



FEDERAL MARITIME COMMISSION
62ND ANNUAL REPORT
FISCAL YEAR 2023

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Letter of Transmittal



FEDERAL MARITIME COMMISSION
800 North Capitol Street, N.W.
Washington, DC 20573-0001

March 29, 2024

To the United States Senate and House of Representatives:

On behalf of the Commission, and pursuant to section 46106(a) of Title 46, United States Code, I am pleased to share with you the 62nd Annual Report of the Federal Maritime Commission, Fiscal Year 2023.

Sincerely,

Daniel B. Maffei
Chairman

Mission, Strategic Goals, and Statutory Authority

The Federal Maritime Commission is the independent Executive Branch agency with jurisdiction over competition, practices, and service in the ocean shipping industry. Our mission is to ensure a competitive and reliable international ocean transportation supply system that supports the U.S economy and protects the public from unfair and deceptive practices. Facilitating commerce and protecting U.S. shippers remain the essential focus of the FMC.

The Commission's Fiscal Year 2022-2026 Strategic Plan has two strategic goals:

Goal 1: Maintain a competitive and reliable international ocean transportation system.

Objective 1.1: Ensure no unreasonable increases in transportation costs or decreases in transportation service are attributed to anticompetitive practices under FMC-filed agreements.

Objective 1.2: Ensure competition is preserved in the purchase of certain covered services.

Goal 2: Protect the public from unlawful, unfair, and deceptive ocean transportation practices.

Objective 2.1: Identify and take action to end unlawful, unfair, and deceptive practices.

Objective 2.2: Prevent public harm through licensing and financial responsibility requirements.

Objective 2.3: Enhance public awareness of agency resources, remedies, and regulatory requirements through education and outreach.

Objective 2.4: Impartially and timely resolve international shipping disputes through alternative dispute resolution and adjudication.

The Federal Maritime Commission administers Subtitle IV (Parts A through D) of Title 46, United States Code. Parts A and B of Subtitle IV deal with the regulation of ocean shipping and were formerly known as the Shipping Act of 1984, as amended (the Shipping Act), the Foreign Shipping Practices Act of 1988 (FSPA) and Section 19 of the Merchant Marine Act, 1920. The Commission also administers and enforces Part C of Subtitle IV, formerly sections 2 and 3 of P.L. 89-777, and section 3503(b)(1)(C) of title 46, United States Code. Part C and section 3503 deal with the financial responsibility of cruise line operators towards passengers of such vessels. Part D of Subtitle IV addresses the Commission generally, including its organization and authority to prescribe regulations. Part D also contains provisions or amendments that were in the Shipping Act, the FSPA, the Ocean Shipping Reform Act of 2022 (OSRA 2022) and the Frank LoBiondo Coast Guard Authorization Act of 2018 (LoBiondo Act).

Year in Review - Regulatory and Organizational Change

While the COVID-related disruptions to global supply chains subsided in 2023, the Commission maintained a high level of activity driven by industry demand, along with regulatory and organizational change. The Ocean Shipping Reform Act of 2022 provided the Commission with additional regulatory authority and mandated several initiatives, including rulemakings, data collection, charge complaints, and enhanced web resources, to serve the shipping public. The FMC was also tasked with contracting a study with the National Academies of Sciences, Engineering and Medicine, related to best practices for chassis pools and supporting activities of other agencies, including multiple studies underway at the U.S. Government Accountability Office. In FY 2023, the Commission was active in supporting cross-agency initiatives related to OSRA 2022 and the maritime supply chain.

Throughout the pandemic, the Commission's priorities were focused on enforcement, addressing challenges faced by U.S. exporters, and providing assistance to U.S. shippers and cruise passengers. In FY 2023, the Commission completed its reorganization of the Bureau of Enforcement, Investigations, and Compliance (BEIC), emphasizing the importance of the Commission's enforcement work. Under the new structure, BEIC is led by a senior executive fostering coordination and cooperation between BEIC's offices, leading to a more effective and productive enforcement program. The agency increased staffing in BEIC as well as other areas that support enforcement, adjudication, and customer assistance.

The changes in authority resulting from OSRA 2022 and new Commission priorities have strengthened the Commission. These changes will be reflected in the agency's strategic plan. At the end of FY 2023, the agency initiated a revision to the strategic plan which is anticipated to be complete by the end of FY 2024.

Ocean Shipping Reform Act of 2022 Implementation

Continuing to implement OSRA 2022 was an important priority for the Commission in FY 2023. The Commission made significant progress on rulemakings related to Detention and Demurrage Billing Practices, Unreasonable Refusal to Deal with Respect to Vessel Space Accommodations, and Unfair or Unjustly Discriminatory Methods. This was in addition to other OSRA 2022 implementation successes that included adding resources to key program areas and initiating a redesign of the Commission's website to streamline the process for the public to communicate with the Commission. The staffing effort is complete and the other activities will be completed before the end of FY 2024.

Implementation efforts will continue in FY 2024 and are projected to be completed before FY 2025.

Rulemakings

The NPRM for Definition of Unreasonable Refusal to Deal or Negotiate with Respect to Vessel Space Accommodations Provided by an Ocean Common Carrier was issued on September 21, 2022 (87 Fed. Reg. 57674). On June 14, 2023, a Supplemental NPRM (SNPRM) was issued (88 Fed. Reg. 38789) which revised certain aspects of the original NPRM and clarified the potential standard for unreasonable conduct by ocean common carriers. The SNPRM issued in the Unreasonable Refusal to Deal With Respect to Vessel Space Accommodations addressed, in part, issues related to the Unfair or Unjustly Discriminatory Methods rulemaking requirement. The Commission received 25 comments in response to the SNPRM and is in the process of drafting a final rule.

The NPRM for Demurrage and Detention Billing Requirements was published in the Federal Register on October 14, 2022 (87 Fed. Reg. 62341). It proposed requirements on specific minimum information that must be included on demurrage and detention invoices and outlines certain billing practices on appropriate timeframes for issuing invoices, disputing charges with the billing party, and resolving such disputes. The Commission received 191 comments in response to the NPRM. The Commission completed the final rule on February 23, 2024.

As noted above, work on the Unfair or Unjustly Discriminatory Methods Related to Cargo Space Accommodations rulemaking has begun as a part of the SNPRM issued on Unreasonable Refusal to Deal. All remaining topics related to the Unfair or Unjustly Discriminatory Methods will be addressed in a separate rulemaking. The Commission is also taking the steps necessary to meet the requirement set by Section 4 of OSRA 2022 to issue regulations setting standards necessary to carry out 46 U.S.C. subtitle IV for registered national shipping exchanges.

Reports and Data Gathering

Section 9 of OSRA 2022 mandates a new data collection in which the Commission will collect and publish information from VOCCs on import tonnage and volumes, as well as empty

container metrics. The Commission has completed the Paperwork Reduction Act process and will begin this data collection from FY 2024 forward.

Section 19 of OSRA required the Commission to enter into an agreement with the National Academies of Sciences, Engineering, and Medicine on a study of best practices for the efficient supply of chassis for transporting intermodal containers.¹ The committee conducting the study held its first open meeting in January 2023 and completed six open meetings by the end of FY 2023. The committee report is due to be completed and publicly released in 2024.

¹ <https://www.nationalacademies.org/our-work/best-practices-for-the-efficient-supply-of-chassis-for-transporting-intermodal-containers#sectionWebFriendly>

Increased Investigations and Enforcement

The Commission's investigatory and enforcement programs protect the public by identifying, deterring, and stopping unlawful activities of regulated entities.

The Commission accomplished two key enforcement policy achievements in FY 2023: the reorganization of BEIC and establishing new enforcement priorities focused on unlawful practices that negatively impact significant portions of the maritime industry or that may cause market distortion. As a result of these changes, the enforcement program has been successful in bringing legal actions to collect civil penalties for law violations totaling nearly \$2.9 million. In FY 2024, the Commission will add resources necessary to increase its investigatory and enforcement activities.

Enforcement Priorities Produce Results

The Commission's enforcement program focuses on investigating and prosecuting civil violations of the U.S. shipping laws and Commission regulations. The Commission's enforcement priorities change based on industry conditions and practices.

In FY 2023, the Commission's investigative and enforcement priorities focused on unlawful common carrier practices that negatively impacted significant portions of the maritime industry or appeared to cause market distortion. Enforcement priorities include, but are not limited to:

- failing to establish, observe, and enforce just and reasonable regulations and practices relating to or connected with receiving, handling, storing, or delivering property that potentially violate 46 U.S.C. § 41102(c). This includes unlawful demurrage and detention practices and improper use of merchant clauses to impose liability on non-contract parties;
- unreasonable refusals to deal or negotiate that potentially violate 46 U.S.C. § 41104(a)(10);
- unreasonable refusals of cargo space accommodations or other unfair or unjustly discriminatory conduct that potentially violates 46 U.S.C. § 41104(a)(3);
- retaliation that potentially violates 46 U.S.C. § 41102(d); and
- tariff and service contract activities that potentially violate 46 U.S.C. § 41104.

In FY 2023, the Commission collected a combined total of \$2.65 million in civil penalties to resolve allegations of misconduct by two large ocean common carriers. In addition to paying civil penalties, the carriers involved in these cases agreed to furnish restitution to impacted shippers in the form of refunds and waivers, and to implement corrective actions to prevent future violations and ensure compliance with the Commission's Interpretive Rule on Detention and Demurrage.

The Commission collected an additional \$246,332 in civil penalties from other, non-related, cases. Penalties collected by the Commission are paid in their entirety into the General Fund of the U.S. Treasury.

Charge Complaints

Section 10 of OSRA 2022 established a new way for shippers to submit complaints to the Commission regarding charges assessed by common carriers and to receive a refund or waiver for non-compliant charges. Upon the promulgation of 46 U.S.C. § 41310, the FMC quickly developed an interim process for the administration, investigation, and prosecution of complaints. To enhance awareness of this process, guidance was posted to the Commission's website in FY 2023 along with an accompanying webinar.

In FY 2023, the FMC received 312 charge complaints from the shipping public. As of September 30, 2023, over \$1.7 million in assessed charges had been voluntarily waived or refunded since the enactment of OSRA 2022. While most charge complaints were voluntarily resolved during investigation, the FMC's process provides for a fast resolution for non-compliant charges that are not resolved. This process involves staff attorneys recommending that the Commission issue an Order to Show Cause proceeding before the Commission to determine the lawfulness of a charge.

Formal Investigations, Private Complaints, and Litigation before the Commission

The FMC provides a venue for legal proceedings for alleged violations of the statutes it administers. Once a complaint is received, the Office of the Administrative Law Judges (OALJ) adjudicates the claim in a timely manner. The goal is to issue Initial Decisions in formal proceedings within 24 months of filing; and informal small claims Initial Decisions within 12 months of filing. Due process may require additional time to issue Initial Decisions, particularly in complex cases. Staffing is essential to meeting these adjudicatory goals, and the FMC hired a third Administrative Law Judge in FY 2023.

The number of legal proceedings initiated at the FMC increased dramatically during the pandemic and has continued into the post-pandemic era. In addition to increased enforcement actions by BEIC, more private parties are seeking binding decisions before the Commission. In FY 2023, the Office of the Secretary processed 927 filings, a 129 percent increase over FY 2022's record number of filings.

In FY 2023, OALJ closed more cases than it has in any year since 2006. By the end of FY 2023, OALJ had 20 formal proceedings pending.² Of those, no cases pending were filed prior to 2022, indicating success in resolving cases in a timely manner.

In FY 2023, OALJ received a total of 21 formal and 12 informal proceedings.³ The OALJ issued 168 non-dispositive orders. In addition, OALJ issued dispositive orders closing 22 formal proceedings and 14 informal proceedings. At the end of FY 2023, 19 formal proceedings and three small claims complaints were pending before the OALJ.⁴

² At the end of FY 2023 20 formal proceedings (Dockets 14-06, 20-14, 21-05, 21-10, 21-11, 21-16, 22-03, 22-07, 22-11, 22-12, 22-13, 22-16, 22-17, 22-18, 22-20, 22-21, 22-22, 22-23, 22-25, 22-26) and five informal complaints (1980(I), 1981(I), 1982(I), 1983(I), and 1984(I)) were pending before the OALJ.

³ These proceedings include:

1. 18 private party complaints (22-27, 22-28, 22-29, 22-30, 22-31, 22-32, 22-33, 22-34, 22-35, 23-01, 23-02, 23-03, 23-04, 23-05, 23-06, 23-07, 23-09, 23-10),
2. one enforcement cases (23-08),
3. one subpart T proceeding (1995(F)),
4. one remanded case (21-17), and
5. 12 informal (small claims) complaints (1985(I), 1986(I), 1987(I), 1988(I), 1989(I), 1990(I), 1991(I), 1992(I), 1993(I), 1994(I), 1996(I), 1997(I)).

⁴ Pending proceedings before the OALJ include Dockets 22-17, 22-20, 22-23, 22-28, 22-30, 22-31, 22-34, 22-35, 23-01, 23-02, 23-03, 1995(F), 23-04, 23-05, 23-06, 23-07, 23-08, 23-09, 23-10) and three small claims complaints (1992(I), 1996(I), and 1997(I)).

The following summarizes the results of docketed proceedings completed during FY 2023 by the OALJ:

Formal Proceedings

Santa Fe Discount Cruise Parking, Inc. d/b/a EZ Cruise Parking, Lighthouse Parking Inc., and Sylvia Robledo d/b/a 81st Dolphin Parking v. The Board of Trustees of the Galveston Wharves and the Galveston Port Facilities Corporation [Docket 14-06]

In 2014, Complainants filed a complaint against Respondents alleging that Respondents violated 46 U.S.C. §§41102(c), 41106(2), and 41106(3) by charging monthly access fees, based upon the total number of parking spaces in their respective lots, that are excessive and not reasonably related to the value of services rendered to Complainants by Respondents. On July 21, 2014, Respondents filed an answer denying the allegations. On December 4, 2015, an initial decision was issued that dismissed the complaint with prejudice. On January 13, 2017, the Commission issued an order affirming the initial decision. On August 9, 2018, the Commission issued an order remanding the proceeding to the ALJ after the U.S. Court of Appeals for the D.C. Circuit had remanded the proceeding to the Commission. On November 16, 2018, an initial decision on remand was issued dismissing the complaint with prejudice. On April 16, 2021, the Commission issued an Order on Initial Decision on Remand. On June 2, 2022, the Commission issued an Order Granting in Part and Denying in Part Petition for Reconsideration. These two Commission orders narrowed the remaining issue to specific questions with regard to calculating reparations. On February 23, 2023, an Initial Decision was issued approving a settlement agreement with the final remaining complainant. On March 28, 2023, the Commission issued a notice not to review the decision.

