

**FEDERAL MARITIME  
COMMISSION**

---

**35th  
ANNUAL REPORT**

**for**

**Fiscal Year**

**1996**





# TABLE OF CONTENTS

LETTER OF TRANSMITTAL .....	v
<b>MEMBERS OF COMMISSION .....</b>	<b>vii</b>
SENIOR COMMISSION OFFICIALS .....	ix
<b>I. THE COMMISSION</b>	
A. History .....	1
<b>B. Functions .....</b>	<b>1</b>
C. Organization .....	4
<b>II. THE YEAR IN REVIEW .....</b>	<b>7</b>
A. Trade Developments .....	8
<b>B. Restrictive Trade Practices .....</b>	<b>10</b>
C. Enforcement .....	12
<b>D. Surveillance .....</b>	<b>13</b>
E. Passenger Vessel Activities .....	14
<b>F. Tariff Automation .....</b>	<b>16</b>
<b>III. SURVEILLANCE AND ENFORCEMENT</b>	
A. Surveillance .....	19
<b>B. Enforcement .....</b>	<b>21</b>
<b>IV. DEVELOPMENTS IN MAJOR U.S. FOREIGN TRADES</b>	
A. Transatlantic .....	23
<b>B. Mediterranean .....</b>	<b>28</b>
C. Middle East .....	30
<b>D. Africa .....</b>	<b>32</b>
E. Latin America and the Caribbean .....	34
<b>F. Transpacific .....</b>	<b>37</b>
G. Worldwide .....	41
<b>V. AUTOMATED TARIFF FILING AND INFORMATION SYSTEM</b>	
A. Introduction and Background .....	45
<b>B. Early Studies on Tariffs .....</b>	<b>46</b>
C. First Step in Tariff Automation .....	47
<b>D. The Shipping Act of 1984 .....</b>	<b>47</b>
E. The Tariff Automation Task Force .....	48
<b>F. ATFI: Feasibility Study of Tariff Automation and         The ATFI Advisory Committee .....</b>	<b>49</b>
G. Benefit Cost Analysis and Procurement Authority .....	51
<b>H. Inquiry on the Functionality of ATFI and         Presolicitation Conference .....</b>	<b>51</b>

I.	Remote Retrieval .....	54
<b>J.</b>	<b>Contract Award and Major Changes</b> .....	<b>56</b>
K.	Docket No. 90-23 .....	58
<b>L.</b>	<b>Batch Filing Guide</b> .....	<b>60</b>
M.	Miscellaneous Milestones .....	61
<b>N.</b>	<b>Update on Remote Access - September 1996</b> .....	<b>64</b>

## **VI. THE FOREIGN SHIPPING PRACTICES ACT OF 1988**

A.	General .....	67
<b>B.</b>	<b>Top Twenty U.S. Liner Cargo</b> <b>Trading Partners</b> .....	<b>68</b>

## **VII. SIGNIFICANT OPERATING ACTIVITIES BY ORGANIZATIONAL UNIT**

A.	Office of the Secretary .....	73
<b>B.</b>	<b>Office of Administrative Law Judges</b> .....	<b>77</b>
C.	Office of the General Counsel .....	83
<b>D.</b>	<b>Office of Equal Employment Opportunity</b> .....	<b>97</b>
E.	Office of Inspector General .....	101
<b>F.</b>	<b>Office of the Managing Director</b> .....	<b>105</b>
G.	Bureau of Economics and Agreement Analysis .....	111
<b>H.</b>	<b>Bureau of Tariffs, Certification and Licensing</b> .....	<b>119</b>
I.	Bureau of Enforcement .....	131
<b>J.</b>	<b>Bureau of Administration</b> .....	<b>137</b>

## **APPENDIXES**

A.	Organization Chart .....	147
<b>B.</b>	<b>Commission Proceedings</b> .....	<b>148</b>
C.	Agreement Filings and Status .....	149
<b>D.</b>	<b>Tariff and Service Contract Filing and</b> <b>Special Permission Applications</b> .....	<b>150</b>
E.	Civil Penalties Collected .....	151
<b>F.</b>	<b>Investigations</b> .....	<b>152</b>
G.	Statement of Appropriations, Obligations and Receipts .....	153







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

March 31, 1997

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-fifth annual report of the activities of the Federal Maritime Commission for fiscal year 1996.

Additionally, section V.N of this report contains an Update on Remote Access - September 1996, to comply with the request of Congress to be kept informed on developments of reasonable restrictions on remote access to the Commission's *Automated Tariff Filing and Information System ("ATFI")*.

Sincerely,

A handwritten signature in dark ink, appearing to read "Harold J. Creel, Jr.", written in a cursive style.

Harold J. Creel, Jr.  
Chairman





# MEMBERS OF COMMISSION\*



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



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



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



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

*One vacancy as of 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  
Enforcement** ..... *Vern W. Hill*
- 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 of the U.S. The passage of the Shipping Act of 1984 ("1984 Act") brought about a major change in the regulatory regime facing shipping companies operating in the U.S. foreign commerce.

### B. FUNCTIONS

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

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

The Commission's regulatory responsibilities include:

- **Protecting shippers and carriers engaged in the foreign commerce of the U.S. from restrictive or non-market-oriented rules and regulations of foreign governments and/or the practices of foreign-flag carriers that have an adverse effect on the commerce of the U.S.**
- **Protecting the rights of U.S.-flag shipping companies to transport cargoes in the U.S. foreign oceanborne and foreign-to-foreign trades.**
- **Reviewing and monitoring agreements of common carriers and other persons engaged in the U.S. foreign commerce. These agreements include conference, pooling, joint service and space charter agreements.**
- **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 foreign government-owned or -controlled carriers to ensure that they are just and reasonable.**
- **Issuing passenger vessel certificates evidencing financial responsibility of vessel owners or charterers to pay judgments for personal injury or death or to repay fares for the nonperformance of a voyage or cruise.**

- **Licensing international ocean freight forwarders.**
- **Bonding 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 commerce of the U.S.**

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

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

In addition to monitoring relationships among carriers, the Commission is also responsible for ensuring that individual carriers, as well as those permitted by agreement to act in concert, fairly treat shippers and other members of the shipping public. The 1984 Act prohibits carriers from unduly discriminating among shippers and

other members of the shipping public. The 1984 Act also requires carriers to make their rates, charges and practices publicly available in tariffs that must be on file with the Commission. Carriers may only assess the rates and charges that are lawfully on file with the Commission. The Commission, however, does not have the authority to approve or disapprove general rate increases or individual commodity rate levels in the U.S. foreign commerce, except with regard to certain foreign government-owned carriers.

Pub. L. No. 89-777 requires the operators of passenger vessels with 50 or more berths, who embark passengers at U.S. ports, to 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 Enforcement; and Bureau of Administration. The Managing Director assists the Chairman in providing executive and administrative direction to the Commission's bureaus. These offices and bureaus are responsible for the Commission's regulatory programs or provide administrative support.

In fiscal year 1996, the Commission was authorized a total of 180 full-time equivalent positions and had a total appropriation of \$14,836,000. The majority of the Commission's personnel are located in Washington, D.C., with area representatives in New Orleans, New York, Miami and Seattle. Field offices in New York, Los Angeles, and Miami were closed on June 8, 1996.



## II

# THE YEAR IN REVIEW

The dynamics and emerging trends of the ocean shipping industry made for an eventful year as the Commission fulfilled its various international trade and transportation responsibilities. The Commission adapted its oversight to these changes to ensure that U.S. interests were protected against unfair shipping practices, and that U.S. importers and exporters were permitted to operate in an open and equitable trading environment.

Restrictive practices by foreign governments again were a primary focus, with one case becoming ripe for action and two others drawing ongoing attention. The Commission's statutory authority to independently address such matters enables prompt and effective responses to remove unfair barriers to trade. Carrier practices were monitored closely, particularly those pursuant to agreements enjoying antitrust immunity, so that cargo interests were afforded fair and reasonable treatment in all U.S. trades. Also, specific trades were targeted to assure that past Commission actions to curb malpractices remained successful, and that all segments of the industry maintained compliance with applicable statutes. Additionally, the cruise industry became much more prominent as certain passenger vessel operators experienced financial and operational difficulties. The Commission expended considerable resources addressing these events, while ensuring that these operators maintained adequate levels of financial responsibility to cover any casualties or instances of nonperformance.

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 Commission continued to identify commercial and economic developments relevant to its oversight of U.S. ocean commerce. Ocean shipping remains a key link between the U.S. economy and our various trading partners.

Cargo volume in the transatlantic trades was off relative to the gains achieved in the previous fiscal year. Carriers serving these trades continued to combine their services and improve efficiency by entering into cooperative working, vessel sharing, and space chartering agreements, most notably the *Grand Alliance Agreement*. Such efforts have helped to keep capacity growth at reasonable levels and more in line with demand, unlike other major trades. Carriers in the *Trans-Atlantic Conference Agreement* ("TACA") saw a slight decline in their collective market share due to independent carrier competition. Competition in the transatlantic should further increase in 1997 as major Far East carriers (COSCO, K Line, and Yangming) enter the trade in a new partnership arrangement. An environment of greater pricing flexibility and competition has developed in the transatlantic as a result of the Commission's 1995 settlement with TACA. TACA voluntarily extended the settlement's one-year independent action provision on service contracts through 1997. In Europe, the European Commission ("EC") issued a statement of objections against TACA, citing certain agreement provisions as anticompetitive and outside the EC's block exemption for liner shipping conferences. A final decision is expected sometime in fiscal year 1997.

U.S. exports to the Mediterranean rose somewhat early in 1996, but fell by the second quarter in contrast to the surge of exports in the previous fiscal year. The drop was attributable partially to the renewed strength of the U.S. dollar against Mediterranean currencies. Imports from the region showed some improvement over last fiscal year, partly due to the weaker Mediterranean currencies. Strong

competition led to lower freight rates during the fiscal year, with further rate declines expected as the supply of vessel space increases. Agreements among carriers showed a continued pattern of service rationalization.

In the Middle East, U.S. export traffic was up in the first quarter of 1996, most of which was accounted for by Israel and Saudi Arabia. Growth in U.S. exports to Saudi Arabia is expected to continue as that nation's revenues increase from higher oil prices and its industrial diversification program. A drop in imported goods such as plastics, apparel, pesticides, and vegetables produced a decrease in U.S. imports from the region. Overall, further declines in import traffic from the Middle East are expected to continue in the coming year.

U.S. exports to Africa were up by 17 percent in fiscal year 1996, while imports grew by 5 percent. Certain imported goods, including cocoa and cotton, realized substantial growth. The Republic of South Africa was the principal U.S. trading partner, accounting for 37 percent of all U.S. exports to the continent. The trade was plagued by an imbalance, with more full containers moving eastbound than westbound. Some carriers partially diffused the problem by participating in rationalization agreements and around-the-world services. Chronic congestion at many African ports remained a severe problem. Nonetheless, several carriers added new services between U.S. Gulf ports and African ports

Many nations throughout Latin America continue to implement economic reform policies to stimulate growth rates. In the liner trades, U.S. exports to Latin America grew by 18 percent in fiscal year 1996, and U.S. imports increased by 9 percent. In the Caribbean, U.S. exports rose by 15 percent, and imports were up by a healthy 22 percent. Despite the increase in cargo volume, freight rates were depressed due mainly to overcapacity. Inadequate facilities and heavy cargo volumes created problems of severe port congestion in several major South American countries. Carriers operating in the trades entered into numerous cooperative working, vessel sharing, and space

chartering agreements in order to relieve the problems of trade imbalance and overcapacity.

The transpacific trades remain the largest and fastest growing U.S. import and export markets. However, in the eastbound trade, the decline in cargo growth that began in 1995 continued through fiscal year 1996, as major Northeast Asia trades experienced general stagnation or weak growth. By the end of the fiscal year, conference carriers in the *Asia-North America Eastbound Rate Agreement* were discussing new service contracting procedures that would allow at least some classes of shippers to negotiate contracts directly with individual carriers. In addition, carrier members of the eastbound *Transpacific Stabilization Agreement* also were considering reintroducing the capacity management program that they suspended under Commission pressure in 1995. In the westbound trade, cargo volumes and rates were relatively stable. Also, the *Transpacific Westbound Rate Agreement* changed its position by beginning to offer service contracts to interested shippers.

## **B. RESTRICTIVE TRADE PRACTICES**

The Commission is specifically charged to address restrictive or unfair trade practices that have adverse consequences on U.S. trade or U.S. interests. Specifically, 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. And section 13(b)(5) of the 1984 Act permits the Commission to assess penalties or take other appropriate action if a foreign government or carrier unduly impairs a U.S.-flag vessel from accessing a foreign-to-foreign trade.

The Commission has been extremely successful in its discharge of these responsibilities over the years. We consistently have removed barriers to fair trade for the benefit of affected U.S. parties. Fiscal year 1996 was no exception.

The Commission continued its investigation of restrictive requirements for the use of port and terminal facilities in Japan. Information provided by carriers in the trade indicated that unfavorable conditions existed regarding the "prior consultation" system in Japan, which requires discussions and operational approvals for port usage. It was also revealed that unreasonable restrictions were being applied by the Government of Japan for obtaining a license to operate a stevedoring company in Japan. The Commission was reviewing the carrier responses and assessing ongoing diplomatic attempts to resolve these situations at fiscal year-end. These restrictions have been a long-standing problem, and the Commission is determined to remove them in order to eliminate unnecessary costs and permit carriers to enhance their efficiency while operating in Japan port areas. This matter was scheduled to receive priority consideration by the Commission early in the upcoming fiscal year.

In Brazil, the Commission previously issued investigative orders to carriers in the trade to obtain information on the apparent failure of Brazilian authorities to permit U.S.-flag carriers to operate a bonded warehouse in Brazil. Information also was sought on U.S. carriers' inability to carry cargo in Brazil's cross trades, which would contravene section 13(b)(5) of the 1984 Act. The responses to these orders are under Commission consideration, and the matter will be further addressed in the upcoming fiscal year.

The Commission also continued to monitor indications that the Peoples Republic of China ("PRC") government had not carried through on its commitment to permit U.S. carriers to engage in freight forwarding and consolidation with wholly-owned subsidiaries. Diplomatic negotiations and the threat of further Commission action under the FSPA or section 19 resulted in the PRC conceding last year

to allow U.S. carriers to provide the involved services with wholly-owned subsidiaries. The Commission will continue to monitor this matter to ensure that the PRC follows through on its commitment.

## C. ENFORCEMENT

The Commission is charged with overseeing U.S. ocean commerce so that a nondiscriminatory and efficient transportation system is maintained for the overall benefit of U.S. international trade. Our enforcement efforts, combined with ongoing monitoring and surveillance of industry practices and behavior, work to achieve these goals. Our enforcement program is aimed at obtaining compliance with applicable statutes, and ensuring that equitable trading conditions exist in all U.S. ocean trades.

The Commission restructured its enforcement program this past fiscal year by merging its former Bureaus of Investigations and Hearing Counsel into a new Bureau of Enforcement. This new bureau enables closer coordination between our investigatory and prosecutorial units, while streamlining the management of these two related functions. It also facilitates inter-bureau efforts on major trade initiatives or programs designed to address serious malpractices.

The Commission also closed its remaining three district offices in fiscal year 1996. We have maintained a presence in Los Angeles, Miami, New Orleans, and Seattle, through an area representative in each of these cities. These representatives serve the other major port cities and transportation centers within their respective areas, providing liaison between the Commission and the maritime industry, collecting and analyzing intelligence, and assessing industry conditions and practices. The North Atlantic region is the responsibility of the new bureau's staff in Washington.

The cooperation between the Commission and the U.S. Customs Service ("Customs"), pursuant to a formal Memorandum of



Understanding ("MOU"), continues to be beneficial to both agencies and recently has expanded. Customs staff now can isolate shipments which enter U.S. commerce bearing a description different from that appearing on an ocean carrier's manifest. This permits Commission personnel to become more selective in determining which entities should be investigated for statutory violations. We expect this avenue of cooperation to increase significantly in the future.

In fiscal year 1996, the Commission investigated suspected malpractices by ocean carriers, cargo interests, and middlemen in the South American trades. We also conducted malpractice investigations in the transatlantic, transpacific, Mediterranean and Caribbean trades. These investigations included various carrier improprieties, improper shipper practices such as misdescription of commodities and misdeclaration of measurements, as well as illegal activity involving untariffed and unbonded NVOs. The Commission also continued to monitor the impact of settlement agreements it reached with TACA in the North Atlantic through periodic reports and semiannual meetings with the conferences' members.

The Commission collected approximately \$900,000 in civil penalties this past fiscal year. Settlements were reached with all segments of the maritime industry, including carriers, cruise operators, shippers, forwarders, and NVOs. The violations involved in these settlements covered a wide range of malpractices in various trades. Continued Commission investigations and surveillance are essential to deter such malpractice in the future and maintain an open and fair trading environment in the U S. oceanborne trades.

#### **D. SURVEILLANCE**

The Commission consistently works to enhance the efficiency and effectiveness of its monitoring and surveillance efforts. These programs are essential in identifying potentially troublesome foreign

trade practices and ensuring compliance with statutory and regulatory requirements.

