FEDERAL MARITIME COMMISSION

47th ANNUAL REPORT

for

Fiscal Year

2008

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

March 31, 2009

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, now codified, as amended, at 46 U.S.C. §306 (a), I am pleased to submit the 47th Annual Report of the activities of the Federal Maritime Commission for fiscal year 2008.

Sincerely,

Karen V. Gregory
Secretary

MEMBERS OF THE COMMISSION*

Vacant
Chairman
Appointed
Expired

Harold J. Creel, Jr.
Commissioner
Appointed 1994
Term Expires 2009

Joseph E. Brennan
Commissioner
Appointed 1999
Term Expired 2008

Rebecca F. Dye
Commissioner
Appointed 2002
Term Expires 2010

*A. Paul Anderson***
Commissioner
Appointed 2003
Term Expired 2007

*One vacancy as of December 1, 2006
**Commissioner Anderson resigned as of May 30, 2008.

SENIOR COMMISSION OFFICIALS

Counsel to Commissioner Anderson .... *Lucille A. Streeter*

Counsel to Commissioner Brennan .... *Steven D. Najarian*

Counsel to Commissioner Creel .... *David R. Miles*

Counsel to Commissioner Dye .... *Edward L. Lee, Jr.*

General Counsel .... *Peter J. King*

Secretary...*Karen V. Gregory*

Administrative Law Judge .... *Clay Guthridge*

Director, Office of
Equal Employment Opportunity .... *Vacant*

Inspector General .... *Adam Trzeciak*

Director of Administration .... *Vacant*

Director of Operations .... *Austin L. Schmitt*

Director, Bureau of Certification
and Licensing .... *Sandra L. Kusumoto*

Director, Bureau of Enforcement .... *Vern W. Hill*

Director, Bureau of
Trade Analysis .... *Florence A. Carr*

Vision

Fairness and Efficiency in U.S. Maritime Commerce

Mission

The FMC's Mission is to:

• Develop and administer policies and regulations that foster a fair, efficient and secure maritime transportation system;

• Protect U.S. maritime commerce from unfair foreign trade practices and market-distorting activities;

• Facilitate compliance with U.S. shipping statutes through outreach and oversight; and

• Assist in resolving disputes

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 Merchant Marine. Under the reorganization plan, the shipping laws of the U.S. were separated into two categories -- regulatory and promotional. The newly-created FMC was charged with the administration of the regulatory provisions of the shipping laws. The responsibilities associated with the promotion of an adequate and efficient U.S. Merchant Marine were assigned to the Maritime Administration, now located within the Department of Transportation.

The Commission is responsible for the regulation of oceanborne transportation in the foreign commerce of the U.S. The passage of the Shipping Act of 1984 (Shipping Act) brought about major change in the regulatory regime applicable to shipping companies operating in the U.S. foreign commerce. The subsequent passage of the Ocean Shipping Reform Act of 1998 ("OSRA"), with its deregulatory amendments and modifications to the Shipping Act, further signaled a significant shift in shipping regulation.

B. FUNCTIONS

The principal statutes administered by the Commission are the Shipping 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. Most of these statutes were amended by

OSRA and are now codified in Title 46 of the U.S. Code at sections 44103 through 40904.

The Commission's regulatory responsibilities include:

- **Reviewing agreements among ocean common carriers and marine terminal operators (MTOs) relating to service in the U.S. foreign oceanborne trades, to ensure that they do not cause substantial increases in transportation costs or decreases in transportation services.**

- **Reviewing service contracts between ocean common carriers and shippers to guard against detrimental effects to shipping in the U.S. foreign trades.**

- **Ensuring that common carriers' tariff rates and charges are accessible to the shipping public in private, electronically accessible systems.**

- **Regulating rates, charges, and rules of 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 refund passenger fares for the nonperformance of a voyage or cruise.**

- **Licensing ocean transportation intermediaries (OTIs) in the U.S. to protect the public from unqualified, insolvent, or dishonest companies.**

- **Ensuring that OTIs maintain sufficient financial responsibility to protect the shipping public from financial loss.**

- **Ensuring against harm to the shipping public by investigating rates, charges, classifications, and practices of common carriers, MTOs, and OTIs operating in the foreign commerce of the U.S.**

- **Taking action to address unfavorable conditions arising out of foreign government or business practices in the U.S. foreign shipping trades.**

The Shipping Act is applicable to the operations of common carriers and other persons engaged in U.S. foreign commerce. It exempts agreements effective under the Shipping Act and the Commission's jurisdiction 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 result in an unreasonable increase in transportation cost or unreasonable reduction in service or otherwise violate the Shipping Act.

In addition to evaluating and monitoring agreements among carriers and marine terminal operators, the Commission is also responsible for ensuring that individual carriers and marine terminal operators, as well as those permitted by agreement to act in concert, treat shippers and other members of the shipping public fairly by not engaging in prohibited acts set out in the Shipping Act. The Shipping Act also requires all common carriers to make their rates, charges and practices available in automated tariff systems that must be available electronically to the public. Ocean common carriers are permitted to enter into service contracts with their shipper customers. Such contracts are confidentially filed with the FMC in its internet-based system. The Commission has, by regulation, also allowed non-vessel-operating common carriers (NVOCC) to offer service to customers under the terms of confidentially-filed contracts called NVOCC Service Arrangements (NSAs). The Commission does not approve or disapprove general rate increases (GRIs) or individual commodity rate levels in the U.S. foreign commerce, except with regard to certain foreign government-owned or -controlled carriers.

The Commission is authorized 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. The Commission may address actions by carriers or foreign governments that either adversely affect shipping in the U.S. foreign oceanborne trades, including the intermodal operations of carriers or the operations of OTIs, or that impair access of U.S.-flag vessels to ocean trade between foreign ports.

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

The Commission also ensures that all OTIs have established sufficient financial responsibility to protect shippers from financial loss. Additionally, the Commission licenses all U.S. OTIs.

The Commission carries out its regulatory responsibilities by conducting informal and formal investigations. It holds hearings, considers evidence, renders decisions, and issues appropriate orders and regulations. The Commission also adjudicates and mediates disputes involving the regulated community, the shipping public, and other affected individuals or interest groups.

C. ORGANIZATION

The Commission is composed of five commissioners appointed by the President with the advice and consent of the Senate. Commissioners serve five-year, staggered terms, and no 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 General Counsel; Office of the Secretary (including the Library and the Office of Consumer Affairs and Dispute Resolution Services); Office of Administrative Law Judges; Office of Equal Employment Opportunity; Office of the Inspector General; Office of Administration (including the Offices of Financial Management, Human Resources, Information Technology, and Management Services); and Office of Operations (including the Bureaus of Certification and Licensing, Enforcement, Trade Analysis and the Commission's Area Representatives).

In fiscal year 2008, the Commission was authorized a total of 180 full-time equivalent positions and had a total appropriation of $22,072,000. That appropriation supported the actual employment of 115 full-time equivalent positions during the fiscal year. While the majority of its personnel are located in Washington, D.C., the Commission has Area Representatives in Houston, Los Angeles, New Orleans, New York, Seattle and South Florida.

II

THE YEAR IN REVIEW

In fiscal year 2008, the total volume of U.S. liner exports shipped worldwide grew by 15 percent. Liner imports to the U.S., however, continued to weaken, declining by 6 percent at fiscal year end. As in preceding years, China was the leading trading partner in liner cargo with the U.S., and over half of all the U.S. liner cargo (imports and exports) was concentrated in trade with nations in northeast Asia. At the end of the fiscal year, indications of a serious global economic downturn were present as the credit and financial crises unfolded and recessionary conditions began to affect economies worldwide. As consumer spending in the U.S. and abroad contracts, the demand for liner cargo is forecast to decline dramatically.

The Commission continued to monitor the international liner trade, focusing in large part on issues relating to ocean common carriers and marine terminal operators in filed agreements. The Commission, through several of its offices and bureaus, reviewed the Clean Truck Program (CTP) that was devised as part of the Clean Air Action Plan under the *Los Angeles and Long Beach Port Infrastructure and Environmental Programs Cooperative Working Agreement* and the *Los Angeles/Long Beach Port/Terminal Operator Administration and Implementation Agreement*. On September 24, 2008, the Commission initiated a formal investigation to determine whether certain practices of the Ports of Los Angeles and Long Beach (Ports) violate the Shipping Act of 1984. These actions and others by various components of the Commission are discussed in detail below.

The Commission monitored agreements that had potential for the greatest competitive impacts due to the parties' ratemaking authority or high market share, such as the Transpacific Stabilization Agreement. In August of 2008, the Commission issued an order under section 15 of the Shipping Act which required specific pricing and operational data from carriers serving the trade between the U.S. and Australia/New Zealand due to competitive concerns. Commission staff is preparing for an ongoing analysis of market changes in the liner trade between the U.S. and North Europe following the October 2008 expiration of antitrust immunity in the European Union.

In fiscal year 2008, the Commission drafted a new Strategic Plan for FY 2010-2015, and restated its mission as follows: to foster a fair, efficient and reliable international ocean transportation system and to protect the public from unfair and deceptive practices. The Commission set forth three draft strategic goals: (1) to maintain an efficient and competitive international ocean transportation system; (2) to protect the public from unlawful, unfair and deceptive ocean transportation practices and resolve shipping disputes; and (3) to advance agency objectives through high-performance leadership and efficient stewardship of resources. The Strategic Plan was reviewed by OMB and submitted for public comment through publication on the Commission's website. Once final, the Plan will be formally reported to Congress.

This Report highlights areas of particular interest and provides an office-by-office synopsis of activities and accomplishments during the past fiscal year.

A. OUTREACH

During fiscal year 2008, the Commission continued to enhance its website by adjusting how information is presented, expanding the amount of information available, and adding additional functions. For example, weekly agreement filing notices that appear in the Federal Register are now published on the agency's website. This enhancement provided greater public awareness of agreement filings. The Commission continually evaluated the overall usefulness of the site and coordinated efforts agency-wide to improve the website's content and user-friendliness.

The Commission also expanded contact with all segments of the maritime industry and the public. The Commission hosted a number of industry briefings in Washington, DC. Staff made several presentations in port areas aimed at securing compliance with agency regulations and updating information. The Commission, through its Alternative Dispute Resolution program, also promoted discussions among carriers and shippers to address U.S. exporter difficulties in obtaining containers and booking space on outbound vessels, particularly in the trade from the U.S. Pacific coast to Asia. The Commission initiated a regular Commission meeting schedule to discuss industry and administrative matters in both public and closed sessions in fiscal year 2008 as well.

During the fiscal year, the Commission continued to make more information and filed documents available electronically and to improve responsiveness to requests for public information. Specifically, key documents filed in formal proceedings are available to the public through the agency's website. In addition, 28 bound volumes of the Commission's official decisions were converted to electronic format. The Commission is developing plans to post these decisions to its website during fiscal year 2009.

The process of electronically scanning/imaging Commission records also continued during fiscal year 2008. The document management system that the Commission oversees has helped support the agency's initiatives for continuity of operations by improving preservation of and Commission staff access to Commission documents. The electronic documents also improve Commission staff response time to public inquiries and public access to electronic files.

B. TRADE DEVELOPMENTS[1]

In fiscal year 2008, the total volume of U.S. liner exports shipped worldwide grew at a rate of 15 percent. The growth rate was 12 percent in FY 2007. In contrast, the total volume of liner imports to the U.S. continued to decline by 6 percent. While import cargo still exceeded export cargo, the imbalance in cargo volume improved. For every loaded twenty-foot equivalent container unit (TEU) exported out of the U.S., 1.5 TEUs were imported. As in preceding years, China was the leading trading partner in liner cargo with the U.S., and over half of all the U.S. liner cargo (imports and exports) was concentrated in trade with nations in northeast Asia. Containership capacity deployed on the world market continued to exceed demand, and it is forecasted that more capacity will be added to the market despite rapid declines in cargo volume expected as a result of the global recession. The worldwide ship capacity currently on order amounts to almost 60 percent of the existing fleet capacity. Concentration in the liner shipping industry remained unchanged for the fiscal year, with the top ten ocean carriers in control of about 60 percent of the world's containership capacity.

In the largest of the U.S. liner trades, fiscal-year growth in U.S. exports to Asia was strong at a rate of 18 percent. Generally, the weakness of the U.S. dollar relative to foreign currencies for much of the fiscal year made U.S. goods more affordable overseas. Declining conditions in the economy reduced the U.S. demand for imports from Asia, causing cargo volume to fall by 6 percent. Nonetheless, for every one TEU of U.S. exports that moved outbound, 2.2 TEUs of imports from Asia were shipped inbound. In the outbound direction to Asia, freight rates increased as a result of the strong export growth, and some shippers reported that they were having to book vessel space weeks in advance due to the increase in demand. In this trade direction, members of the rate

[1] As to developments in particular trade lanes, please see section III, "Developments in Major U.S. Foreign Trades."

discussion agreement, i.e., the *Westbound Transpacific Stabilization Agreement* (WTSA), have a combined market share of 69 percent. Conversely, in the inbound direction from Asia, attempts by members of the *Transpacific Stabilization Agreement* (TSA) to implement general rate increases were reportedly unsuccessful due to the decline in cargo volume. TSA, however, increased its market share from 80 to 86 percent with the addition of China Shipping Container Lines Co., Ltd. ("China Shipping") as a new member to the rate discussion agreement.

In the liner trade between the U.S. and North Europe, U.S. export growth for the fiscal year was significant at 13 percent, while import cargo was down by 5.5 percent. Containerized automobiles topped the list of commodities shipped outbound, accounting for 13 percent of the total export cargo volume in TEUs. For the first time in over a decade, the cargo volume in each trade direction was approximately balanced. Recessionary conditions in the economies of North Europe and the U.S. are forecasted to reduce cargo volume in both trade directions. Further, carriers may have to increase the coordination of their operations to manage excess capacity in the trade in some areas. For the fiscal year, vessel capacity was cut by 5 percent in each trade direction. Notably, CMA CGM S.A. and China Shipping terminated their joint service under their vessel-sharing agreement. Instead, each carrier opted to charter vessel space from the existing services of other carriers in the trade.

Between the U.S. and the region of Australia, New Zealand, and the Pacific Islands (Oceania), U.S. export cargo grew by 17 percent, but import cargo from the region fell slightly. The volume of U.S. export cargo exceeded import cargo by 79,843 TEUs, or over 40 percent. Over the fiscal year, various agreement changes and the rationalization of services between carriers resulted in vessel capacity reductions in both trade directions. ANL Singapore Pte., Ltd. (ANL), a subsidiary of CMA CGM, joined the *Australia and New Zealand-United States Discussion Agreement* (ANZUSDA), the voluntary rate discussion agreement from Australia/New Zealand to the United States. ANL's membership in ANZUSDA increased the market share of the agreement to 85 percent. In the trade direction from the U.S. to Australia/New Zealand, the market share of the voluntary rate discussion agreement, i.e., the *United States/Australasia Discussion Agreement* (USADA), was 90 percent. In addition, CMA CGM and ANL joined the *U.S. Pacific Coast-Oceania Agreement*, the vessel sharing and sailing agreement among Maersk Line, Hamburg-Süd, and Hapag-Lloyd that operates services between Oceania and the U.S. Pacific Coast. As a result of these changes, all of the carriers providing direct services in the trade became interconnected as parties to the rate discussion and vessel-sharing agreements. To assess and monitor the competitive impact of these changes more thoroughly, in August 2008, the Commission issued an order under section 15 of the Shipping Act to obtain relevant pricing and operational data from carriers serving the trade.

In FY 2008, U.S. liner export cargo grew by 21 percent between the U.S. and South America. In contrast, liner import cargo from South America declined by 11 percent. Export cargo exceeded import cargo for the first time in a decade. The region is generally divided into two liner trade sectors: the west coast of South America and the east coast of South America. In the western sector, vessel capacity expanded by seven percent during the fiscal year. Major carriers providing direct service in the trade also participate in the *West Coast of South America Discussion Agreement* (WCSADA), a discussion agreement with voluntary rate authority between the U.S. and nations along the west coast of South America. During the fiscal year, Hapag-Lloyd withdrew from WCSADA. In the eastern sector of the trade, vessel capacity was cut by eight percent as a result of carriers redeploying excess capacity to other trades and entering into vessel-sharing agreements. Over the course of the fiscal year, five new vessel-sharing agreements were formed in this trade sector. Unlike the western sector, carriers operating between the U.S. and east coast of South America do not participate in a broad-based discussion agreement.

C. RESTRICTIVE TRADE PRACTICES

The Commission is responsible for identifying and addressing protectionist practices of other countries that unreasonably favor their domestic companies or discriminate against U.S. trade interests in ocean shipping. In this regard, the Commission may issue rules in response to foreign practices that create conditions unfavorable to U.S. shipping in general. It also may institute countermeasures in response to foreign laws or policies that adversely affect U.S. carriers. It also can initiate appropriate action in instances where a U.S.-flag vessel faces unfair barriers in entering a foreign-to-foreign trade.

The Commission continued to monitor regulations and port practices of the Government of Japan. In fiscal year 2001, the Commission imposed its semiannual reporting requirement for U.S. and Japanese carriers. The Commission continued to require semiannual reports and to review them for any developments in Japanese practices.

The Commission's Permanent Task Force on International Affairs, established in 2000, is chaired by an attorney in the Office of General Counsel and made up of personnel from that office and the Bureaus of Enforcement, Trade Analysis, and Certification and Licensing. The Task Force is responsible for identifying and evaluating foreign practices which might have adverse impacts on U.S. shipping interests.

