFORCEMENT

A. SURVEILLANCE

The systematic surveillance of carrier activities and commercial conditions in the U.S. liner trades is an integral part of the Commission's responsibilities under the 1916 Act and the 1984 Act. Such surveillance helps ensure that carriers operating in the U.S. trades comply with the statutory standards of the applicable Acts and the requirements of relevant Commission regulations. To that end, the Commission administers a variety of monitoring programs and other research activities, designed to keep informed of current trade conditions, emerging commercial trends, and carrier pricing and service activities.

The importance the Commission attaches to its ongoing monitoring activities is a direct consequence of the removal, under the 1984 Act, of the Commission's previous broad discretion to disapprove agreements. The 1984 Act provides that, unless rejected under relevant statutory authority, agreements filed with the Commission shall become effective on the 45th day after filing or the 30th day after notice in the *Federal Register*, whichever is later. Agreements can be rejected for technical reasons or for failure to include statutory provisions in the agreement language. Also, the Commission may extend the original 45-day period for an additional 45 days, if necessary, to obtain additional information from filing parties. Finally, if the Commission determines that an agreement, by virtue of a reduction in competition, is likely to unreasonably increase transportation costs or decrease transportation service, it may seek injunctive relief in the U.S. District Court for the District of Columbia.

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

In fiscal year 1995, the Bureau of Economics and Agreement Analysis' ("BEAA") monitoring and research involved a variety of economic analyses of, and reports on the pricing and service behavior of carriers operating in the U.S. trades. Projects included: (1) an analysis of periodic reports filed by the Trans-Atlantic Conference Agreement ("TACA") and of trade conditions in the North Atlantic; (2) monitoring reports on TACA and the Transpacific Stabilization Agreement, a capacity management and rate discussion agreement covering the inbound Asia/U.S. trades; (3) a detailed economic analysis of the impact of amendments that established TACA, the successor to the Trans-Atlantic Agreement ("TAA"); (4) an analysis of a U.S. Department of Agriculture-sponsored study of the impact of maritime regulatory policy on U.S. agricultural exports; (5) a semiannual report on marine terminal operators' service agreements; (6) a review of the first six-months reporting requirements of the Inter-American Discussion Agreement; (7) a market share report on the transpacific outbound trades; (8) a section 15 order requiring TAA/TACA to submit information and documents regarding IA activities by the member lines; and (9) a section 15 order on bunker fuel and currency adjustment surcharges in the transpacific trades.

BEAA also participated in the Commission's a multi-issue investigation into the pricing and service behavior of

TAA/TACA and its member lines. BEAA provided testimony regarding the extent and competitive consequences of vessel sharing arrangements undertaken by TAA/TACA members and reviewed documents submitted in response to the section 15 order on IA.

B. ENFORCEMENT

The 1984 Act establishes an integrated system for the regulation of the shipping and related industries in furtherance of the statutory declaration of policy to ensure a nondiscriminatory, efficient, and economic ocean transportation system for the benefit of international trade of the U.S.

The enforcement program represents a major area of Commission activity. A major goal of the program is to achieve compliance with the provisions of the 1984 Act. Compliance, in turn, provides the pathway to the statutory objectives of the 1984 Act. Enforcement is a traditional means to achieve compliance through deterrence.

In fiscal year 1995, the Commission continued its efforts to confront and terminate malpractices in major trades. Late in fiscal year 1994, the Commission launched the most comprehensive inquiry into the competitive power of a conference and the impact of that power upon shippers in its history. This unparalleled initiative began as a fact finding investigation into TACA's possible restrictions on member lines' right of IA, alleged discrimination against shippers and unreasonable increases in rates and reduction in service, and possible operations without agreement authority or beyond the scope of the agreement's authority. It was expanded in November 1994 to include three adjudicatory proceedings to pursue issues developed in the fact finding investigation. The issues set forth in the fact finding and adjudicatory proceedings were the subject of settlement agreements which took effect in

March and May 1995. The Commission ended its investigation and the attendant proceedings given TACA's commitment to: rollback 1995 rate increases to 1994 levels; allow members to enter into independent service contracts in 1996; make substantive and procedural changes to its agreement to protect member lines' right of IA and improve service contracting for shippers; and cancel several discussion agreements it had with independent carriers to discuss and agree upon rates. The Commission continues to monitor the implementation of these settlement agreements to ensure that their intent is carried out.

Investigative and enforcement activities involved increased cooperation and coordination with other Government agencies. A joint support program between the Commission and the U.S. Customs Service ("Customs") has resulted in interagency coordination of effort on matters of mutual concern. During fiscal year 1995, coordination between the Commission's district offices and Customs' regional offices was enhanced as part of an amended Memorandum of Understanding between the agencies to provide for the exchange of investigative information. Retrieval of information from Customs' Automated Commercial Environment ("ACE") database was also facilitated by the installation of new ACE hardware at FMC headquarters.

Also in fiscal year 1995, the Commission concluded negotiations with Customs to obtain on-line access to the Automated Broker Interface ("ABI") module in the ACE. Access to the ABI will provide investigators with important information on shipping transactions which has heretofore been very difficult to obtain. The volume and speed of exchange of investigative information should continue to increase in fiscal years 1996 and 1997, as both agencies advance in automation and promote improvements in electronic filing of regulatory information.

The Commission continued a comprehensive program to enforce tariff integrity and ensure compliance with the tariff filing and adherence requirements of the 1984 Act. This program has been designed to include not only the tariff filing and adherence practices of common carriers, particularly NVOCCs, but improper shipper practices, such as misdescription of commodities and misdeclaration of measurements that undermine tariff integrity.

On September 30, 1995, the Commission closed its field offices in Houston, New Orleans, San Francisco and Hato Rey, Puerto Rico, and reduced the number of personnel employed in its remaining field offices in Los Angeles, Miami and New York. These actions, which were necessitated by budget reductions, will create significant challenges for the Commission's enforcement program. To address these challenges, the Commission has decided to streamline its enforcement organization by combining the Bureaus of Hearing Counsel and Investigations into one new Bureau of Enforcement. In addition, closer liaison between investigators and prosecuting attorneys will be achieved by this reorganization, scheduled to become effective early in fiscal year 1996.

During fiscal year 1995, the Commission collected $381,912 in the compromise of civil penalties (*See* Appendix E). While this amount represents a significant reduction from collections in prior years, it also reflects a conscious decision in connection with the settlement with TACA to provide substantial monetary savings for the involved shipping public (estimated to be between $60-$70 million for 1995), in lieu of assessing civil penalties which are deposited in the U.S. Treasury.

IV

DEVELOPMENTS IN MAJOR U.S. FOREIGN TRADES

A. TRANSATLANTIC

In fiscal year 1995, liner trade conditions between the U.S. and North Europe shifted dramatically from the results of the previous fiscal year. Economic expansion in Eastern Europe, combined with a weak U.S. dollar and enhanced U.S. industrial productivity, contributed toward a 14 percent increase in the volume of U.S. liner exports over the previous period's 2 percent decline. Year-end projections are that liner exports to North Europe will achieve a growth rate of 16 percent, a six-year high. U.S. containerized exports of chemicals, automobile parts, and forest and paper products benefitted from particularly high growth rates.

By contrast, U.S. liner import growth from North Europe was relatively meager in comparison to the 11 percent gain in fiscal year 1994. The dollar's depreciation restrained consumer demand for foreign goods in the U.S., resulting in a volume increase of only 2 percent for liner imports from North Europe. Shippers of major containerized imports in the trade, such as wine, beer, and non-alcoholic beverages, reported noticeable declines in demand.

The shift in the trade patterns did, however, reduce the liner trade imbalance by 47 percent, as the volume of liner exports began to catch up with the volume of liner imports. Overall, trade volumes were good, with carriers reporting improved utilization levels and profitability from the recessionary conditions that prevailed earlier in the decade.

Conference carriers maintained a consistent collective market share of around 70 percent in both the eastbound and westbound sectors of the trade during the fiscal year.

As last year, a substantial amount of Commission resources continued to be focused on the activities of the *Trans-Atlantic Agreement* ("TAA")(No. 202-011375), and its member carriers during fiscal year 1995. TAA is a conference agreement that permits its members to discuss and agree on rates, charges, and conditions of service in the trade between the U.S. and North Europe. TAA became effective on August 31, 1992. The carriers subsequently revised their agreement and renamed it the *Trans-Atlantic Conference Agreement* ("TACA"), effective October 24, 1994. TACA currently has 17 members: A.P. Moller-Maersk Line ("Maersk"); Atlantic Container Line AB; Cho Yang Shipping Co. ("Cho Yang"); DSR-Senator Lines; Hanjin Shipping Co. ("Hanjin"); Hapag Lloyd AG; Hyundai Merchant Marine Co., Ltd. ("Hyundai"); Mediterranean Shipping Co. ("Med Shipping"); Nedlloyd Lijnen BV ("Nedlloyd"); Neptune Orient Lines Ltd. ("NOL"); Nippon Yusen Kaisha ("NYK"); Orient Overseas Container (U.K.) Line Ltd. ("OOCL"); P&O Containers Ltd. ("P&O"); Polish Ocean Lines; Sea-Land Service Inc. ("Sea-Land"); Transportacion Maritima Mexicana S.A. de C.V. ("TMM"); and Tecomar S.A. de C.V. ("Tecomar"). TACA's newest member, the South Korean carrier Hyundai, joined the conference in September 1995, and participates in the trade by chartering space on Med Shipping vessels without deploying any of its own vessels.

The original agreement under TAA provided for a two-tiered membership structure with binding rate authority for certain members and voluntary rate authority for others. TAA also implemented a capacity management program ("CMP") in the westbound trade (Europe to the U.S.). In July 1994, the conference filed a revised agreement (TACA) proposing, among

other changes, to restructure and expand its CMP, and eliminate the two-tiered membership structure. Concerns over TACA's implementation and competitive impact prompted the Commission to issue a formal Request for Additional Information on August 10, 1994. After extensive analysis, Commission staff found that certain provisions of TACA, in conjunction with its dominate market position, posed potential violations of section 6(g) of the 1984 Act. As a result of deliberations with the Commission on these matters, TACA modified its agreement to: (1) eliminate the CMP entirely; (2) establish a 15-day window to allow a member to take unilateral action on service contracts; (3) delete any minimum cargo commitment for service contracts; (4) clarify the number of votes necessary for carriers to execute service contracts; (5) reduce the IA notice period to three business days; (6) delete authority allowing members to collectively deal with inland European carriers; and (7) delete authority that could permit members to meet with other unnamed persons and engage in activities, including the exchange of information, for the purpose of negotiating and entering into other agreements. Given these modifications, the Commission took no further action to prevent TACA from becoming effective in October 1994.

The Commission continues to monitor closely the conference carriers' activities and operations to assess the impact of TACA on trade conditions and to ensure compliance with section 6(g) and other provisions of the 1984 Act. TACA is required to submit quarterly reports on its carriers' pricing and service activities, capacity utilization, average revenue per 20-foot container ("TEU"), and other data relevant to its operations.

In addition to these actions, by approving a settlement the Commission resolved a number of proceedings involving TAA, its member carriers, its successor agreement TACA, and certain

non-conference carriers in the trade. The approved settlement ended proceedings initiated against TAA/TACA to investigate alleged malpractices and violations of the 1984 Act by terminating and dismissing: (1) Fact Finding Investigation No. 21, *Activities of the Trans-Atlantic Agreement and Its Members*; (2) Docket No. 94-29, *Practices of the Trans-Atlantic Agreement and its Members With Respect to Independent Action*; (3) Docket No. 94-30, *Container Pool Practices of the Trans-Atlantic Agreement and its Members*; and (4) Section 15 Order, *Eurocorde Discussion Agreement*, and *Gulfway Discussion Agreement*.

In return, the settlement provided that TACA and its member carriers implement the following: (1) suspension of its 1995 rate increases, providing a rollback of rates to 1994 levels (estimated savings to shippers between $60-$70 million); (2) changes to its service contract and IA agreement provisions, procedures, and practices; (3) membership withdrawal from and/or cancellation of various related and interconnecting agreements, including *Eurocorde* and *Gulfway Discussion Agreements*; (4) allowance of only short-term space chartering under TACA; and (5) cancellation of all connecting carrier agreements with NVOCCs. Additionally, the Commission's approval of the settlement imposed the condition that TACA amend its agreement to allow member carriers the option of IA on service contracts for one year, commencing January 1, 1996. This measure was added to introduce additional price competition in the trade and reduce shippers' concerns of unreasonable rate increases. The amendment became effective on April 23, 1995. Another outcome of the settlement provided for semiannual meetings between TACA representatives and Commission staff to review the conference's activities and plans. The first such meeting was held in September 1995.

Overall, the Commission favored the settlement because it conferred immediate economic benefits to shippers through

reduced rates, reduced uncertainty in shipper-carrier relations, and averted protracted and expensive litigation. A related proceeding against TAA/TACA, Docket No. 94-28, *Vessel Sharing Agreements-Order to Show Cause*, was similarly resolved through a separate settlement, approved by Order dated May 10, 1995, with the removal or correction of restrictive or anticompetitive provisions in certain vessel sharing agreements ("VSA") among TAA/TACA members.

Along with the settlement provisions, the conference also independently introduced further flexibility in its service contract negotiations by offering shippers the option of two-year service contracts. The conference amended its agreement, extending its service contract term to a maximum of two calendar years, to become effective in December 1995.

While the FMC was engaged in proceedings involving TAA/TACA during the fiscal year, the EC likewise was occupied with interpreting and applying the competition laws of the European Union ("EU") under the treaty establishing the European Economic Community ("EC Treaty"). In October 1994, the EC formally ruled that TAA did not meet its criteria of a conference and, therefore, was not entitled to the block exemption under Article 85(3) of the EC Treaty. At issue, the EC cited TAA's CMP, its two-tiered membership and rate structure, and its practice of fixing prices on inland transportation among EU member states. Thus, the EC concluded that such practices are illegal under EU laws and that the TAA carriers violate these laws to the extent of their involvement in such practices. The EC consequently ordered TAA to: (1) cease immediately all illegal practices; (2) refrain from engaging in similar practices or agreements in the future; and (3) offer shippers the option of terminating or renegotiating any contractual arrangements concluded under TAA. No monetary penalties were levied at the time of the ruling.

Since the CMP and two-tiered membership structure were removed by the carriers' revised agreement, TACA, the remaining issue in dispute mainly focused on the carriers' ability to negotiate collectively and set inland European rates. In response to the EC's ruling, the carriers filed appeals with the European Court of First Instance ("Court"), seeking to reverse the EC's ruling on the legality of TAA, and requesting its suspension pending appeal. In March 1995, the Court granted the carriers' request for suspension, noting that the EC's ruling could compromise the stability of the market. This legal action was upheld when the European Court of Justice rejected an appeal by the EC to overturn the suspension in July 1995. The carriers' appeal on the legality of TAA, and consequently TACA, remains pending.

Meanwhile, the EC took further action to enforce its ruling by threatening to revoke the carriers' immunity from monetary penalties, a measure that could result in fines of up to 10 percent of the carriers' annual revenues. Again, the carriers turned to the Court for relief by filing an application for interim measures to prevent their loss of immunity. The application was dismissed as premature because the EC had not revoked the carriers' immunity from fines. To date, the EC has not acted on its threat to impose fines. As a measure of compromise, the EC has indicated a willingness to consider inland price fixing if efficiencies that benefit the shipper can be obtained through cooperation on inland services. In response, the carriers introduced an equipment interchange agreement for inland European transportation that aims to reduce the movement of empty containers throughout Europe, and thus improve service and cost efficiencies for shippers. The carriers also formed a multimodal committee to explore further operational efficiencies that can be obtained through reorganizing their European intermodal practices.

On other maritime issues, the EC implemented new regulations exempting certain types of liner shipping consortia agreements from the competition laws under Article 85(1) of the EC Treaty. The new regulations took effect on April 22, 1995, and gave the liner industry until October 21, 1995, to comply. If certain conditions are met, the regulations provide block exemptions for such consortia activities as joint services, space or slot chartering, temporary capacity adjustments, pooling of vessels, revenues, or tonnage, as well as other joint ventures. Liner agreements involving price fixing (conferences), capacity non-utilization, and multimodal operations are excluded from this legislation. The conditions for exemption vary depending on whether the consortium operates within or outside a conference. They also involve market share ceilings, mandatory agreement provisions, and competition standards, including the use of independent rate action, and the right of membership withdrawal without penalty on a maximum of six-months notice after an initial period of the agreement's effectiveness. Consortia not in compliance with these conditions may incur fines if they continue to operate without, depending on their circumstances, either notifying their agreement with the EC or applying for an individual exemption. The consortia regulations will remain in effect for a five-year period until April 2000, and will be reexamined in conjunction with the prevailing market situation at that time. In an earlier draft version of the regulations, the FMC submitted comments noting that the conditions for exemption could cause unintended and unpredictable adverse consequences.

Continuing a trend that started several years ago, carriers in the North Atlantic, as well as in other trades, entered into a number of space charter arrangements to improve efficiency. Some agreements filed during 1995 include the following:

Lykes Lines ("Lykes") and Evergreen ("Evergreen") Lines, major independent carriers operating in the North Atlantic

trades, entered into a space charter and sailing agreement (No. 232-011491), effective April 22, 1995, in the trade between the U.S. and North Europe.

Maersk and the VSA Parties (Sea-Land, P&O, and Nedlloyd) entered into a reciprocal slot exchange and rationalization agreement (No. 232-011509), effective September 8, 1995, in the trade between the U.S. Atlantic and Gulf Coasts, and North Europe. These services were previously performed under TACA Annex B (Space/Slot Chartering and Equipment Exchange). The new agreement was filed in compliance with the FMC/TACA settlement, which limited space chartering to sporadic and short-term arrangements. The parties also operate another space charter and sailing agreement in the trade (No. 203-011395), which is not a reciprocal exchange agreement, but rather, permits the VSA parties to purchase space on Maersk's vessels.

Hyundai and Med Shipping executed and filed a space charter agreement (No. 232-011512) in the trade between the U.S. Atlantic and Gulf Coasts, and North Europe. This agreement became effective in October 1995.

B. MEDITERRANEAN

U.S. exports to the Mediterranean were up sharply in 1995, due to a revival of European demand and a generally weaker dollar. Expected to reach a growth rate of 25 percent, exports were led by industrial inputs such as wastepaper, logs, and lumber, which were generated by strong economic activity in Southern Europe. U.S. imports from the Mediterranean registered significant growth early in 1995 due in part to weak Italian, Spanish, and Turkish currencies. U.S.-bound import traffic from the Mediterranean was expected to rise about 12 percent for the year. A partial slowdown in U.S. import volumes, however, was evident later in the year as a result of

reduced demand for higher-priced European products that have lost their competitive advantage because of rising currency values in Europe.

The situation in liner shipping markets improved substantially in 1995 in comparison with the prior year due to a better economic performance in many European countries, increased shipments of manufactured goods, and the continued trend toward containerization. In contrast to concerns about overcapacity and low rates in prior years, prospects for liner shipping in 1995 appeared to be improving.

Strong world trade growth in manufactured goods, steady development of containerization in many trades, and the presence of newer types of "mega" carriers on liner trade routes boosted the development of feeder services in the Mediterranean and elsewhere. Strategic "global" partnerships, including VSAs, are increasingly apparent in the liner trades where shipowners are adopting strategies attuned to the specific requirements of the trades. The liner trades between Europe and North America registered gradual improvement in vessel capacity use over previous years. The majority of intra-European liner trades reportedly remained stable markets. Despite strong competition from other transport modes, feeders registered continued growth in the service between European ports, and currently are accounting for nearly 40 percent of all intra-European traffic. As containerization continued to expand, the proportion of break-bulk shipments declined even more. Roll-on/roll-off operators concentrated on "niches" in regional markets, including the Mediterranean.