In fiscal year 1996, the Commission implemented new reporting rules and requirements for agreements filed under the 1984 Act. The new regulations provide for the submission of more relevant data upon the initial filing of new carrier agreements, as well as standardized periodic reporting requirements for effective carrier agreements. As part of the initial implementation of the new rules, the Commission issued over 140 information demand orders pursuant to section 15 of the 1984 Act, seeking benchmark statistical data from effective carrier agreement parties. These new rules will enhance both our assessment of carrier proposals and oversight of their practices.

Other major monitoring and research projects undertaken in fiscal year 1996 included: a monitoring report on periodic data and information filed by TACA; joint inter-Bureau recommendations on the TACA carriers' slot chartering policies; a report on the transpacific conferences' independent action procedures and activities; comprehensive studies and reports on ocean freight rate trends and market conditions in major liner trades; reports on the emerging trend of carrier global alliances and their impact on pricing and services; a monitoring report on controlled carrier activities, and an analysis of a controlled carrier's pricing practices in the transpacific trades; and the preparation of data and analyses in support of Commission action to combat restrictive practices of foreign governments.

## **E. PASSENGER VESSEL ACTIVITIES**

The Commission's passenger vessel program implements the financial responsibility requirements of sections 2 and 3 of Pub. L. No. 89-777. This law requires operators of vessels with berth or stateroom accommodations for 50 or more passengers that embark passengers at U.S. ports to establish their financial responsibility to

indemnify passengers in the case of nonperformance (such as the cancellation of a cruise), injury or death.

This program has significant direct impact on individual members of the general public. Annually, millions of U.S. citizens embark on the 135 vessels operated by 42 cruise operators currently in the program. These voyages are safeguarded by evidence of financial responsibility in excess of \$1 billion for casualty and \$330 million for performance.

The Commission's passenger vessel program experienced significant workload increases during fiscal year 1996, attributable to the continued growth and complexity of the cruise industry overall. This growth has translated into a higher level of certification activity, rulemakings, programs responding to cruise operator financial or operational difficulties and legislative initiatives.

The Commission has been conducting a series of proceedings to address the approximately \$700 million gap between its coverage ceiling and the industry's much higher level of unearned passenger revenues. Most recently, it issued a Further Notice of Proposed Rulemaking in an effort to protect a higher proportion of passenger deposits and prepaid fares. The Commission simultaneously discontinued a separate proceeding which sought industry input on alternative forms of demonstrating financial responsibility for nonperformance.

Additionally, the Commission responded to Chapter 11 bankruptcy proceedings involving Regency Cruises and Gold Star Cruises, L.C. The Commission provided guidance to the cruising public and the travel industry and prepared news releases concerning developments in these matters, which affected thousands of travelers.

The Commission also informed Congress about aspects of the program's casualty and nonperformance coverage that appear to warrant legislative action. Certain of the issues addressed were: the

significantly reduced value of the statute's casualty coverage; protection for "cruises-to-nowhere"; protection for tickets purchased in the U.S. for cruises embarking at foreign ports; and inflation's erosion of the penalties provided in Pub. L. No. 89-777.

## F. TARIFF AUTOMATION

The Commission's automated tariff filing system has been fully operational since 1994. This system enabled the Commission to implement a paperless tariff environment. Commission tariff matter is created on the filer's own computer and transmitted to ATFI by discreet individual filings or by publisher through a "batch filing" process. At the end of the fiscal year there were 40 firms certified for batch filing. The Commission received 745 new electronic tariffs in fiscal year 1996, and closed the year with 4,666 tariffs in the ATFI system. Those tariffs and all essential terms of service contracts are available on a 24-hours basis to the approximately 4,400 entities with ATFI access capability. The Commission continually adds new locations to the ATFI system, and ended the fiscal year with 321,494 locations in this database. Additionally, ATFI registration forms were made available electronically this year on the Commission's home page.

The Commission issued a final rule this past fiscal year involving the filing of service contracts. These contracts are required to be filed in paper format. Since the essential terms of these contracts are required to be filed electronically in the ATFI system, the Commission afforded carriers the option of filing an abbreviated paper contract incorporating by reference the provisions filed electronically. This rule is intended to reduce Commission and carrier costs, minimize errors and duplication, and facilitate automation of the Commission's records.

The Commission also entered into an MOU with the Surface Transportation Board ("STB") regarding the filing of U.S. domestic

offshore tariffs in ATFI. Legislation passed in fiscal year 1996 transferred jurisdiction over the domestic trades from the FMC to the STB. The MOU permits these tariffs to continue being filed in ATFI, and sets up specific protocols for STB access and administration, as well as STB's reimbursement to the FMC for applicable contract costs. This change had no effect on filing procedures for domestic carriers, and the Commission remains the sole signatory to the ATFI contract -- it will deal with the contractor on any domestic issues on behalf of STB.

The Commission also agreed on a one-year extension of the ATFI contract, providing for its contractor to maintain the system through fiscal year 1997. The Commission's reduced budget necessitated reductions in certain services and maintenance areas, which limit the system from operating at optimum efficiency. System integrity, accessibility and effectiveness were not unduly compromised. Recompetition of the contract, to include refinements and enhancements in line with technological advances, continues to be held in abeyance given our budgetary constraints and the possibility of legislation altering present tariff filing requirements.



### III

## SURVEILLANCE AND ENFORCEMENT

### A. SURVEILLANCE

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

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

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

In fiscal year 1996, the Bureau of Economics and Agreement Analysis prepared a variety of economic analyses and reports concerning the pricing and service behavior of carriers operating in the U.S. trades. Projects included: (1) analyses of competitive conditions in the eastbound and westbound transpacific trades, including an overview of major alliance agreements; (2) a monitoring report containing a summary of competitive conditions in the Mediterranean Trade, including an overview of interlocking space charter agreements; (3) an analysis of periodic reports filed by the Trans-Atlantic Conference Agreement ("TACA"), as well as reports on semiannual TACA/FMC meetings to discuss general trade conditions, conference activities and the implementation of the settlement agreement of the previous year; (4) completion of Section 15 Orders regarding the initial filing of benchmark data for currently effective carrier agreements under the Commission's final rule regarding new and expanded information and data to be filed pursuant to Docket No. 94-31, *Information Form and Post-Effective Reporting Requirements for Agreements among Ocean Common Carriers Subject to the Shipping Act of 1984*, (5) updating the database for carrier agreements on file with the Commission that is published in the book entitled *Carrier Agreements in the U.S. Oceanborne Trades*; (6) completing negotiations with TACA concerning the production of independent action data to be used in analyzing the competitiveness of its members; and (7) completing an economic analysis of Matson Navigation Company's general rate increase in the Hawaii trade.



## 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.

On October 20, 1995, the Commission merged its former Bureaus of Investigations and Hearing Counsel into a new Bureau of Enforcement. The new Bureau provides for closer coordination between investigations and prosecutions, and streamlines the management of these two related functions.

The Commission closed its remaining three district offices in Los Angeles, Miami, and New York on June 8, 1996, but maintains a presence in Los Angeles and Miami, as well as New Orleans and Seattle, through an area representative based in each of those cities. These representatives also serve the other major port cities and transportation centers within their respective areas. Coverage of the North Atlantic region is the responsibility of the Bureau's staff in Washington, D.C.

The cooperation between the Commission's area representatives and the U.S. Customs Service ("Customs"), with respect to the exchange of investigative information, continues to be beneficial to both agencies and recently has expanded. Customs personnel now can isolate shipments which enter U.S. commerce with a description other than that which had appeared on the ocean common carrier's manifest. This information permits Commission personnel to become more selective in determining which entities should be investigated for

violations of the 1984 Act. As Customs refines its procedures, we expect this avenue of cooperation to increase dramatically in the import and export trades of the U.S.

The Commission completed a comprehensive investigation into possible abuses of the anticompetitive power of TACA and its member lines in the prior fiscal year. This fact finding investigation was launched in response to reports of alleged unlawful activity by TACA, including possible restrictions on the statutory right of TACA members to take independent action on rates, significant withdrawal restrictions contained in certain vessel sharing agreements, and allegedly untariffed and discriminatory inland container pools established by TACA members and sanctioned by TACA. Commission-approved settlements with members of TACA included changes to the conference and agreement structure/procedures, a rollback of rate levels, and an agreement to allow independent action on conference service contracts in 1996. The Commission continues to monitor the impact of these settlement agreements through quarterly reports and semiannual meetings with the conference and its members.

During 1996 the Commission investigated suspected malpractices by ocean carriers, cargo interests and middlemen in the South American trades. Other trades were also the subject of malpractice investigations, including the transatlantic, transpacific, Mediterranean, Central American and Caribbean trades. These investigations included improper shipper practices, such as various forms of secret rebates and absorptions, misdescription of commodities and misdeclaration of measurements, as well as carriage of cargo by and for untariffed and unbonded NVOCCs.

During fiscal year 1996, the Commission collected \$876,959.68 in the compromise of civil penalties. Settlements were reached with many different segments of the industry (*e.g.*, carriers, cruise operators, shippers, forwarders) operating in the U.S. foreign trades (*See Appendix E*).

## IV

# DEVELOPMENTS IN MAJOR U.S. FOREIGN TRADES

### A. TRANSATLANTIC

In the trade between the U.S. and North Europe, the 14 percent U.S. liner export growth achieved during the last fiscal year decelerated considerably, while the volume of liner imports from North Europe continued to fall during fiscal year 1996. The volume of U.S. liner exports to North Europe grew by only 2 percent during fiscal year 1996 -- largely due to a strengthening of the U.S. dollar relative to some European currencies, notably the Deutsche mark. Contractionary fiscal measures adopted during 1996 by several European nations to reduce public debt as they prepare to meet the Maastricht criteria for admission to the European Monetary Union by 1999 also contributed to a weakening in the demand for U.S. exports to North Europe. However, healthier Scandinavian economies and continued economic expansion in North-Eastern Europe (*e.g.*, Russia and Poland) continued to support strong demand for U.S. exports to this region and thereby provided somewhat of a counterbalance to the declines experienced in the other North European regions. Year-end projections anticipate only a 1 to 2 percent growth rate in the overall volume of U.S. exports to North Europe.

U.S. liner import growth from North Europe continued to decline sharply throughout fiscal year 1996, concluding with a 6 percent reduction in liner import volume over the previous period's 2 percent gain. Inventory sell-off adjustments in the U.S. during the first half of 1996; stronger British, Dutch, Swedish, and Danish currencies; and a fall in the competitiveness of German goods (due to increased production costs) contributed to the weakened U.S. demand for North

European goods. Year-end estimates expect a 4 percent reduction in the volume of U.S. imports from North Europe

While the inbound trade from North Europe traditionally has been the stronger of the two trade legs, in 1995 the trade moved close to an overall balance as the volume of U.S. exports began to catch up with imports. That trend continued during fiscal year 1996. The liner trade imbalance between the U.S. and North Europe was reduced by approximately 87 percent over the previous fiscal period as imports continued to sharply decline and exports grew modestly.

During the fiscal year, conference carriers' collective market share dropped 2 percentage points to 68 percent in both the eastbound and westbound sectors of the trade. This loss was mainly due to effective competition from independent carriers operating in the trade.

Once known as the most unprofitable of the major east-west trades, plagued by chronic overcapacity, depressed freight rates and fierce competition (especially during the late 1980s and early 1990s), the transatlantic trade has reversed this course. Even though cargo growth has been relatively undramatic in comparison to the other major east-west trades, the transatlantic has been transformed into a more stabilized trade characterized by responsible vessel supply. In 1992, reported losses by principal conference carriers on the route were \$400 million. Since then, the concerted efforts of carriers within the conference have resulted in a radical improvement. Year-end projections for 1996 expect an aggregate surplus of \$350 million.

Unprecedented carrier solidarity and the relatively slow capacity growth in the trade have been the leading reasons behind the trade's dramatic improvement. While other major east-west trade routes have experienced significant capacity growth over the last several years (global capacity has grown 65 percent since 1990, with transpacific capacity alone increasing 36 percent), supply of vessel space in the transatlantic has grown by only 7 percent. Thus, while carriers have had to invest heavily to accommodate regular and strong cargo

growth on other major trade routes, operators in the transatlantic have been isolated from the full force of external global pressures to add new vessel capacity to the trade and spared the expansion costs.

However, the relatively stable environment recently achieved on the transatlantic may change in early 1997 as China Ocean Shipping Co. ("COSCO"), one of the world's largest shipping lines, will enter the trade in February 1997. COSCO plans to provide a non-conference, weekly service in the trade through partnerships with two other carriers (Kawasaki Kisen Kaisha ("K Line") and Yangming Marine Transport ("Yangming")). Neither K Line nor Yangming currently serve the transatlantic; so they, too, will be new entrants to the trade. While industry reports indicate that the tripartite anticipate targeting about 10 percent of the overall trade, the market is not projected to grow near that amount over the next five years.

A significant amount of Commission resources continued to be focused on the activities of the *Trans-Atlantic Conference Agreement* ("TACA")(No. 202-011375) and its member carriers during fiscal year 1996. In its earlier form as the *Trans-Atlantic Agreement*, TACA originally became effective on August 31, 1992, and was subsequently amended to its present form 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 ("Hapag Lloyd"); Hyundai Merchant Marine Co., Ltd. ("Hyundai"), Mediterranean Shipping Co.; Nedlloyd Lijnen BV; 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. Unlike COSCO, K Line and Yangming, the last two carriers to successfully enter the transatlantic trade (Hanjin and Hyundai), did so without introducing any additional capacity. Both joined TACA and participate in separate space chartering arrangements with other TACA members.

Since the Commission's settlement with TACA a year and a half ago, evidence has developed which suggests that certain provisions of the Commission's settlement have contributed to a more flexible and competitive shipping environment in the transatlantic trade. For example, the requirement to allow TACA members the option of independent action ("IA") on service contracts for one year, commencing January 1996, has produced a notable number of IA service contracts and an increase in the number of IA time-volume rates. Both pricing mechanisms allow for flexibility in meeting specific shippers' needs at competitive rates. TACA has voluntarily extended this option to its members through the end of 1997. In addition, TACA plans an increase in rates of \$40 per 20-foot container ("TEU") and \$50 per 40-foot container ("FEU"), roughly a 3 percent increase over 1996.

In addition to the Commission's close scrutiny of TACA and its members' activities, TACA continued to undergo examination by the European Commission ("EC"). In May 1996, the EC issued a Statement of Objections against TACA finding that the following provisions were not covered under the block exemption for liner shipping conferences under Regulation No. 4056/86: (1) price-fixing agreement on inland European transport services; (2) agreement on terms and conditions for service contracts; (3) agreement to set maximum levels of freight forwarder compensation; and (4) agreement in relation to the exchange of equipment. TACA was given one day, October 25, 1996, to appear before the EC to respond to its Statement of Objections. A final decision by the EC is expected in several months.

Meanwhile, in November 1996, the EC formally withdrew TACA member lines' immunity from monetary penalties, a measure that could result in fines of up to 10 percent of the carriers' annual revenues if TACA eventually is found guilty of breaching European Union competition laws. While no fines have been assessed to date, TACA claims the move is unlawful and plans to challenge the threat of fines in the European courts.

While the pace at which new operational agreements formed between carriers has slowed somewhat from previous years, the use of cooperative operational or space charter arrangements to improve efficiency continued during the fiscal year. Two new agreements filed during 1996 are mentioned:

Lykes Lines ("Lykes") and American President Line ("APL") entered into a space chartering agreement, *Lykes/APL Space Charter Agreement* (No. 232-011544), which permits APL to charter, subcharter or assign any or all space it has on Lykes' vessels operating in the trade between the U.S. and North Europe. As Lykes has filed a bankruptcy petition under Chapter 11 of the U.S. Bankruptcy Code, this agreement was entered into as part of a Compromise Order issued by the court in order to allow APL to settle claims it has against Lykes. Lykes has served the transatlantic trade as a U.S.-flag operator for many years. However, APL has not previously served the trade. While the agreement permits APL to charter space on Lykes' vessels and would provide APL with a low-cost means of entering the transatlantic trade, APL has not yet done so.

The *Grand Alliance Agreement* (No. 203-011536) permits Hapag Lloyd, NOL, NYK and P&O to charter vessels and vessel space, agree upon the deployment and utilization of vessels, aggregate the volume of cargo in their individual service contracts, share operating expenses, and interchange equipment. During a year that witnessed the commencement of operations under a number of strategic carrier alliances, formed mainly by piecing together individual carrier agreements, the *Grand Alliance* was the first, and so far the only, multi-trade lane strategic carrier alliance to completely contain the core operational activities under one filed agreement.

## B. MEDITERRANEAN

In general, European demand for U.S. goods remains suppressed due to widespread budget deficits and high unemployment, particularly in Italy, Spain, and elsewhere in the Mediterranean. A drop in the expansion of U.S. shipments to Southern Europe has resulted from weak currencies and contractionary fiscal policies in the region; some pickup is expected next year. In the inbound direction, U.S. containerized import shipments from the Mediterranean improved somewhat, partly due to the weaker Mediterranean currencies.