D. TRADE OVERSIGHT

As part of its statutory responsibilities, the Commission maintains systematic oversight of the commercial activities of ocean liner carriers and other regulated entities in the U.S. oceanborne trades. On a regular basis, the Commission also monitors economic and trade conditions that affect the ocean shipping industry. The Commission's oversight helps to ensure regulatory compliance by uncovering unreasonable or unfair industry behavior. These efforts also help identify potentially unfavorable trade practices that could affect U.S. oceanborne commerce.

During the fiscal year, the Commission took action to address a number of competitive concerns relating to the agreement activities of ocean common carriers and marine terminal operators. Specifically, the Commission reviewed the Clean Truck Program (CTP) that was devised as part of the Clean Air Action Plan under the *Los Angeles and Long Beach Port Infrastructure and Environmental Programs Cooperative Working Agreement*. On August 1, 2008, the Ports of Los Angeles/Long Beach (Ports) filed an amendment with the FMC to their agreement that expanded the Ports' authority to discuss and agree on provisions of the CTP such as the deadlines for banning older trucks in the use of drayage service at the Ports, a drayage truck replacement (or retrofit) program, a clean truck fee (with certain exceptions), a Clean Truck Fund, and a concession agreement for Licensed Motor Carriers (LMCs) to provide drayage service at the Ports. On September 12, 2008, the Commission issued a formal Request for Additional Information (RFAI) to conduct a thorough competitive impact assessment of the amended agreement in accordance with the U.S. shipping statutes. Responses to the RFAI were submitted by the Ports on September 19, and October 9, 2008.

On a related matter, on April 3, 2008, the Commission issued a formal Request For Additional Information for its review of the *Los Angeles/Long Beach Port/Terminal Operator Administration and Implementation Agreement*, which was filed with the FMC on February 14, 2008. That agreement authorizes the discussion of, and coordination on, the implementation of port programs, including certain elements of the CTP, between the Ports of Long Angeles/Long Beach and members of the *West Coast MTO Agreement*. Upon receipt of the requested information on May 15, 2008, the Commission took no further action to prevent the agreement from becoming effective under the Shipping Act. In allowing the agreement to take effect, the Commission gave notice that it did not wish to delay the implementation of aspects of port programs that are intended for the public benefit, such as improving air quality or port security.

E. ALTERNATIVE DISPUTE RESOLUTION

During fiscal year 2008, the Commission continued to support alternative dispute resolution (ADR) in resolving shipping industry disputes, and encouraged parties to disputes to utilize the program in lieu of litigation. Through the Office of Consumer Affairs and Dispute Resolution Service (CADRS), the Commission provides services to assist parties in resolving disputes and shipping problems arising in the international ocean shipping industry. A broad range of services are designed to avoid the expense and delays inherent in litigation, and to facilitate the flow of U.S. ocean commerce. In fiscal year 2008, 568 complaints were received that necessitated dispute resolution services.

CADRS also adjudicates small claims through informal proceedings under 46 CFR Part 502, Subpart S. Office personnel serve as settlement officers in such cases, which involve complaints seeking reparations up to $50,000 for violations of the shipping statutes. Those claims generally involve alleged prohibited acts in connection with the international transportation of goods, or the failure to establish, observe, and enforce just and reasonable regulations and practices. Four of these complaints were filed in fiscal year 2008. CADRS also evaluates and adjudicates applications for permission to apply non-tariff rates, and to waive or refund freight charges arising from various errors in tariff publications, an inadvertent failure to publish an intended rate, or a misquotation of a rate.

During fiscal year 2008, the Commission also utilized its ADR program to address problems that U.S. exporters encountered in obtaining containers, particularly reefer containers, and booking space on outbound vessels, particularly from the U. S. west coast to Asia. Carriers had repositioned vessels from the U.S. trades to more profitable Europe-Asia and Intra-Asia trades at the same time that U.S. exporters experienced significantly higher demand for their products. The consequent shortage of containers and vessel space led to practices that exacerbated the difficulties. Shippers and carriers alike experienced significant booking and capacity problems. The Commission, through its ADR program, promoted discussions among carriers and shippers to address carrier and shipper concerns.

F. ENFORCEMENT

The Commission has Area Representatives in Houston, Los Angeles, South Florida, New Orleans, New York and Seattle. These representatives serve as liaisons between the Commission and various maritime interests in their respective areas and investigate activity that may violate the Shipping Act.

During fiscal year 2008, the Bureau of Enforcement investigated and prosecuted illegal practices in many trade lanes, including the Transpacific, North Atlantic, Central and South American, Mediterranean, West Africa, Oceana, and Caribbean trades. These included market-distorting activities such as various forms of rebates and absorptions, misdescription of commodities and misdeclaration of measurements, illegal equipment substitution, unlawful use of service contracts, as well as carriage of cargo by and for untariffed and unbonded NVOCCs. Most of these investigations were resolved informally, some with compromise settlements of civil penalties.

Several matters also arose with respect to activities pursuant to filed and unfiled agreements between and among ocean common carriers and marine terminal operators. A major investigative effort was initiated in fiscal year 2008 into the respective Clean Truck Programs of Los Angeles and Long Beach, CA, including the Ports' operations and practices under several agreements filed with the Commission. Enforcement efforts also continued with respect to a number of unlicensed and unbonded NVOCCs specializing in the carriage of used household goods, including the VOCCs and licensed NVOCCs providing service to such unlicensed and unbonded operators.

The Commission collected $182,500 in civil penalties this past fiscal year, which was remitted to the U.S. Treasury (*see* Appendix E). These collections represent a wide range of violations in our major trade lanes.

III

DEVELOPMENTS IN MAJOR U.S. FOREIGN TRADES

A. NORTH EUROPE

Throughout much of fiscal year 2008, the pattern of cargo growth between the U.S. and North Europe mirrored the recent trend of past years. The weak value of the U.S. dollar against European currencies stimulated the demand for U.S. liner export cargo, which grew by about 13 percent in comparison to the preceding fiscal year. Containerized automobiles topped the list of liner commodities shipped from the U.S. to North Europe, accounting for 13 percent of the total export cargo volume in TEUs (twenty-foot equivalent units). Conversely, the troubled housing market curbed the U.S. demand for imported liner cargo from North Europe, which declined by 5.5 percent compared to the preceding fiscal year. Shipments of beer and ale from North Europe, however, remained strong as the top commodity for the fiscal year, accounting for 11 percent of the total import cargo volume in TEUs. Cargo volumes between the outbound and inbound trade directions came into approximate balance for the first time in over a decade.

Toward the end of the fiscal year, as the subprime mortgage and financial crises unfolded, recessionary conditions began to affect the economies of North Europe and the United States. The demand for liner cargo notably declined as consumer spending in the U.S. and abroad contracted. It is expected that trade conditions will worsen for a prolonged period. Trade forecasts estimate that, in fiscal year 2009, import cargo from North Europe will fall by 12 percent, while the growth of U.S. export cargo will be flat in stark contrast to the substantial U.S. export growth of the past two fiscal years.

It is anticipated that carriers serving the trade may increase the coordination of their operations through agreements to manage the likely oversupply of vessel capacity resulting from the drop in demand. Over the course of the fiscal year, vessel capacity in the trade was reduced by 5 percent in both directions, while the average utilization of vessel capacity was 83 percent in the outbound direction and 73 percent in the inbound direction. Notably, in April 2008, CMA CGM S.A. and China Shipping Container Lines Co., Ltd. (China Shipping) terminated the loop service that they jointly operated through their vessel-sharing agreement. Instead, each carrier chartered vessel space from the existing services of other carriers in the trade. CMA CGM entered into a space-charter agreement with Maersk Line, and China Shipping entered into a space-charter agreement with Evergreen Line.

In response to the decision of the European Union (EU) to repeal the block exemption for liner shipping conferences (Council Regulation 4056/86), members of the *Trans-Atlantic Conference Agreement* (TACA) ceased operating under the agreement and canceled their conference tariffs in June 2008. At that time, the market share of the conference was about 40 percent in each trade direction. TACA was formally canceled in September 2008, and the repeal of the conference block exemption took effect on October 18, 2008. Rate volatility reportedly increased in the trade, especially in the application of surcharges, after the conference disbanded. Earlier in the fiscal year, it was also reported that rate levels in the outbound direction rose in response to the growth of U.S. exports. However, most recently, carriers reported that average freight rates between the U.S. and North Europe fell by 30 percent with the decline in cargo volume.

In June 2008, the European Commission (EC) issued its final guidelines for maritime transport services under the competition laws of the EU. Section 3.2 of the guidelines sets forth conditions for the exchange of information between ocean liner carriers in compliance with the competition laws. With the guidelines in place, 20 carriers operating between the U.S. and the member states of the EU filed the *Container Trade Statistics Agreement* (CTSA) with the FMC, which upon the Commission's review, took effect under the Shipping Act on October 13, 2008. CTSA provides for a system of information exchange between its members as well as the formation of the *European Liner Affairs Association* (ELAA) as a trade association under which the members may conduct meetings. Under the provisions of CTSA, the members may not discuss or agree on the deployment of vessel capacity, rates, charges, or liner service terms. In the U.S./North Europe trade, the combined market share of the CTSA members was 88 percent in each trade direction.

B. MEDITERRANEAN

Recessionary conditions in the U.S. and abroad restrained cargo growth in the trade between the U.S. and the Mediterranean. For fiscal year 2008, U.S. liner exports grew moderately at a rate of 4.5 percent. In the preceding fiscal year, U.S. exports rose by 28 percent. The U.S. demand for Mediterranean imports continued to decline to a greater extent than in the past. Liner cargo volume from the Mediterranean to the U.S. fell by 13.3 percent in fiscal year 2008, compared to a decline of 5.3 percent in fiscal year 2007. The U.S. demand for such major goods as ceramic tiles, furniture, and marble from the Mediterranean region was hurt by the failing housing market and the subprime mortgage crisis. Wine was the top imported commodity, accounting for 8 percent of the total import cargo volume in TEUs. The imbalance in cargo volume, however, continued to favor imports. For every export TEU moving outbound from the U.S., 1.3 TEUs of import cargo moved inbound. The outlook for the trade foresees further declines in import cargo and no growth in export cargo.

Traditionally, the existence of excess capacity in this trade unduly depresses freight rates because it is primarily a transit route for liner services that move through the Suez Canal to the Middle East and the Indian Subcontinent. In the preceding fiscal year, carriers in the trade endeavored to control excess capacity by cutting back on their services. These initiatives, however, were not sustained. Over the course of fiscal year 2008, vessel capacity was expanded by about 10 percent in each trade direction. The increase in capacity was largely attributed to vessel upgrades introduced in the existing services operated by the Mediterranean Shipping Company (MSC). With cargo growth expected to decline further, the expansion of capacity threatens to erode vessel utilization levels and freight rates to a greater extent. MSC, along with Maersk Line, Hapag-Lloyd AG, and Zim Intergrated Shipping Services, Ltd. (Zim) are the four largest carriers in the trade, accounting for about 65 percent of the total annual capacity. For the most part, they operate independent services in the trade.

Carriers serving EU member states in the South Europe region of the Mediterranean were also required to comply with the EU's repeal of the block exemption regulations for liner conferences. The last U.S. conference agreement in this region, the *United States South Europe Conference*, was terminated in 2006. The region, however, is included in the geographic scope of CTSA. Carrier members of CTSA operating between the U.S. and South Europe have a combined market share of about 95 percent in each trade direction. The operational agreements of carriers serving South Europe could also be impacted by any changes made to the consortia regulations that are currently under consideration by the EC.

C. INDIAN SUBCONTINENT AND THE MIDDLE EAST

U.S. container exports in fiscal year 2008 grew by 14 percent to the Indian Subcontinent and by 39 percent to the Middle East. Such strong growth can be attributed mainly to the weak U.S. dollar, as well as the military operations in Iraq and Afghanistan. During the fiscal year, the U.S. exported 316,000 TEUs to the Indian Subcontinent and 473,000 TEUs to the Middle East. The *Middle East Indian Subcontinent Discussion Agreement* (MIDA) and the *Westbound Transpacific Stabilization Agreement* (WTSA) are the two major rate discussion agreements that cover all or part of the U.S. outbound container trade to the Indian Subcontinent and the Middle East.

MIDA's geographic scope covers U.S. exports to the Middle East and the Indian Subcontinent. Over the whole geographic scope, MIDA had a 53 percent market share, down 7 percentage points from the previous fiscal year. This decrease is due, in part, to the resignations of four carriers: MacAndrews, the Shipping Corporation of India, Zim, and Emirates Shipping. The latter three carriers were part of a vessel-sharing agreement that offered a weekly service from the U.S. Atlantic coast via the Suez. Due to soaring bunker costs and low utilization levels, the service proved to be unprofitable, and the agreement decided to terminate the service in early 2008. Eighty percent of all U.S. container exports to the Middle East and Indian Subcontinent moved through the U.S. Atlantic and Gulf ports, and the six members of MIDA had 61 percent of this market. During the fiscal year, no new carriers joined MIDA. There were no rate discussion agreements covering U.S. imports from the Middle East in fiscal year 2008.

In this trade region, WTSA's geographic scope also covers U.S. exports to the Indian Subcontinent (but not the Middle East). For the fiscal year, WTSA's market share of all U.S. container exports to the Indian Subcontinent was 43 percent. WTSA dominates U.S. container exports from the U.S. Pacific coast to the Indian Subcontinent with a market share of 75 percent, down by 7 percent from fiscal year 2007.

The rate of decline in U.S. container imports from the Indian Subcontinent slowed. In fiscal year 2008, imports fell by less than 1 percent, compared to a 2 percent decline in the previous fiscal year. U.S. container imports from the Middle East also continued to decline. In fiscal year 2008, imports from this region dropped 10 percent, compared to a 6 percent decline in fiscal year 2007. For the fiscal year, the U.S. imported approximately 622,000 TEUs from the Indian Subcontinent and 134,000 TEUs from the Middle East.

The *Transpacific Stabilization Agreement* (TSA) is the only rate discussion agreement covering U.S. inbound container imports from the Indian Subcontinent.[2] For the fiscal year, the fifteen-member TSA handled approximately 61 percent of all U.S. container imports from the Indian Subcontinent, up 4 percent from the previous fiscal year.

D. AUSTRALIA AND OCEANIA

The Oceania region includes Australia, New Zealand, Papua New Guinea, Western Samoa, and other South Pacific Islands. Total trade in this region grew to almost 460,000 TEUs in fiscal year 2008, which is an increase of over ten percent from fiscal year 2007. The trade is imbalanced, with almost 270,000 TEUs of exports from the U.S. to Oceania and almost 190,000 TEUs of imports. Exports from the U.S. to Oceania grew over 17 percent in fiscal year 2008, which is following over seven percent growth in fiscal year 2007. The growth was aided by the weakness of the dollar during 2007 and the first half of 2008, but short to medium term growth in the trade is likely to be reduced by recent increases in the value of the dollar and the problems in world credit markets. Imports from Oceania went down slightly in fiscal year 2008 by about one percent or about 2,000 TEUs.

Agreement activities in the Oceania region were notable in fiscal year 2008, in particular as concerns the *Australia and New Zealand-United States Discussion Agreement* (ANZUSDA), the *U.S./Australasia Discussion Agreement* (USADA), and the *U.S. Pacific Coast-Oceania Agreement* (referred to as the Oceania Vessel Sharing Agreement or (OVSA). Changes to these agreements, as well as the rationalization of services through vessel sharing agreements, have resulted in capacity reductions estimated at about 18 percent southbound and 5 percent northbound.

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[2] The TSA's geographic scope also includes southeast Asia and northeast Asia.

ANZUSDA, the discussion agreement with voluntary rate authority from Australia/New Zealand to the U.S., was amended at the end of last fiscal year to reflect the addition of ANL Singapore Pte., Ltd. (ANL) to the agreement. ANL is a subsidiary of CMA CGM. Following the amendment, the agreement held about 85 percent of the northbound trade in imports to the United States and included all carriers with direct services to the region. The agreement includes Maersk Line, Hamburg-Süd, Hapag-Lloyd, and ANL. USADA operates as the voluntary rate discussion agreement covering the movement of export cargo from the United States to Australia and New Zealand. In fiscal year 2008, the agreement held about 90 percent of the southbound trade, and it includes CMA CGM, ANL, Compagnie Maritime Marfret SA (Marfret), Hamburg-Süd, Hapag-Lloyd, and Maersk Line. Wallenius Wilhelmsen withdrew from the agreement in November 2008.

OVSA is a vessel-sharing and sailing agreement between Maersk Line, Hamburg-Süd, and Hapag-Lloyd. Notably, in July 2008, CMA CGM along with its subsidiary, ANL, joined OVSA. Under this agreement, the parties jointly deploy three services: one fortnightly service to the Pacific Northwest and separate weekly and fortnightly services to the Pacific Southwest. CMA CGM and Marfret have a similar vessel-sharing agreement covering a route between the U.S. Atlantic Coast and Oceania, that provides a fortnightly service, while Hamburg-Süd in partnership with Maersk Line provides a weekly service on which Hapag-Lloyd takes space.

All of the direct service providers between the United States and Oceania are now interconnected as parties to USADA, ANZUSDA, and OVSA. Because of these market changes and their potential to affect competition, in August 2008, the Commission issued an order under section 15 of the Shipping Act to obtain relevant pricing and operational data from carriers serving the trade. The Commission's order explained that the combined effects of carriers acting as parties under the three agreements may potentially reduce competition, which could affect prices and services in the trade to an unreasonable extent or otherwise violate the Shipping Act.

