

F  
M  
C

# 49TH ANNUAL REPORT

FEDERAL MARITIME COMMISSION

49



F  
Y  
2  
0  
1  
0

FISCAL YEAR 2010

# FEDERAL MARITIME COMMISSION

## 49th ANNUAL REPORT

for

Fiscal Year

2010





# **TABLE OF CONTENTS**

LETTER OF TRANSMITTAL.....	i
<b>MEMBERS OF THE COMMISSION</b> .....	<b>iii</b>
SENIOR COMMISSION OFFICIALS.....	v
<b>FMC MISSION</b> .....	<b>vii</b>
<b>I. THE COMMISSION</b>	
A. Functions .....	1
<b>B. Organization</b> .....	<b>3</b>
<b>II. THE YEAR IN REVIEW</b> .....	<b>5</b>
A. Efficiency and Competition.....	5
<b>B. Protecting the Shipping Public</b> .....	<b>8</b>
C. Stewardship of Resources.....	11
<b>III. DEVELOPMENTS IN MAJOR U.S. FOREIGN TRADES</b>	
A. North Europe.....	13
<b>B. Mediterranean</b> .....	<b>15</b>
C. Indian Subcontinent and the Middle East .....	17
<b>D. Australia and Oceania</b> .....	<b>19</b>
E. Central America and the Caribbean .....	20
<b>F. Asia</b> .....	<b>22</b>
G. South America.....	25
<b>H. Africa</b> .....	<b>27</b>
I. Worldwide .....	28
<b>IV. THE FOREIGN SHIPPING PRACTICES ACT OF 1988</b>	
A. In General .....	33
<b>B. Top Twenty U.S. Liner Cargo</b>	
<b>Trading Partners</b> .....	<b>34</b>

<b>V.</b>	<b>SIGNIFICANT ACTIVITIES BY ORGANIZATIONAL UNIT</b>	
A.	Office of the Secretary.....	39
<b>B.</b>	<b>Office of Administrative Law Judges.....</b>	<b>45</b>
C.	Office of the General Counsel.....	59
<b>D.</b>	<b>Office of Equal Employment Opportunity.....</b>	<b>71</b>
E.	Office of the Inspector General.....	75
<b>F.</b>	<b>Office of Consumer Affairs and Dispute Resolution.....</b>	<b>79</b>
G.	Office of Managing Director.....	83
<b>H.</b>	<b>Bureau of Certification and Licensing.....</b>	<b>95</b>
I.	Bureau of Enforcement.....	105
<b>J.</b>	<b>Bureau of Trade Analysis.....</b>	<b>111</b>

**APPENDICES**

A.	Organization Chart.....	131
<b>B.</b>	<b>Commission Proceedings.....</b>	<b>132</b>
C.	Agreement Filings and Status.....	133
<b>D.</b>	<b>Form FMC-1 Tariff Location Addresses - Electronic Service Contract Filings and Special Permission Applications.....</b>	<b>134</b>
E.	Civil Penalties Collected.....	135
<b>F.</b>	<b>Statement of Appropriations, Obligations and Receipts.....</b>	<b>136</b>



**FEDERAL MARITIME COMMISSION**

WASHINGTON, D.C. 20573-0001

March 31, 2011

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 49th Annual Report of the activities of the Federal Maritime Commission for fiscal year 2010.

Sincerely,

A handwritten signature in black ink that reads 'Richard A. Lidinsky, Jr.' with a stylized flourish at the end.

Richard A. Lidinsky, Jr.

Chairman



## MEMBERS OF THE COMMISSION



*Richard A. Lidinsky, Jr.  
Chairman  
Appointed 2009  
Term Expires 2012*



*Joseph E. Brennan  
Commissioner  
Appointed 1999  
Term Expired 2008*



*Rebecca F. Dye  
Commissioner  
Appointed 2002  
Term Expired 2010*



*Michael A. Khouri  
Commissioner  
Appointed 2009  
Term Expires 2011*

*\*Vacant  
Commissioner*



## SENIOR COMMISSION OFFICIALS

Counsel to Chairman Lidinsky.....*Lowry A. Crook*  
Counsel to Commissioner Brennan .....*Steven D. Najarian*  
Counsel to Commissioner Dye .....*Edward L. Lee, Jr.*  
Counsel to Commissioner Khouri.....*John A. Moran*  
General Counsel .....*Rebecca A. Fenneman*  
Secretary.....*Karen V. Gregory*  
Chief Administrative Law Judge.....*Clay G. Guthridge*  
Director, Office of  
Consumer Affairs and Dispute Resolution.....*Vern W. Hill*  
Director, Office of  
Equal Employment Opportunity .....*Keith I. Gilmore*  
Inspector General .....*Adam R. Trzeciak*  
Managing Director.....*Ronald D. Murphy*  
Deputy Managing Director.....*Florence A. Carr*  
Director, Bureau of Certification  
and Licensing .....*Sandra L. Kusumoto*  
Director, Bureau of Enforcement .....*Peter J. King*  
Director, Bureau of  
Trade Analysis .....*Austin L. Schmitt*



*Mission*

*To foster a fair, efficient and reliable international ocean transportation system and to protect the public from unfair and deceptive practices.*



## **Federal Maritime Commission**

**Fiscal Year 2010**

### **I**

## **THE COMMISSION**

### **A. FUNCTIONS**

The Federal Maritime Commission is an independent agency responsible for the regulation of oceanborne transportation in the foreign commerce of the U.S. for the benefit of U.S. exporters, importers, and the U.S. consumer. The principal statutes administered by the Commission are the Shipping Act of 1984, the Foreign Shipping Practices Act of 1988 (FSPA), section 19 of the Merchant Marine Act, 1920 (1920 Act), and sections 2 and 3 of Pub. L. No. 89-777, 80 stat.1350. These statutes are now codified in Title 46 of the U.S. Code at sections 40101 through 44106. The Shipping Act exempts agreements effective under the Act and the Commission's jurisdiction from the U.S. antitrust laws, as contained in the Sherman and Clayton Acts.

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.
- Maintaining and reviewing confidentially filed service contracts and NVOCC Service Arrangements between ocean common carriers and shippers to guard against detrimental effects to shipping in the U.S. foreign trades.
- Providing a forum for exporters, importers, and other members of the shipping public to obtain relief from ocean shipping practices or disputes that impede the flow of commerce and otherwise cause economic harm.
- Ensuring common carriers' tariff rates and charges are accessible to the shipping public in private, electronically accessible systems.

## **Federal Maritime Commission**

### **Fiscal Year 2010**

- Monitoring 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.
- Protecting the shipping public from economic harm by investigating rates, charges, classifications, and practices of common carriers, MTOs, and OTIs operating in the foreign commerce of the U.S., and acting to stop unjust or unlawful practices that violate the Shipping Act.
- Taking action to address unfavorable conditions arising out of foreign government or business practices in the U.S. foreign shipping trades.

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 entities, the shipping public, and other affected individuals or interest groups.

## **Federal Maritime Commission**

**Fiscal Year 2010**

### **B. 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.

In January 2010, the Commission announced a reorganization that restored the position of Managing Director and made the Office of Consumer Affairs and Dispute Resolution an independent office reporting directly to the Chairman. Following the reorganization, the Commission's organizational units consist of: Office of the Managing Director (including the Offices of Human Resources, Budget and Finance, Management Services, Information Technology, and the Bureaus of Certification and Licensing, Enforcement, Trade Analysis, and the Commission's Area Representatives); Office of the General Counsel; Office of the Secretary (including the Library); Office of Consumer Affairs and Dispute Resolution Services; Office of Administrative Law Judges; Office of Equal Employment Opportunity; and Office of the Inspector General. 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. In fiscal year 2010, the Commission had a total appropriation of \$24,135,000. That appropriation supported the actual employment of 126.55 full-time equivalent positions during the fiscal year.



## **Federal Maritime Commission**

### **Fiscal Year 2010**

## **II**

### **THE YEAR IN REVIEW**

Following the worst year for the maritime industry since international container shipping began 45 years ago, during fiscal year 2010 the industry began to experience a recovery in ocean trade volumes that was stronger than many anticipated. Demand for cargo space and containers outstripped supply, and U.S. exporters and importers experienced supply chain disruptions such as abruptly cancelled bookings, cargo “rolled” to the next sailing, and successive surcharges and price increases. Effective implementation of the Federal Maritime Commission’s (FMC) mission to foster a fair, efficient and reliable international ocean transportation system and protect the public from unfair and deceptive practices was uniquely important this fiscal year due to these challenging trade and operational conditions. The year 2010 was an active time period for the Commission, which concentrated on supporting U.S. exports and the economic recovery, protecting American consumers, encouraging a sustainable ocean transportation industry, enhancing safety and security, and monitoring foreign practices to protect American jobs. An overview of agency activities in pursuit of its mission is highlighted below.

#### **A. Efficiency and Competition**

The FMC is charged with ensuring competitive and efficient ocean transportation for the shipping public through its oversight authorities. Competition in U.S. trades helps to foster competitive rates and encourage diverse service offerings for the benefit of U.S. exporters and importers and ultimately consumers. Ocean carriers and marine terminal operators are granted limited antitrust immunity by the Shipping Act of 1984. The FMC is responsible for guarding against possible abuse of that limited immunity to avoid unreasonable increases in transportation costs or decreases in transportation services. Pursuant to this authority, the Commission undertook a number of actions during the fiscal year to address severe and changing industry conditions:

## **Federal Maritime Commission**

### **Fiscal Year 2010**

#### **Key Accomplishments in Fiscal Year 2010**

**Vessel Capacity and Equipment Availability** - The Commissioners met with major carriers, offering the Commission's services as an "honest broker" to assist parties in resolving vessel capacity and equipment availability issues that had quickly but unexpectedly escalated between shippers and carriers. Recognizing that both carriers and shippers had been substantially affected by the recession, the Chairman called on carriers and shippers to be "partners in recovery."

In the depths of the economic recession, ocean carriers worldwide laid-up much of their fleets. Demand plummeted, causing rates to fall as well. Carriers found themselves with significant operating losses. Losses during 2009 were estimated to be as high as \$20 billion. Consequently, carriers reduced their service by cutting back on capacity. Approximately 575 container vessels were laid-up worldwide, roughly 12 percent of the worldwide fleet. Then, as the U.S. economy began to rebound during the fiscal year, adequate vessel space and equipment was slow to come back on-line and was not available to U.S. exporters who saw increasing demand for their products. Subsequently, U.S. importers experienced the same difficulties. Carriers were reluctant, however, to return vessels to service without confirmation that the unanticipated and sudden increase in demand was not simply a result of temporary inventory restocking, but demand that would continue to increase and be sustainable. Shippers became convinced that ships were being withheld to drive up rates during the annual service contract negotiations which typically occur each spring. To address these issues and other allegations of carrier practices, the Commission instituted Fact Finding Investigation No. 26, which is described under the actions taken to protect the shipping public. In addition, Congress began to review the question of the extent of continued antitrust immunity for liner shipping.

## **Federal Maritime Commission**

### **Fiscal Year 2010**

**Marine Environmental Committee and Clearinghouse** - The FMC has seen environmental issues become increasingly central to the agreements and shipping practices it monitors. In fiscal year 2010, the Commission formed a Marine Environmental Committee, which has begun to review filings at the agency for best environmental practices that can be put forward as models for adoption by other ports and companies. The Commission also created a web-page to serve as an environmental issues clearinghouse for information on maritime environmental issues, news, resources, laws and regulations, and best practices.

**Transpacific Stabilization Agreement's (TSA) Amendment to discuss environmental initiatives** – The Commission supported an amendment that provides TSA members with the ability to discuss beneficial environmental programs such as slow steaming, cold ironing, and alternative fuel usage.

**Proposed Rule to relieve NVOCCs from the burden of publishing tariff rates** – The Commission issued a proposed rule and held a public meeting on the issue of providing NVOCCs relief from the burden of publishing their rates in tariffs. The proposed rule, when final, will enable licensed NVOCCs to avoid publishing tariff rates upon meeting several conditions, including that the rates for all shipments be agreed to in writing and available to the Commission for review if necessary. These written agreements would be known as "negotiated rate arrangements."

**EU Study** - The Commission was actively engaged in gathering data for its study of the impact of the October 2008 European Union (EU) repeal of its block exemption for liner conferences. Data includes information regarding changes in carrier market structures, competition, services, vessel capacity, rates, and surcharges. A dialogue also was established with officials of the European Commission, Directorate-General for Competition.

## **Federal Maritime Commission**

### **Fiscal Year 2010**

**Coordination with the International Trade Administration, U.S. Department of Commerce** - Towards the end of the fiscal year, Commission economists began to assist International Trade Administration (ITA) staff in ITA's attempt to quantify the economic impact of shippers' inability to obtain containers or vessel space for their shipments.

### **B. Protecting the Shipping Public**

The FMC has a wide variety of responsibilities to protect the public from financial harm, including assisting in the resolution of disputes related to the shipment of goods or the carriage of passengers, investigating and prosecuting unreasonable or unjust practices, and ruling on formal complaints alleging violation of the Shipping Act. The FMC also contributes to the integrity and security of the nation's supply chain and transportation system by identifying unlicensed operations and licensing only those ocean transportation intermediaries (OTI) evidencing appropriate character and financial responsibility, and ensuring financial responsibility of cruise vessel operators to indemnify passengers in the event of non-performance. Pursuant to these regulatory responsibilities, the Commission undertook a number of significant actions during fiscal year 2010 to address issues affecting the nation's ocean transportation system:

### **Key Accomplishments in Fiscal Year 2010**

**Fact Finding Investigation No. 26** – Despite the Chairman's urging for carriers and shippers to cooperate as "partners in recovery," the Commission continued to receive reports of widespread rolling of cargo, bookings cancellations, lack of container availability, and imposition of various surcharges and

## **Federal Maritime Commission**

### **Fiscal Year 2010**

rate increases contrary to the requirements of existing service contracts. To look into these matters, on March 17, 2010, the Commission initiated Fact Finding Investigation No. 26, *Vessel Capacity and Equipment Availability in the United States Export and Import Liner Trades*, naming Commissioner Rebecca F. Dye as the Fact Finding Officer. On June 23, 2010, the Commission adopted Commissioner Dye's interim recommendations to take certain immediate actions, including: (1) the creation of Rapid Response Teams for quick resolution of disputes; and (2) increased oversight of the Transpacific Stabilization Agreement (TSA) and the Westbound Transpacific Stabilization Agreement (WTSA) by requiring transcripts of certain Agreement meetings. The Commission also directed staff to prepare recommendations for Commission action on ways to increase oversight of global vessel alliances. The Commission also extended the fact finding investigation into fiscal year 2011.

**Fact Finding Investigation No. 27** - On June 23, 2010, the FMC initiated Fact Finding Investigation No. 27, *Potentially Unlawful, Unfair or Deceptive Ocean Transportation Practices Related to the Movement of Household Goods or Personal Property in U.S.-Foreign Oceanborne Trades*, naming Commissioner Michael A. Khouri as Fact Finding Officer. The investigation resulted from significant complaints over several years from individual shippers of household goods and personal property in the U.S.-foreign oceanborne trades. It is intended to develop a record on the nature, scope, and frequency of the problem of potentially unfair, unlawful, or deceptive practices in the shipping of household goods or personal property between various locations in the United States to foreign destinations. Findings will be reported to the Commission along with recommendations for any Commission action.

**Dispute Resolution** – During fiscal year 2010, 450 individual cases were opened to resolve complaints. These included 145 passenger complaints about cruise line issues, 148 complaints with respect to household goods shipments,

## **Federal Maritime Commission**

### **Fiscal Year 2010**

and 157 complaints involving general cargo shipment matters. The Commission's Office of Consumer Affairs and Dispute Resolution Services (CADRS) also played a significant role in Fact Findings Nos. 26 and 27. In Fact Finding No. 26, it was determined that the Commission's role in resolving significant industry problems, such as those involving capacity and container shortages, of necessity had to rely on various Alternative Dispute Resolution (ADR) techniques for resolution. Participation of the parties in confidential ADR services can provide a means for immediate, cost-effective resolution through cooperation between parties. In Fact Finding No. 27, the experience of the Commission's dispute resolution staff was particularly useful in identifying the significant issues and practices that were at the root of household goods shipment issues.

**Passenger Vessel Nonperformance Coverage** – The Commission heard testimony from passenger vessel operators and cruise industry associations concerning the benefits and challenges of the Commission's financial responsibility requirements. On December 3, 2009 the Commission issued a Notice of Inquiry (NOI) to solicit comments on the extent to which current financial responsibility requirements provide adequate protection of passenger deposits and fares and to determine whether or not the Commission should amend its financial responsibility regulations. A hearing was then held on March 3, 2010, providing the Commission with the opportunity to hear direct responses from the cruise industry to questions on this issue. At the end of the fiscal year, the Commission was receiving answers to additional questions posed to cruise lines.

**Enforcement Actions to Address Market Distorting Activities** – The Commission concluded a compromise agreement with a major People's Republic of China (PRC)-flag shipping line, resolving alleged violations affecting more

## **Federal Maritime Commission**

### **Fiscal Year 2010**

than 1,000 shipments. Violations included providing transportation services to intermediaries that did not have the required tariff, license, or bond; misdescribing cargo in shipments; allowing shipment under service contracts by persons who were not parties to those contracts; and providing transportation that was not in accordance with rates and charges set forth in published tariffs or service contracts. Also, the Commission instituted an investigation against a Hong Kong-based NVOCC and its affiliated shippers' association to determine whether the NVOCC violated sections 10(b)(1) of the Shipping Act of 1984 by permitting unrelated entities to utilize the rates in its service contract and section 10(a)(1) by utilizing a shippers' association as an unfair device or means to obtain lower rates than otherwise applicable. The investigation resulted in a substantial civil penalty and agreement to terminate operation of its affiliated shippers' association.