Early in the year, U.S. export volumes moving to the Mediterranean rose somewhat, stimulated by the then stronger Italian lira and the Spanish peseta. Spanish imports accounted for one-half of the increase, with tobacco and wastepaper leading the way as major moving commodities. However, strong contractionary fiscal measures taken in Italy and Spain severely hurt U.S. containerized traffic to the Mediterranean in the second quarter of 1996. As both countries began to confront budget deficits to satisfy the requirements of European Monetary Reform under Maastricht, and as the slowdown in other major European markets took hold, their export-led economic boom began to dissipate. The downturn is expected to persist into 1997.

Some growth in U.S. import traffic from the Mediterranean was expected this year. However, the trade has been affected adversely by U.S. tariffs on pasta shipments from Italy and Turkey. Early in the year, U.S. import shipments from the Mediterranean rose slightly but were moderated by a strong Italian lira, a drop in Spanish industrial activity, and weak production in Turkey due to political instability. Year-end projections expect U.S. import traffic growth to dip into the single digits and maintain this pace in 1997. A general weakening of regional currencies -- including the Spanish peseta and the Turkish lira -- should serve to reinforce trade from the Mediterranean next year.



However, pasta traffic from Italy and Turkey will be affected as U.S. penalty duties are imposed due to dumping practices by these countries. Turkish tobacco shipments bound for the U.S. likely will slow given the favorable outlook for this U.S. crop in 1997. An appreciation of the Italian lira is expected, following a projected reduction of Italy's budget deficit in 1997, which will likely dampen U.S. import traffic from Italy as well.

Strong competition from a global carrier, which also carries Mediterranean cargo on the Europe-to-Far East trade route, led to a further decline in freight rates during the fiscal year. A slight decline in rates is expected in 1997, accompanied by an increase in available space.

The continued rationalization of shipping services in the major trades was also apparent in agreements implemented in the Mediterranean trade during the year.

The *Hanjin/AMA Agreement* (No. 232-011481-002), operating in the trades between U.S. Atlantic Coast ports and Mediterranean ports in France, Italy, and Spain, was amended to include ports in the Middle East and Far East. This amendment has been highlighted in the Middle East section of this report.

The *Maersk/Sea-Land Mediterranean Agreement* (No. 203-011541) permits the parties to charter vessels to and from each other or third parties, to charter or exchange space from or to one another, and to discuss and agree upon rates on a voluntary and nonbinding basis. The Agreement operates in the trade between U.S. ports in the Portland, Maine/Brownsville, Texas range inclusive, and U.S. inland and coastal points served via such ports and ports on the Mediterranean and Black Seas, ports on the Atlantic Coast of the Iberian peninsula and inland and coastal points served via such Mediterranean, Black Sea and Atlantic Coast ports.

The *Israel Discussion Agreement* (No. 203-011547), a cooperative working arrangement, authorizes the parties to discuss and agree (on a voluntary basis) on tariff rates, service and rules; service contracts; and to exchange information and statistics in the trade between U.S. Atlantic, Gulf, Great Lakes and Pacific Coast ports and points (including Alaska and Hawaii) and the Mediterranean ports and inland points in Israel. The parties to the Agreement include members of the *Israel Trade Conference Agreement* (No. 202-011346) and COSCO.

### C. MIDDLE EAST

U.S. export traffic to the Middle East rose almost 6,000 TEUs in the first quarter of 1996, reflecting improving industrial and investment activities in the wake of peace talks in the region. Most of this improvement was accounted for by Israel and Saudi Arabia. A strong currency and rising demand for industrial goods, wastepaper, newsprint, and resins accounted for a jump of 32 percent in Israeli-bound traffic in the second quarter of 1996. However, the political turmoil in the area, along with lower interest rates during the second half of 1996, may erode Israel's currency value and stall demand for U.S. exports. This slowdown could end with the Israeli government's progress toward peace and economic liberalization, leading to a return to double-digit growth in U.S. export traffic to Israel in mid-1997. The revival of U.S. exports to Saudi Arabia continued to advance. Expectations are for a rebound of U.S. exports to Saudi Arabia due to rising Saudi revenues from higher oil prices and that nation's success in its industrial diversification program. Stepped-up Saudi demand for industrial inputs is expected in early 1997.

U.S. import shipments from the Middle East were down during the current year. A substantial drop in imports of plastic products, apparel, pesticides, and vegetables produced an overall decrease of traffic from the Middle East. U.S. imports from Israel were flat due to its strong currency, and U.S. apparel imports from the United Arab

Emirates were down sharply by 19 percent. Another negative factor was a drop in shipments of industrial inputs moving from Saudi Arabia. Overall, traffic growth from the Middle East is expected to decline 4 percent this year, and remain flat in the coming year. Assuming, however, that the Middle East peace outlook improves, the pace of U.S. imports is expected to increase moderately through 1998 as lower Israeli interest rates soften the value of the Israeli shekel, making that nation's goods more attractive. Moreover, Saudi shipments are expected to be boosted by increased oil revenues from rising prices, thereby facilitating that nation's push for its industrial diversification program and its export industry.

Industrial expansion in India, and elsewhere in the subcontinent, has stimulated trade to that region. This has resulted in a 24 percent boost in U.S. exports to India, mostly wastepaper. The recovery of that region's cotton crop resulted in a downturn in U.S. shipments of this commodity to Pakistan and Bangladesh. The outlook for U.S. exports to India remains promising given that government's policies to continue economic reforms and to encourage foreign investment. This should bolster demand for U.S. industrial inputs. Prospects for other areas on the subcontinent are not as promising. Economic austerity measures in Pakistan are expected to dampen consumer spending and industrial production, reducing the likelihood of an early rebound in U.S. exports to that country. Political difficulty in Bangladesh led to a sharp drop in U.S. shipments to that nation during 1996. However, the current outlook is favorable for recovery of exports to Bangladesh next year, given government steps to stimulate production and investment activity in that nation.

U.S. import traffic from India and the subcontinent registered a poor performance earlier this year. India suffered from political instability and contraction of the economy during the first quarter of 1996. Political problems in Bangladesh and economic difficulties in Pakistan resulted in a decline in import traffic volumes. By the end of the second quarter of 1996, U.S. import shipments from India and the subcontinent had recovered from contraction, signaling a return to

political stability and improvement in industrial activity resulting from government economic reform. A sizeable jump in the 1996/97 cotton harvest in Pakistan will ensure continued large shipments of raw cotton and apparel from that nation. The adoption of the World Bank's plan for improving foreign investment in Bangladesh, along with the establishment of additional tariff and tax-free zones for export manufacturing, are expected to generate a recovery of U.S.-bound traffic from that nation.

The continuing trend toward rationalization and restructuring of liner shipping services was also apparent in the Middle East. A significant new carrier agreement filed during the year was the *Hanjin/AMA Agreement* (No. 232-011481-002), a space charter and sailing agreement, which expanded its geographic scope to include ports in the Middle East and Far East, in addition to Mediterranean ports in France, Italy and Spain. The Agreement also increased the charterers' combined eastbound/westbound slot allocation effective January 1, 1996. The parties to the Agreement are Hanjin, Cho Yang, and DSR-Senator Lines.

## D. AFRICA

African countries had a wide range of growth rates during fiscal year 1996. Kenya, which floated its currency, achieved an appreciation of the Kenyan shilling as confidence in its economic performance fueled an import boom. Kenya achieved a growth rate of 4 percent. Uganda and Tanzania, members of the East African Cooperation of States, fell below 4 percent. Ethiopia, after having settled its conflicts with Somalia and Eritrea, implemented all measures required by the World Bank to improve its economy, but not in time to improve its growth rate during the fiscal year, achieving less than 1 percent growth. Further south, The Republic of South Africa had a 3 percent growth rate. This was the result of implementing tighter fiscal and monetary policies following a fall in the value of the South African rand earlier in the year. The Republic

also added a strong privatization program, business tax incentives, labor reforms and tariff cuts. North of the Sahara, Egypt and Morocco had growth rates of 5 and 9 percent, respectively. This growth was primarily the result of expansion of their non-oil sectors. In Central Africa, the Economic Community of Central African States, including Rwanda and Burundi, where civil and ethnic strife is continuing, was at the bottom with less than 1 percent overall growth. The Congo, which achieved a growth rate of less than 1 percent, changed its Marxist economic policies towards the end of the period. It privatized its oil company and other state-owned companies such as electricity, water utilities, telecommunications and transportation conglomerates.

U.S. containerized trade with Africa increased in fiscal year 1996. Exports were up by 17 percent to 114,520 TEUs and imports increased by 5 percent to over 53,000 TEUs. Some imports, especially cocoa and cotton, increased substantially. The Republic of South Africa remained Africa's principal trading partner of the U.S., accounting for 37 percent of all U.S. exports to Africa. Items imported were mainly high-tech equipment, spare parts and machinery, electronics, and medical equipment. These imports increased by 17 percent over the previous period. However, the trade was plagued by an imbalance as more full containers moved into Africa than the amount exiting the continent. Some carriers partially diffused the problem by participating in space charter/sailing agreements and around-the-world services

Chronic congestion at many African ports posed great problems for carriers in the trade. Many ports lacked equipment to facilitate efficient loading and unloading. Additionally, empty containers and inadequate land-side storage space aggravated port congestion. At the ports of Dar es Salaam in Tanzania and Mombasa, Kenya, congestion occasionally slowed ships by more than two weeks. The Port of Maputo, in Mozambique, was frequently closed because of the civil war. In Somalia, the Port of Mogadishu rarely opened for business. Ports in Southern Africa, such as Durban, Port Elizabeth

and Capetown in The Republic of South Africa, and Beira, Nacala and Walvis Bay in Namibia, were generally less congested.

U.S. Africa Navigation Inc. Steamship Line started a new service between Houston and the West and Central African ports of Dakar, Abidjan, Cotonou, Lome, Port Gentil, Cabinda, Pointe Noire, Matadi and Luanda, deploying two ships every 21 days. Safbank Line also added a fortnightly multi-purpose service between the U.S. Gulf and Southeast African ports providing weekly and biweekly services. Other services to Africa remained unchanged.

Agreement activity in the African trade consisted of an amendment to *The United States/Southern and East Africa Agreement* (No. 202-011259) to provide "associate membership" for Wilhelmsen Lines AS. Another agreement, the *African Northbound Space Charter and Sailing Agreement* (No. 203-011542), permits Safbank Line and Lykes to charter space on Wilhelmsen's vessels. The parties may also interchange equipment and agree upon sailing schedules and the use of terminal facilities and other shore-side services.

## **E. LATIN AMERICA AND THE CARIBBEAN**

Private investment in Latin America and the Caribbean increased by 5 percent during fiscal year 1996, due in large measure to the activities of the Inter-American Development Bank. The Bank expanded its lending and grant activities by injecting more than \$1 billion into regional economies. Much of the activity was focused on infrastructure development projects, which are vital for the economic development of the region. Additionally, applications for direct private loans increased. Loans for more than 40 private projects were in the early stages of consideration at the end of the fiscal year.

Brazil, Venezuela and Argentina, which had very slow growth rates at the start of the year, exhibited increased growth during the

year, and ended with growth rates slightly over 3 percent. Mexico, while recovering from the peso crisis of the previous year, grew by only 1 percent. Elsewhere, as in Chile, Peru, El Salvador and Nicaragua, growth rates were usually in excess of 4 percent. However, at least 12 Latin American and Caribbean nations had growth rates of less than 1 percent.

Average duties, well over 44 percent a decade ago, were reduced to a 13 percent average during 1996. Meanwhile, non-tariff restrictions, which were in effect on 34 percent of imports, were reduced to apply to 11 percent of imports. Other structural changes were undertaken, increasing the opportunities for improved economic performance. Brazil curbed its runaway inflation and removed protection from stagnating sectors, dismantled some monopolies, and allowed more foreign and private investments. Venezuela and Argentina opted for more privatization, and monetary and fiscal adjustments of their economies. Similar reforms were undertaken in many other countries, especially Bolivia, where an innovative approach to privatization is producing significant capital for development of various sectors of its economy.

U.S. containerized exports to Latin America increased significantly, reaching 18 percent to Chile, Columbia, Ecuador and Peru. Imports from those countries increased by 9 percent. In the Caribbean, U.S. exports and imports increased by 15 percent and 22 percent, respectively. The total value of the region's trade exceeded \$273 billion, an increase of 9 percent over the previous fiscal year. As in previous years, the trade continued to experience severe imbalance because more containerized cargo was imported into the region than was exported. The constant need to deal with an excess of empty containers posed a hardship for carriers and port authorities.

Despite increases in the volume of cargo, freight rates fell in the West Coast of South America trades, due mainly to overcapacity. Rates have also been depressed in the Central American trades.

Following a rate reduction of almost 20 percent by Seaboard Marine, all major carriers made substantial reductions on a broad range of rates. These rate reductions produced tensions which contributed to the dissolution of the *Latin America Shipping Services Association*. Members of the *Central American Discussion Agreement* are now discussing the restoration of rate levels.

Some regional ports experienced severe congestion problems, due in large part to inadequate berthing facilities, cranes and land-side space for container storage. Congestion at Brazil's largest port, Santos, often delayed ships longer than 10 days. The Chilean ports of Valparaiso, Antofagasta, Africa, Iquique and San Antonio all experienced severe congestion due in large measure to increased volume in container traffic. San Antonio experienced a volume increase of 81 percent.

Port privatization efforts began in many countries, but few succeeded during the year. Sporadic attempts at port development and expansion were also undertaken. At Kingston, Jamaica, a project costing \$72 million will provide two new deep-water berths and 32 acres of yard space equipped with ship-to-shore container cranes. The project will increase capacity by 300,000 TEUs per year.

Agreements filed in the Latin America and Caribbean trades in fiscal year 1996 provide evidence that carriers increasingly participate in some form of cooperative working agreement, especially vessel sharing and service rationalization. The agreements filed were: *Columbia Express Space Charter and Sailing Agreement* (No. 203-011555); *CSAV/Nacional Space Charter Agreement* (No. 217-011553); *Caribbean Maritime Service Agreement* (No. 203-011389-001); *APL/Crowley Space Charter and Sailing Agreement* (No. 203-011517); *CSAV/Mitsui Space Charter Agreement* (No. 217-011545); *Space Charter and Sailing Agreement between American President Lines, Ltd./Crowley American Transport, Inc.* (No. 202-011547); *TMM/Contship Space Charter and Sailing Agreement* (No. 203-011494-001); *Montemar/Zim Service Coordination Agreement* (No.



203-011527); *Mediterranean Shipping Company/Flota Mercante Grancolombiana Space Charter and Sailing Agreement* (No. 232-011522); *Navieras/Tropical Caribbean Basin Agreement* (No. 203-011525); and *DSR-Senator/Transnave Agreement* (No. 217-011534). These agreements are seen as a way to relieve the problems of cargo imbalances and overcapacity in the trade.

## F. TRANSPACIFIC

The transpacific trade lanes contain the largest and fastest growing major import and export markets in the U.S., and fiscal year 1996 saw dramatic changes in both the inbound and outbound trades. Growth in this area, however, slowed during the fiscal year. In the import trades, the decline in cargo growth that began in the summer of 1995 continued during the first three quarters of fiscal year 1996 as the major Northeast Asia trades experienced general stagnation or weak growth. Those changes in cargo flows, and the uncertainty generated by proposed legislation that would significantly deregulate service contracting, led to serious rate erosion. Westbound, cargo volumes and rates were relatively stable, but recently the *Transpacific Westbound Rate Agreement* ("TWRA") (No. 202-010689) ended its long-standing resistance to service contracting.

Organizationally, the transpacific trades can be viewed as a set of concentric circles. Inbound (import trades) there are two core conferences, the *Japan-United States Eastbound Freight Conference* ("JUSEFC") (No. 202-011528), which collectively sets rates for the Japan-to-U.S. subtrade, and the *Asia-North America Eastbound Rate Agreement* ("ANERA") (No. 202-010776), which does the same for the rest of the Far East-to-U.S. trades and the India Subcontinent-U.S. trades. The membership of the two conferences is essentially the same.

In addition to these two conferences, there is a larger grouping composed of the members of ANERA and JUSEFC and four major

non-conference carriers that operate in the trade. This grouping, the *Transpacific Stabilization Agreement* ("TSA") (No. 203-011223), is a discussion agreement. It authorizes voluntary price and service coordination between the conference and non-conference lines in the trade. The TSA has a market share of approximately 85 percent of the inbound transpacific trade.

The organizational structure of carriers in the outbound (export) trades is almost identical. The core conference is TWRA, whose membership is essentially the same as ANERA's, and whose geographical scope covers the U.S.-to-Asia trade, including the India Subcontinent. The larger discussion agreement with non-conference lines is the *Westbound Transpacific Stabilization Agreement* ("WTSA") (No. 203-011325). WTSA's membership is similar to TSA's except that one major independent line, Yangming, is not a member of WTSA. Consequently, WTSA's market share is approximately 80 percent.