E. CENTRAL AMERICA AND THE CARIBBEAN

In fiscal year 2008, change in liner cargo volume between the U.S. and Central America was minimal. U.S. export cargo fell 0.4 percent to 542,969 TEUs and imports from Central America grew only 3.8 percent to 651,853 TEUs. Fabrics, yarns, and raw cotton account for the largest share (about 14 percent) of US export containers to Central America, while fruits account for nearly half of all imports from the region, three-quarters of which consist of bananas.

Most of the largest carriers in the U.S./Central America trade participate in the *Central America Discussion Agreement* (CADA). The combined market share of CADA members for exports and imports remained nearly the same at 68 percent and 76 percent, respectively. There were no significant changes in the provisions or memberships of this agreement during fiscal year 2008. Three additional vessel-sharing agreements were implemented in the Central America trade during this period.

In the liner trade between the U.S. and the Caribbean, the volume of cargo increased in both trade directions compared to the preceding fiscal year. U.S. exports, mainly of food, consumer, and manufactured products, increased by 8.5 percent to 592,524 TEUs, while imports to the U.S. increased by 6.6 percent to 174,164 TEUs.

Carriers in the U.S./Caribbean trade participate in four rate discussion agreements covering discrete trades: (1) the *Hispaniola Discussion Agreement*, (2) the *Caribbean Shipowners Association*, (3) the *Florida-Bahamas Shipowners and Operators Association*, and (4) the *Aruba Bonaire and Curacao Discussion Agreement*. There were no significant changes in the provisions or memberships of these agreements during fiscal year 2008, but two additional vessel-sharing agreements were filed covering the Caribbean trade.

F. ASIA

In terms of containerized cargo, Asia is by far our largest trading region. In fiscal year 2008, Asia accounted for 62 percent of all U.S. inbound and outbound containerized cargo. Seventy-one percent of all U.S. container imports originated from Asia, and the region took 49 percent of all U.S. container exports.

The major agreement in the transpacific trade, the *Transpacific Stabilization Agreement* (TSA), is a fifteen-member discussion and policy-setting agreement with voluntary pricing authority covering the inbound container trade from northeast and southeast Asia to the U.S.[3] During fiscal year 2008, TSA's market share of the U.S. inbound Asian trade was approximately 86 percent, compared to 80 percent the previous fiscal year. The increase in market share was mainly due to the recruitment of China Shipping Container Lines as a member.

During the fiscal year, Asian imports decreased by nearly seven percent. Northeast Asia accounted for 88 percent of all transpacific container imports, with most originating from China. For the fiscal year, the U.S. imported 12.9 million TEUs of Asian goods. The declining growth in Asian imports can be attributed to the U.S. financial and home mortgage crises and to the rising cost of energy.

For the annual service contract season that began on May 1, 2008, TSA announced that its members had agreed to raise freight rates, on a voluntary, non-binding basis, by $400 per FEU for cargo discharged at U.S. Pacific coast ports and $600 per FEU for cargo discharged at U.S. Atlantic coast ports. In an effort to recover escalating bunker costs, TSA members also established a

[3] The TSA's geographic scope also includes the Indian Subcontinent (discussed earlier under a separate heading).

voluntary, non-binding guideline to include a floating bunker fuel surcharge in all service contracts. This surcharge was to be set separately from the base rates and periodically adjusted to reflect bunker fuel price fluctuations. It was reported that TSA members generally were not successful in obtaining the full amount of these planned rate increases during their service-contract negotiations with individual shippers, repeating a pattern of the past several years. However, TSA did appear to have some success in negotiating a floating bunker fuel surcharge into service contracts.

The major agreement in the outbound transpacific trade is the *Westbound Transpacific Stabilization Agreement* (WTSA). Like TSA, the ten-member WTSA operates as a forum for the exchange of information between its members that enables them to discuss and agree upon rate levels for cargo exported from the U.S. to Asia. WTSA's geographic scope covers all U.S. outbound shipments to northeast and southeast Asia as well as the Indian Subcontinent. In fiscal year 2008, WTSA maintained a market share of approximately 69 percent for northeast and southeast Asia. WTSA had no changes in membership over the fiscal year.

In contrast to U.S. imports, U.S. exports to the region expanded by 18 percent to reach 5.9 million TEUs. The declining value of the dollar generally made U.S. products cheaper overseas. U.S. container exports to northeast Asia grew by 14 percent, and by 41 percent to southeast Asia. Eighty-eight percent of all U.S. container exports to Asia are destined for northeast Asia. The surge in exports caused container vessels to leave port full and resulted in a shortage of containers in certain locations in the United States.

WTSA does not have a distinct start to its annual service-contract season like that of the TSA. Instead, WTSA members agree to voluntary service-contract rate guidelines for different types or groups of commodities throughout the year. This practice is dictated primarily by the seasonality of the major U.S. agricultural export commodities, which have different growing seasons and peak times when they are shipped. Because exports increased considerably during the fiscal year, container lines successfully increased rates as exporters sometimes had to book space on vessels several weeks in advance of their scheduled sailing dates.

G. SOUTH AMERICA

Between the U.S. and South America, U.S. export cargo reached 912,173 TEUs, recording an increase of 21 percent. However, import cargo from South America to the U.S. fell by 11 percent to 895,321 TEUs. These trends mark the first year that exports surpassed imports in containerized cargo and clearly reflect the falling value of the U.S. dollar and the weakening U.S. economy.

The South America region is generally divided into two trade areas – one to the west coast and the other to the east coast. Just over 43 percent of all of the U.S./South America cargo moved between the U.S. and the west coast of South America. By the end of fiscal year 2008, annualized vessel capacity had increased nearly 7 percent to about 760,000 TEUs in each trade direction.

Most of the carriers that provide direct service to the west coast of South America are also members of the *West Coast of South America Discussion Agreement* (WCSADA). The combined market share of WCSADA members was about 74 percent in the U.S. outbound direction and 60 percent in the U.S. inbound direction. Some carriers also served the trade indirectly via transshipment services based at ports in Mexico, Panama, and the Caribbean. The only change to WCSADA provisions or membership this fiscal year was the departure of Hapag-Lloyd as a participant. One vessel-sharing agreement covering the Chilean sub-trade of WCSADA was implemented during this period.

Liner cargo in the trade between the U.S. and the east coast of South America accounted for almost 57 percent of the U.S./South America liner cargo. By the end of fiscal year 2008, annualized vessel capacity in this trade had dropped 8 percent to about 930,000 TEUs in each trade direction. Unlike the west coast of South America trade, carriers serving the east coast of South

America do not actively participate in a broad-based rate discussion agreement spanning the entire geographic scope of the trade. However, five new vessel-sharing/space charter agreements covering the trade were filed during the year.

H. AFRICA

Cargo volumes between the United States and Africa were up almost 20 percent in fiscal year 2008, following an almost 15 percent increase in the previous fiscal year. This growth was generated by a 27 percent increase in U.S. exports to Africa from the previous fiscal year to over 250,000 TEUs. Imports from Africa decreased by 2.3 percent from the previous fiscal year to about 95,000 TEUs. The trade is heavily imbalanced; there was approximately one TEU inbound for every 2.6 TEUs that moved outbound. South Africa dominates the U.S. liner trade with Africa, accounting for about 33 percent of the overall container volume and over 50 percent of the imported containers. Nigeria is the second largest liner trading partner with the United States in the region, with 12 percent of container volumes. Morocco and Ghana are the third and fourth largest partners with about 6 percent of container volumes apiece.

There were no significant mergers, acquisitions, or changes in liner services during the fiscal year. Maersk Line, Safmarine (wholly owned by Maersk Line), and MSC continued to operate their joint weekly American Express (AMEX) service under the authorities of the *Southern Africa/Oceania Agreement*. This service, which sails from the U.S. East Coast to Port Elizabeth, Durban and Cape Town, utilizes 8 vessels of about 2,400 TEUs in size. Those three carriers are also the top carriers in the Africa trade, carrying approximately 76 percent of the containers traveling between the United States and Africa.

The *Southern Africa/Oceania Agreement* is subject to special reporting requirements due to some unique features, including a revenue pool. The revenue pool, which was capped in

March 2005, is a rare method used by the three carriers to share the risks of operating this service. To ensure that the Agreement does not breach the Shipping Act's section 6(g) standard or other prohibitions, the member carriers provide revenue and capacity information to the FMC on a per sailing basis.

I. WORLDWIDE

The world's container trade expanded by 7 percent in fiscal year 2008, compared to almost 13 percent in 2007. Early in the year, growth had been particularly strong in the Asia to Europe head-haul trade. Just 12 months ago, steamship lines were making record profits in the Asia-Europe trade, but freight rates began falling dramatically in the summer and still were falling as the fiscal year came to a close.

Container volumes in the U.S. liner trades in fiscal year 2008 increased to 30.5 million TEUs, compared to 29.7 million last year. The U.S. share of the world's container trades declined further this year to about 20.5 percent, compared to 21 percent last year (and 23 percent the year before that). Although U.S. container imports declined by over 6 percent to register 18.3 million TEUs in fiscal year 2008, U.S. container exports expanded by almost 15 percent, reaching over 12.1 million TEUs. For every loaded container exported from the U.S., about 1.5 was imported, compared to 1.85 last year.

Container cargo through Pacific Northwest ports, such as Seattle, Tacoma and Portland, fell by about 5 percent. This coastal region's share of U.S. container volume also fell to 10.9 percent from 11.6 percent last year. The Pacific Southwest region, which includes the ports of Los Angeles, Long Beach and Oakland, saw container cargo fall by about 1 percent. This coastal region's share of U.S. container volume fell to 39.2 percent from 40.1 percent. Ports along the U.S. Atlantic and Gulf coasts did comparatively well. Container volumes at Atlantic coast ports expanded by about 5 percent and by 2 percent at Gulf coast ports. While Atlantic coast ports lifted their share of U.S. container cargo from 40.7 to 42.2 percent, Gulf coast ports maintained their share at 6.7 percent.

In fiscal year 2008, the U.S.'s top five liner cargo trading partners were China, Japan, South Korea, Taiwan and Hong Kong. South Korea advanced to occupy the third-place slot at the expense of Taiwan, which slipped to fourth. Collectively, these five trading partners accounted for 53.1 percent of the total U.S. container trade, compared to 54.5 percent last year. This year, trade with China accounted for 35.7 percent of the total U.S. container trade, compared to 37 percent in fiscal year 2007.

On a worldwide basis, containership capacity continued to grow much faster than container demand for the second year in a row. By July 2008, the containership fleet's nominal capacity had grown by over 13 percent compared to the same month last year. Industry analysts anticipate capacity will further expand next year despite an expected rapid deceleration in shipping demand. As the end of the fiscal year approached, over 4,500 containerships, with a fleet capacity exceeding 11.4 million TEUs, were deployed in the world's container trades. Four hundred containerships were added to the world fleet, net of vessels scrapped. As of July 2008, there were orders worldwide for 1,379 new containerships with an aggregate capacity of 6.8 million TEUs. The ship capacity on order amounts to almost 60 percent of the existing fleet capacity.

Concentration in the world's container shipping industry remained unchanged during fiscal year 2008. The top five container operators were still Maersk Line, MSC, CMA CGM, Evergreen Line and Hapag-Lloyd. COSCO Container Line (COSCO) rose in rank to occupy sixth place, while China Shipping Container Line fell to eighth position, having been overtaken by COSCO and APL, a Singapore-based carrier. Among the top 100 container operators at the end of fiscal year 2008, the top five operators reportedly controlled 43 percent of the world's containership fleet capacity, the top 10 controlled about 60 percent, and the top 20 controlled 82 percent.

IV

THE FOREIGN SHIPPING PRACTICES ACT OF 1988

A. IN GENERAL

The Foreign Shipping Practices Act of 1988 (FSPA), which became effective on August 23, 1988, directs the Commission to investigate and address adverse conditions affecting U.S. carriers in U.S. oceanborne trades, when such conditions do not exist for foreign carriers in the U.S. 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.

In fiscal year 2008, the Commission monitored potentially unfavorable or discriminatory shipping practices by a number of foreign governments. However, no direct FSPA action was necessary.

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

Pursuant to the Foreign Shipping Practices Act, the FMC must include in its annual report to Congress “a list of the twenty foreign countries which generated the largest volume of oceanborne liner cargo for the most recent calendar year in bilateral trade with the United States.” 46 U.S.C. § 306 (b)(1).

The Journal of Commerce’s Port Import Export Reporting Service (PIERS) database was used to derive the Commission’s list of top twenty trading partners. PIERS obtains data on U.S. import and export shipments from tapes of manifests filed electronically with U.S. Customs and Border Protection (CBP) via the Automated Manifest System (AMS). PIERS also stations personnel at individual ports to collect shipment data that is incomplete or not filed through AMS. The company edits the raw shipment data and distinguishes liner shipments from non-liner shipments, and employs additional procedures to increase data accuracy.

The most recent complete calendar year for which data are available is 2007. The table on the next page lists the twenty foreign countries that generated the largest volume of oceanborne liner cargo in bilateral trade with the U.S. in 2007. The figures in the table represent each country’s total U.S. liner imports and exports in thousands of TEUs.

Top Twenty U.S. Liner Cargo Trading Partners (2007)

Rank	Country	TEUs (000s)
1	China (PRC)	11,247
2	Japan	1,626
3	Taiwan	1,286
4	South Korea	1,203
5	Hong Kong[4]	1,071
6	Germany	802
7	Brazil	655
8	Italy	613
9	India	589
10	Belgium and Luxembourg	572
11	Thailand	555
12	Indonesia	527
13	Netherlands	485
14	Vietnam	469
15	United Kingdom (incl. N. Ireland)	447
16	Malaysia	371
17	Honduras	336
18	Chile	299
19	Guatemala	287
20	Costa Rica	282

Three quarters of the top twenty trading partners saw gains in volume. U.S. liner trade with Vietnam grew by 30 percent over

[4] On July 1, 1997, Hong Kong reverted to Chinese control as a special administrative region. However, PIERS continues to report data separately for Hong Kong because of its status as a major transshipment center.

Source: All data are aggregated from the PIERS (Port Import Export Reporting Service) database maintained by the Journal of Commerce.

the previous year. U.S. liner trade with China grew by less than three percent over last year but maintained its top ranking. This is the smallest gain for China in several years. U.S. liner trades with Taiwan and Belgium & Luxembourg expanded by 15 and 14 percent, respectively. Hong Kong's liner trade with the U.S. declined five percent. Guatemala regained a position in the top twenty ranking, while Spain dropped off the list. Costa Rica dropped from 18th to 20th in the ranking, with essentially the same volume of liner cargo as in 2006.

V

SIGNIFICANT ACTIVITIES

BY

ORGANIZATIONAL UNIT

A. OFFICE OF THE SECRETARY

1. In General

As the focal point for matters submitted to and emanating from the Commission, the Office of the Secretary is the main public contact point with the FMC. The Office receives and processes a variety of documents filed by the public, including: complaints initiating adjudicatory proceedings for alleged violations of the Shipping Act and other applicable laws; special docket applications and applications to correct clerical or administrative errors in service contracts or NVOCC service arrangements; all communications, petitions, notices, pleadings, briefs, or other legal documents in administrative proceedings; and subpoenas served on the FMC, its members or employees.

The Office is responsible for preparing and submitting regular and notation agenda matters for consideration by the Commission and preparing and maintaining the minutes of actions taken by the Commission on these matters; issuing orders and notices of actions of the Commission; maintaining official files and records of all formal proceedings and Commission regulations; issuing publications; and authenticating instruments and documents of the Commission. During fiscal year 2008, the Commission issued orders finalizing six formal proceedings and three informal dockets. In addition, two rulemaking proceedings remained pending at the end of the fiscal year.

The Office also responds to information requests from Commission staff, the maritime industry, press, and the public; administers the Freedom of Information, Government in the Sunshine, and Privacy Acts; compiles historical Commission decisions; maintains a public reference/law library and a Docket Activity Library; manages the Commission's Internet website; and participates in the development and coordination of agency-wide public relation/outreach activities. The Office of the Secretary also oversees the Office of Consumer Affairs and Dispute Resolution Services.

As the Commission's public information/press office, the Office of the Secretary prepares or coordinates the preparation of Commission news releases; responds to public and press inquiries or directs inquiries to the appropriate Commission bureau/office; and monitors the trade press for matters of agency interest for referral to the chairman, commissioners, and Commission staff.

The Office remained involved in the Commission's ongoing effort to expand contact with all segments of the maritime community and the public. Initiatives undertaken by Commission staff to improve industry outreach included hosting a number of industry briefings and updating informational material. The Office implemented a regular Commission meeting schedule to discuss industry and administrative matters before the Commission in both public and closed sessions in fiscal year 2008 as well.

The Office of the Secretary also manages the Commission's website. During fiscal year 2008, the Office improved the Commission's website by adjusting how information is presented, expanding the amount of information available, and adding functionality. For example, in August 2008 the Office increased the accessibility of information on filed agreements through website publishing of weekly agreement filing notices that appear in the Federal Register. This enhancement provided greater public awareness of agreement filings. The Office continues to evaluate the overall usefulness of the site and works closely with other offices and bureaus to improve its content and user-friendliness. The Office also began discussing alternatives for redesigning the agency's Intranet with the Commission's Office of Information Technology. The scope of the agency's Intranet redesign project has been expanded to encompass OIT's plans to improve the agency's collaborative capabilities and enhance its business processes.