The rationalization of shipping services continued to be the major factor underlying most types of new agreements implemented in the Mediterranean during 1995. The trade became somewhat more crowded when Hanjin entered the trade as a member of the *South Europe American Conference*

Agreement ("SEAC") (No. 202-011456), the rate-setting conference for the trade. The current membership of SEAC includes Cast Logistics (USA) Limited, Cho Yang, Compagnie Maritime d'Affretement, DSR-Senator Lines, Evergreen, Italian Line, Lykes, Maersk, Nedlloyd, P&O, Sea-Land, and Zim Israel Navigation Co., in addition to Hanjin. The *SEAC Agreement* was amended to permit the parties to take IA on rate or service items that are exempted from the Commission's tariff filing requirements. The modification also reduces the amount of the financial guarantee that is payable upon admission to the conference.

Four carriers established a cooperative working agreement to allow them to coordinate prices and adjust service levels in the transport of cargoes between the U.S. East and Gulf Coasts and Mediterranean countries. The *Mediterranean Discussion Agreement* (No. 203-011508) authorizes the parties to agree upon rates, service contracts, and other items of mutual concern in the trade between U.S. Atlantic and Gulf Coast ports and points, and ports on the Mediterranean Sea, the Black Sea, the Sea of Marmara, and points in Europe and Morocco via such ports. The parties to this Agreement include Contship Container Lines Ltd., Italian Line, TMM, and Tecomar.

The *TMM/Contship Space Charter and Sailing Agreement* (No. 203-011494) permits the parties to agree, with voluntary adherence, upon rates, to charter space to one another, and to coordinate their services in the trade between U.S. Atlantic and Gulf ports, and inland points, and ports in Spain, Italy, and France and inland points in Europe, and Gulf ports and inland points in Mexico.

The *HUAL-WLS Space Charter Agreement* (No. 217-011478) authorizes the World Logistic Services to charter space aboard vessels operated by Hoegh Ugland Auto Liners A/S in

the trade between U.S. Atlantic ports and Mediterranean and Middle Eastern ports.

The *NL/Tricon Agreement* (No. 217-011486) authorizes the members of the *Tricontinental Service Agreement* (No. 203-011305) (Cho Yang and DSR-Senator Lines) to charter space to Nedlloyd in the trade between U.S. Atlantic ports and Mediterranean ports in Spain, France, and Italy, as well as ports on the Red Sea and Persian Gulf.

Sea-Land and Compania Trasatlantica Espanola S.A. filed the *Sea-Land/CTE Agreement* (No. 207-011496), which authorizes the formation of a joint service in the trade between U.S. Gulf of Mexico, Florida, and Puerto Rico ports and ports in the Western Mediterranean.

C. MIDDLE EAST

As in the Mediterranean, liner shipping in the Middle East recovered somewhat from depressed rates and overcapacity problems prevailing last year. Liner operators in the Middle East have continued to pursue policies of rationalization and restructuring of their services in the trade. Over the past year, prospects for liner shipping improved due in large part to the recovery of most major European economies, an enhanced trade in manufactured goods, and the continuing trend toward containerization. World trade growth was expected to reach nearly 9 percent during 1995. At the same time, a significant phenomenon became apparent in the establishment and proliferation of global alliances by carriers operating in the Europe/Asia and U.S./Asia liner trades. The existence of these partnerships was quite evident in the Middle East and the Mediterranean.

These structural changes in East/West services stimulated a new demand for sophisticated vessel tonnage and also

hastened the development of feeder services in several trades including the Middle East. In 1995, U.S. imports from the Middle East were forecast to expand by 12 percent. Saudi Arabia's U.S.-destined export traffic was expected to reach double-digit expansion due to increased industrial diversification and privatization efforts in that country. The liner trade from India and the Subcontinent was reasonably active, with a slowdown increasingly likely by next year. Imports from Pakistan were affected by the closure of textile mills and rising cotton prices. The outlook for Bangladesh exports to the U.S. was more favorable due to its strong apparel trade. In the outbound direction, following two years of contraction, U.S. exports to the Middle East were expected to grow by 9 percent in 1995. Israel and Saudi Arabia were the most promising destinations for U.S. export traffic. Despite the fact that U.S. exports to Saudi Arabia were doing well as a result of that nation's higher oil revenues and stepped-up efforts to diversify and privatize the industrial sector, serious financial problems facing Saudi Arabia were expected to limit export traffic growth to about 3 percent in the next two years. A surge in U.S. exports to the Subcontinent was attributed to poor cotton crops in India and Pakistan and the region's booming apparel production facilities. The cotton export boom was expected to persist until next year. Nevertheless, overall U.S. export traffic to India contracted last year. Moreover, the outlook for U.S. exports to that nation is not promising, due to a devaluation of the rupee, restraints on government spending, and an expected interest rate increase that would likely moderate demand.

The trend toward rationalization and restructuring of liner shipping services was quite apparent in the Middle East, where several significant cooperative carrier agreements were filed during the year.

The *HMM/K-Line Space Charter Agreement* (No. 232-011513) permits the parties to charter space from one another

and to rationalize sailings in the trade between ports in Asia and the Middle East, and ports on the U.S. Pacific Coast, including Alaska, and inland U.S. points via such ports.

The *K-Line/Yangming Transpacific Rationalization and Space Charter Agreement* (No. 232-011514) permits the parties to charter space from one another, and to rationalize sailings in the trade between ports in Asia, the Middle East, Australia and New Zealand, and ports on the U.S. Pacific Coast, including Alaska and inland U.S. points via such ports.

The *"8900" Lines/APL Discussion Agreement* (No. 203-011487) permits the members of the "8900" Lines Rate Agreement and American President Lines, Ltd. to discuss and agree upon rates, terms, and conditions of service in the trade between the U.S. and the Persian Gulf, Jordan and Yemen.

The *Indian Subcontinent Inbound Discussion Agreement* (No. 203-011484) authorizes its members to meet and discuss transportation rate and service matters in the Indian Subcontinent-U.S. inbound trade.

The *NYK/HUAL Space Charter and Cooperative Working Agreement* (No. 232-011502) authorizes NYK to charter space on vessels owned by Hoegh Ugland Auto Liners A/S and to rationalize sailings in the trade between U.S. Gulf and Atlantic Coast ports and ports on the Red Sea and Arabian Gulf.

The *Italia di Navigazione - Lloyd Triestino di Navigazione Trans Pacific Joint Service/Evergreen Space Charter and Cooperative Working Agreement* (No. 203-011476) permits the parties to charter space to each other, to rationalize their services, and to agree voluntarily upon rates in the trade between U.S. Pacific Coast ports and ports in the Far East, the Indian Subcontinent, the Middle East, Australia, and New Zealand.

A number of agreements in the Middle East trade also include Mediterranean ports of call within their scopes, as Mediterranean ports are convenient stop-off points for vessels sailing between the U.S. East Coast and the Middle East. Two examples of these agreements were highlighted in the Mediterranean section, the *HUAL-WLS Space Charter Agreement* and the *NL/Tricon Agreement*.

D. AFRICA

African countries again had poor rates of economic growth in fiscal year 1995, continuing a decade-long trend during which gross domestic product ("GDP") averaged 2.7 percent. The African Development Bank reported that GDP in its 52 member countries averaged 3.6 percent. The more developed economies of South Africa and Nigeria averaged 4.4 percent. The lowest performance came from the Economic Community of Central African States. Economic activity in that region, beset by war and ethnic strife in Rwanda and Burundi, averaged 2.6 percent.

The value of African merchandise exports fell for the fourth consecutive year. Petroleum prices declined in real terms to their lowest level since 1973. This adversely affected Nigeria, Libya, Gabon, Angola, and Zaire, where fuels are the principal exports.

The principal trading partners of the U.S. were South Africa, Angola, and Nigeria. Exports to these countries totaled $8.4 billion, with South Africa receiving $4.4 billion in goods, and Angola and Nigeria each accounting for $2 billion. Imports from Africa amounted to $11.8 billion, including crude oil, which was valued at $7.7 billion.

African trade was plagued by a trade imbalance with approximately 30 percent more imports than exports. Carriers

experienced considerable problems of backhauling empty containers. Increasing feeder services from East/West routes and cooperative working agreements among carriers helped to alleviate the problem.

Port conditions also hindered trade flows. Many ports lacked equipment, such as cranes, to facilitate loading and unloading. Labor unrest at ports also exacerbated the problem. These conditions, as well as uncollected empty containers, increased congestion at ports. In East Africa, the ports of Mombasa in Kenya and Dar es Salaam in Tanzania, which handle over 70 percent of the containerized cargo of East and Central Africa, experienced severe congestion. Other ports in the region, such as Mogadishu in Somalia and Maputo in Mozambique, were generally out of service because of civil wars in their hinterlands. In South Africa, the ports of Durban and Capetown enjoyed a surge in container traffic due in part to increased transshipment to Namibia (South West Africa). By the end of April, over 250,000 containers passed through Capetown, 22 percent more than the total expected for the year. Durban also had a comparable increase. West African ports also experienced congestion. The port of Tema, in Ghana, built to accommodate 65,000 TEUs annually, handled 100,000 TEUs. It is projected that the port will experience more congestion in the future.

Some freight conferences increased rates during the year. The *U.S./South and East Africa Conference* imposed a surcharge of 10 percent on breakbulk cargo effective January 1995. This surcharge was imposed to defray increased stevedoring costs, port charges, and other operational expenses. The *America West African Freight Conference* announced a rate increase of $100 per TEU and $5 per ton, effective October 1995.

Safbank Line ("Safbank") continued to be the major carrier serving Africa during fiscal 1995. It changed its

operation to three separate weekly services between the U.S. Atlantic, Gulf and the U.S. West Coast. It also initiated a joint biweekly multipurpose service with Lykes between Southern Africa and the U.S. Atlantic and Gulf Coasts. Other major carriers included: Farrell Line, America Africa Line, Mediterranean Line, Italian Line, OT African Line, Maersk, and Sea-Land. In the West African trade, OT African Line had an increase in cargo volume between North America and West Africa. Pan African Line, S.A. started a new service between South and West Africa using multipurpose ships.

Significant agreement activity in the African trade included: *The West Africa Discussion Agreement* (No. 203-011510), a discussion agreement which permits the parties to discuss tariff rates, service items, rules and regulations, service contracts, and other conditions and practices in the trade; and the *Steamship Line Cooperative Chassis Pool Agreement* (No. 203-011515), a cooperative working and equipment interchange agreement authorizing the parties to establish, operate, utilize and administer a chassis pool. Additionally, Lykes and Safbank joined the *American/West African Freight Conference* (No. 202-007680-90).

E. LATIN AMERICA AND THE CARIBBEAN

The economies of Latin America and the Caribbean countries grew at an average of less than 2 percent during fiscal year 1995, following an average rate of 4.4 percent in 1994. Despite the slower growth rates, two countries, Chile and Peru, achieved growth rates of 7 percent. However, little or no growth occurred in Argentina, Uruguay, or Venezuela. The region, nevertheless, achieved a net international trade surplus for the first time since 1990. Mexico registered a particularly bad economic performance in 1995. The Mexican economy was depressed by the collapse of the peso, which dropped by 40 percent against the U.S. dollar. Mexican foreign reserves

declined sharply from US$26 billion in 1994 to $5.5 billion in January 1995.

Intra-regional trade grew more rapidly than trade with countries outside the region. The United Nations Commission for Latin America and the Caribbean reported that intra-regional trade increased by almost 22 percent. The impetus for this increase came from regional trading groups such as MERCOSUR (Argentina, Brazil, Paraguay and Uruguay), the Andean Group (Bolivia, Colombia, Ecuador, Peru and Venezuela), the Central American Common Market ("CACM") (Costa Rica, El Salvador, Guatemala, Honduras, Nicaragua, and Panama), and the Association of Caribbean States (the island nations of the former British West Indies, Venezuela and Central America). Despite the existence of many different trading blocs, trade barriers were not present. Chile and Colombia have applied to join both the North American Free Trade Agreement ("NAFTA") and MERCOSUR. Mexico, already a member of NAFTA, also has free trade ties with Chile and MERCOSUR. Members of CACM and Venezuela are also members of the Association of Caribbean States. In another development, the countries of the Andean Group have started negotiations with MERCOSUR about membership.

U.S. trade with the region increased in 1995. U.S. imports increased by approximately 18 percent and exports by 20 percent. Brazil was the leading importer of U.S. products. Its tariff cuts and a strong currency generated an increased demand for U.S. consumer goods. Venezuela also increased its import of U.S. products by 16 percent, followed by the Caribbean countries with a 10 percent increase. Exports from the region changed very little, except from Chile. A strong U.S. demand for copper and many nontraditional exports resulted in an increase of nearly 25 percent in Chilean exports to the U.S.

Ports in the region experienced severe congestion problems due largely to inadequate berthing facilities and landside space to store containers. Many ports also lacked adequate equipment. Furthermore, labor disputes added to the ports' problems. The port of Santos in Brazil, largest in the region, experienced delays of up to two weeks.

Some carriers serving the trade concluded that space sharing would be a partial solution to the problems of trade imbalance and congestion. Accordingly, Cho Yang entered the East Coast of South America trade in partnership with Di Gregorio de Navegacao, Amazon Lines, and DSR-Senator Lines. Four other carriers, Ivaran Lines, Columbus Lines, Empresa de Navegacao Alianca, and Crowley American Transport, agreed to share space. Sea-Land and Maersk added South America to their worldwide alliance. The lines in these rationalization arrangements carried 64 percent of U.S. containerized exports. In order to reduce expenses, the member lines of the *Latin America Shipping Services Association* ("LASSA"), Crowley American Transport, King Ocean Line, Seaboard Marine, Sea-Land, and Tropical Shipping and Construction Co., and the lines of the *U.S./Panama Freight Association* merged and began to serve the trade as one conference. LASSA, however, collapsed after all the members resigned in the fall of 1995. Companhia Maritima Nacional ("Nacional") and Chilean Line entered into a space charter agreement and instituted a service calling every twelve days in the trade between the U.S. Atlantic Coast and South America.

Other service changes were made by carriers that augmented existing services, initiated new ones or exited the trade. The net effect was a trend towards weekly services that generally replaced less frequent operations. Maersk upgraded its service between the U.S. Atlantic Coast and the East Coast of South America from weekly to twice weekly. Nacional deployed three ships in a new service between the U.S. Atlantic

Coast and the East Coast of South America. Lykes exited the West Coast of South America trade in May, citing, among other factors, repositioning costs for empty containers. Other lines expressed concern about backhaul costs and declining rates, but deferred decisions to exit the trade.

Few rate increases were implemented in the region during the fiscal year. In July the *Inter-American Freight Conference* doubled its surcharge to Santos because of port congestion. The added cost for a TEU reached $300, and $500 for a 40-foot container ("FEU"). In February LASSA added a $200 surcharge for containers going through Guatemala, and added another surcharge in April on all southbound traffic because of security problems. The April surcharge added $39 to the cost of moving a TEU, $50 for an FEU, and $61 for a 45-foot container.

Agreements filed in the Latin America trades in fiscal year 1995 reflected a general trend toward cooperative working arrangements, including vessel sharing and rationalization of services. The *Steamship Line Cooperative Chassis Pool Agreement* (No. 203-011515); the *CSAV/CCNI Car Carrier Agreement* (No. 203-011574); *Hanjin/Tricon Panama Agreement* (No. 232-011501); and *Companhia Maritima Nacional A/S Ivarans Rederi Space Charter and Sailing Agreement* (No. 232-011489) are but a few examples of the arrangements in these trades which carriers are implementing to reduce their operating costs and improve service quality to shippers.

F. TRANSPACIFIC

The transpacific trade lane contains the U.S.'s largest (Northeast Asia) and the fastest growing (China and Southeast Asia) major export and import markets. The inbound (import) trades experienced rapid growth in the first three quarters of fiscal year 1995 (October 1994 through June 1995), but faced an

unexpected downturn in that growth beginning in June. The outbound (export) trades experienced steady growth as the relatively weak dollar added to increased demand for U.S. goods, especially for higher-value agricultural products.

Organizationally, the Pacific trades can be viewed as a collection of concentric circles. The core is composed of a group of between nine and eleven conference carriers (depending on the trade) that collectively set rates under the authority of one outbound conference, the *Transpacific Westbound Rate Agreement* ("TWRA") (No. 202-010689), and three inbound conferences, the *Asia-North America Eastbound Rate Agreement* ("ANERA") (No. 202-010776), the *Trans-Pacific Freight Conference of Japan* ("TPFCJ") (No. 202-000150), and the *Japan-Atlantic Gulf Freight Conference* ("JAG") (No. 202-003103).

The second ring is composed of non-conference lines that are members of the two "discussion" agreements under which these non-conference lines are authorized to voluntarily coordinate pricing and service with TWRA, ANERA, TPFCJ and JAG member lines. These agreements include one covering the inbound trades, the *Transpacific Stabilization Agreement* ("TSA") (No. 202-011223), and one covering the outbound trades, the *Westbound Transpacific Stabilization Agreement* ("WTSA") (No. 202-011325).

The outer ring is composed of the remaining lines that set their prices and services independently and do not participate in the voluntary rate coordination activities with TSA or WTSA members. This outer fringe of competitors includes one large and expanding government-owned national carrier, China Ocean Shipping Co.

For carriers operating in the inbound transpacific trades, 1995 began with strong trade flows and expectations that

increasing volumes would support a significant GRI during the traditional service contracting period in April and May. Cargo volumes for the first calendar quarter of 1995 were more than 10 percent higher than the same period in 1994, and annual export growth was anticipated to be in the range of 7 to 8 percent.

Based on those expectations, ANERA instituted rate increases of between $200 and $250 per FEU on the majority of commodities moving inbound from Asia (except Japan, which is outside ANERA's geographic scope). In response, many shippers, including a number of very important accounts, whose high-volume offerings make them a benchmark against which the rates of smaller shippers are determined, moved portions of their business to non-conference lines offering lower rates. By July cargo volumes were declining compared to 1994 levels, signaling the beginning of a slowdown at the start of the traditional holiday shipping season. The expectations for 7 to 8 percent trade growth in 1995 were revised downward to about 4 percent or less. In the fall of 1995, ANERA carriers responded to these market pressures by offering rate reductions to regain cargo from independent carriers and essentially wiping out earlier increases.

In the Japan trade, the strong yen and cutbacks in auto production resulted in reduced U.S. imports from Japan, while China, in contrast, expanded its exports to the U.S. markedly. Significant volume growth continues to be forecast for Southeast Asian inbound trades for 1995, with Malaysia, Indonesia, and the Philippines exhibiting double-digit growth. In the long-term, China and the nations of Southeast Asia appear to be the major growth areas for U.S. imports. During 1995, carriers began establishing more direct services to China and Singapore (the hub port for Southeast Asia) in response to that growth. Nevertheless, the Northeast Asia countries of Japan, Korea, Taiwan, and Hong Kong remain strong markets

for U.S. exports and sources of finished goods for the U.S. import market.