While there are a number of smaller lines that set their prices independently and do not participate in the voluntary rate coordination activities of TSA and WTSA, there is only one major line, COSCO, that does not participate.

For carriers operating in the eastbound transpacific trades, fiscal year 1996 began as a disappointing continuation of the volume and rate difficulties they experienced in late 1995. In October 1995, APL initiated a series of rate cuts of between \$230 and \$560 per FEU on auto parts, vehicle kits, and electronic goods in the Japan trade (commodities that account for an estimated 70 percent of freight volume). Similar rate reductions spread to other Asian trades, with OOCL, NOL, Maersk and Sea-Land reportedly taking IAs that reduced rates on several key commodities by up to \$500 per FEU. In addition to the Japan market, rate cutting was particularly heavy in the inbound Hong Kong, Taiwan, Korea and China trades.

The autumn discounting was seen as an effort by conference lines to win back patronage, to reduce the spread between their rates and those of the non-conference lines, and to allow them to attract customers in anticipation of the deregulation of service contracts contained in pending legislative proposals. Rate reductions in the eastbound transpacific trades continued through the first half of 1996, with some studies showing an average rate decline of 5 percent per quarter for each of the three calendar quarters from October 1995 through June 1996.

In contrast, the westbound transpacific trades enjoyed relatively strong cargo volumes, and rates remained comparatively stable throughout 1996. The notable exception was a decision by APL in late July to reduce rates substantially on wastepaper, a major moving commodity in the westbound trade, by \$10 per ton below TWRA's base rate. However, four days later, APL notified its customers that the discount would be reduced to only \$2 per ton.

Stable rates did not mean that concerns with possible deregulation and loss of market share were absent in the westbound trades. TWRA's decision to reverse its traditional stand on service contracts demonstrated that change was on the agenda. In the first two weeks of 1996, TWRA signed over 50 service contracts with chemical, cotton, resin, forest product, tobacco, beef, and grocery shippers. A further change came in August when TWRA agreed to sign service contracts with NVOCCs of mixed commodities.

One factor often cited in discussions of the rate reductions in the eastbound trade and conference lines' change on contracting in the westbound trade was the introduction of new tonnage, especially ultra-large post-panamax containerships (with capacity in excess of 4,200 TEUs). Several lines added these larger vessels to their transpacific fleets in 1996, and more, up to and including super-post-panamax vessels (approaching the 6,000 TEU range), are expected in 1997. Anticipation of this additional capacity, and the pressure it is likely to put on rates, was seen as one factor in the eastbound rate

discounting and westbound pricing restraint by transpacific conferences.

Beyond intense eastbound rate competition, westbound changes in conference service contracting, and the introduction of ever larger vessels, the other significant news in the transpacific trades centered on China. Fiscal year 1996 saw the beginning of direct linehaul connections between the U.S. and mainland China. Except for direct service by COSCO, China's national carrier, the huge and rapidly expanding U.S./China trade was formerly served via Hong Kong or by feeder service to and from Japan. This year, the Global Alliance, the Sea-Land/Maersk Alliance, the *Grand Alliance*, and Hanjin began direct transpacific calls at Shanghai in central China, while the Global and the Sea-Land/Maersk Alliances also began calls at Yantian in South China.

Furthermore, in August, China published a new regulation covering shipping service with respect to the Taiwan strait trade. The landmark ruling would allow shipping links between ports in Taiwan and two mainland ports in Fujian province. While technical and political difficulties remain, this unilateral action by Beijing, as well as meetings between shipping representatives from Taiwan and mainland China, seem to signal a possible opening of direct shipping across the Taiwan strait. Were such an opening to be established, it could have important consequences for shipping activity throughout the Far East, especially Northeast Asia.

At the end of fiscal year 1996, ANERA carriers appeared on the verge of agreeing to loosen their regulation of members' service contracts. New contracting procedures that would allow at least some classes of shippers to negotiate contracts directly with individual lines, rather than with the conference as a whole, were under discussion. TSA lines also appeared to be preparing to reintroduce the capacity management program that they suspended under Commission pressure in the summer of 1995.

## G. WORLDWIDE

The structure and operations of liner carriers have changed dramatically over the last few years. Many carriers are involved in operational alliances to give them fully global capabilities. Even COSCO, a staunchly independent carrier, has announced plans to develop closer ties with Yangming and K Line in order to extend the reach of their Europe/Asia cooperation and allow them to enter the transatlantic trade in early 1997. Evergreen Lines alone among the world's largest carriers has remained above alliance making. With most of the world's carriers coming together into multi-trade lane operational alliances, the current regulatory scheme faces important challenges in balancing the carriers' drive to increase operational efficiency while also giving shippers the widest possible set of options. Not surprisingly, the impact of alliances extends well beyond their impact on the regulatory structure. Shippers, ports, intermediaries, and niche carriers have also been affected by the trend toward closer carrier alliances, and have developed means to protect themselves, or even take advantage of these alliances.

Mirroring the consolidations and operational alliances of the ocean liner carriers, consolidation in the freight forwarder/NVOCC market has accelerated rapidly. Leading the trend this year was Fritz Cos., already one of the largest freight forwarders in the U.S. In the past three years, Fritz Cos. has acquired 54 forwarder/customs brokers. With these consolidations, the U.S.-based Fritz Cos. has become a leading contender for market share with the traditionally much larger European freight forwarders. This rash of acquisitions has encouraged other intermediaries to consolidate their operations and strengthen their niche in commodity- or geographic-specific markets.

Nor has the world port network been immune from the ocean liner operator alliances. As the alliances improve vessel utilization rates, the amount of cargo each vessel carries increases. At the same time, the alliances are also bringing increasingly larger vessels to the market.

Ports have had to increase their dredging operations, in some cases dramatically, and to purchase larger cranes to handle the bigger vessels. Additionally, ports have been required to improve chassis availability and railhead throughput to prevent detrimental levels of congestion. Finally, alliances have given carriers additional bargaining power with ports, increasing the incentive for both to optimize terminal and dock usage. These influences have been felt worldwide. Ports in Europe, Singapore, and Southeast Asia are increasingly becoming load-center ports, handling the huge vessels by arranging transshipment, motor, and/or rail movements to other countries.

One of the most interesting developments of the past year is the pressure the alliances have brought on independent carriers, encouraging them into greater participation in trade-wide discussion agreements. Such discussion agreements have been used by carriers in the transatlantic and transpacific trades for years, but recently discussion agreements in the U.S./South America and Europe/South America trades have attracted carriers previously thought to be niche carriers or too small to join the major players.

Shippers have also responded to the operational consolidation of ocean carriers by joining together in shipper associations such as the Global Shippers' Association. Reportedly seeking to bring more than 25,000 containers under contract(s) covering much of the Atlantic, Pacific, and Europe, the Global Shippers' Association utilizes both independent and conference carriers to move cargo. Equally significant as the size of the contract is its multi-trade lane nature. As carriers have increasingly consolidated their operations, they have been able to offer expanded service alternatives. The Global Shippers' Association contract contemplates cargo moving westbound from Asia through the Suez Canal to the U.S. East Coast, as well as cargo moving in the traditional eastbound direction to U.S. West Coast ports. Shippers can be expected increasingly to utilize the efficiencies offered by carrier alliances.

As a group, carriers have been finding it difficult to maintain rate levels in all trades, despite the increased cooperation of individual carriers. Tensions between conference and non-conference carriers over appropriate rate differentials continued in fiscal year 1996. As the service quality provided by non-conference carriers has approached that of their conference rivals, conference carriers have become increasingly insistent that the traditional conference/non-conference rate differential shrink. Non-conference carriers have been equally insistent about keeping the differential. The year ended without any agreement on this issue and with rate cutting on selected major commodities in the inbound Asia/U.S. trade. Undoubtedly, this issue will continue to be a major topic of concern to carriers as additional capacity is brought on line in many trades.





## V

# AUTOMATED TARIFF FILING AND INFORMATION SYSTEM ("ATFI")

## A. INTRODUCTION AND BACKGROUND

The 1984 Act requires common carriers by water in the foreign commerce of the U.S. to file and keep open to public inspection their "tariffs" applicable to ocean transportation. The 1984 Act also requires that service contracts be filed and that their essential terms be made available to the public in tariff format. *See* 46 U.S.C. app. §§ 817 and 1707.

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

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

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

with the law, the statutes provide for substantial penalties for not filing or, if properly filed, for not adhering to the provisions of a tariff or the essential terms of a service contract. *See, e.g.*, 46 U.S.C. app. §§ 812, 815, 818, 1708, and 1709.

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

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

## **B. EARLY STUDIES ON TARIFFS**

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

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

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

### **C. FIRST STEP IN TARIFF AUTOMATION**

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

### **D. THE SHIPPING ACT OF 1984**

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

## E. THE TARIFF AUTOMATION TASK FORCE

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

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

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

The report recommended the conduct of a feasibility study to evaluate the technical alternatives available and their costs, including a market analysis of the demand for tariff information and the likelihood that the Commission's costs could be recaptured. The report concluded that the feasibility study should be contracted out, since the Commission lacked the necessary technical expertise. Because the Commission needed to ensure that all future studies were unbiased, thorough, and accurate, it hired an industry consultant in August 1985 for technical assistance. The contract provided that the consultant must remain independent of the feasibility study contractor and could not become the contractor for the pilot or operating system.

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

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

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

Candidates for membership on the Committee were solicited. The nineteen industry members selected represented three ocean carriers, three steamship conferences, two NVOCCs, three freight forwarders and the National Customs Brokers and Forwarders Association, three ports and the California Association of Port Authorities, two exporters and importers and the American Association of Exporters and Importers, two information service firms, and the Information Industry Association.

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

- **To allow each segment of the shipping industry to formulate and specify its needs and goals in the process of automating shipping tariffs.**
- **To educate each segment of the shipping industry about the needs and goals of the other segments in such a process.**

- **To investigate the possible applications of existing and foreseeable automated data processing technology to accommodate such needs and goals.**
- **Then, if feasible, to formulate the necessary compromises of the needs and goals of each industry segment to design a system which is acceptable and beneficial to all industry segments.**

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

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

The *Feasibility Study* stated:

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

## **G. BENEFIT COST ANALYSIS and PROCUREMENT AUTHORITY**

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

## **H. INQUIRY ON THE FUNCTIONALITY OF ATFI and PRESOLICITATION CONFERENCE**

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

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

The electronic ATFI system, for which the Commission is seeking a prime contractor, will be run on the contractor's central computer with appropriate terminals at the Commission for tariff review, processing, and retrieval. The format of tariff data to be electronically filed is being developed in conjunction with the industry Transportation Data Coordinating Committee and will emphasize "tariff line items," vis-a-vis, tariff pages, as under the present system. "Tariff line items" are basically equivalent to commodity rate items in current paper tariffs and can be amended directly, without having to issue an entire revised page.

As recommended by the Commission's Advisory Committee, standardized commodity or geographic coding will not be mandated at the beginning, but the system must have the capability to provide for these functions at the appropriate time. The system will also include the essential terms of service contracts.

Full implementation of the system will be in phases to allow commercial firms time to adapt their operations. Exemptions, at least temporary, will be granted to some types of tariff filers who are not economically able to use the electronic system.

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

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

Tariff filers will be able to file and amend their tariff materials by remote access directly to the ATFI system by carriers or conferences almost any time of day. The carrier or conference will be able to screen-scan its tariff so that the appropriate item can be amended. Commercial tariff services can also continue to be used by carriers and conferences for filing, e.g., by direct input



into the database, after creating tariffs on instruction from their clients, or transforming their paper tariffs into electronic form. The Commission will encourage commercial tariff services to assist small firms who may find it difficult to file electronically.

Once the tariff data are officially on file, the Commission will download the entire database in "flat files," formatted onto computer tapes which will be sold to any person at the relatively inexpensive marginal cost of dissemination. This will satisfy the Commission's statutory duty of providing copies of tariffs at a reasonable charge. In order to keep up with a substantial number of rapidly changing freight rates in the shipping industry, however, interested persons must obtain these updated database tapes frequently. The Commission will offer a subscription service to provide this capability.

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

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

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

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

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

## I. REMOTE RETRIEVAL

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

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

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

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

The controlling question is: In designing the functionality of its ATFI system, has the Commission properly considered and balanced competing interests, such as (1) the system's utility to shippers, carriers and other members of the shipping public, and (2) the future role of private-sector information services? The Commission believes it has.

In October, 1986, a year before the Commission heard of any complaints about "remote retrieval," its private-sector contractors issued "A Comprehensive Study of the Feasibility of an Automated Tariff System." This report accurately describes the proposed functionality of the ATFI system in terms sufficiently precise for private-sector firms to fully understand for the purpose of submitting proposals. This public report was considered and discussed by the Commission's Industry Advisory Committee at the time and there were no objections to "remote retrieval"....

More importantly, with the approval of the Commission and the Advisory Committee, the Feasibility Study Report suboptimized ATFI's public retrieval functions as an accommodation to private-sector information firms.

\* \* \* \* \*

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

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

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

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

## **J. CONTRACT AWARD and MAJOR CHANGES**

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

On August 8, 1989, the ATFI contract was awarded for Phase I, System Concept (including verification of requirements), and Phase II, System Design, to Planning Research Corporation ("PRC Inc." or "Contractor") of McLean, Virginia, teaming with Data Exchange

International ("DXI"), of Pittsburgh, Pennsylvania, which had the best technical, as well as the best cost proposal. The contract for the 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, has a one-year warranty after it formally accepts the software, and complete access to the underlying documentation (source code) thereafter.

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

The last optional phase of the PRC Inc. contract expired towards the end of fiscal year 1994. At that time, the Commission elected to continue its contractual arrangement with PRC Inc. on a limited basis, while it considered what approach it would use to select a contractor to design and develop an updated version of its ATFI system. Accordingly, the Commission negotiated extensions of the PRC Inc. contract that were limited to ongoing maintenance of the ATFI equipment and other necessities, while the Commission began the process of developing a formal procurement to select a contractor to design and develop additional and enhanced functions.

## **K. DOCKET NO. 90-23**

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

a first Interim Report, which considered the comments received and resolved the issues raised in the NOI.

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

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

The proposed rule in Docket No. 90-23, *Tariffs and Service Contracts*, was issued on September 9, 1991 (56 Fed. Reg. 46,044), as a new Part 514 of Title 46 CFR, with the deadline for comments being October 31, 1991. Part 514 is the sole, all-inclusive CFR part covering tariffs and service contracts filed into the Commission's electronic system. Other CFR parts which govern the filing of paper tariffs and service contracts were removed from the CFR, *i.e.*, Parts 515, 520, 550, 580 and 581.

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

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

- As suggested by the commenters, the essential terms of service contracts could be filed in full-text, *vis-a-vis* the database format of the proposed rule, with some degree of standardization (*e.g.*, rule numbers) and with the final format to be developed after another round of comments from the public.
- Algorithms need not (cannot) be developed for all possible assessorial charges, *e.g.*, those that are not pre-determinable. The interim rule clarified the algorithm requirement and provided another option for linking textual rules to Tariff Line Items, *i.e.*, the "dummy algorithm" or "null linkage." Under the full-text format for essential terms, no algorithmization would be possible.

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

## L. BATCH FILING GUIDE

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



Accordingly, the first Interim Report of December 1990 in Docket No. 90-23 appended the ATFI "Batch Filing Guide" (containing, among other things, transaction sets, file transfer formats, data dictionary, and code reference tables). Since its first issuance, the "Batch Filing Guide" has been revised several times to reflect major system improvements, while, at the same time, attempting to provide the public with as much advance notice of such changes as possible. Other parts of the ATFI User Guides, such as the "ATFI Fundamentals Guide," etc., 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 40 such certified firms.

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

The implementation schedule was refined on December 17, 1992 (at 57 Fed. Reg. 59,999) and was republished on May 28, 1993 (at 58 Fed. Reg. 31,522). This schedule provided that the official tariffs be filed electronically at different times in calendar year 1993. Carriers and conferences operating in the Worldwide/Asian & South Pacific trades were scheduled to file first, followed by those in the European trades, the Africa/Mid East trades, the North American/Caribbean trades, and the Central/South America trades. Terminal operators and carriers in the domestic offshore trades filed last. Finally, the schedule

provided for the beginning of the electronic filing of all essential terms of new service contracts.

Many filers were not ready to file during their designated periods, and were granted extensions of time. A total of 36 petitions representing 219 carriers/conferences were filed, 32 of which were granted enabling carriers to extend their filing deadline. Even with the extensions, however, the Commission continued to target December 31, 1993, as being the date by which all filers should be in compliance. Those filers who did not meet the Commission schedule found themselves named in orders to show cause why their tariffs should not be canceled for failure to file timely in ATFI format. The Commission issued its last show cause order on this matter early in fiscal year 1995. All told, approximately 310 carriers had their paper tariffs canceled for failure to file in the new electronic format.

During fiscal year 1996, 745 new tariffs were filed in the ATFI system. At the end of the fiscal year, there were 4,666 effective tariffs in the system, a net increase of 114 tariffs or approximately 3 percent compared to fiscal year 1995. The filing of new tariffs has leveled off now that the conversion from paper to the electronic form is complete.