The process of electronically scanning/imaging Commission records continued during fiscal year 2008. The document management system that the Office oversees supports the agency's initiatives for continuity of operations by improving preservation of and Commission staff access to Commission documents, as well as improving Commission staff response time to public inquiries and public access to electronic files. In addition to electronically converting all Commission official files (both current and historical), the Office has a program in place to systematically scan documents from other agency components. For example, during the fiscal year, the Office completed conversion of all historical case files for the Bureau of Enforcement and two-thirds of the General Counsel's administrative files.

During fiscal year 2008, the Office took the lead in accomplishing the agency's performance goals related to making more Commission information and filed documents available electronically and to improving responsiveness to requests for public information. Specifically, the Office continued to make key documents filed in formal proceedings available through its website. In addition, the Office converted 28 bound volumes of the Commission's official decisions to electronic format. These historical decisions are no longer available to the public in bound volume form. The Office is developing plans to post these decisions to the Commission's website during fiscal year 2009.

2. Office of Consumer Affairs and Dispute Resolution Services

The Office of Consumer Affairs and Dispute Resolution (CADRS) is responsible for developing and implementing the Commission's Alternative Dispute Resolution (ADR) program. Through this program, the Commission provides services to assist parties in resolving disputes and shipping problems in the U.S. maritime industry that affect international ocean shipping. These include a broad range of services designed to avoid the expense and delays inherent in litigation and to facilitate the flow of U.S. ocean commerce.

With respect to matters already in litigation or moving toward litigation, parties to a dispute are encouraged to avail themselves of mediation or other ADR processes such as conciliation, facilitation, fact-finding, mini-trials, or arbitration, as a means to resolve disputes. The Commission makes trained neutrals available to facilitate the resolution of shipping disputes at all stages. Outside neutrals also may be contracted for as needed.

During fiscal year 2008, Commission mediators provided mediation services in several matters, thus assisting parties in avoiding significant litigation costs and risks. CADRS also provides *ombudsman* services to participants in ocean shipping transactions. Typical complaints include situations where an NVOCC or VOCC has placed a lien on cargo in its possession, often for sums owed under a different contract of carriage, and cases in which an NVOCC has received cargo from its customer and taken payment for the transportation of the cargo, but failed to deliver the cargo. Tracking the whereabouts of a shipment can be difficult, and often additional charges have accrued, necessitating payment of additional funds to obtain release of the shipment.

During fiscal year 2008, 568 complaints were received that necessitated the opening of a case to provide dispute resolution services. These included 189 complaints concerning cruise issues, 198 concerning household goods matters, and 181 concerning cargo shipment matters. During 2008, the number of cruise complaints declined 14 percent. The number of household good complaints increased by 37.5 percent, and the number of other cargo cases increased by approximately 25 percent. Cargo shipment complaints continued to be of increasing complexity. CADRS received a significantly greater number of complaints involving goods released to an improper party and without appropriate documentation than in the past, and an increased number of situations where difficulties arose in presenting an original bill of lading to receive the shipment. Problems concerning co-loaded shipments continue to be a significant issue. In addition to the above complaints, approximately 1,000 information requests were received and processed.

In addition to the cases reported above, the office was involved in facilitating discussions to address a container and space shortage, the "exporters' dilemma." In early 2008, CADRS began receiving an increasing number of inquiries concerning difficulties U.S. exporters were having obtaining containers or space for outbound shipments. Essentially, the increasing profitability of the Europe-Asia and Intra-Asia trades, coupled with slower growth in U.S. demand for imports from Asia, resulted in carriers repositioning their vessels away from the U.S. Pacific trades. At the same time, the growth of Asian economies, coupled with the reduction in the value of the U.S. dollar, increased the demand for U.S. export products. Consequently, many U.S. exporters encountered difficulty obtaining space on outbound vessels. These factors, along with rising fuel costs, also made it difficult to obtain containers. The Commission's ADR program facilitated initial discussions among carriers and shippers in an attempt to alleviate many of the difficulties for exporters. The problem was overtaken by the worldwide economic downturn at the end of the fiscal year causing the demand for U.S. exports, and therefore the demand for export containers, to drop sharply. Direct lines of communication were established between at least one major carrier and agricultural exporters, which should help alleviate export issues in the future.

3. Library

The FMC public reference/law library is an information source for Commission staff, government agencies, private organizations and the public. The library contains a variety of books, directories, encyclopedias, journals, magazines, reports, microforms, and videos. Its holdings consist of specialized material, primarily covering the various segments of the international shipping industry, as well as historical and current regulatory materials covering all phases of shipping in the U.S. foreign trades. It also contains material on several related fields such as engineering, economics, political science and a collection of legal publications. The Library collection includes law encyclopedias, engineering textbooks, legal treatises, Comptroller General Decisions, and selected titles of the National Reporter system. The Library's holdings consist of approximately 8,700 volumes and numerous microfiches, CD-ROMs, and on-line services.

In fiscal year 2008, the Office completed a needs assessment and evaluated recommendations for the development of an online catalogue for the Commission's law/reference library collection. The Office anticipates implementing a plan during fiscal year 2009.

B. OFFICE OF THE ADMINISTRATIVE LAW JUDGES

1. In General

Administrative law judges (ALJs) manage the development of an evidentiary record through rulings and conferences with counsel for the litigating parties, rule upon dispositive motions, and preside at hearings held after the receipt of a complaint or institution of a proceeding on the Commission's own motion.

The Office of ALJs has 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; 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 2008, 18 formal proceedings were pending before the Office of ALJs. During the year, 5 formal proceedings were added. The Office dismissed three respondents in two formal proceedings, and two formal proceedings were settled. The Office also dismissed one case that the Commission reinstated on appeal. The ALJs entered an Initial Decision in one case that the Commission approved and entered a Partial Summary Judgment in one other case.

2. Final action by the Office of Administrative Law Judges and subsequent Commission action.

In fiscal year 2008, the Office of Administrative Law Judges issued initial decisions partially or completely resolving six proceedings, and the Commission issued orders on nine proceedings that had been decided by administrative law judges.

Anchor Shipping Co. v. Alianca Navegacao e Logistica Ltda., Crowley American Transport Inc., Columbus Line, Inc., and Hamburg Südamerikanische Dampfschifffahrts. [Docket No. 02-04]

This case is on remand from the Commission. *Anchor Shipping Co. v. Aliança Navegação e Logística Ltda*., 30 S.R.R. 991 (2006). On September 27, 2007, the ALJ granted Respondents' motion to dismiss the claims of violation of sections 6 and 7 of the Act (as these sections impose no duties on Respondents) and the claims of violation of section 9 of the Act (as Respondents are not controlled carriers within the meaning of the Act). In the same order, the ALJ dismissed the claim for a civil penalty because the statutory scheme does not contemplate the imposition of civil penalties in a private-party complaint proceeding. On October 26, 2007, the ALJ denied Anchor's motion to enlarge the time to file exceptions to the September 26 order. On November 1, 2008, the Commission served notice that it would not review the September 26 order. On January 18, 2008, the ALJ vacated the portion of the October 26, 2007, order seeking enlargement of time to file exceptions, as it was a matter that should have been addressed by the Commission. On January 24, 2008, the Commission rescinded its November 1, 2007, notice not to review. On July 31, 2008, the Commission granted additional time for Anchor to file exceptions to the September 26 order.

On April 19, 2007, the ALJ referred to the Commission the Complainant's motion for the Bureau of Enforcement to intervene. On November 8, 2007, the Commission denied the motion. On May 20, 2008, the ALJ referred to the Commission a second Anchor motion to compel intervention by BOE. On July 31, 2008, the Commission denied the second motion.

Verucci Motorcycles, LLC v. Senator International Ocean, LLC. [Docket No. 06-05]

On March 13, 2008, the ALJ issued an Order Dismissing Complaint for Failure to Comply with the Commission's Rules of Practice and Procedure and Orders Entered in this Proceeding. On May 7, 2008, the Commission remanded the case for further proceedings.

EuroUSA Shipping, Inc., Tober Group, Inc., and Container Innovations Inc. – Possible Violations of Section 10 of the Shipping Act of 1984 and the Commission's Regulations at 46 C.F.R. § 515.27 [Docket No. 06-06]

On July 12, 2008, the ALJ granted partial summary judgment for Tober Group, Inc., on the claim that Tober violated section 10(b)(11) of the Shipping Act.

Armstrong World Industries, Inc. v. Expeditors International of Washington, Inc. [Docket No. 07-03]

On April 3, 2008, the ALJ approved the parties' settlement and dismissed the complaint. On May 6, 2008, the Commission issued a Notice Not to Review.

Frank J. Kuzela v. A.P. Moller-Maersk A/S [Docket No. 1883(F)]

On June 26, 2008, the ALJ issued an order dismissing the complaint with prejudice.

Nathan Freeman v. Mediterranean Shipping Co. S.A. and Shipco Transport, Inc. [Docket No. 08-01]

On April 24, 2008, the ALJ approved the parties' settlement agreement and dismissed the complaint. On May 28, 2008, the Commission issued a Notice Not to Review.

3. Pending Proceedings

At the close of fiscal year 2008, there were 21 formal proceedings pending before the Office of ALJs. During fiscal years 2009 and 2010, the Office will conduct hearings and render decisions on adjudicatory proceedings and any rulemaking proceedings referred to the Office.

C. OFFICE OF THE GENERAL COUNSEL

The General Counsel provides legal counsel to the Commission. This includes reviewing staff recommendations for Commission action for legal sufficiency, drafting proposed rules to implement Commission policies, and preparing final decisions, orders, and regulations for Commission review. In addition, the Office of the General Counsel (OGC) provides written and 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 courts and Congress and administers the Commission's international affairs program.

1. Rulemakings and Decisions

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

Decisions by the Commission

Odyssea Stevedoring of Puerto Rico, Inc. v. Puerto Rico Ports Authority, [Docket No. 02-08]; International Shipping Agency, Inc. v. The Puerto Rico Ports Authority, [Docket No. 04-01]; and San Antonio Maritime Corp. and Antilles Cement Corp. v. Puerto Rico Ports Authority, [Docket No. 04-06], 30 S.R.R. 1339 (March 5, 2007)

These cases came before the Commission for a determination of whether the Puerto Rico Ports Authority (PRPA) is an arm of the Commonwealth of Puerto Rico and therefore entitled to sovereign immunity. Odyssea Stevedoring of Puerto Rico, Inc., International Shipping Agency, Inc., San Antonio Maritime Corp. and Antilles Cement Corp. (collectively "complainants") alleged that PRPA's marine terminal leasing practices violated sections 10(b)(10), 10(d)(1), 10(d)(3), and 10(d)(4) of the Shipping Act. Further, Intership alleged PRPA violated section 10(a) (3) of the Shipping Act, by failing to act in accordance with the terms of an agreement filed with the Commission. PRPA filed motions for summary judgment or motions to dismiss in all three cases, arguing that the complaints were barred by PRPA's sovereign immunity as an arm of the Commonwealth of Puerto Rico. In *Odyssea* and *Intership*, the ALJ ruled that PRPA was not entitled to sovereign immunity. The Commission, sua sponte, decided to review the ALJ's decision. On November 30, 2006, the Commission issued an order, on a 3-2 vote, finding that PRPA is not an arm of the Commonwealth of Puerto Rico and is therefore not entitled to sovereign immunity.

The Commission's order was appealed to the U.S. Court of Appeals for the D.C. Circuit (Case No. 06-1407). The Court heard oral argument on October 26, 2007. On July 8, 2008, the Court issued its opinion finding that PRPA is an arm of the Commonwealth of Puerto Rico and is therefore immune from suit absent its consent. Intership filed a motion on August 25, 2008, to stay the Court's mandate pending filing of a petition for writ of certiorari. The Court granted Intership's motion on September 16, 2008. A petition for a writ of certiorari at the United States Supreme Court was filed by Intership on October 8, 2008.

Premier Automotive Services, Inc. v. Robert L. Flanagan and F. Brooks Royster, III, [Docket No. 06-03], _____ S.R.R. _____ (June 11, 2008)

Premier Automotive Services, Inc. (Premier) filed a complaint against Robert L. Flanagan and F. Brooks Royster, III (collectively Flanagan) alleging that Flanagan's marine terminal leasing practices violated sections 10(b)(10), 10(d)(1) and 10(d)(4) of the Shipping Act, 46 U.S.C. §§ 41102, 41104 and 41106. Mr. Flanagan and Mr. Royster were the Maryland Secretary of Transportation and the Executive Director of the Maryland Port Administration (MPA), respectively, and were sued because MPA possesses sovereign immunity. Flanagan filed a Motion to Dismiss arguing that (1) the case is barred by constitutional principles of state sovereign immunity; (2) the Shipping Act does not authorize private complaints for injunctive relief, and (3) the respondents should not be held liable as individuals under provisions of the Shipping Act which are specifically applicable to common carriers, OTIs and MTOs. Premier responded to the motion arguing that the action is within the Ex Parte Young, 209 U.S. 123 (1908), exception to state sovereign immunity and that the Shipping Act provides for prospective injunctive relief. The ALJ granted the motion to dismiss on March 31, 2006, finding that the complaint was barred by sovereign immunity since Young did not apply. Premier appealed the ALJ's decision to the Commission, and oral argument was heard on June 13, 2007. The Commission dismissed the proceeding on June 11, 2008, finding that this proceeding is barred by the sovereign immunity interests of the State of Maryland.

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 petitions 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 is representative of matters litigated by the Office:

Puerto Rico Ports Authority v. The Federal Maritime Commission and the United States of America, D.C. Circuit, Case No. 06-1407.

This proceeding is an appeal of the Commission's November 30, 2006, order in Docket Nos. 02-08 (Odyssea Stevedoring of Puerto Rico, Inc. v. Puerto Rico Ports Authority); Docket No. 04-01 (International Shipping Agency, Inc. v. The Puerto Rico Ports Authority); and Docket No. 04-06 (San Antonio Maritime Corp. and Antilles Cement Corp. v. Puerto Rico Ports Authority). The Commission's order, on a 3-2 vote, found that the PRPA is not an arm of the Commonwealth of Puerto Rico and is, therefore, not entitled to sovereign immunity. PRPA appealed the order, arguing that it is entitled to sovereign immunity. The Commission proceedings have been stayed by the Court pending resolution of the appeal. The Commission's brief was submitted on June 28, 2007, and oral argument was heard on October 26, 2007. On July 8, 2008, the U.S. Court of Appeals for the D. C. Circuit issued its opinion finding that the Puerto Rico Ports Authority is an arm of the Commonwealth of Puerto Rico and is, therefore, immune from suit absent its consent. Intervenor International Shipping Agency, Inc. (Intership) filed a motion on August

25, 2008, to stay the Court's mandate, pending filing of a petition for writ of certiorari. The Court granted Intership's motion on September 16, 2008. A petition for a writ of certiorari at the United States Supreme Court was filed by Intership on October 8, 2008. The FMC remains a respondent in this proceeding before the Supreme Court by reason of the agency's issuance of the order central to the appeal.

Landstar Express America, Inc. and Landstar Global Logistics, Inc. v. Federal Maritime Commission, D. C. Circuit, Case No. 08-1152

This proceeding is an appeal of the Commission's February 15, 2008 order in Commission Docket No. 06-08, In the Matter of the Lawfulness of Unlicensed Persons Acting as Agents for Licensed Ocean Transportation Intermediaries – Petition for Declaratory Order. The Commission denied the petition filed by Team Ocean Services, Inc., (Team Ocean) following review of the petition and three comments submitted thereon, including the comments of Landstar America, Inc. and Landstar Global Logistics, Inc. ("Landstar"). On April 14, 2008, Landstar filed a Petition to Review the Commission's Order, asserting in its Petition that it is a party aggrieved by the Commission's denial of Team Ocean's Petition. Petitioners submitted a single issue to be raised to the Court:

> Whether the FMC Order's determination that it is unlawful under The Shipping Act of 1984, as amended, for an unlicensed agent to provide Non-Vessel Operating Common Carrier (NVOCC) services in the name of and on behalf of a licensed NVOCC is arbitrary, capricious, contrary to the FMC's statutory authority, jurisdiction and existing precedent, inconsistent with the plain language of the applicable statute, an abuse of discretion, unsupported by substantial evidence, or otherwise contrary to law.

The Commission filed a Motion to Dismiss and a Certified Index to the Record on June 9, 2008. Landstar filed a response opposing the motion on June 17, 2008, and the FMC replied to Landstar's response on June 27, 2008. On September 16, 2008, the Court issued an order instructing the parties to brief the issues in the motion to dismiss in their briefs on the merits of the petition for review. The Court established

December 4, 2008 as the Petitioners' opening brief due date and January 12, 2009 as the due date for the Commission's opening brief.

3. Legislative Activities

The OGC represents the Commission's interests in all matters before Congress. This includes preparing testimony for Commission officials, responding to Congressional requests for information, commenting on proposed legislation, and responding to the Office of Management and Budget (OMB) requests for views on proposed bills and testimony.

During fiscal year 2008, 80 bills, proposals and Congressional inquiries were referred to the OGC for review or comment. The Office prepared and coordinated testimony, responses to Questions for the Record and a 60-day written report in relation to the agency's fiscal year 2009 budget authorization hearing before the U.S. House of Representatives Committee on Transportation and Infrastructure, Subcommittee on Coast Guard and Maritime Transportation. In addition, the Office assisted in the written testimony and responses to Questions for the Record for the agency's fiscal year 2009 budget requests submitted to the U.S. House of Representatives Committee on Appropriations, Subcommittee on Transportation, HUD, and Related Agencies. The office also prepared and coordinated testimony, responses to Questions for the Record and a 90-day written report in relation to the U.S. House of Representatives Committee on Transportation and Infrastructure, Subcommittee on Coast Guard and Maritime Transportation's oversight hearing regarding Federal Maritime Commission management and regulation of international shipping.