Intermodal Motor Carriers Conference, American Trucking Associations, Inc. v. Ocean Carrier Equipment Management Association Inc.; Consolidated Chassis Management, LLC; CMA CGM S.A.; Cosco Shipping Lines Co. Ltd.; Evergreen Line Joint Service Agreement, FMC No. 011982; Hapag-Lloyd AG; HMM Co. Ltd.; Maersk A/S; MSC Mediterranean Shipping Company S.A.; Ocean Network Express Pte. Ltd.; Wan Hai Lines Ltd.; Yang Ming Marine Transport Corp.; and Zim Integrated Shipping Services [Docket 20-14]

IMCC alleges that Respondents adopted and imposed unjust and unreasonable regulations and engaged in unjust and unreasonable practices by requiring the use of OCEMA member default chassis providers and denying motor carriers their right to select the chassis provider for merchant haulage movements, in violation of 46 U.S.C. § 41102(c). Each of the thirteen Respondents filed an answer denying the allegations and raising affirmative defenses, including lack of jurisdiction, failure to join indispensable parties, and failure to demonstrate actual injury or causation. This is a large and complex proceeding with thirteen respondents, discovery from multiple non-parties, and well over a million pages of documents produced in discovery. Given the size of the proceeding, the parties limited the time frame and geographic scope to initially focus their efforts on four geographic regions. The parties filed three separate motions for

summary decision, making novel legal arguments based on complex economic theories and extensive expert economist testimony. On February 6, 2023, an Initial Decision partially granting summary decision was issued which granted in part and denied in part IMCC's motion for summary decision and denied Respondents' motion for summary decision and Evergreen's supplemental motion for summary decision. Exceptions to the Initial Decision were filed by the Respondents. The Commission subsequently issued an Order affirming the Initial Decision and remanded the case for further proceedings before the ALJ. Respondents have since filed Motions for Reconsideration with the Commission, which are currently pending.

MCS Industries, Inc. v. COSCO Shipping Lines Co., Ltd. and MSC Mediterranean Shipping Company SA [Docket 21-05]

Complainant filed a complaint alleging that Respondents violated 46 U.S.C. §§ 41102(c), 41102(a)(2), 41104(a)(5), 41104(a)(9), and 41104(a)(10) with regard to provision of ocean shipping services. On August 26, 2021, MSC Mediterranean Shipping filed an answer denying the complaint's allegations and raising defenses. MSC Mediterranean Shipping refused to produce discovery, despite multiple orders to do so. Therefore, on January 13, 2023, an Initial Decision on Default was issued granting default for failure to produce discovery and ordering that MSC Mediterranean Shipping pay a total of \$944,655 plus interest in reparations to MCS Industries. Exceptions were filed and the case is pending before the Commission on appeal.

Orange Avenue Express, Inc. v. Hapag Lloyd AG [Docket 21-10]

Complainant filed a complaint alleging that Respondent violated the Shipping Act with regard to the movement of refrigerated containers. On December 21, 2021, Respondent filed an answer denying the allegations. On October 3, 2022, an order was issued approving a settlement and dismissing the proceeding with prejudice. On November 3, 2022, the Commission issued a notice not to review.

OJ Commerce, LLC v. Hamburg Sudamerikanische Dampfschiffahrts-Gesellschaft A/S & Co KG and Hamburg Sud North America, Inc. [Docket 21-11]

This proceeding began on December 13, 2021, when the Commission issued a notice of filing of complaint and assignment, indicating that Complainant OJ Commerce, LLC had filed a complaint against Respondents Hamburg Südamerikanische Dampfschiffahrts-Gesellschaft A/S & CO. KG and Hamburg Sud North America, Inc. An amended complaint, entered on February 18, 2022, alleged that Hamburg violated the Shipping Act at 46 U.S.C. §§ 41102(b)(2), 41102(c), 41104(a)(3), 41104(a)(5), 41104(a)(9), and 41104(a)(10). On August 31, 2022, OJC's claims under sections 41102(b)(2), 41104(a)(5), and 41104(a)(9) were dismissed. In addition, OJC's claim of unreasonable practices under section 41102(c) was resolved, as Hamburg refunded the full amount of the demurrage charges at issue. On June 7, 2023, an Initial Decision was issued finding a violation of sections 41104(a)(3) (retaliation), and 41104(a)(10) (refusal to deal) by HSDG and dismissing the complaint against HSNA. HSDG was ordered to pay OJC reparations in

the amount of \$9,843,766.40, with interest on the reparations award running from April 29, 2021. Exceptions were filed and the case is pending before the Commission on appeal.

Wan Hai Lines, Ltd. and Wan Hai Lines (USA) Ltd. - Possible Violations of 46 U.S.C. § 41102(c) [Docket 21-16]

The Commission initiated an enforcement proceeding against Respondents by issuing an Order of Investigation and Hearing for possible violations of 46 U.S.C. § 41102(c) by failing to establish, observe, and enforce just and reasonable regulations and practices relating to its assessment of charges on containers when return locations with corresponding appointments were unavailable. On January 24, 2022, Respondents filed an answer denying the allegations. On June 7, 2022, an order was issued denying a request to approve a settlement agreement but permitting the parties to file an interlocutory appeal. On December 15, 2022, the Commission issued an order affirming denial of the joint settlement motion, remanding the proceeding, and requiring an initial decision within four months. On March 13, 2023, an Initial Decision was issued, approving the remand settlement agreement. On April 13, 2023, the Commission issued a notice not to review.

Ocean Network Express Pte. Ltd. and Ocean Network Express (North America), Inc. - Possible Violations of 46 U.S.C. § 41102(c) [Docket 21-17]

The Commission initiated an enforcement proceeding against Respondents by issuing an Order of Investigation and Hearing for possible violations of 46 U.S.C. § 41102(c). Respondents were alleged to have overbroadly defined and applied the definition of merchant in BOLs to unilaterally impose joint and several liability for freight and/or charges on a party with whom Respondents were not in contractual privity and who had not consented to be bound by the terms of the BOL. On May 4, 2022, Respondent Ocean Network Express (North America), Inc. was dismissed from the proceeding. On June 23, 2022, the remaining Respondent and the Commission's Bureau of Enforcement BOE (now the Bureau of Enforcement, Investigations, and Compliance) jointly moved the ALJ to approve a proposed settlement agreement. On June 28, 2022, the ALJ approved the settlement and dismissed the proceeding with prejudice. On July 15, 2022, the Commission issued a notice indicating its determination to review the initial decision approving settlement agreement. On October 27, 2022, the Commission issued an Order Reversing the Initial Decision and Remanding. On remand, the parties reached a settlement. On December 13, 2022, an Initial Decision was issued approving the remand settlement agreement. On January 17, 2023, the Commission served a notice not to review the remand decision.

One Banana North America Corp. v. Hapag-Lloyd AG and Hapag-Lloyd (America) LLC [Docket 22-03]

Complainant filed a complaint alleging that Respondents violated 46 U.S.C. §§ 41104(a)(10) and 41102(c) and 46 C.F.R. §§ 545.4 and 545.5 with regard to movement of refrigerated containers. On February 7, 2022, Complainant was granted leave to file an amended complaint. On

March 9, 2022, Respondents filed an answer to the amended complaint denying the allegations. On October 31, 2022, the parties filed a joint motion seeking approval of a settlement agreement, dismissal of Complainant’s claims with prejudice, and requesting confidential treatment of the settlement agreement. On November 16, 2022, an order was issued approving the settlement and dismissing the proceeding with prejudice. On December 20, 2022, the Commission issued a notice not to review the dismissal.

Acme Freight Services Corp. v. Total Terminals International [Docket 22-07]

Complainant filed a complaint alleging that Respondent violated 46 U.S.C. § 41102(c) and 46 C.F.R. §§ 545.4 and 545.5 with regard to assessing demurrage charges against containers, including containers that were subject to a governmental hold and therefore unavailable for pickup. On May 26, 2022, an order was issued denying Respondent’s motion to dismiss. On October 21, 2022, the parties filed a joint motion seeking approval of a settlement agreement, voluntary dismissal of the complaint with prejudice, and requesting confidential treatment of the settlement agreement. On November 9, 2022, an order was issued approving the settlement and dismissing the proceeding with prejudice. On December 12, 2022, the Commission issued a notice not to review the dismissal.

Aeneas Exporting LLC v. Honeybee International Inc. and All America Shipping [Docket 22-11]

Complainant filed a complaint alleging that Respondents violated 46 U.S.C. §§ 41102(c) and 41104(a)(3), 46 C.F.R. §545.4, and “Fraud and Coercion” regarding the receipt, handling, storing, and delivery of vehicles and assessment of charges and fees. On April 26, 2022, Respondents filed an answer denying the allegations. On October 31, 2022, Complainant and Respondents filed a joint motion seeking approval of a settlement agreement, voluntary dismissal of the complaint with prejudice, and requesting confidential treatment of the settlement agreement. On November 16, 2022, an order was issued approving the settlement and dismissing the proceeding with prejudice. On December 20, 2022, the Commission issued a notice not to review the dismissal.

International Longshoremen’s Association v. Gateway Terminals, LLC; Charleston Stevedoring Company, LLC; Ports America Florida, Inc.; Ceres Marine Terminals, Inc.; and SSA Atlantic, LLC [Docket 22-12]

Complainant alleged that Respondents violated 46 U.S.C. §§ 41102(b), 41105(6), 41106, and 15 U.S.C. § 13 with regard to anticompetitive and trade restrictive practices. On September 29, 2023, an Initial Decision was issued dismissing the claims for lack of jurisdiction. On October 3, 2023, the Commission issued a notice of determination to review the decision. The proceeding is currently pending before the Commission.

International Express Trucking, Inc. v. ZIM Integrated Shipping Services Ltd. [Docket 22-13]

Complainant alleged that Respondent violated 46 U.S.C. §§ 41102(c) and 46 C.F.R. §§ 545.4 and 545.5 with regard to assessing demurrage and/or detention charges against containers. On May

20, 2022, Respondent filed an answer denying the allegations. On October 20, 2022, an order was issued approving a settlement between the parties and dismissing the proceeding with prejudice. On November 22, 2022, the Commission issued a notice not to review.

GoForth & Marti dba GM Business Interiors v. HSIN Silk Road Shipping Limited [Docket 22-16]

Complainant alleged that Respondent violated 46 U.S.C. § 41102(c) and 46 C.F.R. §§ 545.4 and 545.5 with regard to assessing fees against containers. On February 15, 2023, an Initial Decision on Default was issued granting default and ordering \$74,000 plus interest in reparations. On March 21, 2023, the Commission issued a notice not to review the decision.

Color Brands, LLC v. AAF Logistics, Inc. [Docket 22-18]

Complainant filed a complaint alleging that Respondent violated 46 U.S.C. §§ 41102(a)(c), 41104(a)(4)(e), and 41104(a)(14) regarding insurance premiums and the adjustment and settlement of insurance claims on its cargo shipments. On October 18, 2022, an order was issued granting Respondent's counsel's motion to withdraw and ordering Respondent to respond to the complaint. On November 28, 2022, Complainant filed a motion seeking default and entry of a default judgment and on December 6, 2022, Respondent was ordered to respond to the motion for default. On January 27, 2023, an Initial Decision on Default was issued granting default and ordering \$322,624.17 plus interest in reparations. On February 23, 2023, the Commission issued a notice of determination to review the decision. On January 18, 2024, the Commission issued an Order affirming, in part, and vacating, in part, the Initial Decision and remanding the case to the ALJ for further proceedings.

MSRF, Inc. v. Yang Ming Transport Corporation [Docket 22-21]

Complainant filed a complaint alleging that Respondent violated 46 U.S.C. §§ 41102(c), 41104(a)(2), 41104(a)(5), 41104(a)(9), and 41104 (a)(10), regarding its practices and the rates and terms of its service contract. On September 13, 2022, Respondent filed an answer denying the allegations. On August 24, 2023, the parties filed a joint motion for approval of a confidential settlement agreement. On September 7, 2023, an order was issued approving the settlement and dismissing the proceeding with prejudice. On October 11, 2023, the Commission issued a notice not to review the decision.

U Shippers Group Inc. v. Maersk A/S dba Maersk [Docket 22-22]

Complainant filed a complaint alleging that Respondent violated 46 U.S.C. §§ 40102(21), 41102(c), 41102(d), 41104(a)(2), 41104(a)(3), 41104(a)(5), 41104(a)(9), and 41104 (a)(10), regarding its practices and the rates and terms of its service contract. On September 26, 2022, Respondent filed an answer denying the allegations. On March 31, 2023, the parties filed a joint motion seeking approval of a settlement agreement, voluntary dismissal of the complaint with prejudice, and requesting confidential treatment of the settlement agreement. On April 17, 2023, an order was issued approving the settlement and dismissing the proceeding with prejudice. On May 19, 2023, the Commission issued a notice not to review the decision.

B & G Futures Inc., Revocation of Ocean Transportation Intermediary License No. 026512NF [Docket 22-25]

The Commission's Bureau of Certification and Licensing notified Respondent that the Commission intended to revoke its ocean transportation intermediary (OTI) license. Respondent requested a hearing under Subpart X and the Secretary assigned the proceeding to OALJ. BEIC was instructed to file a copy of the notice and supporting materials. After BEIC's submission, Respondent filed a response contesting the allegations. BEIC then filed a reply. On January 19, 2023, the ALJ issued an Initial Decision revoking Respondent's OTI license. The ALJ's order became administratively final on February 23, 2023, when the Commission issued a notice not to review the decision.

Philip Reinisch Company LLC v. Flexport International LLC [Docket 22-26]

Complainant filed a complaint alleging that Respondent violated 46 U.S.C. §§ 41104(a)(15) and 41104(d) regarding the issuance of invoices without required information and the assessment of detention and demurrage charges. On November 14, 2022, Respondent filed an answer denying the allegations. On March 9, 2023, the parties filed a joint motion seeking approval of a settlement agreement, voluntary dismissal of the complaint with prejudice, and requesting confidential treatment of the settlement agreement. On March 24, 2023, an order was issued approving the settlement and dismissing the proceeding with prejudice. On April 25, 2023, the Commission issued a notice not to review the decision.

Globerunners, Incorporated v. Hoyer Global (USA), Inc. [Docket 22-27]

Complainant filed a complaint alleging that Respondent violated 46 U.S.C. §§ 41102(c) and 41104(a)(14) and 46 C.F.R. § 532.5(d)(2)(iv) in its practices and pass-through of charges. On November 8, 2022, Respondent filed an answer denying the allegations. On June 14, 2023, the parties filed a joint motion seeking voluntary dismissal based on a settlement agreement. On June 28, 2023, an order was issued approving the settlement and dismissing the proceeding. On July 31, 2023, the Commission issued a notice not to review the decision.