Additionally, all essential terms of service contracts entered into after November 22, 1993, are electronically filed in ATFI. The Commission received 9,425 new service contracts in fiscal year 1996, which represented an approximate 15 percent increase from the prior year. Amendments to service contacts more than doubled this fiscal year, with 19,427 being filed. All tariff and service contract essential term filings are available on a 24-hour basis to any of the 4,374 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 continually adds new locations to the ATFI system, and ended the fiscal year with 321,494 locations in this database. Additionally, ATFI registration forms have been made available electronically on the Commission's Internet home page.

The Commission also published a final rule involving the filing of service contracts. These contracts 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 rule to afford the option of filing an abbreviated paper contract which incorporates by reference the provisions filed in the electronic essential terms filing. This rule is intended to reduce Commission and carrier costs, minimize errors and duplication, and facilitate automation of the Commission's records.

During fiscal year 1996, the Commission entered into an MOU with the STB regarding the filing of U.S. domestic offshore tariffs in ATFI. Legislation passed in fiscal year 1996 transferred jurisdiction over the U.S. domestic offshore trades from the FMC to the STB. The MOU permits these tariffs to continue being filed in ATFI, and sets up specific protocols for STB access and administration, as well as STB's reimbursement to the FMC for applicable contract costs. This change has no effect on filing procedures for domestic carriers. Also, the Commission remains the sole signatory to the ATFI contract -- it will deal with the Contractor on any domestic issues on behalf of STB.

The Commission also agreed on a one-year extension of the ATFI contract, providing for its Contractor to maintain the system through fiscal year 1997. The Commission's reduced budget necessitated reductions in certain services and maintenance areas, which limits the system from operating at optimum efficiency. However, we are confident that system integrity, accessibility and effectiveness will not be unduly compromised. Recompetition of the contract, to include refinements and enhancements in line with technological advances, continues to be held in abeyance given our budgetary constraints and

the possibility of legislative action to alter present tariff filing requirements.

## **N. UPDATE ON REMOTE ACCESS SEPTEMBER 1996**

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. Fees for the secondary use of tariff data no longer are applicable.



# VI

## THE FOREIGN SHIPPING PRACTICES ACT OF 1988

### A. GENERAL

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

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

During fiscal year 1996, the Commission investigated potentially restrictive practices of the Governments of Japan, Brazil, and the People's Republic of China ("PRC" or "China") which may warrant institution of formal proceedings under the FSPA or other statutes. These matters included requirements and restrictions on the use of Japanese harbor services, limitations on forwarding and consolidation services in China, and Brazilian restrictions on warehousing and cross-trading with other South American nations.

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

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

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

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

The most recent year for which Census data were available to the Commission is calendar year 1995. 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 1995. 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 (1995)

<u>Rank</u>	<u>Country</u>	<u>Tons (000's)</u>
1	Japan .....	20,203
2	China (PRC) .....	10,676
3	Taiwan .....	7,895
4	South Korea .....	6,904
5	Germany .....	5,137
6	Hong Kong .....	4,461
7	Brazil .....	4,117
8	United Kingdom (Incl. N. Ireland) .....	4,022
9	Italy .....	3,897
10	The Netherlands (Holland) .....	3,376
11	Indonesia .....	2,925
12	Thailand .....	2,925
13	France .....	2,845
14	Belgium .....	2,575
15	Australia .....	2,083
16	Spain .....	1,824
17	India .....	1,819
18	Malaysia .....	1,790
19	Philippines .....	1,706
20	Venezuela .....	1,512

*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 1995 as in the previous year. In terms of ranking order, only minor changes occurred in the course of a year. The United Kingdom fell in rank from 6th to 8th, while both Hong Kong and Brazil shifted up by one position to 6th and 7th, respectively. The Philippines slipped from the 16th position to the 19th, while Spain ascended in rank from 18th to 16th, and Malaysia jumped by one position to end the year at 18th.

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 375 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.

Over this same period, bilateral trade with Southeast Asian countries has increased significantly (*e.g.*, trade with Thailand and Indonesia increased 192 percent and 151 percent, respectively). Changes in the rankings of Southeast Asian countries, however, have not mirrored the rapid advance exhibited by China over the last nine 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 subpoenas served on the Commission or members and employees thereof; administering the Freedom of Information, Government in the Sunshine, and Privacy Acts; responding to information requests from the Commission staff, maritime industry, and the public; issuing publications and authenticating instruments and documents of the Commission; compiling and publishing bound volumes of Commission decisions; and maintaining official copies of the Commission's regulations. The Office also is responsible for approving or denying special docket requests.

The Secretary's Office also participates in the development of rules designed to reduce the length and complexity of formal proceedings, and participates in the implementation of legislative changes to the shipping statutes. During fiscal year 1996:

- **The Commission issued decisions concluding 8 formal proceedings. Another 4 formal proceedings were**

discontinued or dismissed without decision, while 17 initial decisions of an administrative law judge became administratively final without Commission review. The Commission also concluded 142 special docket applications and 15 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 1997.
- Special Docket Officers issued decisions in 135 proceedings during fiscal year 1996.

## **2. Office of Informal Inquiries and Complaints and Informal Dockets**

This Office coordinates the informal complaint handling system throughout the Commission. A total of 1,854 complaints and information requests were processed in fiscal year 1996. Recoveries to the general public of overcharges, refunds and other savings attributable to the complaint handling activities amounted to \$189,605. Since 1987, this Office has helped complainants recover over \$1,700,000.

The Office facilitated communications among maritime industry representatives and Commission officials, and supplied materials and information requested by the general public. During fiscal year 1996, this Office responded to 851 such telephone requests and inquiries. The Office maintained liaison with members of the President's

Consumer Affairs Council, in which it participated throughout the fiscal year.

In addition, the Office is responsible for the initial adjudication of reparation claims up to \$10,000 that are filed by shippers against common carriers by water engaged in the foreign commerce of the U.S. These claims must be predicated upon violations of the 1984 Act. Through the end of fiscal year 1996, the Office also was responsible for adjudicating such cases involving the domestic offshore commerce of the U.S.; the regulatory responsibility for U.S. domestic offshore commerce was transferred to the STB effective October 1, 1996, pursuant to the ICC Termination Act of 1995, Pub. L. No. 104-88, 109 Stat 803 (1995). 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 1996, 6 claims were filed, while 10 pending cases were carried over from the previous year. During the same period, 9 informal docket claims were concluded by the Office, and there were 7 pending cases at the close of the fiscal year

During fiscal year 1996:

- **The Office cooperated closely with the staff of the Bureau of Enforcement with respect to the activities of several nonperforming NVOCCs. These efforts helped many customers of the concerned firms recover their apparent losses.**
- **The Office increased its involvement in certain types of complaints that had previously been handled in District Offices.**
- **The Office continued to broaden its outreach activities. Efforts in this area contributed to a wider variety in the types of complaints received.**





## **B. OFFICE OF ADMINISTRATIVE LAW JUDGES**

### **1. General**

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

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

At the beginning of fiscal year 1996, 19 proceedings were pending before the ALJs. During the year, 35 cases were added. The ALJs formally settled 10 proceedings, dismissed or discontinued 7 proceedings, and issued 11 initial decisions in formal proceedings and 14 decisions in special docket proceedings.

### **2. Commission Action**

The Commission adopted three formal initial decisions and four special docket decisions of the ALJs.

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

#### ***The Government of the Territory of Guam, et al. v. Sea-Land Service, Inc. and American President Lines, Ltd.* [Docket No. 89-26].**

In this proceeding, the complainant Government of the Territory of Guam, on behalf of its shipper citizens, alleged that respondent carriers Sea-Land Service, Inc. and American President Lines, Ltd. charged unreasonably high rates for transportation of goods from the West Coast of the U.S. to Guam during 1987 to 1989, in violation of various provisions of the 1916 Act and the 1933 Act. The Government sought remedial orders including refunds of allegedly excessive freight money paid during that period of time. Complainant argued a novel theory in rate cases, namely, that respondent carriers' general high level of rates warranted refunds on individual shipments. The presiding judge found that complainant had not proved its allegations and that a number of unique factors relevant to the distant, high-cost Guam trade justified respondent's higher rate levels.

#### ***Ceres Marine Terminal, Inc. v. Maryland Port Administration* [Docket No. 94-01].**

In this proceeding, a stevedoring company and marine terminal operator alleged that respondent Maryland Port Administration had unfairly treated and unlawfully discriminated against complainant, in violation of various provisions of the 1984 Act, by giving a competing company a better lease allowing the competing company to operate at respondent's premises because the competing company was also a vessel-operating common carrier. Complainant sought to renegotiate its own lease with respondent and obtain money damages. The presiding judge found that respondent had unlawfully preferred complainant's competitor, even though complainant offered to provide

the same volume of business to the Port as its carrier competitor, and ruled that the Commission should remand the proceeding to determine the amount of money damages owed to complainant as provided by the Commission's rules of procedure.

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

In this case, Universal Cargo Management, Inc. ("Universal"), a shipper and also an NVOCC, alleged that respondent Hyundai had unlawfully refused to give Universal a service contract, in violation of section 8(c) of the 1984 Act. Complainant also sought money damages, exceeding \$200,000, for this allegedly unlawful refusal. In his first Initial Decision, the presiding judge found that Universal had timely requested access to a service contract. On remand from the Commission, however, the presiding judge found that the Commission lacked jurisdiction over the dispute because a contract had been formed and the relevant statute, section 8(c) of the 1984 Act, required that disputes involving breaches of service contracts be heard in courts or by arbitration, and not by the Commission.

***South Carolina State Ports Authority Regulation of Stevedore and Marine Terminal Functions* [Docket No. 94-24].**

Petitioner South Carolina State Ports Authority asked the Commission to issue a declaratory order finding lawful petitioner's proposed tariff rules that would license stevedores who wish to operate at the Port's premises on condition that the stevedore promote the interests of the Port and comply with other conditions. The presiding judge decided that the Port's proposed tariff rules were unreasonable and unlawful under the 1984 Act and would confer too much discretionary authority on the Port's director. He agreed with protesting stevedoring companies and other ports that the proposed

rules would unfairly discriminate against stevedores and ought not to be allowed to go into effect.

***AAEL America Africa Europe Line GMBH v. Virginia International Trade & Investment Group LLC and William W. Joyce III [Docket No. 95-09].***

In this proceeding, complainant carrier alleged that respondent shippers had violated section 10(a)(1) of the 1984 Act by obtaining transportation without paying the applicable tariff charges through an unjust or unfair device or means and sought over \$30,000 in unpaid freight bills. In his first Initial Decision, the presiding judge found that one respondent, a limited liability company, had defaulted and owed the money, and that the other respondent, one of the company's owners, was also personally liable to pay the bills. On remand from the Commission, the presiding judge found that the evidence was insufficient to support a finding that the owner respondent had personally misled or deceived the complainant carrier and further found that this respondent was not entitled to attorney's fees that he incurred in defending against the complaint.

***Seair Cargo Agency Inc. d/b/a Seair International Line—Possible Violations of Section 10(b)(1) of the Shipping Act of 1984 [Docket No. 96-10].***

This case is a Commission-instituted proceeding to determine if Seair Cargo Agency, Inc., a foreign-based NVOCC, violated section 10(b)(1) of the 1984 Act by charging less than its filed tariff rates on 27 occasions at various times during 1994, 1995, and 1996, on numerous shipments respondent carried from Far East ports to the U.S. Respondent later ceased operations in the U.S., and its tariff was canceled for failure to maintain a surety bond, as required by law. The presiding judge found that the Commission's Bureau of Enforcement had proved that respondent had violated law on 27 occasions as

charged and that a penalty of \$50,000, the full amount of its previous surety bond, should be assessed.

***Haewoo Air & Shipping Co., Ltd. d/b/a Haewoo Shipping Co., Ltd.—Possible Violations of Section 10(b)(1) of the Shipping Act of 1984 [Docket No. 96-11].***

This is another Commission-instituted investigation against a foreign-based NVOCC, which had allegedly charged less than its applicable tariff rates on 25 occasions on shipments it carried during 1994 and 1995 from Far East ports to the U.S. Respondent later discontinued its operations and its tariff was canceled. The presiding judge found that the Commission's Bureau of Enforcement had proved that respondent had violated section 10(b)(1) of the 1984 Act on 25 occasions and that a penalty in the full amount of the respondent's surety bond should be assessed, namely, \$50,000.

The ALJs also issued decisions in Special Docket Nos. 3007, 3008, 3009, 3010, 3011, 3012, 3013, 3014, 3015 and 3016, which were pending before the Commission at the end of fiscal year 1996.

#### **4. Pending Proceedings**

At the close of fiscal year 1996, there were 12 pending proceedings before the ALJs, of which 3 were investigations initiated by the Commission. The remaining proceedings were instituted by the filing of complaints or applications by common carriers by water, shippers, conferences, port authorities or districts, terminal operators, trade associations, and stevedores.



## C. OFFICE OF THE GENERAL COUNSEL

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

### 1. Decisions and Rulemakings

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

***Information Form and Post-Effective Reporting Requirements for Agreements Among Ocean Common Carriers Subject to the Shipping Act of 1984*** [Docket No. 94-31], 61 Fed. Reg. 11,564 (March 21, 1996).

The Commission issued comprehensive new regulations governing the information submission requirements for agreements among ocean common carriers subject to the 1984 Act. Newly filed agreements must be accompanied by an information form showing specific data on the agreement member lines' cargo carryings, revenue results and port service patterns before they entered into the agreement. In addition, member lines of certain kinds of effective agreements are required to submit reports on their operations on a regular and ongoing basis, which will reflect the lines' cargo carryings, revenue results and port

service patterns after they entered into the agreement. The application of the new regulations to a particular agreement depends 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 regulations must still be filed with the Commission, unless it qualifies for one of the Commission's existing filing exemptions, but will not have any information form or reporting obligations. The intent of the new regulations 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.

***Marine Terminal Tariff Provisions Regarding Liability of Vessel Agents; Petition for Rulemaking [Docket No. P3-95], 27 S.R.R. 611 (June 28, 1996).***

The Commission was petitioned by several maritime associations, on behalf of independent vessel agents doing business in various U.S. ports, to initiate a rulemaking proceeding declaring unlawful any marine terminal tariff provision which holds vessel agents liable for the terminal charges of the vessel owners who are their disclosed principals. Petitioners argued that this common and long-standing practice imposes an onerous burden on agents and constitutes an unfair, unilateral assignment of liability.

The Petition was opposed by port and marine terminal interests. They argued that the relief requested is more akin to an adjudicatory order than a rule and that, therefore, the Petition was procedurally defective. The ports also maintained that the Petition was factually inaccurate and that it urged a finding that is contrary to well-settled FMC case law, which has determined that such tariff provisions are not per se unreasonable.



After hearing oral argument, the Commission denied the Petition, noting that there was no factual foundation justifying the imposition of a broad rule of nationwide applicability, and that any specific instances of unreasonableness could be addressed on a case-by-case basis.

***Noncontiguous Domestic Trade Tariffs*** [Docket No. 96-04], 61 Fed. Reg. 5,835 (Request for Comments, February 14, 1996), 61 Fed. Reg. 52,494 (Notice, October 7, 1996).

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

***Service Contract Filing Requirements - Miscellaneous Revisions***, [Docket No. 95-08], 27 S.R.R. 453 (February 12, 1996).

The Commission initiated this proceeding by publishing a Notice of Proposed Rulemaking ("NPR") in the *Federal Register* on May 23, 1995. The NPR solicited comment on a proposal to amend the Commission's service contract rules to provide for an optional, abbreviated service contract format. In addition, the NPR proposed to require service contracts to set forth the complete names and addresses of all contract parties, including affiliates.

The Commission received comments from the major conferences of ocean common carriers serving the U.S. trades. After consideration of the comments, the Commission issued a final rule that affords contract parties the option of filing service contracts in an abbreviated format and requires service contracts to set forth the parties' legal names and business addresses.

***All Marine Moorings, Inc. v. ITO Corporation of Baltimore* [Docket No. 94-10], 27 S.R.R. 539 (May 15, 1996).**

All Marine Moorings, Inc. ("All Marine") performs line-handling or mooring services at various marine terminals in the Port of Baltimore. ITO Corporation of Baltimore ("ITO") is a marine terminal operator/stevedore, operating a marine terminal at South Locust Point under a lease from the Maryland Port Administration, owner of the marine terminal facilities.

All Marine alleged that ITO's decision to perform line-handling itself as part of its marine terminal services to carriers calling at its South Locust Point terminal, and to exclude All Marine from performing line-handling at ITO's terminal for all carriers other than two with which All Marine had preexisting contracts, was an attempt by ITO to establish a monopoly for these services. All Marine argued that this constituted an unreasonable preference or disadvantage and an unreasonable terminal practice in violation of sections 10(b)(11), 10(b)(12) and 10(d)(1) of the 1984 Act and sections 16 and 17 of the 1916 Act. All Marine's complaint requested a cease and desist order and reparations in the amount of \$116,420 for revenues allegedly lost to ITO.