**Shanghai Shipping Exchange Regulations** – The Commission is closely monitoring the impact of the People's Republic of China's new requirement on both vessel operating ocean common carriers and NVOCCs to provide freight rate data and sensitive commercial information to a quasi-governmental agency, the Shanghai Shipping Exchange. In response to concerns raised by U.S. shippers, FMC visited the Shanghai Shipping Exchange in September 2010 to seek and obtain assurances regarding protections for confidential information of U.S. companies that must be filed with the Exchange. The FMC will continue to follow these and related developments in China closely to ensure that no unreasonable conditions exist that would impair U.S. commerce.

### **C. Stewardship of Resources**

#### **Technology**

The FMC strives to use new information technology (IT) as a means of improving agency business processes and augmenting the accessibility of the public conducting licensing or legal business with the agency. In fiscal year

## **Federal Maritime Commission**

### **Fiscal Year 2010**

2010, the FMC identified more ways in which new technology can and should be incorporated to achieve a paperless, efficient, and transparent government.

#### **Resources**

Strategic management of the FMC's human resources, fiscal resources, information resources and physical property is essential to meet the agency's regulatory and programmatic goals. In fiscal year 2010, the FMC strove to make the most productive use of its resources.

#### **Key Accomplishments in Fiscal Year 2010**

**Upgrade of Commission telecommunications technology** - During the fiscal year, the Commission's telephone system was upgraded to provide Voice over IP capabilities. The Commission also initiated projects that will enable the public viewing of Commission meetings over the internet, and built teleconferencing technology into an existing conference room.

**Upgrade of the Commission's Website Operating Platform** - During fiscal year 2010, the Commission initiated efforts to upgrade its website operating platform. The new, more modern platform will enable the Commission to launch a new website during fiscal year 2011 that will include enhanced website graphics, more social networking/communications capabilities, and improved public visibility of the Commission's resources and services. The new platform will support the Commission's efforts to make more information proactively available to the public through its website, in support of the Administration's initiative for a more open and transparent government.

**OHR Finalized Work Plans** - The Commission submitted its Human Capital Plan, Workforce Plan, Accountability System, and Succession Management Plan in accordance with OPM's Human Capital Assessment and Accountability Framework and coordinated with OPM, OMB, and the Small Agency Human Resources Council on human capital and related initiatives.

## **Federal Maritime Commission**

**Fiscal Year 2010**

### **III**

#### **DEVELOPMENTS IN MAJOR U.S. FOREIGN TRADES**

##### **A. NORTH EUROPE**

In fiscal year 2010, the liner trade between the United States and North Europe showed some recovery in cargo volume from the severe declines in the preceding period caused by the recession. Compared to fiscal year 2009, U.S. liner exports grew by 7 percent. In terms of the top commodities, containerized exports of paper, wood pulp, and general cargo surpassed automobiles, which fell in demand by 40 percent. In the inbound trade, the volume of liner imports from North Europe grew by 6 percent. As in the preceding period, beer and ale remained the top liner import commodity from North Europe, comprising 11 percent of the total import cargo volume in TEUs (twenty-foot equivalent units), followed by containerized imports of auto parts, paper, and furniture. The general outlook for cargo volume growth in the trade is modest due to the uncertainty over the economy.

There were fewer service and agreement changes in fiscal year 2010 than in fiscal year 2009 when carriers actively coordinated their operations to reduce excess vessel capacity. Among the changes for the fiscal year, in December 2009, Maersk Line removed vessels from the trade by terminating the North Europe leg of its pendulum service between the Far East-U.S.-North Europe and adjusting space allocation under its vessel sharing agreement with members of the New World Alliance. Independent of the Grand Alliance, in September

## **Federal Maritime Commission**

### **Fiscal Year 2010**

2010, Hapag Lloyd AG initiated a new weekly, express loop service operating between the ports of New York/New Jersey and Antwerp. To help sustain its new service, Hapag Lloyd has been chartering space to Hamburg-Sud and Hyundai Merchant Marine Co., Ltd. In addition, CMA CGM entered into a vessel sharing agreement with Campania Sud Americana de Vapores S.A. (CSAV) to initiate a new service that will commence at the start of the next fiscal year and replace the service CMA CGM operates with Mediterranean Shipping Co. (MSC). By the end of the fiscal year, operational changes in the trade resulted in only a 2 percent reduction in total annualized vessel capacity, while the utilization of vessel capacity reportedly improved to an average of around 85 percent in each trade direction, as compared to 68 percent in fiscal year 2009.

To restore ocean freight rates, most carriers in the trade implemented general rate increases (GRIs) in their individual tariffs of around \$400 per FEU on a quarterly basis throughout the fiscal year. Among these carriers, Hapag Lloyd, MSC, and Maersk Line are the largest liner operators in the trade and together moved approximately 50 percent of the total container volume in each trade direction. The higher levels of capacity utilization enabled carriers to sustain some amount of their GRIs. Toward the end of the fiscal year, industry analysts estimated that market rates in the head-haul trade direction inbound from North Europe had climbed to nearly \$2,500 per FEU (forty-foot equivalent unit), equating to a 40 percent increase over last fiscal year. Additional GRIs are set to take effect at the start of the next fiscal year.

## **Federal Maritime Commission**

### **Fiscal Year 2010**

On other relevant issues, the functions of the European Liner Affairs Association (ELAA) were taken over by the World Shipping Council when ELAA disbanded in July 2010. ELAA had previously represented the interest of ocean carriers within the European Union (EU), and was transformed into an industry trade association under the *Container Trade Statistics Agreement* (CTSA). CTSA was formed as an information exchange agreement between carriers operating in the U.S./EU trades, and became effective in October 2008 at the time when the repeal of the EU block exemption regulations for liner shipping conferences took effect. CTSA is slated to be replaced by a new information exchange agreement with a broader worldwide geographic scope.

### **B. MEDITERRANEAN**

During fiscal year 2010, the economies of south European nations along the Mediterranean were shaken by a severe crisis in the financial markets that threatened to undermine the unity of the euro currency by eurozone nations. Major member states of the EU, including Greece, Italy, Spain, and Portugal, faced the possibility of defaulting on government debt levels that had become too high to sustain, creating alarm in financial markets worldwide. To ease the crisis, eurozone countries and the International Monetary Fund provided loans to Greece, and imposed fiscal austerity measures. In addition, in May 2010, the EU Council adopted the European Financial Stability Facility, Council Regulation (EU) No. 407/2010, providing guarantees of 750 billion euros in loans to secure financial stability among EU member states.

## **Federal Maritime Commission**

### **Fiscal Year 2010**

Despite the financial turmoil, the liner trade between the U.S. and the Mediterranean showed positive growth in cargo volume compared to declines of 18 to 20 percent in the preceding year. For fiscal year 2010, U.S. exports to the Mediterranean grew by 12 percent. Paper remained the top U.S. container export to the region, accounting for 17 percent of the total export cargo volume in TEUs, followed by wood pulp, cotton, and lumber. Containerized exports of automobiles, however, fell by 55 percent. In the inbound direction, growth in liner imports from the Mediterranean was more modest at 4 percent. Wine was the top container import from the region, amounting to 9 percent of the total import cargo volume in TEUs, followed by furniture, vegetables, and ceramic tiles. Import cargo from the region continued to exceed U.S. export cargo. For every TEU moved outbound from the U.S., 1.2 TEUs moved inbound.

The Mediterranean trade is highly concentrated with the top four major carriers, MSC, Maersk Line, Hapag Lloyd, and Zim Integrated Shipping Services, Ltd., moving upwards of 70 percent of the container cargo in each trade direction. Throughout the fiscal year, these major carriers periodically implemented GRIs of around \$200 per container in their individual tariffs. A number of carriers serving the trade coordinated their operations by forming agreements. Yang Ming (UK), Ltd. and United Arab Shipping Co., are sharing space between their services that transit the Mediterranean via the Suez Canal to and from the Indian Subcontinent. Hamburg Sud terminated its service in the trade in favor of chartering space from Hapag Lloyd. APL Co. Pte. Ltd. ended its space chartering agreement with Maersk Line and is now chartering space from Hanjin Shipping Co., Ltd. Even with these operational changes, by fiscal year end, a series of vessel upgrades by carriers added about 9 percent more capacity to the trade, which suppressed utilization levels and freight rates.

## **Federal Maritime Commission**

**Fiscal Year 2010**

### **C. INDIAN SUBCONTINENT AND THE MIDDLE EAST**

Last year, the growth rate of U.S. exports to the Indian Subcontinent was only 9 percent compared to 18 percent in fiscal year 2009. U.S. container exports to the Middle East grew by 10 percent in fiscal year 2010, compared to a less than 1 percent increase in the previous fiscal year. The United States exported approximately 406,000 TEUs to the Indian Subcontinent and 521,000 TEUs to the Middle East. In this region, the *Westbound Transpacific Stabilization Agreement* (WTSA) is the only major rate agreement covering part of the U.S. outbound container trade.

WTSA's geographic scope covers U.S. exports to the Indian Subcontinent countries of Bangladesh, Pakistan, and Sri Lanka (but not India or the Middle East).<sup>1</sup> WTSA's geographic scope formerly included India, the U.S.'s largest trading partner in the Indian Subcontinent, but WTSA has suspended India from its geographic scope because India's competition laws no longer exempt ocean liner agreements. For the fiscal year, WTSA's market share for U.S. exports to Bangladesh, Pakistan, and Sri Lanka was only 35 percent, down from 42 percent in the previous fiscal year. No major rate discussion agreements cover U.S. exports to the Middle East.

---

<sup>1</sup> WTSA's geographic scope also includes northeast and southeast Asia.

## **Federal Maritime Commission**

### **Fiscal Year 2010**

As the United States began recovering from the global recession, demand for foreign imports increased. In fiscal year 2010, U.S. container imports from the Indian Subcontinent increased by 8 percent and by 15 percent from the Middle East. In the prior fiscal year, container imports from both the Indian Subcontinent and Middle East shrank due to the recession. The U.S. imported approximately 608,000 TEUs from the Indian Subcontinent and 149,000 TEUs from the Middle East in fiscal year 2010.

The *Transpacific Stabilization Agreement* (TSA) is the only major rate discussion agreement covering U.S. inbound container movements from the Indian Subcontinent countries of Bangladesh, Pakistan and Sri Lanka.<sup>2</sup> Similar to WTSA, TSA suspended India from its geographic scope in response to India implementing its competition laws. For the fiscal year, TSA had a 91 percent market share of U.S. imports from the countries of Bangladesh, Pakistan and Sri Lanka. In the prior fiscal year, TSA's market share was 58 percent from these three countries. This large spike in market share was mainly due to Maersk Line joining TSA in January 2010. During the fiscal year, Maersk Line, along with its subsidiary Safmarine, moved 34 percent of all container imports from the three Indian Subcontinent countries to the U.S. No major rate agreements cover Middle East imports to the United States.

---

<sup>2</sup> Like WTSA, the TSA's geographic scope also includes southeast Asia and northeast Asia.

## **Federal Maritime Commission**

**Fiscal Year 2010**

### **D. AUSTRALIA AND OCEANIA**

The Oceania trade includes the nations and territories of Australia, New Zealand, Papua New Guinea, Western Samoa, and other South Pacific Islands. Overall, for the fiscal year, there were mixed results in the growth of liner cargo, but an improvement from the declines of nearly 10 percent that occurred in each trade direction in the preceding period. U.S. exports to the region grew by 9 percent. The top container exports included general cargo, auto parts, paper, and grocery products. In the inbound trade direction, liner imports from Australia/Oceania were down by three percent. Container imports of meat and wine, the top two commodities from the region, accounted for 36 percent of the total import cargo volume in TEUs. Overall, U.S. exports shipped in the outbound trade direction exceeded imports. For every TEU that moved inbound from the region, 1.6 TEUs moved outbound from the United States. Hamburg Sud was the largest carrier operating in the trade with a market share of over 30 percent in each trade direction.

Carriers providing direct service in the trade are interconnected through a network of agreements. There are two main rate discussion agreements that cover the trade. In the outbound direction, six carriers participate in the *United States/Australasia Discussion Agreement* (USADA), with a combined market share of 78 percent. The remaining 22 percent of the outbound market is made up of competing carriers who primarily service the trade through trans-shipment arrangements. During the fiscal year, members of USADA implemented a series of three GRIs. In the inbound direction, five carriers participate in the *Australia and New Zealand-United States Discussion Agreement* (ANZUSDA), accounting for 88 percent of the inbound market. In the fiscal year, members of

## **Federal Maritime Commission**

### **Fiscal Year 2010**

ANZUSDA set GRIs for major commodities, such as meat and wine. In addition, covering the Pacific Islands, five carriers participate in the *Pacific Island Discussion Agreement*, with a combined market share of 85 percent. The carriers that participate in these rate discussion agreements serve the trade through a series of vessel sharing agreements. There were no substantive agreement changes during the fiscal year.

The tight network of interconnected agreements among carriers has prompted the Commission to take preventive actions by closely examining competitive conditions in the trade. In August 2008, under section 15 of the Shipping Act 46 U.S.C. § 40104, the Commission ordered carriers serving the trade to provide specific operational and commercial data for the period from January 2006 through August 2008. Upon analysis of this information, in December 2009, the Commission issued another section 15 order to obtain additional information from, and to implement more extensive reporting requirements on, carriers in agreements that provide direct service in the trade. With this information, the Commission carefully monitors the competitive conduct of the carriers to ensure that their activities under agreements remain in compliance with the Shipping Act.

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

In fiscal year 2010, significant improvements occurred in liner cargo volume between the United States and Central America. U.S. export cargo increased 7 percent to 522,600 TEUs and imports from Central America increased 6 percent to 643,600 TEUs. Waste paper still accounted for the largest share of U.S.

## **Federal Maritime Commission**

### **Fiscal Year 2010**

containerized exports at 13 percent. The second largest export commodity was fabrics, yarns, and raw cotton, accounting for 12 percent. Used automobiles accounted for almost 9 percent of total exports to the region in FY2009 dropped significantly, and accounted for only 4 percent of total exports in FY2010. Fresh fruit accounted for over half of all imports from the region, three-quarters of which consisted of bananas. The second largest import was clothing and apparel with nearly 20 percent of the total.

Most of the larger carriers in the U.S./Central America trade participate in the *Central America Discussion Agreement* (CADA). In June 2010, the geographic scope of CADA was expanded to include Haiti and the Dominican Republic on the island of Hispaniola, two countries previously covered by the *Hispaniola Discussion Agreement* (HDA) before it was terminated. The consolidation of these two agreements produced no change in membership in CADA as the only two members of HDA, Crowley Liner Services and Seaboard Marine, were also members of CADA. The market share of CADA members for exports and imports was 61 percent and 68 percent in fiscal year 2010, respectively.

Fiscal year 2010 saw mixed results in the liner trade between the United States and the Caribbean. U.S. exports, mainly food, consumer, and manufactured products, increased by 5 percent to 521,700 TEUs, while imports to the U.S. dropped by 12 percent to 133,300 TEUs.

Carriers in the U.S./Caribbean trade participated in three rate discussion agreements covering discrete trades: (1) the *Caribbean Shipowners Association*, (2) the *Florida-Bahamas Shipowners and Operators Association*, and (3) the *Aruba Bonaire and Curacao Discussion Agreement*. There were no changes in provisions or membership in any of these agreements during this fiscal year.

## **Federal Maritime Commission**

### **Fiscal Year 2010**

#### **F. ASIA**

In terms of containerized cargo, Asia is our primary trading region. In fiscal year 2010, Asia accounted for 64 percent of all U.S. inbound and outbound containerized cargo. Seventy-two percent of all U.S. container imports originated from Asia, and the region received 52 percent of all U.S. container exports.

The TSA is the major agreement in the transpacific trade with 15 members. It is a discussion and policy-setting agreement with voluntary pricing authority covering the inbound U.S. container trade from northeast and southeast Asia.<sup>3</sup> During fiscal year 2010, TSA's market share was approximately 93 percent, compared to 83 percent the previous fiscal year. This increase in market share was due mainly to Maersk Line joining TSA in January 2010. Despite TSA's large market share, new entrants to the trade have not been deterred. During the fiscal year, two new carriers, The Containership Company and Hainan Pan Ocean Shipping Co., entered the transpacific container market.

In December 2009, TSA added authority to its basic agreement that allows members to talk about and reach agreement on strategies to reduce air emissions, water pollution and fuel consumption. Acting individually, most transpacific carriers began slow steaming a significant portion of their services in 2010. Slow steaming involves reducing the normal service speed of ships in an effort to reduce bunker full costs which account for a high portion of ship operating costs. Slow steaming is also used to mitigate greenhouse gas emissions.

---

<sup>3</sup> TSA's geographic scope also includes parts of the Indian Subcontinent (discussed in section C).

## **Federal Maritime Commission**

### **Fiscal Year 2010**

For fiscal year 2010, container imports from Asia grew by 12 percent. Northeast Asia accounted for 87 percent of transpacific imports, with most originating in China. For the fiscal year, the U.S. imported 12.1 million TEUs of Asian goods compared to 10.8 million TEUs last year. This cargo growth is thought to be the result of companies replenishing depleted inventory and a modest increase in U.S. consumer spending.