MVM Logistics v MSC Mediterranean Shipping Company (USA) Inc. [Docket 22-29]

Complainant filed a complaint alleging that Respondent violated 46 U.S.C. § 41102(c) in its practices regarding the return of containers and related assessment of charges. On November 21, 2022, Respondent filed an answer denying the allegations. On March 24, 2023, the parties filed a stipulation of voluntary dismissal of the action without prejudice. On March 31, 2023, the Commission issued a notice of dismissal discontinuing the proceeding without prejudice.

Doka U.S.A. Ltd. v. MSC Mediterranean Shipping Company (USA) Inc. [Docket 22-32]

Complainant filed a complaint alleging that Respondent violated 46 U.S.C. §§ 41102(c), 41104(a)(15), and 41104(d), regarding its practices and the billing and assessment of charges on

the shipments of the Complainant's container cargo, including demurrage, detention, and dwell charges. On December 19, 2022, Respondent filed an answer denying the allegations. On April 27, 2023, the parties filed a joint motion seeking approval of a confidential settlement agreement and dismissal with prejudice of the complaint. On May 12, 2023, an order was issued approving the settlement and dismissing the proceeding with prejudice. On June 15, 2023, the Commission issued a notice not to review the decision.

CCMA, LLC v. Mediterranean Shipping Company S.A. and Mediterranean Shipping Company (USA) Inc. [Docket 22-33]

Complainant filed a complaint alleging that Respondent violated 46 U.S.C. § 41102(c), regarding its practices and the billing and assessment of charges on the shipments of the Complainant's container cargo, including demurrage, detention, and dwell charges. On January 6, 2023, Respondent filed an answer denying the allegations. On May 12, 2023, the parties filed a joint motion seeking approval of a confidential settlement agreement and dismissal with prejudice of the complaint. On May 26, 2023, an order was issued approving the settlement and dismissing the proceeding with prejudice. On June 27, 2023, the Commission issued a notice not to review the decision.

[Informal \(Small Claims Proceedings\)](#)

Southern States Forwarding, Inc. v. Mediterranean Shipping Company (USA) Inc. [Docket 1980(I)]

Claimant alleged that Respondent violated 46 U.S.C. §§ 40101 and 41104(d)(2) of the Shipping Act and the Commission's Rules of Practice and Procedure at 46 C.F.R. § 501.2(c) by changing its shipping schedule after the Port of Norfolk had begun receiving Claimant's booking, resulting in export demurrage, roll-over fees, and other costs. On October 4, 2022, the parties submitted a motion to dismiss, together with a confidential settlement agreement and release stating that they had resolved their dispute. On October 11, 2022, an order was issued approving the settlement and dismissing the proceeding with prejudice. On November 14, 2022, the Commission issued a notice not to review the decision.

Southern States Forwarding, Inc. v. Ocean Network Express (North America) Inc. [Docket 1981(I)]

Claimant alleged that Respondent violated 46 U.S.C. §§ 40101, 41104(a)(15), 41104(d)(2)(A-L), and 41104(d)(2)(M) of the Shipping Act by demanding payment of demurrage on a shipment it knew or should have known it was not entitled to collect. On November 11, 2022, Claimant submitted a motion to dismiss, together with a copy of the parties' confidential settlement agreement and release, indicating that it wished to withdraw its Complaint because the parties had resolved their dispute. On November 18, 2022, an order was issued approving the settlement and dismissing the proceeding with prejudice. On December 20, 2022, the Commission issued a notice not to review the decision.

Germozap, LLC v. Shenzhen Fly International Logistics Co., Ltd. [Docket 1982(I)]

Claimant alleged that Respondent violated 46 U.S.C. § 41102(c) of the Shipping Act and the Commission's regulations related to ocean transportation intermediaries in connection with Respondent's delivery of Claimant's cargo from China to the United States. On April 26, 2023, an Initial Decision was issued finding that the evidence did not demonstrate that a violation of the Shipping Act occurred and dismissing the Complaint with prejudice. On May 30, 2023, the Commission issued a notice not to review the decision.

All-Ways Forwarding of NY Inc., v. Mediterranean shipping Company S.A. [Docket 1983(I)]

Claimant alleged that MSC illegally collected demurrage charges from Claimant in the amount of \$4,850.00. On October 17, 2022, Claimant submitted a motion to dismiss, together with a copy of the parties' confidential settlement agreement and release, indicating that it wished to withdraw its Complaint because the parties had resolved their dispute. On October 24, 2022, an order was issued approving the settlement and dismissing the proceeding with prejudice. On December 1, 2022, the Commission issued a notice not to review the decision.

Toyoshima International, America, Inc./TIA v. Mediterranean Shipping Company (USA) Inc./MSC [Docket 1984(I)]

Claimant filed a small claims complaint alleging that in violation of 46 U.S.C. § 41104(a)(3) and (a)(4)(E), Respondents unreasonably delayed releasing original bills of lading on six shipments, causing Claimant to suffer damages in the amount of \$10,600.00. On October 3, 2022, prior to the receipt of Respondent's answer, Claimant submitted a motion to dismiss its complaint, together with a settlement agreement between the parties, stating that it had settled its dispute with Respondent. On December 1, 2022, an order was issued approving the settlement and dismissing the proceeding with prejudice. On January 4, 2023, the Commission issued a notice not to review the decision.

Alioune Badara and Dora Mae Ndiaye v. Fleur de Lis Worldwide, LLC [Docket 1985(I)]

Claimants filed a small claims complaint alleging that Respondent had violated 46 U.S.C. §§ 41102(c), 41102(d)(1), and 41102(d)(2)(B) of the Shipping Act in connection with the delivery of Claimants' cargo from Houston, Texas to Dakar, Senegal. On June 21, 2023, a decision was issued finding that Claimants failed to demonstrate that a violation of sections 41102(c), 41102(d)(1), and 41102(d)(2)(B) occurred but that the evidence showed that Respondent violated section 41104(a)(2)(A) by providing service in the liner trade that was not in accordance with its tariff rates and rules. Reparations were awarded to Claimants. On July 25, 2023, the Commission issued a notice not to review the decision.

True Pick, LLC/TP v. Grimaldi Euromed [Docket 1986(I)]

Claimant alleged that Respondent Atlantic Container Line/ACL violated 46 U.S.C. § 40101 in connection with the shipment of Claimant's cargo from Houston, Texas, to Piraeus, Greece. On

December 16, 2022, True Pick amended its complaint to replace Grimaldi Euromed as the respondent in the Claim. On March 17, 2023, prior to the receipt of Respondent's answer, Claimant submitted a motion to dismiss its complaint, together with a settlement agreement between the parties, stating that it had settled its dispute with Respondent. On March 28, 2023, an order was issued approving the settlement and dismissing the proceeding with prejudice. On April 28, 2023, the Commission issued a notice not to review the decision.

A Customs Brokerage, Inc. v. Cargocare Logistics USA, Inc. and Cargocare Logistics America, Inc. [Docket 1987(I)]

Claimant alleged that Respondents violated 46 U.S.C. § 41102(c) of the Shipping Act in connection with the delivery of its cargo from Cochin, India to Miami, Florida. Respondent Cargocare Logistics USA, Inc. (Cargocare USA) failed to respond or participate in the proceeding. On July 17, 2023, a default judgment was entered against Respondent Cargocare USA and it was found, in addition, that Respondents violated section 41102(c) by forcing Claimant to pay double ocean freight to obtain its shipments, and that they were jointly and severally liable to Claimant for its damages. On August 17, 2023, the Commission issued a notice that it had determined to review the decision. The proceeding is pending before the Commission.

Martin David Thibeaux v. Chris Smith/Chris Smyth, Robert Ewing, Trailerland, LLC, Trailer Mania [Docket 1988(I)]

Claimant alleged that Respondents violated 46 U.S.C. § 41102(c) of the Shipping Act in connection with an arrangement to ship Claimant's boat from Fort Lauderdale, Florida to the Bahamas, and that Respondents are operating as an ocean freight forwarder without a Federal Maritime Commission OTI license, financial bond, or insurance. On May 12, 2023, a decision was issued, dismissing with prejudice the complaint against Respondents Robert Ewing and Trailerland, LLC on the basis that Claimant failed to show or allege that they were in any way involved in the arrangement in dispute. The complaint that Respondents Chris Smith and Trailer Mania violated section 41102(c) was also dismissed with prejudice on the basis that the evidence did not demonstrate that they violated the Shipping Act. However, it was found that the evidence supported Claimant's allegation that they operated as an OTI without an FMC license. Because the evidence did not show that Claimant suffered any injury due to the violation, it was found that Claimant was not entitled to receive reparations. However, a cease-and-desist order was issued enjoining Respondents from operating as an OTI in the future without an FMC-issued OTI license, as requested by Claimant. On June 15, 2023, the Commission issued a notice not to review the decision.

Nikon Manufacturing, Inc. v. MSC Mediterranean Shipping Company [Docket 1989(I)]

Claimant alleged that demurrage charges totaling \$8323.50 that Respondent imposed on Claimant's containers at the Port of Everglades, Florida failed to comply with the provisions of the Commission's Rules at 46 C.F.R. § 545.5(c)(2)(iv) related to the imposition of demurrage and detention charges. On March 17, 2023, prior to the receipt of Respondent's answer, Claimant

submitted a motion to dismiss its complaint, together with a settlement agreement between the parties, stating that it had settled its dispute with Respondent. On March 28, 2023, an order was issued approving the settlement and dismissing the proceeding with prejudice. On April 28, 2023, the Commission issued a notice not to review the decision.

HGMD LLC v. Mediterranean Shipping Company S.A., Mediterranean Shipping Company (USA) Inc. as agent for Mediterranean Shipping Company S.A. and MSC Croatia D.O.O. as agent for Mediterranean Shipping [Docket 1990(I)]

Claimant alleged that it engaged Respondents to ship its container from Croatia to the Port of Newark, but that MSC sent the arrival notice for the container to the wrong party, causing the container not to be timely retrieved and to accrue demurrage charges which MSC then declined to waive, and Claimant was forced to pay, and that by doing so Respondents violated 46 U.S.C. §§ 41102(c) and 41104. On May 1, 2023, prior to the receipt of Respondent’s answer, Claimant submitted a motion to dismiss its complaint, together with a settlement agreement between the parties, stating that it had settled its dispute with Respondent. On May 12, 2023, an order was issued approving the settlement and dismissing the proceeding with prejudice. On June 15, 2023, the Commission issued a notice not to review the decision.

TCW, Inc. v. Maersk A/S and Maersk Line U.S.A., Inc as Agent for Maersk A/S (dba Maersk Line, Maersk Line Limited, Safmarine, Sealand) [Docket 1991(I)]

Claimant alleged that Respondents’ charging of “street turn” or “usage” fees to motor carriers who reutilize an empty import container for an export booking violates 46 U.S.C. § 41102(c). On April 5, 2023, prior to the receipt of Respondent’s answer, Claimant submitted a motion to dismiss its complaint, stating that Respondent had agreed to refund the charge in question and to discontinue charging TCW moving forward, but that the parties “did not execute a formal settlement agreement” and had merely communicated by email. Because Claimant represented that the parties had not entered into a settlement agreement, on April 26, 2023, Claimant’s request to dismiss its Complaint was granted without need for review by the Commission, pursuant to 46 C.F.R. § 72(a)(1) of the Commission’s Rules of Practice and Procedure.

RGC Coffee Inc. v. Mediterranean Shipping Company [Docket 1993(I)]

Claimant alleged that Respondent violated 46 U.S.C. § 41102(c) in connection with the transportation of its cargo from Cartagena, Colombia to Seattle, Washington. On June 22, 2023, prior to the receipt of Respondent’s answer, the parties submitted a motion to dismiss by Claimant and a copy of their settlement agreement. On July 19, 2023, an order was issued approving the settlement and dismissing the proceeding with prejudice. On August 22, 2023, the Commission issued a notice not to review the decision.

TCW, Inc. v. Mediterranean Shipping Company, S.A.; Mediterranean Shipping Company (USA) Inc. [Docket 1994(I)]

Claimant alleged that Respondents violated provisions of the Shipping Act of 1984 in connection with certain invoices they issued to Claimant. On August 2, 2023, prior to the receipt of Respondent's answer, the parties submitted a motion to dismiss by Claimant and a copy of their settlement agreement. On August 23, 2023, an order was issued approving the settlement and dismissing the proceeding with prejudice. On September 25, 2023, the Commission issued a notice not to review the decision.

Rulemakings

Inflation Adjustment of Civil Monetary Penalties [RIN 3072-AC94 / Docket No. FMC-2022-0077]

On January 11, 2023, the Commission published a final rule to adjust for inflation the civil monetary penalties assessed or enforced by the Commission, pursuant to the Federal Civil Penalties Inflation Adjustment Act Improvements Act of 2015 (Pub. L. 114-74, section 701). The Act requires that agencies adjust and publish their civil penalties by January 15 of each year.

Update of Existing FMC User Fees [RIN 3072-AC96 / Docket No. FMC-2023-0009]

On March 21, 2023, the Commission published a direct final rule to update its current user fees and amend the relevant regulations to reflect these updates pursuant to Office of Management and Budget (OMB) Circular A-25. The fee amendments reflect changes in salaries of employees assigned to certain fee-generating services.

Delegations to Bureau of Enforcement, Investigations, and Compliance [RIN 3072-AC97 / Docket No. FMC-2023-0011]

On April 17, 2023, the Commission published a final rule delegating authority to the Bureau of Enforcement, Investigations, and Compliance (BEIC) to issue Notice(s) of Violations and to compromise civil penalty claims subject to review by the Commission. Delegation of authority to BEIC provides enhanced efficiency and flexibility during the enforcement process while maintaining Commission oversight.

Definition of Unreasonable Refusal to Deal or Negotiate With Respect to Vessel Space Accommodations Provided by an Ocean Common Carrier [RIN 3072-AC92 / Docket No. FMC-2023-0010]

On June 14, 2023, the Commission published a supplemental notice of proposed rulemaking (SNPRM) that revised certain aspects of the original NPRM, published on September 21, 2022, and clarified the potential standard for unreasonable conduct by ocean common carriers. OSRA 2022 prohibits ocean common carriers from unreasonably refusing to deal or negotiate with respect to vessel space accommodations. The Commission is proposing to define the elements necessary to establish a violation and the criteria it will consider in assessing reasonableness.

Demurrage and Detention Billing Requirements [RIN 3072-AC90 / Docket No. FMC-2022-0066]

On October 14, 2022, as directed by OSRA 2022, the Commission published a notice of proposed rulemaking (NPRM) proposing new specific minimum information that must be included on demurrage and detention invoices and outlines certain billing practices on appropriate timeframes for issuing invoices, disputing charges with the billing party, and resolving such disputes.