Both parties had cited and relied on the same constellation of cases involving exclusive leases or other arrangements at marine terminals. The ALJ's Initial Decision pointed out that the cited cases generally could be divided into two lines, those striking down

exclusive or monopolistic practices at ports and those finding such arrangements reasonable under the specific circumstances of the case. In light of the facts of this case, the ALJ concluded that the circumstances were more like those presented in the Commission cases in which exclusive or preferential arrangements were permitted. The ALJ found that the burden of proof rested with complainant who had, on balance, not shown that ITO had violated the reasonableness standard of the Shipping Acts.

The Commission affirmed the ALJ's decision, emphasizing that the common theme of the Commission precedents was the decisional importance of each individual set of facts. The Commission also explained that while no determination of whether a particular practice or action would be considered violative of the antitrust laws is necessary to a determination of reasonableness under the Shipping Act, the concepts, terminology, and framing and analysis of issues involved in antitrust cases are frequently useful in such determinations.

***Administrative Offset; Rulemaking [Docket No. 96-15], 61 Fed. Reg. 50,444 (September 29, 1996).***

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

To satisfy that requirement, the Commission adopted, without change, existing Treasury Department regulations governing administrative offset. The new Commission regulations, found at 46 CFR Part 505, were published in the *Federal Register* as a final rule on September 26, 1996, effective October 28, 1996.

## 2. Litigation

The General Counsel represents the Commission in litigation before courts and other administrative agencies. Although the litigation work largely consists of representing the Commission upon petition for review of its orders filed with the U.S. Courts of Appeals, the General Counsel also participates in actions for injunctions, enforcement of Commission orders, actions to collect civil penalties, and other cases where the Commission's interest may be affected by litigation.

The following are representative of matters litigated by the Office:

### ***FMC v. Puerto Rico Maritime Shipping Authority*, 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 U.S. Court of Appeals for the First Circuit for review of the Commission's order of April 25, 1995. In that order, 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, and the First Circuit heard oral argument on November 8, 1995.

The Court reversed the Commission's award of reparations, finding that PRMSA's earlier litigation in the U.S. District Court for the Southern District of Florida had barred Save-On-Shipping's claim before the Commission for reparations under the 1916 Act. The

Court, however, affirmed the Commission's holding that PRMSA's practice violated the "reasonable practice" standard of the 1916 Act.

***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 the involved defendants to enjoin violations of the 1984 Act pending the completion of a Commission administrative proceeding, Docket No. 92-52. The defendants had allegedly violated the 1984 Act by engaging in freight forwarding services without a license and bond; acting as an NVOCC without a tariff and bond; knowingly and willfully using an unfair device and means to obtain ocean transportation for less than the rates applicable; engaging in unfair practices in the adjustment and settlement of claims; and failing to establish, observe and enforce just and reasonable regulations and practices relating to or connected with receiving, handling, storing, or delivering property. The defendants also allegedly had engaged in fraud, deceit, and other unlawful conduct in booking or attempting to book cargo with ocean common carriers and NVOCCs, 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 enjoined defendants from engaging in any ocean or trucking transportation-related activities, required full restitution to injured shippers, and terminated

all of defendants' "800" telephone numbers. Defendants also admitted to all the factual allegations and violations in Docket No. 92-52. The Court ordered a public defender for Garcia on June 27, 1994. The defendant failed to appear for a hearing July 14, 1994, on the Commission's request for six months of imprisonment, and 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. Garcia was taken into custody by U.S. Customs, upon action by Canadian immigration authorities returning Garcia to the U.S. on November 20, 1996. On November 25, 1996, the U.S. District Court in Albany ordered Garcia detained and returned to the Middle District of Pennsylvania.

### **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 1996, 151 bills, proposals and Congressional inquiries were referred to General Counsel for comments. The Office also prepared and coordinated testimony for three Congressional hearings, and worked closely with Congressional staffs on proposed legislation that affected the Commission.

#### **4. Significant Ongoing Activity**

***Petition of South Carolina State Ports Authority for Declaratory Order [Docket No. 94-24], 27 S.R.R. 674 (May 31, 1996).***

South Carolina State Ports Authority ("SCSPA") filed a Petition For a Declaratory Order ("Petition") to allow it to act without peril in issuing in its FMC-filed tariff guidelines the criteria it will apply to license stevedores and marine terminal operators ("MTOs") operating at SCSPA facilities. SCSPA alleged that "economic regulation" of stevedores and MTOs doing business or seeking to do business at public port facilities is necessary to protect the public investment in the facilities. Twelve parties replied to the Petition.

The replies to the Petition reflected a division of views between stevedores and non-port MTOs, who opposed the proposals, and public ports, who supported the proposals. The Commission concluded that the issue of SCSPA's reservation of terminal functions for itself was inappropriate for disposition on declaratory order because it involved past and present conduct which could entail violations of the Shipping Acts. With respect to the proposed tariff rule for the licensing of stevedores, on the other hand, the Commission found that it raised issues which were uniquely within the expertise of the Commission, did not involve possible past or present violations of the Shipping Acts, and, insofar as they arise under the Shipping Acts, were not issues which could be raised in another forum. However, in its Order of May 1, 1995, the Commission found that there were material issues of fact in this case which could not be disposed of on the basis of the existing record, and it referred the matter to an ALJ for an evidentiary hearing. The presiding ALJ issued an Initial Decision on May 31, 1996, finding the proposed guidelines prospectively in violation of the 1984 Act. The case presently is before the Commission on Exceptions to the Initial Decision.

***Amzone International, Inc. and Universal Cargo Management, Inc. v. Hyundai Merchant Marine Co., Ltd.***, [Docket No. 94-17], 27 S.R.R. 386 (November 5, 1995).

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

On April 28, 1995, the presiding ALJ issued an Initial Decision, in which he found that Universal timely filed its access request and "granted" its complaint. Hyundai filed Exceptions to the decision, to which Universal replied.

The Commission decided to treat the Exceptions as an interlocutory appeal so that it could resolve a controlling question of law. The Commission then found timely Universal's request to access a service contract that the original parties terminated one hour later. The Commission noted that the mutual termination of a service contract does not extinguish the rights of a shipper who has earlier requested access. The Commission further found that a contract termination must be filed with it and published before it can effectively cut off a shipper's right of access. The Commission then remanded the proceeding to the ALJ for further action on the remaining issues.

## **5. Foreign Shipping Restrictions and International Affairs**

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



and makes recommendations to the Commission for investigating and addressing such practices.

The Commission has the authority to address restrictive foreign shipping practices under section 19 of the 1920 Act and the FSPA. Section 19 empowers the Commission to make rules and regulations governing shipping in the foreign trade to adjust or meet conditions unfavorable to shipping. The FSPA directs the Commission to address adverse conditions affecting U.S. carriers in 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.

In 1996 the Commission investigated potentially restrictive practices by foreign governments in Japan, the PRC, and Brazil 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 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 was assessing the responses to these orders at fiscal year-end, and was scheduled to meet early in the upcoming year to determine whether sanctions against Japanese liner operators were necessary to counteract the restrictive Japanese port practices.

With regard to China, the Office of the General Counsel continued to monitor 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. This issue was included in a previous FSPA proceeding the Commission initiated regarding restrictive practices by the PRC. That proceeding was discontinued in 1992 after PRC concessions and commitments to remove the involved restrictions. Diplomatic negotiations and the threat of further Commission action under the FSPA or section 19 resulted in the PRC conceding this past fiscal year to allow U.S. carriers to provide the involved services with wholly owned subsidiaries. The Commission will continue to monitor this situation to ensure that the PRC follows through on its commitment.

The Commission, on July 8, 1996, issued investigative orders to seventeen carriers operating in the U.S.-Brazil trades. The purpose of these "Information Demand Orders" was to collect information on certain policies or practices of the Government of Brazil which may contravene applicable U.S. law. In particular, the Commission sought to ascertain whether the failure of Brazilian authorities to permit a U.S.-flag carrier to operate a bonded warehouse in Brazil created conditions unfavorable to shipping in the foreign trade under section 19 of the 1920 Act or constituted adverse conditions affecting U.S. carriers that do not exist for Brazilian carriers, in conflict with the FSPA. The Commission also inquired as to whether restrictions on U.S. carriers' ability to carry cargoes in the cross-trades between Brazil and other South American countries impairs access of U.S.-flag vessels to ocean trade between foreign ports, in violation of section 13(b)(5) of the 1984 Act.

If the information collected in response to the orders points to violations of law, the Commission may launch formal adjudicatory or rulemaking proceedings. Such proceedings could result in the imposition of sanctions, including imposition of per-voyage fees, limitations on sailings, and suspension of tariffs.

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

Another responsibility of the Office is the identification and verification of controlled carriers under section 9 of the 1984 Act. Common carriers that are owned and controlled by foreign governments are required to adhere to certain tariff-filing requirements under the 1984 Act. The Office investigates and makes appropriate recommendations to the Commission regarding the status of potential controlled carriers. The Office, in conjunction with other Commission components, also monitors the activities of controlled carriers. In fiscal year 1996, 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 1996 include the following:

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

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

During fiscal years 1997 and 1998, the Office will continue all existing programs and initiate additional activities designed to increase an understanding of EEO concepts and principles.





## **E. OFFICE OF INSPECTOR GENERAL**

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

It is the duty and responsibility of the OIG to:

- **Provide policy direction for and conduct, supervise, and coordinate audits and investigations relating to, the Commission's programs and operations.**
- **Review existing and proposed legislation and regulations relating to the Commission's programs and operations and to make recommendations concerning the impact of such legislation or regulations on the economy and efficiency in, and the prevention and detection of fraud and abuse in, the administration of the Commission's programs and operations.**
- **Recommend policies for, and conduct, supervise, or coordinate other activities carried out or financed by the Commission for the purpose of, promoting economy and efficiency in the administration of, or preventing and detecting fraud and abuse in, the Commission's programs and operations.**
- **Recommend policies for, and conduct, supervise, or coordinate relationships between the Commission and other Federal agencies, state and local governmental agencies, and nongovernmental agencies with respect**

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

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

In fiscal year 1996, the OIG issued seven audit reports in final, including four audits relating to ATFI secondary user fees required to be collected and remitted to the Commission pursuant to Pub. L. No. 102-582. These audits resulted in an additional \$110,123.54 in secondary user fees possibly owed to the Federal government. Another audit of particular significance involved a review of automated data processing transactions and six recommendations were made to improve the process used by the Commission in procuring Federal information processing resources. The OIG also completed a review of the headquarters imprest fund and a survey of the OIG's responsibilities with respect to audited financial statements.

During the year, various investigations, both formal and informal, were opened and pursued. Two formal investigations were closed during the fiscal year.

A peer review of the OIG was completed as required by the General Accounting Office Standards, and a favorable report was issued.

In fiscal year 1997, the OIG intends to conduct a comprehensive program of audits and reviews, with a continued high priority on program evaluations. The goal is to improve program operations while continuing to combat any waste, fraud and abuse that may exist in agency programs. This work is especially relevant during a period of extremely austere budgets. In addition, investigations will be conducted as necessary.

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. The ECIE serves as a forum for the exchange of views for the inspector general community and provides a base for the establishment of joint inspector general projects. It is anticipated that the Commission's OIG will participate in any projects developed during fiscal year 1997.



## **F. OFFICE OF THE MANAGING DIRECTOR**

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

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

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

Also, the Managing Director provides administrative guidance to the:

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

and administrative assistance to the:

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

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

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

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

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

A significant achievement of the Office during fiscal year 1996 was the coordination of the Commission's new field operations structure. This required, among other things, planning for the orderly shutdown of the agency's field offices and developing a comprehensive plan for effecting a transition to a different field operations program. This program features the utilization of area representatives, working from alternate worksites and using up-to-date technologies in telecommunications and information systems, to carry out the Commission's enforcement and liaison activities within their areas of responsibility. Also, in response to several cruise line bankruptcies, the Office ensured that the public was kept informed of their rights under the Commission's statutorily required rules in this area. The Office continues to oversee a rulemaking process reviewing passenger vessel operators' financial responsibility requirements aimed at ensuring that adequate levels of coverage are maintained

The Office is currently:

- 1. Overseeing the further development of all enforcement efforts, including addressing the challenges facing the Commission's enforcement programs as the result of the closing of its district**

**offices and the implementation of a new field operations structure;**

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

**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 1997 and 1998 are the further development of the Commission's enforcement program in light of the new field operations structure; the continued coordination of staff efforts regarding the maintenance of the ATFI system and planning for future ATFI requirements; completion of the passenger vessel operator rulemaking process; organization of staff action to implement 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 Office of Information Resources Management ("OIRM") administers the Commission's information resources management ("IRM") program under the Paperwork Reduction Act of 1995, as amended, as well as other applicable laws which prescribe responsibility for operating the IRM program. These IRM functions include: conducting IRM management studies and surveys; managing data telecommunications; developing and managing databases and applications; coordinating records management activities;

administering IRM contracts; and developing Paperwork Reduction Act clearances for submission to OMB. The Office is also responsible for managing the computer security, and the records and forms programs. The Director of the Office serves as Senior IRM Manager, Forms Control Officer, Computer Security Officer, Records Management Officer, and ADP Coordinator for the ADP Committee. The Director of the Office also monitors the activities of the ATFI Contracting Officer's Technical Representative.

During fiscal year 1996, the Office:

- **Coordinated the development of the Commission's Internet home page with the Government Printing Office ("GPO") (site address "<http://www.fmc.gov>"). Subsequently moved administration of the home page to an in-house FMC server.**
- **Developed an Information Resources Management Five-Year Plan for management approval.**
- **Published IRM newsletters and conducted Information Technology ("IT") Group meetings to share current IT information with Commission employees.**
- **Coordinated technical, logistical, procedural and security issues related to the Commission's worldwide ATFI system and other database systems created, owned and maintained by the Commission.**
- **Furnished agencywide advice and coordination on records management, OMB clearances, collections of information, and IRM.**



- **Migrated the Commission's Local Area Network from a DOS-based to a Windows-based operating environment.**
- **Coordinated the return of IT equipment and software from the closed district offices and the cancellation of related IT support contracts. Developed a plan for the redistribution of the returned IT equipment.**
- **Recommended, acquired, configured, tested and delivered IT equipment for the newly-established area representatives. Also provided for remote FMC e-mail and Internet access.**
- **Continued coordinating and monitoring all contractor issues related to the implementation of the agency's optical imaging system.**
- **Coordinated the transfer of domestic tariff records from the Commission to the STB.**
- **Conducted computer security training for selected FMC components and coordinated with the Training Officer for IT training.**
- **Continued to assist the FMC's Inspector General on audits of industry accounting procedures to ensure compliance with Pub. L. No. 102-582, and provided technical analysis of data collection.**

In addition to implementing ongoing Office programs and providing technical support for the ATFI program mentioned above, major initiatives for fiscal years 1997 and 1998 include: (1) providing agencywide Internet access and training; (2) developing an Intranet site; (3) enhancing the FMC home page; (4) upgrading the Commission's internal e-mail system to include external e-mail

capabilities; (5) conducting an agencywide records management audit; (6) maintaining liaison with the GPO to ensure that FMC's Government Information Locator Service entries remain current; and (7) providing continued administrative support to agency components regarding IRM matters.

# **G. BUREAU OF ECONOMICS AND AGREEMENT ANALYSIS**

## **1. General**

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

- **Administering comprehensive trade monitoring programs to identify and track relevant competitive, commercial, and economic activity in each major U.S. trade, and to advise the Commission and its staff on current trade conditions, emerging trends, and regulatory needs affecting waterborne liner transportation.**
- **Conducting systematic surveillance of carrier activity in areas relevant to the Commission's administration of statutory standards.**
- **Developing economic studies and analyses in support of the Commission's regulatory responsibilities.**
- **Providing expert economic testimony and support in formal proceedings, particularly regarding unfair foreign shipping practices.**
- **Processing and analyzing common carrier and marine terminal agreements.**

## **2. Surveillance**

An integral part of the Bureau's responsibilities under 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 1996, see Section III. A, *Surveillance*.

## **3. General Economic Analysis**

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

Key projects the Bureau completed in fiscal year 1996 included: (1) an analysis and report on periodic data and information filed by the Trans-Atlantic Conference Agreement ("TACA"); (2) an analysis of responses from TACA carriers to Section 15 Orders on conference slot chartering policies, and preparation of a joint inter-Bureau Commission recommendation thereon; (3) an analysis and report on the transpacific conferences' responses to Section 15 Orders on their IA procedures and activities; (4) an analysis of documents and data in response to an informal investigation of carrier actions under certain

discussion agreements in the transpacific trades; (5) an updated monitoring report of controlled carrier activities, individual controlled carrier profiles, and an analysis of the competitive pricing practices on strategic commodities by a controlled carrier in the transpacific trades; (6) comprehensive economic studies and reports, with extensive data compilations, on ocean freight rate trends, trade projections, market conditions and interlocking carrier agreements in the major liner trades, including the Far East and Mediterranean; (7) reports on the emerging trend of carrier global alliances and their impact on pricing, services, and regulatory oversight; (8) an update of the Bureau's carrier agreement database and publication of *Carrier Agreements in the U.S. Oceanborne Trade*; (9) analysis of comments and assistance on a final rule revising the information form and implementing new reporting requirements for carrier agreements; (10) preparation of Section 15 Orders seeking benchmark statistical data from carrier agreements under the new reporting requirements, and analysis and responses to waivers from agreement parties requesting relief from the reporting requirements; (11) a rate-of-return analysis and Commission recommendation on a rate increase in the U.S./Hawaii trade; (12) an economic review of the Initial Decision in Docket No. 89-26, *The Government of the Territory of Guam v. Sea-Land Service, Inc. and American President Lines, Ltd.*, (13) responses to inquiries and complaints from members of Congress and shippers; and (14) preparation of speeches and briefings for senior Commission officials.