For the annual service contract season that began on May 1, 2010, TSA announced a general rate increase per FEU of \$800 to the U.S. west coast and \$1,000 to the U.S. east coast. TSA carriers were successful in achieving most of TSA's announced rate increases and by the end of the fiscal year, transpacific services were once again profitable.

The major agreement in the outbound transpacific trade is WTSA. Like TSA, the ten-member WTSA operates as a forum for the exchange of information among its members and permits them to discuss and voluntarily agree upon rates for cargo exported from the United States to Asia. WTSA's geographic scope covers all U.S. outbound shipments to northeast and southeast Asia.<sup>4</sup> During fiscal year 2010, WTSA's market share was approximately 65 percent.

---

<sup>4</sup> Like TSA, WTSA's geographic scope also includes parts of the Indian Subcontinent (discussed under section C).

## **Federal Maritime Commission**

### **Fiscal Year 2010**

U.S. exports to Asia increased by 10 percent during fiscal year 2010. For the fiscal year, the United States exported 5.7 million TEUs of goods to the region. Eighty-three percent of all U.S. container exports to Asia are destined for northeast Asia, which includes all of China, Taiwan, South Korea and Japan.

WTSA does not have a distinct start to its annual service contract season like that of TSA. Instead, WTSA members agree to voluntary service contract guidelines for different types or groups of commodities throughout the year. This practice is dictated by the seasonality of the major U.S. agricultural export crops, which have different growing seasons and peak shipping times. WTSA members were able to sustain some increases in freight rates during the fiscal year.

Container growth forecasts for both U.S. imports and exports ranged this year anywhere from 1 to 5 percent. Initially, carriers were not prepared for the surge in cargo volumes that actually occurred, most notably during the slack winter season. Due to substantial losses in the previous fiscal year, carriers removed capacity in the transpacific trade lanes in an effort to cut costs and minimize financial losses. As a result, when cargo volumes increased unexpectedly in early 2010, many shippers had difficulty obtaining sufficient vessel space, and sometimes equipment, to move their resurging volumes. By late summer, however, substantial increases in vessel capacity in the transpacific trade (including the use of “extra loader” vessels) had largely relieved the vessel capacity shortage.

## **Federal Maritime Commission**

### **Fiscal Year 2010**

#### **G. SOUTH AMERICA**

In fiscal year 2010, U.S. export cargo to South America increased 21 percent to 900,000 TEUs, recovering all losses from the previous fiscal year. Import cargo from South America to the United States increased in volume less than one percent to 774,000 TEUs.

The South America region is generally divided into two trade areas – the west coast and the east coast. Just over 48 percent of the U.S./South America cargo moved between the United States and the west coast of South America in fiscal year 2010, a 2 percentage point increase from the previous year. U.S. export cargo to the west coast of South America increased 15 percent to 385,000 TEUs and imports from the region rose almost 4 percent. Waste paper accounted for the largest share of U.S. containerized exports at 13 percent. The second and third largest export commodities were synthetic resins and general cargo at 7 percent and 4 percent, respectively. As in the U.S./Central America trade, exports of used automobiles decreased about 50 percent compared to fiscal year 2009. Fresh fruit accounted for 30 percent of imports from the west coast of South America. Still wines were the second largest commodity from the region at 5 percent of the total imports. The third largest import commodity was vegetables at just over 4 percent.

By the end of fiscal year 2010, annualized vessel capacity in the U.S./west coast of South America trade had increased almost 15 percent to 860,000 TEUs in the northbound trade, and increased almost 14 percent to 890,000 TEUs in the southbound trade.

## **Federal Maritime Commission**

### **Fiscal Year 2010**

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). There were two changes to membership during this fiscal year. Maruba Shipping left the trade altogether in October 2009 and Interocean Lines joined the agreement in September 2010. These changes in membership had little effect on the overall market share of WCSADA members as both carriers had less than 1 percent market share in the trade at the time they left or joined the agreement. In fiscal year 2010, the WCSADA market share decreased 3 percentage points from the previous year to 78 percent for cargo moving southbound, but its share of cargo moving northbound stayed the same at 66 percent.

Carriers also served the trade indirectly via trans-shipment services based at ports in Mexico, Panama, and the Caribbean. In fiscal year 2010, just over 23 percent of all southbound cargo and 41 percent of all northbound cargo was transshipped to and from the west coast of South America through these ports.

Liner cargo in the trade between the United States and the east coast of South America accounted for almost 52 percent of the U.S./South America liner cargo. U.S. exports to the east coast of South America increased 25 percent to 515,000 TEUs during fiscal year 2010. Imports from the region fell 3 percent to 354,000 TEUs during the same period. The top export commodity was auto parts at 7 percent. Waste paper was the second top export commodity at 6 percent. Logs and lumber were the top import commodity at six percent. The second and third top commodities from the region were granite and tires at 5 percent each.

## **Federal Maritime Commission**

### **Fiscal Year 2010**

By the end of fiscal year 2010, annualized vessel capacity in this trade had increased 3 percent to 934,000 TEUs for the northbound trade, and by almost 2 percent in the southbound trade to 922,000 TEUs. 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.

#### **H. AFRICA**

Cargo volumes between the United States and the Africa trade region increased by 4 percent in fiscal year 2010, following last year's decrease of about 10 percent. The increase in cargo volumes was generated by a five percent increase in U.S. exports to Africa from the previous fiscal year to 241,000 TEUs. Imports from Africa increased about 2 percent from the previous fiscal year to about 83,400 TEUs. The trade continues to be heavily imbalanced, with approximately one TEU inbound for every three TEUs that moved outbound. South Africa dominates the U.S. liner trade with Africa, accounting for about 27 percent of the overall container volume and 49 percent of the imported containers. Nigeria is the United States' second largest trading partner in the region, with 13 percent of container volumes, and Ghana and Morocco are the third and fourth largest partners with about 7 percent and 5 percent, respectively.

## **Federal Maritime Commission**

### **Fiscal Year 2010**

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 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 eight vessels of about 2,400 TEUs in size. These three carriers are also the top carriers in the Africa trade, carrying approximately 70 percent of the containers moving between the United States and Africa.

The Southern Africa/Oceania Agreement is subject to special reporting requirements due to its unique features, including a revenue pool. The revenue pool, the distributions from which were 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 complies with the Shipping Act's section 6(g) and does not violate its other prohibitions, the member carriers provide revenue and capacity information to the FMC for each northbound and southbound sailing.

## **I. WORLDWIDE**

The world's container trade expanded by about 10 percent in fiscal year 2010 compared to a contraction of almost 11 percent in 2009. As the fiscal year came to a close, 128 containerships lay idle, representing 1.6 percent of the total fleet capacity measured in TEUs. In contrast, 548 ships representing 10 percent of the containership fleet capacity lay idle at the end of fiscal year 2009.

## **Federal Maritime Commission**

### **Fiscal Year 2010**

Container volumes in the U.S. liner trades in fiscal year 2010 expanded 10 percent to 27.7 million TEUs, compared to 25.1 million last year. The U.S. share of the world's container trades was 21 percent. U.S. container imports increased after two consecutive years of decline, expanding by 10 percent to 16.8 million TEUs, compared to 15.3 million in 2009. This was still well below the record of 19.4 million TEUs reached in fiscal year 2007. U.S. container exports also expanded. They increased by 10 percent to 10.9 million TEUs. The U.S. container trade imbalance remained unchanged; for every 100 loaded containers exported from the U.S., 154 were imported.

Container cargo through Pacific Northwest ports, such as Seattle, Tacoma and Portland, grew by more than 10 percent. This coastal region's share of U.S. container volume increased to 11 percent from 10.6 percent. The Pacific Southwest region, which includes the ports of Los Angeles, Long Beach and Oakland, saw container volumes increase by 11 percent. This coastal region's share of U.S. container volume rose to 41 percent from 39 percent. Ports along the U.S. Atlantic coast performed less well. Their container volumes expanded by 9 percent and volumes at Gulf coast ports expanded only 5 percent. The Atlantic coast ports managed a marginal increase in their share of U.S. container cargo from 42 to 43 percent, while Gulf coast ports marginally lost share from 7.3 to 7.2 percent.

In fiscal year 2010, the United States' top five liner cargo trading partners remained China, Japan, South Korea, Taiwan, and Hong Kong. U.S. liner trade with China and Hong Kong grew during the fiscal year by 9 and 10 percent, after relatively modest contractions last year. Trade with Taiwan expanded 12

## **Federal Maritime Commission**

### **Fiscal Year 2010**

percent, and Japan by 10 percent, and trade with South Korea grew by an impressive 22 percent after having contracted 23 percent last year. Collectively, these five trading partners accounted for 54 percent of the total U.S. container trade, just above last year's figure of 53 percent. This year, trade with China accounted for 37 percent of the total U.S. container trade, down 1 percentage point compared to fiscal year 2009.

On a worldwide basis, the containership fleet expanded at about the same pace as the demand for global container shipping. This year the containership fleet's nominal capacity grew by just over 9 percent compared to last year. At the end of the fiscal year, 4,852 containerships, with a fleet capacity of 14.1 million TEUs, were available to serve the world's container trades. Net of vessels scrapped, only 145 containerships were added to the world fleet, just above last year's number of 129. At the end of fiscal year 2010, there were orders worldwide for 566 new containerships with an aggregate capacity of 3.7 million TEUs. This amount of ship capacity on order is equivalent to only 26 percent of the existing fleet capacity, down from 43 percent last year and 60 percent two years ago.

The world's container shipping industry became slightly more concentrated during fiscal year 2010. Among the top 100 container operators at the end of fiscal year 2010, the top five operators controlled 43 percent of the world's containership fleet capacity, the top ten controlled just under 61 percent, and the top twenty controlled almost 83 percent (compared to 42, 59 and 80

**Federal Maritime Commission**

**Fiscal Year 2010**

percent, respectively, last year). In descending order of containership fleet capacity, the top five operators remained Maersk Line, MSC, CMA CGM, Evergreen Line and APL. Hapag-Lloyd, COSCO Container Lines, China Shipping Container Lines, NYK Line and Hanjin Shipping completed the top ten ranking.



**Federal Maritime Commission**

**Fiscal Year 2010**

**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 United States.

In fiscal year 2010, the Commission monitored potentially unfavorable or discriminatory shipping practices by a number of foreign governments. However, no direct FSPA action was necessary.

**Federal Maritime Commission**

**Fiscal Year 2010**

**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. The most recent complete calendar year for which data are available is 2009. 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 United States in 2009. The figures in Table 1 represent each country’s total U.S. liner imports and exports combined in thousands of TEUs.

**Federal Maritime Commission**

**Fiscal Year 2010**

**Table 1: Top Twenty U.S. Liner Cargo Trading Partners (2009)**

<u>Rank</u>	<u>Country</u>	<u>TEUs (000s)</u>
1	China (PRC)	9,690
2	Japan	1,251
3	South Korea	1,142
4	Taiwan (ROC)	963
5	Hong Kong <sup>5</sup>	870
6	Germany	624
7	India	606
8	Vietnam	597
9	Indonesia	497
10	Brazil	476
11	Thailand	467
12	Italy	452
13	Belgium and Luxembourg	418
14	Netherlands	379
15	United Kingdom	346
16	Guatemala	325
17	Malaysia	325
18	Honduras	290
19	Australia	290
20	Chile	261

---

<sup>5</sup>Although, Hong Kong reverted to Chinese control in July 1997, PIERS continues to report data separately for Hong Kong because of its status as a major transshipment center.

**Federal Maritime Commission**

**Fiscal Year 2010**

Although there was a 12 percent year-to-year decrease in liner volumes in the United States' bilateral trade with its top 20 trade partners, the membership of the top 20 list remained the same. The ranking of the top six countries remained identical with the 2008 rankings. In fact, allowing for some shifts in their individual rank order, those same six countries have topped the list for the past decade. China, although its U.S. trade volumes shrank 8 percent from last year, easily led the field again in 2009. Only three of the top 20 countries posted year-to-year volume increases – Guatemala, Vietnam, and India.

**Federal Maritime Commission**

**Fiscal Year 2010**

**V**

**SIGNIFICANT ACTIVITIES**

**BY**

**ORGANIZATIONAL UNIT**



## **Federal Maritime Commission**

**Fiscal Year 2010**

### **A. OFFICE OF THE SECRETARY**

#### **1. In General**

The Office of the Secretary (OS) serves as the focal point for matters submitted to and emanating from the Commission. It is the public's main 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 statutes and other applicable laws; special docket applications and requests to correct clerical or administrative errors in service contracts or NSAs; all communications, petitions, notices, pleadings, briefs, or other legal instruments 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. 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 relations/outreach strategies and initiatives.

During fiscal year 2010, the OS continued to administratively process and direct all major filings addressed to the Commission and its component offices, including agreements filed under section 5 of the 1984 Act. The Office also issued 42 orders in docketed proceedings on behalf of the Commission.

## **Federal Maritime Commission**

### **Fiscal Year 2010**

The Office serves as the Commission's public information/press office. Accordingly, it 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 staff.

The Secretary was designated as the agency's Performance Improvement Officer (PIO) in February 2010. Subject to the direction of the Chairman, and in consultation with the Managing Director, the PIO oversees the Commission's performance management activities, including development of performance goals, plans and reports. During fiscal year 2010, the PIO drafted a revision to the 2010-2015 Strategic Plan. This revision will further streamline the plan to focus all resources on mission oriented goals. The Secretary has held and will continue to hold quarterly meetings with all agency components to measure progress toward specific performance targets set out in the strategic plan.

The Office is significantly involved with the Commission's ongoing objective to enhance public awareness of the agency. The Office promotes transparency and accountability on behalf of the Commission by evaluating, developing and implementing improvements to the Commission's website. During this fiscal year, the Office increased the amount of information available on specific topics and issues related to the agency and important to stakeholders and the media. For example, the Office worked with other Commission components and occasionally other agencies to provide information on such hot topics as moving personal household goods, cruise passenger information, passenger vessel financial responsibility, U.S. export and import capacity issues, China's new shipping policies, maritime environmental issues and the Deepwater Horizon Oil Spill. These informative online resources provide easy public access to useful information and resources, increase public awareness of how the FMC is involved with daily events and help to underscore our mission to oversee oceanborne transportation in the foreign commerce of the United States.

## **Federal Maritime Commission**

### **Fiscal Year 2010**

Additionally, the Office upgraded the Commission's website operating platform and content management tool. These upgrades support plans to enhance website graphics, include more social networking/communications capabilities, and further improve public visibility of the Commission's website. During fiscal year 2011, the Office plans to improve the overall usability of the website by working closely with other offices and bureaus, other government agencies, and public users to provide content-driven, user-friendly information through the website.

During fiscal year 2010, the Office collaborated with other Commission components on plans for upgrading and modernizing the communication technology in the Commission's hearing room. The Office supported this effort by providing advice on best government practices and technical, web-based requirements as related to web-broadcasting.

The process of electronically scanning/imaging Commission records is an ongoing function of the Office. Not only does the Office electronically convert all official Commission files (both current and historical), it is responsible for planning, scheduling and systematically scanning documents for other agency components. The Document Management Program the Office oversees helps support the agency's initiatives for Continuity of Operations (COOP) by: improving preservation of and staff access to Commission documents, improving staff response time to public inquiries, and providing direct public access to electronic files. As a result of its scanning program, the Office continued to make key documents filed in formal proceedings available through its website.

## **Federal Maritime Commission**

### **Fiscal Year 2010**

During the fiscal year, the Office completed a large-volume scanning project. The contents of 28 bound volumes of historical Commission decisions issued between the years 1919 and 1987 were converted to electronic format and will be posted to the Commission's website. These historical decisions are no longer in publication in bound volume form, however, with the completion of this project the entire body of historical Commission decisions issued in its adjudicatory proceedings will be available on the FMC website. Making this information readily available to the public in electronic form has proven to be a useful and cost effective resource, especially for attorneys practicing before the Commission.

During fiscal year 2011, the Office plans to develop an electronic, searchable database for the Commission's historical Informal Docket proceedings. The database will provide a more efficient research tool for historical cases and decisions related to informal docket proceedings filed with the Commission. The database will be initially available to staff attorneys, settlement officers, and the office of Administrative Law Judges.

In support of the Commission's strategic goal to protect the public from unlawful, unfair and deceptive ocean transportation practices and resolve shipping disputes, during fiscal year 2011 the Office will lead an agency-wide team in a review of the Commission's Rules of Practice and Procedure. Emphasis will be on evaluating the Commission's procedures against current Federal Rules of Civil Procedure and updating Commission procedures where appropriate. The benefits and challenges associated with electronic filing of documents in Commission proceedings will also be considered. Potential automation initiatives in this area must be accomplished in conjunction with the Office of Information Technology.

## **Federal Maritime Commission**

**Fiscal Year 2010**

### **2. Library**

The OS also oversees the Commission's Library. The Library serves the Commission's research and information needs and is a specialized repository of current and basic materials primarily covering the shipping industry, the history of shipping, and regulations covering all phases of shipping in the U.S. foreign trade. It contains a variety of books, directories, encyclopedias, journals, magazines, reports, microforms, and videos. The Library 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, legislative materials, and selected titles of the National Reporter system. The Library's holdings consist of approximately 8,700 volumes and numerous microfiches, CD-ROMs, and online services.



