

**FEDERAL MARITIME  
COMMISSION**

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**46th  
ANNUAL REPORT**

**for**

**Fiscal Year**

**2007**





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

March 31, 2008

To the United States Senate and House of Representatives:

Pursuant to section 103(e) of Reorganization Plan No. 7 of 1961, and section 208 of the Merchant Marine Act, 1936, now codified, as amended, at 46 U.S.C. §306 (a), I am pleased to submit the 46th Annual Report of the activities of the Federal Maritime Commission for fiscal year 2007.

Sincerely,

A handwritten signature in cursive script that reads "Karen V. Gregory".

Karen V. Gregory  
Assistant Secretary



## MEMBERS OF THE COMMISSION \*



*Steven R. Blust\*\*  
Chairman  
Appointed 2002  
Term Expired 2006*



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



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



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



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

\*One vacancy as of December 1, 2006

\*\*Chairman Blust resigned as of November 30, 2006





## SENIOR COMMISSION OFFICIALS

Counsel to Commissioner Anderson . . . . *Lucille A. Streeter*  
Counsel to Commissioner Brennan . . . . *Steven D. Najarian*  
Counsel to Commissioner Creel . . . . . *David R. Miles*  
Counsel to Commissioner Dye . . . . . *Edward L. Lee, Jr.*  
General Counsel . . . . . *Amy W. Larson*  
Secretary . . . . . *Bryant L. VanBrakle*  
Administrative Law Judge . . . . . *Clay Guthridge*  
Director, Office of  
Equal Employment Opportunity . . . . . *Carmen G. Cantor*  
Inspector General . . . . . *Adam Trzeciak*  
Director of Administration . . . . . *Peter J. King*  
Director of Operations . . . . . *Austin L. Schmitt*  
Director, Bureau of Certification  
and Licensing . . . . . *Sandra L. Kusumoto*  
Director, Bureau of Enforcement . . . . . *Vern W. Hill*  
Director, Bureau of  
Trade Analysis . . . . . *Florence A. Carr*



*Vision*

*Fairness and Efficiency in U.S. Maritime Commerce*

*FMC Mission*

*The FMC's Mission is to:*

- *Develop and administer policies and regulations that foster a fair, efficient and secure maritime transportation system;*
- *Protect U.S. maritime commerce from unfair foreign trade practices and market-distorting activities;*
- *Facilitate compliance with U.S. shipping statutes through outreach and oversight;*
- *Assist in resolving disputes*



# I

## THE COMMISSION

### A. HISTORY

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

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

### B. FUNCTIONS

The principal statutes administered by the Commission are the Shipping Act, the Foreign Shipping Practices Act of 1988 (“FSPA”), section 19 of the Merchant Marine Act, 1920 (“1920 Act”), and Pub. L. No. 89-777. Most of these statutes were amended by OSRA and are now codified in Title 46 of the U.S. Code at sections 44103 through 40904.

The Commission's regulatory responsibilities include:

- **Reviewing agreements among ocean common carriers and marine terminal operators (“MTOs”) relating to service in the U.S. foreign oceanborne trades, to ensure that they do not cause substantial increases in transportation costs or decreases in transportation services.**
- **Reviewing service contracts between ocean common carriers and shippers to guard against detrimental effects to shipping in the U.S. foreign trades.**
- **Ensuring that common carriers’ tariff rates and charges are accessible to the shipping public in private, electronically accessible systems.**
- **Regulating rates, charges, and rules of government-owned or -controlled carriers to ensure that they are just and reasonable.**
- **Issuing passenger vessel certificates evidencing financial responsibility of vessel owners or charterers to pay judgments for personal injury or death, or to refund passenger fares for the nonperformance of a voyage or cruise.**
- **Licensing ocean transportation intermediaries (“OTIs”) in the U.S. to protect the public from unqualified, insolvent, or dishonest companies.**
- **Ensuring that OTIs maintain sufficient financial responsibility to protect the shipping public from financial loss.**
- **Ensuring against harm to the shipping public by investigating rates, charges, classifications, and**

**practices of common carriers, MTOs, and OTIs operating in the foreign commerce of the U.S.**

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

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

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

The Commission is authorized to take action to ensure that the foreign commerce of the U.S. is not burdened by non-market barriers to ocean shipping. The Commission may take countervailing action to correct unfavorable shipping conditions in U.S. foreign commerce and may impose penalties. The Commission may address actions by carriers

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

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

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

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

## **C. ORGANIZATION**

The Commission is composed of five commissioners appointed by the President with the advice and consent of the Senate. Commissioners serve five-year, staggered terms, and no more than three members of the Commission may belong to the same political party. The President designates one of the commissioners to serve as chairman. The chairman is the chief executive and administrative officer of the agency.

The Commission's organizational units consist of: Office of the General Counsel; Office of the Secretary (including the Library and the Office of Consumer Affairs and Dispute Resolution Services); Office of Administrative Law Judges; Office of Equal Employment Opportunity; Office of the Inspector General; Office of Administration (including the Offices of Financial Management, Human Resources, Information



Technology, and Management Services); and Office of Operations (including the Bureaus of Certification and Licensing, Enforcement, Trade Analysis and the Commission's Area Representatives).

In fiscal year 2007, the Commission was authorized a total of 180 full-time equivalent positions and had a total appropriation of \$20,427,910. That appropriation supported the actual employment of 119 full-time equivalent positions during the fiscal year. While the majority of its personnel are located in Washington, D.C., the Commission has Area Representatives in Houston, Los Angeles, New Orleans, New York, Seattle and South Florida.



## II

### THE YEAR IN REVIEW

Fiscal year 2007 was another year of growth in the U.S. liner trades. Total cargo volume of U.S. liner exports grew by 12 percent, in contrast to the slight decline in imports for the first time in years. Notably, cargo growth in imports from Asia slowed substantially this fiscal year, though China continued to be the leading trading partner in liner cargo with the U.S.

The Commission continued to monitor the international liner trade, focusing this fiscal year in large part on issues relating to ocean common carriers and marine terminal operators in filed agreements. The Commission kept close watch on agreements that had potential for the greatest impacts, namely the Transpacific Stabilization Agreement and the development of the Clean Truck Program (“CTP) in the Ports of Los Angeles and Long Beach under the Los Angeles and Long Beach Port Infrastructure and Environmental Programs Cooperative Working Agreement. The Commission saw a welcome decline in the number of household goods complaints received this year, possibly attributable to formal action and outreach undertaken in the previous year.

Continuing to focus on improving accessibility to the public, the Commission made available an electronic method for filing an application for an ocean transportation intermediary license. Use of the electronic application is voluntary at this time and is available at a reduced filing fee. The Commission undertook a number of compliance presentations and public service announcements in major port areas. The Commission’s website was continually updated to maintain current and useful information in a user friendly fashion.