## **4. Types of Agreements**

### **(a) Conference and Interconference Agreements**

Conference agreements provide for the collective discussion, agreement, and establishment of ocean freight rates and practices by groups of ocean 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 1996, the Bureau analyzed and processed 102 conference and interconference agreement filings, including modifications to existing agreements, under the 1984 Act. There were 34 conference agreements and 3 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 8 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 also have included space charter and sailing authority within the scope of their agreements.

During fiscal year 1996, 33 space charter and sailing agreements and modifications were filed under the 1984 Act, and 112 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.

Three joint service agreements were filed during fiscal year 1996, and 20 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 that do not fit precisely within the other agreement categories. This category also includes voluntary rate discussion agreements. Carriers filed 79 CWAs, including amendments, in fiscal year 1996. There were 119 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 1996, the Bureau received and reviewed 98 agreements and agreement modifications relating to port and marine terminal services and facilities. Certain terminal agreements become effective upon filing under Commission rules that exempt certain classes of marine terminal agreements from the waiting period requirements of the 1984 Act. Terminal agreements not entitled to an exemption are processed under applicable statutory requirements. At the end of the fiscal year, 1,102 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 were required to file annual financial and operating reports with the Commission. The Bureau reviewed these reports and provided financial expertise to ensure that rates for transportation of cargo and other services provided by domestic common carriers are just and reasonable. The ICC Termination Act of 1995, Pub. L. No.104-88, 109 Stat 803 (1995), repealed the 1933 Act and relevant provisions pertaining to the domestic offshore trades in the 1916 Act, effective September 30, 1996. This Act also vests with the STB within the Department of Transportation the regulatory oversight of port-to-port rates in the domestic offshore trades, which was under the Commission's jurisdiction. Thus, the Commission will have no regulatory role over rates and agreements in the domestic offshore trades beginning in fiscal year 1997.

## **6. Future Plans and Proposed Activities**

The Bureau's overall monitoring program will: focus on systematic oversight of carrier and trade activity with emphasis on upgrading monitoring systems to incorporate data and information that will be provided by carriers pursuant to Docket No. 94-31, *Information Form and Post-Effective Reporting Requirements for*



*Agreements Among Ocean Common Carriers Subject to the Shipping Act of 1984*; analyze this and other trade data to track trends in the various trades and anticipate areas requiring closer scrutiny; assess the impact of key issues facing the industry in order to monitor developments in major trades and analyze agreements in the foreign trades under the standards of the 1984 Act; and continue to 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.



# **H. BUREAU OF TARIFFS, CERTIFICATION AND LICENSING**

## **1. General**

The Bureau of Tariffs, Certification and Licensing is responsible for the review of all tariffs filed by common carriers, conferences of such carriers, and MTOs, as well as service contracts filed by carriers and conferences; ensuring that NVOs submit appropriate evidence of financial responsibility; 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.**
- **Ensures that shippers, as a result of tariff filings, are not subjected to unjust, unfair or unreasonable discriminatory practices in the movement of cargo in the U.S. foreign commerce.**
- **Approves or disapproves special permission applications involving requests to deviate from tariff filing rules.**
- **Administers the NVOCC financial responsibility program by setting policies and guidelines and reviewing financial instruments that evidence financial responsibility.**
- **Processes service contracts and essential terms publications filed by ocean common carriers and**

**conferences of such carriers, issuing notices of intent to reject service contracts containing provisions which fail to conform to Commission regulations.**

- **Prepares recommendations on requests to correct clerical or administrative errors in the essential terms of service contracts.**
- **Licenses ocean freight forwarders.**
- **Certifies owners and operators of passenger vessels in U.S. trades with respect to the financial responsibility of such owners and operators to satisfy any liability incurred for nonperformance of voyages or death or injury to passengers or other persons.**
- **Assists in the maintenance of the Commission's ATFI system, and has primary responsibility for administration and review of all tariffs and service contract essential terms filed in the ATFI system.**

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

In fiscal year 1996, the Bureau participated in the development of the Commission's Internet home page. Information on regulatory matters that the Bureau administers is now available to the public on the Internet, including: the tariff and service contract regulations under 46 CFR Part 514; passenger vessel financial responsibility requirements under 46 CFR part 540; anti-rebate certification requirements under 46 CFR Part 582; and financial responsibility

requirements for NVOCCs under 46 CFR Part 583. Additionally, electronic downloadable forms that are used in support of the Bureau's regulatory programs are available on the home page, e.g., freight forwarder application forms, ATFI registration forms, and the application for certification of financial responsibility.

## **2. Foreign Commerce**

### **(a) Foreign Tariffs**

Section 8 of the 1984 Act (46 U.S.C. app. 1707) requires common carriers to file tariffs setting forth their rates, charges, rules and practices for transporting cargo in the foreign waterborne commerce of the U.S. Section 8 does not give the Commission the authority to regulate rate levels except with regard to controlled carriers. However, the Bureau reviews tariff filings and rejects tariff matter which fails to comply with Commission regulations or statutory requirements. These rejections help protect shippers and fulfill the Commission's obligation to protect shippers from unfair and discriminatory practices.

During fiscal year 1996, the Commission received 686 new, complete tariffs from carriers and conferences operating in the U.S. foreign commerce. (Additional statistics concerning filings into ATFI can be found in the ATFI section below.) The Bureau also processed 220 foreign special permission applications (including one controlled carrier special permission application) to deviate from the statutory provisions of the 1984 Act and/or the Commission's tariff filing regulations.

### **(b) Service Contracts**

Section 8(c) of the 1984 Act (46 U.S.C. app. 1707) provides that ocean common carriers and conferences of such carriers operating in the foreign commerce of the U.S. may enter into confidential service

contracts with shippers and/or shippers' associations. A concise statement of the essential terms of the service contract is publicly available via electronic filing in tariff format. The essential terms of any service contract 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 1996, the Bureau received 29 essential terms publications, 9,425 new service contracts, and 19,427 amendments. The Commission received 1,326 more contracts in fiscal year 1996 than it did in fiscal year 1995, and more than double the number of service contract amendments received in the previous fiscal year. The service contract filings involved an estimated 36,500 shippers, 25 conferences, and 110 individual ocean common carriers. Of these contracts, 130 contracts were filed on behalf of 65 shippers' associations.

In fiscal year 1996, the Commission published a Final Rule in Docket No. 95-08, *Service Contract Filing Requirements -- Miscellaneous Revisions*, to permit an optional and abbreviated service contract format which is intended to reduce industry and Commission costs and facilitate automation of the Commission's service contract records.

### **(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 one request for special permission from a controlled carrier during fiscal year 1996.

#### **(d) Common Carrier Anti-Rebate Certification Program**

Every common carrier by water in the foreign commerce of the U.S. and licensed ocean freight forwarder is required by section 15(b) of the 1984 Act (46 U.S.C. app. 1714) and 46 CFR Part 582 to file a sworn *Certification of Company Policies and Efforts to Combat Rebating in the Foreign Commerce of the United States*. This certification is to be filed with the Secretary of the Commission on or before December 31 of each even-numbered calendar year and is to be signed by the Chief Executive Officer of the common carrier or ocean freight forwarder. Section 15(b) of the 1984 Act and 46 CFR 582.1(b) provide that failure to file the required certification may result in a civil penalty of \$5,000 for each day the violation continues. (Effective October 1, 1996, this will increase to \$5,500 pursuant to the Federal Civil Penalties Inflation Adjustment Act of 1990, Pub L. No. 101-410, 104 Stat. 890, 28 U.S.C. § 2461.) In addition to the civil penalty provision, the Commission's regulations provide, upon 45-days notice, for the cancellation of the tariffs of those carriers, and the suspension of the licenses of those ocean freight forwarders, who fail to file a certification. Furthermore, any initial tariff filing or application for an ocean freight forwarder license that does not include an anti-rebate certification in accordance with Part 582 is rejected.

A program supported by the Bureau's electronic databases is in place to ensure that common carriers and freight forwarders file their certifications. Existing certifications were not due to be renewed during fiscal year 1996. However, approximately 550 certifications were filed by new carriers or freight forwarders registering with the Commission. Carriers and freight forwarders that need to file their initial certification or a renewal can obtain a copy of the certification form directly from the Commission's Internet home page.

### **(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 2,300 bonds and one insurance policy are currently on file. The Bureau estimates that over 1,000 inquiries on surety bond matters were received during the fiscal year.

## **3. Domestic Commerce**

### **(a) Domestic Tariffs**

During fiscal year 1996, carriers operating in the U.S. domestic offshore trades filed 20 new tariffs in ATFI. The Bureau also received and processed two special permission applications to deviate from the domestic tariff filing rules. Fiscal year 1996 was the last year that common carriers operating in the U.S. domestic offshore commerce were required to file tariffs of rates, charges and rules with the Commission 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). The



regulatory responsibility for U.S. domestic offshore commerce was transferred to the STB effective October 1, 1996, pursuant to the ICC Termination Act of 1995, Pub. L. No. 104-88, 109 Stat. 803 (1995). Under an MOU, the Commission will be providing the STB with access to the ATFI system for the electronic filing of tariffs to be filed with the STB. The Bureau made the administrative arrangements for STB's receipt and control of all existing domestic trade tariffs, as well as the domestic tariffs which continue to be filed in the ATFI system after October 1, 1996.

### **(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 12 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 140 vessels and 44 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.

The Bureau's passenger vessel program experienced significant workload increases during fiscal year 1996. These increases are attributable to the continued growth and complexity of the cruise industry overall. The industry's growth has translated into a higher level of certification activity, rulemakings, programs responding to passenger vessel operator bankruptcies, and legislative initiatives. During fiscal year 1996, the Commission received 108 applications for passenger vessel certificates. During the fiscal year, 52 casualty certificates and 68 performance certificates were approved and issued to passenger vessel applicants.

In addition, the Bureau prepared a Further NPR aimed at protecting a higher proportion of passenger deposits and prepaid fares, Docket No. 94-06, *Financial Responsibility Requirements for Nonperformance of Transportation.* Given the Commission's issuance of this Further NPR, the Bureau also prepared a notice to discontinue Docket No. 94-21, *Inquiry into Alternative Forms of Financial Responsibility For Nonperformance of Transportation.*

The Bureau was called upon to respond to Chapter 11 bankruptcy proceedings involving two cruise lines. In this connection, the Bureau monitored relevant activities, advised the Commission, provided guidance to the traveling public and the travel industry, and prepared news releases concerning developments in these matters, which affected thousands of travelers.

The Bureau also prepared a letter, which has been sent to Congress, concerning certain aspects of the Pub. L. No. 89-777 program regarding casualty and nonperformance coverage that appear to warrant legislative action. Some of the issues addressed were: the significantly reduced value of the statute's casualty coverage; the lack of protection for "cruises-to-nowhere" and tickets purchased in the U.S. for cruises embarking at foreign ports; and inflation's erosion of the penalties provided in Pub. L. No. 89-777.

The Bureau was also involved in an investigation of an apparent violation of Pub. L. No. 89-777 arising from uncertificated advertising of the Royal Venture Cruise Line vessel SUN VENTURE, Docket No. 96-16, *Royal Venture Cruise Line, Inc. and Anastassios Kiriakidis, Possible Violations of Passenger Vessel Certification Requirements.*

## **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 1996, 406 new and amending license applications were received for processing. The Commission approved 306 applications, 73 applications were deficient and returned, and 11 applications were withdrawn. One hundred and sixty-five licenses were issued, while 76 licenses were revoked. At the end of the fiscal

year, 1,929 licensed forwarders were operating under the Commission's jurisdiction.

In fiscal year 1996, freight forwarders began submitting the Commission's revised Form FMC-18, *Application for License as an Ocean Freight Forwarder*. The streamlined form ended the requirement to submit financial data and reduced the applicant's estimated paperwork burden from 18 hours to 2 hours.

## **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; through the use of the ATFI system, the Bureau has achieved a "paperless tariff environment." At the end of fiscal year 1996, there were 4,666 effective tariffs in ATFI (Appendix D shows the number of tariff objects filed in the ATFI system in fiscal year 1996).

### **(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 provide support for many of the Commission's programs. Certain information contained in the databases is also available to the public.

## **7. Rulemaking and Docketed Proceedings**

The Bureau recommends the initiation of, or supports, formal rulemakings and Commission docketed proceedings. During fiscal year 1996, the Bureau participated in the following matters:

***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].***

In Docket No. 94-06, the Bureau prepared a Further NPR aimed at protecting a higher proportion of passengers' deposits and prepaid fares; given this Further NPR, a related notice was prepared to discontinue Docket No. 94-21.

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

The Bureau was involved in an investigation of an apparent violation of Pub. L. No. 89-777 arising from uncertificated advertising of the Royal Venture Cruise Line vessel SUN VENTURE.

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

The Commission published a Final Rule on February 12, 1996, to permit an optional, abbreviated service contract format which is intended to reduce duplication and Commission and carrier costs, as well as facilitate automation of the Commission's service contract records. The rule also required service contracts to include the legal names and business addresses of the signatories, and either list affiliates' business addresses or certify that affiliates' business addresses will be provided to the Commission within ten business days of such request.

***Bill Sherwood; Corporate World International, Inc., and Corporate World Relocation International, Inc. [Docket No. 94-09]; F & D Loadline Corporation, Possible Violations of Section 10(b)(1) of the Shipping Act of 1984 [Docket No. 96-03]; and Haewoo Air & Shipping Co., Ltd., dba Haewoo Shipping Co. Ltd., Possible Violations of Section 10(b)(1) of the Shipping Act of 1984 [Docket No. 96-11].***

The Bureau conducted research to support the Bureau of Enforcement in Docket No. 94-09, and prepared a rate analysis of bills of lading, testimony, and affidavits for the Bureau of Enforcement's use in Docket Nos. 96-03 and 96-11.

# I. BUREAU OF ENFORCEMENT

On October 20, 1995, the Commission merged its former Bureaus of Investigations and Hearing Counsel into a new Bureau of Enforcement. The new Bureau provides for closer coordination between investigations and prosecutions, and streamlines the management of these two related functions. Attorneys of the Bureau of Enforcement serve as trial attorneys 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 serve as legal advisors to the Managing Director and other bureaus, and also may be designated Investigative Officers in nonadjudicatory fact finding proceedings. The Bureau monitors all other formal proceedings in order to identify major regulatory issues and to advise the Managing Director and the other bureaus. The Bureau also participates in the development of Commission rules and regulations. On occasion, under the direction of the General Counsel, attorneys from the Bureau may participate in matters of court litigation to which the Commission is a party.

Through investigative personnel, the Bureau monitors and conducts investigations into the activities of ocean common carriers, NVOCCs, freight forwarders, shippers, ports and terminals, and other persons to ensure compliance with the statutes and regulations administered by the Commission. Monitoring activities include: (1) service contract reviews to determine compliance with applicable statutes and regulations, (2) reviews of NVOCC operations, including compliance with bonding requirements; (3) post-licensing and routine compliance checks of licensed ocean freight forwarders to determine whether their operations conform with regulatory requirements; (4) audits of passenger vessel operators to ensure the financial protection of cruise passengers; and (5) various studies and surveys to support Commission programs. Investigations are conducted into

alleged violations of the full range of statutes and regulations administered by the Commission, including: illegal rebating; misdescriptions or misdeclarations of cargo; illegal or unfiled agreements; abuses of antitrust immunity; unlicensed freight forwarding; untariffed cargo carriage; unbonded NVOCC and passenger vessel operations; and various types of consumer abuses, such as failure of carriers or intermediaries to carry out transportation obligations, resulting in cargo delays and financial losses for shippers.

The Commission closed its three district offices in Los Angeles, Miami, and New York on June 8, 1996, but maintains a presence in Los Angeles and Miami, as well as New Orleans and Seattle, through an area representative based in each of those cities. These representatives also serve the other major port cities and transportation centers within their respective areas. Coverage of the North Atlantic region is the responsibility of the Bureau's staff in Washington, D.C. In addition to monitoring and investigative functions, area representatives represent the Commission within their jurisdictions, provide liaison between the Commission and the maritime industry and the shipping public, collect and analyze intelligence of regulatory significance, and assess industry conditions. Liaison activities involve cooperation and coordination with other government agencies, providing regulatory information and relaying Commission policy to the shipping industry and the public, and handling informal complaints.