Cargo growth in the outbound trades grew at a rate of about 13 percent during 1995. While not on par with 1994's 18 to 19 percent growth, the increased volume was enough to keep vessels in the outbound trades operating at capacity utilization levels in the 80 to 90 percent range or higher. Refrigerated cargoes, such as beef, poultry, fruits, and vegetables, which are higher value, and consequently command higher rates than the mainstay exports to Asia (wastepaper, chemicals/resins, lumber goods, cotton, and hay), did particularly well. Carriers in the outbound trade averaged a reported $120 per FEU increase in 1995. And with forecasts for continued cargo growth in the 12 to 13 percent range through 1996, outbound rates are expected to remain firm, with further rate increases scheduled for early 1996.

New agreement activity was modest for the transpacific trades. Notable actions included TSA's indefinite suspension of its CMP in September. Kawasaki Kisen Kaisha Ltd. ("K-Line"), a traditional conference member, entered into an agreement (No. 232-011514) with Yangming Marine Co., Inc. ("Yangming"), a traditional non-conference line, to charter space and rationalize sailings in the trades between Asia, the Middle East, Australia/New Zealand and the U.S. Pacific Coast and inland points. K-Line also entered into a chartering agreement with another non-conference line, Hyundai (No. 232-011513). That agreement also covered the trades between ports in Asia and the Middle East and U.S. Pacific ports and inland points.

During fiscal year 1995 the Commission initiated two major inquiries into the behavior of conferences and discussion agreements in the transpacific trades. In April the Commission issued Section 15 Information Demand Orders to TWRA,

ANERA, TPFCJ, and JAG, seeking information and documents relating to the conferences' IA rate activities.

In July the Commission authorized the Bureau of Economics and Agreement Analysis and the Office of the General Counsel to request extensive data from TSA and WTSA as prelude to an investigation into the reasonableness of recent and potential future rate increases. As a result of the discussions between the Commission staff and the attorneys for the two discussion agreements, TSA agreed to suspend indefinitely its CMP. That program allowed TSA lines to coordinate a reduction in the capacity each member line made available for cargo originating within the geographic scope of the agreement.

The foregoing matters resulted in extensive document production. Consequently, the Commission was able to undertake an in-depth review of pricing behavior in the transpacific trades. Reports on the results of these two investigations will be finalized in early 1996.

G. WORLDWIDE

The year saw the beginning of changes in the liner industry that are expected to have a major impact on the organization, and perhaps even the viability, of the traditional conference system. These changes include:

1. The creation of multi-trade operational alliances among the largest ocean carriers;

2. The growth of serious tension between conference and non-conference lines regarding comparability of service levels and rate differentials; and

3. The continuing pressure for regulatory reform, especially in the areas of confidential service contracting and tariff rate filing.

In an effort to expand service while simultaneously reducing overhead costs and investment risk, the majority of the world's top twenty lines have announced the creation of multi-trade alliances, variously known as "global alliances," "strategic alliances," "mega-alliances," or "new consortia." These alliances are composed of from two to four core carriers that share assets (vessels, terminals, containers) and coordinate their operations worldwide. However, alliance members retain their separate corporate identities and marketing/customer service functions. These new alliances include:

- **American President Lines, Mitsui O.S.K., Nedlloyd, and OOCL;**
- **NYK, NOL, Hapag-Lloyd AG, and P&O;**
- **Sea-Land and Maersk;**
- **DSR-Senator Lines, Cho Yang, and Hanjin.**

In addition, several other major lines, including K-Line, Yangming, Hyundai, Med Shipping, and Norasia, have entered less expansive agreements that show potential for later development into full-fledged global alliances.

Tensions between conference and non-conference lines over appropriate rate differentials grew in 1995. Conference lines, notably in the transpacific trades, have complained that increases in the service quality offered by non-conference lines have not been accompanied by a decrease in the rate differentials those lines offer. Consequently, the conference

lines charged that they have been losing market share to their non-conference rivals.

Given the growing pricing conflicts, the surge of new (and larger) vessels scheduled to come on-line in 1996, and the possibility of a less restrained contracting environment resulting from potential revisions to shipping legislation, 1995 closed with heightened concern about the viability of the current conference system.

V

AUTOMATED TARIFF FILING AND INFORMATION SYSTEM ("ATFI")

A. INTRODUCTION AND BACKGROUND

The 1916 Act and 1984 Act require common carriers by water in the domestic offshore (*e.g.,* between the mainland and Hawaii or Puerto Rico) and foreign commerce of the U.S., to file and keep open to public inspection their "tariffs" applicable to ocean transportation. The 1984 Act also requires that service contracts be filed and that their essential terms be made available to the public in tariff format. *See* 46 U.S.C. app. §§ 817 and 1707.

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

Additionally, terminal tariffs are required to be filed by persons engaged in carrying on the business of furnishing wharfage, dock, warehouse or other terminal facilities in connection with a common carrier by water in the foreign or domestic offshore commerce.

The applicable statutes and implementing regulations require the Commission to ensure compliance with certain

essential standards before tariff material is accepted for filing. Similarly, service contracts may be rejected by the Commission if they do not meet certain statutory and regulatory requirements. In order to ensure compliance with the law, the statutes provide for substantial penalties for not filing or, if properly filed, for not adhering to the provisions of a tariff or the essential terms of a service contract. *See, e.g.,* 46 U.S.C. app. §§ 812, 815, 818, 1708, and 1709.

The Commission uses the filed tariff and service contract data for surveillance and investigatory purposes and adjudicates issues raised by private parties. For Commission proceedings, as well as in any court case, the tariff or service contract provision, on file at the Commission and in effect, is official evidence of the applicable rate, charge or rule. While tariff and service contract information is used for regulatory purposes, the statutory scheme is designed primarily to provide rate information to the shipping public to promote competition and to facilitate the flow of U.S. exports and imports. All such tariff data is filed with and maintained by the Commission. Prior to implementation of the ATFI system, the Commission was receiving up to a million pages per year of tariff matter.

The enormous amount of paper the Commission had to process with a limited number of employees led it to consider modern technology as a means of alleviating the paperwork burdens on both the government and the shipping industry. A systematic exploration of this subject area by the Commission commenced with a series of studies, beginning in 1981 and continuing through early in calendar year 1983.

B. EARLY STUDIES ON TARIFFS

The Commission conducted a study to examine the validity of the premises upon which tariff filing requirements were based. The study contained three parts, which included an

internal Commission analysis; interviews with shippers, exporters, and ocean freight forwarders; and interviews with ocean carriers and conferences.

The overall conclusion of the three-part study was that retention of the requirement to file tariffs had widespread support in the maritime industry, but that the system was in need of modernization, particularly in the area of computerization. While conducting this three-part study, the Commission also began an internal study of the impact of filing activity upon the Commission itself.

With the results of these two studies in hand, the Commission explored the issue of tariff automation, interviewing carriers, conferences, freight forwarders, shippers, and transportation service firms. This survey revealed the overall belief of these parties that not only should the tariff system be automated, but that implementation of an automated system was overdue.

C. FIRST STEP IN TARIFF AUTOMATION

Recognizing that there was a need and apparent industry support for tariff automation, the Commission's next step was to determine if any parties were interested in developing an appropriate system. On November 14, 1983, the Commission published in the *Commerce Business Daily* a *Notice of Inquiry*, entitled *"Sources Sought for 'Paperless' Federal Maritime Commission Electronic Filing, Storage and Retrieval Systems for Tariffs."* A number of replies were received. The commenters also raised questions of both a legal and policy nature which needed to be resolved before proceeding with additional phases leading to the eventual adoption of an electronic tariff system.

D. THE SHIPPING ACT OF 1984

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

E. THE TARIFF AUTOMATION TASK FORCE

In August 1984, a special Tariff Automation Task Force was formed to gather additional information and, in January 1985, send questionnaires to ocean carriers, NVOCCs, conferences, freight forwarders, and shippers. The questionnaires focused on the use of tariff data and suggestions to improve the process.

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

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

The report recommended the conduct of a feasibility study which would evaluate the technical alternatives available and their costs, including a market analysis of the demand for tariff information and the likelihood that the Commission's costs could be recaptured.

The report concluded that the feasibility study should be contracted out, since the Commission lacked the necessary technical expertise. Because the Commission needed to ensure that all future studies were unbiased, thorough, and accurate, it hired an industry consultant in August 1985 for technical assistance. The contract provided that the consultant must remain independent of the feasibility study contractor and could not become the contractor for the pilot or operating system.

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

The Commission entered into an interagency memorandum of understanding with the General Services Administration ("GSA") in August 1985 for the development of a feasibility study, resulting in a contract for this task with a GSA-approved contractor.

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

Candidates for membership on the Committee were solicited. The nineteen industry members selected represented three ocean carriers, three steamship conferences, two

NVOCCs, three freight forwarders and the National Customs Brokers and Forwarders Association, three ports and the California Association of Port Authorities, two exporters and importers and the American Association of Exporters and Importers, two information service firms, and the Information Industry Association.

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

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

- **To educate each segment of the shipping industry about the needs and goals of the other segments in such a process.**

- **To investigate the possible applications of existing and foreseeable automated data processing technology to accommodate such needs and goals.**

- **Then, if feasible, to formulate the necessary compromises of the needs and goals of each industry segment to design a system which is acceptable and beneficial to all industry segments.**

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

The functions and requirements of tariff automation identified in the study have not changed and have become the backbone of subsequent efforts to procure the ATFI system.

The *Feasibility Study* stated:

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

G. BENEFIT COST ANALYSIS and PROCUREMENT AUTHORITY

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

H. INQUIRY ON THE FUNCTIONALITY OF ATFI and PRESOLICITATION CONFERENCE

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

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

> The electronic ATFI system, for which the Commission is seeking a prime contractor, will be run on the contractor's central computer with appropriate terminals at the Commission for tariff review, processing, and retrieval. The format of tariff data to be electronically filed is being developed in conjunction with the industry Transportation Data Coordinating Committee and will emphasize "tariff line items," vis-a-vis, tariff pages, as under the present system. "Tariff line items" are basically equivalent to commodity rate items in current paper tariffs and can be amended directly, without having to issue an entire revised page.
>
> As recommended by the Commission's Advisory Committee, standardized commodity or geographic coding will not be mandated at the beginning, but the system must have the capability to provide for these functions at the appropriate time. The system will also include the essential terms of service contracts.
>
> Full implementation of the system will be in phases to allow commercial firms time to adapt their operations. Exemptions, at least temporary, will be granted to some types of tariff filers who are not economically able to use the electronic system.
>
> The system will be as compatible as possible with existing computer equipment through the use of software

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

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

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

Once the tariff data are officially on file, the Commission will download the entire database in "flat files," formatted onto computer tapes which will be sold to any person at the relatively inexpensive marginal cost

of dissemination. This will satisfy the Commission's statutory duty of providing copies of tariffs at a reasonable charge. In order to keep up with a substantial number of rapidly changing freight rates in the shipping industry, however, interested persons must obtain these updated database tapes frequently. Commission will offer a subscription service to provide this capability.

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

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

The Commission also explained in the NOI and in the draft RFP that remote access to the Commission's database by

modem would be available any time of the day for retrieval of tariff information by any interested person.

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

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

I. REMOTE RETRIEVAL

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

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

revisions were made to the RFP to reflect new funding exigencies and legal requirements. In October 1988, the Commission issued to some 200 potential offerors a second draft RFP for comment on the technical revisions. However, the Commission remained concerned about the questions on remote retrieval.

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

> The controlling question is: In designing the functionality of its ATFI system, has the Commission properly considered and balanced competing interests, such as (1) the system's utility to shippers, carriers and other members of the shipping public, and (2) the future role of private-sector information services? The Commission believes it has.
>
> In October, 1986, a year before the Commission heard of any complaints about "remote retrieval," its private-sector contractors issued "A Comprehensive Study of the Feasibility of an Automated Tariff System." This report accurately describes the proposed functionality of the ATFI system in terms sufficiently precise for private-sector firms to fully understand for the purpose of submitting proposals. This public report was considered and discussed by the Commission's Industry Advisory Committee at the time and there were no objections to "remote retrieval"....
>
> More importantly, with the approval of the Commission and the Advisory Committee, the Feasibility Study Report suboptimized ATFI's public retrieval

functions as an accommodation to private-sector information firms.

* * * * *

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

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

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

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

J. CONTRACT AWARD and MAJOR CHANGES

After receiving many technical comments on the two draft RFPs, and after resolving the "remote retrieval" issue, the Commission issued a final RFP in January 1989 to over 200

potential offerors on the bidders' list. Eight proposals were received in March 1989 and evaluated for technical quality and cost effectiveness.

On August 8, 1989, the ATFI contract was awarded for Phase I, System Concept (including verification of requirements), and Phase II, System Design, to Planning Research Corporation ("PRC Inc." or "Contractor") of McLean, Virginia, teaming with Data Exchange International ("DXI"), of Pittsburgh, Pennsylvania, which had the best technical, as well as the best cost proposal. The contract for the five-year system life also contained options for each subsequent Phase, i.e., Development and Testing; Prototype Operation; and Full-scale Operation. The contract is worth approximately $7M with the exercise of all options. Work on Phase I began on September 5, 1989, and during fiscal year 1990 the Contractor finished Phases I and II, as well as Phase III - Development and Testing.

The system's Prototype Phase (Phase IV) began in April 1990. As required by the contract, the Contractor resurveyed existing software being developed by private industry to see if there was any that could be incorporated into the ATFI system in order to improve it. The survey identified only one such software package, one being developed by DXI, that met the functionality requirements of the system. At about the same time, the Contractor and the Commission identified other changes, mostly from new technology, that could improve the system. One such proposed change was the substitution of a new model minicomputer for the originally planned mainframe computer. This would continue to provide sufficient capacity but significantly improve user-friendliness. The Contractor submitted a proposed modification containing the desired changes, and Delegation of Procurement Authority was obtained from GSA for the modification.

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

Under the license agreement, sign-on screens show the copyright notice, as follows: *© 1990. Data Exchange International, Inc. Unpublished. All rights reserved under the copyright laws of the United States. See* 48 CFR §§ 27.408(b) and 52.227-14. The Commission does not in any way endorse this or any other commercial product, and clause H.9.1 of the prime contract requires any commercial tariff services performed by an affiliate of the Contractor to be completely separate from contract performance. Accordingly, the cosponsored approach, allowed and encouraged by the FAR § 27.408, and as implemented by the Commission's contractual arrangements, complied with the language in H. Rep. No. 31, 101st Cong., 1st Sess. 5-6 (1989): "In addition, the Commission, in establishing the ATFI system, should take all appropriate steps to ensure that the private contractor is precluded from gaining an unfair advantage over other private companies in the provision of value-added services." On July 19, 1990, the contract was modified to incorporate these changes.

The last optional phase of the PRC Inc. contract expired towards the end of fiscal year 1994. At that time, the Commission elected to continue, on a limited basis, its contractual arrangement with PRC Inc., while it considered

what approach it would use to select a new contractor to design and develop an updated version of its ATFI system. Accordingly, the Commission negotiated extensions of the PRC Inc. contract that were limited to ongoing maintenance of the ATFI equipment and other necessaries, while the Commission began the process of developing a formal procurement to select a contractor to design and develop additional and enhanced functions.

K. DOCKET NO. 90-23

On August 1, 1990, the Commission instituted Docket No. 90-23, in which it issued a second ATFI NOI - Advance Notice of Proposed Rulemaking, requesting further public comment on some of the basic features being considered for ATFI and how they may impact current paper tariff practices. On December 26, 1990, the Commission issued a first Interim Report, which considered the comments received and resolved the issues raised in the NOI.

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

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

The proposed rule in Docket No. 90-23, *Tariffs and Service Contracts,* was issued on September 9, 1991 (56 Fed. Reg.

46,044), as a new Part 514 of Title 46 CFR, with the deadline for comments being October 31, 1991. Part 514 will be the sole, all-inclusive CFR part covering tariffs and service contracts filed into the Commission's electronic system. Other CFR parts which govern the filing of paper tariffs and service contracts, will be removed from the CFR, *i.e.,* Parts 515, 520, 550, 580 and 581.

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

- **The Harmonized Code provision for commodities was changed from mandatory to optional (or preferred), without prejudice to future rulemakings.**

- **As suggested by the commenters, the essential terms of service contracts could be filed in full-text, *vis-a-vis* the database format of the proposed rule, with some degree of standardization (*e.g.*, rule numbers) and with the final format to be developed after another round of comments from the public.**

- **Algorithms need not (cannot) be developed for all possible assessorial charges, *e.g.*, those that are not pre-determinable. The interim rule clarified the algorithm requirement and provided another option for linking textual rules to Tariff Line Items, *i.e.*, the "dummy algorithm" or "null linkage." Under the full-text format for essential terms, no algorithmization would be possible.**

Further comments were invited by the interim rule publication. As a result of these comments, the *First Interim ATFI Amendments* were issued on January 4, 1993 (58 Fed. Reg. 25), effective on February 3, 1993. The major subject of the *First Interim ATFI Amendments* was the "final format" for electronically filing essential terms so that they could be filed in "full-text" format.

L. BATCH FILING GUIDE

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

Accordingly, the first Interim Report of December 1990 in Docket No. 90-23 appended the ATFI "Batch Filing Guide" (containing, among other things, transaction sets, file transfer formats, data dictionary, and code reference tables). Since its first issuance, the "Batch Filing Guide" has been revised several times to reflect major system improvements, while, at the same time, attempting to provide the public with as much advance notice of such changes as possible. Other parts of the ATFI User Guides, such as the "ATFI Fundamentals Guide," etc., are also revised when necessary and made available to regular subscribers. This process is expected to continue throughout the life of the system.

M. MISCELLANEOUS MILESTONES

Certifications of firms for batch filing capability began in late fiscal year 1992. There now are 39 such certified firms, many of which are assisting carriers and conferences to convert their tariff matter to electronic form.

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

The implementation schedule was refined on December 17, 1992 (at 57 Fed. Reg. 59,999) and was republished on May 28, 1993 (at 58 Fed. Reg. 31,522). This schedule provided that the official tariffs be filed electronically at different times in calendar year 1993. Carriers and conferences operating in the Worldwide/Asian & South Pacific trades were scheduled to file first, followed by those in the European trades, the Africa/Mid East trades, the North American/Caribbean trades, and the Central/South America trades. Terminal operators and carriers in the domestic offshore trades filed last. Finally, the schedule provided for the beginning of the electronic filing of all essential terms of new service contracts. Many filers were not ready to file during their designated time frame and were granted extensions of time. A total of 36 petitions representing 219 carriers/conferences were filed, 32 of which were granted enabling carriers to extend their filing deadline. Even with the extensions, however, the Commission continued to target December 31, 1993, as being the date by which all filers should

be in compliance. Those filers who did not meet the Commission schedule found themselves named in orders to show cause why their tariffs should not be canceled for failure to file timely in ATFI format. The Commission issued its last show cause order on this matter early in fiscal year 1995, and on February 13, 1995, an additional 191 carriers had their tariffs canceled for failure to file. All told, approximately 310 carriers had their paper tariffs canceled for failure to file in the new electronic format.

During fiscal year 1995, 1,132 new tariffs were filed in the ATFI system. At the end of the fiscal year, there were 4,552 effective tariffs in the system, a net increase of 789 tariffs or 21 percent compared to fiscal year 1994. Additionally, all essential terms of service contracts entered into after November 22, 1993, are electronically filed in ATFI, making them available on a 24-hour basis to any of the approximately 4,000 individuals and organizations, including government agencies, registered to access ATFI data.