## **Federal Maritime Commission**

**Fiscal Year 2010**

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

#### **1. In General**

Under the direction and management of the Chief Administrative Law Judge, the Office of Administrative Law Judges (OALJ) holds hearings and renders initial or recommended decisions in formal rulemaking and adjudicatory proceedings as provided in the Shipping Act of 1984, and other applicable laws and other matters assigned by the Commission, in accordance with the Administrative Procedure Act and the Commission's Rules of Practice and Procedure.

The OALJ 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; issue Initial Decisions (IDs); and take any other action authorized by agency rule consistent with the Administrative Procedure Act.

At the beginning of fiscal year 2010, twelve formal proceedings were pending (on hand) before the OALJ (Docket Nos. 06-01, 06-06, 06-09, 07-01, 07-10, 08-03, 08-04, 08-06, 09-01, 09-03, 1896(F), and 1898(F)). During the year, nine new formal proceedings were added (Docket Nos. 09-07, 09-08, 10-01, 10-02, 10-05, 10-06, 10-07, 10-08, and 10-09) and one formal proceeding was remanded by the Commission (Docket No. 07-02). OALJ issued IDs in three contested proceedings (Docket Nos. 06-01, 06-06 (two IDs on the merits), and 06-09), a decision on civil penalty in one proceeding (Docket No. 07-02), dismissed some respondents in one proceeding (10-01), approved settlements in five proceedings (Docket Nos. 06-06 (one settlement), 07-10, 08-06, 09-03, 10-02, and 10-07 (partial settlement)), dismissed some claims and granted leave to appeal an issue in one proceeding (Docket No. 09-01), and referred one motion to approve a settlement to the Commission (Docket No. 09-07).

## **Federal Maritime Commission**

**Fiscal Year 2010**

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

In fiscal year 2010, the Office of Administrative Law Judges issued initial decisions partially or completely resolving eleven proceedings and referred one motion to dismiss to the Commission.

*Worldwide Relocations, Inc.; Moving Services, L.L.C.; International Shipping Solutions, Inc.; Dolphin International Shipping, Inc.; Boston Logistics Corp.; Tradewind Consulting, Inc.; Global Direct Shipping; Megan K. Karpick; Martin J. McKenzie; Patrick John Costadoni; Lucy Norry; Baruch Karpick; and Sharon Fachler – Possible Violations of Sections 8, 10, and 19 of the Shipping Act of 1984 and the Commission's Regulations at 46 C.F.R. §§ 515.3, 515.21, and 520.3 [Docket No. 06-01]*

On January 11, 2006, the Commission served an Order of Investigation and Hearing to determine whether nine corporations and fourteen individuals violated sections 8, 10, and 19 of the Shipping Act, at 46 U.S.C. §§ 40501, 41102, 40901, and 40902, and the Commission's regulations at 46 C.F.R. §§ 515.3, 515.21, and 520.3. The Commission named the Bureau of Enforcement (BOE) as a party. The proceeding investigated (1) whether Respondents violated sections 8, 10, and 19 of the Act and the Commission's regulations by operating as non-vessel-operating common carriers (NVOCCs) in the U.S. trades without obtaining licenses from the Commission, without providing proof of financial responsibility, without publishing an electronic tariff, and by failing to establish, observe, and enforce just and reasonable regulations and practices relating to or connected with receiving, handling, storing, or delivering property; (2) whether, in the event one or more violations

## **Federal Maritime Commission**

**Fiscal Year 2010**

of the Act and Commission regulations are found, civil penalties should be assessed and, if so, the identity of the persons and/or corporations to whom the penalties should be assessed and the amount of the penalties to be assessed; and (3) whether, in the event violations are found, appropriate cease and desist orders should be issued. During the course of the proceedings, claims were dismissed against a number of Respondents and the Commission did not review those decisions. On August 16, 2010, the administrative law judge issued an ID addressing claims against International Shipping Solutions, Dolphin International Shipping, Worldwide Relocations, Boston Logistics, Tradewind Consulting, Moving Services, Global Direct, Megan Karpick, Baruch Karpick, Martin McKenzie, Patrick Costadoni, Lucy Norry, and Sharon Fachler. On September 14, 2010, the Commission served a Notice to Review the decision.

***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], 31 S.R.R. 1131 (January 7, 2010)***

On May 11, 2006, the Commission served an Order of Investigation and Hearing to determine whether Respondents, licensed NVOCCs, violated section 10(b)(11) of the Shipping Act and the Commission’s regulations at 46 C.F.R. § 515.27 by knowingly and willfully accepting cargo from or transporting cargo for the account of an ocean transportation intermediary (OTI) that did not have a tariff and bond as required by sections 8 and 19 of the Act. The Commission

## **Federal Maritime Commission**

### **Fiscal Year 2010**

named BOE as a party. To be a section 10(b)(11) violation, the OTI from which a Respondent accepted cargo would itself have to be an NVOCC. Since the three entities were not affiliated with each other and presented different fact patterns, the administrative law judge issued a separate ID for each Respondent.

On October 9, 2009, the administrative law judge issued an ID approving a settlement between EuroUSA and the BOE. On November 12, 2009, the Commission served a Notice not to Review the decision.

On October 9, 2009, the administrative law judge issued an ID finding that BOE did not prove that the unlicensed intermediaries with whom Tober did business operated as NVOCCs; therefore, Tober did not violate section 10(b)(11) of the Act. The administrative law judge found that Tober violated section 10(b)(2)(A) of the Act by providing service in the liner trade that was not in accordance with the rates and charges in its published tariff, but did not assess a penalty for these violations. BOE filed exceptions to the ID. The Commission's decision is pending.

On December 1, 2009, the administrative law judge issued an ID finding that Container Innovations violated section 10(b)(11) and imposing a civil penalty of \$390,000 for thirteen knowing and willful violations of the Act. On January 7, 2010, the Commission served a Notice not to Review the decision.

**Federal Maritime Commission**

**Fiscal Year 2010**

***Parks International Shipping Inc., Cargo Express International Shipping Inc., Bronx Barrels & Shipping Supplies Shipping Center, Inc., and Ainsley Lewis a.k.a. Jim Parks – Possible Violations of Sections 8(a) of the Shipping Act and the Commission’s Regulations at 46 C.F.R., Parts 515 and 520 [Docket No. 06 -09], 31 S.R.R. 1166 (February 5, 2010)***

On September 19, 2006, the Commission served an Order of Investigation and Hearing to determine whether Respondents violated sections 8(a) and 19 of the Shipping Act, 46 U.S.C. §§ 40501(a), 40901, and 40902, and the Commission’s regulations at 46 C.F.R. Part 520 and 46 C.F.R. Part 515, by operating as OTI without publishing a tariff, without obtaining a license, and without providing proof of financial responsibility. The Commission named BOE as a party. On February 5, 2010, the administrative law judge issued an ID finding that on twelve shipments, Parks International violated section 8(a) by operating as a NVOCC without publishing tariffs and violated section 19 by operating as an OTI without obtaining a license from the Commission and without providing proof of financial responsibility. The administrative law judge found that on sixteen shipments, Cargo Express violated section 19 by operating as an OTI without obtaining a license and without providing proof of financial responsibility, and that on fourteen of those shipments, Cargo Express also violated section 8(a) by operating as an NVOCC without publishing tariffs. The administrative law judge imposed civil penalties on Parks International and Cargo Express, and ordered them to cease and desist from violating the Act. The administrative law judge dismissed the claims against Bronx Barrels and Ainsley Lewis. On April 6, 2010, the Commission served a Notice to Review the decision.

**Federal Maritime Commission**

**Fiscal Year 2010**

***Anderson International Transport and Owen Anderson – Possible Violations of Sections 8(a) and 19 of the Shipping Act [Docket No. 07-02], 31 S.R.R. 1232 (February 23, 2010)***

On March 22, 2007, the Commission served an Order of Investigation and Hearing to determine whether Respondents violated sections 8, 19(a), and 19 (b) of the Shipping Act, 46 U.S.C. §§ 40501(a), 40901, and 40902, and the Commission's regulations at 46 C.F.R. Part 515 and Part 520 by operating as an OTI without publishing a tariff, without obtaining a license, and without providing proof of financial responsibility. The Commission named BOE as a party. On August 28, 2009, the administrative law judge issued an ID finding that Respondents did not violate section 8 because they did not operate as a common carrier, and finding that Respondents violated sections 19(a) and 19(b) by operating as an OTI without publishing a tariff, without obtaining a license, and without providing proof of financial responsibility. The administrative law judge ordered Respondents to cease and desist from violating the Act. The administrative law judge did not impose a civil penalty, finding that BOE failed to introduce evidence regarding Respondents' ability to pay a civil penalty. On December 8, 2009, BOE filed a petition to reopen the proceeding for the purpose of taking further evidence regarding Respondents' ability to pay. The Commission granted this request and remanded the case for further consideration. On February 23, 2010, the administrative law judge issued an order on remand imposing a penalty on Respondents. On March 9, 2010, the Commission served a Notice to Review the decision, and on March 15, 2010, BOE filed exceptions to the decision.

**Federal Maritime Commission**

**Fiscal Year 2010**

***Kawasaki Kisen Kaisha, Ltd. v. Fashion Accessories Shippers Association, Inc.; Gemini Shippers Association, Inc.; Sara Mayes; and Harold Sachs***  
**[Docket No. 07-10]**

On November 8, 2007, Kawasaki Kisen Kaisha, Ltd. (“K” Line) filed a complaint alleging that Respondents violated the Shipping Act (46 U.S.C. §§ 40102(20), (22), and (23), 41102(a), 41104(10), and the Commission’s regulations at 46 C.F.R. § 530.8(c)) by: (1) holding themselves out as a shippers’ association when they are neither organized as a shippers’ association nor function as one as defined by the Act; (2) requiring that “royalty payments” be made by “K” Line to Respondents for the “privilege of carrying cargoes under the contract rates,” and through such “royalty payments,” engaging in a scheme to obtain transportation at less than the otherwise applicable rates; and (3) implementing and enforcing an “exclusive dealing clause” that locked shippers into respondent Fashion Accessories’ contracts and controls rate levels. On October 27, 2009, the administrative law judge issued an ID approving a settlement. On November 30, 2009, the Commission served a Notice not to Review the decision.

***Western Holding Group, Marine Express, Inc., and Corporación Ferries del Caribe, Inc. v. Mayagüez Port Commission and Holland Group Port Investment (Mayagüez), Inc.*** [Docket No. 08-06]

On November 17, 2008, Complainants filed a complaint alleging Respondents violated the Shipping Act by engaging in unjust, unreasonable, and unlawful practices in violation of 46 U.S.C. § 41102(c); and unreasonable refusals to negotiate, unreasonable discrimination, and undue or unreasonable prejudice or disadvantages in violation of 46 U.S.C. § 41106(1)-(3). Holland Group

**Federal Maritime Commission**

**Fiscal Year 2010**

filed a counter-complaint against Complainants, alleging tariff violations and unreasonable practices, in violation of 46 U.S.C. §§ 40501(a)(1), 41102(c), 41104(1) and (2)(A) of the Act, and 46 C.F.R. § 520.3(a) of the Commission's regulations. On February 1, 2010, the administrative law judge issued an ID approving a settlement between Complainants and Mayagüez Port Commission and dismissing the proceeding as to that Respondent. On March 4, 2010, the Commission served a Notice not to Review the decision. The proceeding between Complainants and Holland Group continued. On September 20, 2010, the administrative law judge issued an ID granting the remaining parties' Joint Motion to Dismiss. On October 12, 2010, the parties filed a Joint Motion for Modification of Order. The proceeding is now before the Commission.

***Mitsui O.S.K. Lines Ltd. v. Global Link Logistics, Inc., Olympus Partners, L.P., Olympus Growth Fund III, L.P., Olympus Executive Fund, L.P., Louis J. Mischianti, David Cardenas, Keith Heffernan, CJR World Enterprises, Inc., and Chad J. Rosenberg [Docket No. 09-01]***

On May 5, 2009, Mitsui filed a complaint alleging that respondent Global Link, a non-vessel-operating common carrier (NVOCC) licensed by the Commission, and the other Respondents who owned Global Link at the time of the alleged violations, violated sections 10(a)(1) and 10(d)(1) of the Shipping Act by: (1) engaging in a deliberate scheme to obtain ocean transportation of property at rates lower than the applicable service contract or tariff rates; and (2) failing to establish, observe, and enforce just and reasonable practices relating to

## **Federal Maritime Commission**

### **Fiscal Year 2010**

or connected with receiving, handling, and delivering property. 46 U.S.C. §§ 41102(a) and (c). Mitsui also alleges that Respondents violated the Commission's regulations at 46 C.F.R. § 515.31(e) which prohibits preparation or filing of false or fraudulent claims or false information relative to an ocean transportation intermediary transaction. Global Link, asserting claims belonging to its new owners, filed crossclaims against the other Respondents who owned Global Link at the time of the violations alleged by Mitsui, contending that the old owners violated sections 10(a)(1) and 10(d)(1) when they sold Global Link to the new owners. On June 22, 2010, the administrative law judge issued an ID finding that the Commission has jurisdiction over the inland portion of intermodal transportation, dismissing Mitsui's section 10(a)(1) claim, and dismissing Global Link's crossclaims. On July 14, 2010, Global Link filed exceptions to the dismissal of its crossclaims. On July 22, 2010, the Commission served a Notice to Review the dismissal of Mitsui's section 10(a)(1) claim. On August 13, 2010, the administrative law judge granted Respondents' motion for leave to take an interlocutory appeal of the holding that the Commission has jurisdiction over the inland portion of intermodal transportation. The proceeding is before the Commission for the matters on appeal and continues before the administrative law judge on Mitsui's section 10(d)(1) claim.

**Federal Maritime Commission**

**Fiscal Year 2010**

***Naveena Exports, Ltd. v. Go-Trans, Inc.* [Docket No. 09-03]**

On June 26, 2009, Naveena filed a complaint alleging that respondent Go-Trans, an ocean transportation intermediary, violated the Shipping Act by “fail [ing] to establish, observe, and enforce just and reasonable regulations and practices relating to or connected with receiving, handling, storing, or delivering property,” 46 U.S.C. § 41102(c), when it released four containers of goods to a buyer without being presented an original bill of lading. On January 19, 2010, the administrative law judge issued an ID approving a settlement. On February 22, 2010, the Commission served a Notice not to Review the decision.

***World Chance Logistics (Hong Kong), Ltd. and Yu, Chi Shing, a.k.a. Johnny Yu – Possible Violations of Section 10 of the Shipping Act of 1984* [Docket No. 09-07]**

On October 22, 2009, the Commission served an Order of Investigation and Hearing to determine whether Respondents, a foreign based tariffed and bonded NVOCC registered with the Commission and its owner, violated the Shipping Act by permitting unrelated shippers to have direct access to the rates in Respondents’ service contracts, providing rates and charges to shippers that were not in accordance with the rates and charges contained in Respondents’ tariff, and utilizing a “private limited company” as an unfair device or means to obtain lower rates and to receive volume incentive payments not otherwise applicable in violation of sections 10(a)(1), 10(b)(1), and 10(b)(2) of the Act. 46 U.S.C. §§ 41102(a), 41104(1), and 41104(2). The Commission named the BOE as a party. On April 2, 2010, the administrative law judge referred a joint motion for settlement to the Commission. On May 20, 2010, the Commission approved the settlement.

**Federal Maritime Commission**

**Fiscal Year 2010**

***AMC USA, Inc. v. International First Service S.A. a/k/a IFS S.A.; International First Service Argentina a/k/a AR-IFS; International First Service USA, Inc. a/k/a IFS USA, Inc.; Global Wine Logistics USA Inc. a/k/a GWL USA, Inc.; Anita McNeil; and Ipsen Logistics GmbH [Docket No. 10-01]***

On January 22, 2010, AMC USA filed a complaint asserting that Respondents violated the Shipping Act by failing to keep open to the public, in an automated tariff system, tariffs showing all rates, charges, classifications, rules, and practices between all points and ports on its route and on any through transportation that has been established; failing to file with the Commission the service contracts entered into with vessel operating common carriers; engaging in a willful and deliberate fraudulent scheme to steal customers, employees, and proprietary information from AMC USA in order to gain an unfair business advantage and/or in order to provide ocean transportation for property for less than the rates and/or charges that would otherwise have applied; operating under agreements that were required to be filed under the Act that were not effective pursuant to the Act; working together to allow parties to obtain transportation for property at less than the rates or charges that would have applied by unjust and unfair means; failing to establish, observe, and enforce just and reasonable regulations and practices, relating to or connected with receiving, handling, and delivering property; and knowingly and willfully accepting cargo for the account of an OTIs that does not have a tariff and a bond insurance or other surety, 46 U.S.C. §§ 40501(a), 40502(b)(1), 41102, 41104(1) and 41104(11). The complaint also alleged that Respondents acted as ocean transportation intermediaries in the United States without a license in violation of the Act and Commission regulations. On May 25, 2010, the administrative law judge granted AMC

**Federal Maritime Commission**

**Fiscal Year 2010**

USA's motion to dismiss with prejudice the claims against respondents Ipsen Logistics and Global Wine Logistics. On June 29, 2010, the Commission served a Notice not to Review the decision. The proceeding continues against the other Respondents.

***BDP International, Inc. v. United Transport Tankcontainers, Inc.* [Docket No. 10-02]**

On March 23, 2010, BDP International, an ocean freight forwarder licensed by the Commission, filed a complaint against Respondent, a NVOCC licensed by the Commission, alleging that Respondent had not paid BDP compensation on several hundred shipments in violation of section 10(b)(2)(A) of the Shipping Act of 1984. 46 U.S.C. § 41104. On May 7, 2010, the administrative law judge issued an ID approving a settlement. On June 9, 2010, the Commission approved the settlement.