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

During 1996, the Bureau investigated suspected malpractices by ocean carriers, cargo interests and middlemen in the South American



trades. Other trades were also the subject of malpractice investigations, including the transatlantic, transpacific, Mediterranean, Central American and Caribbean trades. These investigations included improper shipper practices, such as various forms of secret rebates and absorptions, misdescription of commodities and misdeclaration of measurements, as well as carriage of cargo by and for untariffed and unbonded NVOCCs.

The Bureau completed 64 investigations and special inquiries, and 27 compliance checks and audits, which includes service contract audits and audits of NVOCCs and cruise operators. Appendix F summarizes the Bureau's investigative and audit activities. (*See Part III, Surveillance and Enforcement.*)

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

In 1995, the Commission completed a comprehensive investigation into possible abuses of the anticompetitive power of TACA and its member lines. This fact finding investigation was launched in response to reports of alleged unlawful activity by TACA from several sources, including the Commission's own monitoring initiatives and inquiries, and petitions filed by others. The activities addressed in this investigation included possible restrictions on the statutory right of TACA members to take independent action on rates, significant withdrawal restrictions contained in certain vessel sharing agreements which also require membership in TACA, and allegedly untariffed and

discriminatory inland container pools established by TACA members and sanctioned by TACA. In March and May 1995, the Commission approved settlements with members of TACA and of certain vessel sharing agreements to resolve the issues generated in this investigation. The settlements included changes to the conference and agreement structure and procedures, a roll back of rates to 1994 levels, and an agreement to allow independent action on conference service contracts in 1996. The Commission continues to monitor the impact of these settlement agreements through quarterly reports and semiannual meetings with the conference and its members.

At the beginning of fiscal year 1996, 21 enforcement cases were pending final resolution by the Bureau. During the fiscal year, 21 new enforcement actions were commenced. Twenty-four were compromised and settled, administratively closed, or referred for formal proceedings. Eighteen enforcement cases were pending resolution at fiscal year's end.

At the start of fiscal year 1996, the Bureau was party to 11 formal proceedings. During the fiscal year, the Bureau participated in 6 new formal proceedings. Ten proceedings in which the Bureau participated were completed. Accordingly, 7 formal proceedings were pending at the end of the fiscal year.

At the beginning of fiscal year 1996 there were 56 requests for legal advice pending in the Bureau. One hundred seventeen requests for legal advice were received during the fiscal year, and 74 legal advice projects were completed. Accordingly, 99 legal advice matters were pending in the Bureau on September 30, 1996.

As a result of enforcement activity, the Commission collected \$876,959.68 in civil penalties in fiscal year 1996. Settlements were reached with many different segments of the industry (*e.g.*, carriers, cruise operators, shippers, forwarders) operating in the U.S. foreign trades. Civil penalty collections are listed in Appendix E. (*See Part III, Surveillance and Enforcement.*)

In fiscal years 1997 and 1998, the Bureau will continue to pursue fraudulent and anticompetitive practices as well as monitor major U.S. trades. The closing of the remaining three district offices and the reduction in Bureau personnel from 53 in September 1995 to 19 in September 1996, significantly impacts enforcement activity. However, the Bureau will continue to perform all of its enforcement and advisory functions, albeit on a more selective basis. The Bureau will continue to plan enforcement programs with other bureaus and to conduct investigations and audits. Where violations of the 1984 Act are developed, the Bureau will pursue them and negotiate settlements of these cases. The Bureau also will 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 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, 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 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 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 1996, the Office:

- **Completed logistical and other arrangements related to the closing of the Commission's district offices.**
- **Provided administrative support to establish area representatives for the Bureau of Enforcement in Seattle, Los Angeles, New Orleans, and Miami.**

- **Continued to provide contracting guidance and assistance in support of the FMC's ATFI program.**
- **Developed operating procedures for close-out of small purchase procurement actions at the end of each fiscal year.**
- **Implemented a new property automation system and electronic commerce program at the Commission.**
- **Arranged for the printing and distribution of the FMC's 34th Annual Report.**
- **Coordinated the expansion of physical security measures at the headquarters facility in accordance with the Department of Justice's *Vulnerability Assessment of Federal Facilities* study.**
- **Arranged for the release of surplus office space at the headquarters facility.**
- **Provided procurement guidance and services in the acquisition of advisory and assistance support, shipping data, Internet service, and a home page through GPO.**

**(c) Future Plans**

In fiscal year 1997, the Office's objectives include the following: (1) expand the automated property management system for use in other Commission activities for inventory control; (2) continue efforts to expand the Commission's electronic commerce program for paperless office interactions; (3) develop an MOU with the GSA for miscellaneous contracting services in support of the agency's mission; (4) review the Commission's telecommunication requirements to

reduce costs; (5) update internal procurement regulations and procedures in accordance with revisions to the FAR; and (6) continue to provide advisory and assistance support to FMC activities regarding innovative support service approaches.

## **2. Office of Budget and Financial Management**

### **(a) General Office Responsibilities**

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

### **(b) Achievements**

During fiscal year 1996, the Office:

- **Collected and deposited \$2,201,513 from user fees and fine and penalty collections.**
- **Prepared fiscal year 1997 OMB policy base line estimates, coordinated and prepared budget justifications and estimates for the fiscal year 1997 Congressional budget and the fiscal year 1998 budget to OMB, and participated in OMB and Congressional budget hearings.**



- **Prepared a variety of external reports such as: the Civil Monetary Penalty Report and the Current Asset Management Annual Certification (FY 1995 Cash Flow) (Treasury); the Report on First Class Airline Accommodations for FY 1995 (GSA); the Report on Financial Management Improvements (Joint Financial Management Improvement Program); the Annual Leave Year Report, and the Report on Workyears and Personnel Costs (Office of Personnel Management - "OPM"); the Annual Report on Occupational Safety and Health Program (Department of Labor); and the Annual Prompt Payment Report (OMB).**
- **Provided management with monthly status reports on workyears, funding, travel and receivables.**
- **Prepared multiple budgets due to funding by Continuing Resolutions for FY 1996.**
- **Participated on task forces regarding field office reorganization, user fees, and electronic commerce.**

**(c) Future Plans**

During fiscal years 1997 and 1998, the Office will: (1) continue to develop and implement electronic commerce and automate the processing of purchase orders, obligations and payments in conjunction with the Office of Administrative Services and OIRM; (2) review procedures and controls for cash management; (3) 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, including implementation of the Debt Collection and Improvement Act of 1996.

## **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, career transition, retirement, and personnel security.

### **(b) Achievements**

During fiscal year 1996, the Office:

- **Drafted new Commission Orders on *Reduction in Force in the Senior Executive Service and Career Transition Assistance Plan* and updated Commission Orders on the agency's *Merit Staffing Program* and the *Drug-Free Workplace Plan*.**
- **Prepared management information papers on a variety of personnel issues, and issued memoranda to advise employees on a number of issues.**
- **Provided ongoing career transition assistance and counseling to employees separated by reduction in force ("RIF") at the end of the last fiscal year, and implemented regulations on out-placement assistance and career transition. Also provided assistance to GSA in establishment of a governmentwide Career Transition Center in our headquarters building.**

- **Prepared to implement numerous potential furloughs during the period of continuing resolutions, including updating the Commission's shutdown plan.**
- **Worked closely with the contracted payroll agent to make certain employees were paid as promptly as possible upon returning from furlough in mid-January and to ensure that all January 1996 pay changes were processed correctly.**
- **Issued RIF notices to employees to implement the Commission's plan to close its remaining district offices in Miami, Los Angeles, and New York; calculated severance payments and other entitlements for affected employees; and completed process by separating employees in June 1996.**
- **Conducted a complete merit staffing program which included filling a number of critical positions, including Directors, OIRM and Office of Budget and Financial Management. Completed classification and staffing actions necessary to appoint area representatives. Prepared documentation necessary to effect merger of the Bureau of Hearing Counsel and the Bureau of Investigations into the Bureau of Enforcement.**
- **Conducted three Voluntary Early Retirement Open Seasons (four eligible employees retired early). Submitted a request for Voluntary Early Retirement Authority to OPM for use during fiscal year 1997. Upon approval, issued memorandum to employees offering early retirement during the first quarter of FY 1997.**

- **Monitored and modified Employee Assistance Program contracts for the agency and sponsored on-site wellness.**
- **Conducted the Federal Employees Health Benefits Program and Thrift Savings Plan Open Seasons, including sponsoring an annual Employee Health Benefits Fair. Sponsored Blue Cross/Blue Shield Service Days during which a representative met 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.**
- **Managed a very successful Annual Leave Transfer Program.**
- **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 1997 and 1998, 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.

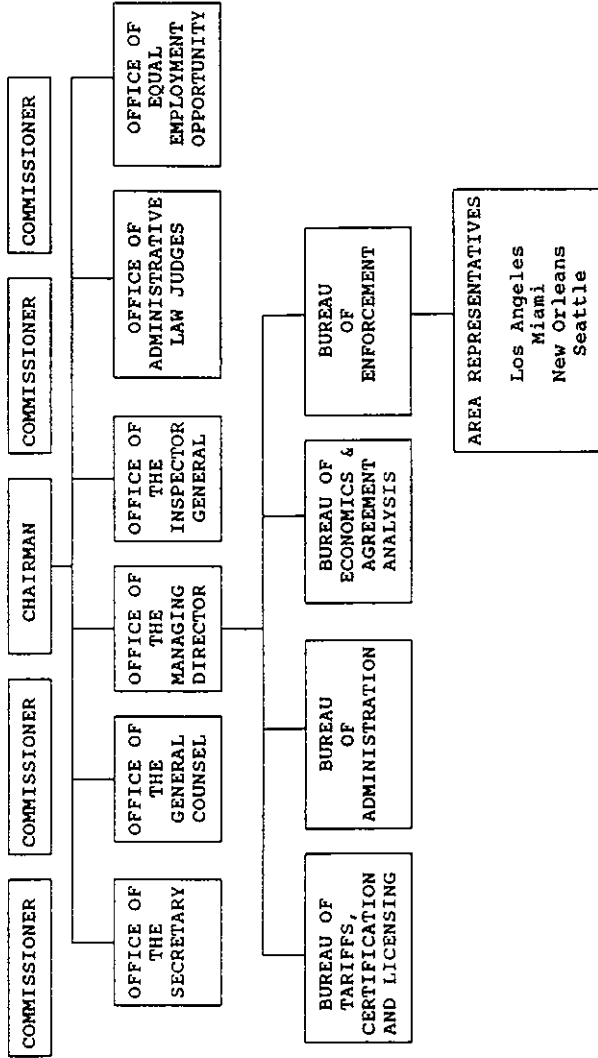
## **APPENDIXES**



# APPENDIX A

## ORGANIZATION CHART

FEDERAL MARITIME COMMISSION  
ORGANIZATION CHART



# APPENDIX B

## COMMISSION PROCEEDINGS Fiscal Year 1996

### *Formal Proceedings*

Decisions .....	8
Discontinuances & Dismissals .....	4
Initial Decisions Not Reviewed .....	17
Rulemakings - Final Rules .....	5
- Withdrawn .....	<u>1</u>
Total .....	<u>35</u>

<i>Special Dockets</i> .....	142
------------------------------	-----

<i>Informal Dockets</i> .....	15
-------------------------------	----



# APPENDIX C

## AGREEMENT FILINGS AND STATUS

Fiscal Year 1996

### Agreements Filed in FY 1996 (including modifications)

Carrier .....	179
Terminal .....	98
Total .....	277

### Agreements Processing Categories in FY 1996

Forty-Five Day Review .....	87
Shortened Review .....	16
Exempt-Effective Upon Filing .....	186
Rejection of Filing .....	0
Formal Extension of Review Period .....	3
Approved Under Shipping Act, 1916 .....	1
Total .....	293

### Carrier Reports Submitted for Commission Review

Minutes of Meetings .....	1,187
Operating and Ad Hoc Reports .....	25
Total .....	1,212

### Agreements on File as of September 30, 1996

Conference .....	34
Interconference .....	3
Pooling & Equal Access .....	8
Joint Service .....	20
Sailing & Charter .....	112
Cooperative Working, Agency, & Equipment Interchange .....	136
Terminal .....	1,102
Total .....	1,415

### Domestic Offshore Trade Activities

Annual Reports Filed .....	6
GRI Reviews .....	1

# APPENDIX D

## TARIFF AND SERVICE CONTRACT FILINGS AND SPECIAL PERMISSION APPLICATIONS Fiscal Year 1996

*Electronic Tariffs\* in Effect* ..... 4,666

### *Electronic Tariff Filings*

*Tariffs (new)\** ..... 745  
*Rules* ..... 70,338  
*Commodity Descriptions* ..... 234,676  
*Tariffs Line Items* ..... 2,498,191  
*Inland Tables* ..... 10,019  
*Tariff Records* ..... 2,187  
*Organization Records* ..... 1,855

### *Essential Term Documents*

*New Service Contracts* ..... 9,425  
*Service Contract Amendments* ..... 19,427

### *Special Permission Applications*

#### *Foreign*

*Granted* ..... 191  
*Denied* ..... 10  
*Withdrawn* ..... 19

#### *Domestic*

*Granted* ..... 2  
*Denied* ..... 0  
*Withdrawn* ..... 0

---

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

# APPENDIX E

## CIVIL PENALTIES COLLECTED

Fiscal Year 1996

ANR Inc. . . . .	\$10,000.00
<b>Blue Eagle Consolidations . . . . .</b>	<b>22,500.00</b>
Celebrity Cruises, Inc. . . . .	20,000.00
<b>China International Freight . . . . .</b>	<b>10,000.00</b>
Columbus Line. . . . .	160,000.00
<b>Corporate World Int'l . . . . .</b>	<b>5,000.00</b>
Danzas Corporation . . . . .	75,000.00
<b>Glory Freight Ltd. . . . .</b>	<b>10,000.00</b>
Hellmann Int'l Forwarders . . . . .	80,000.00
<b>IEL Cargo System Inc. . . . .</b>	<b>10,000.00</b>
Immortal Service Inc. . . . .	7,500.00
<b>L.C. Shipping Co. Inc. . . . .</b>	<b>12,500.00</b>
Longrow Shipping Limited . . . . .	35,000.00
<b>Martyne C. Merritt . . . . .</b>	<b>336,959.68</b>
Norwegian Cruise Line Ltd . . . . .	4,000.00
<b>Oceanlink Forwarder Co. . . . .</b>	<b>8,500.00</b>
Rohde & Liesenfeld, Gmbh . . . . .	55,000.00
<b>Trans Power Int'l Forwarders . . . . .</b>	<b>10,000.00</b>
Unifret Int'l Texas. . . . .	<u>5,000.00</u>
 <b>Total Civil Penalties Collected . . . . .</b>	 <b>\$876,959.68</b>

# APPENDIX F

## INVESTIGATIONS

Fiscal Year 1996

*Investigations/Special Inquiries Opened:* 44

*Audits/Compliance Checks Opened:* 6

*Compliance Checks:* 4

*Cruise Audits:* 2

**Total Openings:** 50

*Investigations/Special Inquiries Completed:* 64

*Audits/Compliance Checks Completed:* 27

*Compliance Checks:* 16

*Service Contract Audits:* 1

*NVOCC Audits:* 8

*Cruise Audits:* 2

**Total Completions:** 91

*Openings and completions reflect the closing of the remaining district offices and the placement of one area representative in Miami, Florida; New Orleans, Louisiana; Los Angeles, California; and Seattle, Washington in fiscal year 1996.*

# APPENDIX G

## STATEMENT OF APPROPRIATIONS, OBLIGATIONS AND RECEIPTS FOR THE FISCAL YEAR ENDED SEPTEMBER 30, 1996

### *APPROPRIATIONS:*

Public Law 104-134: For necessary expenses of the Federal Maritime Commission as authorized by section 201(d) of the Merchant Marine Act of 1936, as amended (46 App. U.S.C. 1111), including services as authorized by 5 U.S.C. 3109, hire of passenger motor vehicles authorized by 31 U.S.C. 1343 (b); and uniforms or allowances therefor, as authorized by 5 U.S.C. 5901-02; Provided, that not to exceed \$2,000 shall be available for official reception and representation expenses.	\$14,855,000
Public Law 104-134, Omnibus Consolidated Rescissions and Appropriations Act of 1996	<u>- 19,000</u>
<b>Revised Appropriation</b>	<b>\$14,836,000</b>

### *OBLIGATIONS AND UNOBLIGATED BALANCE:*

Net obligations for salaries and expenses for the fiscal year ended September 30, 1996.	<b>\$14,835,840</b>
---	---------------------

### *STATEMENT OF RECEIPTS:* Deposited with the General Fund of the Treasury for the Fiscal Year Ended September 30, 1996.

Publications and reproductions, Fees and Vessel Certification, and Freight Forwarder Applications	\$1,155,777
ATFI user fees	\$ 168,776
Fines and penalties	<u>\$ 876,960</u>
<b>Total general fund receipts</b>	<b>\$2,201,513</b>