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

## **A. OUTREACH**

During the fiscal year, the Commission continued to update and improve access to information through its website. New and revised Frequently Asked Questions were posted, and links were updated throughout the Commission's site on an ongoing basis. The Commission continually evaluated the overall usefulness of the site and coordinated efforts agencywide to improve the website's content and user friendliness.

The Commission also continued its ongoing effort to expand contact with all segments of the maritime community and the shipping public. Several initiatives were undertaken by Commission staff during the year to improve industry outreach, including updating educational and informational material.

During fiscal year 2007, the Commission continued to make more information and filed documents available electronically and to improve responsiveness to requests for public information. Specifically, the Commission continued to make key documents filed in formal proceedings available to the public through its website and integrated the Commission's internal complaints database with other internal databases to facilitate the agency's ability to provide timely information regarding cargo and cruise complaints to the public.

The process of electronically scanning/imaging Commission records also continued during fiscal year 2007. Data migration from the old system to the new one was completed, and the new system became fully functional during the fiscal year. The new system has helped support the agency's initiatives for continuity of operations by improving preservation of and Commission staff access to Commission documents, as well as improving Commission staff response time to public inquires and public access to electronic files.

## B. TRADE DEVELOPMENTS

In fiscal year 2007, the total cargo volume of U.S. liner exports shipped worldwide grew by 12 percent due largely to the weak value of the U.S. dollar relative to foreign currencies, which made U.S. goods more affordable abroad. Total liner imports to the U.S. declined slightly by a little over one percent for the first time in many years. While import cargo still exceeded export cargo, the imbalance in cargo volume improved as a result of the strong export growth. For every loaded twenty-foot equivalent container unit (“TEU”) exported out of the U.S., 1.8 TEUs were imported. As in preceding years, China was the leading trading partner in liner cargo with the U.S., and over half of all U.S. liner cargo (imports and exports) was concentrated in trade with countries in Northeast Asia. Containership capacity on the world market continued to grow at a steady pace ahead of demand. Additional capacity growth is anticipated for the future because of the considerable number of containerships on order, particularly those with individual vessel capacities of 10,000 TEUs or more. Concentration in the liner shipping industry increased during the fiscal year, with the top ten ocean carriers in control of 60.5 percent of the world’s containership capacity, up from 53 percent in the preceding fiscal year.

In the largest of the U.S. liner trades, cargo growth in imports from Asia slowed substantially to less than one percent, down from a growth rate of 15 percent in fiscal year 2006. The drop in import growth was attributed to the declining U.S. housing market, the rising cost of energy and fuel, and the product safety problems of goods made in China. Conversely, U.S. liner exports to Asia grew by 11 percent, up from a 6 percent increase in the preceding fiscal year. A number of membership changes and modifications occurred in the carrier rate discussion agreements that operate in the trade. In the inbound direction from Asia, the market share of the *Transpacific Stabilization Agreement* (“TSA”) increased from 60 to 80 percent as three carriers joined the agreement. TSA further expanded its geographic scope to include the Indian Subcontinent, and reorganized its internal structure and committees. In the outbound direction, a carrier member withdrew from the *Westbound*

*Transpacific Stabilization Agreement* (“WTSA”), and the market share of the agreement was about 68 percent.

In the transatlantic, U.S. liner exports to North Europe grew by 15 percent. The continued depreciation of the U.S. dollar against European currencies stimulated U.S. export growth, particularly in the emerging East European market. Liner imports from North Europe, however, declined by 5 percent. The amount of cargo volume in each trade direction was more balanced, but vessel capacity utilization was low due to a substantial amount of excess capacity in the trade. Certain carriers in the trade endeavored to rationalize and cut their services and capacity. However, vessel upgrades to existing services tended to offset any capacity reductions, and the amount of vessel capacity deployed in the trade remained relatively stable throughout the fiscal year. Rate initiatives by carriers were largely ineffective. It was reported at the end of the fiscal year that base freight rates had fallen, but increases in surcharges assessed by carriers to recover fuel costs appeared to be holding to a greater extent. In this regard, members of the *Trans-Atlantic Conference Agreement* (“TACA”) increased their tariff surcharge for fuel cost by 54 percent from the start to the end of fiscal year 2007. The market share of the conference was around 37 percent in each trade direction. On regulatory matters, the repeal of the block exemption for liner shipping conferences by the European Union (“EU”) is scheduled to take effect in October 2008. In preparation for the repeal, the European Commission (“EC”) is formulating guidelines on the application of EU competition rules to maritime transport services and reviewing its consortia regulations for ocean liner carriers.

Between the U.S. and the Mediterranean, U.S. liner exports rose substantially by 26 percent, while liner imports from the region decreased by 8 percent, which was attributed to a decline in the U.S. demand for home furnishings and building materials. Imports from Italy and Spain were especially hard hit by the slump in the U.S. housing market. Excess vessel capacity in the trade kept utilization levels low. Several major carriers in the trade terminated services to reduce excess capacity. By the end of the fiscal year, vessel capacity was down by 6 percent in the inbound direction and 3 percent in the outbound direction. The poor utilization levels generally suppressed any rate initiatives in the trade.

Mediterranean Shipping Co. (“MSC”) was the largest carrier in the trade, with a market share of around 20 percent in each trade direction.

In the trade between the U.S. and Australia/Oceania, liner cargo volume rose by over 7 percent in the outbound (export) trade direction and over 4 percent in the inbound (import) trade direction. During the fiscal year, most of the major carriers operating in the trade adjusted their services and operational arrangements. By the end of the fiscal year, there were six direct liner services operating in the trade, of which three call at U.S. Pacific ports, and three call at U.S. Atlantic ports. Significantly, almost a quarter of the liner cargo in the trade was moved indirectly via transshipment services. In the inbound direction from Australia to the U.S., the rate discussion agreement was modified to include New Zealand within its authority and geographic scope; the amended agreement was renamed the *Australia-New Zealand/United States Discussion Agreement*. In addition, ANL Singapore Pte. Ltd. joined the discussion agreement, which increased its membership to four carriers with a market share of about 80 percent.

## **C. RESTRICTIVE TRADE PRACTICES**

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

The Commission continued to monitor regulations and port practices of the Government of Japan. In fiscal year 2001, the Commission revised its semiannual reporting requirement for U.S. and Japanese carriers. The Commission continued to require these semiannual reports in fiscal year 2007 and to review them for any developments in Japanese practices.