Civil Penalty Amendments to Rules of Practice and Procedure [RIN 3072-AC95 / Docket No. FMC-2023-0008]

On March 20, 2023, the Commission published a final rule to amend its Rules of Practices and Procedure governing the compromise, assessment, mitigation, settlement, and collection of civil penalties. These changes align with the statutory changes in OSRA 2022 on penalties or refunds.

Recent Key Commission Litigation

FMC Docket No. 1966(I), *TCW, Inc. v. Evergreen Shipping Agency (Am.) Corp. & Evergreen Line Joint Service Agreement*, Order Affirming the Initial Decision (December 29, 2022): The Commission upheld the Small Claims Officer's decision that the charging of per-diem for days when a port was closed for a weekend and equipment could not be returned was unjust and unreasonable in the absence of extenuating circumstances. This case is now before the U.S. Court of Appeals for the D.C. Circuit. This case could significantly impact how the industry deals with charges related to weekends, holidays, and other times when containers or chassis cannot be returned.

FMC Docket No. 20-14, *Intermodal Motor Carriers Conference, American Trucking Associations, Inc. v. Ocean Carrier Equipment Management Association, Inc. et al., Initial Decision Partially Granting Summary Decision* (February 6, 2023): Complainant IMCC, a conference of ATA – American Trucking Associations, alleges that OCEMA and CCM (VOCC-backed equipment management groups which have FMC-filed agreements) have engaged in unreasonable practices related to chassis (chassis choice and gray pools) in nearly every port in the U.S. IMCC alleges that respondents' actions are more restrictive than necessary to support chassis availability and that they unreasonably restrain the market for haulage chassis. As a result, IMCC maintains that motor carriers, shippers, and the downstream public have paid higher chassis prices and suffered inefficiencies, and thus OCEMA/CCM actions violate 46 U.S.C. § 41102(c) of the Shipping Act. IMCC requests cease and desist relief from these practices. On February 6, 2023, an Initial Decision partially granting summary decision was issued which granted in part and denied in part IMCC's motion for summary decision and denied Respondents' motion for summary decision and Evergreen's supplemental motion for summary decision. Exceptions to the Initial Decision were filed by the Respondents. The Commission subsequently issued an Order affirming the Initial Decision and remanded the case for further proceedings before the ALJ. Respondents have since filed Motions for Reconsideration with the Commission, which are currently pending. This factually and legally complex case is now pending with the Commission on review of respondents' Exceptions to the Initial Decision.

FMC Docket No. 21-11, *OJ Commerce, LLC v. Hamburg Sudamerikanische Dampfschiffahrts-Gesellschaft A/S and Co KG and Hamburg Sud North America, Inc., Initial Decision* (June 7, 2023): Complainant OJ Commerce (OJC), a shipper, alleged that Respondents Hamburg Sudamerikanische Dampfschiffahrts-Gesellschaft and Hamburg Sud North America (collectively "HSDG"), a carrier, failed to provide cargo space pursuant to a service contract. OJC alleges when it complained and threatened action before the Commission, HSDG cut off all negotiations towards future service contracts and refused to provide further space under the existing service contract. The ALJ found that the HSDG violated 46 U.S.C. § 41104(a)(3) by refusing to deal with OJC and § 41104(a)(10) by retaliating against OJC. The ALJ ordered HSDG to pay OJC

\$9,843,766.40 in reparations with interest. This case is now pending with the Commission on review of both the respondents' and complainants' Exceptions to the Initial Decision.

Ensuring a Competitive Industry through Agreements Review and Monitoring

In support of strategic goal 1, maintaining a competitive and reliable international ocean transportation system, the FMC's competition program involves careful analysis of agreements upon filing and ongoing review of actions that are taken under these agreements.

The FMC's statutory authority and regulations require that agreements which allow collaboration among ocean common carriers or marine terminal operators (MTOs) must be filed with the Commission. Commission staff analyze these agreements upon filing for potential anticompetitive effects. For those agreements that are competitively concerning (including all alliances described below), the Commission staff monitor activity on an ongoing basis. Conduct inconsistent with the terms of an agreement is illegal and exposes parties to criminal and civil prosecution under existing statutes.

At the end of FY 2023, there were 343 agreements on file with the Commission, comprised of VOCC agreements, MTO agreements, and assessment agreements. There are 45 agreements on file which staff monitor regularly due to competitive concerns. The vast majority of agreements on file with the Commission are vessel sharing agreements (VSAs) which allow straightforward space sharing.

In FY 2023, there was an uptick in the number of VOCC and MTO agreements on file with the Commission that were cancelled. Among VOCCs, major agreement cancellations included multiple VSAs involving carriers who entered the U.S. trades during the pandemic and left the trades after the downturn in spot prices in 2023. This is further described in the section on

Agreement Review Process

- All agreements are reviewed pursuant to the standard set forth in 46 U.S.C. § 41307(b)(1).
- Agreements become effective 45 days after filing unless the Commission has requested additional information to evaluate the competitive impact of the agreement.
- The Commission has the authority to reject a pending agreement filing if it determines that the filing fails to meet the Shipping Act and Commission regulations requiring filed agreements to be clear and definite, or if the filing is outside of the Commission's jurisdiction.
- The Commission may seek to prevent the operation of an agreement under 46 U.S.C. § 41307(b) where it determines that the agreement could reduce competition to the point of unreasonably impacting the market, or substantially lessen competition in the purchasing of certain covered services as defined in the Frank LoBiondo Coast Guard Authorization Act of 2018 (Pub. L. No. 115-282).
- Effective agreements are subject to Shipping Act restrictions and Commission oversight.

tariffs and service contracts later in this report. In fall 2022, Maersk and IBM announced that they were discontinuing the TradeLens platform. This led to the cancellation of two FMC-filed agreements – the TradeLens Agreement (FMC No. 201328) and the Foundation Carrier Agreement (FMC No. 201351).

The Commission issued multiple Requests for Additional Information for certain filed agreements beginning at the end of FY 2022 and continuing throughout FY 2023. Under agency regulations at Part 535, the Commission “may request from the filing party any additional

What are Alliances? What are Vessel Sharing Agreements?

FMC statutes and regulations contain no definition of Alliances or VSAs. Generally, however, Alliances refer to carriers participating in VSAs that have a global geographic scope.

VSAs are agreements between two or more ocean common carriers to share space on a serviced string or trade lane and include the authority to rationalize capacity. This contrasts with space charter agreements, where carriers provide space for other carriers on a service but do not contain capacity rationalization authority.

Alliances are large VSAs. Currently, there are three global alliances – 2M, OCEAN, and THEA. Each Alliance filed agreements with the FMC that are available through the Commission’s website. Each agreement is slightly different, but discussion of pricing or other operational considerations is not authorized in an Agreement. If Agreement parties engage in those kinds of unauthorized activities, they would be subject to criminal and civil prosecution.

Agreements are not mergers nor joint ventures. Ocean carriers in these agreements compete with one another based on price and service. The FMC monitors agreements through submitted data, external data on market activities, and through regular conversations with agreement parties.

information and documents necessary to complete the statutory review required by the Act.” The agreements for which the Commission requested additional information upon filing of the agreement or amendments to an existing agreement include the World Shipping Council Agreement (FMC No. 201349), the South Atlantic Multiport Chassis Pool Agreement (FMC No. 201391), and the Agreement by Ocean Common Carriers to Participate on the Exchange Board (FMC No. 201234).

The largest ocean common carriers participate in “alliances” or global VSAs. There are three alliances with agreements on file at the Federal Maritime Commission. Alliance agreements allow coordination of capacity, but discussion or coordination on rates is categorically prohibited. Alliance agreements are the class of agreement that is most closely and regularly scrutinized by the Commission. Alliances provide extensive information to the Commission including meeting minutes and measures of blank and delayed sailings, capacity, volumes, and revenue. Additionally,

Commission staff responsible for marketplace competition issues hold meetings with each of the alliances semi-annually.

The largest alliance, measured by market share in the major east-west trades, is the 2M alliance, consisting of Maersk and Mediterranean Shipping Company. The 2M alliance will be dissolved in 2025, and its member carriers began taking actions in 2023 to move towards increasingly independent services. In FY 2023, the Commission continued its regular, ongoing engagement at both the Commissioner and staff levels with competition authorities in the UK and EU to address the state of the industry and potential marketplace changes due to macroeconomic shifts. Due to the UK's exit from the EU, the Commission now engages with the UK Competition Authority directly on an as-needed basis.

The FMC's monitoring program is unlike any other. Competition authorities in the European Union, the People's Republic of China, and in various other nations do not have access to the same detailed, business confidential information that the FMC collects from alliance carriers. The Commission regularly evaluates the information it collects to carefully monitor activities under agreements and monitoring requirements are adjusted as needed. Monitoring requirements for alliance carriers were most recently revised in spring 2022. As the ocean transportation market in the major trade lanes shifts from supply scarcity to supply excess, the FMC's focus will be on ensuring that alliance carriers do not restrict capacity to artificially increase rates. The 2022 changes to monitoring requirements properly position the Commission to rapidly track changes in capacity and act quickly if circumstances warrant intervention.

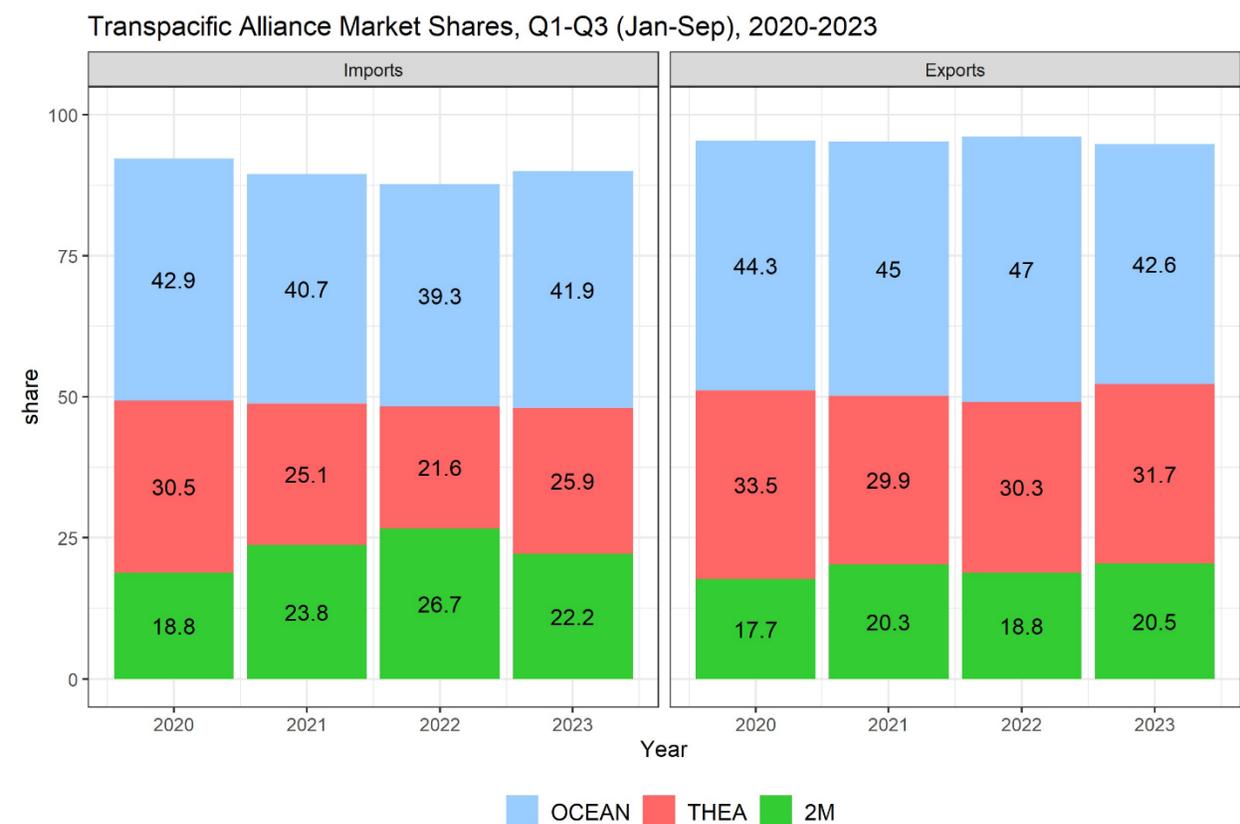
In the first half of calendar year 2023, the number of blanked/cancelled sailings increased substantially across the three alliances. The alliance carriers collectively removed approximately 1.7 million Twenty Foot Equivalent Units (TEUs) in capacity through blank sailings in Q1 2023 and roughly 0.5 million of this was due to continued congestion in the first three months of 2023. In Q2 2023, the capacity removed through blank sailings was roughly 840,000 and very little of this was due to congestion – nearly all was due to decreased demand or realigning fleets. Despite this, total capacity in the major trades increased overall. In the transpacific trade, inbound capacity increased by 36 percent quarter-over-quarter in Q2 2023 and the corresponding increase in the transatlantic inbound trade was 20 percent.

Utilization and average revenues fell across the major trades for the alliance carriers. Utilization was 73 percent on the inbound transpacific trade in Q2 2023 and 74 percent on inbound transatlantic trade. The average revenue for alliance carriers on transpacific inbound containers has settled at its approximate pre-pandemic levels. On the transatlantic inbound trade, average revenue still exceeds pre-pandemic levels, but has declined considerably – with monthly average decreases of 14.7 percent in Q2 2023.

Market Shares of Carriers in the Major East-West Trades

The Commission uses PIERS⁵ data to calculate carrier market share within the global alliances. The shares below are computed based on the total TEUs transported in the major east-west trade lanes by the carriers and reflect the totals carriers by via alliance services, other shared services under VSAs, and independent services provided by the carriers.

The three alliances are OCEAN, 2M, and THE Alliance (THEA). The OCEAN Alliance consists of CMA CGM, COSCO (including its majority-owned affiliate OOCL), and Evergreen. THEA members include Hapag-Lloyd, HMM, Ocean Network Express (ONE), and Yang Ming. 2M is comprised of Maersk Line and Mediterranean Shipping Company (MSC).