The Commission has kept the ATFI user community updated by routinely and systematically revising the ATFI User Guides and issuing press releases and ATFI System News items. The Commission also is continually adding new locations to the ATFI locations database. In addition, during fiscal year 1995, the Commission published or proposed two rulemaking proceedings that affect the tariff-filing community. Docket No. 95-01 proposed the elimination of CFR Parts 515, 550, 580 and 581, which contained the Commission's rules for filing tariffs in paper format. Since the ATFI system was fully implemented and operational, with all paper tariffs converted to electronic format or canceled, there no longer was a need for paper tariff filing rules. These regulations were eliminated by a final rule effective May 23, 1995. Additionally, in Docket No. 95-08, the Commission proposed a rule to permit an optional, abbreviated format for filing service contracts. Complete copies of service

contracts presently are required to be filed in paper format. Since the essential terms of these contracts are required to be electronically filed in the ATFI system, the Commission issued a proposal to reduce duplication and minimize errors in filings. The rule would afford the option of filing an abbreviated paper contract which incorporates by reference the provisions filed in the electronic essential terms filing, sets forth limited, specified information, and contains a certification that the paper filing and referenced essential terms constitute the entire contract. A final rule is anticipated in fiscal year 1996.

The Commission also exercised the option for its ATFI contractor to maintain the system through fiscal year 1996. Recompetition of the contract, to include refinements and enhancements in line with technological advances, has been held in abeyance given budgetary constraints and questions surrounding the future of tariff filing. Action will be taken in fiscal year 1996 to ensure continuation of a viable system.

N. UPDATE ON REMOTE ACCESS SEPTEMBER 1995

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

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

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

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

1. A tariff retriever would be limited to accessing a single, individual tariff per connection with the ATFI-host computer; and

2. A tariff retriever would be limited to a certain time, such as 30 minutes, per connection to the ATFI computer.

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

a. The Commission must make available the ATFI tariff data without time quantity or other limitation;

b. A direct access charge of $.46 per minute for tariff retrieval; and

c. A secondary use charge of $.46 per minute for the use of tariff data maintained by others in a database that has multiple tariff information obtained directly or indirectly from the Commission. (This secondary use charge was to expire September 30, 1995.)

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

VI

THE FOREIGN SHIPPING PRACTICES ACT OF 1988

A. GENERAL

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

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

During fiscal year 1995, the Commission investigated potentially restrictive practices of the Governments of Japan and the PRC which may warrant institution of formal proceedings under section 19 and the FSPA. These matters included requirements and restrictions on the use of Japanese Harbor services, and limitations on forwarding and consolidation services in PRC.

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

Section 10002(g)(1) of the Omnibus Trade and Competitiveness Act of 1988 requires the FMC to include in its annual report to Congress "a list of the twenty foreign countries that generated the largest volume of oceanborne liner cargo for

the most recent calendar year in bilateral trade with the United States."

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

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

The most recent year for which Census data were available to the Commission is calendar year 1994. The table on the next page gives the twenty foreign countries that generated the largest volume of oceanborne liner cargo in bilateral trade with the U.S. in 1994. The figures in the table represent each country's total U.S. liner imports and exports in thousands of long tons.

Top Twenty U.S. Liner Cargo Trading Partners (1994)

Rank	Country	Tons (000's)
1	Japan	19,522
2	China (PRC)	8,615
3	Taiwan	8,526
4	South Korea	6,014
5	Germany	5,087
6	United Kingdom (Incl. N. Ireland)	3,848
7	Hong Kong	3,647
8	Brazil	3,530
9	Italy	3,479
10	The Netherlands (Holland)	3,142
11	Indonesia	2,872
12	Thailand	2,841
13	France	2,779
14	Belgium	2,647
15	Australia	2,035
16	Philippines	1,657
17	India	1,614
18	Spain	1,606
19	Malaysia	1,567
20	Venezuela	1,329

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

The same countries comprised the top twenty U.S. liner trading partners in 1994 as in the previous year. Of the changes occurring among the partner rankings, the most notable include Brazil's move from 10th to 8th, the Philippines' move from 20th to 16th, and Venezuela's descent from 17th to 20th.

Since the Commission began generating its list of the top liner trading partners in calendar year 1987, the most significant changes have occurred in the rank of China and the volume of trade with China and Southeast Asian countries. The volume of bilateral trade with China has increased over 245 percent since 1987. In 1987, China ranked seventh. It entered the top five in 1989, and has been among the top three trading partners since 1992.

Bilateral trade with Southeast Asian countries has increased significantly (*e.g.,* trade with Thailand and Indonesia increased 184 percent and 147 percent, respectively). Changes in the rankings of Southeast Asian countries have not, however, mirrored the rapid advance exhibited by China over the last eight years.

VII

SIGNIFICANT OPERATING ACTIVITIES

BY

ORGANIZATIONAL UNIT

A. OFFICE OF THE SECRETARY

1. General

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

The Secretary's Office also participates in the development of rules designed to reduce the length and complexity of formal proceedings, and participates in the implementation of legislative changes to the shipping statutes. During fiscal year 1995:

- **The Commission issued decisions concluding 9 formal proceedings. Another 7 formal proceedings were discontinued or dismissed without decision, while 6 initial decisions of an Administrative Law Judge became administratively final without Commission review. The Commission also concluded 162 special docket applications and 32 informal dockets, which involve claims sought against carriers for up to $10,000. During the same period, the Commission issued final rules in 5 rulemaking proceedings and withdrew 1 proposed rule.**

- **Eight rulemaking proceedings and four formal petitions were pending before the Commission at the end of the year. Final decisions in these matters are anticipated in fiscal year 1996.**

- **Special Docket Officers issued decisions in 163 proceedings during fiscal year 1995.**

2. Office of Informal Inquiries and Complaints and Informal Dockets

This Office coordinates the informal complaint handling system throughout the Commission. A total of 1,898 complaints and information requests were processed in fiscal year 1995. Recoveries to the general public of overcharges, refunds and other savings attributable to the complaint handling activities amounted to $213,771. Since 1986, this Office has helped complainants recover over $2,400,000.

The Office facilitated communications among maritime industry representatives and Commission officials, and supplied materials and information requested by the general public. During fiscal year 1995, this Office responded to 899 such

telephone requests and inquiries. The Office maintained liaison with members of the President's Consumer Affairs Council, in which it participated throughout the fiscal year.

In addition, the Office is responsible for the initial adjudication of reparation claims up to $10,000 that are filed by shippers against common carriers by water engaged in the foreign and domestic offshore commerce of the U.S. These claims must be predicated upon violations of the 1916 Act, the 1984 Act, or the 1933 Act. Many of the claims received under this program constitute shippers' requests for freight adjustments arising from alleged overcharges by carriers, while a significant number pertain to the mishandling of personal effects shipments. During fiscal year 1995, 36 claims were filed, while 2 pending cases were carried over from the previous year. During the same period, 26 informal docket claims were concluded by the Office, while 2 others were assigned elsewhere. There were 10 pending cases at the close of the fiscal year.

During fiscal year 1995:

- **The Office continued its involvement in interagency discussions designed to enhance consumer referral and complaint resolution techniques.**

- **The Office jointly participated with the Office of General Counsel in the Consumer Affairs Council's Expo for Congressional staff. This biennial event presented an opportunity to provide information on the types of constituent services available.**

- **The Office continued to broaden its outreach activities. Efforts in this area contributed to a significant increase in the number and variety of complaints received.**

B. OFFICE OF ADMINISTRATIVE LAW JUDGES

1. General

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

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

At the beginning of fiscal year 1995, fifteen proceedings were pending before the ALJs. During the year, thirty-three cases were added. The ALJs held six prehearing conferences, formally settled six proceedings, dismissed or discontinued two proceedings, and issued six initial decisions in formal proceedings, fourteen decisions in special docket proceedings, and one initial decision in an informal docket.

2. Commission Action

The Commission adopted two formal initial decisions and twelve special docket decisions of the ALJs.

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

Military Sealift Command v. Sea-Land Service, Inc., et al. [Docket No. 90-08].

This proceeding involves the Cooperative Working Arrangement, or Agreement, of respondents Sea-Land Service, Inc. ("Sea-Land"), P & O Containers Limited dba Trans Freight Lines ("TFL"), and Nedlloyd Lijnen ("Nedlloyd"), in which Sea-Land agreed to charter U.S.-flag vessels to TFL and Nedlloyd, and the parties agreed to space charter and cross charter space to each other in the U.S.-flag vessels owned by Sea-Land.

Article 5(i) of the Agreement provides that no space in Sea-Land's vessels shall be utilized by TFL or Nedlloyd for the carriage of U.S. preference cargoes unless carried pursuant to bills of lading or contracts of carriage with Sea-Land.

Section 10(c)(6) of the 1984 Act, 46 U.S.C. app. § 1709(c), provides that no group of two or more common carriers may allocate shippers among specific carriers that are parties to the agreement or prohibit a carrier that is a party to the agreement from soliciting cargo from a particular shipper "except as otherwise required by the law of the United States or the importing or exporting country."

It was found, in a ruling dated February 27 and in an initial decision dated June 8, 1995, which decision adopted by reference the February 27 ruling, that Article 5(i) is a prohibited allocation and a prohibited solicitation, and it is not required by any law of the U.S. Respondents were directed to remove Article 5(i) from the Agreement and cease and desist

from the prohibited conduct. The proceeding is pending before the Commission on exceptions filed by respondents.

Amzone International, Inc. and Universal Cargo Management, Inc. v. Hyundai Merchant Marine Co., Ltd. [Docket No. 94-17].

In this proceeding, two shippers alleged that they were denied service contracts by respondent carrier, although they were similarly situated to another shipper who had been given such contract, in violation of sections 8(c) and 10(b)(12) of the 1984 Act. One shipper (Amzone) withdrew its complaint, but the other continued to litigate its claim. It was found that the respondent carrier's attempt to nullify its outstanding service contract by canceling it before filing the cancellation with the Commission did not effectively cancel the contract, and that complainant Universal was entitled to be given proper consideration by the carrier in its request for a comparable service contract.

Application of Ocean Star Container Line for the Benefit of Oceanbridge Shipping, Ltd. [Special Docket No. 2929].

In this proceeding, the carrier applicant was granted permission to apply discounts contained in a time-volume rate system to two shipments which were entitled to the special discounts. Permission was granted pursuant to section 8(e) of the 1984 Act because the carrier's tariff publisher had inadvertently canceled the carrier's time-volume rate system by filing an erroneous tariff notice with the Commission, thereby making higher tariff rates applicable to the two shipments.

Application of Transpacific Westbound Rate Agreement and Orient Overseas Container Line for the Benefit of Armstrong World Industries, Inc. **[Special Docket No. 2930].**

In this proceeding the carrier applicant and its conference were granted permission to waive collection of additional freight charges on a particular export shipment moving to Taiwan pursuant to section 8(e) of the 1984 Act. Permission was granted because applicants inadvertently neglected to instruct their tariff publisher to file a particular lower per-container rate prior to shipment, thereby subjecting the shipper to higher tariff rates because of their honest mistake.

Stauffer Chemical Europe S.A. Subsidiary of Zeneca Specialties (Formerly ICI Americas, Inc.) v. NYK Line **[Informal Docket No. 1787(F)].**

In this proceeding, complainant shipper alleged that it was overcharged on a shipment of a chemical product, in violation of section 10(b)(1) of the 1984 Act and asked for an award of reparations amounting to $8,501.55 plus interest. Respondent carrier denied the claim and also contended that complainant's representative was not authorized to file the complaint on its behalf. It was found that respondent's tariff contained two different rates that could apply to the subject cargo, that the shipper was therefore entitled to the lower of the two rates, and that the shipper's representative was authorized to file the complaint. Reparations were awarded, plus interest in the amount claimed.

4. Pending Proceedings

At the close of fiscal year 1995, there were nineteen pending proceedings before the ALJs, of which four were investigations initiated by the Commission. The remaining proceedings were instituted by the filing of complaints or applications by common carriers by water, shippers, conferences, port authorities or districts, terminal operators, trade associations, and stevedores.

C. OFFICE OF THE GENERAL COUNSEL

The General Counsel provides legal counsel to the Commission. This includes reviewing for legal sufficiency staff recommendations for Commission action, drafting proposed rules to implement Commission policies, and preparing final decisions, orders, and regulations for Commission ratification. In addition, the Office of the General Counsel provides written or oral legal opinions to the Commission, its staff, or the general public in appropriate cases. As described in more detail below, the General Counsel also represents the Commission before the courts and Congress and administers the Commission's international affairs program.

1. Decisions and Rulemakings

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

Fact Finding Investigation No. 21 -- *Activities of the Trans-Atlantic Agreement and its Members; Practices of the Trans-Atlantic Agreement and its Members With Respect to Independent Action* [Docket No. 94-29]; *Container Pool Practices of the Trans-Atlantic Agreement and its Members* [Docket No. 94-30], 27 S.R.R. 51 (February 24, 1995).

On July 27, 1994, the Commission commenced an extensive investigation into the activities of the Trans-Atlantic Agreement ("TAA"), subsequently Trans-Atlantic Conference Agreement ("TACA"), and its member lines. This fact finding investigation, similar in process to a grand jury, was launched

in response to reports of alleged unlawful activity by TAA from several sources, including the Commission's own monitoring initiatives and inquiries, and petitions filed by shipper groups.

In its order instituting Fact Finding Investigation No. 21, the Commission announced that it would investigate whether the TAA lines had engaged in activities violative of the 1984 Act, including:

- **Unreasonably increasing transportation costs by reducing competition in the North Atlantic trades.**

- **Operating under agreements that have not been filed, or in a manner not in accordance with the terms of its filed agreements.**

- **Retaliating against certain shippers by refusing or threatening to refuse cargo space accommodations, or by resorting to other unfair or unjustly discriminatory methods.**

- **Subjecting particular persons or descriptions of traffic to unreasonable refusals to deal or to undue or unreasonable prejudice or disadvantage.**

- **Knowingly and willfully accepting cargo for the account of untariffed or unbonded NVOCCs, or entering into service contracts with such carriers.**

- **Boycotting or taking other concerted actions resulting in unreasonable refusals to deal.**

- **Allocating shippers among specific carriers, or prohibiting TAA members from soliciting cargo from particular shippers.**

- **Charging, demanding, collecting or receiving greater, less, or different compensation for transportation of property than the applicable tariff rates and charges.**

To augment the fact finding investigation, the Commission also issued two compulsory orders directing TAA and its members to provide information and documents relating to: (1) alleged restrictions on the exercise of the right of IA by TAA members; and (2) TAA members' non-exclusive transshipment agreements and so-called "connecting carrier" agreements. The Commission inquired whether the lines' use of such agreements constituted unfair or unjust means to circumvent otherwise applicable tariffs and service contracts.

The purpose of the proceeding was to enable the Commission to determine whether there was sufficient evidence of violations of the 1984 Act to warrant further action, including the institution of injunction proceedings in U.S. District Court. Fact finding hearings were conducted in Boston, Chicago, New York, and Washington, DC.

The Commission announced on November 18, 1994, that as a result of evidence developed in Fact Finding Investigation No. 21, it was instituting two separate adjudicatory proceedings directed at certain activities of the TAA and its members: Docket No. 94-29, *Practices of the Trans-Atlantic Agreement and its Members With Respect to Independent Action* -- an investigation into unlawful restraints on the right of TACA members to take IA; and Docket No. 94-30, *Container Pool Practices of the Trans-Atlantic Agreement and its Members* -- an investigation into unlawful container pools operated by TACA members and apparently sanctioned by TACA.

A proposed settlement agreement involving Docket Nos. 94-29 and 94-30 and Fact Finding Investigation No. 21 was

submitted to the Commission on February 2, 1995, by TACA and its member lines, the Commission's Bureau of Hearing Counsel, and the Investigative Officers in Fact Finding Investigation No. 21. Under the terms of the proposed settlement, the TACA lines agreed, *inter alia*, to reduce rates to 1994 levels, revise service contracts and contracting procedures, and revise TACA provisions dealing with IA. Furthermore, under the settlement, the TACA lines agreed to cancel other discussion and conference agreements in the North Atlantic trades, thereby removing any legal authority for discussions between TACA and non-TACA lines on rates or other competition-related matters. The lines also pledged to eliminate much of their current, broad space charter authority, to cancel all connecting carrier agreements with NVOCCs, and to implement a plan to set forth in applicable tariffs and service contracts the terms by which containers and equipment will be made available to shippers. It was proposed that representatives of TACA and the Commission meet semiannually to discuss TACA activities and plans, beginning in September 1995.

On February 9, 1995, the FMC voted to seek public comment on the proposed settlement agreement. The Commission received 245 comments on the proposed settlement, over 200 of which supported the proposed settlement. However, a number of the commenters, both in favor and opposed, expressed concerns regarding possible significant TACA rate increases in 1996 if the settlement was approved.

On February 24, 1995, the Commission conditionally approved the proposed settlement in the TACA cases. However, noting concerns about the potential for unreasonable 1996 rate increases, the Commission required as a condition for approval that the TACA lines permit individual members to enter into service contracts with shippers for the 1996 contract

year. The carriers satisfied this condition on March 9, 1995, filing an amendment to their conference agreement providing that any TACA member may enter into an individual service contract with any shipper or shippers' association for the transportation of cargo, including seasonal commodities, within the trade for the 1996 contract year, and the settlement became effective. Shippers will also retain the option of entering into a TACA conference service contract for 1996.

***Petition of South Carolina State Ports Authority ("SCSPA") for Declaratory Order* [Docket No. 94-24], 27 S.R.R. 175 (May 1, 1995).**

The Commission granted in part and denied in part a request to initiate a declaratory order proceeding concerning the practices of SCSPA. The Petition, filed pursuant to Rule 68 of the Commission's Rules of Practice and Procedure, 46 C.F.R. § 502.68 (1993), requested a ruling to allow the SCSPA to act without peril in issuing, in its FMC-filed tariff, guidelines for the criteria it will apply to license stevedores and marine terminal operators ("MTOs") operating at SCSPA facilities, as well as provisions reserving to itself certain MTO functions performed at its facilities, thus denying competing MTOs access to its publicly owned facilities to perform those functions. The Commission instituted a proceeding to examine the lawfulness of the SCSPA's proposed stevedore licensing guidelines, but ruled that issues relating to its practice of reserving to itself certain MTO functions involved past and present practices, as well as future practices of the same kind, and were inappropriate for determination in a declaratory order proceeding.

***Section 6(g) of the Shipping Act of 1984* [Docket No. 93-23], 58 Fed. Reg. 62,616 (November 29, 1993).**

The Commission initiated an Advance Notice of Proposed Rulemaking concerning section 6(g) of the 1984 Act. The purpose of the Advance Notice was to obtain comments on whether the Commission should issue regulations or guidelines that would describe its enforcement policy under section 6(g), and if so, what form such guidelines should take. In the first round of comments, the Commission received an exceptionally broad range of comments on the desirability, form, and contents of the possible 6(g) guideline. Therefore, the Commission invited and received reply comments from carriers, shippers and government agencies. On November 9, 1994, the Commission voted to discontinue this proceeding, finding that its section 6(g) methodology was best developed through case experience and application.

On the same date, the Commission voted to issue a proposed rule to revise its information filing and reporting requirements. This new rulemaking proceeding incorporates various meritorious suggestions made by commenters in Docket No. 93-23.