***Rendezvous International v. Chief Cargo Services, Inc., Kaiser Apparel, Inc., Edco Logistics, Inc., Oriental Logistics, Inc., and Razor Enterprise* [Docket No. 10-07]**

On July 19, 2010, Rendezvous International filed a complaint alleging that Respondents violated several sections of the Shipping Act by fraudulently and unlawfully/wrongfully releasing three separate shipments to a customer without requiring presentation of bills of lading. On September 17, 2010, the administrative law judge issued an ID approving a settlement with Chief Cargo Services, Inc. The proceeding against the other Respondents continued before the administrative law judge. On October 19, 2010, the Commission served a Notice not to Review the decision as to Chief Cargo Services, Inc.

## **Federal Maritime Commission**

### **Fiscal Year 2010**

#### **3. Pending Proceedings**

At the end of fiscal year, 13 formal proceedings were counted as pending (on hand) before the OALJ (07-01, 08-03, 08-04, 09-01, 09-08, 10-01, 10-05, 10-06, 10-07, 10-08, 10-09, 1896(F), and 1898(F)).



## **Federal Maritime Commission**

**Fiscal Year 2010**

### **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 Orders**

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

#### ***Repeal of Marine Terminal Agreement Exemption* - [Docket No. 09-02], 30 S.R.R. 1088 (December 4, 2009)**

On July 2, 2009, the Commission published Notice of Proposed Rulemaking to repeal 46 C.F.R. § 535.308, an exemption from the statutory waiting period for MTO agreements. The rulemaking was published in the Federal Register, 74 FR 31666 (July 2, 2009), and received three comments. During its meeting on November 19, 2009, the Commission decided to repeal the exemption because pursuant section 16 of the Shipping Act, 46 U.S.C. 40103, the

## **Federal Maritime Commission**

### **Fiscal Year 2010**

Commission is permitted to continue an exemption from the Act's requirements only if "it finds that the exemption will not result in substantial reduction in competition or be detrimental to commerce." However, the Commission found that potentially anti-competitive agreements were filed under § 535.308. The Commission also found that repeal of the § 535.308 exemption would have only a minimal impact on the industry because of the narrow applicability of the exemption and, thus, the small number of agreements filed claiming the exemption. On December 9, 2009, the Commission's Final Rule repealing § 535.308 was published in the Federal Register, 74 FR 65034 (December 9, 2009).

***Petition of the National Customs Brokers and Forwarders Association of America, Inc. for Exemption from Mandatory Tariff Publication [Petition No. P1-08], 31 S.R.R 1124 (January 5, 2010); NVOCC Negotiated Rate Arrangements [Docket No. 10-03]***

On July 31, 2008, the National Customs Brokers and Forwarders Association of America, Inc. (NCBFAA) filed a petition requesting the Commission exercise its authority under 46 U.S.C. § 40103 and issue an exemption for non-vessel-operating common carriers (NVOCCs) from the provisions of the Shipping Act of 1984 requiring them to publish and/or adhere to rate tariffs for ocean transportation in those instances where they have individually negotiated rates with their shipping customers and memorialized those rates in writing. Notice of the Petition was published on August 11, 2008 and comments on it were due by September 26, 2008. 73 FR 46625.

## **Federal Maritime Commission**

### **Fiscal Year 2010**

NCBFAA's proposal incorporated the following principles: the exemption would be voluntary; the exemption would relate only to tariff rates, not to tariffs rules; disputes relating to exempt contracts would be settled only under contract law; NVOCC Service Arrangements (NSAs), to the extent used, would continue to be filed with the Commission and NSA essential terms would continue to be published; exempt contracts would be memorialized in writing; the Commission would have access to documentation relating to exempt contracts; the exemption would not be construed to extend antitrust immunity to NVOCCs; and only NVOCCs that are licensed or registered OTIs would be eligible to use the exemption.

On December 24, 2009, NCBFAA filed a motion for leave to supplement the record and submit a verified statement on behalf of DJR Logistics, Inc. By order served January 5, 2010, the Commission granted NCBFAA's motion, accepted the verified statement, and reopened the record for the limited purpose of receiving updated tariff cost information, and any replies thereto, from previous commenting parties of record by January 21, 2010. Comments in response to the Petition were filed by members of Congress; two Federal government agencies; OTIs; associations; consultants; tariff publishers; and vessel-operating common carriers (VOCCs).

## **Federal Maritime Commission**

### **Fiscal Year 2010**

After consideration of the Petition and all comments at an open Commission meeting on February 18, 2010, the Commission voted by a 3-1 margin to instruct the staff to initiate a rulemaking to relieve licensed NVOCCs from the costs and burdens of tariff rate publication. The Commission specifically found that it was within its statutory authority and discretion under Section 16 of the Shipping Act to grant such an exemption with certain conditions, after having considered all the comments filed in support and in opposition to the Petition, as doing so would not result in substantial reduction in competition or be detrimental to commerce, consistent with the Act. See 46 U.S.C. § 40103(a). A notice of proposed rulemaking was published in the Federal Register on May 7, 2010. 75 FR 25150, Commission Docket 10-03.

The Commission voted to exempt licensed NVOCCs by regulation from these requirements of the Act: the requirement in Section 8(a), codified at 46 U.S.C. §§ 40501(a)-(c) that each common carrier keep open to public inspection in an automated tariff system tariffs showing all its rates; Section 8(b), codified at 46 U.S.C. § 40501(d) (time volume rates); Section 8(d), codified at 46 U.S.C. § 40501(e) (tariff rate increase may not be effective on less than 30 days' notice but decrease effective immediately); Section 8(e), codified at 46 U.S.C. § 40503 (carrier application to grant refunds); and Section 10(b)(2)(A)'s requirement of adhering to the published tariff rate, codified at 46 U.S.C. § 41104(2)(A). The Commission also determined to seek public comment on whether the regulation should also extend the exemption to the prohibitions of Section 10(b)(4), codified at 46 U.S.C. § 41104(4) (prohibiting common carriers from unfair or unjustly discriminatory practices in services pursuant to a tariff), and Section 10(b)(8), codified at 46 U.S.C. § 41104(8) (prohibiting common carriers from undue or unreasonable preference or advantage or undue or unreasonable prejudice or disadvantage for tariff service).

## **Federal Maritime Commission**

### **Fiscal Year 2010**

The proposed regulation would recognize NVOCC negotiated rate agreements (NRAs) and proposed defining that instrument as “a written and binding arrangement between a shipper and an eligible NVOCC to provide particular transportation service for a particular shipment at a particular rate prior to the receipt of the cargo by the common carrier or its agent (including originating carriers in the case of rates for through transportation).”

The Commission sought comment on whether the regulation should additionally specifically exempt a compliant NVOCC from the prohibitions of Section 10(b)(4), codified at 46 U.S.C. § 41104(4) (prohibiting common carriers from unfair or unjustly discriminatory practices in service pursuant to a tariff), and Section 10(b)(8), codified at 46 U.S.C. § 41104(8) (prohibiting common carriers from undue or unreasonable preference or advantage or undue or unreasonable prejudice or disadvantage for tariff service). The Commission also requested comment on additional terms to be required in the NRA documentation, and on the usefulness of providing a specific set of "safe harbor" provisions in the regulation as to what further terms should be included in an NRA or actions an NVOCC should take to ensure the NRA will fall within the exemption. A public meeting was requested and held on May 24, 2010. Written comments were received through June 4, 2010. At the end of the fiscal year, this proceeding was pending issuance of a final rule by the Commission.

## **Federal Maritime Commission**

**Fiscal Year 2010**

### **2. Petitions Granted by the Commission**

#### ***In the Matter of the Lawfulness of Unlicensed Persons Acting as Agents for Licensed Ocean Transportation Intermediaries [Docket No. 06-08], 31 S.R.R. 1058 (November 6, 2009)***

In August 2006, Team Ocean Services, Inc., filed a petition for declaratory order seeking to have the Commission issue an order affirming that it is lawful for licensed OTIs to engage unlicensed persons to act as their agents to perform OTI services. On February 15, 2008, the Commission issued a declaratory order denying Team Ocean's petition, concluding that only licensed persons are permitted to provide OTI services to the public. Landstar Express America sought review of the Commission's declaratory order, and on June 26, 2009, the United States Court of Appeals for the District of Columbia Circuit issued a decision concluding that agents providing OTI services need not be licensed. *Landstar Express America v. Federal Maritime Commission*, 569 F. 3d 493 (D.C. Cir. 2009). In light of this conclusion, the court vacated the Commission's declaratory order and remanded the matter to the Commission. On November 6, 2009, the Commission issued an Order Granting Petition for Declaratory Order, in which it concluded that it is lawful for a licensed OTI to engage an unlicensed person to act as its agent to perform OTI services on behalf of the disclosed licensed OTI.

## **Federal Maritime Commission**

**Fiscal Year 2010**

### **3. 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:

***Federal Maritime Commission v. All-In-One Shipping, Inc., et al., U.S. District Court for the Southern District of Florida, Case No. 06-60054***

On January 12, 2006, the Commission filed a Complaint for Injunctive Relief with the U.S. District Court for the Southern District of Florida to enjoin four household goods moving companies and three individuals from operating as NVOCCs in violation of the Shipping Act of 1984 by accepting cargo for transportation, and for advertising for or soliciting cargo while operating as an OTI without a valid license, bond or other security on file with the Commission. The District Court issued the requested preliminary injunction by order dated January 17, 2006. Injunctive relief remains in force pending conclusion of agency enforcement proceedings in FMC Docket No. 06-01.

## **Federal Maritime Commission**

### **Fiscal Year 2010**

On August 16, 2010, the ALJ issued an ID in Docket No. 06-01 finding violations of the Shipping Act and imposing civil penalties on the corporate and individual parties. No parties filed exceptions to the ID. The Commission determined to review the ID, and its final decision is due by February 28, 2011.

***Natural Resources Defense Council, Inc. v. Federal Maritime Commission, U.S. District Court for the District of Columbia, Civil Action No. 1:09-cv-00935***

On May 19, 2009, the National Resources Defense Council, Inc. (NRDC) filed a complaint for declaratory and injunctive relief against the Commission for failing to produce records and denying it a full waiver of fees under the Freedom of Information Act (FOIA). An Assistant U.S. Attorney represented the Commission. An answer to the complaint was filed on July 9, 2009. On September 28, 2009, NRDC filed its Motion for Summary Judgment on the merits of the case related to fee waivers. On November 6, 2009, the Commission filed its Consolidated Memorandum in Opposition to NRDC's Motion for Summary Judgment and in Support of its own Cross Motion for Summary Judgment. The NRDC filed its final brief on November 30, 2009 and the Commission's brief on the same issue was filed on December 18, 2009. As of June 8, 2010, the presiding Judge had not ruled on the briefed issues in the case. Prior to any ruling by the presiding Judge, the parties amicably resolved the dispute. The Commission agreed to produce a limited pool of documents and pay attorney's fees in exchange for dismissal of the case. After production of documents, and after the NRDC did not file any objection, the parties entered a stipulation of dismissal, and the case was terminated from the court's docket.

## **Federal Maritime Commission**

**Fiscal Year 2010**

### **4. 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 FY 2010, 110 bills, proposals, and congressional inquiries were referred to the OGC for review or comment. OGC prepared and coordinated testimony for the agency's FY 2011 budget authorization hearing and a hearing involving the capacity of vessels to meet U.S. import/export requirements. Both hearings were held before the U.S. House of Representatives' Committee on Transportation and Infrastructure's Subcommittee on Coast Guard and Maritime Transportation. In addition, OGC helped prepare one nominee for confirmation hearings before the Senate Committee on Commerce, Science and Transportation.

On September 22, 2010, H.R. 6167, the Shipping Act of 2010 was introduced. This proposed legislation would amend Title 46 of the United States Code, to increase competition and improve movement of goods by limiting anti-trust immunity to certain ocean common carrier agreements, increase penalties for Shipping Act violations, require Commission approval before an agreement becomes effective, establish an ocean shipping advisory committee, establish a dispute resolution process at the Commission, expand prohibitions on ocean transportation practices, and require the Federal Maritime Commission to maintain an Office of Dispute Resolution and Customer Advocate.

## **Federal Maritime Commission**

### **Fiscal Year 2010**

In FY2011 and 2012, 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 to promote efficient and secure flow of ocean transportation.

#### **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 1920 Act 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 FY 2010, 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.

## **Federal Maritime Commission**

### **Fiscal Year 2010**

The OGC also informally pursued several matters that involved potentially restrictive foreign practices including new legislation, new interpretations of existing legislation, new regulations of non-domestic carriers' terminal handling charges and implementation by the People's Republic of China of new requirements on carriers to file tariff and service contract rates with the Shanghai Shipping Exchange a quasi-governmental entity and for that entity to establish a freight index based upon information received.

Another responsibility of the OGC is the classification 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. In FY 2010, a Chinese carrier was deemed a controlled carrier and added to the current list of controlled carriers. The list of controlled carriers is published below in Part J of this Chapter.

## **Federal Maritime Commission**

**Fiscal Year 2010**

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 monitors foreign laws and practices to determine whether there are any unjust non-market barriers to trade. Where appropriate, the OGC will recommend Commission action.

### **6. Designated Agency Ethics Official**

The Ethics Official is designated by the Chairman and located in the OGC. The position is performed as a collateral duty by the attorney designated as Ethics Official.

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.

## **Federal Maritime Commission**

**Fiscal Year 2010**

### **D. OFFICE OF EQUAL EMPLOYMENT OPPORTUNITY**

The Federal Maritime Commission Office of Equal Employment Opportunity Program (EEO) follows Federal EEO and personnel management laws, concepts, procedures and regulations to develop, implement and manage a comprehensive program of equal employment opportunity. The program is statutorily mandated with required activities in complaints processing, adjudication, affirmative employment program planning, workforce diversity management, special emphasis programs, community outreach, monitoring and evaluation.

The Chairman of the Federal Maritime Commission is responsible for ensuring equal opportunity in the Commission. The Chairman has delegated this authority to the Director of Equal Employment Opportunity. Operational responsibility for compliance with EEO policies and programs lies with the Commission's front line managers. The Director of EEO (DEEO) 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. The DEEO arranges for EEO counseling or ADR 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. In addition, the DEEO represents the agency on several intergovernmental committees, coordinates all affirmative program planning efforts, 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.

## **Federal Maritime Commission**

### **Fiscal Year 2010**

The Office works closely with senior management and with the Commission's Office of Human Resources (OHR) to: (1) monitor affirmative employment programs; (2) expand outreach and recruitment initiatives; (3) improve the representation, career development and retention of women, minorities and persons with disabilities; (4) provide adequate career counseling; (5) facilitate early resolution of employment-related problems; and (6) develop program plans and progress reports.

### **Significant Accomplishments for fiscal year 2010**

Significant accomplishments include the following: (1) coordinated “No FEAR Act” (Notification and Federal Employees Antidiscrimination and Retaliation Act of 2002) training for all current and new employees; (2) provided EEO and non-EEO related guidance to Commissioners, managers, supervisors and employees in addressing issues that arose; (3) collaborated with managers and supervisors in striving to maintain and effectively manage a diverse workforce; (4) continued to administer an effective EEO complaint process that strives to attempt resolution of issues informally through collaborative ADR techniques at the lowest possible level; (5) held commemorative programs for all FMC employees for National Black History Month, Women’s History Month, and Asian Pacific Heritage Month while also recognizing Hispanic Heritage Month, Native American Indian Heritage Month, and Gay and Lesbian Pride Month through electronic announcement; (6) prepared all required EEO and Affirmative Employment Program accomplishment reports and plans; (7) collaborated with the Equal Employment Opportunity Commission (EEOC) management staff to discuss more effective approaches for meeting the MD-715 goals and objectives; and (8) continued to administer the EEO process in support of the FMC goal of achieving and maintaining a model work environment in accordance with Federal EEO policy and affirmative employment goals and objectives.

## **Federal Maritime Commission**

### **Fiscal Year 2010**

During fiscal years 2011 and 2012, the Office of EEO will continue all existing programs and initiate additional activities designed to increase an understanding of EEO concepts and principles, including monitoring workforce diversity, outreach, retention, career development initiatives, administer a barrier analysis as part of MD-715 requirements, and provide interactive mediation training for all interested FMC employees. MD-715 is the policy guidance which the Equal Employment Opportunity Commission provides to Federal agencies for their use in establishing and maintaining effective programs of equal employment opportunity under Section 717 of the Civil Rights Act of 1964 (Title VII), as amended, 42 U.S.C. 2000e *et seq.*, and Section 501 of the Rehabilitation Act of 1973 (Rehabilitation Act), as amended, 29 U.S.C. 791 *et seq.*



## **Federal Maritime Commission**

**Fiscal Year 2010**

### **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 inspector generals (IG), culminating in 1988 with the establishment of Office of Inspectors General (OIG) in smaller, independent agencies, including the Federal Maritime Commission. Currently, there are 73 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; to access all information deemed by the IG to be relevant to the reviews; and to publish findings and recommendations based on the reviews.