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

## **D. TRADE OVERSIGHT**

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



During the fiscal year, the Commission addressed a number of issues relating to the activities of ocean common carriers and marine terminal operators pursuant to agreements on file at the FMC. Commission staff met with representatives of the *Transpacific Stabilization Agreement* (“TSA”) on two separate occasions in accordance with the 2003 settlement agreement of the Commission’s fact-finding involving TSA members’ service contracting practices, *FMC Fact-Finding Investigation No. 25 – Practices of Transpacific Stabilization Agreement Members Covering the 2002-2003 Service Contract Season*. In addition, staff prepared economic analyses to examine the prevailing market conditions and the likely competitive impact of a number of TSA issues that went before the Commission. These included the addition of three new carrier members to TSA, and the reincorporation of the Indian Subcontinent into the geographic scope of TSA pursuant to an addendum to the 2003 settlement agreement and an amendment filing to the agreement.

While the Commission also conducted other specific monitoring and research projects in fiscal year 2007, detailed later in this Annual Report, one major development was the Clean Truck Program (“CTP”) being proposed and discussed as part of the Clean Air Action Plan under the *Los Angeles and Long Beach Port Infrastructure and Environmental Programs Cooperative Working Agreement*. Under the CTP, the Ports of Los Angeles/Long Beach (“Ports”) are considering proposals that could, among other things: (1) set diesel emissions requirements for trucks used for drayage service at the Ports’ marine terminals; (2) implement a drayage truck replacement (or retrofit) program enforcing the Ports’ emissions requirements; and (3) finance the truck replacement program (in part) through the assessment of a fee on container cargo drayed by truck through the Ports’ marine terminals. In addition, the Ports are considering options that could provide that trucking companies only be allowed to operate drayage service through licensed concessions administered by the Ports, which might be conditional on the companies owning a fleet of trucks and hiring a staff of drivers as full-time employees.

Numerous groups and organizations representing parties that could be affected by the CTP, including shippers and motor carriers, expressed concerns before the Commission that the Ports’ actions under the agreement pose potential violations of the Shipping Act in multiple

respects. Primary among these concerns is the likely impact of the CTP on the levels of drayage service and cargo throughput at the Ports' marine terminals. The Commission has closely monitored these developments to assess the reasonableness of the Ports' activities, and the concerns of affected parties, under the Shipping Act. In this regard, the Commission's staff has met with a wide range of interested parties to hear their views on the CTP and its likely impact. On two occasions over the fiscal year, Commission staff traveled to the area to meet directly with officials of the Ports to gather information on the CTP and discuss its development and the concerns expressed about its proposals. On another occasion, the Ports' staff visited the Commission to provide updates on the CTP. The Ports are in the process of phasing in various components of the CTP, and the Commission will continue to review these developments closely in accordance with its statutory authority.

## **E. ALTERNATIVE DISPUTE RESOLUTION**

During fiscal year 2007, the Commission continued to emphasize the role of alternative dispute resolution ("ADR") in resolving shipping industry disputes, and encouraged parties to disputes to utilize the program in lieu of litigation. Through the Office of Consumer Affairs and Dispute Resolution Service ("CADRS"), the Commission provides services to assist parties in resolving disputes and shipping problems in the U.S. maritime industry that affect international ocean shipping. These include a broad range of services designed to avoid the expense and delays inherent in litigation, and to facilitate the flow of U.S. ocean commerce.

Another function of CADRS includes the adjudication of small claims through informal proceedings under 46 CFR Part 502, Subpart S. Office personnel serve as settlement officers in such cases, which involve complaints seeking reparations up to \$50,000 for violations of the shipping statutes. Those claims generally involve alleged prohibited acts in connection with the international transportation of goods, or the failure to establish, observe, and enforce just and reasonable regulations and practices. Seven of these complaints were filed in fiscal year 2007. CADRS staff also evaluate and adjudicate applications for permission to apply non-tariff rates, and to waive or refund freight charges arising from

various errors in tariff publications, an inadvertent failure to publish an intended rate, or a misquotation of a rate.

## **F. ENFORCEMENT**

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

During fiscal year 2007, the Bureau of Enforcement investigated and prosecuted illegal practices in many trade lanes, including the Transpacific, North Atlantic, Central and South American, North and West Africa, Oceania, and Caribbean trades. These included market-distorting activities such as various forms of secret rebates and absorptions, misdescription of commodities and misdeclaration of measurements, illegal equipment substitution, unlawful use of service contracts, as well as carriage of cargo by and for untariffed and unbonded NVOCCs. Most of these investigations were resolved informally, some with compromise settlements of civil penalties.

Several matters also arose with respect to activities pursuant to filed and unfiled agreements between and among ocean common carriers and marine terminal operators. A major enforcement effort also continued with respect to a number of unlicensed and unbonded NVOCCs specializing in the carriage of used household goods, and was expanded to include the VOCCs and licensed NVOCCs providing service to such unlicensed and unbonded operators.

The Commission collected \$1,372,000 in civil penalties this past fiscal year (*see* Appendix E). These collections represent a wide range of violations in all of our major trade lanes.



### **III**

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

### **A. NORTH EUROPE**

In fiscal year 2007, the low value of the U.S. dollar against European currencies and the slump in the U.S. housing market affected growth in the liner trade between the U.S. and North Europe. In comparison to the preceding fiscal year, U.S. liner exports grew by 15 percent. Much of this growth was concentrated in the emerging East European market. By contrast, liner imports from North Europe declined by 5 percent. The imbalance in cargo volume, however, improved as a result of the strong export growth. For every twenty-foot equivalent unit (TEU) that moved outbound, 1.2 TEUs moved inbound from North Europe. The utilization of vessel capacity in the trade remained weak due to the large amount of capacity that was added in the preceding fiscal year. On average, the quarterly utilization of vessel capacity was 62 percent outbound and 74 percent inbound.

After the major restructuring of services that occurred in the preceding fiscal year, service levels in the trade appeared to stabilize during fiscal year 2007. No new services were added, and certain carriers took measures to rationalize and cut their existing services and vessel capacity. Maersk Line terminated the transatlantic leg of its US/Australia pendulum service, and restructured a loop service into a US/North Europe/Asia pendulum service. Similarly, Hapag-Lloyd AG (“Hapag-Lloyd”) terminated its participation in the US/North Europe/Australia pendulum service that it operated with CMA-CGM, S.A. (“CMA-CGM”) and Compagnie Maritime Marfret (“Marfret”). Norasia Container Lines, Ltd. and Gold Star Line, Ltd. ended the round-the-world service they operated in the trade. Vessel upgrades to existing services, however, offset some of these capacity reductions. By the end of the fiscal year, capacity in the outbound direction was unchanged, while inbound capacity declined by only two percent.