***American President Lines, Ltd. v. Cyprus Minerals Corporation* [Docket No. 91-27], and *American President Lines, Ltd. v. Cyprus Copper Company* [Docket No. 92-01], 26 S.R.R. 1227 (January 31, 1994).**

American President Lines, Ltd. ("APL") filed two complaints against Cyprus Copper Company ("Cyprus") alleging violations of section 10(a)(1) of the 1984 Act, based upon alleged misdescriptions of certain shipments from the U.S. to Japan. Upon APL's motion for summary judgment and Cyprus' motion for subpena, the presiding ALJ issued an order denying

Cyprus' motion but granting APL's, and awarded it reparations of $455,345.57, plus interest. The ALJ, however, declined to award APL the attorneys' fees it had requested. Both parties filed exceptions to the order, and the Commission heard oral argument.

The Commission, in an order served January 31, 1994, found that the filed rate doctrine continues to apply to cases under the 1984 Act, and, therefore, any agreement to charge other than tariff rates is irrelevant. The Commission further found correct the ALJ's denial of Cyprus' motion for subpena. However, the Commission expressed some reservations about the state of the record. In particular it questioned the proper classification of the cargo under the applicable tariffs and the methodology used to compute the freight due. The Commission, accordingly, remanded the proceeding to the ALJ to resolve those limited issues. The Commission also noted that should APL ultimately prevail, it would be entitled to petition for attorneys' fees. The ALJ held a further hearing in this matter, during which both parties presented witnesses and introduced additional evidence. The ALJ issued a supplemental initial decision in which he found that APL had properly classified the cargo shipped according to its applicable tariff and that APL used the proper methodology to compute the freight charges due. Cyprus subsequently filed exceptions to this decision. On January 3, 1995, complainant and respondents filed a Joint Motion for Dismissal in order to settle the matter. The Commission approved the settlement on March 15, 1995.

2. Litigation

The General Counsel represents the Commission in litigation before courts and other administrative agencies. Although the litigation work largely consists of representing the Commission upon petition for review of its orders filed with the U.S. Courts of Appeals, the General Counsel also participates

in actions for injunctions, enforcement of Commission orders, actions to collect civil penalties, and other cases where the Commission's interest may be affected by litigation.

The following are representative of matters litigated by the Office:

Puerto Rico Maritime Shipping Authority v. FMC, 1st Cir. No. 95-1643.

The respondent in *Save-On Shipping, Inc. v. Puerto Rico Maritime Shipping Authority* [Docket No. 92-12], and *Mr. Stanley Hecht v. Puerto Rico Maritime Shipping Authority* [Docket No. 93-21], filed a petition in the First Circuit for review of the Commission's order of April 25, 1995, in which the Commission found that the tariff and bill of lading provisions of Puerto Rico Maritime Shipping Authority ("PRMSA"), compelling shippers to pay costs and attorneys' fees incurred by PRMSA in suits to recover unpaid freight, violated the requirement of the 1916 Act that carriers in the domestic offshore trades maintain reasonable practices relating to rates, charges, tariffs and bills of lading. PRMSA sought review of the Commission's decision in the U.S. Court of Appeals for the First Circuit, which heard oral argument in the case on November 8, 1995. A decision is pending.

Burlington Northern Railroad Company v. M. C. Terminals, Inc. [Docket No. 91-06], 26 S.R.R. 934 (May 21, 1993).

Complainant, a rail carrier being sued in a court by respondent, an MTO, asked the court to stay the case to obtain the Commission's ruling as to the reasonableness of the tariff item under which the terminal operator was seeking to recover money. The tariff item in question concerned an assessment on

money. The tariff item in question concerned an assessment on rail cars delivered to the terminal, the terminal claiming that it was conferring benefits on the railroad in the form of services and use of terminal facilities in completion of the railroad's duty of delivery of the rail cars to the terminal. In its complaint to the Commission, the rail carrier challenged two other tariff items which dealt with charges to be assessed against it by the terminal in cases of disruption of rail service or delay in delivering rail cars to the terminal.

The Initial Decision ("ID") of the ALJ held that the Commission lacks jurisdiction over the subject matter of each of the challenged tariff items, but that the tariff items could remain in the tariff subject to publication of a notice that they did not relate to marine terminal functions. On exceptions, the Commission reversed the holdings that it lacks subject matter jurisdiction under section 10(d)(1) of the 1984 Act, 46 U.S.C. app. § 1709(d)(1), over charges for moving railcars to position them in the order requested for unloading by the terminal, and that complainant is not a user of respondent's marine terminal facilities, insofar as these include the underground hoppers and supporting structures. Tariff items relating to rail service disruption and delay in delivery of railcars, not subject to the Commission's jurisdiction under the 1984 Act, were ordered deleted from the MTO's tariff. The Commission also reversed the ID to the extent that it relied on section 33 of the 1916 Act, 46 U.S.C. app. § 832, for determination of the reach of the 1984 Act. The ID was otherwise adopted and the proceeding was held in abeyance for the parties to seek clarification of matters from the Interstate Commerce Commission ("ICC"). Each party sought a declaratory order in a proceeding before the ICC. The parties reached settlement of the dispute, resolving the proceedings before the District Court, the ICC and the FMC. The settlement was approved by both agencies. FMC approval was administratively final on November 9, 1994.

***Hanstai International, Inc. v. FMC,* D.C. Cir. No. 94-1165.**

The complainants in *Western Overseas Trade and Development Corp. v. Asia North America Eastbound Rate Agreement* [Docket No. 92-06], *Allstate Trading Company, et al. v. Asia North America Eastbound Rate Agreement* [Docket No. 92-07], and *Pacific Motif, Inc. v. Asia North America Eastbound Rate Agreement* [Docket No. 92-18], filed a petition for review of the Commission's orders of April 26, 1993, and February 24, 1994, in which the Commission found that: (1) it had jurisdiction to determine if their service contracts were entered into under section 8(c) of the 1984 Act; (2) although the service contracts at issue contained a provision which purported to limit the shipper's remedies in the event the conference failed to perform, that provision did not render the contracts void *ab initio*; (3) the members of the conference could lawfully take IA to establish tariff rates that were lower than the corresponding rates in the subject service contracts; and (4) section 8(c) of the 1984 Act bars the Commission from hearing claims which, although couched in terms of alleged violations of the Act, sought remedies or asserted defenses that would be available in a breach of contract action if the matter were brought before a court. On April 12, 1995, the U.S. Court of Appeals for the D.C. Circuit issued a *per curiam* decision affirming the Commission.

***USA & FMC v. Martyn C. Merritt, et al.,* S.D.N.Y. 88-Civ. 6253 (TPG).**

Martyn Merritt ("Merritt") appealed the entry of an order by the U.S. District Court for the Southern District of New York, enforcing the Commission's decision in Docket No. 84-38. The Commission had assessed penalties totaling $335,000 against Merritt individually, and jointly and severally with Ariel

Maritime Group, Inc. ("Ariel") and other Merritt companies created and controlled, charged with multiple and repeated violations of the 1916 Act. The U.S. Court of Appeals for the Second Circuit affirmed the District Court's ruling that Merritt's challenge to the Commission's order could only be brought on direct appeal to the U.S. Courts of Appeal, which he had not taken. The Court of Appeals affirmed the view of the District Court and the Commission that substantive challenges may not be raised in defense of an action to enforce Commission penalty orders under the 1984 Act. In the related action in the District Court, continuing orders of garnishment of certain Merritt and Ariel assets were entered on June 7, 1993. An order to disburse was entered on March 3, 1994. The Commission received a total of $138,000 in penalties and interest from the bank holding the escrow account in fiscal year 1995.

***Universal Fixture Manufacturing Co., Inc. v. FMC,* D.C. Cir. No. 94-1623.**

Universal Fixture Manufacturing Co., Inc. ("Universal") filed a complaint against the Asia North America Eastbound Rate Agreement ("ANERA") alleging various violations of the 1984 Act. The dispute centered around a service contract between Universal and ANERA, under which Universal shipped less cargo than it had committed. On August 10, 1993, the Commission issued a decision dismissing the alleged violations of sections 3(21) and 8(c) of the 1984 Act and remanding the proceeding to the ALJ for such further action as was warranted. Subsequently, ANERA filed a second motion to dismiss the remaining allegations of the complaint, which was granted on November 18, 1993. Universal appealed that order to the Commission.

On appeal, the Commission found that Universal's allegations of misrepresentations should be considered by a

court or arbitrator and not by the Commission. The Commission found that Universal's arguments concerning misrepresentations, waiver and estoppel were defenses to common law contract actions and did not present meritorious claims under the 1984 Act. The Commission further concluded that there was no common source of discrimination in this case and that the filed rate doctrine did not apply. The Commission also found that Universal did not have a choice of remedies and that it did not have to resolve the issue of attorneys' fees and costs at that time. Universal subsequently filed a petition for review with the U.S. Court of Appeals for the D.C. Circuit. On May 14, 1995, Universal's motion for voluntary dismissal was granted.

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

On December 7, 1992, the Commission filed an action seeking a preliminary injunction against defendants to enjoin violations of the 1984 Act pending the completion of a Commission administrative proceeding, FMC Docket No. 92-52. The defendants had allegedly violated the 1984 Act by engaging in freight forwarding services without a license and bond; acting as an NVOCC without a tariff and bond; knowingly and willfully using an unfair device and means to obtain ocean transportation for less than the rates applicable; engaging in unfair practices in the adjustment and settlement of claims; and failing to establish, observe and enforce just and reasonable regulations and practices relating to or connected with receiving, handling, storing, or delivering property. The defendants had also allegedly engaged in fraud, deceit, and other unlawful conduct in booking or attempting to book cargo with ocean common carriers and NVOCCs, using the names of licensed freight forwarders without their knowledge and

consent, and assuming fictitious names to conceal their true identities.

The U.S. District Court granted the preliminary injunction. Upon information that defendants were violating the injunction, the Commission filed a Motion for an Order to Show Cause-Alleged Contempt for Violation of Injunction. The U.S. District Court entered a Stipulations and Consent Order on March 8, 1993, which, among other things, prohibits defendants from violating any provisions of the 1984 Act. This Order also permanently enjoins defendants from engaging in any ocean or trucking transportation-related activities, requires full restitution to injured shippers, and terminated all of defendants' "800" telephone numbers. Defendants also admitted to all the factual allegations and violations in FMC Docket No. 92-52. The Court ordered a public defender for Garcia on June 27, 1994. A hearing was held on July 6, 1994, on FMC's request for six months of imprisonment. The Court issued a bench warrant for Garcia's arrest on July 14, 1994. On December 9, 1994, supplemental briefs on hearing requirements for finding absent defendant in contempt were filed. The Court denied the motion for finding of contempt in absentia on December 30, 1994. He remains a fugitive.

3. Legislative Activities

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

During fiscal year 1995, 91 bills, proposals and Congressional inquiries were referred to General Counsel for comments. The Office also prepared and coordinated testimony for four Congressional hearings.

4. Significant Ongoing Activity

Pacific Trades Inquiry

In June 1995, the Commission directed its staff to conduct an informal inquiry into two major carrier agreements in the Pacific trades, the Transpacific Stabilization Agreement ("TSA") and the Westbound Transpacific Stabilization Agreement ("WTSA"). These agreements were formed during a period of widespread economic recession and significant financial issues for all carriers operating in the Pacific trades. Their purpose is to allow conference and non-conference carriers to discuss matters of mutual concern, including rates, and to try to arrive at common rate and service policies. In addition, TSA authorized the establishment and maintenance of a CMP, whereby the TSA member carriers agreed to establish a "maximum allowed capacity" for each TSA line by withholding from the shipping public a certain amount of its actual vessel capacity.

The Commission's concern about TSA and WTSA stemmed from the change in economic conditions in the Pacific trades, which now appear to be much more favorable for the carriers. After an initial review of Pacific trade conditions and recent WTSA and TSA activities, the Commission held intensive negotiations with the agreement carriers, required production of documents and extensive data about their operations, and secured elimination of TSA's CMP. Termination of the CMP on August 29, 1995, resulted in additional vessel space being available to shippers, leading to increased competition in the trade. Since that time, several lines have cut rates on a number of key commodities in the Pacific. The Commission continues to investigate informally other aspects of TSA and WTSA.

***Petition for Exemption from Tariff and Bonding Requirements in Regard to Household Goods and Personal Effects for the Account of the General Services Administration,* [Petition No. P2-95], ___ S.R.R.__ (April 10, 1995).**

On April 14, 1995, the Household Goods Forwarders Association of America, Inc. filed a petition requesting that the Commission exempt NVOCCs by water from the tariff filing and bonding requirements to the extent that they are engaged in the transportation of used household goods and personal effects of personnel of federal civilian executive agencies in the domestic and foreign commerce of the U.S. pursuant to a solicitation issued and administered by the GSA. The Commission issued notice of the filing of the petition on April 20, 1995, and requested interested persons to submit their views by May 25, 1995. Four commenters support the petition, and no comments were filed in opposition. On August 18, 1995, the Commission granted the petition and issued a final rule amending its regulations to exempt NVOCCs by water from the tariff filing and bonding requirements to the extent requested by the petition.

***Information Form and Post-Effective Reporting Requirements for Agreements Among Ocean Common Carriers Subject to the Shipping Act of 1984* [Docket No. 94-31], 59 Fed. Reg. 62,372 (December 5, 1994).**

The Commission proposed to amend its regulations governing the information submission requirements for agreements among ocean common carriers subject to the 1984 Act. The Commission proposed to replace the current information form that accompanies newly filed agreements with a new form applicable to certain kinds of agreements, which would require the submission of specific data on the agreement

member lines' cargo carryings, revenue results and port service patterns before they entered into the agreement. In addition, the Commission proposed regulations that would require the member lines of certain kinds of effective agreements to submit reports on their operations on a regular and ongoing basis, which would reflect the lines' cargo carryings, revenue results and port service patterns after they entered into the agreement. The application of the proposed rule to a particular agreement would depend primarily on whether the agreement authorizes its carrier members to engage in certain activities, and secondarily on the carrier members' combined market share. An agreement that does not authorize any of the activities specified by the proposed rule would still be filed with the Commission, unless it qualifies for one of the Commission's existing filing exemptions, but would not have any information form or reporting obligations. The intent of the proposed rule is to provide the Commission with improved information on the impact of concerted carrier practices on the foreign commerce of the U.S., and to facilitate the processing and monitoring of ocean carrier agreements under the standards of the 1984 Act. Comments on this proposed rule have been received, and Commission action is expected early in the upcoming fiscal year.

***Vessel Sharing Agreements - Order to Show Cause,* [Docket No. 94-28], 27 S.R.R. 249.**

On November 23, 1994, the Commission ordered the members of four VSAs operating in the North Atlantic trades to show cause why those agreements should not be disapproved, canceled or modified for violating the conference withdrawal and readmission requirements set forth in section 5(b)(2) and (3) of the 1984 Act. At issue were the agreements' significant withdrawal penalties, coupled with provisions requiring membership in TACA.

On February 9, 1995, the Commission voted to disapprove a proposed settlement agreement in this proceeding. In disapproving this settlement, the Commission observed that the parties had not reached a sufficient agreement on all the material issues covered by the settlement. However, on March 6, 1995, the parties submitted to the Commission a second proposed settlement. Under the terms of that agreement, the lines agreed to delete from the subject agreements the requirement that VSA member lines be members of TACA. In addition, Respondents would delete those sections of their agreements which establish that, when a party withdraws from a VSA, it must withdraw from the trade for five years. Instead, the parties would be allowed to discuss conference membership in a non-binding manner. The Commission approved this settlement on May 10, 1995, finding that it resolved the legal issues in the proceeding and brought the parties into compliance with the 1984 Act.

***Coloading Practices by Non-Vessel-Operating Common Carriers; Shipper Affiliate Access to Service Contracts* [Docket No. 93-22], 58 Fed. Reg. 62,077 (November 24, 1993).**

The Commission issued a proposed rule to amend its coloading regulations to remove ambiguities in the current rules and reflect developments in coloading industry practices. The proposal would redefine the term "coloading" to mean cargo combined pursuant to an agreement between or among NVOCCs, and to exclude cargo for which the receiving NVOCC issues its own bill of lading. The Commission also solicited comment on whether full containerload cargo could be coloaded. The proposed rule would require coloading agreements to be put in writing and made available to the Commission, prohibit coloaded cargo from being carried under a service contract, and limit the affiliates that may access service contracts. The Commission also invited comment on

the more fundamental issue of whether coloading should be prohibited altogether.

Upon review of the 58 comments received in response to the proposed rule, the Commission determined to hold this proceeding in abeyance and to explore further whether existing coloading practices are consistent with statutory requirements. Therefore, on November 4, 1994, the Commission initiated a new proceeding, Docket No. 94-26, *Inquiry into Statutory Basis for Coloading Practices and Possible Section 16 Exemption for Coloading,* in which it served notice that coloading appears to contravene statutory tariff filing requirements. Docket No. 94-26 also solicits comment on whether the Commission should initiate a proceeding under section 16 of the 1984 Act, to exempt some aspect of coloading activity from otherwise applicable requirements if no other statutory basis for coloading can be identified. Comments on this inquiry are under review.

5. Foreign Shipping Restrictions and Related Matters

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

During fiscal year 1995, the Commission investigated potentially restrictive practices by foreign governments in Japan and the PRC, which may warrant institution of formal proceedings under section 19 and the FSPA.

On September 12, 1995, the Commission issued Information Demand Orders to all carriers in the U.S.-Japan trades, to collect information on restrictions and requirements for the use of port and terminal facilities in Japan. The Commission is investigating (1) the "prior consultation" system, a process of mandatory discussions and operational approvals for port usage; (2) mandatory weighing and measuring requirements; (3) restrictions on Sunday work; and (4) the disposition of the Japanese Harbor Management Fund, a fund collected from carriers serving Japanese ports. These restrictions issues are of serious concern to the carriers operating in the U.S.-Japan trade, including the U.S.-flag carriers.

In its investigatory orders, the Commission solicited information about these practices, and about the role of the Government of Japan in harbor operations. The Commission will review the information provided under these orders, to determine if further action is warranted. If so, it can initiate proceedings under the FSPA or under section 19 of the 1920 Act. Under these Acts, the Commission has the authority to levy per-voyage fees on Japanese-flag lines, or to prevent them from operating in the U.S. trades altogether.

With regard to the PRC, the Office of the General Counsel is monitoring indications that the PRC Government has not carried through on a commitment made to the U.S. Government in November 1993 to permit freight forwarding and consolidation by wholly foreign-owned subsidiaries of U.S. ocean carriers. We understand that no U.S.- or foreign-flag carrier has been allowed to engage in this type of operation, except in the form of a joint venture with a Chinese company. The U.S. Government is currently trying to resolve this issue through diplomatic means; however, should these diplomatic efforts prove unsuccessful, initiation of Commission action under section 19 or the FSPA may be appropriate.

The Office of the General Counsel also participated in interagency groups and international maritime discussions, particularly as technical advisors to the Interagency Maritime Policy Group, whose other members include representatives of the U.S. Departments of Transportation, State, Commerce, and Justice, and the Office of the U.S. Trade Representative. The Office also coordinated and participated in briefings of foreign visitors.

Another responsibility of the Office is the identification and verification of controlled carriers under section 9 of the 1984 Act. Common carriers that are owned and controlled by foreign governments are required to adhere to certain tariff filing requirements under the 1984 Act. The Office investigates and makes appropriate recommendations to the Commission regarding the status of potential controlled carriers. The Office, in conjunction with other Commission components, also monitors the activities of controlled carriers. In fiscal year 1995, the Office reviewed documents and information relating to the controlled carrier status of a number of carriers.