During fiscal year 2010, the OIG issued the following audit reports and evaluations:

**Federal Maritime Commission**

**Fiscal Year 2010**

<b><u>Audit Report Number</u></b>	<b><u>Subject of Audit</u></b>
<b>A10-01</b>	<b>Audit of the FMC's FY 2009 Financial Statements</b>
<b>A10-01A</b>	<b>Management Letter to the FY 2009 Audited Financial Statements</b>
<b>A10-02</b>	<b>Independent Evaluation of FMC's FY 2009 Implementation of FISMA</b>
<b>A10-03</b>	<b>Audit of the Office of Secretary Oversight of Document Scanning Services</b>
<b>OR10-01</b>	<b>Review of Contract Monitoring in the Office of Information Technology</b>
<b>OR10-02</b>	<b>Best Practices for Time &amp; Attendance Implementation</b>
<b>OR10-03</b>	<b>Review of FMC's User Fee Calculation</b>
<b>OR10-04</b>	<b>OIG User Satisfaction Survey of the Office of Information Technology Helpdesk</b>

## **Federal Maritime Commission**

### **Fiscal Year 2010**

In addition to these completed audits and reviews, the OIG performed fieldwork on the FY 2010 financial statement audit and the Federal Information Security Management Act evaluation, which includes privacy and data protection. The OIG also began a review of the Office of Consumer Affairs and Dispute Resolution Services.

On the investigative side, the OIG processed 62 complaints received on the office's hotline and responded to two Freedom of Information Act requests. We opened no investigations and referred no matters to prosecutorial authorities during this period. However, we learned of a scheme that used the name of the FMC to perpetuate a scam on consumers with fraudulent e-mails and correspondence using FMC letterhead. To protect potential victims from falling prey to this deception, the OIG requested that a scam alert be posted to the FMC website in multiple locations, including the OIG's webpage.

During the year, the OIG reviewed various proposals to provide inspectors general with testimonial subpoena authority, to provide ombuds services to whistleblowers under the Whistleblower Protection Enforcement Act of 2009, and to improve public access to federal information, pursuant to the Transparency in Government Act. The OIG also reviewed internal Commission Orders which included audit follow-up and Privacy Act implementation and reviewed agency regulations, which were amended to reflect the agency's recent reorganization and suggested revisions to reflect the appropriate reporting relationship between the inspector general and the agency.

The OIG entered into a Memorandum of Understanding with a sister OIG for counsel support and had a peer review performed of its audit quality assurance program by another OIG. The peer review team opined that the FMC/OIG complied with applicable government auditing standards, policies and procedures.

## **Federal Maritime Commission**

### **Fiscal Year 2010**

The OIG responded to two Congressional requests pertaining to agency implementation of OIG recommendations. Also during this period, the OIG advised the Bureau of Certification and Licensing on internal control over office procedures for processing license fee checks.

In addition to these audit and investigative activities and outcomes, the Inspector General staff participated in several activities pertaining to the Council of Inspectors General on Integrity and Efficiency (CIGIE). For example, the IG served on CIGIE's Legislation and Integrity Committees. The Legislation Committee is a centralized point-of-contact and liaison for CIGIE to ensure regular and ongoing communication with Congressional committees, committee staff and the Government Accountability Office regarding issues of common interest, and provides input to, and receives feedback from, the Congress on legislation affecting the IG community as a whole. The Integrity Committee is charged with receiving, reviewing, and referring for investigation, where appropriate, allegations of administrative (non-criminal) misconduct against inspectors general and designated senior staff members of the OIG. OIG staff was active in the Federal Audit Executive Council and the Council of Counsels to the Inspector General. Staff also served on the Improper Payment/Forensic Accounting and Auditing workgroup and the CIGIE Hotline workgroup.

In fiscal year 2011, 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 a statutorily-required audit of the FMC's fiscal year 2011 financial statements, as required by the Accountability for Tax Dollars Act, and an evaluation of the agency's information security program, as required by the Federal Information Security Management Act. Finally, the OIG will focus remaining resources on the agency's mission-critical programs and outreach activities with the objectives of enhancing performance and improving outcomes.

## **Federal Maritime Commission**

**Fiscal Year 2010**

### **F. OFFICE OF CONSUMER AFFAIRS AND DISPUTE RESOLUTION SERVICES**

The Office of Consumer Affairs and Dispute Resolution Services (CADRS) is responsible for developing and implementing the Commission's ADR program. Through this program, the Commission provides services to assist parties in resolving shipping disputes. The Office provides a 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 to resolve their disputes. The Commission makes trained neutrals available to facilitate resolution at all stages. Outside neutrals also may be employed as needed. During fiscal year 2010, Commission mediators provided services in a number of matters, especially assisting parties in overcoming obstacles to delivery of transported goods.

CADRS also provides ombuds services to participants in ocean shipping transactions. Typical complaints include situations where an NVOCC or VOCC has placed a hold on cargo in its possession, often for sums owed under a different contract of carriage. Other cases occur when an NVOCC has received cargo from its customer and taken payment for the transportation of the cargo, but failed to deliver the cargo. Urgent resolution may facilitate delivery of shipments to avoid the accrual of additional demurrage/detention/storage charges. With respect to household goods shipments, consumers often use unlicensed entities that demand additional payment and/or abandon the goods and refuse to communicate with the consumer. 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. CADRS also receives a significant number of complaints involving issues with cruise lines.

## **Federal Maritime Commission**

### **Fiscal Year 2010**

Another function of CADRS includes the adjudication of small claims through informal proceedings under 46 CFR Part 502, Subpart S. Office personnel serve as Settlement Officers in such cases, which involve complainants seeking reparations up to \$50,000 for alleged violations. 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.

During fiscal year 2010, 532 complaints were received that necessitated the opening of cases to provide dispute resolution services. These included 157 passenger complaints about cruise line issues, 172 complaints with respect to household goods shipments, and 203 complaints involving other cargo shipment matters. Cargo shipment complaints continued to be of increasing complexity. Problems involving OTIs with overextended finances and inability to complete the ocean transportation continued to be an issue. In addition, many household goods complaints pertained to initial charges quoted vis á vis the actual charges billed, often due to measurement discrepancies.

Another issue that arose in fiscal year 2010 concerned a VOCC, which was the subject of more than 20 complaints. This particular company had its vessel seized for debts owed and yet continued to accept shipments without the ability to complete the ocean transportation. CADRS worked closely with the VOCC to secure these containers, to facilitate delivery through the use of OTIs and other VOCCs, or to return the cargo to shippers.

**Federal Maritime Commission**

**Fiscal Year 2010**

Also, CADRS received over 20 complaints involving a particular NVOCC, specializing in household goods shipments, which decided to sell its business without completing the transportation for which it had already been paid. CADRS assisted shippers in locating their shipments and directed them on how to make claims with the bonding company for losses incurred.

The Commission initiated Fact Finding Investigation No. 26 into current conditions and practices in the U.S. liner trades and into potential impediments to the flow of U.S. import and export cargo. CADRS has been involved in seeking resolution to individual concerns regarding booking cancellations, and equipment and space limitations, and participated in the Commission's efforts to address the larger problems. CADRS also participated in the Commission's Fact Finding Investigation No. 27 involving the review of potentially unlawful, unfair, or deceptive practices related to the movement of household goods or personal property in the U.S.-foreign oceanborne trades. Complaints received by CADRS were the basis for initiating the proceeding and CADRS will necessarily continue to be involved in efforts to resolve further disputes and to educate the public and industry with regard to appropriate practices and activities.



## **Federal Maritime Commission**

**Fiscal Year 2010**

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

In January 2010, the Commission was reorganized as an important first step towards a revitalized FMC. Under the reorganization, the Commission restored the position of Managing Director. The Managing Director serves as the Commission's chief operating officer and senior executive responsible for the management and coordination of the Commission's operating bureaus, exercising administrative direction or guidance over all units of the Commission. In addition, the Managing Director oversees the Commission's Area Representatives and all administrative offices.

The Deputy Managing Director is the Commission's Competition Advocate, and the Assistant Managing Director is the FMC's Chief Information Officer (CIO) and Records Management Officer. The CIO provides overall strategic planning and guidance to the Office of Information Technology, which provides technical expertise and is responsible for the day-to-day maintenance and operation of the Commission's information technologies.

Office staff directly coordinate activities of the Area Representatives and provide oversight, coordination, direction and monitoring of Commission investigative outreach and complaint resolution activities of the Area Representatives. This requires extensive coordination among the Area Representatives and the Bureau of Enforcement, determining investigative priorities and goals.

## **Federal Maritime Commission**

### **Fiscal Year 2010**

In managing the day-to-day operations of the Commission, the OMD provides direction and coordination among Commission administrative and program components to assure synergism and cohesive efforts to achieve the Commission's strategic goals. The OMD initiates recommendations for long-range plans, new or revised policies and standards, and rules and regulations, while issuing internal directives to Commission staff.

During fiscal year 2010, the OMD initiated an effort to streamline the licensing process. Significant improvement has been attained, and goals have been appropriately adjusted in the Commission's strategic plan, reflecting the ability to review license applications much more quickly. The OMD also played a significant role in the Commission's determination to provide economic relief to NVOCCs from the costs and burdens of publishing their rates in publicly accessible tariffs.

Other significant accomplishments included participation in the planning of, initiation and pursuit of Fact Finding Investigation No. 26, *Vessel Capacity and Equipment Availability in the United States Export and Import Liner Trades*, as well as Fact Finding Investigation No. 27, *Potentially Unlawful, Unfair or Deceptive Ocean Transportation Practices Related to the Movement of Household Goods or Personal Property in U.S.-Foreign Oceanborne Trades*.

During fiscal year 2010, the OMD guided the agency's continuing efforts to enhance its IT program, emphasizing the development of efforts to improve efficiency through the use of information technologies. With the CIO, OIT and the Commission's operating programs working closely together, greater emphasis was placed on the ultimate impact of IT initiatives on Commission operations.

## **Federal Maritime Commission**

### **Fiscal Year 2010**

The OMD's key objectives for fiscal year 2011 include: (1) increasing the impact and availability of ARs in providing assistance to importers and exporters; (2) overall modernization of technology to enhance the efficiency of Commission operations; (3) implementing the agency's Human Capital Management Plan, particularly with respect to succession planning for the departure of highly skilled personnel; (4) implementing enhanced dispute resolution mechanisms to quickly address industry disputes; (5) continuing to refine and enhance agency administrative programs and operations by reviewing, developing and/or updating internal directives and Standard Operating Procedures; (6) implementing a revised Commission strategic plan to provide vision and direction for future Commission activities, refocusing Commission operations to facilitate the growth of imports and exports; and (7) reviewing and updating Commission regulations governing OTIs and PVOs, with the former focusing on a means of reducing consumer fraud.

## **Federal Maritime Commission**

### **Fiscal Year 2010**

#### **1. Area Representatives**

The Commission's Area Representatives (ARs) provide liaison to the shipping industry at a local level and act as a resource to all bureaus and offices of the Commission. The Commission maintains a presence in Los Angeles, South Florida, New Orleans, New York, Houston and Seattle through ARs based in each of those areas. These representatives also serve other major port cities and transportation centers within their respective areas. The ARs represent the Commission within their jurisdictions, resolve complaints and issues between parties involved in international oceanborne shipping (often coordinating with CADRS), investigate alleged violations of the shipping statutes, and act as a liaison to the shipping public, providing information to the maritime industry while acting as an intelligence resource to Commission headquarters. They provide advice and guidance to the shipping public, collect and analyze information of regulatory significance, and assess industry conditions. The ARs frequently cooperate and coordinate with other governmental agencies and departments, both Federal, state and municipal, providing regulatory information and relaying Commission policy to the shipping industry and the public. The ARs communicate to the public through outreach activities such as seminars, participating in various conferences and trade shows, making presentations, and through various local community contacts.

In fiscal year 2010, hundreds of informal complaints were handled by the ARs. These complaints often involved unlawful activity. Where possible, compliance was achieved informally. In other instances opening cases was warranted, and the ARs conducted thorough investigations to determine the extent of unlawful activity. The ARs conducted a number of investigations in 2010 of unlawful shipping practices by major ocean carriers and NVOCCs and referred them to the Bureau of Enforcement for action. Investigative activity by ARs helps to ensure fair competition in the trades to and from the United States.

## **Federal Maritime Commission**

### **Fiscal Year 2010**

The ARs were instrumental in the publication of public service announcements for each major port area in fiscal year 2010, warning consumers against the use of unlicensed OTIs. The ARs worked with the OMD in selecting appropriate local publications, including those that would reach various ethnic communities that experience has shown are particularly vulnerable to fraudulent type of activity by unlicensed entities. These warnings saved many from potentially losing their possessions. They resulted in numerous inquiries and reports to the ARs regarding licensed and unlicensed OTI activity and, consequently, appeared to reduce the volume of complaints resulting from activities of unlicensed entities.

In fiscal year 2010, South Florida ARs, with the assistance of BCL, made presentations on OTI licensing requirements and compliance for recently licensed companies, current applicants and persons interested in becoming licensed, to audiences in Florida. ARs also worked closely with a number of law enforcement agencies, and briefed or addressed key officials of the New York City Police Department, New Jersey State Police, and Houston Police Department, as well as the Association of Ship Brokers and Agents, Steering Committee of Sea Cargo Americas, University of Miami School of Law, International Cargo Committee of the Greater Miami Chamber of Commerce, Columbia River Customs House Brokers and Freight Forwarders, National Defense Transportation Association, and U.S. Customs and Border Patrol.

In fiscal year 2010, the South Florida ARs provided valuable expertise and guidance about shipping customs and documentation, assisting in an investigation by the Export-Import Bank of the United States (Ex-Im Bank) and the Department of Justice that resulted in a guilty plea for a conspiracy to defraud the Ex-Im Bank of approximately \$854,000.

## **Federal Maritime Commission**

### **Fiscal Year 2010**

The ARs participated in task forces and initiatives sponsored by local law enforcement agencies; the U.S. Department of Justice; the Department of Homeland Security (DHS), through Customs and Border Patrol and Immigration and Customs Enforcement; and the Department of Commerce. This participation facilitates sharing of information on illegal activities.

ARs also provided valuable assistance in Commission Fact-Finding Investigation No. 26, *Vessel Capacity and Equipment Availability in the United States Export and Import Liner Trades*, and Fact-Finding Investigation No. 27, *Potentially Unlawful, Unfair or Deceptive Ocean Transportation Practices Related to the Movement of Household Goods or Personal Property in U.S.-Foreign Oceanborne Trades*. In each of those proceedings, ARs assisted the fact finding officer in arranging for the appearance of impacted witnesses, answering inquiries from shipping industry participants, and, through OMD, advising the Fact Finding Officers with respect to the conduct of the proceedings.

In fiscal year 2011, through the ARs, OMD will use the investigative, dispute resolution, liaison and outreach skills of the ARs and their contacts in various areas to provide education and assistance to the shipping public to facilitate the transportation of cargo in the foreign trades of the U.S., and to investigate unlawful practices in the marketplace.

## **Federal Maritime Commission**

**Fiscal Year 2010**

### **2. Office of Budget and Finance**

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

The Office of Budget and Finance (OBF) administers the Commission's financial management program and is responsible for offering guidance on optimal use of the Commission's fiscal resources. OBF 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, work years, and cash management. Additionally, OBF manages the Commission's Travel Charge Card Program and administers all budget execution functions.

#### **(b) Achievements**

During fiscal year 2010, OBF:

- **Collected and deposited \$1,250,668 to the U.S. Treasury from fines and penalty collections, publications, reproductions, and user fees.**
- **Worked with Bureau of Public Debt (BPD) staff and the Commission's independent auditors regarding the audits of fiscal years' 2009 and 2010 financial statements. The Commission received unqualified opinions for both fiscal years.**
- **Developed a new methodology for calculating user fee costs and revised procedures and calculations used to estimate the cost of annual performance goals.**

## **Federal Maritime Commission**

### **Fiscal Year 2010**

#### **(c) Future Plans**

Goals in fiscal year 2011 include: assisting with facilitating implementation of Pay.gov for acceptance of electronic payments from the industry through the Commission's ECM; improving the Cash Management Program and updating relevant Standard Operating Procedures; and developing detailed training documents for the Commission's Travel Charge Card Program to improve cardholders' knowledge of appropriate use and responsibilities.

### **3. 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 2010, OHR:

- **Coordinated with senior management to review and evaluate leadership development programs and activities to address succession planning and conducted a comprehensive recruitment effort for the Senior Executive Service Candidate Development Program.**

## **Federal Maritime Commission**

### **Fiscal Year 2010**

- **Finalized the agency’s Human Capital Plan, Workforce Plan, Accountability System, and Succession Management Plan in accordance with OPM’s Human Capital Assessment and Accountability Framework and coordinated with OPM, OMB, and the Small Agency Human Resources Council on human capital and related initiatives.**
- **In concert with OPM’s hiring reform initiative, established agency SWAT team and undertook activities to simplify the Federal application process and enhance recruitment efforts.**

#### **(c) Future Plans**

In fiscal year 2011, OHR plans to continue to: 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, and explore high-tech solutions to address program requirements, including e.g., a fully automated training evaluation system; partner with agency officials in concert with the President’s goal to build a transparent high-performance government specifically with respect to Federal hiring reform and improving employee satisfaction and wellness; and continue with e-OPF implementation and conversion of performance, payroll benefits and other HR records to electronic format, and execute plan for full production and employee roll-out.

**Federal Maritime Commission**

**Fiscal Year 2010**

**4. Office of Information Technologies**

**(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 2010, OIT:

- **Implemented a video conference system, as well as a teleconferencing system, and VoIP phone system throughout the agency.**
- **Upgraded the FMC's desktop environment; data lines to all field offices; and the e-mail system, including added redundancy to achieve system uptime of 99.999 percent.**
- **Implemented a virtual server environment to comply with the Federal government's green initiative.**

## **Federal Maritime Commission**

### **Fiscal Year 2010**

#### **(c) Future Plans**

Major OIT initiatives for fiscal year 2011 include plans to: implement DHS mandated Trusted Internet Connection; continue to work on the FMC Enterprise Architecture Plan; incorporate 80 percent of the agency's servers into the virtual server system; add SSL VPN access to the COOP systems; and support the Pay.gov and HSPD-12 initiatives.