In fiscal years 2009 and 2010, the OGC will continue to take the lead in providing assistance and technical advice to Congress regarding issues for possible legislative consideration. The Office may also recommend legislative amendments as necessary, to ensure uniformity with other federal initiatives and to allow for the efficient and secure flow of ocean transportation.

4. Other Significant Activity

The Port of Los Angeles and Port of Long Beach Proposed Clean Trucks Program, and FMC Agreement No. 201170, Los Angeles and Long Beach Port Infrastructure and Environmental Programs Cooperative Working Agreement

The Port of Los Angeles and the Port of Long Beach (the Ports) are members of the "Los Angeles and Long Beach Port Infrastructure and Environmental Programs Cooperative Working Agreement" (FMC Agreement No. 201170), currently on file with the Commission, that permits them to discuss, consult, and agree on the establishment and implementation of programs and strategies to improve port-related transportation infrastructure and to decrease port-related air pollution. This agreement became effective on August 10, 2006. The Ports have been in the process of developing a Clean Trucks Program as the first initiative under their joint Clean Air Action Plan. The Ports' goal has been to significantly reduce air pollution from port drayage trucks by replacing or retrofitting an estimated 16,000 trucks servicing the Ports over a five-year period. In early November 2007, each of the Ports adopted identical tariffs requiring a progressive ban on older and non-retrofitted drayage trucks, beginning October 1, 2008.

The Ports have been considering ways to finance and implement the Clean Trucks Program, including a cargo fee and a concessions system, which require trucking companies to use only employee drivers, rather than independent contractors. An amendment to the Ports' Infrastructure Agreement was filed on August 1, 2008 which allows the Ports to implement the Clean Truck Program. The Commission requested additional information on September 11, 2008, in order to complete its economic analysis of the impacts of the agreement on transportation costs and service. The Ports filed their responses to the Commission's questions on September 18, 2008. The Commission has received information and letters from various stakeholders expressing support for or opposition to certain aspects of the proposed Clean Trucks Program. Certain groups have asserted that the proposed Clean Trucks Program may violate provisions of the Shipping Act, 46 U.S.C. §§ 40101-41309 (2006). These allegations include concerns that the Ports' agreement will unreasonably increase transportation costs or reduce service, in violation of section 6(g) of the Shipping Act.

As a step designed to help the Ports of Los Angeles and Long Beach implement the Clean Trucks Program, the Ports and the West Coast Marine Terminal Operators Agreement entered into and filed the “Los Angeles/Long Beach Port/Terminal Operator Administration and Implementation Agreement.” (FMC Agreement No. 201178) (AIA). The Commission required the parties to submit additional information relative to the AIA and subsequently allowed the Agreement to become effective as of June 13, 2008. The Commission noted that its decision does not foreclose future actions with respect to the AIA, or those Parties' activities under other related agreements, that may violate the Shipping Act. The Commission also advised that any further agreements reached pursuant to the AIA, and those related agreements of the Ports of Los Angeles and Long Beach, must be timely filed with the Commission to allow for the competitive review and analysis required by Congress.

On September 24, 2008, the Commission initiated FMC Docket No. 08-05, an investigation to determine whether certain practices of the Ports of Los Angeles and Long Beach (Ports) violate the Shipping Act of 1984. Practices under investigation include: the mandate, on a phased-in basis, that Licensed Motor Carriers (LMCs) that serve the Port of Los Angeles utilize only employee drivers and not independent owners and operators; the ban on independent owner operators providing drayage service at the Port of LA; Port payments to certain motor carriers as an incentive to provide drayage service at the port, but not to other similarly situated motor carriers; exemption of some cargo owners from paying a Clean Truck Fee but not others despite the fact that their cargo is moved in compliant trucks; the requirement that motor carriers providing container drayage service at the port submit an application for a concession, but not publishing standards or criteria by which such applications will be granted or denied; and, refusal to deal or negotiate with motor carriers otherwise authorized to provide drayage service at the port who conduct their port operations using independent owner-operators.

5. Foreign Shipping Restrictions and International Affairs

The OGC is responsible for the administration of the Commission's international affairs program. The OGC 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 Merchant Marine Act of 1920 and the Foreign Shipping Practices Act. 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 that affect U.S. carriers in foreign trade and that do not exist for foreign carriers in the U.S.

In fiscal year 2008, the Commission continued to monitor potentially restrictive shipping practices of the Government of Japan, including the effects of amendments to the Port Transportation Business Law enacted in 2000 and 2005. The Commission continued to receive and evaluate semi-annual reports from United States-flag and Japanese-flag vessels operating in the trades with Japan pursuant to its proceeding in Docket No. 96-20, Port Restrictions and Requirements in the United States/Japan Trade. The OGC also pursued informally several matters that involved potentially restrictive foreign practices, including new legislation, new interpretations of existing legislation and new regulations of non-domestic carriers' terminal handling charges.

OGC staff served as technical advisors to the U.S. delegation to the semi-annual US-Japan Regulatory Reform talks held in Washington, D.C., in April, 2008. OGC also acted as technical advisor and presented views on the possible effects of the European Union's elimination (in October, 2008) of the block exemption for liner conferences.

Another responsibility of the OGC is the identification of "controlled carriers" subject to section 9 of the Shipping Act. Common carriers that are owned or controlled by foreign governments are required to adhere to certain requirements under the Act, and their rates are subject to Commission review. The OGC investigates and makes appropriate recommendations to the Commission regarding the status of potential controlled carriers. The OGC, in conjunction with other Commission components, also monitors the activities of controlled carriers.

The OGC continues to take the lead in accomplishing the agency's performance goals relating to eliminating restrictions that unjustly disadvantage U.S. interests. OGC will monitor foreign laws and practices to determine whether there are any unjust non-market barriers to trade. The OGC will recommend appropriate action to the Commission.

6. Designated Agency Ethics Official

The Ethics Official is administratively within the Office of the Chairman, but the position is performed as a collateral duty by an attorney in the OGC.

The Commission’s Ethics Official is responsible for administering public and confidential financial disclosure systems in order to prevent conflicts of interest from arising in the execution of the agency’s regulatory functions. The Ethics Official also conducts annual training and offers day-to-day advice and guidance to ensure compliance with the standards of ethical conduct that apply to Executive Branch officials.

D. OFFICE OF EQUAL EMPLOYMENT OPPORTUNITY

The Office of Equal Employment Opportunity (OEEO) manages a comprehensive program of equal employment opportunity, consistent with federal equal employment opportunity (EEO) and personnel management laws, regulations and directives. This program promotes equal employment opportunity, processes complaints of discrimination and identifies and eliminates any discriminatory practices and policies.

The Chairman of the Federal Maritime Commission (FMC) is responsible for ensuring equal opportunity at the Commission. The Chairman has delegated this authority to the Director of Equal Employment Opportunity (DEEO). Operational responsibility for compliance with EEO policies and programs lies with the Commission's managers and supervisors.

The Director of EEO works independently under the direction of the Chairman to provide advice to the Commission's senior staff and management in improving and carrying out its policies and program of non-discrimination, workforce diversity and affirmative employment program planning. In accordance with regulations and guidance issued by the Equal Employment Opportunity Commission, the DEEO arranges for EEO counseling or alternative dispute resolution for 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. Additionally, the DEEO represents the Commission on intergovernmental committees, directs programs of special emphasis, and coordinates the activities of the Selective Placement and Federal Equal Opportunity Recruitment Coordinators. The DEEO also supervises two collaterally assigned EEO counselors.

The OEEO works with senior management and with the Commission's Office of Human Resources (OHR) to: (1) promote equal employment opportunity; (2) monitor affirmative employment programs; (3) expand outreach and recruitment initiatives; (4) improve career development and retention of all employees without regard to race, color, sex, national origin, religion, disability, sexual orientation, political affiliation or familial status; (5) provide adequate career counseling; (6) facilitate early resolution of employment related problems; and (7) develop program plans and progress reports.

Significant Accomplishments for fiscal year 2008

During fiscal year 2008, for the fourth year in a row, women and minorities continue to represent a majority of the workforce at the Commission. Significant accomplishments include the following: (1) provided EEO briefings to senior staff and new employees; (2) provided information to employees about Internet sites with diversity/EEO related information; (3) updated the Commission's No FEAR Act statistics on the FMC website at **http://www.fmc.gov/home/NoFEARAct.asp** and began planning for the FY 2009 No FEAR Act refresher training for all employees; (4) provided counseling assistance to Commissioners, managers, supervisors, and employees; (5) provided support and assistance to managers and supervisors in maintaining and effectively managing a diverse workforce; (6) reviewed and assessed human resource activities and actions; (7) maintained an effective discrimination complaint process that resolved issues informally, expeditiously, and at the lowest possible level; (8) held special commemorative programs for all FMC employees for National Hispanic Heritage, National Disability Employment Awareness, National American Indian Heritage, African American History, Women's History, Asian Pacific American, Gay and Lesbian Pride months, and Dr. Martin Luther King, Jr. Day; (9) participated in meetings of several inter-agency councils regarding special emphasis matters, including the Federal Women's Program Interagency Council; (10) participated in EEO-related training/conferences; and (11) prepared all required affirmative employment program accomplishment reports and plans.

During fiscal years 2009 and 2010, the OEEO will continue all existing programs and initiate activities designed to increase an understanding of EEO concepts and principles, including monitoring workforce diversity, outreach, retention, and career-development initiatives.

E. OFFICE OF THE INSPECTOR GENERAL

The Inspector General Act of 1978, as amended, establishes the responsibilities and duties of an Inspector General. The Inspector General Act was amended in the 1980's to increase the number of agencies with statutory IGs, culminating in 1988 with the establishment of Office of Inspectors General (OIG) in smaller, independent agencies, including the Federal Maritime Commission. Currently, there are 67 statutory IGs within executive and legislative departments and agencies. The mission of the OIGs, as identified in the IG Act, is to:

- **Conduct and supervise independent and objective audits and investigations relating to agency programs and operations.**

- **Promote economy, effectiveness and efficiency within the agency.**

- **Prevent and detect fraud and abuse in agency programs and operations.**

- **Review and make recommendations regarding existing and proposed legislation and regulations relating to agency programs and operations.**

- **Keep the agency head and Congress informed of problems in agency programs and operations.**

To ensure objectivity, the IG Act empowers independent IGs to determine what reviews to perform; access to all information for the reviews; and authority to publish findings and recommendations based on the reviews.

During fiscal year 2008, the OIG issued the following audit reports and evaluations:

<u>Audit Report Number</u>	<u>Subject of Audit</u>
A08-01	**Review of FMC Implementation of Federal Information Security Management Act for FY 2007**
A08-02	**Audit of the FMC's FY 2007 Financial Statements**
A08-02A	**Management Letter to the FY 2007 Audited Financial Statements**
A08-03	**Audit of the FMC's Telephone Services**
A08-04	**Review of Expenses to Furnish, Redecorate or Improve the Offices of FMC Commissioners**
A08-05	**Audit of the Management of *BlackBerry* Communication Devices**
A08-06	**Audit of the Federal Maritime Commission's Budget Execution Processes, Procedures and Policies for Fiscal Year 2007**

A08-07	**Implementation of the Federal Information Security Management Act for Fiscal Year 2008**
A08-08	**Privacy and Data Protection Evaluation Report**

OIG audits and evaluations issued during FY 2008 identified $41,000 in funds that could have been put to better use and issued 41 recommendations to enhance program performance and effectiveness.

In addition to these completed audits and reviews, the OIG began its annual financial statement audit, performed an investigation into allegations of wrongdoing by FMC staff, referred 13 "hotline" complaints to the appropriate FMC program offices for disposition and responded to several public requests to look into various maritime-related issues. The OIG also prepared a narrative summary of "management challenges" facing the FMC for inclusion in the FY 2007 PAR.

In addition to these audit and investigative activities and outcomes, the OIG worked with the agency's webmaster to enhance the utility of the OIG's webpage and to comply with legislative requirements to install a link on the FMC/OIG's webpage that supports anonymous communications to the OIG; revised its investigative manual; responded to a request from the Chairman, House Committee on Oversight and Reform, for information on recommendations made by the OIG dating back to 2001; and met with staff from the Senate Committee on Commerce, Science and Transportation, Subcommittee on Surface Transportation and Merchant Marine, to discuss agency operations and administration.

In fiscal year 2009, the OIG will continue to place a high priority on audits and reviews with the objective of improving agency programs and operations. The OIG will complete statutorily-required reviews to include separate audits of the FMC's fiscal year 2008 Financial Statements and an evaluation of the agency's information security program and privacy assurance controls, as required by the Federal Information Security Management Act. The OIG will also review agency checkout processes for separating employees and its time and attendance documentation. Finally, the OIG will focus remaining resources on the agency's mission critical programs and outreach activities with the objective of enhancing performance and improving outcomes.

F. OFFICE OF ADMINISTRATION

The Office of Administration (OA) provides administrative support to the program operations of the Commission. OA interprets governmental policies and programs, and administers these in a manner consistent with Federal guidelines, including those involving procurement, information technology (IT), financial management, and human resources. OA 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 of OA is responsible for the direct administration and coordination of the:

- **Office of Financial Management**
- **Office of Human Resources**
- **Office of Information Technology**
- **Office of Management Services**

The Director of OA provides administrative guidance to the:

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

and administrative assistance to the:

- **Offices of the Commissioners**
- **Office of the Inspector General**
- **Office of Equal Employment Opportunity**

The OA Director is the FMC's Chief Acquisition Officer (CAO), Audit Follow-up and Management (Internal) Controls Official, Senior Agency Official for Privacy, and Forms Control Officer. The Director also represents the FMC as Principal Management Official to the Small Agency Council. As the Chief Financial Officer, the Director provides program oversight for the agency's budget and financial management responsibilities, and ensures agency compliance with the Financial Integrity Act, the Antideficiency Act, and the Debt Collection Improvement Act of 1996.

The Deputy Director of Administration is the FMC's Chief Information Officer (CIO). The CIO oversees the Office of Information Technology operations and activities administered under the Clinger-Cohen Act of 1996, as well as other applicable laws which prescribe responsibility for operating the office. As the FMC's Competition Advocate, the Deputy Director promotes more competitive procurement practices, and reports to the CAO as required. The Deputy Director also serves as Records Management Officer.

The Office of the Director had significant program achievements in fiscal year 2008. The Office guided the agency's continuing efforts to enhance its IT program, and received an "unqualified" opinion in its fiscal year 2008 financial statement audit. The Office engaged in the orderly transition to the Office of Operations of responsibility for preparation of the Annual Performance Plan, the Annual Program Performance Report, and the agency Strategic Plan, as required by the Government Performance and Results Act of 1993. The Office also prepared the Federal Activities Inventory Reform Act report and the Performance and Accountability Report (which included the Management's Discussion and Analysis and the Federal Managers Financial Integrity Act report). Also during the fiscal year, the Office directed the update of the internal Commission issuances that specify procedures for a variety of programs and activities, and guided Commission efforts to comply with the Government Paperwork Elimination Act and the Federal Information Security Management Act of 2002 (FISMA). Additionally, the Office guided the development of the fiscal year 2009 Congressional budget submission and the fiscal year 2010 baseline budget request to the Office of Management and Budget (OMB), and directed all efforts involving the audit of the Commission's fiscal year 2008 financial statements. The

Office also provided primary support for the OMB clearance and records management programs, and guided the further development of the agency's Continuity of Operations (COOP) Plan.

OA's key objectives for fiscal year 2009 are to: continue to implement policy directions aimed at refining and enhancing agency administrative programs and operations; monitor the accomplishment of agency performance goals, particularly those related to the implementation of Pay.gov and GSA's Smart Pay Program for agency-wide and industry acceptance of electronic payments; initiate further IT improvements, including the replacement, integration or update of agency database systems, the upgrading of network and desktop operating systems, and the implementation of Voice over Internet Protocol (VoIP); and work with senior managers to ensure effective strategic succession planning. The Office also will take the lead in assuring that the agency-wide computer security program is effective, that the agency's financial management system receives an unqualified opinion in annual financial audits, and that the agency complies fully with the government-wide identity card ("HSPD-12") initiative.

1. Office of Financial Management

(a) General Office Responsibilities

The Office of Financial Management (OFM) administers the Commission's financial management program and is responsible for offering guidance on optimal utilization of the Commission's fiscal resources. OFM is charged with interpreting government budgetary and financial policies and programs, and developing annual budget justifications. The Office also administers internal control systems for agency funds, travel, workyears, and cash management. Additionally, OFM manages the Commission's Travel Charge Card Program and administers all budget execution functions.