D. OFFICE OF EQUAL EMPLOYMENT OPPORTUNITY

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

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

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

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

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

Significant accomplishments in fiscal year 1995 include the following:

1. Provided briefings to senior staff.

2. Provided internal and external workshops on equal employment topics.

3. Provided extensive counseling assistance to managers, supervisors and employees.

4. Assisted in management reviews of district offices.

5. Continued to utilize outside resources at no expense to the agency to upgrade the skills of clerical, administrative and EEO staff.

6. Developed information and materials for training senior executives, district directors and staff, and EEO Counselors.

7. Planned and developed extensive internal and external special emphasis programs for FMC employee participation.

8. Continued to improve FMC's image and identity among Federal agencies and the community by developing cooperative programs in the special emphasis areas.

9. Continued to chair the Small Agency Coalition of EEO Directors.

10. Developed and implemented non-discrimination policy and programs in response to Pub. L. No. 103-123.

During fiscal years 1996 and 1997, the Office will continue all existing programs and initiate additional activities designed to increase an understanding of EEO concepts and principles.

E. OFFICE OF INSPECTOR GENERAL

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

It is the duty and responsibility of the OIG to:

- **Provide policy direction for and to conduct, supervise, and coordinate audits and investigations relating to the Commission's programs and operations.**

- **Review existing and proposed legislation and regulations relating to the Commission's programs and operations and to make recommendations concerning the impact of such legislation or regulations on the economy and efficiency in, and the prevention and detection of fraud and abuse in, the administration of the Commission's programs and operations.**

- **Recommend policies for, and to conduct, supervise, or coordinate other activities carried out or financed by the Commission for the purpose of promoting economy and efficiency in the administration of, or preventing and detecting fraud and abuse in, the Commission's programs and operations.**

- **Recommend policies for, and to conduct, supervise, or coordinate relationships between the Commission and other Federal agencies, state and local governmental agencies, and nongovernmental**

agencies with respect to all matters relating to: the promotion of economy and efficiency in the administration of, or the prevention and detection of fraud and abuse in, programs and operations administered or financed by the Commission; and the identification and prosecution of participants in any fraud or abuse.

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

In fiscal year 1995, the OIG issued four audit reports in final, one draft audit, and one operational review. A number of informal and formal investigations were also conducted during the fiscal year.

Towards the end of fiscal year 1995, the Office initiated a number of audits in connection with ATFI secondary user fees required to be collected and remitted to the Commission pursuant to Pub. L. No. 102-582. The objective was to verify that access by private customers to ATFI data maintained by commercial tariff service companies was properly recorded, and that user fees collected pursuant to that access were properly remitted to the Commission.

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

In fiscal year 1996, the OIG expects to complete a number of significant audits, as well as operational reviews, surveys and follow-up reviews. Investigations will be conducted as necessary. The Office will continue to emphasize the principles encompassed in the "vision statement" issued by the Inspectors General. In addition, the ECIE serves as a forum for the exchange of views for the inspector general community and provides a base for the establishment of joint inspector general projects. It is anticipated that the Commission's OIG will be active in these projects as they are developed.

F. OFFICE OF THE MANAGING DIRECTOR

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

- **Bureau of Economics and Agreement Analysis.**
- **Bureau of Tariffs, Certification and Licensing.**
- **Bureau of Hearing Counsel.**
- **Bureau of Investigations.**
- **Bureau of Administration.**

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

Also, the Managing Director provides administrative guidance to the:

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

and administrative assistance to the:

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

Further, early in the fiscal year, the Office of Information Resources Management ("IRM") was transferred from the Bureau of Administration to the Office of the Managing Director.

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

In addition, the Managing Director is the Audit Follow-up and Management (Internal) Controls Official for the Commission, and the Office manages those programs. The Managing Director is the agency's Senior Procurement Executive, its Designated Senior IRM Official, and the Commission's Chief Operating Officer.

At the beginning of calendar year 1995, the Chairman appointed the Deputy Managing Director as the ATFI Contracting Officer. In this capacity, the Deputy Managing Director has direct responsibility for administration of this contract and the planning for future ATFI contract requirements. Additionally, the Chairman has designated a member of the Commission as the Chairman of the Automated Data Processing ("ADP") Committee and responsible for ATFI oversight.

A significant achievement of the Office during fiscal year 1995 was the coordination of an enhanced enforcement program involving all operating bureaus, especially the extensive investigation into the activities of TACA, which included a number of public hearings around the country as part of its information-gathering phase. During fiscal year 1995, the Commission achieved a settlement agreement with TACA. This agreement, among other things, required TACA to revise its service contracting procedures and its agreement provisions dealing with IA. TACA also agreed to roll back rates to 1994 levels, which is estimated will save U.S. shippers and importers between $60-$70 million, and to permit individual members to enter into service contracts with shippers for the 1996 contract year. The Commission also began a comprehensive fact finding investigation regarding malpractice activity in major U.S. trades. This effort will be a primary focus of the operating bureaus for

an extended period, as many leads are pursued and information developed in an attempt to curb violative actions that negatively affect U.S. ocean commerce.

The Office is currently:

1. Guiding the implementation and maintenance of the agency's ATFI system under Commissioner Hsu's oversight and the planning for future ATFI contract requirements;

2. Overseeing the further development of all enforcement efforts, including addressing the challenges facing the Commission's enforcement program as the result of the closing of four of its seven district offices;

3. Directing all staff efforts in cases involving restrictive practices of foreign governments; and

4. Managing the Commission's planning and actions with respect to the President's directives and OMB's guidance on streamlining government, strategic planning and management reform.

The Office's key objectives for fiscal years 1996 and 1997 are the continued coordination of staff efforts regarding the implementation and maintenance of the ATFI system and planning for future ATFI contract requirements; the further development of the Commission's enforcement program in light of the strictures imposed by the closing of many of its district offices; organization of staff action to implement Presidential directives with respect to streamlining, strategic planning and management reform; and continuing oversight of staff efforts to address restrictive practices of foreign governments.

Office of Information Resources Management

The major function of the Office of IRM is to administer the information resources management program under the Paperwork Reduction Act of 1980, as amended, as well as other applicable laws which prescribe responsibility for operation of the Commission's IRM program. Other functions include: management studies and surveys; data telecommunications/database management and application development; records management; IRM contract administration; and development of Paperwork Reduction Act clearances for submission to OMB. The Office is also responsible for the computer security and records and forms management programs. The Director of the Office serves as Contracting Officer's Technical Representative on the ATFI Project, Senior IRM Manager, Forms Control Officer, Computer Security Officer, Records Management Officer, and ADP Coordinator for the ADP Committee.

During fiscal year 1995, the Office:

- **Coordinated technical, logistical, procedural and security issues related to the Commission's worldwide ATFI system and other database systems created, owned and maintained by the Commission; and completed development of the new ATFI Invoice Accounting System and User Guide.**

- **Upgraded the Commission's Local Area Network ("LAN") to a Microsoft Windows NT Operating System, and implemented CD-ROM technology and desktop publishing in the LAN environment.**

- **Coordinated the initial cabling and prototype testing for the agency's optical imaging program; coordinated testing, installation and upgrading of**

PCs throughout the FMC; and coordinated the return of equipment and software and the cancellation of all support services contracts in FMC district offices that were closed and downsized.

- **Established Internet access capabilities for FMC users, and coordinated with agency components to develop Government Information Locator Service ("GILS") entries.**

- **Assisted the FMC's Inspector General on audits of industry accounting procedures to ensure compliance with Pub. L. No. 102-582, and provided technical analysis of data collection.**

In addition to implementing ongoing Office programs and providing extensive technical support for the ATFI program mentioned above, major initiatives for fiscal years 1996 and 1997 include: (1) submission of an electronic records management schedule to the National Archives and Records Administration; (2) developing an update of internal guidance to reflect changes occasioned by the Paperwork Reduction Act of 1995; and (3) maintaining liaison with the Government Printing Office to ensure that FMC's GILS entries remain current.

G. BUREAU OF ECONOMICS AND AGREEMENT ANALYSIS

1. General

In fiscal year 1995, the Bureau of Trade Monitoring and Analysis changed its name to the Bureau of Economics and Agreement Analysis to better reflect the nature and function of its activities. Also last year, the Bureau assumed program responsibility for analyzing financial reports filed by common carriers in the U.S. domestic offshore trades, which previously resided in the Bureau of Tariffs, Certification and Licensing.

The primary function of the Bureau is to plan, develop, and administer programs related to the oversight of concerted activity of common carriers by water under the standards of the 1984 Act and 1916 Act. The Bureau's major program activities include:

- **Administering comprehensive trade monitoring programs to identify and track relevant competitive, commercial, and economic activity in each major U.S. trade, and to advise the Commission and its staff on current trade conditions, emerging trends, and regulatory needs affecting waterborne liner transportation.**

- **Conducting systematic surveillance of carrier activity in areas relevant to the Commission's administration of statutory standards.**

- **Developing economic studies and analyses in support of the Commission's regulatory responsibilities.**

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

- **Analyzing annual financial and operating reports and GRIs filed by common carriers in the U.S. domestic offshore trades.**

- **Processing and analyzing common carrier and marine terminal agreements.**

2. Surveillance

An integral part of the Bureau's responsibilities under the 1916 Act and the 1984 Act is the systematic surveillance of carrier activity and commercial conditions in the U.S. liner trades. The goal of the Bureau's surveillance activities is to ensure that carriers operating in these trades comply fully with the statutory standards of the applicable U.S. laws and Commission regulations. To that end, the Bureau administers a variety of monitoring programs, and other research efforts, designed to apprise the Commission of current trade conditions, emerging commercial trends, and carrier pricing and service activities.

For a description of the Bureau's monitoring activities for fiscal year 1995, *see* Section III.A, *Surveillance*.

3. General Economic Analysis

In addition to research and economic analysis pertaining to its monitoring programs, the Bureau provides economic expertise for a variety of Commission initiatives. Bureau economists prepare testimony in domestic offshore rate cases, fact finding investigations, and unfair shipping practices cases

under section 19 of the 1920 Act and FSPA. They also provide assistance in formulating Commission rulemakings and prepare speeches, testimony and briefings for senior agency officials.

Key projects the Bureau completed in fiscal year 1995 included: (1) an inquiry into the feasibility of codifying guidelines in a rule to determine whether agreements have resulted in, or are likely to result in, among other things, unreasonable increases in transportation costs; (2) a final rule changing carrier financial reporting requirements and the rate-of-return methodology in the domestic offshore trades; (3) final rules updating the Commission's existing user fees and implementing new fees; (4) an analysis of the reasonableness of a GRI in the Hawaiian trade; (5) a proposed rule to update and expand the Commission's agreement information form and reporting requirements; (6) a critique of a Department of Agriculture study on the effects of conference pricing on agricultural exports; (7) development of trade data and information requested by other Government entities; (8) a cost-benefit analysis of a proposed increase in the financial guaranty required of passenger vessel operators; (9) periodic monitoring reports on key agreements and on the activities of controlled carriers; (10) section 15 information demand orders regarding certain surcharges in the transpacific trades and IA activities in both the transpacific and transatlantic trades; (11) economic analyses of amendments to two key agreements in the transpacific and transatlantic trades; (12) supporting fact finding hearings on conditions in the transatlantic trades, including support in fashioning a settlement agreement between the Commission and the transatlantic conference; (13) the initial phase of the Pacific market structure project, in which the Commission obtained the suspension of a CMP in the inbound transpacific trade; (14) handling a variety of inquiries and complaints from members of Congress and shippers on a wide range of problems and issues, including antitrust issues, the level of rates, surcharges, accessorial charges, service contracts,

and port service; (15) researching and preparing speeches and briefings for senior Commission officials; and (16) participating in a government-wide initiative to develop a standardized international trade database recommended by the National Performance Review.

4. Types of Agreements

(a) Conference and Interconference Agreements

Conference agreements provide for the collective discussion, agreement, and establishment of ocean freight rates and practices by groups of ocean common carriers. These agreements typically are limited to a geographical area or trade route. Interconference agreements are between two or more conferences, and usually cover shared administration, or provide a forum for discussing issues of common interest.

During fiscal year 1995, the Bureau analyzed and processed 51 conference and interconference agreement filings, including modifications to existing agreements, under the 1984 Act. There were 44 conference agreements and 13 interconference agreements in effect at the end of the fiscal year.

(b) Pooling and Equal Access Agreements

Pooling agreements are commercial arrangements among carriers in a given trade providing for the pooling and apportionment of cargo or revenues or both in the interest of increased efficiencies through stabilizing competitive conditions. These agreements often set forth sailing requirements and other requirements aimed at improving overall service efficiency. Equal access agreements serve to formalize national-flag carrier access to cargo that is controlled by the governments of

reciprocal trading partners under cargo preference laws, import quotas, or other restrictions.

There were 21 pooling and equal access agreements in effect at the end of the fiscal year.

(c) Space Charter and Sailing Agreements

Space charter agreements authorize the chartering of vessel space or container slots between or among participating vessel operators. Sailing agreements provide for the rationalization of the parties' sailing schedules. Through effective management of their vessels and the space on those vessels, participants in these agreements are able to provide a high level of service at reduced operating costs. These agreements also generally contain authority to exchange equipment. A number of conferences and discussion agreements have also included space charter and sailing authority within the scope of their agreements.

During fiscal year 1995, 25 space charter and sailing agreements and modifications were filed under the 1984 Act, and 158 were in effect at the end of the fiscal year.

(d) Joint Service Agreements

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

One joint service agreement was filed during fiscal year 1995, and 41 joint service agreements were in effect at the conclusion of the fiscal year.

(e) Cooperative Working Agreements

Cooperative working agreements ("CWAs") run the gamut from discussion agreements, which permit the participants to discuss competitively sensitive trade matters, to specialized inter-carrier operational undertakings (*e.g.,* capacity reduction arrangements) that do not fit precisely within the other agreement categories. This category also includes voluntary rate discussion agreements. Carriers filed 68 CWAs, including amendments, in fiscal year 1995. There were 174 CWAs in effect at the end of the fiscal year.

(f) Marine Terminal Agreements

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

During fiscal year 1995, the Bureau received and reviewed 125 agreements and agreement modifications relating to port and marine terminal services and facilities. All terminal agreements become effective upon filing under Commission rules that exempt certain classes of marine terminal agreements from the waiting period requirements of the 1984 Act, or the approval requirements of the 1916 Act. Terminal agreements not entitled to an exemption are processed under applicable statutory requirements. At the end of the fiscal year, 1,081 terminal agreements were on file with the Commission.

5. Domestic Commerce

In accordance with Commission regulations, vessel-operating common carriers in the domestic offshore trades are required to file annual financial and operating reports with the Commission. The Bureau reviews these reports and provides financial expertise to ensure that rates for transportation of cargo and other services provided by domestic common carriers are just and reasonable. During fiscal year 1995, the Bureau reviewed 39 annual reports and analyzed and found reasonable a GRI in the Hawaiian trade. A significant development in the domestic trades last year was the sale of the only government-owned carrier operating in these trades to private interests.

6. Future Plans and Proposed Activities

The Bureau's overall monitoring program will continue to: focus on systematic oversight of carrier and trade activity with an emphasis on developing new and innovative programs and methods to enhance the Commission's effectiveness in administering the various shipping statutes; assess the impact of key issues facing the industry, to monitor developments in major trades, and to analyze agreements in the foreign trades under the standards of the 1984 Act; collect and analyze trade data in major conference trades to track trends in the various trades and anticipate areas ripe for closer scrutiny; and refine its section 6(g) monitoring methodology in evaluating the degree of anticompetitiveness generated by agreements within the context of their commercial environments.

The Bureau also will continue to furnish support and prepare economic testimony in formal Commission proceedings arising in the areas of its expertise; provide analyses and recommendations on petitions, information demand orders, and Commission-initiated rulemakings; perform pre-effectiveness analyses of newly filed agreements to determine whether they

are likely to raise issues and specific questions under sections 5, 6(g) and 10 of the 1984 Act, or raise general policy questions; prepare recommendations to the Commission on the more complex agreements and those agreements that raise policy issues; and process other agreement matters internally under authority delegated by the Commission.

The Bureau will continue to analyze domestic offshore agreement filings under the public interest standards of the 1916 Act and make appropriate recommendations to the Commission for approval or disapproval of these agreements. Further, the Bureau will review annual financial and operating reports filed by domestic carriers, and determine the reasonableness of GRIs filed by those carriers.

H. BUREAU OF TARIFFS, CERTIFICATION AND LICENSING

1. General

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

- **Reviews and maintains both new and amended tariff filings, rejecting those which fail to conform to the Commission's regulations;**

- **Approves or disapproves special permission applications involving requests to deviate from tariff filing rules;**

- **Administers the NVOCC financial responsibility program by setting policies and guidelines and reviewing financial instruments that evidence financial responsibility;**

- **Processes service contracts and essential terms publications filed by ocean common carriers and conferences of such carriers, issuing notices of intent to reject service contracts containing provisions which fail to conform to Commission regulations;**

- **Prepares recommendations on requests to correct clerical or administrative errors in the essential terms of service contracts;**

- **Licenses ocean freight forwarders;**

- **Certifies owners and operators of passenger vessels in U.S. trades with respect to the financial responsibility of such owners and operators to satisfy any liability incurred for nonperformance of voyages or death or injury to passengers or other persons; and**

- **Assists in the planning and development of the Commission's ATFI system, and has primary responsibility for administration and review of all tariffs and service contract essential terms filed in the ATFI system.**

As part of its program responsibilities, the Bureau develops long-range plans, new or revised policies and standards, and rules and regulations with respect to its program activities; initiates recommendations, in collaboration with other offices of the Commission as warranted, for formal action and proceedings by the Commission; and cooperates with other Commission components with regard to enforcement of the Commission's regulatory requirements.

2. Foreign Commerce

(a) Foreign Tariffs

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

to controlled carriers, section 8 does not give the Commission the authority to regulate rate levels.

During fiscal year 1995, the Commission received 1,014 new, complete tariffs from carriers and conferences operating in the U.S. foreign commerce. (Additional statistics concerning filings into ATFI can be found in the ATFI section below.) The Bureau also received and processed 309 foreign special permission applications (including controlled carrier special permission applications) to deviate from the statutory provisions of the 1984 Act and/or the Commission's tariff filing regulations.

(b) Service Contracts

Section 8(c) of the 1984 Act (46 U.S.C. app. 1707) provides that ocean common carriers and conferences of such carriers operating in the foreign commerce of the U.S. may enter into confidential service contracts with shippers and/or shippers' associations. A concise statement of the essential terms of the service contract must be filed electronically in tariff format and must be offered to all similarly situated shippers for a period of at least thirty days.

Confidential service contracts offer an alternative to transportation under tariff terms. Their flexibility enables contract parties to tailor transportation services to accommodate specific commercial and operational needs. During fiscal year 1995, the Bureau received 35 new essential terms publications, 8,099 new service contracts, and 8,851 amendments, involving an estimated 38,400 shippers, 28 conferences, and 117 individual ocean common carriers. Of these contracts, 145 contracts were filed on behalf of 69 shippers' associations, a substantial increase over fiscal year 1994, when only 13 contracts were filed on behalf of 10 shippers' associations.