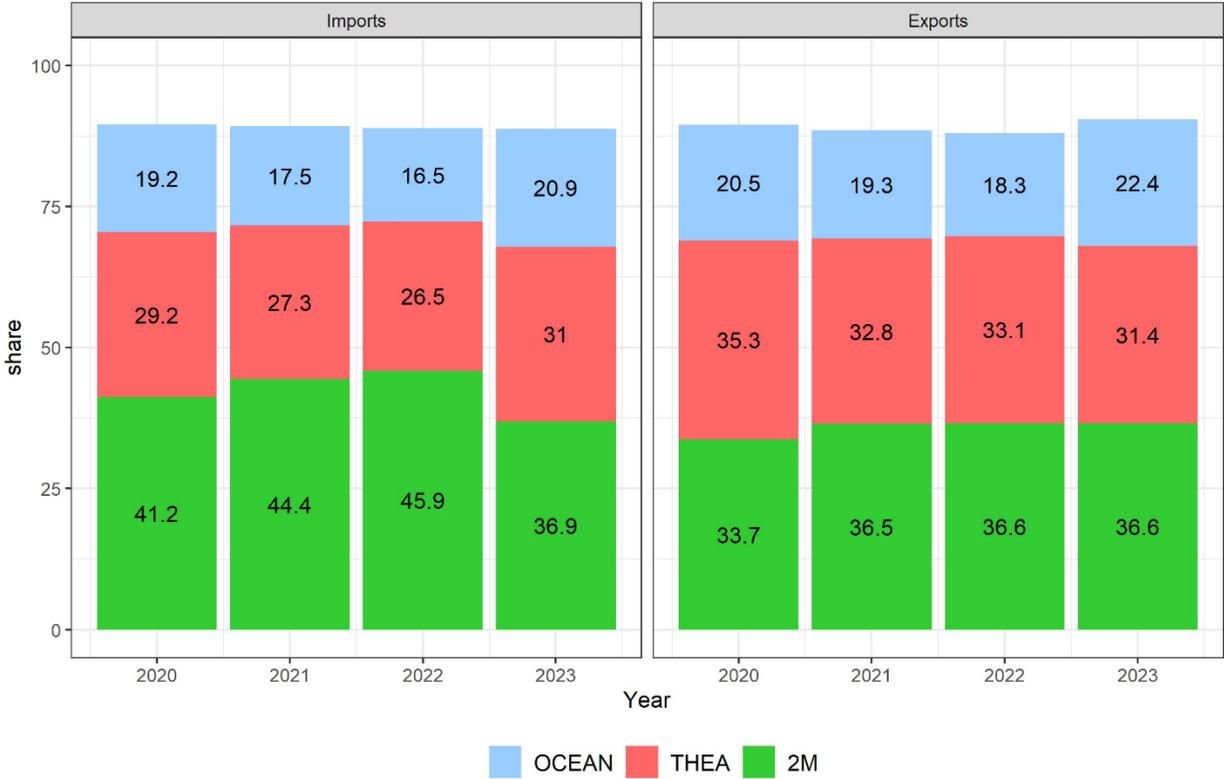


As shown in the Transpacific Market Shares Chart, carriers in the three global alliances held a combined market share of 90 percent of imports and 94.8 percent of exports in the transpacific trade in the first half of calendar year 2023. While the OCEAN alliance carriers' share of the import trade declined from 2020 to 2022, the market share increased to nearly 43 percent in

⁵ Port Import/Export Reporting Services (PIERS) provides comprehensive trade data which contains detailed information on import and export transactions, based on bills of lading filed with U.S. Customs and Border Protection.

2023 and the carriers in this alliance dominate the transpacific trade for both imports and exports. The 2M carriers' share of the import market increased between 2020 and 2022, but declined in the first three quarters and is below 2021 levels. Their share of the export market has hovered around 20 percent for the past three years. After a decline in market share on the import trade in 2022, THEA carriers reached a market share of 25.9 percent in the first three quarters of 2023, roughly on par with the 2021 numbers, but below 2020. Their share of the export market has been relatively stable over recent years.

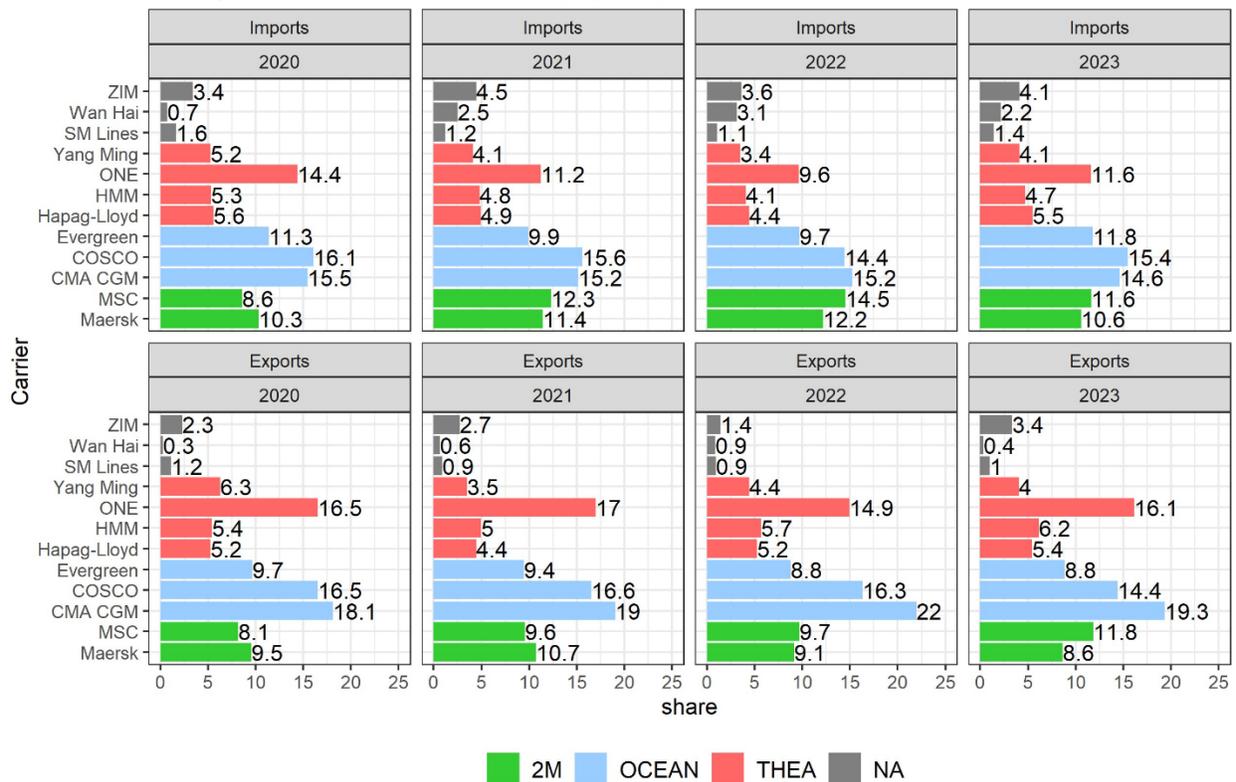
Transatlantic Alliance Market Shares, Q1-Q3 (Jan-Sep), 2020-2023



source: PIERIS

In the transatlantic trades, the alliance carriers collectively accounted for 88.8 percent of imports and 90.4 percent of exports. On the import side, the 2M carriers saw a substantial reduction in their share of the import market, which decreased 9 percentage points in 2023 versus 2022 and is over 4 percentage points below their market share in 2020. The carriers in OCEAN and THEA increased their market shares of imports, roughly splitting the decline in the 2M carrier share. The export side of the market showed fewer changes with 2M carrier shares stable between 2021 and 2023, OCEAN carriers' shares increasing slightly and THEA decreasing slightly.

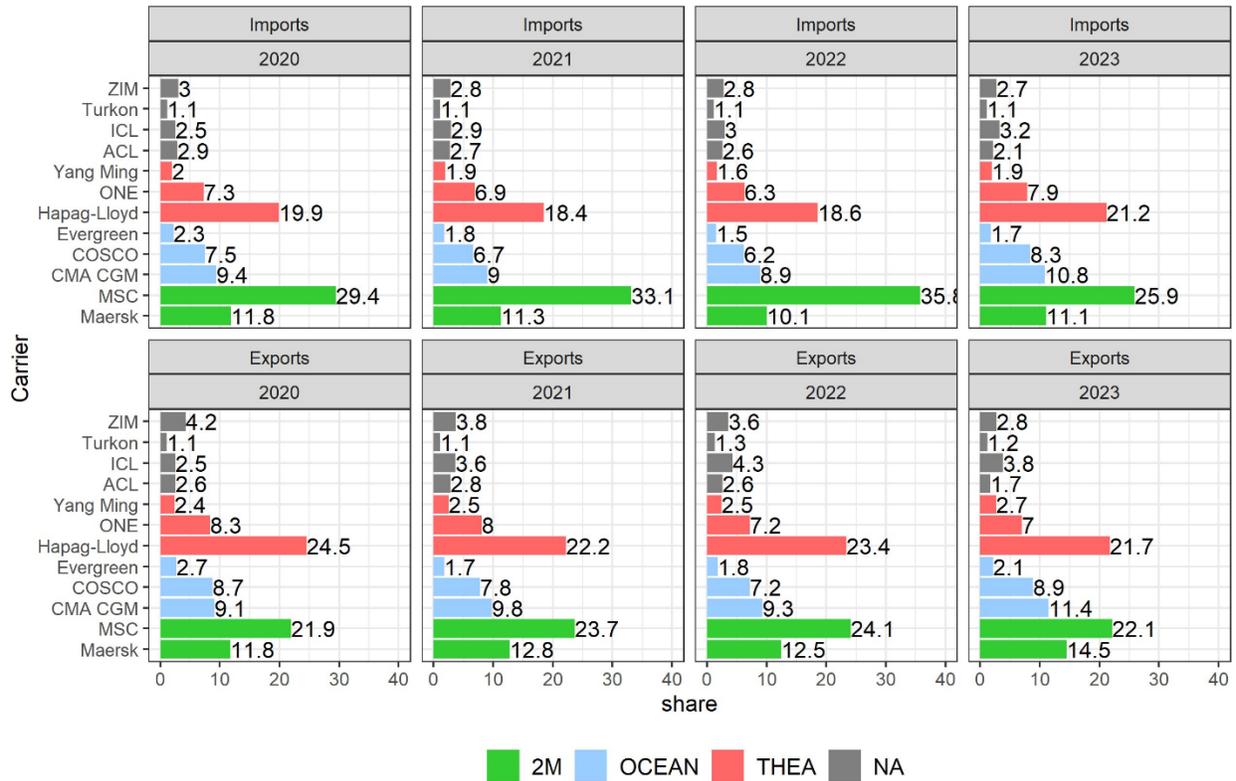
Transpacific Carrier Market Shares, Q1-Q3, 2020-2023



source: PIERS

Focusing on the market share of individual carriers, Zim is the largest non-alliance carrier in the transpacific trade and has sustained a stable market share of roughly 4 percent of imports, while increasing its share of exports to 3.4 percent in the first three quarters of 2023. Most of the alliance carriers have had relatively stable import market shares over the past four years, with both Maersk’s and MSC’s market shares decreasing in 2023. However, MSC still has a substantially higher market share in the transpacific import market than in 2020. MSC has also increased its export market share in the transpacific trade.

Transatlantic Carrier Market Shares, Q1-Q3, 2020-2023



source: PIERS

In the transatlantic trade, the non-alliance carriers have exhibited stable market shares over the past four years. Within THEA, the increased import market share is largely attributed to an increase in Hapag-Lloyd’s share, which had dropped in 2021 and 2022 before returning to levels in 2023 that are slightly higher than 2020. Even with a marked decline in its market share between 2022 and 2023, MSC remains the market leader in the transatlantic import market. On the export side, MSC’s market share is slightly higher than Hapag-Lloyd’s. Both CMA CGM and COSCO from OCEAN increased their export market shares in the first three quarters of 2023.

Protecting the Public and Consumer Assistance

The scope of the Commission's statutory and regulatory authority is broad, and it oversees international waterborne commerce valued at trillions of dollars, as well as passenger vessel operations embarking at U.S. ports. As a small agency, it is imperative that the Commission's program offices focus on vigilant oversight which includes compliance, investigations, and enforcement.

The Commission works proactively to meet the objectives of strategic goals 1 and 2 of protecting the public from unfair and deceptive practices by communicating clearly to regulated entities their obligations under statute and regulation. Commission resources are focused to address noncompliance in the areas with highest impact. In FY 2023, the Commission added resources to compliance efforts across multiple bureaus and offices.

FMC Audit Program

The need for clear communications between the Commission and carriers to achieve industry compliance underpins an audit program initiated by Chairman Maffei in July 2021. In FY 2023, the scope of this program was expanded to marine terminal operators as well as some port authorities.

The FMC Audit Program provides a forum for focused conversations between senior Commission staff and representatives from ocean common carriers, port authorities, and MTOs. The agendas for regular meetings are driven by industry issues. Past issues have included congestion and movement of empty containers, fees and billing practices, export strategies, and challenges faced by the industry. Under this program, the Commission has tracked trends, policies, and procedures related to detention and demurrage billing and identified best practices for carriers related to communicating their practices to the shipping public.⁶

In FY 2023, meetings with the 11 largest carriers included discussions of carrier compliance with OSRA 2022, trends in demurrage and detention, updates on export services, and market outlook. The meetings with port authorities and MTOs included discussions of OSRA 2022 scope and compliance as well as challenges faced by terminal operators.

The program continues to collect information from carriers and work within the Commission to set agenda items for FY 2024 meetings.

Fact Finding 29 included a recommendation for all carriers and MTOs to identify FMC Compliance Officers. The agency leveraged the FMC Audit Program to obtain information on compliance officers for the major carriers and terminal operators and this information is shared within the Commission. These points of contact are used to further communicate industry

⁶ <https://www.fmc.gov/detention-and-demurrage/vessel-operating-common-carrier-vocc-audit-program/>

alerts and other industry advisories to ensure that carriers and MTOs are aware of Commission policies.

Tariffs and Service Contracts

Beyond the FMC Audit Program, Commission program offices have expanded their efforts to address identified gaps in regulatory compliance by regulated entities. These gaps resulted from changes to industry over time, the increase in non-vessel-operating common carriers (NVOCC) in the marketplace, and the lingering aftereffects of the pandemic. Through their efforts in FY 2023, Commission program offices successfully achieved increased industry compliance with regulations addressing Carrier Automated Tariffs (Part 520), Marine Terminal Operator Schedules (Part 525), NVOCC Service Arrangements (Part 531), and NVOCC Negotiated Rate Arrangements (Part 532).

In FY 2023, the FMC increased staffing in the Bureau of Trade Analysis and refocused on tariff and service contract compliance activities that would lead to highest impact. This included increased outreach to the industry through industry alerts and communication with designated compliance officers to ensure that service contracts are filed timely, that ocean common carriers vet NVOCCs for compliance with FMC regulations when entering into service contracts, and that all carriers maintain tariffs.

As rates increased on the major east-west trade lanes during the pandemic, smaller carriers drawn by high freight rates entered the U.S. trades for the first time. As rates fell in 2022 and 2023, several of these carriers ended their services calling in the U.S. The Commission staff tracked this activity closely and ensured that carriers exiting the trade cancelled their tariffs so shippers had an accurate understanding of which ocean carriers were legally operating in the U.S. trades.