Initiatives to increase freight rates in the trade were largely ineffective possibly due to the weak levels of vessel capacity utilization. Members of the *Trans-Atlantic Conference Agreement* (“TACA”) abandoned their plans for a general rate increase (“GRI”) on tariffs at the start of the fiscal year. Later, in April 2007, TACA implemented a GRI in each direction of the trade. TACA further announced plans for another outbound GRI for October 2007. Industry analysts, however, estimated that base freight rates had fallen by 20 to 30 percent toward the end of the fiscal year, but the assessment of surcharges by carriers for fuel costs seemed to be holding to a greater extent in the trade. Notably, the steep increase in oil prices prompted TACA to raise its Bunker Adjustment Factor (BAF) surcharge for fuel costs by 54 percent over the fiscal year. TACA’s market share for the fiscal year was around 37 percent in each trade direction. Hapag-Lloyd, which left the conference in 2006, was the largest carrier in the trade, with a market share of 16 percent inbound and 22 percent outbound.

The repeal of the block exemption for liner shipping conferences (Council Regulation 4056/86) by the European Union (“EU”) is scheduled to take effect in October 2008. Thereafter, liner carriers in the EU trades will be subject to the general competition rules of the EU. In September 2007, the European Commission (“EC”) issued, for public comment, draft guidelines on the application of the competition rules to maritime transport services. The final guidelines will be issued prior to October 2008. In July 2007, the EC also issued a survey to carriers in the EU trades requesting information on their consortia arrangements in connection with a review of its consortia regulations for liner carriers (Commission Regulation 611/2005). It was reported that this review is intended to update the consortia regulations to account for the repeal of Council Regulation 4056/86.

## **B. MEDITERRANEAN**

During fiscal year 2007, liner cargo growth between the U.S. and the Mediterranean was seriously affected by conditions in the U.S. economy. U.S. liner exports to the region rose by 26 percent in response to currency exchange rates that favored foreign consumers. Liner imports

from the Mediterranean, however, declined by 8 percent as the U.S. demand for home furnishings and building materials fell. Imports from Italy and Spain were especially hard hit by the slump in the U.S. housing market. While liner imports still exceeded exports in the trade, the substantial rate of export growth for the fiscal year improved the cargo imbalance. For every export TEU moving outbound from the U.S., 1.6 TEUs of import cargo moved inbound.

Excess vessel capacity in the trade kept utilization levels low. On average for the fiscal year, vessel utilization was 41 percent outbound and 69 percent inbound. As a transit route between trade lanes, the Mediterranean tends to attract services that have excess capacity. Of the major services operating between the U.S. and the Mediterranean, 7 out of 17 are pendulum services that transit the Suez Canal en route to other trades such as the Middle East, the Indian Subcontinent, and Asia.

Toward the end of the fiscal year, carriers in the trade began to reduce their services. Maersk Line terminated its East Mediterranean loop service. Similarly, COSCO Container Lines Co. Ltd. (“COSCO”), Yangming Marine Transport Corp. (“Yangming”), and Kawasaki Kisen Kaisha (“K Line”) terminated their jointly operated loop service; instead, each carrier entered into a separate vessel-sharing agreement with Mediterranean Shipping Company (“MSC”) to cover the trade. China Shipping Container Lines (“CSCL”) restructured its round-the-world service by shifting greater capacity to the Mediterranean/Asia trade and eliminating direct calls in the U.S./Mediterranean trade. Hapag-Lloyd also removed vessels from its loop services in the trade. Overall, by the end of the fiscal year, vessel capacity was reduced by 6 percent in the inbound direction and 3 percent in the outbound direction.

With the demise of the *U.S. South Europe Conference* in 2006, carriers in the trade are independently setting rates and surcharges; however, poor levels of vessel capacity utilization generally suppressed any rate initiatives. Industry analysts estimated that by the end of the fiscal year base freight rates in the inbound trade direction fell by 15 percent, but in the outbound trade sector from the U.S. Gulf Coast to the Mediterranean, some increase in rates was occurring. MSC was the largest carrier in the trade with a market share of 20 percent in each trade direction for fiscal year 2007.

## C. INDIAN SUBCONTINENT AND THE MIDDLE EAST

U.S. container exports in fiscal year 2007 grew 27 percent to the Indian Subcontinent and 22 percent to the Middle East. Such strong growth can be attributed mainly to the weak U.S. dollar and the military operations in Iraq and Afghanistan. During the fiscal year, the U.S. exported 276,000 TEUs to the Indian Subcontinent and 338,000 TEUs to the Middle East. Approximately 80 percent of all U.S. container exports to the Middle East and the Indian Subcontinent move through U.S. Atlantic and Gulf coast ports. The *Middle East Indian Subcontinent Discussion Agreement* (“MIDA”) and the *Westbound Transpacific Stabilization Agreement* (“WTSA”) are the two major rate discussion agreements that cover all or part of the U.S. outbound container trade to the Indian Subcontinent and the Middle East.

MIDA’s geographic scope covers U.S. exports to the Middle East and the Indian Subcontinent. Over the whole geographic scope, MIDA had a 60 percent market share, up 10 percentage points from the previous fiscal year. This increase is due, in part, to the addition of the Shipping Corporation of India, Ltd., Zim Integrated Shipping Services, Ltd. (“Zim”), and Emirates Shipping Line FZE, which joined MIDA in September 2006, as well as by gains made by Maersk Line, whose market share increased by around 4 percentage points. The ten members of MIDA had a strong market presence along the U.S. Atlantic and Gulf Coasts with a market share of approximately 68 percent. There are no rate discussion agreements covering U.S. imports from the Middle East.

In this trade region, WTSA’s geographical scope covers U.S. exports to the Indian Subcontinent (but not the Middle East). For the fiscal year, WTSA’s market share of all U.S. container exports to the Indian Subcontinent was 43 percent. WTSA dominates U.S. container exports from the U.S. Pacific Coast to the Indian Subcontinent with a market share of 82 percent. In November 2006, CSCL resigned from WTSA, and ten carriers remained in the agreement.



U.S. container imports from the Indian Subcontinent declined considerably. In fiscal year 2007, imports fell 7 percent, compared to a 16 percent increase in the previous fiscal year. U.S. container imports from the Middle East also declined. In fiscal year 2007, imports from this region dropped 7 percent, compared to a 3 percent gain during the prior fiscal year. For the fiscal year, the U.S. imported approximately 612,000 TEUs from the Indian Subcontinent and 147,000 TEUs from the Middle East.