(b) Achievements

During fiscal year 2008, OFM:

- **Collected and deposited in the General Fund $489,446 from fines and penalty collections, publications, reproductions, and user fees.**

- **Coordinated and prepared budget justifications and estimates for the fiscal year 2009 Congressional budget and developed fiscal year 2010 baseline budget documents for OMB.**

- **Prepared a variety of external reports, including: the Annual Leave Year Report and the Report on Workyears and Personnel Costs for 2007 (Office of Personnel Management – OPM); the Report on International Travel for FY 2007 (OMB); the Report on First-Class Airline Accommodations for fiscal year 2007 (General Services Administration – GSA); and Monthly Reports of Full-Time/Equivalent Work-year Civilian Employment (OPM).**

- **Prepared monthly status reports on workyears, funding, travel, receivables, and bureau/office budget allocation reports to provide management with meaningful, timely expense data by program.**

- **Completed a process for the individual bureaus/offices to forecast annual goals in accordance with the Commission's strategic goals.**

- **Worked with Bureau of Public Debt (BPD) staff and the Commission's independent auditors regarding the audits of fiscal years' 2007 and 2008 financial statements. The Commission received unqualified opinions for both fiscal years.**

- **Pursued delinquent receivables and referred applicable debts to the Department of Treasury for collection.**

- **Worked with the Director of Administration to finalize the Commission's fiscal year 2007 Management's Discussion and Analysis and prepare the Commission's fiscal year 2007 Performance and Accountability Report, and to initiate fiscal year 2008 versions of those reports.**

(c) Future Plans

Goals in fiscal year 2009 include: facilitating implementation of Pay.gov and GSA's Smart Pay Program for agency-wide and industry acceptance of electronic payments; continuing to pursue initiatives leading to economy and efficiency in budget and financial operations; and improving OFM's Cash Management Program, including migrating to updated platforms for the Paperless Check Conversion through the Federal Reserve Bank in Cleveland.

2. Office of Human Resources

(a) General Office Responsibilities

The Office of Human Resources (OHR) administers a complete human resources management program, including recruitment and placement, position classification and pay administration, occupational safety and health, employee assistance, employee relations, workforce discipline, performance management and incentive awards, employee benefits, career transition, retirement, employee development and training, and personnel security.

(b) Achievements

During fiscal year 2008, OHR:

- **Monitored the activities of the agency's payroll/personnel service provider, National Finance Center (NFC), and worked with OA staff to ensure security, continuity and accuracy of payroll and personnel services.**

- **Coordinated with senior management in administering certain employee development programs and activities to address succession planning.**

- **Conducted a comprehensive training program in accordance with the agency's budget and strategic and performance plans, promoting e-learning and on-line training opportunities, continuing the college tuition reimbursement program, ensuring training for new employees on the No Fear Act, and participating in the Small Agency Council Training Program.**

- **Planned, implemented, and promoted new programs for Personal Financial Literacy Education and Volunteer/Community Service Awareness and issued newsletters highlighting appropriate information and activities.**

- **Conducted a comprehensive personnel and information security program, including initiating and adjudicating security investigations for new and reinvestigated employees, completing work necessary for reporting and updating data in the Clearance Verification System pursuant to the E-clearance initiative, and collaborating with the U.S. Customs and Border Protection to gain access to the Automated Commercial Environment/International Trade Data System.**

- **Coordinated with OPM in administering the Federal Human Capital Survey and worked with senior management to identify areas needing improvement.**

- **Implemented provisions of the Federal Workforce Flexibility Act and related legislation and met with contractor to continue to finalize a Human Capital Plan, Workforce Succession Plan, and Accountability System Policy and Plan in accordance with OPM's Human Capital Assessment and Accountability Framework.**

- **Conducted a performance management and incentive awards program.**

- **Conducted a comprehensive recruitment program utilizing flexibilities and recruitment alternatives to staff critical positions.**

- **Coordinated with OPM, OMB, and pertinent partners on a variety of human capital initiatives related to accomplishment of action items pursuant to the President's Management Agenda.**

- **Maintained the partnership for acquisition of assistive devices through the Department of Defense's Computer/Electronic Accommodations Program.**

- **Continued to work with the Small Agency Consortium, OPM and Northrop Grumman officials to complete program activities for the Fast Track implementation of E-OPF.**

- **Promoted the Preventive Health and Awareness Program and OPM's** *Healthier Feds* **initiatives, and hosted wellness seminars sponsored by the Employee Assistance and Federal Occupational Health Programs.**

- **Oversaw preparation for implementation of the Enterprise Human Resources Integration project, and administered other E-Gov initiatives such as Recruitment One-Stop, E-payroll, E-clearances, and E-learning.**

- **Conducted a proactive retirement program that included computing benefits, providing retirement seminars and related training, and processing all retirements.**

- **Coordinated with other administrative units and GSA to implement pertinent provisions of HSPD-12 and meet OMB requirements related to issuance of Federal employee credentials.**

- **Evaluated contractor performance in the areas of personal suitability adjudication and classification/position management.**

- **Worked with contractors to facilitate agencywide implementation of the automated training data management reporting system required by OPM.**

(c) Future Plans

In fiscal year 2009, OHR plans to continue to: advise agency management and staff on all human resources matters and ensure the maintenance of a sound and progressive human resources program; implement pertinent portions of the agency's strategic, training and related performance plans, particularly performance goals related to the management of human resources; explore and implement simplification, flexibility, and accountability of human resources management programs, including investigating automated solutions to address program requirements; in conjunction with administrative components and the GSA, evaluate the implementation of eOPF and conversion of HR records to electronic format to address program requirements and meet agency business needs; complete implementation of HSPD-12 and the credentialing of all employees; monitor the processes and database modernization activities of the NFC in conjunction with the government-wide e-payroll initiative and to ensure timely and accurate payroll and personnel services; and implement and evaluate agency Human Capital, Workforce Planning and Accountability Plans and associated metrics to assess progress in meeting strategic and performance goals and to determine necessary modifications.

3. Office of Information Technology

(a) General Office Responsibilities

The Office of Information Technology (OIT) provides management support to the program and administrative operations of the Commission with respect to IT, and thus is responsible for ensuring that the Commission's IT program is administered in a manner consistent with applicable rules, regulations, and guidelines. OIT receives programmatic guidance from the agency's CIO.

The OIT Director serves as the Commission's IT Officer, Telecommunications Manager, Help Desk and Database Administration Manager, and oversees the IT security program. The OIT Director plans, coordinates, and facilitates the use of automated information systems.

(b) Achievements

During fiscal year 2008, OIT:

- **Contracted out services to reevaluate the Form FMC-18 system. The three-month project concluded with the contracting company recommending a review of the FMC Enterprise Architecture and rebuilding the FMC applications from an enterprise point of view.**

- **Initiated the VoIP project, which will transfer all agency phones into an Internet-based phone system and increase the bandwidth for the FMC, providing redundancy for the phone system as well as Internet activity.**

- **Began working with GSA and the Office of Management Services on a one- year project to redesign the FMC Data Center (server room).**

- **Successfully upgraded Microsoft Office within the FMC.**

- **Began a six-month contract in the fourth quarter of the fiscal year to redevelop all the necessary Federal Information Security Act (FISMA) documentation needed to comply with OMB requirements.**

- **Successfully relocated the FMC IT COOP site from San Antonio, Texas, to Germantown, Maryland.**

- **Continued the development and enhancement of FMC systems to automate processes consistent with the E-Government Act.**

- **Continued to update the policies and procedures associated with the technical assistance provided to FMC staff and changes in the IT infrastructure.**

(c) Future Plans

Major OIT initiatives for fiscal year 2009 include plans to: maintain compliance with FISMA requirements; complete implementation of VoIP; create an FMC Enterprise Architecture Plan; upgrade the FMC's E-mail system; improve the VPN security infrastructure to be FIPS compliant; complete the FMC Datacenter redesign project; support the Pay.gov and HSPD-12 initiatives; and begin development of an Online Agreements system.

4. Office of Management Services

(a) General Office Responsibilities

The Office of Management Services (OMS) directs and administers a variety of management services that principally provide administrative support to the regulatory program operations of the Commission. The Director of the Office serves as the Commission's Contracting Officer.

The Office's support programs include procurement of administrative goods and services, property management, space management, printing and copying management, mail and record services, 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 2008, OMS:

- **Through the Office Director, continued to serve as the Agency's Technical Representative for oversight of the Headquarters (HQ) building security contract, and served as Chairman of the tenants' Building Security Committee and the Government's Designated Official for the HQ site regarding emergency preparedness.**

- **Worked with the Department of Homeland Security's Federal Protective Service (FPS) and the current physical security contractor, American Security Programs, on awarding the physical security services contract for FMC's HQ building.**

- **Coordinated with the Office of the Secretary (OS) and BPD to award a five-month contract bridge for scanning services to keep these services available to OS, while completing the re-solicitation and award of a new scanning services contract.**

- **Established an HQ-wide shredding services program and arranged for quarterly disposal of unwanted documentation and recycled materials at the agency's HQ facility.**

- **Coordinated with the CIO for the development of a full-scale FISMA support package of required program services, and arranged with BPD to solicit pricing information and establish an acquisition plan to acquire the support; a contract was awarded for this critical agency-wide services requirement.**

- **Traveled to Houston, Texas to conduct site surveys with the agency's Area Representative (AR) and GSA Realty Specialist, and assisted the AR in relocating to new, permanent office space.**

- **Coordinated with GSA and the Office of Operations to renew office space leases in the agency's New York, Los Angeles, and Seattle Area Representative locations.**

- **Traveled to Hollywood, Florida to conduct site surveys, and arranged through GSA to relocate the two AR's in this area to GSA-leased space.**

- **Coordinated with the CIO, OIT, and BPD to acquire "project planning and development" services for the Form FMC-18 system.**

- **Transferred the agency's invoice processing program and function to OFM with no disruption in support to agency activities, and worked closely with OFM to ensure a smooth transition.**

(c) Future Plans

In fiscal year 2009, the Office's objectives include: continuing to work with GSA, FPS, and other tenant agencies at HQ facilities and field locations to upgrade and/or improve the building's security measures and emergency preparedness; continuing to work with the other Directors in OA to improve communication and agency-wide administrative support through regular dialogue and/or information-sharing sessions and by promoting a customer-service and team-building environment throughout the OA; continuing to work with BPD on ways to improve the FMC's acquisition and procurement processes; and continuing to provide office support and administrative services.

G. OFFICE OF OPERATIONS

1. Oversight Responsibilities

The Director of Operations is responsible to the Chairman for leadership and coordination of the following Commission bureaus or units:

- **Bureau of Certification and Licensing**
- **Bureau of Enforcement**
- **Bureau of Trade Analysis**
- **Area Representatives (AR)**

The Office of Operations oversees the operation of various Commission programs and recommends necessary changes in staff objectives.

Fiscal year 2008 brought a significant rise in the number of MTO agreements filed and an increase in the number of OTI licenses sought and granted. Fiscal year 2008 saw a surge in export cargo from the U.S. and a corresponding lack of available container space, followed quickly by the first signs of the impact of the global economic downturn on the shipping industry. The Office worked with the bureaus and other agency offices to report to the Commission with regard to emerging industry changes in all sectors. The Office continues to lead the Bureau of Enforcement and the Bureau of Certification and Licensing in review and coordination of compliance and enforcement policy. In fiscal year 2008, the Commission reviewed the Los Angeles/Long Beach/Terminal Operator Administration and Implementation Agreement, and the Los Angeles and Long Beach Port Infrastructure and Environmental Programs Cooperative Working Agreement. The Office coordinated and assisted in the Bureaus' recommendations and consideration of these high-profile agreements.

2. Administrative Responsibilities

The Director of Operations was designated as the agency's Performance Improvement Officer (PIO) in December of 2008. Executive

Order 13450: "Improving Government Program Performance" required executive agencies to name PIOs who would have responsibility for coordinating the performance management activities of the agency, including the development of strategic and annual performance plans and reports, and continual assessment of strategic and performance goals and means for measurements of progress.

In fiscal year 2008, the agency drafted a new Strategic Plan for fiscal years 2010 through 2015. The Office of Operations led the drafting process, with the participation of all Commission bureaus and offices. After the Commission approved the new plan, the Office worked with the Office of Management and Budget (OMB) to finalize objectives and performance measures. At the end of the fiscal year, a draft Strategic Plan was posted on the agency website for public comment. A new mission statement and three strategic goals were developed, along with objectives and performance measures for the six-year period. The goals and objectives in this plan will link directly to annual performance plans for the same fiscal years as well as to the agency's annual budget, as called for by the above-mentioned Executive Order and OMB Circular A-11.

The Office of Operations also has responsibility for coordination of budget requests and spending by the three bureaus, from the point of submitting budget requests to monitoring spending on travel and training. The Office is responsible for travel planning and final approval for the bureau staff. As well, in fiscal year 2008, the Office drafted the Annual Report for Fiscal Year 2007.

3. Area Representatives

The Commission maintains a presence in Los Angeles, South Florida, New Orleans, New York, Houston and Seattle through ARs. These representatives serve other major port cities and transportation centers within their respective areas. The Area Representatives report directly to the Office of Operations. In addition to their monitoring and investigative functions, Area Representatives represent the FMC within their jurisdictions, provide liaison between the FMC and the maritime industry and the shipping public, collect and analyze information of regulatory significance, and assess industry conditions. The Area

Representatives support the functions of each bureau under the Office of Operations. Liaison activities include: cooperation and coordination with other governmental agencies and departments; providing regulatory information and relaying FMC policy to the shipping industry and the public; and handling informal complaints.

In fiscal year 2008, hundreds of informal complaints were handled by Area Representatives. These complaints often involved reports of unlawful activities by regulated entities, or requests for assistance in recovering lost cargo or payments. In many cases the Area Representatives were able to assist in the resolution of these complaints directly or referred cases to the Commission's Office of Consumer Affairs and Dispute Resolution Services. Where unlawful activity could not be resolved and compliance achieved informally, and in other cases as required, investigations were opened by the Office of Operations. In fiscal year 2008 over 40 investigations of potential violations of the Shipping Act were opened and conducted with the support of Bureau of Enforcement attorneys. The Area Representatives investigate these violations through visits to regulated entities and review of documents and commercial or governmental databases. If a potential violation remains unresolved, a proceeding will be referred to the Bureau of Enforcement for further action as described later in this report.

Public service announcements were published by the Office of Operations in each major port area warning against the use of unlicensed OTIs. The Area Representatives led this effort through review of the text and selection of the appropriate local publications. These warnings led to numerous inquiries and reports to ARs regarding licensed and unlicensed OTI activity and an apparent decrease in complaints about the activities of unlicensed entities in communities in which they were published.

In fiscal year 2008, Area Representatives made presentations, with the assistance of the Bureau of Certification and Licensing, on OTI licensing requirements and compliance for recently licensed companies, current applicants and persons interested in becoming licensed, to audiences in Florida and Hawaii. ARs also briefed or addressed key officials of the New York and New Jersey Port Authority, the New Jersey State Police, the Houston Air Cargo Association, the Houston Maritime Area Safety and Security Team, the Houston Maritime Awareness

Security Terrorism Training Conference, the Memphis Multi Modal Conference and U.S. Customs and Border Patrol.

In fiscal year 2008, the Los Angeles Area Representative participated along with other FMC staff in PIER PASS discussions with the Ports of Los Angeles and Long Beach and issues concerning the Los Angeles/Long Beach/Terminal Operator Administration and Implementation Agreement, and the Los Angeles and Long Beach Port Infrastructure and Environmental Programs Cooperative Working Agreement.

Area Representatives participated in tasks forces or initiatives sponsored by local law enforcement agencies, the U.S. Department of Justice, the Department of Homeland Security (through Customs and Border Patrol or Immigration and Customs Enforcement) and the Department of Commerce. This participation facilitates sharing of information on illegal activities primarily involving export.

H. BUREAU OF CERTIFICATION AND LICENSING

1. In General

The Bureau of Certification and Licensing has responsibility for the Commission's ocean transportation intermediary (OTI) licensing program and passenger vessel certification program. The Bureau:

- **Licenses and regulates OTIs, including ocean freight forwarders and non-vessel-operating common carriers (NVOCCs).**

- **Issues certificates to owners and operators of passenger vessels that have evidenced financial responsibility to satisfy liability incurred for nonperformance of voyages or for death or injury to passengers and other persons.**

- **Manages programs assuring financial responsibility of OTIs and passenger vessel operators, by developing policies and guidelines, and analyzing financial instruments and financial statements.**

- **Develops and maintains information systems that support the Bureau's programs and those of other Commission entities.**

The Bureau is organized into two offices: the Office of Transportation Intermediaries and the Office of Passenger Vessels and Information Processing. The former reviews and approves applications for OTI licenses, and maintains and updates records about licensees. The latter reviews applications for certificates of financial responsibility with respect to passenger vessels, manages all activities with respect to evidence of financial responsibility for OTIs and passenger vessel owner/operators, and develops and maintains all Bureau databases and records of OTI applicants and licensees.

2. Licensing of Ocean Transportation Intermediaries

OTIs are transportation middlemen for oceanborne cargo moving in the U.S.-foreign trades. There are two types: NVOCCs and ocean freight forwarders. NVOCCs are common carriers who do not operate the vessels by which transportation is provided. Ocean freight forwarders in the U.S. arrange for the transportation of cargo with a common carrier on behalf of shippers and process documents related to those shipments. Both NVOCCs and ocean freight forwarders must be licensed by the Commission if they are located in the U.S. NVOCCs doing business in the U.S. foreign trades but located outside the U.S. (foreign NVOCCs) may choose to become licensed, but are not required to do so. Whether licensed or not, foreign NVOCCs must establish financial responsibility. All NVOCCs must publish electronic tariffs which contain the NVOCC's rates, charges, rules and practices.