By the end of FY 2023, each of the carriers who entered the transpacific trade during the pandemic had left the trade. These include:

- Iris Logistics: entered August 2021; left November 2022
- Lihua Logistics: entered August 2021; left October 2022
- Oriental Lake Shipping: entered July 2021; left July 2022
- Shanghai Jinjiang Shipping: entered August 2021; left January 2023
- SITC Container Lines: entered Sept 2021; left January 2023
- Starocean Marine Co.: entered Sept 2021; left January 2023
- WTS International Logistics: entered August 2021; left February 2023
- T.S. Lines: entered July 2021; left May 2023
- C.U. Lines: entered June 2021; left August 2023
- BAL Container Line: entered May 2021; left August 2023
- Transfar Shipping: entered July 2021; left September 2023

During the pandemic, the number of NVOCCs offering service in the U.S. increased substantially. As of June 2023, there were approximately 8,500 NVOCCs with tariff locations published on the FMC website. In FY 2023, there was a Commission effort to target entities that were out of compliance with either tariff postings or financial responsibility requirements. This included revoking licenses, working with tariff publishers to cancel tariffs, and removing entities from the FMC website. Work continues to ensure that non-compliant NVOCCs are identified quickly, and if the NVOCCs do not take actions to be compliant, then the Commission will promptly and efficiently address a refusal to comply.

Licensing and Financial Responsibility for Ocean Transportation Intermediaries and Passenger Vessel Operators

The Commission's regulatory scope includes Parts 515 (Licensing, Registration, Financial Responsibility Requirements, and General Duties for Ocean Transportation Intermediaries) and 540 (Passenger Vessel Financial Responsibility). There are over 9,100 ocean transportation intermediaries regulated by the Commission. To receive an OTI license, applicants must employ a Qualifying Individual with the necessary character and a minimum of three years of shipping experience in the U.S. Additionally, OTI applicants must demonstrate financial responsibility by means of a bond, insurance, or other financial instrument available to pay claims for damages or civil penalties. Under the Commission's triennial renewal program, OTIs review and update their information on file with the Commission. In FY 2023, the agency took approximately 900 actions to revoke or terminate licenses for OTIs no longer maintaining financial responsibility.

In addition, the Commission administers a requirement pertaining to passenger vessel operators (PVOs) that arrange, offer, advertise, and provide passage on a vessel; have berths or stateroom accommodations for 50 or more passengers; and embark passengers from a U.S. port. These PVOs are required to establish financial responsibility with the Commission for the Indemnification of Passengers for Nonperformance of Transportation and to Meet Liability incurred for Death or Injury to Passengers or Other Persons on Voyages.

In response to the disruptions experienced by the cruise industry during the pandemic, new regulations mandated that, for passengers who are due refunds, PVOs must provide full compensation of all fees, including ancillary fees, within 180 days. Optionally, in lieu of a refund, passengers may agree to receive future cruise credits.

Consumer Assistance

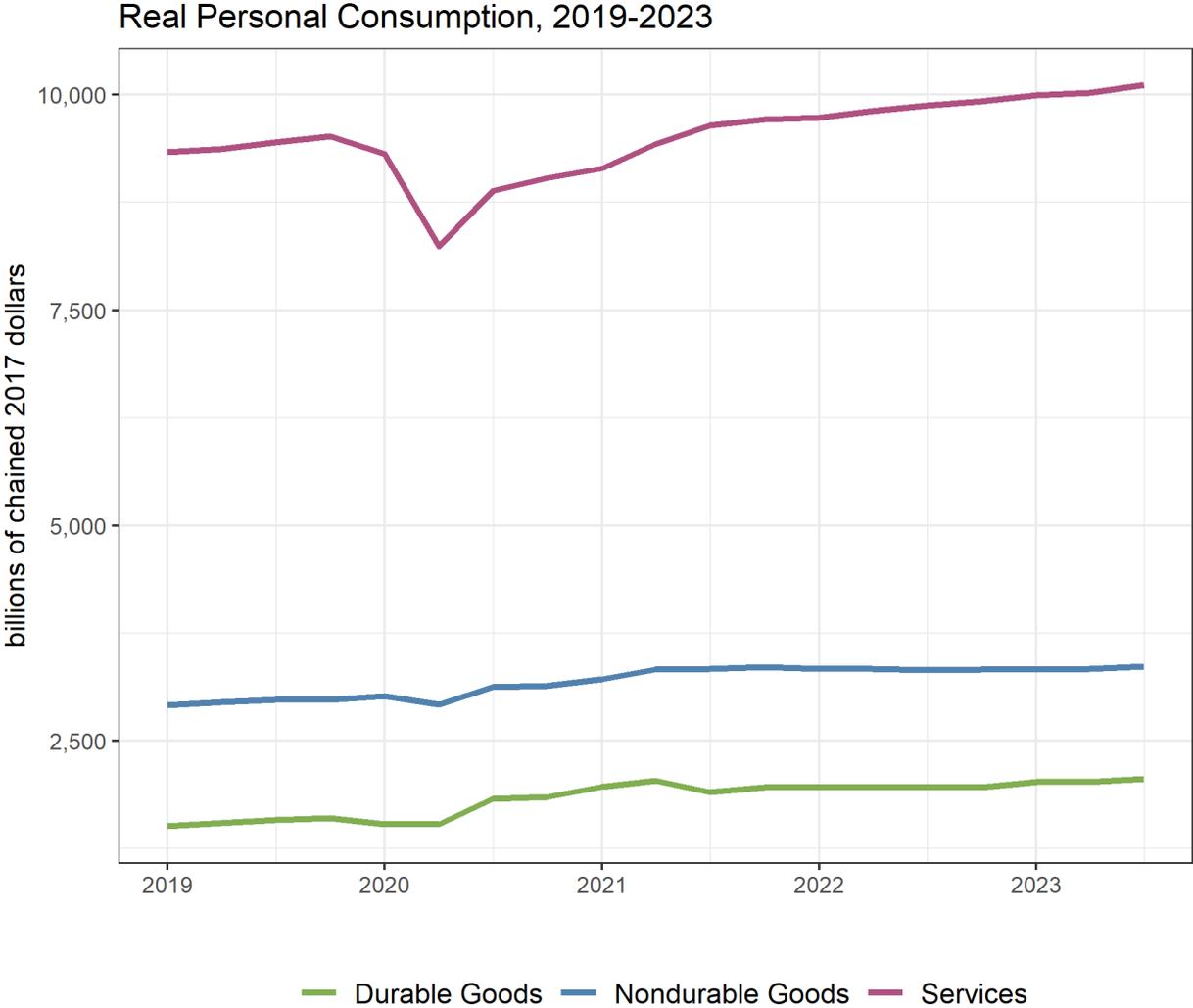
The Office of Consumer Affairs and Dispute Resolution Services (CADRS) helps private parties informally resolve disputes related to cargo and cruise voyage matters without the costs, risks and delays associated with pursuing formal legal actions. CADRS also offers mediation services for formal proceedings that have been filed at the Commission. All assistance is provided without charge.

In FY 2023, CADRS handled over 300 cases. Roughly 65 percent of cases involved commercial cargo, 25 percent involved passenger vessels/cruises and the balance involved household goods movement. The vast majority of the commercial cargo cases (80 percent) concern import cargo and 20 percent involve export cargo.

CADRS staff has taken on an additional role in Commission outreach. In FY 2023, staff participated in several industry events and met with multiple federal agencies. Much of this outreach work has been in support of export activities. In FY 2024, CADRS will continue expanding its outreach efforts.

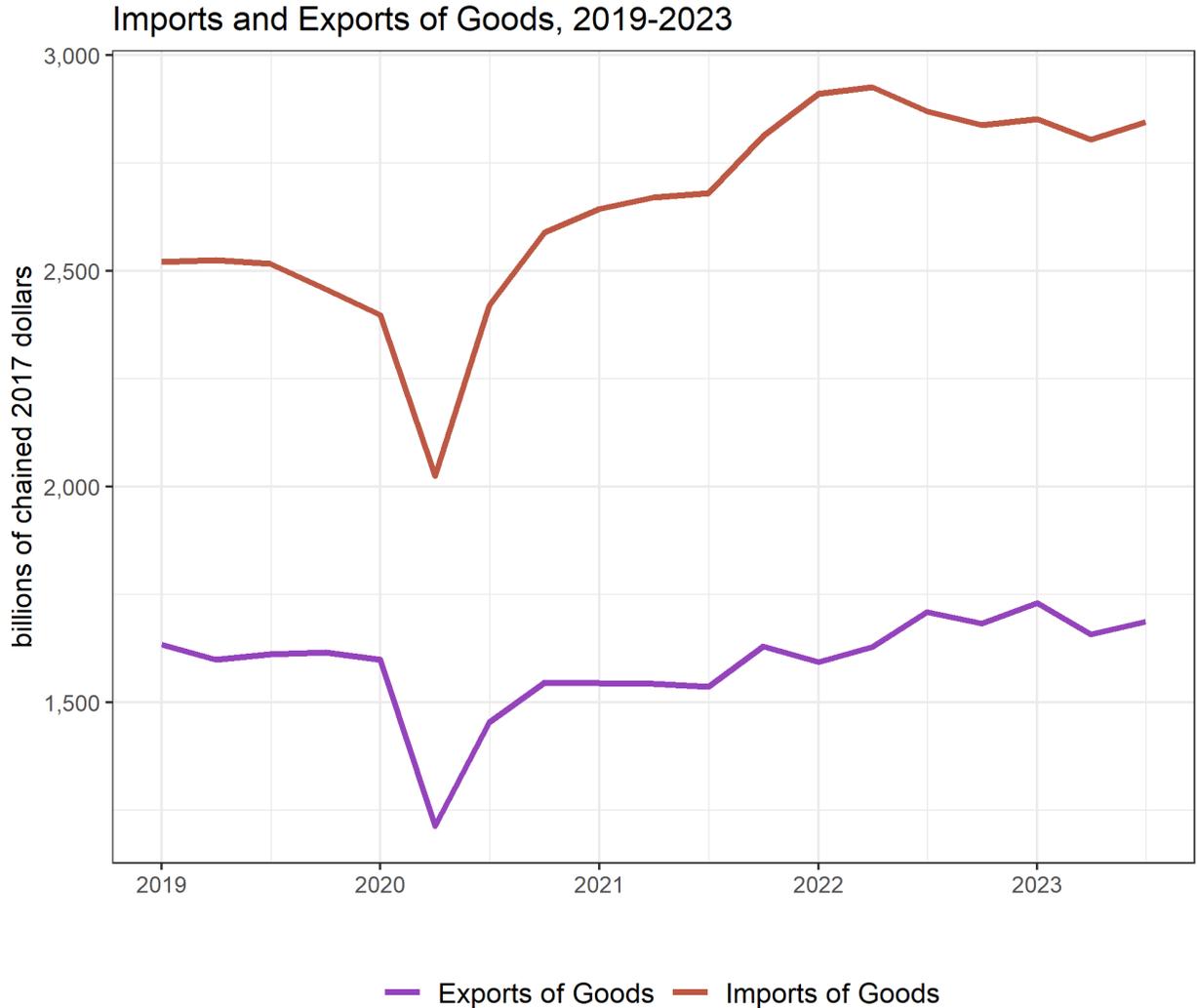
Developments in Major U.S. Foreign Trades

The shift in consumer demand from services to goods at the outset of the COVID-19 pandemic is well documented. By 2022, inflation-adjusted personal consumption on services had returned to pre-pandemic levels and rose throughout Q3 2023. While real consumer spending on both durables and nondurables was relatively flat in real terms in 2022 and 2023, consumer spending remains above pre-pandemic levels, particularly on durable goods.



source: U.S. Department of Commerce, Bureau of Economic Analysis

While increased spending on goods is typically associated with increased level of imports, real imports decreased throughout most of 2023, rebounding a bit in the third quarter. This is mainly attributed to high levels of inventory in the U.S. due to the surge in imports in 2022. On the export side, the value of real exports dropped in Q2 2023 and increased in the third quarter of the year.



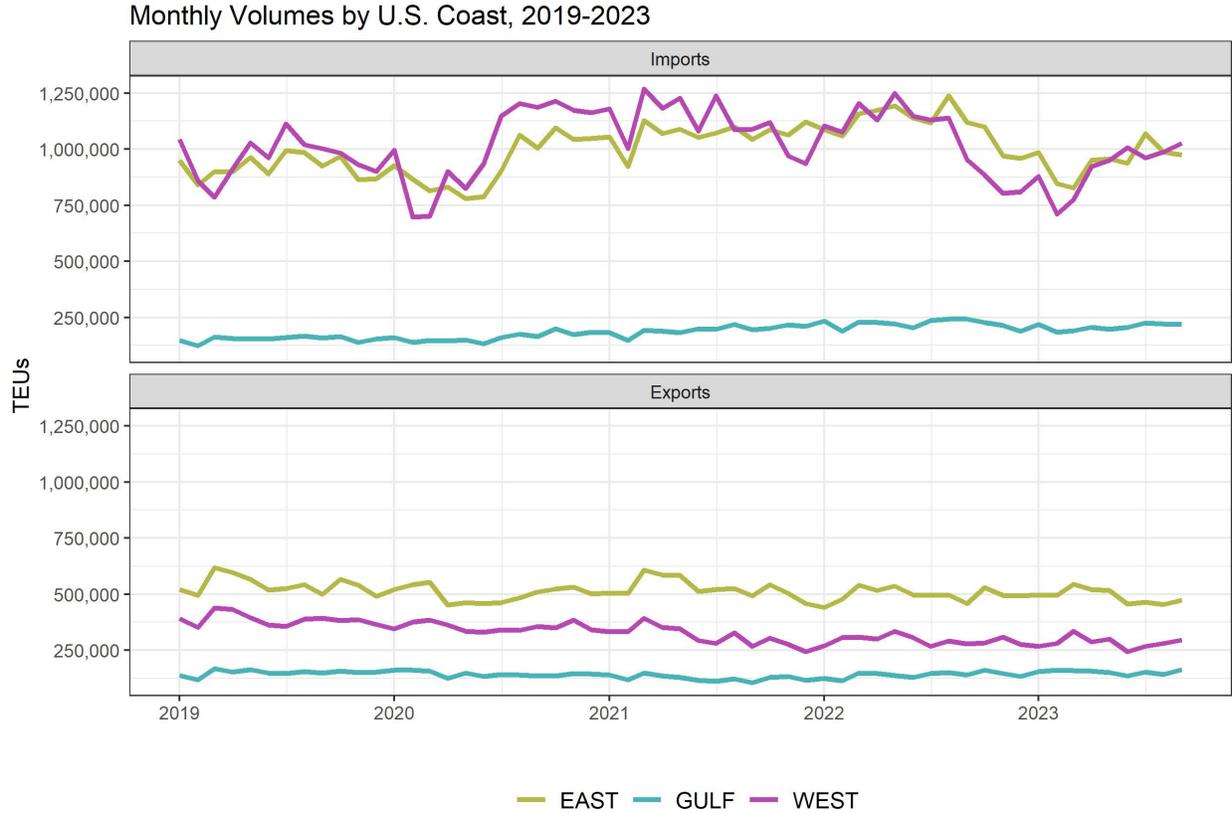
source: U.S. Department of Commerce, Bureau of Economic Analysis

Containerized U.S. Imports and Exports

Rates for containerized shipping dropped precipitously in 2023, due to the decreased congestion in global supply chains, declining demand for imports, and increased global capacity created by delivery of newbuild ships. Average rates in all key U.S. trade lanes have fallen from their COVID-era historic highs and returned to rates that are more historically normal.