The *Transpacific Stabilization Agreement* (“TSA”) replaced the *Indian Subcontinent Discussion Agreement* (“ISDA”) as the only rate discussion agreement covering U.S. inbound container imports from the Indian Subcontinent. During fiscal year 2007, TSA amended its basic agreement to include the Indian Subcontinent. Shortly afterwards, ISDA ceased operations, as many ISDA carriers were also members of TSA. For the fiscal year, the fourteen-member TSA handled approximately 57 percent of all U.S. container imports from the Indian Subcontinent.

It was reported that Indian regulators, in light of changes in European regulations, will also be reviewing the immunity of liner conferences from their recently-enacted competition law.

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

This region encompasses Australia, New Zealand, Papua New Guinea, Western Samoa and other South Pacific Islands. U.S. container imports from the region totaled 191,000 TEUs in fiscal year 2007, while the U.S. outbound liner trade totaled 226,000 TEUs. Australia is the largest U.S. trading partner in the region, accounting for almost two-thirds of the liner cargo in the trade. New Zealand accounted for another quarter. For every U.S. container imported from this region, nearly 1.2 TEUs were exported. Compared to last fiscal year, U.S. liner exports to the region grew by over 7 percent, and liner imports from the region grew by over 4 percent.

Following last year's consolidations, no further mergers or acquisitions took place this year. However, several independent and

jointly operated services were restructured. Hamburg Südamerikanische Dampfschiffahrts Gesellschaft KG (“Hamburg Süd”) upgraded its Trident service between the Europe, Australia/New Zealand, and U.S. Atlantic ports. Hapag-Lloyd obtained expanded space on the Oceania service of Maersk Line, and withdrew from the North American pendulum service it operated in concert with CMA-CGM/Marfret through a vessel-sharing agreement. In turn, CMA-CGM and Marfret expanded the scope of their vessel-sharing agreement to include the Caribbean and Central America. Maersk Line revised the geographic scope of its Oceania service and shuffled the ports of call. On the U.S. Pacific coast, Hamburg Süd, Hapag-Lloyd, and Maersk Line made extensive changes to the schedules and vessel allocations of their jointly operated services.

At year end, six direct liner services operated between the U.S. and Australia and New Zealand: three served the U.S. Pacific coast and three served the U.S. Atlantic coast. On the U.S. Atlantic coast, Hamburg Süd and Maersk Line independently operated their Trident and Oceania services, respectively. Further, Hapag-Lloyd took space on Maersk Line's Oceania service. In addition, CMA-CGM and Marfret jointly operated their North American Pendulum service. On the U.S. Pacific coast, Hamburg Süd, Hapag-Lloyd, and Maersk Line jointly operated two service strings under their amended *U.S. Pacific Coast-Oceania Agreement*: one to the Pacific Southwest, and the other to the Pacific Northwest. ANL Singapore Pte, Ltd. a subsidiary of CMA-CGM, and U.S. Lines, Ltd. (“U.S. Lines”) also jointly operated a U.S.-Australia/New Zealand/China triangular service. Additionally, several transshipment services and specialized carriers operate in the Australia-New Zealand trade, e.g. Swire Shipping Ltd., and Wallenius Wilhelmsen Logistics. In fact, transshipment services accounted for almost a quarter of the liner cargo.

During the fiscal year, U.S. Lines joined the *United States/Australasia Discussion Agreement* (“USADA”), thereby expanding the number of members to nine. An enlarged *Australia-New Zealand/United States Discussion Agreement* (“ANZUSDA”) incorporated the authorities and geographic scope of the *New Zealand/United States Discussion Agreement*, which is still in effect but dormant, as no activity has been taken under it since the effectiveness of

ANZUSDA. Additionally, the ANZUSDA added ANL Singapore Pte Ltd. as a party to the agreement, expanding the number of members to four.

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

In fiscal year 2007, growth in cargo volume between the U.S. and Central America was minimal compared to the preceding fiscal year. The Dominican Republic-Central American Free Trade Agreement (“DR-CAFTA”), expected to boost cargo growth through the reduction of trade restrictions, was signed in the previous fiscal year. The anticipated cargo growth has not yet materialized, possibly due to the fact that DR-CAFTA has not been fully implemented as yet.

In the trade between the U.S. and the Caribbean, the volume of cargo increased in both trade directions compared to the preceding fiscal year. U.S. exports, mainly of food, consumer, and manufactured products, increased by 7 percent to 547,583 TEUs, while imports to the U.S. increased 6 percent to 161,237 TEUs.

Carriers in the U.S./Central American trade participate in the *Central America Discussion Agreement*. Carriers in the U.S./Caribbean trade participate in four rate discussion agreements covering discrete trades: (1) the *Hispaniola Discussion Agreement*, (2) the *Caribbean Shipowners’ Association*, (3) the *Florida-Bahamas Shipowners’ and Operators Association*, and (4) the *Aruba Bonaire and Curacao Discussion Agreement*. There were no significant changes in the provisions or memberships of these agreements during fiscal year 2007. Two additional vessel-sharing agreements were implemented in the Caribbean trade during this period.

## **F. ASIA**

In terms of containerized cargo, Asia is the largest trading partner of the United States. In fiscal year 2007, Asia accounted for 62 percent of all U.S. inbound and outbound containerized cargo. Seventy-one percent

of all U.S. container imports originated from Asia, and the region took 47 percent of all U.S. container exports.

The major agreement in the Transpacific trade, TSA, is a rate discussion and policy-setting agreement with voluntary pricing authority covering the U.S. inbound container trade from Northeast and Southeast Asia, and most recently the Indian Subcontinent was added. At the beginning of 2007, TSA eliminated the position of executive director and replaced it with a four-carrier executive committee. The reorganization enabled carriers to be more directly involved in managing TSA activities. With greater carrier involvement, the members believe TSA will be more attuned and responsive to the needs of shippers.

During fiscal year 2007, several carriers joined TSA. In early 2007, CMA-CGM rejoined TSA after the French carrier resigned from the agreement a year earlier. Later in the year, MSC and Zim also joined TSA. As a result, TSA's market share of the U.S. inbound Asian trade increased by about 19 percentage points with TSA carriers moving almost 80 percent of all Asian imports, compared to about 60 percent in fiscal year 2006.

The growth in Asian imports slowed dramatically in fiscal year 2007, increasing by less than one percent. In the previous fiscal year, imports from this region grew 15 percent. Compared to fiscal year 2006, container imports from Northeast Asia grew by less than one percent and declined by 3 percent from Southeast Asia. Northeast Asia accounted for 88 percent of all transpacific container imports, with the most cargo volume originating from China. For the fiscal year, the U.S. imported 13.6 million TEUs of Asian goods.

Reportedly, the sluggish growth in Asian imports can be attributed to the collapse of the U.S. housing market, the rising cost of energy and fuel, and the product safety concerns of goods made in China. Most Asian imports are consumer goods and, given the rise in energy costs and the loss of the "wealth effect" from escalating house prices, U.S. consumers have less disposable income. Consumer concerns over the safety of Chinese products sold in the U.S., especially toys (80 percent of which are manufactured in China), further dampened the demand for Asian imports.