To fulfill its responsibilities with regard to service contracts, the Commission undertook a number of initiatives in fiscal year 1995. For example:

- **In November 1994, the Commission issued *Circular Letter No. 1-94* to alert the industry that, under the Commission's regulations, service contract commodity descriptions, like those filed in tariffs, should not be ambiguous or apply to analogous articles.**

- **A Notice of Proposed Rulemaking was issued May 17, 1995, under Docket No. 95-08, *Service Contract Filing Requirements -- Miscellaneous Revisions*, to reduce duplication and Commission and carrier cost, as well as facilitate automation of the Commission's service contract records. The proposed rule provides an optional, abbreviated service contract format which includes the contract parties' addresses. The Bureau reviewed and analyzed comments received on the proposal. The completion of the rule is anticipated in fiscal year 1996.**

- **In fiscal year 1995, the Bureau continued to follow the Commission's directive to determine whether various classes of shippers are treated fairly and consistently in their service contract dealings with ocean common carriers and conferences, and investigated related questions concerning trade practices. During fiscal year 1995, the Bureau analyzed the third in a series of carrier and conference reports pursuant to Section 15 Order, *Service Contract Negotiations*, regarding Fact Finding Investigation No. 20, *Service Contract Negotiations with Shippers' Associations and Non-***

Vessel-Operating Common Carriers. **The Bureau prepared a final consolidated report which concluded that there were no apparent broad abuses of the service contract process by either conferences or carriers. The Bureau also provided technical and analytical support in Fact Finding Investigation No. 21, *Activities of the Trans-Atlantic Agreement and its Members* (and related proceedings), as well as providing service contract rate research for the U.S. Agricultural Export Study.**

(c) Controlled Carriers

A controlled carrier is an ocean common carrier whose operating assets are directly or indirectly owned or controlled by the government under whose registry the vessels of the common carrier are operated. Section 9 of the 1984 Act (46 U.S.C. app. 1708) provides that no controlled carrier may maintain rates or charges in its tariffs filed with the Commission that are below a level that is just and reasonable, nor may any such carrier establish or maintain unjust or unreasonable classifications, rules or regulations in those tariffs. In addition, such rates, charges, classifications, rules or regulations of a controlled carrier may not, without special permission of the Commission, become effective sooner than the 30th day after the date of filing with the Commission. Exceptions to these proscriptions include rates of controlled carriers of a state whose vessels are entitled by a treaty of the U.S. to receive most-favored-nation treatment.

The Bureau monitors the tariff filings of controlled carriers to assure that the required notice for rate increases and decreases is given. The Bureau received six requests for special permission from controlled carriers during fiscal year 1995.

(d) Common Carrier Anti-Rebate Certification Program

Every common carrier by water in the foreign commerce of the U.S. and licensed ocean freight forwarder is required by section 15(b) of the 1984 Act (46 U.S.C. app. 1714) and 46 CFR Part 582 to file a sworn *Certification of Company Policies and Efforts to Combat Rebating in the Foreign Commerce of the United States*. This certification is to be filed with the Secretary of the Commission on or before December 31 of each even-numbered calendar year and is to be signed by the Chief Executive Officer of the common carrier or ocean freight forwarder. Section 15(b) of the 1984 Act and 46 CFR 582.1(b) provide that failure to file the required certification may result in a civil penalty of $5,000 for each day the violation continues. In addition to the civil penalty provision, the Commission's regulations provide, upon 45-days notice, for the cancellation of the tariffs of those carriers, and the suspension of the licenses of those ocean freight forwarders, who fail to file a certification. Furthermore, any initial tariff filing or application for an ocean freight forwarder license that does not include an anti-rebate certification in accordance with Part 582 is rejected.

A program supported by the Bureau's electronic databases is in place to ensure that common carriers and freight forwarders file their certifications. The Bureau mailed anti-rebate certificate reminder letters to nearly 4,000 common carriers and freight forwarders in fiscal year 1995. Subsequently, the tariffs of 141 carriers were canceled for failure to file 1995/1996 anti-rebate certifications.

(e) NVOCC Financial Responsibility

Section 23 of the 1984 Act (46 U.S.C. app. 1721) requires an NVOCC operating in the foreign commerce of the U.S. to file a bond, insurance or other surety as proof of financial responsibility. The Commission's regulations require proof of

financial responsibility in the amount of $50,000. Evidence of financial responsibility obtained pursuant to this requirement is used to satisfy claims arising from transportation-related activities or penalties assessed by the Commission pursuant to section 13 of the 1984 Act. Under this program, approximately 2,150 bonds and 1 insurance policy are currently on file.

During fiscal year 1995, the Commission granted Petition No. P2-95, *Household Goods Forwarders Association, Inc., Petition for Exemption*. Commission regulations were revised to exclude from the financial responsibility requirements shipments of used household goods and personal effects for the account of federal civilian executive agencies shipping under the International Household Goods Program administered by the GSA.

3. Domestic Commerce

(a) Domestic Tariffs

Common carriers operating in the U.S. domestic offshore commerce are required pursuant to section 18(a) of the 1916 Act (46 U.S.C. app. 817) and section 2 of the 1933 Act (46 U.S.C. app. 844) to file tariffs of rates, charges and rules with the Commission. The Bureau must ensure that these tariffs comply with applicable statutory requirements. During fiscal year 1995, carriers operating in the U.S. domestic offshore trades filed 50 new tariffs in ATFI. The Bureau also received and processed four special permission applications to deviate from the domestic tariff filing rules.

(b) Marine Terminal Activities

The Commission is responsible for the review of tariffs related to the marine terminal industry. Terminal tariffs cover the facilities, services and labor provided by both public and

private entities in connection with the receipt and delivery of cargo from shippers and consignees, and the interchange of cargo between land and ocean carriers. The Bureau reviewed 33 new marine terminal tariffs, along with numerous amendments that were filed into the ATFI system during the fiscal year.

4. Passenger Vessel Certification

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

Upon the submission of satisfactory evidence of financial responsibility in accordance with Subpart A of 46 CFR 540, the Commission issues a *Certificate of Financial Responsibility for Indemnification of Passengers for Nonperformance of Transportation.* Upon the submission of similar evidence in accordance with Subpart B of 46 CFR 540, the Commission issues a *Certificate of Financial Responsibility to Meet Liability Incurred for Death or Injury to Passengers or Other Persons on Voyages.* The program now encompasses about 135 vessels and 42 operators, which have evidence of financial responsibility coverage in excess of $330 million for nonperformance and over $1 billion for casualty. The certificates issued pursuant to this program are necessary for the Customs clearance of thousands of passenger vessel sailings annually.

During fiscal year 1995, the Commission received 83 applications for passenger vessel certificates. During the fiscal

year, 37 casualty certificates and 32 performance certificates were approved and issued to passenger vessel applicants.

The Bureau prepared a Notice of Inquiry in Docket No. 94-21, *Inquiry into Alternative Forms of Financial Responsibility for Nonperformance of Transportation.* The inquiry was instituted to determine whether an acceptable alternative can be fashioned that will address the industry concerns with the rule proposed in Docket No. 94-06, *Financial Responsibility Requirements for Nonperformance of Transportation*, yet ensure that cruise passengers are adequately protected in the event of nonperformance of transportation.

5. Freight Forwarders

The Commission's regulatory responsibilities over the forwarding industry are found in section 19 of the 1984 Act. Ocean freight forwarders are persons who, in effect, hold themselves out to shippers as export departments for hire. Ocean freight forwarders operate in the export commerce of the U.S. by arranging for the ocean transportation of cargo by common carriers, and by handling the paperwork, legal requirements, safety requirements and other incidentals related to the shipment of cargo. Ocean freight forwarders receive a fee from the exporter for handling an export shipment, as well as compensation from the ocean carrier whose vessel is selected to carry the cargo.

During fiscal year 1995, 372 new and amending license applications were received for processing. The Commission approved 249 applications; 107 applications were deficient and returned; 17 applications were withdrawn; and 1 application was denied. One hundred and twenty-nine licenses were issued, while 69 licenses were revoked. At the end of the fiscal year, 1,848 licensed forwarders were operating under the Commission's jurisdiction.

On-site compliance investigations are conducted as part of the Commission's effort to ensure that licensed ocean freight forwarders comply with the provisions of the shipping statutes and the Commission's regulations. During the year, 67 investigative reports were received by the Bureau. Several of these reports resulted in the issuance of warning letters to licensees or referral to the Bureau of Hearing Counsel for the assessment of appropriate civil penalties.

The Commission, in an effort to reduce the burden to the freight forwarder industry, revised its Form FMC-18, *Application for License as an Ocean Freight Forwarder*, during the fiscal year. Revision of the form resulted in reducing the burden associated with applying for a license from 18 hours to 2 hours. To this end, the requirement to submit financial data has been eliminated and the Form FMC-18 streamlined.

6. Automated Database Systems

(a) ATFI

ATFI, a computer-based system designed to increase efficiency, reduce processing time, and enhance service, provides for electronic filing, processing and retrieval of foreign and domestic carrier tariffs, marine terminal tariffs, service contract essential terms, and amendments thereto. The ATFI system provides carriers and conferences with greater flexibility in establishing price and service offerings and in filing tariffs containing those offerings with the Commission. The Commission launched the ATFI system on February 22, 1993, and through the use of the ATFI system, the Bureau has achieved a "paperless tariff environment." At the end of fiscal year 1995, there were 4,552 effective tariffs in ATFI, a net increase of 789 tariffs or 21 percent over fiscal year 1994. (Appendix D shows the number of tariff objects filed in the ATFI system in fiscal year 1995.)

A number of carriers failed to register and file their tariff(s) in electronic format. Consequently, beginning in fiscal year 1993, the Commission initiated a series of proceedings which ordered these carriers to show cause why the Commission should not cancel their paper tariffs for failure to convert them to ATFI format. Prior to fiscal year 1995, 120 tariffs were canceled in these proceedings. The Commission issued its last order in Docket No. 94-20, *Cancellation of Tariffs for Failure to Comply with Automated Tariff Filing and Information System ("ATFI") Filing Requirements,* on October 14, 1994, to 243 carriers or terminal operators with paper tariffs or essential terms publications on file. The tariffs or essential terms publications of 191 of these carriers or MTOs were canceled by final order on February 13, 1995.

(b) Other Databases

The Bureau maintains several automated database systems other than its ATFI system. These are the: (1) Service Contract System; (2) Regulated Persons Index; (3) Microfiche System; and (4) Ocean Freight Forwarder System. The Service Contract System contains certain key service contract data, such as shipper names, which are kept confidential. The Regulated Persons Index assigns a discrete number to each person the Commission regulates and contains the address, telephone number and trade name of the person. The Microfiche System provides a means of locating canceled tariffs which have been microfiched. The Ocean Freight Forwarder System contains certain information concerning licensees, including surety bond information. These databases, several of which are electronically transferred to other Commission offices, provide support for many of the Commission's programs. Certain information contained in the databases is also available to the public.

During fiscal year 1995, the Commission purchased an imaging system to optically scan historical tariff data which was filed with the Commission in paper format prior to ATFI. This system is expected to be operational in fiscal year 1996.

7. Rulemaking and Docketed Proceedings

The Bureau initiates or supports formal rulemakings and Commission docketed proceedings. During fiscal year 1995, the Bureau participated in, developed, or completed the following matters:

Service Contract Negotiations, Section 15 Order.

The Commission issued this Section 15 order to implement certain of the Investigative Officer's recommendations in Fact Finding Investigation No. 20, *Service Contract Negotiations with Shippers' Associations and Non-Vessel-Operating Common Carriers*, with regard to developing additional information concerning the service contract negotiating process. The Bureau completed an analysis of a second and third series of semiannual section 15 reports for this proceeding.

Fact Finding Investigation No. 21, *Activities of the Trans-Atlantic Agreement and its Members; Vessel Sharing Agreements -- Order to Show Cause* [Docket No. 94-28]; *Practices of the Trans-Atlantic Agreement and its Members with Respect to Independent Action* [Docket No. 94-29]; and *Container Pool Practices of the Trans-Atlantic Agreement and its Members* [Docket No. 94-30].

The Bureau provided technical and analytical support to the staff working group involved with these proceedings,

investigating whether a conference of ocean common carriers and/or individual ocean common carriers in the North Atlantic trade were engaging in activities violative of the 1984 Act.

***Inquiry into Alternative Forms of Financial Responsibility For Nonperformance of Transportation* [Docket No. 94-21]; and *Financial Responsibility Requirements for Nonperformance of Transportation* [Docket No. 94-06].**

The Bureau prepared a Notice of Inquiry, Docket No. 94-21, to determine whether an acceptable alternative can be fashioned that will address industry concerns with the rule proposed in Docket No. 94-06, yet ensure that cruise passengers are adequately protected in the event of nonperformance of transportation.

***Cancellation of Tariffs for Failure to Comply with Automated Tariff Filing and Information System ("ATFI") Filing Requirements* [Docket No. 94-20].**

The Commission issued an order requiring the remaining carriers with active paper tariffs or essential terms publications (or tariffs of MTOs) on file to show cause why their paper tariffs and/or essential terms publications should not be canceled for failure to file such tariffs or publications in ATFI. The Commission canceled the paper tariffs and/or essential terms publications of carriers (or tariffs of MTOs) that failed to respond to the show cause order and/or file a tariff in ATFI.

***Filing of Tariffs by Marine Terminal Operators; Publishing, Filing and Posting of Tariffs in Domestic Offshore Commerce; Publishing and Filing of Tariffs by Common Carriers in the Foreign Commerce of the United States; Service Contracts* [Docket No. 95-01].**

The Bureau initiated the removal of 46 CFR Parts, 515, 550, 580, and 581, which set forth the Commission's rules for filing tariffs in paper format. The Commission determined that these rules were no longer necessary after the successful implementation of ATFI.

***Service Contract Filing Requirements -- Miscellaneous Revisions* [Docket No. 95-08].**

The Commission proposed a rule on May 17, 1995, to permit an optional, abbreviated service contract format which is intended to reduce duplication and Commission and carrier costs. Comments were received and reviewed, and a final rule is anticipated in fiscal year 1996.

I. BUREAU OF HEARING COUNSEL

The Bureau of Hearing Counsel participates as trial counsel in formal adjudicatory (docketed) proceedings, non-adjudicatory investigations, rulemaking proceedings when designated by Commission order, and other proceedings initiated by the Commission. Bureau attorneys serve as trial attorneys, where intervention is permitted and appropriate, in formal complaint proceedings instituted under section 22 of the 1916 Act (46 U.S.C. app. 821), section 11 of the 1984 Act (46 U.S.C. app. 1710), and in investigations instituted under the FSPA (46 U.S.C. app. 1701). Bureau attorneys also may be designated Investigative Officers in non-adjudicatory formal proceedings. The Bureau monitors all other formal proceedings in order to identify major regulatory issues and to advise the Managing Director and the other Commission bureaus. The Bureau also participates in the development of Commission rules and regulations. On occasion, attorneys of the Bureau may participate in court litigation on behalf of the Commission.

The Bureau also furnishes legal advice to the Managing Director and other bureaus. Bureau attorneys work closely with field investigators and review enforcement reports. The Bureau prepares and serves notices of violations of the shipping statutes and Commission regulations and may compromise and settle civil penalty allegations arising out of those violations. If settlement is not reached, the Bureau acts as prosecutor in formal Commission proceedings that may result in settlement or in the assessment of civil penalties. The Bureau also participates, in conjunction with other bureaus, in special enforcement initiatives.

In fiscal year 1995, the Bureau continued its efforts to deter malpractices in U.S. ocean transportation. On July 27,

1994, the Commission launched a comprehensive inquiry into the competitive power of the TAA and its member lines, and the impact of that power upon shippers. Activities addressed included: possible restrictions on the statutory right of TAA members to take IA on rates; allegedly unlawful connecting carrier agreements; operating under agreements that may not have been filed or in a manner not in accordance with filed agreements; alleged unjust discrimination against shippers; possible use of untariffed and discriminatory inland container pools; and allegedly unreasonable increases in rates and reductions in service. Attorneys from the Bureau were designated as investigative officers. The investigation was launched in response to reports of alleged unlawful activity by TAA from several sources, including the Commission's own monitoring initiatives and inquiries, and petitions filed by the National Industrial Transportation League and by Container Freight International and Danish Consolidation Services. The investigative officers were directed to conclude the investigation within 180 days and to advise the Commission if it appeared that more immediate action, particularly injunctive action, would be necessary.

Hearings in Fact Finding Investigation No. 21 were conducted in Boston, Chicago, New York and Washington, D.C., during the period August through October 1994. In November 1994, an interim report to the Commission resulted in the commencement of three adjudicatory proceedings directed at certain issues developed in the fact finding investigation, *viz:* Docket No. 94-28, *Vessel Sharing Agreements, Order to Show Cause*; Docket No. 94-29, *Practices of the Trans-Atlantic Agreement and its Members with Respect to Independent Action*; and Docket No. 94-30, *Container Pool Practices of the Trans-Atlantic Agreement and its Members.*

In December 1994, settlement negotiations commenced, resulting in a proposed settlement. That settlement was

published for comment and, after review of the comments, was approved by the Commission effective March 9, 1995. The Commission conditioned its approval on an amendment to the conference agreement to permit carrier members to negotiate individual service contracts in 1996. Other important features of the settlement include:

- **A rollback of 1995 TACA (the successor to TAA) rate increases to 1994 levels.**

- **Cancellation of several discussion agreements under which TACA members and independent carriers could discuss and agree upon rates.**

- **Substantive and procedural changes designed to make TACA service contracts more "shipper friendly."**

- **Improvements to the conference agreement to protect members' rights to take IA.**

This settlement is estimated to have saved the shipping public between $60-$70 million in 1995, and avoided the costs of further litigation of these complex issues. Moreover, the settlement enhanced the future ability of shippers to obtain reasonable rates and service in the transatlantic trades.

In addition to this major transatlantic initiative, the Bureau continued its efforts to combat malpractices in U.S. trades with South and Central America. Both as part of a multi-disciplinary team focusing on these trades, and in their capacity as prosecutors, attorneys from the Bureau pursued alleged tariff violations by carriers, shippers and middlemen which resulted in one settlement with an ocean common carrier in March 1995, and other cases in various stages of enforcement action.

Other enforcement initiatives in fiscal year 1995 focused on NVOCCs with tariffs containing only generic "Cargo, N.O.S." rates, and their practice of charging commodity rates not found in those tariffs. These so-called "Shell Tariff" cases have made this segment of the industry much more aware of tariff requirements and have resulted in improvements to NVOCC tariffs and rating practices.

At the beginning of fiscal year 1995, 21 enforcement cases were pending final resolution by the Bureau. During the fiscal year, 55 new enforcement actions were commenced. Forty-four cases were compromised and settled, administratively closed, or referred for formal proceedings. Thirty-two enforcement cases were pending resolution on September 30, 1995.

At the start of fiscal year 1995, the Bureau was party to 10 formal proceedings. During the fiscal year, the Bureau participated in 8 new formal proceedings. Eight proceedings in which the Bureau participated were completed. Accordingly, 10 formal proceedings were pending at the end of the fiscal year. At the beginning of fiscal year 1995, there were 40 requests for legal advice pending in the Bureau. Sixty-eight requests for legal advice were received during the fiscal year, and 46 legal advice projects were completed. Accordingly, 62 legal advice matters were pending in the Bureau on September 30, 1995.

As a result of enforcement activity, the Commission collected $381,912.63 in civil penalties in fiscal year 1995. Settlements were reached with many different segments of the industry (*e.g.*, carriers, shippers, forwarders) operating in the U.S. foreign trades.