#### **5. Office of Management Services**

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

The Office of Management Services (OMS) directs and administers a variety of management services functions that principally provide administrative support to the regulatory program operations of the Commission. The Director of the Office 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 2010, OMS:

## **Federal Maritime Commission**

### **Fiscal Year 2010**

- **Coordinated with the Chairman and Managing Director to relocate appropriate headquarters (HQ) personnel to implement the Chairman’s Reorganization Plan of January 31, 2010. The relocation effort involved approximately a third of the HQ staff.**
  
- **Participated in the Federal Protective Service’s (FPS) “Operation Shield” event, conducted at the HQ building to ensure proper procedures were being followed by the contract security force with respect to building access. Met with the FPS COTR and Operation Shield Team on “lessons learned” at the close of each event.**
  
- **Coordinated with the Chairman and Managing Director to establish a “Management Evaluation and Review” branch within OMS to provide review and assessment of mission related activities and operations.**

#### **(c) Future Plans**

In fiscal year 2011, 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 buildings’ security measures and emergency preparedness; continuing to work with BPD on ways to improve and streamline the FMC’s acquisition and procurement processes; and continuing to provide advice and assistance to FMC activities regarding innovative office support and administrative services programs.

## **Federal Maritime Commission**

**Fiscal Year 2010**

### **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.

## **Federal Maritime Commission**

**Fiscal Year 2010**

### **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.

## **Federal Maritime Commission**

### **Fiscal Year 2010**

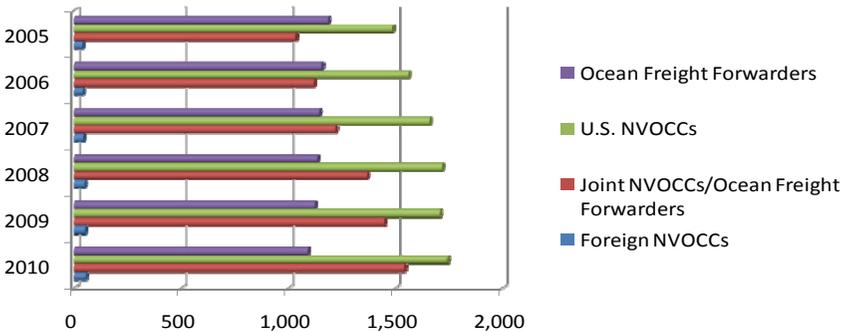
If an OTI is a licensed NVOCC, it must file a Form FMC-1 and publish a tariff. Furthermore, non-U.S.-based NVOCCs that do not wish to be licensed must provide the Commission with proof of financial responsibility in the amount of \$150,000, file a Form FMC-1, and ensure a tariff is published at the site 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 the OTI arising from its transportation-related activities under the Shipping Act.

During FY 2010, the Commission received 409 new OTI applications and 246 amended applications, issued 499 OTI licenses, and revoked 345 licenses. At the end of the fiscal year, 1,093 OFFs, 1,711 U.S. NVOCCs, 1,544 joint NVOCC/OFFs, and 55 foreign NVOCCs held active OTI licenses. An additional 1,109 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 112 licensed and/or bonded OTIs, representing approximately a 2 percent increase from 5,400 OTIs in fiscal year 2009 to 5,512 in fiscal year 2010. U.S. NVOCCs may file riders to their existing NVOCC bonds to meet financial responsibility requirements imposed by the Chinese government. The Commission received 62 riders providing optional proof of financial responsibility for NVOCCs serving the U.S.-China trade. Figure 2 shows the number of freight forwarders and NVOCCs that held active OTI licenses over the past five fiscal years from 2005 through 2010.

## Federal Maritime Commission

Fiscal Year 2010

**Figure 2: Ocean Freight Forwarders, NVOCCs That Held Active OTI Licenses 2005-2010**



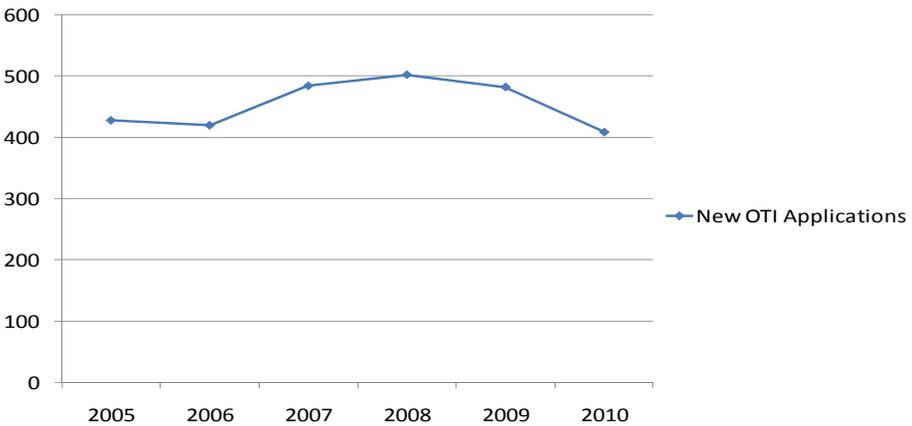
The Bureau worked diligently during the fiscal year to streamline the OTI licensing process and reduce the time needed to reach a licensing decision. The Commission's goal was to complete 55 percent of all OTI license applications within 90 business days during fiscal year 2010. Through concerted efforts, the Bureau completed 65 percent of all OTI applications within 90 business days, exceeding the goal set by 10 percent. Additionally, BCL made significant progress in reducing the number of applications processed with incomplete data submissions from applicants. The number of pending applications at the beginning of fiscal year 2011 was reduced by 76 percent when compared to the number of pending applications on hand at the beginning of fiscal year 2010. The Bureau continues to streamline the OTI licensing review process to improve the timeliness of licensing determinations.

**Federal Maritime Commission**

**Fiscal Year 2010**

The automated Form FMC-18, *Application for an Ocean Transportation Intermediary License*, permits filers to complete an OTI application on-line, scan and attach required documents, and submit the application electronically. The filing system incorporates significant security features for the purpose of protecting applicant data, and detecting and preventing unauthorized system intrusion. The Bureau seeks additional efficiencies in its OTI licensing program through future improvements in the automated Form FMC-18 system. At the present time, approximately 96 percent of all incoming OTI applications received are from the electronic system. Figure 3 shows the number of new applications processed by FMC over each of the last five fiscal years, 2005 through 2010.

**Figure 3: New Ocean Transportation Intermediaries Applications Received 2005-2010**



## **Federal Maritime Commission**

**Fiscal Year 2010**

### **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 194 vessels and 40 operators, which have aggregate evidence of financial responsibility coverage in excess of \$293 million for nonperformance and over \$293 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 currently require coverage of \$15 million 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. U.S. Customs and Border Protection is directed to refuse clearance to any vessel which does not comply with the FMC's evidence of financial responsibility requirements for casualty and nonperformance. During fiscal year 2010, the Commission approved and issued 19 casualty certificates and 8 performance certificates.

## **Federal Maritime Commission**

### **Fiscal Year 2010**

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 closely with the cruise line and the financial responsibility provider, if necessary, to facilitate the refund process. The public is kept informed through press releases posted on the Commission's website and advice given to passengers who contact staff. During FY 2010, no operators under the PVO program filed for bankruptcy. One operator, West Travel, Inc. doing business as Cruise West (Cruise West), ceased operations in September 2010 with unperformed cruises. BCL and CADRS continue to work closely with Cruise West's claims processor and the United States Tour Operators Association to oversee the disbursement of funds to Cruise West passengers and address concerns from the public regarding this situation. Staff also continued to assist passenger vessel operators and financial responsibility providers during the fiscal year to resolve passenger claims for several cancelled cruises of other cruise operators.

The Bureau examines PVO activities and operations by monitoring current industry events and reviewing cruise lines' unearned passenger revenue (UPR) information. Oversight of cruise line operators' operations and activities ensures compliance with applicable statutes and Commission regulations. One component of the Bureau's PVO monitoring program is to perform on-site reviews of PVOs' financial responsibility. The on-site review confirms 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.

## **Federal Maritime Commission**

### **Fiscal Year 2010**

On October 28, 2009, the Commission terminated Docket No. 02-15, *Passenger Vessel Financial Responsibility*, noting that the data collected may no longer be relevant given the recent global economic downturn. In an effort to gather more current information regarding the benefits or burdens that the non-performance coverage requirement has on all sectors of the passenger vessel industry, the Commission issued a Notice of Inquiry (NOI) on December 3, 2009 and held a hearing on March 3, 2010 to receive testimony from passenger vessel operators and trade associations. Subsequent to the hearing, witnesses responded to additional questions for the record. Further requests for information from the Commission were issued. BCL provided its analysis of the data and presented options for the Commission's consideration in early fiscal year 2011. Due to the ongoing analysis of information received from the NOI and Hearing, the staff did not conduct a cruise line on-site review in fiscal year 2010.

#### **4. Automated Database Systems**

During FY 2010, BCL continued to modernize and expand the Regulated Persons Index (RPI), a 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 compliant OTIs so that carriers and others can ascertain whether an OTI is properly licensed, bonded, and if required, has posted the location of its automated tariff. The OTI list also indicates whether an NVOCC has filed an optional rider for additional proof of NVOCC financial responsibility. Additional report capabilities were implemented during the fiscal year to facilitate management of the OTI licensing program. Also, in conjunction with the agency's OIT, BCL continues to work towards automating the PVO Application Form FMC-131, *Application for Certificate of Financial Responsibility*, and to gather requirement analysis to facilitate the filing of PVO applications.

## **Federal Maritime Commission**

### **Fiscal Year 2010**

#### **5. Future Plans**

In fiscal year 2011, the Bureau will:

- Continue to develop and present options to the Commission for consideration to ensure that passenger vessel financial responsibility requirements for nonperformance provide appropriate protection for the public. The Bureau will take any action needed to implement a decision reached by the Commission, including initiation of rulemakings or adjustments in PVO monitoring procedures.
- Review rules and regulations regarding OTI licensing requirements to ensure continued protection of the shipping public in light of changed industry circumstances.
- Produce guidance for OTI applicants to assist in completing OTI Application Form FMC-18.
- Develop an enhancement to the OTI list on the Commission's website enabling users to perform geographic searches to locate licensed OTIs, which will be particularly useful for individuals who plan to move overseas. Finding a licensed OTI in their local area can result in more accurate quotations for transportation of their household goods and will allow those consumers to make better informed decisions, rather than resorting to use of unlicensed OTIs. The Bureau plans to expand contact information provided for all OTIs on the website as well.
- Continue efforts to improve the efficiency and productivity of the OTI licensing program through additional developments to the current automated Form FMC-18 system, or in conjunction with the agency's Enterprise Content Management project.



## **Federal Maritime Commission**

**Fiscal Year 2010**

### **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 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 Managing Director 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 of court or 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 provides liaison and legal advice in investigations of 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

## **Federal Maritime Commission**

### **Fiscal Year 2010**

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. Other Bureau investigations may be resolved through compliance measures. 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 efforts.

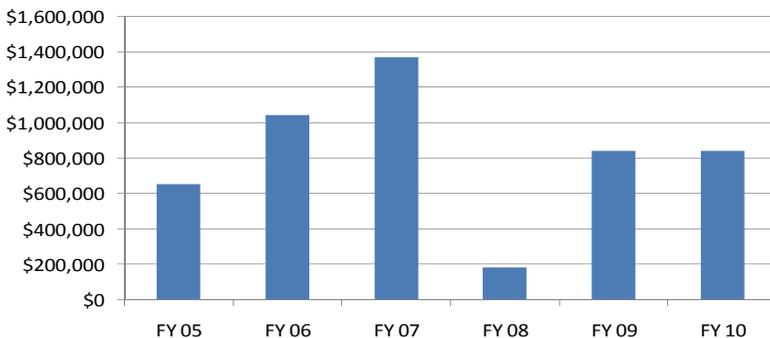
During fiscal year 2010, the Bureau of Enforcement investigated and prosecuted possible illegal practices in many trade lanes, including the Transpacific, Oceania, North Atlantic, Mediterranean, West Africa, Central and South American and Caribbean trades. These market-distorting activities included 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. The following Figure 4 shows civil penalties collected by the FMC over the last five fiscal years.

## Federal Maritime Commission

### Fiscal Year 2010

In addition, several matters arose with respect to activities among ocean common carriers and OTIs operating in the import trades from the People's Republic of China. During the fiscal year, China Shipping Container Line settled charges by the Commission's Bureau of Enforcement that alleged violations of the Shipping Act of 1984 involving more than one thousand shipments over a four-year period. The Commission also commenced Docket No. 09-07, an investigation to determine whether World Chance Logistics (Hong Kong) Ltd. and its principal violated section 10(b)(1) of the Shipping Act of 1984, by permitting unrelated entities to utilize the rates in its service contract, and violated section 10(a)(1) by utilizing a related entity, Fireworks Logistics Association, Ltd., as an unfair device or means to obtain lower rates. Both of these efforts resulted in substantial monetary penalties paid to the Commission. Enforcement efforts also continued into the operations of unlicensed and unbonded NVOCCs specializing in the carriage of used household goods, including licensed OTIs providing service to unlicensed entities.

**Figure 4: Civil Penalties Collected  
FY 2005 - 2010**



## **Federal Maritime Commission**

### **Fiscal Year 2010**

Interaction between the Bureau, the Commission's Area Representatives, and the CBP with respect to the exchange of investigative information 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 2010, 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. During the fiscal year, 113 audits were commenced, 116 audits were completed (including audits carried over from FY2009), and 15 remained pending in the Bureau on September 30, 2010.

At the beginning of fiscal year 2010, 20 enforcement cases were pending final resolution by the Bureau, the Bureau was party to 8 formal proceedings, and there were 25 matters pending which the Bureau was monitoring or for which it was providing legal advice. During the fiscal year, 7 new cases were referred for enforcement action or informal compromise; 17 were compromised and settled, administratively closed, or referred for formal proceedings; and 12 enforcement cases were pending resolution at fiscal year's end. Also, 3 formal proceedings were initiated; 4 formal proceedings were completed, and 7 were pending at the end of the fiscal year. Additionally, the Bureau opened 13 matters involving monitoring or legal advice during the fiscal year, completed or closed 27 such matters, and 11 were pending in the Bureau on September 30, 2010.

**Federal Maritime Commission**

**Fiscal Year 2010**

In fiscal year 2011, 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. Cargo misdescription in the PRC trades by ocean common carriers, NVOCC and others will serve as an area of continuing focus for the Bureau's enforcement efforts during fiscal year 2011.



## **Federal Maritime Commission**

**Fiscal Year 2010**

### **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, 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.**

## **Federal Maritime Commission**

### **Fiscal Year 2010**

- **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**

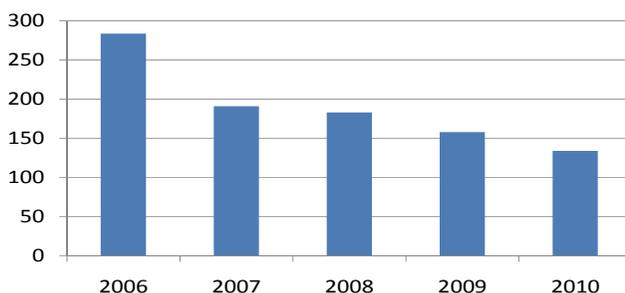
Under sections 4 and 5 of the Shipping Act, all agreements by or among ocean common carriers to fix rates or conditions of service, pool cargo or revenue, allot ports or regulate sailings, limit or regulate the volume or character of (or passengers to be) carried, control or prevent competition, or engage 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 ocean common carriers 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, 46 U.S.C. §41307(b)(1). Effective agreements are exempt from U.S. antitrust laws, and instead subject to Commission oversight.

In fiscal year 2010, the Bureau received 134 agreement filings, a decrease of 24, or 15 percent, from the previous year. The Bureau analyzed and processed 142 agreement filings during the year. Statistics on agreement filings for fiscal year 2010 are contained in Appendix C. The following graph illustrates the recent downward trend in agreement filings since FY 2006.

## Federal Maritime Commission

Fiscal Year 2010

**Figure 5: Agreement Filings  
FY 2006 - 2010**



While the annual number of filings has been decreasing, the number of effective carrier agreements on file with the Commission has remained relatively constant, averaging about 225 over the last five years.

### **(a) Ocean Common Carrier Agreements**

There are two broad categories of ocean common carrier agreements filed with the Commission: (1) pricing agreements, where the main 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 of the two categories of agreements follows:

## **Federal Maritime Commission**

### **Fiscal Year 2010**

#### **(1) Pricing Agreements**

There are two types of pricing agreements: conference agreements and rate discussion agreements (RDAs). 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 tariff rate in which all the member lines participate. RDAs also focus on rate matters, but unlike conferences, any consensus reached under RDAs is non-binding on the parties. RDAs do not have common tariff rates as each party publishes its own tariff. At the end of the fiscal year 2010, conference agreements accounted for two percent of all carrier agreements on file, RDAs 10 percent.