For the annual service contract season that began on May 1, 2007, TSA announced that its members had agreed to raise freight rates, on a voluntary, non-binding basis, by \$300 per forty-foot equivalent units (“FEU”) for cargo discharged at U.S. Pacific Coast ports and \$500 per FEU for cargo discharged at U.S. Atlantic Coast ports. Reports in the trade press indicated that TSA members generally were not successful in obtaining the full amount of these planned rate increases during their service contract negotiations with individual shippers, repeating the same pattern as in past years.

The major agreement in the outbound Transpacific trade is WTSA. Like TSA, WTSA operates as a forum for the exchange of information between its members that enables them to discuss and agree upon rate levels for cargo exported from the U.S. to Asia. WTSA’s geographic scope covers all U.S. outbound shipments to Northeast and Southeast Asia as well as the Indian Subcontinent. In fiscal year 2007, WTSA maintained a market share of approximately 68 percent. During the fiscal year, CSCL resigned from WTSA.

In contrast to U.S. imports, U.S. exports to the region expanded by a robust 11 percent to reach almost 5 million TEUs. The declining value of the dollar generally made U.S. products cheaper abroad. While U.S. container exports to Northeast Asia grew by 9 percent, they grew by a hefty 27 percent to Southeast Asia. Eighty-five percent of all U.S. container exports to Asia are destined for Northeast Asia.

WTSA does not have a distinct start to the annual service contact season like that of the TSA. Instead, WTSA members agree to voluntary service contract rate guidelines for different types or groups of commodities throughout the year. This practice is dictated primarily by the seasonality of the major U.S. agricultural export commodities which have different growing seasons and peak times when they are shipped.

Finally, China adopted an Anti-Monopoly law in the fiscal year. It is yet to be seen whether Chinese regulators will immunize liner conferences from the application of this new law.

## G. SOUTH AMERICA

Between the U.S. and South America, U.S. export cargo reached 741,890 TEUs, an impressive increase of 17 percent. However, import cargo from South America to the U.S. fell by 6.5 percent to 998,177 TEUs. These trends clearly reflect the falling value of the U.S. dollar. The South America region is generally divided into two trade areas - - one to the East Coast of South America, and the other to the West Coast of South America.

Just over 40 percent of all of the U.S./South America cargo moved between the U.S. and the West Coast of South America. About 680,000 TEUs of annualized vessel capacity were deployed in this trade in each direction at the end of the fiscal year. Most of the carriers that provide direct service in the trade are also members of the *West Coast of South America Discussion Agreement* (“WCSADA”). The combined market share of WCSADA members was about 70 percent in the outbound direction and 60 percent in the inbound direction. Some carriers also served the trade indirectly via transshipment services based at ports in Mexico, Panama, and the Caribbean.

During the year, no substantial changes were made to WCSADA. Several new agreements covering the East and West Coasts of South America became effective in the trade. Most were vessel sharing or space charter agreements, the largest was the *USATLAN/MARUBA Space Charter Agreement* between four major carriers in the trade.

Liner cargo in the trade between the U.S. and the East Coast of South America accounted for almost 60 percent of U.S./South America liner cargo. By the end of fiscal year 2007, annualized vessel capacity in this trade was about one million TEUs in each trade direction. Unlike the West Coast of South America trade, carriers serving the East Coast of South America do not actively participate in a broad-based rate discussion agreement spanning the entire geographic scope of the trade. However, seven new vessel sharing agreements covering the trade were filed during the year.

## H. AFRICA

This region encompasses all of Africa, including ports in West Africa and South Africa. U.S. container imports from Africa totaled 96,000 TEUs in fiscal year 2007, while U.S. container exports totaled almost 196,000 TEUs. For every U.S. container imported, about two were exported. Compared to the past fiscal year, U.S. container exports grew 30 percent, whereas U.S. container imports fell 7 percent. South Africa accounted for about 40 percent of the liner cargo in this U.S. trade region in fiscal year 2007, making it by far the continent's largest U.S. liner trading partner. However, this is a slight decrease from last year. In a distant second place, oil-rich Nigeria contributed an additional ten percent or so. South Africa's port of Durban is the biggest container port on the continent, handling nearly a quarter of this trade's liner cargo. Almost half of the liner cargo in the U.S.-Africa trade is transshipped.

Although no significant mergers or acquisitions occurred during the fiscal year, several shipping lines implemented changes to their liner services. For instance, Maersk Line, Safmarine Container Lines N.V. ("Safmarine," a wholly-owned subsidiary of Maersk Line), and MSC upgraded their jointly provided America Express (AMEX) service by adding an eighth vessel. Furthermore, the carriers revised the service schedule to incorporate fixed day weekly calls at: Newark, Baltimore, Norfolk, Charleston, Freeport, Cape Town, Port Elizabeth, and Durban. In addition, Galborg Pte Ltd. added two vessels to its weekly liner service between the U.S. Gulf Coast and South Africa.

Maersk Line, Safmarine, and MSC jointly operate the AMEX service under the authorities of the *Southern Africa/Oceania Agreement*, which was amended to incorporate the abovementioned changes. Apart from this change, no other significant agreement activities occurred. Further, Maersk Line, MSC, and Maersk Line's subsidiary, Safmarine, remain the top carriers in the Africa trade.

## I. WORLDWIDE

The world's container trades continued to expand strongly in fiscal year 2007. World container traffic was expected to reach around 142 million TEUs, more than 13 percent greater than the level reached at the end of fiscal year 2006. Growth was exceptionally strong in the Asia to Europe head haul trades, but expansion in the U.S. container trades was much weaker. During the year, the total number of containers imported into or exported from the U.S. was just under 30 million TEUs, an increase of 3.1 percent over fiscal year 2006. The U.S. share of the world's container trades declined this year to about 21 percent, compared to 23 percent last year. Although U.S. container imports declined by just over 1 percent to 19.2 million TEUs in fiscal year 2007, there was a robust performance in U.S. container exports, which expanded by 12.2 percent to reach 10.5 million TEUs. For every loaded container exported from the U.S., just under two were imported.

Container imports through Pacific Northwest ports, such as Seattle, Tacoma and Portland, remained about the same as last year at about 2.4 million TEUs. This coastal region's share of U.S. container imports rose slightly to 12.8 percent, compared to 12.4 percent last year. The Pacific Southwest region, which includes the ports of Los Angeles, Long Beach and Oakland, saw its share of U.S. container imports remain at just under 46 percent. Ports along the U.S. Atlantic and Gulf Coasts handled around 40.7 percent of all U.S. container imports, compared to 41.5 percent last year.