The Drewry Container Freight Insight estimates the Shanghai to New York trade peaked in mid-2021 at roughly \$15,000 per forty-foot equivalent unit (FEU), dropped below \$4,000 by the end of calendar year 2022, and was approximately \$3,300 in September 2023. Rates from Shanghai to Los Angeles peaked at roughly \$12,000 in mid-2021 and were below \$3,000 for most of calendar year 2023. The September 2023 rate for this trade was roughly \$2,400.

On the transatlantic trade, Drewry reported rates for an FEU from Rotterdam to New York hovered at a high of roughly \$7,000 per FEU for most of 2022, before dropping throughout 2023 and settling at \$1,500 in September, lower than the 2019 rates on this trade. Rotterdam to Los Angeles rates were at \$2,790 in September 2023, roughly on par with the rates in spring 2019.

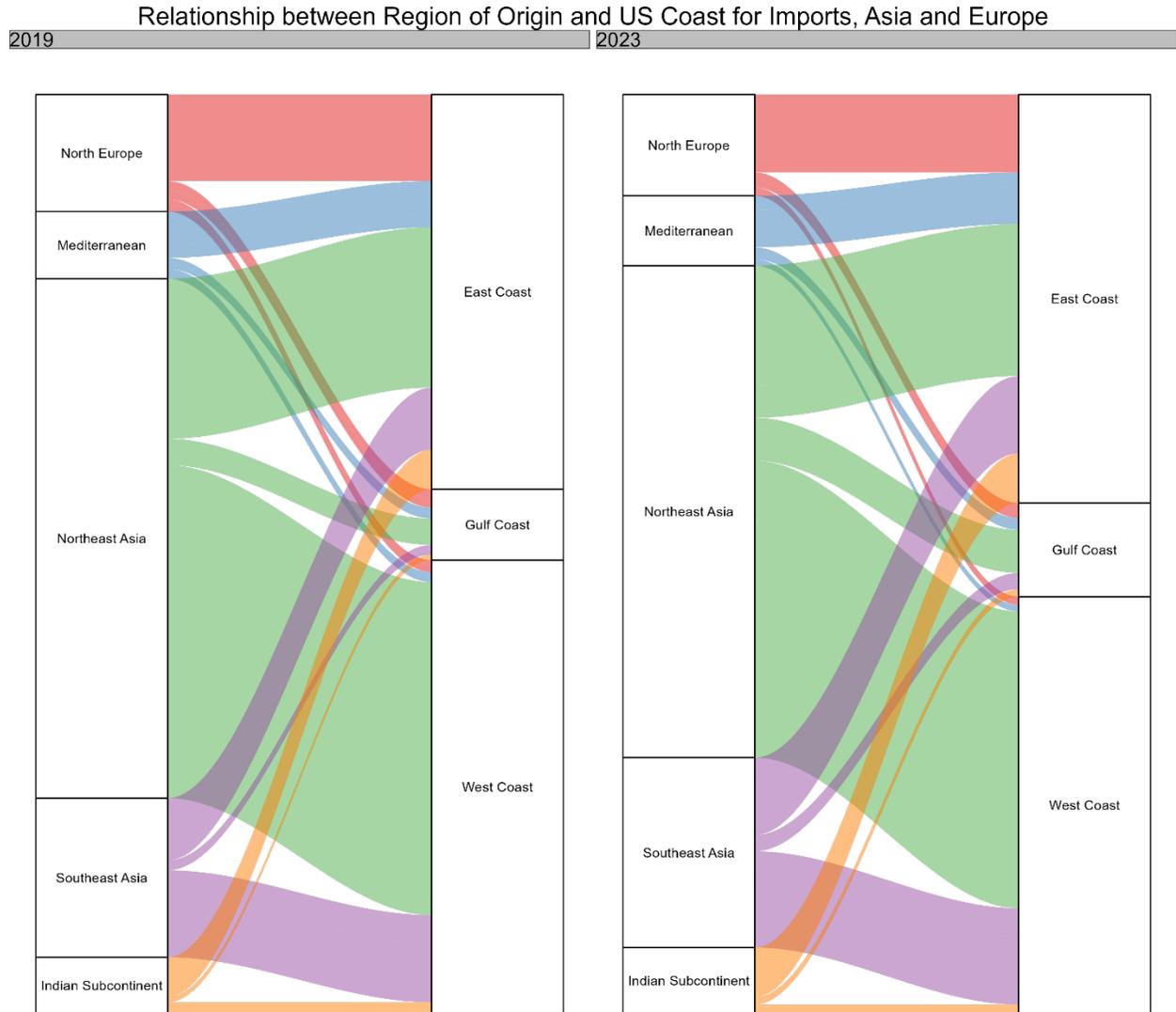


source: PIERS

Turning to container volumes (in TEUs) by coast, import volumes through the East and West Coast ports decreased from mid-2022 through the first few months of 2023 and then trended upward in spring and summer 2023. While total TEUs imported through the East Coast were greater than the West Coast in the second half of 2022 and beginning of 2023, they were roughly equivalent for the period July through September 2023. Export volumes were relatively stable across the last several months of 2022 and the beginning of 2023 before starting to decrease in the spring months.

The distribution of the major east-west trade among the U.S. coastal ports changed markedly post-pandemic, as depicted in the following two charts. The share of imports entering through the Gulf Coast increased between 2019 and 2023. Much of this was the result of an increased share of trade from Northeast Asia entering through Gulf ports as well as a slight increase in trade from Southeast Asia entering through the Gulf. The East Coast also increased its share of

containerized imports on the major east-west trades, with nearly all of that increase originating in Southeast Asia and the Indian subcontinent.



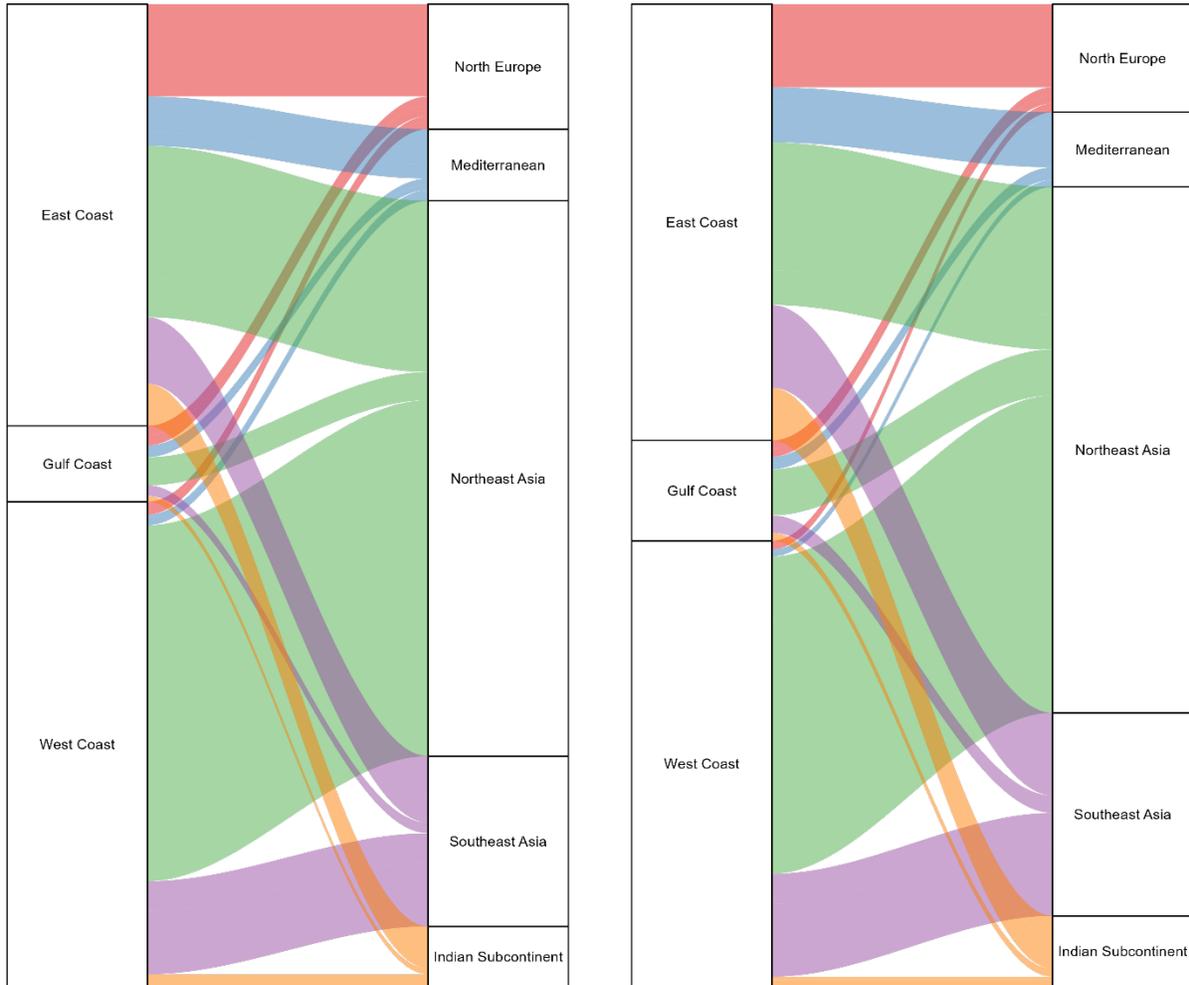
source: PIERS

Likewise, East Coast and Gulf Coast ports increased their shares of exports. The share of Southeast Asia and Indian subcontinent export trade grew between 2019 and 2023 and the East and Gulf Coast ports have increased their shares of this trade. They both have also increased slightly their share of the Northeast Asia export trade.

Relationship between US Coast and Region of Destination for Exports, Asia and Europe

2019

2023



source: PIERS

Report on Foreign Laws and Practices

Trading Partners

Section 46106(b)(1) of Title 46 requires the FMC to 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.” The most recent calendar year available from PIERS data is 2022. China remained the U.S.’s ocean top trading partner in containerized oceanborne cargo in 2022, though the total volumes decreased from nearly 14 million TEUs in 2021.

Rank	Country	TEUs
1	China (PRC)	13,320,873
2	Vietnam	2,914,367
3	South Korea	1,831,218
4	India	1,678,749
5	Taiwan (ROC)	1,298,111
6	Japan	1,293,458
7	Thailand	1,227,980
8	Germany	1,025,387
9	Indonesia	816,457
10	Malaysia	780,572
11	Belgium	773,409
12	Italy	744,939
13	Brazil	743,573
14	Guatemala	565,145
15	Turkey	492,683
16	Netherlands	480,522
17	Spain	449,382
18	Chile	397,486
19	Honduras	386,604
20	United Kingdom	375,163

Source: PIERS

The top 9 countries were identical to 2021. Brazil dropped from number 10 in 2021 to number 13 in 2022. Malaysia, Belgium, Italy, Netherlands, Turkey, and Spain moved up in the rankings.

Competitive Impact of Ocean Carrier Alliance Joint Purchase of Certain Covered Services

Section 46106(b)(6) of Title 46 requires the Commission to analyze agreements that jointly purchase certain covered services. THE Alliance jointly contracts for terminal services in the U.S. and is subject to alternative monitoring requirements. The FMC conducted two safety zone threshold tests based on U.S. Department of Justice/Federal Trade Commission (DOJ/FTC) guidelines using available data for FY 2023 (October 2022 — June 2023).⁷ In the first test, the number of container lifts jointly purchased by THEA were compared to the number of overall lifts in each port market where THEA jointly contracts, with the threshold being 35 percent. In the second test, the value of THEA's jointly purchased input (terminal services) was compared to the combined sales revenue of the members in each of the relevant trade lanes, with the threshold being 20 percent. In FY 2023, THEA operated within the safety zone thresholds.

Foreign Practices Cases

The Commission has the authority to address restrictive foreign shipping practices under Chapters 421 and 423 of the U.S. Code, as well as section 41108(d) of Chapter 411. Section 42101 empowers the Commission to make rules and regulations to adjust or meet conditions unfavorable to shipping in the foreign trade of the United States. Section 42302 directs the Commission to investigate whether any laws, rules, regulations, policies or practices of a foreign government or practices of a foreign carrier result in adverse conditions that affect U.S. carriers in U.S. oceanborne trade and that do not exist for foreign carriers in the United States. Section 41108(d) directs the Commission to address actions by a foreign government or foreign carrier that unduly impair the access of a U.S.-flag vessel to ocean trade between foreign ports.

On March 6, 2020, the Commission received a Petition for Section 19 relief from the Lake Carriers' Association, a trade association of owners and operators of vessels on the Great Lakes, alleging that conditions created by Transport Canada, an agency of the government of Canada, are unfavorable to shipping in the United States/Canada trade. The Lake Carriers' Association asserted that Transport Canada's proposed regulations requiring the installation of ballast water management systems on vessels loading or discharging ballast water in Canadian waters would drive U.S.-flag vessels from the cross-lakes U.S. export trade with Canada. On June 16, 2020, the Commission issued a Notice of Investigation and Request for Comments. 85 Fed. Reg. 37453. The comment period closed on July 22, 2020, and the Commission received 21 comments, mostly in support of the Petition.

On October 26, 2020, the U.S. Environmental Protection Agency published a Notice of Proposed Rulemaking (NPRM) regarding Vessel Incidental Discharge National Standards of Performance. 85 Fed. Reg. 67818. Like the Canadian rule, the EPA's proposed rule intends to reduce the

⁷ U.S. Department of Justice/Federal Trade Commission. Antitrust Guidelines for Collaborations Among Competitors (April 2000) <https://www.justice.gov/media/970831/dl?inline>. Data used for these tests include those directly collected from THEA through monitoring and data from PIERS.

environmental impact of vessel discharges, such as ballast water. Though similar in intent, it is unclear if the EPA's final rule will ultimately match the Canadian rule. The EPA's approach to Great Lakes ballast water contained in their proposed rule did not align with the Canadian approach and will not have an effect on the U.S.-Great Lakes fleet. The NPRM required that comments be received on or before November 25, 2020. On June 4, 2021, Transport Canada issued its final rule. *See* Ballast Water Regulations: SOR/2021-120, Canada Gazette, Part III, Volume 155, Number 13 (June 4, 2021). The general approach to the Canadian regulation of Great Lakes ballast water did not change. However, while the effective date of the final rule remains 2024, the rule delayed implementation until 2030 for vessels built prior to 2009.