To become licensed by the Commission, an OTI must establish that it, through its Qualifying Individual (QI), has a minimum of three years of experience in ocean transportation intermediary activities in the U.S. and the necessary character to render OTI services as well as establish its financial responsibility by means of a bond, insurance, or other instrument. An investigation of the applicant's qualifications address such issues as accuracy of information provided in the application; integrity and financial responsibility of the applicant; character of the applicant and its QI; and length and nature of the QI's experience handling OTI duties. Licensed ocean freight forwarders must establish financial responsibility in the amount of $50,000, and licensed NVOCCs, $75,000. An additional $10,000 of coverage is required for each unincorporated U.S. branch office in the United States other than the one used to establish a presence. If an OTI is a licensed NVOCC, it must file a Form FMC-1 and publish a tariff. Furthermore, non-U.S.-based NVOCCs that do not wish to be licensed must provide the Commission with proof of financial responsibility in the amount of $150,000, file a Form FMC-1, and ensure a tariff is published at the site listed on the Form FMC-1. A non-U.S.-based NVOCC must list in its tariff an agent for service of process in the United States, and it must use a licensed OTI for any OTI services performed on its behalf in the United States. The financial instrument must be available to pay claims against the OTI arising from its transportation-related activities, any order of reparation assessed under the Shipping Act, and any judgments for damages against an OTI arising from its transportation-related activities under the Shipping Act.

During fiscal year 2008, the Commission received 502 new OTI applications and 236 amended applications, issued 474 OTI licenses, revoked 227 licenses, and reissued approximately 13 licenses. At the end of the fiscal year, 1,136 ocean freight forwarders, 1,720 U.S. NVOCCs, 1,367 joint NVOCC/ocean freight forwarders, and 49 foreign NVOCCs held active OTI licenses. An additional 1,032 foreign NVOCCs maintained proof of financial responsibility on file with the Commission, but chose not to be licensed. Overall, there has been a gain of 254 licensed and/or bonded OTIs, representing a 5% increase from 5,050 OTIs in fiscal year 2007 to 5,304 in fiscal year 2008. U.S. NVOCCs may file riders to their existing NVOCC bonds to meet financial responsibility requirements imposed by the Chinese government. The Commission received 103 riders providing optional proof of financial responsibility for NVOCCs serving the U.S.-China trade.

The Bureau also developed an electronic system to permit online submissions of the OTI application, Form FMC-18. Approximately 80% of all incoming OTI applications received are from the electronic system. The FMC continued its outreach program and promoted awareness of OTI licensing requirements. Specifically, in conjunction with the efforts of Hawaii State Representative John Mizuno's office, FMC personnel presented a general information session to those involved in OTI activities which necessitate licensing. Further, staff participated at the Florida Customs Brokers and Forwarders Association Seminar on how to obtain an OTI License/Responsibilities of an OTI under the Shipping Act and FMC regulations.

3. Passenger Vessel Certification

The Commission administers 46 U.S.C. §§ 44102-44103, which requires evidence of financial responsibility for vessels which have berth or stateroom accommodations for 50 or more passengers and embark passengers at U.S. ports and territories. The program now encompasses 203 vessels and 48 operators, which have aggregate evidence of financial responsibility coverage in excess of $339 million for nonperformance and over $725 million for casualty. Certificates of performance cover financial responsibility for the indemnification of passengers for nonperformance of transportation. This requirement also helps prevent unscrupulous or financially weak operators from operating from U.S. ports. The required levels of coverage for nonperformance are determined by Commission regulation, which do not currently require coverage exceeding 15 million dollars per entity. Even after an operator has ceased operations and dissolved its corporate existence, the evidence of financial responsibility is still valid and available to claimants against the guarantor.

Certificates of casualty are required to meet liability that may occur for death or injury to passengers or other persons on voyages to or from U.S. ports in the amounts established by the statute. The law provides for $20,000 coverage per person for the first 500 passengers, and the scale decreases to $5,000 per person for passengers in excess of 1,500.

The certificates issued pursuant to this program are necessary for U.S. Customs and Border Protection's clearance of thousands of passenger vessel sailings annually. During fiscal year 2008, the Commission approved and issued 30 casualty certificates and 37 performance certificates an increase of 20% and 6% respectively from the previous fiscal year.

In conjunction with CADRS, the Bureau offers information and guidance to the cruising public throughout the year on passenger rights and obligations regarding monies paid to cruise lines that fail to perform voyages. Over the past few years, a number of cruise operators discontinued operations or filed for bankruptcy. When cruise lines fail to perform because of bankruptcies or other failures, the Commission works with the cruise line and the financial responsibility provider to facilitate the refund process. The public is kept informed through press releases posted on the Commission's website, and advice is given to passengers who contact the FMC staff. During fiscal year 2008, one cruise operator under the Commission's PVO program ceased operation, and none filed for bankruptcy. Staff continued its efforts to assist passenger vessel operators and financial responsibility providers to resolve passenger claims for several cancelled cruises.

The Bureau continues to monitor PVO activities and operations by performing oversight of current industry events and reviews of cruise line's financial records. PVO analysts perform oversight of cruise line operator's operations and activities to ensure compliance with applicable statute and Commission regulations. One component of the Bureau's PVO monitoring program is to perform on-site reviews to evaluate PVOs' financial responsibility with respect to oversight of cruise lines participating in the Commission's PVO program. The purpose of the on-site review is to confirm the passenger vessel operator's compliance with the Commission's reporting requirements relating to unearned passenger revenue and the appropriate amount of coverage required to ensure adequate financial responsibility. The Commission also wants to determine if a PVO is in compliance with the Commission's reporting requirements relating to unearned passenger revenue and the appropriate amount of coverage required to ensure financial responsibility. During fiscal year 2008, an on-site review was conducted of a cruise line which established its financial responsibility with an escrow account.

4. Automated Database Systems

During fiscal year 2008, BCL continued to modernize and expand the Regulated Person Index (RPI), a Commission database containing up-to-date records of licensed OTIs, ocean common carriers and other entities. Among other data uses, the RPI is used to post on the Commission's website a list of OTIs which are compliant with OTI requirements so that carriers and others can ascertain whether an OTI is properly licensed and bonded, and, if required, has posted the location of its automated tariff. Furthermore, the Bureau planned for the development of an automated Form 131, *Application for Certificate of Financial Responsibility*, and conducted preliminary requirements analysis.

5. Future Plans

In fiscal year 2009, the Bureau will:

- Carry on efforts to enhance the electronic FMC-18 system to expedite licensing, integrate FMC databases, improve the functionality for electronic payments and e-signature capability, and support electronic filing of bond information.

- Continue to promote awareness of regulatory requirements for OTIs and PVOs to increase compliance by VOCCs, OTIs, and PVOs with the Shipping Act.

- Assure that the PVO program meets the contemporary needs of the cruising public. The Bureau will review the effectiveness of the PVO monitoring procedures; make appropriate corrections to staff procedures and monitoring schedules; and follow up to ensure that the new procedures are timely implemented.

I. BUREAU OF ENFORCEMENT

The Bureau of Enforcement is the primary prosecutorial arm of the Commission. Attorneys of the Bureau serve as trial attorneys in formal proceedings instituted under section 11 of the Shipping Act, and in investigations instituted under the FSPA. Bureau attorneys serve as legal advisors to the Office of Operations and other Commission bureaus, and also may be designated investigative officers in nonadjudicatory fact-finding proceedings. The Bureau monitors all other formal proceedings, including relevant court proceedings, in order to identify major regulatory issues and advise the Director of Operations and the other bureaus. The Bureau also participates in the development of Commission rules and regulations and serves on inter-bureau task forces and special committees. On occasion, under the direction of the General Counsel, attorneys from the Bureau may participate in matters in court or in other agency litigation to which the Commission is a party.

Through investigative personnel, and most often as the result of information provided by the industry and other government entities, the Bureau monitors and investigates the activities of ocean common carriers, OTIs, 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 and NVOCC service arrangement (NSA) reviews to determine compliance with applicable statutes and regulations; (2) reviews and audits of ocean common carrier, NVOCC and ocean freight forwarder operations, including compliance with licensing, tariff, and bonding requirements; (3) audits of passenger vessel operators to ensure the financial protection of cruise passengers; (4) monitoring of agreements among ocean carriers and MTOs; and (5) various studies and analyses to support Commission programs. Investigations involve alleged violations of the full range of statutes and regulations administered by the Commission, including: illegal or unfiled agreements; abuses of antitrust immunity; unlicensed OTI activity, including servicing of noncompliant OTIs by VOCCs and licensed NVOCCs; illegal rebating; misdescriptions or misdeclarations of cargo; untariffed cargo carriage; unbonded OTI and passenger vessel operations; and various types of consumer abuses, including failure of carriers or intermediaries to carry out transportation obligations, resulting in cargo delays or financial losses for shippers. The Bureau adheres to the agency's objectives of obtaining statutory compliance and ensuring equitable trading conditions.

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 Commission units, in special enforcement initiatives, fact-finding investigations and rulemaking.

During fiscal year 2008, the Bureau of Enforcement investigated and prosecuted possible illegal practices in many trade lanes, including the Transpacific, Oceana, North Atlantic, Mediterranean, West Africa, Central and South American and Caribbean trades. These market-distorting activities included various forms of rebates and absorptions, misdescription of commodities and misdeclaration of measurements, illegal equipment substitution, and unlawful use of service contracts, as well as carriage of cargo by and for untariffed and unbonded NVOCCs. Most of these investigations were resolved informally, some with compromise settlements and civil penalties.

In addition, several matters arose with respect to activities pursuant to filed and unfiled agreements between and among ocean common carriers and marine terminal operators. A major investigative effort was initiated in fiscal year 2008 into the respective Clean Truck Programs of Los Angeles and Long Beach, CA, including the Ports' operations and practices under several agreements filed with the Commission. Enforcement efforts also continued concerning the operations of unlicensed and unbonded NVOCCs specializing in the carriage of used household goods, including licensed OTIs providing service to the unlicensed.

The exchange of investigative information among the Bureau, the Commission's Area Representatives, and the CBP continues to be beneficial to all parties. Cooperation with CBP included staff interactions and joint field operations to investigate entities suspected of violating both agencies' statutes or regulations. Such cooperation also has included local police and other government entities, including the U.S. Attorney's Office and the Federal Bureau of Investigation, when necessary.

In fiscal year 2008, the compliance audit program continued. This program, conducted from headquarters primarily by mail, reviews the operations of licensed OTIs to assist them in complying with the statutory requirements and the Commission's rules and regulations. The audit program also includes review of entities holding themselves out as VOCCs with no indication of vessel operations. At the beginning of fiscal year 2008, 6 audits were pending. During the fiscal year, 117 audits were commenced, 116 audits were completed, and 7 were pending in the Bureau on September 30, 2008.

At the beginning of fiscal year 2008, 18 enforcement cases were pending final resolution by the Bureau, the Bureau was party to 7 formal proceedings, and there were 78 matters pending which the Bureau was monitoring or for which it was providing legal advice. During the fiscal year, 21 new enforcement actions were commenced; 14 were compromised and settled, administratively closed, or referred for formal proceedings; and 25 enforcement cases were pending resolution at fiscal year's end. Also, 4 formal proceedings were initiated; 2 formal proceedings were completed, and 9 were pending at the end of the fiscal year. Additionally, 77 matters involving monitoring or legal advice were received during the fiscal year, 62 such matters were completed, and 93 were pending in the Bureau on September 30, 2008.

In fiscal year 2009, the Bureau will continue to investigate market-distorting, fraudulent and anticompetitive practices not in compliance with the statutes and regulations administered by the Commission, including the operations of licensed and unlicensed OTIs and possible non-compliance by the parties with the regulatory requirements for service contracts and NSAs.

J. BUREAU OF TRADE ANALYSIS

1. In General

The primary function of the Bureau is the oversight of concerted activity by ocean common carriers and marine terminal operators under the standards of the Shipping Act. Further, the Bureau administers the Commission's agreements, service contract, and NSA programs, and monitors the accessibility and accuracy of all published tariffs. 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. foreign trade, and to advise the Commission and its staff on current trade conditions, trends, and regulatory concerns affecting oceanborne 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 ocean common carrier and MTO agreements.**

- **Reviewing and processing service contracts, NSAs, and amendments filed by ocean common carriers, conferences of such carriers, and NVOCCs, including**

service contract and NSA statements of essential terms published by such entities.

- **Reviewing tariff publications in automated systems of carriers and conferences and ensuring that tariffs under OSRA are accessible to the public and accurate.**

2. Agreement Filings and Review

Under sections 4 and 5 of the Shipping Act, all agreements by or among ocean common carriers to fix rates or conditions of service, pool cargo or revenue, allot ports or regulate sailings, limit or regulate the volume or character of cargo or passengers to be carried, control or prevent competition, or engage in exclusive or preferential arrangements, are required to be filed with the Commission. Except for certain exempted categories, agreements among MTOs and among one or more MTOs and one or more VOCCs also are required to be filed with the Commission. Generally, an agreement becomes effective 45 days after filing, unless the Commission has requested additional information. These agreements are reviewed pursuant to the standard set forth in section 6(g) of the Shipping Act. Effective agreements are exempt from the antitrust laws.

In fiscal year 2008, the Bureau received 183 agreement filings, a decrease of eight (or four percent) from the previous year. The Bureau analyzed and processed 176 agreement filings during the year. Statistics on agreement filings for fiscal year 2008 are in Appendix C.

(a) Ocean Common Carrier Agreements

There are two broad categories of ocean common carrier agreements filed with the Commission: (1) pricing agreements, where the focus is on rates, and (2) operational agreements, where the focus can range from the sharing of vessel space to the management of an internet portal. Descriptions follow of the two categories of agreements.

(1) Pricing Agreements

There are two types of pricing agreements: conference agreements and rate discussion agreements. Conference agreements provide for the collective discussion, agreement, and establishment of ocean freight rates and practices by groups of ocean common carriers. Conferences publish a common rate tariff in which all the member lines participate. Rate discussion agreements (RDAs) also focus on rate matters, but unlike conferences, any consensus reached under RDAs is non-binding on the parties. RDAs do not publish common rate tariffs, as each party publishes its own tariff. Pricing agreements represented 16 percent of all agreement filings last year. At the end of the year, conference agreements accounted for 3.1 percent of all carrier agreements on file, while RDAs made up 11.9 percent.

While in years past conference agreements were the dominant pricing forum in many trades, their commercial significance has effectively disappeared in recent years. Since FY 2000, the number of conferences has declined by 70 percent, from 23 to 7 agreements. No new conference agreement has been filed with the Commission since FY 2000. The last traditionally functioning conference, the Trans-Atlantic Conference Agreement, disbanded and officially terminated on September 30, 2008, in response to the European Union's repeal of its block exemption for conferences. Of the remaining seven conferences in the U.S. trades, three cover only government cargoes, two are inactive, one focuses solely on joint service contracting between its two parties, and one deals exclusively with U.S. inland charges. Agreement filing activities of conferences also diminished last year with just four filings, representing about two percent of all filings received last year.

RDAs have become the primary pricing forum in most U.S. trade lanes. Since FY 2000 the number of RDAs has declined from 36 to 27 agreements, a 25 percent reduction. During fiscal year 2008, there were no new RDAs filed. Twenty-five modifications to existing RDAs were filed, about 15 percent of all filings for the year. The vast majority added or deleted members. One rate discussion agreement was terminated during the fiscal year, the Indian Subcontinent Discussion Agreement.

(2) Operational Agreements

Operational agreements include vessel-sharing agreements, joint service agreements, cooperative working agreements, and non-rate discussion agreements. Operational agreement filings during the fiscal year accounted for 57 percent of all carrier filings.

Vessel-sharing agreements (VSAs) typically authorize some level of service cooperation with the goal of reducing individual operating costs. VSAs range from alliance agreements, which involve considerable operational cooperation among the parties, to slot charter agreements, which require only minimal commitments. VSAs account for 70 percent of effective carrier agreements and accounted for 62 percent of carrier agreement filings received last year. Thirty-eight new VSAs were filed last year, representing 95 percent of all new carrier agreements filed. Twenty-seven VSAs were terminated. Since FY 2000, the number of VSAs has increased by seven percent, from 148 to 159.

Under joint service agreements (JSAs), two or more carriers operate a joint venture under a single name in a specified trading area. The JSA issues its own bills of lading, sets its own rates, and acts as an individual ocean common carrier. At the end of the year there were seven JSAs on file. This is three percent of the total number of effective carrier agreements. No new JSAs were received during fiscal year 2008, and one was terminated. Since FY 2000, the number of effective JSAs has fallen by 50 percent, from 14 to 7. This is due to carriers' preferences for more flexible arrangements such as VSAs.

Cooperative working agreements (CWA) are non-pricing agreements that tend to deal with unique operational considerations relating to acquisitions, joint service contracting, sharing of administrative services, or internet portal management. Other agreements filed with the Commission in very small numbers include agency, sailing, transshipment, and equipment interchange (including chassis pooling) agreements. At the end of the year, there were 18 CWAs and other agreements on file, representing eight percent of all carrier agreements. One new CWA was filed last year. Since FY 2000, the number of CWAs and other agreements has decreased by one, from 19 to 18.

Non-rate discussion agreements (NRDAs) provide ocean common carriers with a forum for discussing matters of mutual interest other than rates. Typically, these agreements focus on regulatory, safety, and security issues. At the end of the year, there were eight such agreements on file, or 2.5 percent of the total. The Bureau received only one new NRDA during the year. This agreement, the Container Trades Statistics Agreement, provides the parties with a means to compile and share trade data in the North Atlantic trades and is meant to replace the terminated Trans-Atlantic Conference Agreement. Since FY 2000, the number of active NRDAs has declined slightly, from 11 to 8.