During this fiscal year, each coastal region's relative share of U.S. export containers remained more or less the same. About 60 percent of all export containers were handled by U.S. Atlantic and Gulf Coast ports, 30 percent by Pacific Southwest ports, and just under 10 percent by ports in the Pacific Northwest.

The U.S.'s top five liner cargo trading partners remained unchanged, viz. China, Japan, Taiwan, South Korea and Hong Kong. Hong Kong fell from third to fifth in the ranking, while Taiwan rose to third from fifth. Notably, each top five trading partner is located in Northeast Asia. Collectively they accounted for 54.5 percent of the total



U.S. container trade in fiscal year 2007. This year, trade with China accounted for 37 percent of the total U.S. container trade, the same as in fiscal year 2006.

On a worldwide basis, containership capacity continued to grow faster than container demand by a few percentage points. By the end of the year, the containership fleet's nominal capacity had grown by over 15 percent. Several industry analysts anticipate capacity also will expand by a similar amount next year because the level of ordering, particularly of exceptionally large ships with capacity of 10,000 TEUs or more, accelerated in the second half of the fiscal year. At the end of the year, about 4,150 containerships with a fleet capacity of over 10 million TEUs were deployed in the world's container trades, representing a net annual addition of about 350 ships. At the end of July 2007 there were orders worldwide for 1,309 new containerships with an aggregate capacity of 4.3 million TEUs. The ship capacity on order amounted to almost 53 percent of the existing fleet capacity.

Concentration in the container shipping industry increased during fiscal year 2007, although the top-5 container operators were still Maersk Line, MSC, CMA-CGM, Evergreen and Hapag Lloyd, respectively. Two Chinese carriers, CSCL and COSCO occupied sixth and seventh places. Among the top-100 container operators at the end of fiscal year 2007, the top-5 operators reportedly controlled 43.6 percent of the world's containership fleet capacity, the top-10 controlled 60.5 percent, and the top-20 controlled 82.3 percent.



## **IV**

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

### **A. IN GENERAL**

The Foreign Shipping Practices Act of 1988 (“FSPA”) became effective on August 23, 1988. The FSPA directs the Commission to investigate and address adverse conditions affecting U.S. carriers in U.S. oceanborne trades, when such conditions do not exist for foreign carriers in the U.S. under U.S. law or as a result of acts of U.S. carriers or others providing maritime or maritime-related services in the U.S.

In fiscal year 2007, the Commission monitored potentially unfavorable or discriminatory shipping practices by a number of foreign governments. No FSPA action was taken in 2007.

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

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

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

The most recent complete calendar year for which data are available is 2006. The table on the next page lists the twenty foreign countries that generated the largest volume of oceanborne liner cargo in bilateral trade with the U.S. in 2006. The figures in the table represent each country’s total U.S. liner imports and exports in thousands of TEUs.

## Top Twenty U.S. Liner Cargo Trading Partners (2006)

<u>Rank</u>	<u>Country</u>	<u>TEUs (000s)</u>
1	China (PRC) .....	10,958
2	Japan .....	1,701
3	Hong Kong <sup>1</sup> .....	1,125
4	Taiwan .....	1,118
5	South Korea .....	1,099
6	Germany .....	789
7	Brazil .....	656
8	Italy .....	602
9	Thailand .....	580
10	India .....	549
11	Belgium & Luxembourg .....	502
12	Indonesia .....	486
13	Netherlands .....	469
14	United Kingdom (incl. N. Ireland) .....	438
15	Malaysia .....	384
16	Vietnam .....	361
17	Honduras .....	306
18	Costa Rica .....	281
19	Chile .....	280
20	Spain .....	271

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

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

With only a few exceptions, the 2006 top twenty trading partners closely mirror those for 2005. Almost across the board, the top twenty trading partners saw gains in volume. Vietnam saw gains of 24 percent, the largest of the group. Growing by 17 percent, China has further widened the gap between itself and Japan, the number two trading partner. Taiwan, Costa Rica, and Chile experienced 12, 15, and 14 percent increases in volume, respectively. Again this year, Hong Kong's volume declined, this time by 6 percent. Costa Rica and Chile, surpassing Spain, appear on the list for the first time. Consequently, Guatemala and France have dropped off the list.

**V**

**SIGNIFICANT ACTIVITIES**

**BY**

**ORGANIZATIONAL UNIT**





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

### **1. In General**

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

The Office is responsible for preparing and submitting regular and notation agenda matters for consideration by the Commission and preparing and maintaining the minutes of actions taken by the Commission on these matters; issuing orders and notices of actions of the Commission; maintaining official files and records of all formal proceedings and Commission regulations; issuing publications; and authenticating instruments and documents of the Commission. During fiscal year 2007, the Commission issued orders finalizing eighteen formal proceedings and five informal dockets. In addition, two rulemaking proceedings were finalized in fiscal year 2007 and two remained pending at the end of the fiscal year.

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

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

The Office remained involved in the Commission's ongoing effort to expand contact with all segments of the maritime community and the public. Several initiatives were undertaken by Commission staff to improve industry outreach, including updating educational and informational material.

The Office of the Secretary also manages the Commission's website. During the fiscal year, the Office continued to make improvements to increase user-friendliness and information availability. For example, the Office posted new and revised Frequently Asked Questions and updated links throughout the Commission's site. In December 2007, the Office introduced enhanced website search capabilities to enable Commission staff and the public to perform more refined or comprehensive searches of docket proceedings. The Office will continue to evaluate the overall usefulness of the site and work closely with other offices and Bureaus to improve its content and functionality.

The process of electronically scanning/imaging Commission records also continued during fiscal year 2007. Data migration from the old system to the new one was completed, and the new system became fully functional during the fiscal year. The new system has helped support the agency's initiatives for continuity of operations by improving preservation of and Commission staff access to Commission documents, as well as improving Commission staff response time to public inquires and public access to electronic files. In addition to continuing to scan its own office files, during fiscal year 2007, the Office commenced scanning documents from the Office of the General Counsel and the Bureau of Enforcement. It also began planning for the scanning process for the Bureau of Trade Analysis, the Bureau of Certification and Licensing and the Commissioners' offices.

During fiscal year 2007, the Office continued to take the lead in accomplishing the agency's performance goals related to making more Commission information and filed documents available electronically and to improving responsiveness to requests for public information. Specifically, the Office continued to make key documents filed in formal proceedings available through its website; integrated the Commission's internal complaints database with other internal databases; and began the process for redesigning the agency's Intranet.