On February 3, 2022, the Commission sought additional comment on Transport Canada's final rule. 87 Fed. Reg. 6173. The Commission requested specific input in several areas, including: the application and economic impact of the final Canadian regulation, considerations of the EPA's proposed rule, applicable international law, and the range of possible Commission actions. The Commission received eight comments, two of which are public. In January 2023, the EPA announced that it planned to issue an SNPRM in fall 2023 to provide clarification on the proposed rule, share new ballast water data that EPA is receiving from the U.S. Coast Guard, and discuss additional regulatory options the EPA is considering for the final rule.

The Commission continues to monitor the situation and remains in contact with other relevant federal agencies as it proceeds with its investigation. At this time, the Commission does not have any recommendations for additional legislation in this area.

Controlled Carriers and Commission Identification of Otherwise Concerning Practices

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. Chapter 407 of Title 46, U.S. Code 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.

As of the end of fiscal year 2023, four controlled carriers operated in the U.S. trades. All four controlled carriers are subsidiaries of COSCO SHIPPING Holdings Co., Ltd.:

1. COSCO SHIPPING Lines Co., Ltd. – People’s Republic of China
2. Orient Overseas Container Line Limited – People’s Republic of China
3. OOCL (Europe) Limited – People’s Republic of China
4. COSCO Shipping Lines (Europe) GmbH – People’s Republic of China

OSRA 2022 revised the Commission’s annual reporting provisions to require the Commission to identify any “otherwise concerning practices” by ocean common carriers that are controlled carriers or “owned or controlled by, a subsidiary of, or otherwise related legally or financially, to a corporation based in a country” that is: (1) a non-market economy country, as determined by the U.S. Department of Commerce; (2) a priority foreign country, as determined by the U.S. Trade Representative; or (3) subject to monitoring by the U.S. Trade Representative under section 306 of the Trade Act of 1974, 46 U.S.C. § 46106(b)(7).

The Commission identified or continues to investigate two concerning practices by controlled carriers in the past fiscal year. One is the manufacturing of shipping containers and chassis by the People’s Republic of China (P.R.C), which is analyzed in Commissioner Bentzel’s recent report, “Assessment of P.R.C. Control of Container and Intermodal Chassis Manufacturing.” Commissioner Bentzel assessed the increasing unavailability of shipping containers during the port congestion and supply chain crisis of the COVID-19 pandemic, and produced this report following that investigation. The report noted that COSCO Shipping Lines Co. Ltd., which is on the Commission’s controlled carrier list, is a shareholder of the major Chinese shipping container producer CIMC, and that Chinese chassis manufacturers are similarly state-owned. In addition, the three largest Chinese manufacturers control over 86 percent of the world’s supply of intermodal chassis, and those same companies manufacture over 95 percent of containers in the global shipping market, including U.S. domestic train and truck intermodal containers. At the height of the COVID-19 pandemic and supply chain crisis, China took steps to consolidate the production of shipping containers and chassis. As demand for ocean containers increased during this period, Chinese intermodal equipment manufacturers were slow to increase production.

Secondly, an adjudicatory proceeding captioned *Bed, Bath and Beyond v. Orient Overseas Container Line Limited and OOCL (Europe) Limited* (Docket No. 23-02) is currently before one of the Commission’s Administrative Law Judges. Both Orient Overseas Container Line Limited and OOCL (Europe) Limited are controlled carriers, and COSCO Shipping Lines is also named as a respondent. The complaint alleges that these carriers exploited price inflation in container shipping during the pandemic, resulting in a large increase in Respondents’ profitability at the expense of shippers and the U.S. public. The complaint also alleges that the named controlled carriers specifically adopted the following strategies: (1) they engaged in a practice of systematically failing to meet their service commitments, and allocated Bed, Bath and Beyond’s bargained-for space to other shippers at a higher price; (2) many of the demurrage and

detention charges that the controlled carriers assessed were for periods of time in which Bed, Bath and Beyond's ability to pick up or return containers was constrained due congestion at ports or policies implemented by the controlled carriers; and (3) the controlled carriers sought to coerce premium pricing by inducing Bed, Bath and Beyond to enter into premium rate contracts as a precondition to carry a fraction of the quantity commitment to which Bed, Bath and Beyond had already committed. The complaint alleges that Respondents' practices were knowing and deliberate. This adjudication is ongoing, and a decision is expected in 2024.

International Affairs Program

The Commission's international affairs program supports the agency's mission to ensure and maintain a competitive and reliable international ocean transportation supply system. The program contributes to this goal by enhancing awareness of regulatory requirements through education and outreach with private sector and foreign government representatives, at both staff and leadership levels. The program also supports the Commission's unique, independent authority to identify and address unfavorable conditions created by foreign governments or businesses in foreign shipping trades. Finally, the international affairs work contributes to the agency's mandate to actively monitor foreign government-owned controlled carriers in U.S. trades.

Throughout the year, the Commission hosted or attended in-person and virtual meetings with foreign peer regulatory agencies to share information about the Commission's role and authorities, and to improve its familiarity with foreign shipping and competition regulations. In April 2023, the Commission hosted the Belmont Shipping Club, a group of 17 maritime nations and a delegation from the European Union, at FMC headquarters in Washington, D.C. Commission staff met at the working level with many parties throughout the fiscal year, including staff from embassies and ministries of Australia, New Zealand, the United Kingdom, the European Commission, and Ports Australia. The Commission hosted a working-level meeting in September 2023 with representatives from Brazil's Agência Nacional de Transportes Aquaviários (ANTAQ).

Individual Commissioners broadly engaged with foreign government counterparts. The Chairman participated virtually in a bilateral meeting with the United Kingdom's Department for Transport (DfT), in December 2022, and Commissioner Dye met with DfT representatives in June 2023. She also met with the United Kingdom's Competition and Markets Authority (CMA) in May 2023, and the Chairman met with CMA during London International Shipping Week in September 2023. The Chairman met with the European Union regulators in Belgium in February 2023. Commissioner Bentzel also met with representatives from the European Union in Belgium in March 2023. Commissioner Dye participated remotely in a bilateral meeting with South Korea's Ministry of Oceans and Fisheries in August 2023. Commissioner Sola traveled to South Korea in August 2023 to engage with the Port of Busan and participate in a meeting between the South Korean Prime Minister Han Duck-soo and Panamanian Minister of Private Investment

Jose Alejandro Rojas Pardini. Also in August 2023, the Chairman participated in a bilateral meeting in Washington, D.C., with representatives from the Vietnam Maritime Administration.

Information Technology

The Commission ensures that IT investments are efficiently aligned with and implemented based on its strategic priorities. The Commission is revising its IT governance policies as part of longer-term initiative to update our IT investment management framework, enhance IT spending transparency, gain visibility into the demand from customers and the cost to serve them, and optimize the level of enterprise IT spending to support key mission goals and objectives.

The Commission uses multiple legacy systems to collect information from the public and regulated entities that must be modernized. The modernization of these systems will improve efficiency in the way the Commission interacts with the ocean shipping industry to collect required information, the management and use of the data collected, and mitigate cybersecurity risks. In FY 2023, the Commission completed an initial evaluation of its IT infrastructure, with a focus on cybersecurity risk mitigation and system integration. This evaluation included a roadmap and initial budget estimate. The IT modernization project plan will be finalized in the first half of FY 2024.

The modernization plan will include the replacement of several independent systems and fillable forms submitted by regulated entities and the shipping public and will feature the integration of systems to streamline cross-office activities. The modernized systems will have enhanced analytic capabilities, including dashboards, to support data-driven compliance and enforcement actions and enhance reporting capabilities.

Through its evaluation of the current systems modernization needs, the Commission has identified legacy applications and manual processes that should be replaced by commercial off-the-shelf case management solutions. This includes key work in support of investigations, enforcement, and consumer assistance.

In addition to replacing legacy applications, the agency has identified multiple functions handled through manual or ad hoc processes that reduce staff effectiveness. In FY 2024 and FY 2025, these areas will be modernized through procurement and customization of commercial off-the-shelf solutions. This will include e-signature workflow management and court management systems, as the increased filings since FY 2020 has made the replacement of ad hoc processes an agency priority.

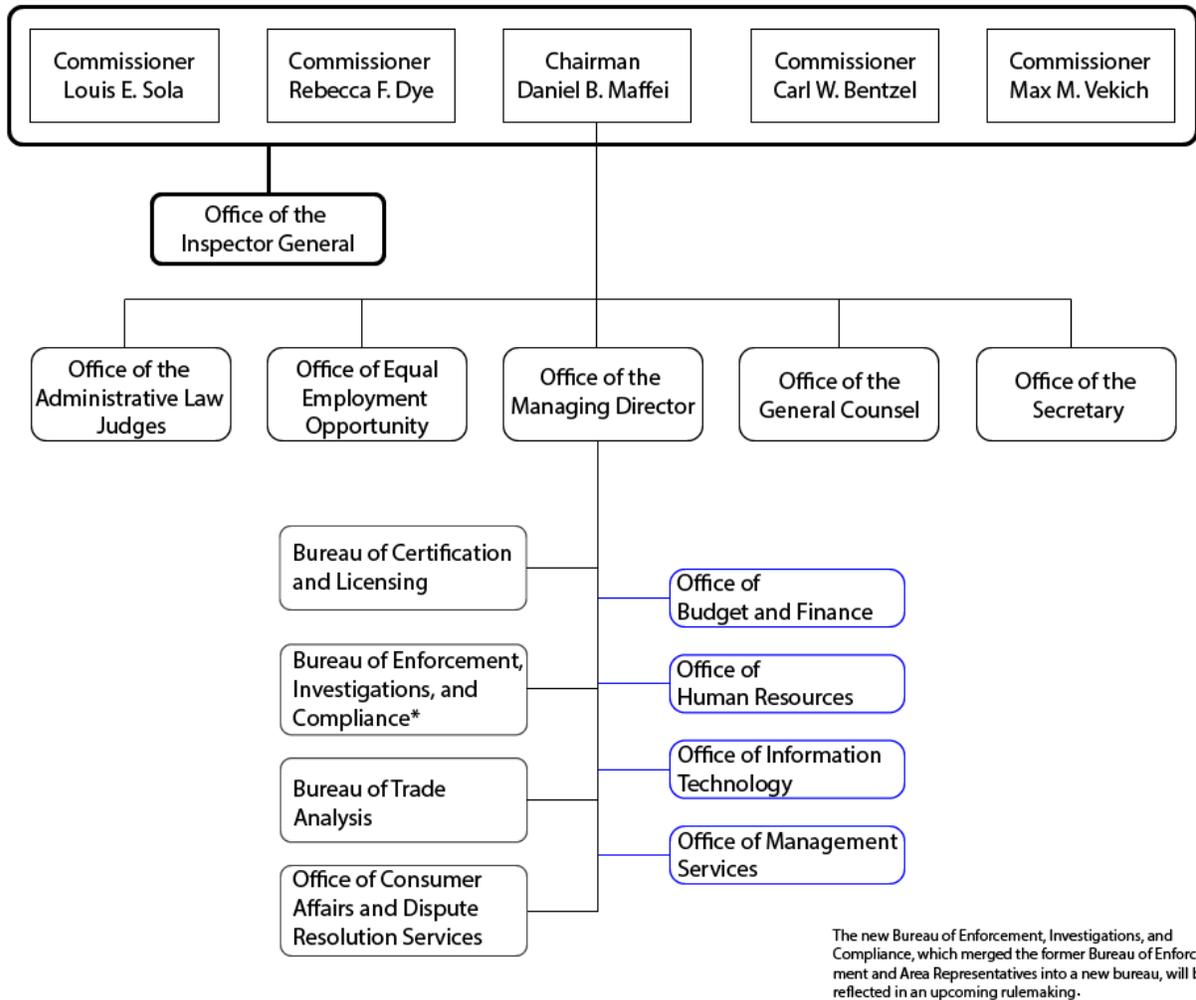
In FY 2023, the Commission began work to replace the current FOIA and Privacy Act processing functions that are handled via email and an Excel-based tracking system with off-the-shelf FOIA software. This work will continue in FY 2024.

In addition, also in FY 2023, the Commission began modernizing its website through a contract with the GSA Center of Excellence. The resulting website will serve the shipping public by enhancing awareness of agency resources, remedies, and regulatory requirements and by making the FMC's web content easily searched and accessible. The agency will ensure that its materials are compliant with Section 508 best practices. This project is composed of two phases: (1) planning and design; and (2) implementation and launch, slated to be complete in FY 2024.

The Commission continues to prioritize its cybersecurity framework through infrastructure enhancements and maturation of its cybersecurity and privacy programs. Improvements include an integrated cybersecurity incident and privacy breach response plan, enhanced cybersecurity monitoring and response, and an improved ability to continue business/mission operations in the event of a cyberattack. The agency continues to identify opportunities to address gaps in its security to enable better decision-making and improve leadership visibility and oversight.

Appendix A: Organization Chart

The FMC is composed of five Commissioners nominated by the President and confirmed by the Senate, each serving a staggered five-year term. The Commission is a bipartisan body; no more than three members of the Commission may be of the same political party. One Commissioner, designated by the President, serves as Chairman, Chief Executive, and Chief Administrative Officer of the Commission.



Appendix B: Statement of Appropriations, Statement of Custodial Activity, and Financial Operations

Statement of Appropriations - Public Law 117-328:

For necessary expenses of the Federal Maritime Commission as authorized by 46107 of title 46, United States Code, including services as authorized by section 3109 of title 5, United States Code; hire of passenger motor vehicles as authorized by section 1343(b) of title 31, United States Code; and uniforms or allowances therefore, as authorized by sections 5901 and 5902 of title 5, United States Code, \$38,260,000: Provided, That not to exceed \$3,500 shall be for official reception and representation expenses.

	2023	2022
Fines, Penalties, and Forfeitures	\$ 2,896,852	\$ 2,082,000
General Fund Proprietary Receipts (User fees)	425,994	253,715
Refunds of Proprietary Receipts (User fees)	(250)	(480)
Interest	98	-
Total Custodial Collections	\$ 3,322,694	\$ 2,335,235

Financial Operations: For a detailed review of the FMC's financial operations, including expenditures, please refer to the FMC's Congressional Budget Reports and its Performance and Accountability Reports found at <https://www.fmc.gov/about-the-fmc/strategies-budgets-and-performance/>.



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