No new carrier conference agreement has been filed with the Commission since fiscal year 2000. Last year, one conference deleted its binding rate authority and became a RDA. Of the remaining four conferences, three cover only government cargoes and the other focuses solely on joint service contracting between its two parties. Given their historical trend and taking into account what is still in effect, conference agreements have become largely irrelevant to U.S. liner shipping.

Today, RDAs are the primary pricing discussion forum in U.S. trade lanes. Since fiscal year 2000, RDAs on file have declined from 36 to 24 agreements; a 33 percent reduction. During fiscal year 2010, RDA filings represented about 10 percent of all agreement filings, for the most part adding or removing members. There was no new RDA filed last year and three were terminated - the Hispaniola Discussion Agreement, the New Zealand/United States Discussion Agreement, and an arrangement between three ro-ro cargo carriers.

## **Federal Maritime Commission**

### **Fiscal Year 2010**

#### **(2) Operational Agreements**

Operational agreements include vessel-sharing agreements, joint service agreements, cooperative working agreements, and non-rate discussion agreements. At the end of the fiscal year, operational agreements accounted for 88 percent of all effective carrier agreements.

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 close operational cooperation across multiple trade lanes, to slot charter agreements, which require only minimal commitments. VSAs account for the vast majority of effective carrier agreements, 73 percent at the end of the fiscal year. They also accounted for 45 percent of carrier agreement filings received last year. Twenty-one new VSAs were filed in fiscal year 2010, and 19 VSAs either were terminated or expired. The total of VSAs on file has remained the same over the last three years.

Under joint service agreements (JSAs), two or more carriers operate a combined service under a single name in a specified trading area. The joint service 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, no change from the previous two years. JSAs represented only three percent of the total number of effective carrier agreements. No new JSAs and only one amendment to existing agreements was received during the fiscal year.

## **Federal Maritime Commission**

### **Fiscal Year 2010**

Cooperative working agreements (CWAs) are non-pricing agreements that tend to deal with unique operational considerations relating to acquisitions, sharing of administrative services, or internet portal management. Other agreements filed with the Commission in very small numbers include agency, sailing, trans-shipment, and equipment interchange (including chassis pooling) agreements. At the end of the year, there were 18 CWAs and other agreements on file, no change from last year, and representing 8 percent of all carrier agreements. One new CWA regarding the joint operation/ownership of a gantry crane in Guam, and four amendments to existing CWAs were filed last year. This number represented less than four percent of the filings received.

Non-rate discussion agreements (NRDAs) provide ocean common carriers a vehicle for discussing matters of mutual interest other than rates. Typically, these agreements focus on macro-economic, regulatory, safety, and security issues. At the end of the fiscal year, there were nine such agreements on file. NRDAs accounted for just under four percent of the total. Only four amendments were filed during FY2010.

#### **(b) Marine Terminal Operator Agreements**

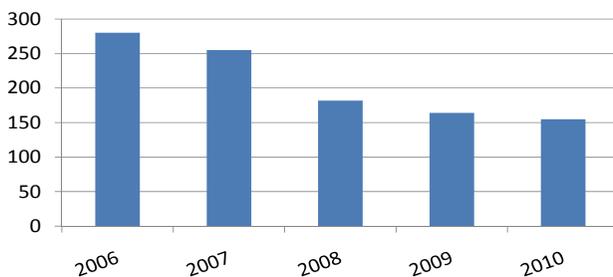
Marine terminals, operated by both public and private entities, provide facilities, services, and labor for the interchange of cargo and passengers between land and ocean carriers, and for the receipt and delivery of cargo from shippers and consignees. The Bureau is responsible for reviewing and processing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

## Federal Maritime Commission

### Fiscal Year 2010

During fiscal year 2010, the Bureau received 27 MTO agreement filings, including four terminations. This represents a decrease of only two from last year. In addition to the filing activity, three MTO agreements were withdrawn to take advantage of the filing exemption granted to MTO leases, five agreements expired, and three agreements were no longer subject to the Commission's jurisdiction. MTO agreement filings accounted for 20 percent of all filings during the fiscal year. At the end of the fiscal year, there were 155 marine terminal agreements on file, down from 164 the previous year, about a five percent drop. The graph below provides the trend of MTO agreements on file over the last five years.

**Figure 6: MTO Agreements on File  
FY 2006 - 2010**



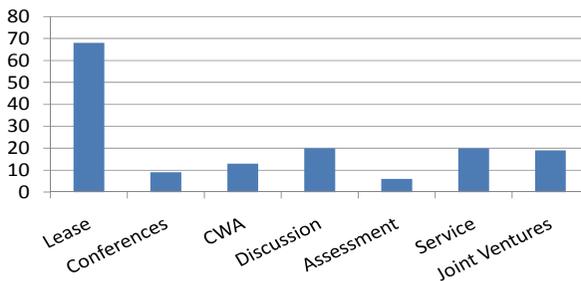
## Federal Maritime Commission

### Fiscal Year 2010

Terminal leases accounted for most of the MTO agreements on file at 44 percent, followed by MTO discussion and service agreements at 13 percent each, and MTO joint ventures at 12 percent. MTO conferences account for six percent of MTO agreements and have no significant role in competition among MTOs. Over the last five years, leases and services agreements experienced the biggest decline, falling 66 percent and 35 percent, respectively. These decreases are largely due to the filing exemption these agreements are afforded under the Commission's regulations and notifications of previously unreported terminations.

The following graph charts the types of MTO agreements on file at the end of fiscal year.

**Figure 7: MTO Agreements by Type**  
as of September 30, 2010



## **Federal Maritime Commission**

**Fiscal Year 2010**

### **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 MTO agreements are monitored in a similar fashion. 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. The Bureau administers monitoring programs, researches current trade conditions, emerging commercial trends, carrier pricing and services, and other issues that may adversely affect U.S. liner shipping.

The Commission's monitoring program examines carrier competition in individual U.S. trade lanes, including market share, concentration, barriers to market entry, and 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 2010 included: (1) participating in the investigatory team, and assisting in the preparation of reports and recommendations in Fact Finding Investigation No. 26, *Vessel Capacity and Equipment Availability in the United States Export and Import Liner Trades*; (2) providing assistance with Commission testimony for a Congressional hearing to address the complaints of shippers, and supplying trade data and information in response to requests from Congress; (3) developing recommendations for increased reporting requirements for agreements cited in the Commission's Order to Fact Finding Investigation No. 26; (4) preparing

## **Federal Maritime Commission**

### **Fiscal Year 2010**

economic impact assessments for the Commission on options to accept, reject, or modify the request in FMC Petition P1-08, *Petition of the National Customs Brokers and Freight Forwarders Association of America, Inc. for Exemption from Mandatory Rate Tariff Publication*; (5) preparing a recommendation for a Commission Section 15 Order for data and information from carriers in agreements that directly serve the Australia/Oceania trade; (6) completing the data collection and analyses of average revenue, service contract rates, surcharges, cargo volume, commodities, vessel capacity and utilization for the major trade lanes to be included in the Commission's study of the repeal by the European Union (EU) of the block exemption regulations for liner shipping conferences; (7) preparing a recommendation and questions for a Commission Notice of Inquiry to invite public comments on market conditions in liner shipping and the impact of the repeal of the EU block exemption; (8) completing a report on the impact of the global recession on liner shipping as part of the study of the EU block exemption repeal; (9) preparing any necessary competitive impact analyses, along with requests for additional information, of new agreement filings and amendments to agreements; (10) participating in meetings with carrier representatives of the major alliance agreements to obtain information on the structure and operations of the agreements; (11) providing economic assistance and comments on a maritime study conducted by the Organization for Economic Co-operation and Development; (12) providing assistance and responses to the Competition Commission of Singapore on the FMC's administration of agreements and reporting requirements for agreements; (13) developing an intranet website with trade profiles, a data entry screen to review carrier tariffs, and an intranet interface to search the database of agreements; and (14) providing data and information on liner trade conditions and agreement matters in response to requests from within and outside the Commission.

## **Federal Maritime Commission**

### **Fiscal Year 2010**

The Bureau also provides economic expertise for Commission initiatives, including rulemaking proceedings. Bureau economists may prepare testimony in investigations and cases of unfair shipping practices under section 19 of the 1920 Act and the Foreign Shipping Practices Act (FSPA). The Bureau also 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 2010, 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 2010, 4,867 tariff location addresses were posted on the Commission's website. Of that number, 4,386 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.

## **Federal Maritime Commission**

### **Fiscal Year 2010**

The Commission held a public meeting on May 24, 2010 to receive oral comments and allow participants to field questions from the Commission concerning the Notice of Proposed Rulemaking published May 7, 2010 (75 FR 25150) regarding NVOCC Negotiated Rate Arrangements. The rule, pending final approval, would allow NVOCCs to “opt out” of having to file tariff rates in favor of Negotiated Rate Arrangements (NRAs) with shippers. NVOCCs still would be required to publish tariff rules, providing access free of charge.

#### **5. Service Contracts**

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

During fiscal year 2010, the Commission received 45,342 new service contracts, compared to 45,328 in fiscal year 2009, and 350,310 contract amendments, compared to 412,570 in fiscal year 2009. The number of original contracts in fiscal year 2010 was almost identical to the previous fiscal year whereas amendment filings decreased by nearly 15 percent. The impact of the global recession was a major factor in the increased number of amendment filings in fiscal year 2009 as rates plummeted. In fiscal year 2010, due to a surge in demand, carriers imposed hefty increases that restored rates to near pre-recession levels.

Original service contract or NSA filings that contain clerical errors can be corrected within two business days by filing a “corrected transmission” copy into SERVCON. During the fiscal year, 4,262 records involving corrected transmission copies were filed into SERVCON.

## **Federal Maritime Commission**

### **Fiscal Year 2010**

#### **6. Service Arrangements**

Commission rules allow NVOCCs to offer transportation services pursuant to individually negotiated, confidential service arrangements with customers known as NVOCC Service Arrangements (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.

Since January 2005, when NSA filing began, 5,197 NSAs and 3,836 amendments have been filed with the Commission. Approximately 1,493 (29 percent) of those NSAs and 3,624 (41 percent) of all amendments were filed during fiscal year 2010 by a total of 69 individual NVOCCs. Of the 950 NVOCCs that are registered with the Commission to file NSAs, only 145 (about 15 percent) have done so.

#### **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 foreign 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 information sources to identify controlled carriers and any unjust or unreasonable controlled carrier activity that might require Commission action. In fiscal year 2010, nine controlled carriers operated in the U.S. trades:

**Federal Maritime Commission**

**Fiscal Year 2010**

- (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;
- (8) Shipping Corporation of India Ltd., The (RPI No. 001141) - Republic of India; and
- (9) Hainan P.O. Shipping Co., Ltd. (RPI No. 022860) – People's Republic of China.

## **Federal Maritime Commission**

### **Fiscal Year 2010**

#### **8. Marine Terminal Schedules**

Pursuant to the Ocean Shipping Reform Act (OSRA), a marine terminal operator (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 267 MTOs have filed Form FMC-1 but at the close of fiscal year 2010, only 154 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 2010, the Form FMC-1 System reflected the tariff location addresses of 321 VOCCs, 4,386 NVOCCs, 6 conferences, and 154 MTOs. The FMC-1 System also allows the Commission to track the status of any Form FMC-1 submitted.

## **Federal Maritime Commission**

### **Fiscal Year 2010**

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 2011, with the assistance of the Office of Information Technology, 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, the Commission makes certain database information 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 2011, in addition to its regular review of new ocean carrier and marine terminal operator agreements and on-going monitoring of existing agreements, the Bureau plans to finalize an in-depth study of the effects of the European Union's decision to repeal its competition law exemption for liner conferences. The study will include an analysis of responses to a notice of inquiry that was issued on November 1, 2010, and solicited information about key industry and consumer groups' experiences resulting from repeal of the EU exemption.

## **Federal Maritime Commission**

### **Fiscal Year 2010**

In addition, the Bureau will continue its on-going monitoring of capacity and equipment availability in the U.S. liner trades generally and the transpacific trade in particular. To gain a better understanding of the capacity deployments made by global alliances, the Bureau will refine the information required to be filed by those types of agreements. Conditions in the U.S./Australia-New Zealand trade and the U.S./South Africa trade will remain under close review.

The Bureau will continue to assist other bureaus and offices with analytical support, participate in the Commission's strategic planning efforts, oversee the filing of service contracts and the publication of tariffs, and engage and conduct compliance studies on other research projects concerning liner shipping, terminal operations, and inter-modal transportation in the U.S. trades.



# **APPENDICES**





**Federal Maritime Commission**

**Fiscal Year 2010**

**APPENDIX B**  
**COMMISSION PROCEEDINGS**  
**Fiscal Year 2010**

**Formal Proceedings**

Orders of Investigation Initiated .....	2
Formal Complaints Filed .....	8
ALJ Initial Decisions Issued* .....	10
Initial Decisions Reviewed .....	3
Exceptions Filed to Initial Decisions .....	1

<b>Fact Finding Orders Issued</b> .....	2
---	---

**Rulemakings**

Proposed Rules.....	1
Final Rules .....	3

**Informal Dockets**

Informal Complaint Filed .....	8
Settlement Officer Decisions Issued.....	16
Settlement Officer Decisions Reviewed .....	2

<b>Notice of Inquiries Issued</b> .....	2
---	---

<b>Hearings Held</b> .....	2
----------------------------	---

\*Initial Decisions includes four settlements approved and one dismissal.

**Federal Maritime Commission**

**Fiscal Year 2010**

**APPENDIX C**  
**AGREEMENT FILINGS AND STATUS**  
**Fiscal Year 2010**

**Agreements Filed**

**(including modifications and terminations)**

Carrier .....	107
Terminal.....	27
Total.....	134

**Agreement Processing Categories**

Forty-Five Day Review.....	35
Expedited Review.....	10
Exempt-Effective Upon Filing.....	91
Rejection of Filing.....	0
Formal Extension of Review Period.....	1
Withdrawals.....	5
Not Subject to Commission Jurisdiction.....	0
6(g) Injunction.....	0
Total.....	142

**Carrier Reports Submitted for Commission Review**

Minutes of Meetings.....	963
Ad Hoc Reports.....	135
Monitoring Reports.....	318
Total.....	1,416

**Agreements on File as of September 30, 2010**

Conference.....	4
Rate Discussion.....	24
Non-Rate Discussion.....	9
Joint Service.....	7
Vessel-Sharing.....	168
Cooperative Working & Other.....	18
Terminal.....	155
Total.....	385

**Federal Maritime Commission**

**Fiscal Year 2010**

**APPENDIX D**

**FORM FMC-1**

**TARIFF LOCATION ADDRESSES - SERVICE  
CONTRACT AND NSA FILINGS AND SPECIAL  
PERMISSION APPLICATIONS**

**Fiscal Year 2010**

**Form FMC-1 Filings**

VOCCs.....	321
OTI/NVOCCs.....	4,386
MTOs.....	154
Conferences.....	6

**Electronic Service Contract Documents**

New Service Contracts.....	45,342
Service Contract Amendments.....	350,310

**NVOCC Service Arrangement (NSA) Documents**

New NSAs.....	1,493
NSA Amendments.....	3,624

**Special Permission Applications**

Granted.....	7
Denied.....	1
Pending.....	0
Withdrawn.....	0

**Federal Maritime Commission**

**Fiscal Year 2010**

**APPENDIX E**

**CIVIL PENALTIES COLLECTED**

**Fiscal Year 2010**

<b>China Shipping Container Line.....</b>	<b>\$ 440,000.00</b>
A.T.I. U.S.A. Inc. ....	115,000.00
<b>MT Global Freight Solutions Inc.....</b>	<b>35,000.00</b>
Network Shipping Ltd.....	100,000.00
<b>JAK Holding Inc.....</b>	<b>33,750.00</b>
Perfect Logistics Inc.....	30,000.00
<b>J &amp; S Universal Services Inc. and</b>	
<b>Ocean Cargo Logistics Group, LLC.....</b>	<b>25,000.00</b>
Awilda Shipping Inc.....	15,000.00
<b>Speedy International LLC.....</b>	<b>32,500.00</b>
Sifax Shipping Company LLC.....	<u>15,000.00</u>
<b>Total Civil Penalties Collected.....</b>	<b>\$841,250.00</b>

**Federal Maritime Commission**

**Fiscal Year 2010**

**APPENDIX F**

**STATEMENT OF APPROPRIATIONS,  
OBLIGATIONS AND RECEIPTS FOR  
THE FISCAL YEAR ENDED  
SEPTEMBER 30, 2010**

***APPROPRIATIONS:***

For necessary expenses of the Federal Maritime Commission as authorized by section 201(d) of the Merchant Marine Act, 1936, as amended (46 U.S.C. App. 1111), including services as authorized by 5 U.S.C. 3109; hire of passenger motor vehicles as authorized by 31 U.S.C. 1343(b); and uniforms or allowances therefore, as authorized by 5 U.S.C. 5901–5902, \$24,135,000: *Provided*, That not to exceed \$2,000 shall be available for official reception and representation expenses.

**\$24,135,000**

***OBLIGATIONS AND UNOBLIGATED BALANCE:***

Net obligations for salaries and expenses for the fiscal year ended September 30, 2010.

**\$24,124,727**

***STATEMENT OF RECEIPTS:*** Deposited with the General

Fund of the Treasury for the Fiscal Year Ended September 30, 2010:

Publications and reproductions,  
Fees and Vessel Certification,  
and Freight Forwarder Applications **\$ 209,418**

Fines and penalties **\$1,041,250**

**Total general fund receipts \$1,250,668**