In fiscal year 1996, the Bureau will be merged with the Bureau of Investigations into one bureau named the Bureau of Enforcement, to enhance cooperation between investigations and prosecutions of malpractices and streamline management

and administration. The new Bureau will continue to plan enforcement programs with other bureaus. Where violations of the 1984 Act are developed, the Bureau will pursue them and negotiate settlements of these cases. The Bureau will also provide legal advice to the Managing Director and other bureaus. The Bureau will continue its practice to implement policy decisions through formal proceedings in order to resolve regulatory and enforcement problems and to intervene in formal complaint cases with significant regulatory and jurisdictional issues.

J. BUREAU OF INVESTIGATIONS

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

During fiscal year 1995, the Bureau maintained staff of 40 personnel located in the headquarters office in Washington, D.C., and district offices in the major port cities of New York; Miami; Hato Rey, Puerto Rico; New Orleans; Houston; Los Angeles; and San Francisco. In addition to investigative functions, each district office represents the Commission within its jurisdiction, provides liaison between the Commission and the maritime industry and the shipping public, collects and analyzes intelligence of regulatory significance, and assesses industry-wide conditions for the Commission.

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

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

- **Illegal rebating by carriers and receipt of illegal rebates by shippers, NVOCCs, and shippers' associations.**

- **Misdescriptions and misdeclarations of cargo or other malpractices of carriers, shippers, consignees, and other persons.**

- **Activities of ocean common carriers who are parties to agreements whenever it appears that such agreements and modifications have been implemented prior to filing with the Commission or are being carried out in violation of the shipping acts.**

- **Failure by common carriers to file appropriate tariffs covering their rates and charges or to charge rates that are in effect and on file with the Commission.**

- **Operating as an ocean freight forwarder without a license issued by the Commission or contrary to statute or regulation.**

The Bureau's audit and compliance activities include:

- **Audits of service contracts to determine compliance with statute and regulation.**

- **Audits of NVOCCs.**

- **Post-licensing and routine compliance checks of licensed freight forwarders to determine whether their operations conform with regulatory requirements.**

- **Audits of passenger vessel operators to ensure the financial protection of cruise passengers.**

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

The Bureau assists the Bureau of Hearing Counsel in formal proceedings before the Commission, conducts studies and surveys for use in program development and program revision, reports trade information, and recommends remedial action.

During fiscal year 1995, the Bureau continued to investigate malpractices in the South American trade. This initiative involved all seven district offices in a comprehensive review of shipments in both the northbound and southbound trades to and from all major points in South America. The Bureau also continued to investigate malpractices in the other key trade routes, including the transatlantic, transpacific, Mediterranean, Central American and Caribbean trades. The Bureau continued to conduct a limited number of targeted investigations in the transpacific trades while assessing the efforts of the major carriers to forge a tradewide self-policing mechanism. In addition, the Bureau continues to monitor and investigate conditions in the North Atlantic trades as part of the Transatlantic Enforcement Initiative that began in 1987.

The Bureau conducted 123 investigations and special inquiries, and 144 compliance checks and audits which include service contract audits and audits of NVOCCs. Appendix F summarizes the Bureau of Investigations' activities. A total of 37 investigations were referred for enforcement action. (*See* Part III, *Surveillance and Enforcement.*)

During fiscal year 1995, the Bureau conducted an investigative program designed to ensure compliance with tariff filing requirements under the Commission's ATFI System. Many common carriers, particularly foreign-based NVOCCs, were believed to be filing "Shell" Tariffs that contained only Cargo, N.O.S. rates and not the various commodity rates that were actually being assessed. The Bureau's investigation of

"Shell" Tariff operators resulted in the development of 25 enforcement cases that were submitted for prosecution.

During fiscal year 1995, the Bureau participated with other bureaus in an agency task force/working group that was assigned to investigate the ratemaking practices and other activities of the TAA/TACA Conference in a fact finding investigation. The Bureau was responsible for investigating the following specific areas of suspected malpractice: improper connecting carrier agreements between TAA members and NVOCCs covering the North Atlantic Trades; untariffed container pools operated by TAA members on the West Coast; and TAA service contracts with untariffed/unbonded NVOCCs.

Coordination between the Commission's district offices and Customs' regional offices was enhanced in fiscal year 1995, as a part of the amended Memorandum of Understanding between the agencies to provide for the exchange of investigative information. During fiscal year 1995, there was a significant increase in the level of information retrieval activities from Customs' Automated Commercial Environment ("ACE") Database. This activity was facilitated by the installation of new ACE software in headquarters. During fiscal year 1995, Bureau personnel received refresher training from Customs in the use of the ACE to obtain on-line vessel manifest information. These tools permit Bureau investigative staff to review and analyze large numbers of ocean shipping transactions for violations of statute or agency regulations, and to look for trends and significant shifts in cargo movements or changes in cargo carriage in the inbound U.S. trades.

The Bureau of Investigations has concluded negotiating with the Customs Service to obtain on-line access to the Automated Broker Interface ("ABI") module in the ACE. Access to the ABI will provide investigators with critical information not currently available without great difficulty.

This information will fill in a gap in the investigator's ability to move quickly and accurately through very extensive ocean shipping transactions. When malpractices in ocean shipping transactions are uncovered by investigative personnel from either agency, this information is routinely exchanged with the other agency when there is a need and use for the information. The volume and speed in the exchange of investigative information should continue to increase in fiscal years 1996 and 1997.

The Houston, New Orleans, San Francisco, and Puerto Rico district offices were closed on September 30, 1995, and the personnel assigned to those offices were separated by reduction in force ("RIF") procedures. In addition, the staffs of the Miami and Los Angeles district offices were reduced by RIF procedures.

Investigative resources in fiscal years 1996 and 1997 will be directed toward malpractices in the major trade routes and the development of new efforts to deter unlawful shipping practices. In fiscal year 1996, the Bureau will be merged with the Bureau of Hearing Counsel to become the Bureau of Enforcement.

K. BUREAU OF ADMINISTRATION

Office of the Director

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

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

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

The Director is the Commission's Competition Advocate, as well as the Commission's representative to the Small Agency Council ("SAC"). The FMC training and development function is also administered within the Office. The Training Officer provides employee development assistance and career counseling throughout the agency, provides technical assistance to the Executive Resources Board ("ERB"), and coordinates the activities of the Senior Executive Service ("SES") Candidate Development Program. The Training Officer also serves as a member of the SAC Training Committee. During the past year, the agency utilized a number of cost-free training opportunities available through the SAC and the Department of Justice. The

agency also planned and coordinated an aggressive training program for district office and headquarters employees. The Office of the Director also is responsible for directing and administering the Commission's Information Security Program, which includes an active oversight and security education program to ensure effective implementation of Executive Order 12958.

1. Office of Administrative Services

(a) General Office Responsibilities

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

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

(b) Achievements

During fiscal year 1995, the Office:

- **Coordinated the relocation of the Miami, Los Angeles, and San Francisco district offices.**

- Continued to provide contracting guidance and assistance in support of the Commission's ATFI program.

- Arranged the Memorandum of Understanding with the Office of Personnel Management ("OPM") for background investigation services on Commission employees.

- Conducted an analysis and then revised the headquarters copying program to enhance productivity and cost effectiveness.

- Implemented a new Cooperative Administrative Support Program agreement with the Department of Agriculture for disposition of the Commission's surplus or excess personal property.

- Acquired and installed upgraded property inventory system software.

- Expanded the Standard Automated Contracting System to include the management approval chain and new "electronic commerce" requirements.

- Coordinated and arranged for the orderly closing of the San Francisco, Houston, New Orleans, and Puerto Rico district offices.

- Conducted a cost benefit analysis and arranged through GSA for the reduction of office space in headquarters and the New York, Los Angeles, and Miami district offices.

(c) Future Plans

In fiscal year 1996, the Office's objectives include the following: (1) complete the implementation and installation of the automated property and inventory management system throughout the Commission; (2) complete the implementation and expansion of the automated procurement processing system in accordance with the Government-wide electronic commerce program initiatives; and (3) continue to provide advice and assistance to Commission officials regarding innovative administrative support initiatives.

2. Office of Budget and Financial Management

(a) General Office Responsibilities

The Office of Budget and Financial Management administers the Commission's financial management program, including fiscal accounting activities, fee and forfeiture collections, and payments; ensures that Commission obligations and expenditures of appropriated funds are proper; develops annual budget justifications for submission to Congress and OMB; develops and administers internal controls systems that provide accountability for agency funds; administers the Commission's travel and cash management programs, as well as the Commission's Imprest Funds; ensures accountability for official passports; and assists in the development of proper levels of user fees. The Director of the Office is the Commission's Chief Financial Officer.

(b) Achievements

During fiscal year 1995, the Office:

- **Collected and deposited $1,749,271 from user fees and fine and penalty collections. Of this amount,**

$117,618 is related to ATFI user fees and $572,480 to Pub. L. No. 102-582.

- Prepared fiscal year 1996 OMB policy base line estimates, coordinated and prepared budget justifications and estimates for the fiscal year 1996 Congressional budget and the fiscal year 1997 budget to OMB, and participated in OMB and Congressional budget hearings.

- Worked with the American Express Government Credit Card Program to implement the use of the Travel Credit Card for ATM machines.

- Prepared a variety of external reports such as: the Civil Monetary Penalty Report, and the Current Asset Management Annual Certification (FY 1994 Cash Flow) (Treasury); the Report on Financial Management Improvements, and the Best Practices in the Federal Financial Management (Electronic Clearing House) Report (Joint Financial Management Improvement Program); the Annual Leave Year Report, and the Report on Workyears and Personnel Costs (OPM); the Annual Report on Occupational Safety and Health Program (Department of Labor); and the Annual Prompt Payment Report (OMB).

- Provided management with monthly status reports on workyears, funding, travel and receivables.

- Assisted with the update of user fees for the Commission.

- Developed Voluntary Separation Incentive Payments and Voluntary Early Retirement Proposals.

- **Prepared a draft of procedures to close out fiscal year obligations.**

(c) Future Plans

During fiscal years 1996 and 1997, the Office will: (1) continue testing off-the-shelf travel manager software; (2) implement electronic commerce to automate the processing of purchase orders, obligations and payments; (3) prepare OMB and Congressional budget submissions; (4) review procedures and controls for cash management; and (5) pursue initiatives leading to economy and efficiency in budget and financial operations.

4. Office of Personnel

(a) General Office Responsibilities

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

(b) Achievements

During fiscal year 1995, the Office:

- **Prepared management information papers on a variety of personnel issues.**

- **Implemented improvements to the Commission's personnel and information security program, including preparation of sensitivity designation forms for every position.**

- Prepared mass change and related documents concerning agency reorganization and unit name changes.

- Worked with the ERB to complete the SES recertification program and other SES program plans, including guidance on new restrictions on the ability of SES to accumulate annual leave.

- Completed a program to deliver mandatory HIV/AIDS education to all employees.

- Made significant progress in reviewing, revising, and reducing the number of internal personnel regulations.

- Issued Certificates of Expected Separation to employees in district offices, issued RIF notices to certain employees in most of the Commission's district offices, sent a representative to assist in outplacement efforts for those employees affected by RIF, and assisted in closing district offices in Puerto Rico, New Orleans, Houston, and San Francisco.

- Established a Career Transition Center for headquarters employees.

- Submitted a request for Voluntary Early Retirement Authority to OPM, which subsequently was approved, and conducted a Voluntary Early Retirement Open Season.

- Prepared a Retention Register listing all Commission employees.

- **Monitored and reported on employee assistance program contracts in Washington, D.C., New York, Miami, New Orleans, Houston, San Francisco, and Los Angeles; and sponsored on-site wellness programs.**

- **Sponsored an annual Employee Health Fair, conducted the Health Benefits and Thrift Savings Plan Open Seasons, and sponsored Blue Cross/Blue Shield Service Days during which a representative meets with employees on-site to assist them.**

- **Advised supervisors concerning their responsibilities in areas of employee conduct and performance, including granting within-grade increases and awards, and correcting disciplinary and performance problems.**

- **Resolved a number of employee relations cases.**

- **Managed a very successful Annual Leave Transfer Program.**

- **Maintained the Commission's high standing among agencies in percentage of employees with targeted disabilities, and publicized the availability of the new Federal Information Relay Service for communication with the speech and hearing impaired.**

- **Coordinated the agency's Combined Federal Campaign effort, which raised over $17,000.**

- **Worked with the District Government to conduct the Summer Youth Employment Program.**

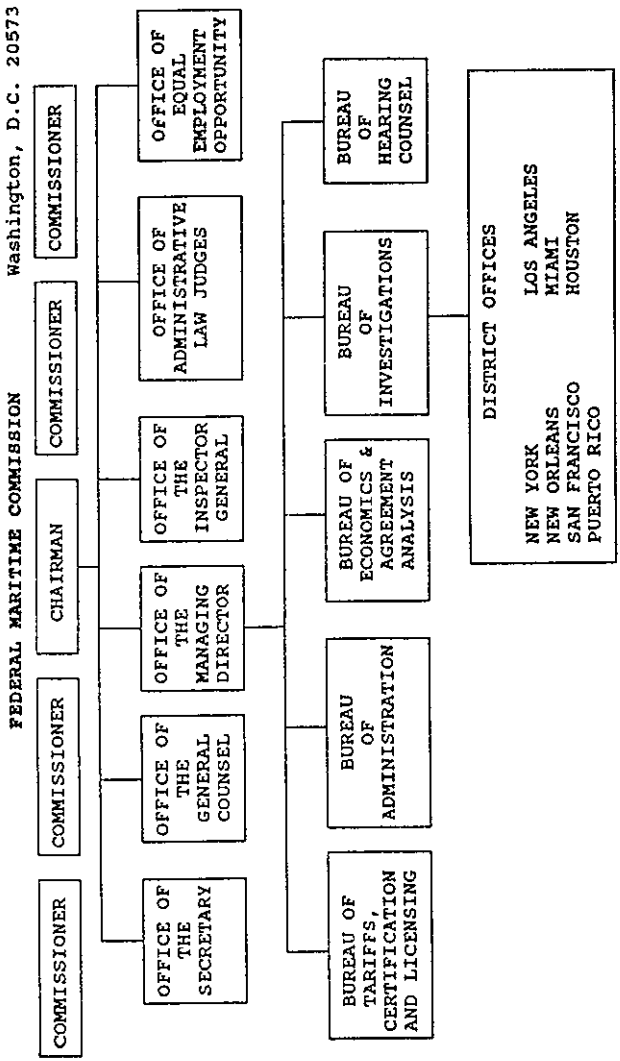
(c) Future Plans

During fiscal years 1996 and 1997, the Office will continue to advise the Commission on all personnel matters and ensure the maintenance of a sound and progressive personnel program. The Office will continue its review of personnel policies as recommended, with the goal of reducing its internal regulations in accordance with streamlining guidelines.

APPENDIXES

APPENDIX A

ORGANIZATION CHART



APPENDIX B

COMMISSION PROCEEDINGS
Fiscal Year 1995

Formal Proceedings

Decisions	9
Discontinuances & Dismissals	7
Initial Decisions Not Reviewed	6
Rulemakings - Final Rules	5
- Withdrawn	1
Total	28

Special Dockets	162
Informal Dockets	32

APPENDIX C

AGREEMENT FILINGS AND STATUS
Fiscal Year 1995

Agreements Filed in FY 1995
(including modifications)

Carrier	145
Terminal	125
Total	270

Agreements Processing Categories in FY 1995

Forty-Five Day Review	76
Shortened Review	14
Exempt-Effective Upon Filing	212
Rejection of Filing	0
Formal Extension of Review Period	2
Approved Under Shipping Act, 1916	1
Total	305

Carrier Reports Submitted for Commission Review

Minutes of Meetings	1,433
Operating and Ad Hoc Reports	29
Total	1,462

Agreements on File as of September 30, 1995

Conference	44
Interconference	13
Pooling & Equal Access	21
Joint Service	41
Sailing & Charter	158
Cooperative Working, Agency, & Equipment Interchange	174
Terminal	1,081
Total	1,532

Domestic Offshore Trade Activities

Annual Reports Filed	39
GRI Reviews	1

APPENDIX D

TARIFF AND SERVICE CONTRACT FILINGS AND SPECIAL PERMISSION APPLICATIONS
Fiscal Year 1995

Electronic Tariffs* in Effect	*4,552*
Electronic Tariff Filings	
Tariffs (new)	*1,132*
Rules	*103,418*
Commodity Descriptions	*355,673*
Tariffs Line Items	*3,268,654*
Inland Tables	*10,292*
Tariff Records	*3,613*
Organization Records	*2,334*
Essential Term Documents	
New Service Contracts	*8,099*
Service Contract Amendments	*8,851*
Special Permission Applications	
Total Received - Foreign	*309*
Granted	*281*
Denied	*21*
Withdrawn	*4*
Pending	*3*
Total Received - Domestic	*4*
Granted	*4*
Denied	*0*
Withdrawn	*0*

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

APPENDIX E

CIVIL PENALTIES COLLECTED
Fiscal Year 1995

AA Forwarding Inc..	$20,000.00
Airway Express Co. Ltd	**10,000.00**
All Freight International.	20,000.00
Allegro International	**5,000.00**
Ariel Maritime Group, Inc.	15,409.93
General Forwarding	**50,000.00**
Hanstai International Inc.	102.70
Kin Bridge Express	**11,000.00**
Kirk Line	60,000.00
Poundex Assoc. Corp.	**75,000.00**
Samjin America Inc.	25,000.00
Shoe City Inc.	**50,400.00**
Transtar Express Company	10,000.00
Transworld Shipping (USA)	**30,000.00**
Total Civil Penalties Collected	**$381,912.63**

APPENDIX F

INVESTIGATIONS
Fiscal Year 1995

Investigations/Special Inquiries Opened:		*79*
Audits/Compliance Checks Opened:		*55*
Compliance Checks:	*40*	
Service Contract Audits:	*2*	
NVOCC Audits:	*13*	
	Total Openings:	*134*
Investigations/Special Inquiries Completed:		*123*
Audits/Compliance Checks Completed:		*144*
Compliance Checks:	*91*	
Service Contract Audits:	*4*	
NVOCC Audits:	*49*	
	Total Completions:	*267*
Reports Referred for Enforcement Action:		***37***

APPENDIX G

STATEMENT OF APPROPRIATIONS, OBLIGATIONS AND RECEIPTS FOR THE FISCAL YEAR ENDED SEPTEMBER 30, 1995

APPROPRIATIONS:

Public Law 103-317, approved September 8, 1994: For necessary expenses of the Federal Maritime Commission as authorized by section 201(d) of the Merchant Marine Act of 1936, as amended (46 App. U.S.C. 1111), including services as authorized by 5 U.S.C. 3109; hire of passenger motor vehicles authorized by 31 U.S.C. 1343 (b); and uniforms or allowances therefor, as authorized by 5 U.S.C. 5901-02; Provided, that not to exceed $2,000 shall be available for official reception and representation expenses.

$18,531,000

OBLIGATIONS AND UNOBLIGATED BALANCE:

Net obligations for salaries and expenses for the fiscal year ended September 30, 1995. **$18,530,674**

STATEMENT OF RECEIPTS: Deposited with the General Fund of the Treasury for the Fiscal Year Ended September 30, 1995:

Publications and reproductions, Fees and Vessel Certification, and Freight Forwarder Applications	$ 677,260
ATFI user fees	$ 117,618
Davis Law fees	$ 572,480
Fines and penalties	$ 381,913
Total general fund receipts	**$1,749,271**

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