(b) Marine Terminal Operator Agreements

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

During fiscal year 2008, the Bureau received 50 MTO agreement filings, including nine terminations or withdrawals. This represents a 400 percent increase over last year. MTO agreements accounted for 27 percent of all agreement filings during the fiscal year. This significant increase from last year (when MTOs accounted for just three percent of all agreement filings) is primarily due to the decision of a port authority to file its recently executed service agreements with carriers, despite the filing exemption for this type of agreement. The other filings fall into two categories: joint venture cooperative working agreements and agreements addressing environmental concerns and practices. At the end of the fiscal year, there were 182 marine terminal agreements on file, down from 255 the previous year, or a decrease by 28 percent. This decline resulted from the identification of a large number of leases that had expired without notice to the Bureau.

The Bureau received five joint venture cooperative working agreements during the year for the Ports of Miami, Houston, Mobile, Seattle, and New Orleans. In general, these agreements establish a joint venture between two or more holding companies, usually owned by larger organizations already involved in marine terminal operations. These holding companies, the joint venture, and other related parties enter into an agreement allowing them to discuss and agree on rates and charges, provide underlying operational and administrative support to the joint venture, and reassign existing operating leases for terminal facilities to the joint venture.

Increasingly, marine terminal operators are looking more closely at the environmental impact of their port operations trying to minimize the environmental consequences resulting from these activities. These coordinated efforts can include the use of certain types of fuel in container handling equipment, incentives for the use of cleaner fuel in vessels while in port, and significant changes to drayage trucks serving a given port area.

In larger port areas, MTOs are discussing and agreeing on measures to be taken to reduce negative environmental effects. The number of these kinds of discussion agreements filed over the past two years has increased. In FY 2008, discussion agreements were filed for New York/New Jersey, Los Angeles/Long Beach, and Seattle/Tacoma.

3. Monitoring and Economic Analysis

The systematic monitoring of common carrier activities and commercial conditions in the U.S. foreign trades is an integral part of the Commission's responsibilities under the Shipping Act. The activities of certain types of agreements among marine terminal operators are monitored in a similar fashion. Such monitoring helps ensure that carriers and marine terminal operators comply with the statutory standards of the Shipping Act and the requirements of relevant Commission regulations. To that end, the Bureau administers monitoring programs and researches current trade conditions, contemporary issues adversely affecting the industry, emerging commercial trends, and carrier pricing and service.

The Commission's monitoring program examines carrier competition within individual U.S. trade lanes, including market share, concentration, barriers to market entry, coordination between carriers or groups of carriers. The program also examines the availability of alternative services and alternative supply sources for imports, as well as cargo volume trends, congestion bottlenecks, commercial pricing practices, operational cost pressures, service offerings, vessel capacity utilization, capacity management programs, service contracting activity, and shipper complaints.

Major projects begun or completed by the Bureau in fiscal year 2008 included: (1) the Bureau's monitoring and analysis projects arising in connection with the *Los Angeles–Long Beach Infrastructure and Environmental Programs Cooperative Working Agreement;* the *U.S. Pacific-Oceania Agreement*, the *U.S./Australia Discussion Agreement* and the *Australia and New Zealand-U.S. Discussion Agreement* as discussed earlier; (2) staff participation in the Maritime Data Working Group, including contributions to the publication of *Maritime Trade and Transportation* produced under the auspices of the U.S. Department of Transportation, Bureau of Transportation Statistics; (3) a study of the repeal by the EU of the block exemption for liner shipping conferences; (4) an analysis of market variables affecting the availability of containers and vessel space for shippers of U.S. exported goods; (5) compilation of data on U.S. container export and import volumes by trade region; (6) an assessment of the economics of U.S. west coast container cargo diversion and the implications for ports in Florida; (7) staff participation in the development of the Automated Commercial Environment/International Trade Data System (ACE/ITDS); (8) migration from paper filing to the electronic filing of monitoring reports, meeting minutes and other related materials that certain agreements are required to file pursuant to the Commission's agreement reporting requirements; and (9) meetings with industry representatives on agreement and trade matters, including two trips to southern California to discuss issues relating to the San Pedro Bay ports' Clean Air Action Plan.

The Bureau also provides economic expertise for 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. Professional staff provides briefings and supporting materials for senior agency officials on agreements and trade conditions for the Commission's hearings before Congress and the official speaking engagements of FMC Commissioners, and conducts outreach on behalf of the Commission to industry and the public.

4. Tariffs

The Shipping Act requires common carriers and conferences to publish their tariffs electronically, in private systems. These electronic tariffs contain rates, charges, rules, and practices of common carriers operating in the U.S. foreign commerce. The Bureau monitors the public accessibility of these private tariff systems and reviews published tariff material for compliance with the requirements of the Shipping Act. The Bureau also determines whether to grant applications for special permission to deviate from tariff publishing rules and regulations. During fiscal year 2008, the Bureau received and processed eight special permission applications.

Further, the Bureau is responsible for processing the electronic Form FMC-1, *Tariff Registration Form,* required to be filed with the Commission by common carriers, conferences, and MTOs. The data on this form identifies the location of common carrier tariffs, including common carrier and conference service contract essential terms publications or any MTO schedules. At the end of fiscal year 2008, 4,543 tariff location addresses were posted on the Commission's website. Of that number, 4,061 tariff addresses were for NVOCCs. The Bureau also collaborates with other Commission bureaus and offices to verify that VOCCs and NVOCCs comply with the Commission's licensing, bonding and tariff publication requirements.

5. Service Contracts

Service contracts are an alternative to transportation of cargo under tariff rates. Service contracts enable the parties to tailor transportation services to their commercial and operational needs and to keep many terms of these arrangements confidential.

During fiscal year 2008, the Commission received 44,438 new service contracts, compared to 46,608 in fiscal year 2007, and 294,880 contract amendments, compared to 262,076 in fiscal year 2007. Over the last two fiscal years, the number of original filings has decreased, while the filings of amendments to those original service contracts have increased. During the fiscal year, the total number of service contracts filed into SERVCON, the Bureau's service contract filing system, reached two million. Original service contract or NSA filings that contain errors due to clerical errors can be corrected within two business days by filing a "corrected transmission" copy into SERVCON. During the fiscal year, 2,305 records involving corrected transmission copies were filed into SERVCON.

6. NVOCC Service Arrangements

Commission rules allow NVOCCs to offer transportation services pursuant to individually negotiated, confidential service arrangements with customers (NSAs) rather than under a published tariff. The Commission's rules implementing NSAs, 46 CFR Part 531, *NVOCC Service Arrangements*, became effective on January 19, 2005.

At the end of fiscal year 2008, there were 662 NVOCCs registered with the Commission to file NSAs. During fiscal year 2008, approximately 990 NSAs and 1,434 amendments were filed by 63 NVOCCs. Since January 2005, when the practice was established, there have been 2,411 NSAs and 2,823 amendments filed by 115 NVOCCs.

7. Controlled Carriers

A controlled carrier is an ocean common carrier that is, or whose operating assets are, owned or controlled directly or indirectly by a government. The Shipping Act provides that no controlled carrier may maintain rates or charges in its tariffs or service contracts that are below a level that is just and reasonable, nor may any such carrier establish, maintain, or enforce unjust or unreasonable classifications, rules or regulations in those tariffs or service contracts. In addition, tariff 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 publication.

The Commission's staff monitors U.S. and foreign trade press and other data to identify controlled carriers and any unjust or unreasonable controlled carrier activity that might require Commission action. There are currently eight controlled carriers operating in the U.S. trades:

(1) American President Lines, Ltd and APL Co., Pte. (RPI No. 000240) – Republic of Singapore;

(2) Ceylon Shipping Corporation (RPI No. 016589) – Democratic Socialist Republic of Sri Lanka;

(3) COSCO Container Lines Company, Limited (RPI No. 015614) - People's Republic of China;

(4) China Shipping Container Lines Co., Ltd. (RPI No. 016435) - People's Republic of China;

(5) China Shipping Container Lines (Hong Kong) Company, Ltd. (RPI No. 019269) - People’s Republic of China;

(6) Compagnie Nationale Algerienne de Navigation (RPI No. 000787) - People’s Democratic Republic of Algeria;

(7) Sinotrans Container Lines Co., Ltd. (d/b/a Sinolines) (RPI No. 017703) – People’s Republic of China; and

(8) Shipping Corporation of India Ltd., The (RPI No. 001141) – Republic of India.

8. Marine Terminal Activities

Pursuant to the Ocean Shipping Reform Act (OSRA) an MTO may make available to the public a schedule of rates, regulations, and practices, including limitations of liability for cargo loss or damage, pertaining to receiving, delivering, handling, or storing property at its marine terminal. Any such schedule made available to the public shall be enforceable by an appropriate court as an implied contract without proof of actual knowledge of its provisions. Pursuant to the Commission’s regulations governing MTO schedules, any terminal schedule that is made available to the public must be available during normal business hours and in electronic form. Each MTO must notify the Bureau of the electronic location of its terminal schedule by submitting Form FMC-1 before commencing operations. A total of 260 MTOs have filed Form FMC-1. At the close of fiscal year 2008, 152 of these MTOs had published their terminal schedules. The internet addresses for these MTO terminal schedules are posted on the Commission's website.

9. Automated Database Systems

The Bureau currently maintains and uses the following automated databases and filing systems: (1) Form FMC-1 System; (2) SERVCON, the system for filing service contracts and NSAs (as well as internal database systems related to SERVCON registration forms); and (3) the Agreement Profile Database.

At the end of fiscal year 2008, the Form FMC-1 System reflected the tariff location addresses of 324 VOCCs, 4,061 NVOCCs, six conferences, and 152 MTOs. The FMC-1 System also allows the Commission to track the status of any Form FMC-1 submitted.

SERVCON contains service contract and NSA data, most of which is available only to the Commission's staff due to confidentiality requirements. Carriers must register to file service contracts by submitting Form FMC-83, and NVOCCs must submit Form FMC-78 to file NSAs. During fiscal year 2009, the Bureau intends to implement an electronic registration procedure for carriers/OTIs filing service contracts and NSAs.

The Agreement Profile Database contains information about the status of carrier and terminal agreements, as well as related monitoring reports.

These databases and filing systems provide support for many of the Commission's programs and the Bureau's monitoring efforts. Through specially tailored reports, certain database information is available to the general public.

The Bureau also maintains an electronic library of effective carrier and MTO agreements. This library is accessible through the Commission's website.

10. Future Plans

During fiscal year 2009, the Bureau will review and evaluate various agreements related to the Los Angeles and Long Beach proposed Clean Truck Program; provide economic testimony in two Commission actions arising in response to elements of the Clean Truck Program (Docket No. 08-05 and U.S. District Court Civil Action No. 1:08-cv-1895-RJL, *FMC vs. City of Los Angeles, et al.);* and update the Bureau's original section 6(g) analysis of the revised *Los Angeles and Long Beach Cooperative Working Agreement* (FMC No. 201170-001) to take into account any changed economic circumstances affecting the San Pedro Ports and any changes to the Clean Truck Program made by the parties.

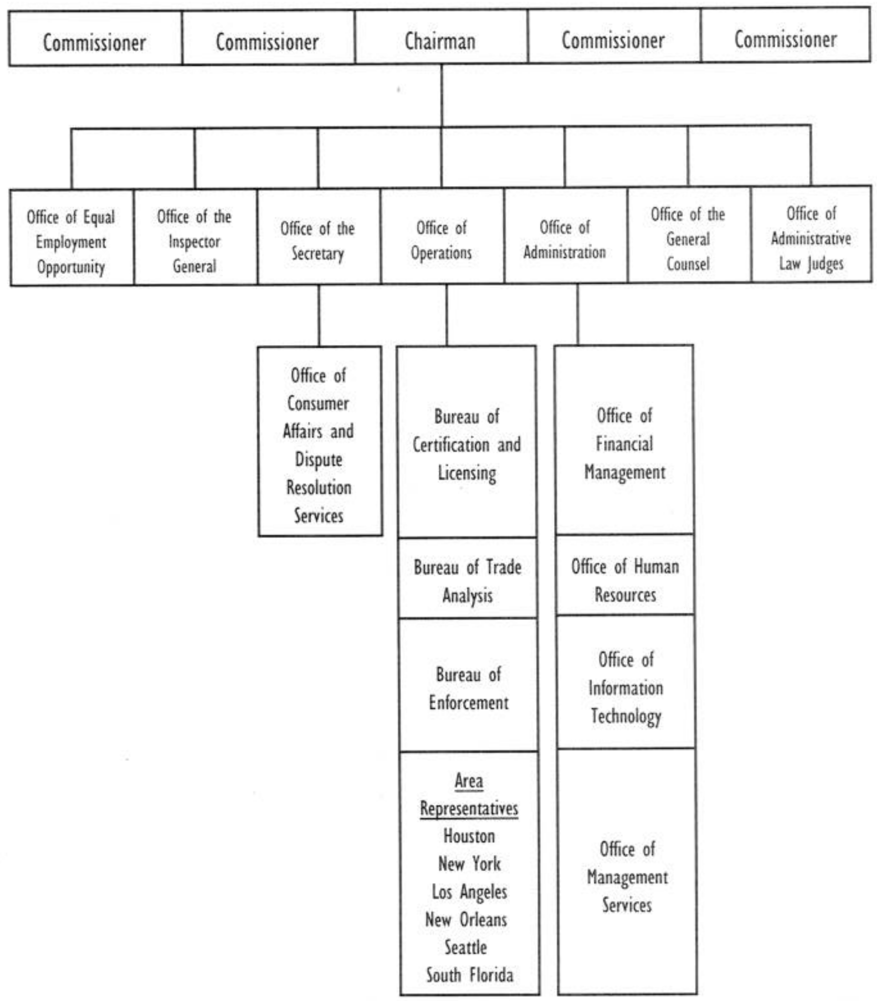
The Bureau will also analyze the impact of the European Union's elimination of the immunity for liner shipping from competition laws, including any affects on U.S. exports or imports; contribute to the Commission's analysis of *Petition No. P1-08, Petition of the National Customs Brokers and Forwarders Association of America, Inc. for Exemption from Mandatory Rate Tariff Publication* and review new ocean carrier agreements.

The Bureau will continue to monitor the activity of ocean common carrier and MTO agreements; assist other bureaus with analytical support; participate in agency strategic planning; and engage in other research projects concerning liner shipping, marine terminal operations, and inter-modal transportation.

APPENDICES

APPENDIX A

FEDERAL MARITIME COMMISSION
ORGANIZATION CHART
Fiscal Year 2008



APPENDIX B

COMMISSION PROCEEDINGS
Fiscal Year 2008

Formal Proceedings

Discontinuances, Dismissals and Settlements *6*
Rulemakings - Final Rules *0*

Total...***6***

Informal Dockets...***3***

APPENDIX C

AGREEMENT FILINGS AND STATUS
Fiscal Year 2008

Agreements Filed in FY 2008
(including modifications and terminations)

Carrier	133
Terminal	50
Total	183

Agreement Processing Categories in FY 2008

Forty-Five Day Review	36
Expedited Review	9
Exempt-Effective Upon Filing	126
Rejection of Filing	0
Formal Extension of Review Period	2
Withdrawals	2
Not Subject	1
Total	176

Carrier Reports Submitted for Commission Review

Minutes of Meetings	1,016
Ad Hoc Reports	221
Monitoring Reports	199
Total	1,436

Agreements on File as of September 30, 2008

Conference	7
Rate Discussion	27
Non-Rate Discussion.	8
Joint Service	7
Vessel-Sharing	159
Cooperative Working & Other	18
Terminal	182
Total	408

APPENDIX D

FORM FMC-1
TARIFF LOCATION ADDRESSES - ELECTRONIC SERVICE CONTRACT AND NSA FILINGS AND SPECIAL PERMISSION APPLICATIONS
Fiscal Year 2008

Form FMC-1 Filings

VOCCs 324
OTI/NVOCCs...4,061
MTOs 152
Conferences..6

Electronic Service Contract Documents

New Service Contracts 44,438
Service Contract Amendments.............294,880

NVOCC Service Arrangement ("NSA") Documents

New NSAs 990
NSA Amendments....................................1,434

Special Permission Applications

Granted..3
Denied 1
Pending..1
Withdrawn...3

APPENDIX E

CIVIL PENALTIES COLLECTED
Fiscal Year 2008

Curiel International Logistics.	$ 20,000.00
Double Ace Cargo	32,500.00
Laparkan Trading Limited CFS.	30,000.00
Oriental Air Transportation (Chicago) Inc.	20,000.00
Pudong Trans USA Inc.	60,000.00
Sunway Logistics (USA), Inc.	20,000.00
Total Civil Penalties Collected	**$182,500.00**

APPENDIX F

STATEMENT OF APPROPRIATIONS, OBLIGATIONS AND RECEIPTS FOR THE FISCAL YEAR ENDED SEPTEMBER 30, 2008

APPROPRIATIONS:

Public Law 110-161, 110th Congress: 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. 5901-5902, $22,072,000: Provided, that not to exceed $2,000 shall be available for official reception and representation expenses.

$22,072,000

OBLIGATIONS AND UNOBLIGATED BALANCE:

Net obligations for salaries and expenses for the fiscal year ended September 30, 2008.	**$21,624,421**

STATEMENT OF RECEIPTS: Deposited with the General Fund of the Treasury for the Fiscal Year Ended September 30, 2008:

Publications and reproductions, Fees and Vessel Certification, and Freight Forwarder Applications	$ 306,946
Fines and penalties	$ 182,500
Total general fund receipts	**$ 489,446**