## **2. Office of Consumer Affairs and Dispute Resolution Services**

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

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

During fiscal year 2007, Commission mediators provided mediation services in several dispute resolution proceedings, thus assisting parties in avoiding significant litigation costs and risks. CADRS also provides *ombudsman* services to participants in ocean shipping transactions. Typical complaints include situations where an NVOCC or VOCC has placed a lien on cargo in its possession, often for sums owed under a different contract of carriage, and cases in which an NVOCC has received cargo from its customer and taken payment for the transportation

of the cargo, but failed to deliver the cargo. Tracking the whereabouts of a shipment can be difficult, and often additional charges have accrued, necessitating payment of additional funds to obtain release of the shipment.

During fiscal year 2007, 509 complaints were received that necessitated the opening of a case to provide dispute resolution services. These included 220 complaints about cruise issues, 144 about household goods matters, and 145 about cargo shipment matters. During 2007, cargo shipment complaints involved more complex legal issues than had been typical in previous years. Increasingly, complaints involve demurrage and detention issues, the failure to present accurate original bills of lading, and failure to release one party's shipments as a result of prior debts of unrelated co-loading partners. In addition to complaints, approximately 1,000 information requests were processed. The revised complaints database designed by CADRS proved useful in responding to complaints and inquiries. Its integration with other Commission databases also proved useful to other Commission activities.

For the first time in several years, fewer household goods complaints were received than for other cargo matters. This may have been attributable to improved outreach and the previous year's institution of a formal Commission investigation of several problem movers. In addition to opening that proceeding, injunctions were obtained against several companies and individuals to prohibit their continued operation. As a result, several entities ceased operations, thereby reducing the number of complaints against those entities. In addition, the Commission issued consumer advisories, and the Commission's website has been expanded to provide consumer advice and to caution consumers to deal only with properly licensed OTIs.

With respect to passenger matters, a cruise line that had ceased operations during fiscal year 2004 approached Commission staff for the purpose of closing out an existing escrow account. CADRS and the BCL staff worked closely with the new CEO and escrow agent in order to resolve 29 complaints remaining from passengers affected by the 2004 cancellation of voyages, enabling the escrow account to be terminated. In FY 2007, seven informal proceedings of small claim matters were filed for adjudication in CADRS.

### **3. Library**

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



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

### **1. In General**

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

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

At the beginning of fiscal year 2007, ten formal proceedings were pending before the Office of ALJs. During the year, 12 formal proceedings and one informal proceeding were added (the informal proceeding subsequently was converted to a formal proceeding). The Office of ALJs issued orders completely resolving four proceedings.

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

In fiscal year 2007, the Office of Administrative Law Judges issued initial decisions partially or completely resolving seven proceedings, and the Commission issued orders on nine proceedings that had been decided by administrative law judges.

### ***Carolina Marine Handling, Inc. v. South Carolina State Ports Authority, et al.* [Docket No. 99-16]**

On November 28, 2006, the Commission issued an order denying reconsideration of its June 30, 2006, decision remanding the proceeding to the Office of Administrative Law Judges. On January 30, 2007, the ALJ granted the complainant's motion to dismiss the complaint with prejudice. On March 2, 2007, the Commission issued a notice that the time to review the decision had expired and the decision had become administratively final.

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

This case is on remand from the Commission. *Anchor Shipping Co. v. Aliança Navegação e Logística Ltda.*, 30 S.R.R. 991 (2006). On April 19, 2007, the ALJ referred Complainant's motion for the Bureau of Enforcement to intervene to the Commission as being beyond the ALJ's authority. On September 27, 2007, the ALJ granted Respondents' motion to dismiss the claims of violation of sections 6 and 7 of the Act as these sections impose no duties on Respondents, and the claims of violation of section 9 of the Act Respondents are not controlled carriers within the meaning of the Act. In the same order, the ALJ dismissed the claim for a civil penalty because the statutory scheme does not contemplate the imposition of civil penalties in a private party complaint proceeding.



***Odyssea Stevedoring of Puerto Rico, Inc. v. Puerto Rico Ports Authority [Docket No. 02-08]***

***International Shipping Agency, Inc. v. Puerto Rico Ports Authority [Docket No. 04-01]***

***San Antonio Maritime Corp. and Antilles Cement Corp. v. Puerto Rico Ports Authority [Docket No. 04-06]***

On November 30, 2006, the Commission remanded these cases to the ALJ for further proceedings. On February 22, 2007, the D.C. Circuit granted Respondent's motion to stay the proceedings pending review by that court.

***Qin's Inc. v. Superior Lake International [Docket No. 04-08]***

On January 9, 2007, the ALJ issued an order granting Complainant's motion for attorney's fees. On February 16, 2007, the Commission issued a notice that the time to review the decision had expired and the decision had become administratively final.

***Worldwide Relocations, Inc., et al. -- Possible Violations of Sections 8, 10, and 19 of the Shipping Act of 1984 and the Commission's Regulations at 46 C.F.R. §§ 515.3, 515.21, and 520.3 [Docket No. 06-01]***

On November 29, 2006, the Commission vacated the ALJ's approval of settlement agreements with four respondents and remanded for further inquiry. *Worldwide Relocations*, 30 S.R.R. 1208 (2006). On March 15, 2007, the ALJ approved the settlements with those four Respondents. On April 26, 2007, the Commission issued a notice that the time to review the decision had expired and the decision had become administratively final. On June 20, 2007, the ALJ granted BOE's motion to dismiss five respondents. On July 24, 2007, the Commission issued a notice that the time to review the decision had expired and the decision had become administratively final. On September 27, 2007, the ALJ granted BOE's motion to dismiss an additional respondent.

***The Lake Charles Harbor and Terminal District v. West Cameron Port, Harbor and Terminal District [Docket No. 06-02]***

On August 2, 2007, the Commission issued an order denying the appeal and discontinuing the proceeding.

***Ritco Int'l v. Air 7 Seas Transport; Air 7 Seas Transport v. Shipping Corp. of India, Ltd. [Docket No. 06-07]***

On January 16, 2007, the ALJ dismissed the complaint without prejudice when Complainant failed to respond to a show cause order. On March 22, 2007, the Commission granted the parties' joint motion to dismiss the complaint with prejudice.

***Transport Express, Inc. and the Intermodal Motor Carriers Conference, American Trucking Associations v. Sinotrans Container Lines Co, Ltd., and Sinotrans Shipping Agency (NA), Inc. [Docket No. 06-10]***

On January 12, 2007, the ALJ issued an Initial Decision approving settlement. On February 16, 2007, the Commission issued a notice that the time to review the decision had expired and the decision had become administratively final.

***R.O. White & Co. & Ceres Marine Terminals Inc. v. Port of Miami Terminal Operating Company, Continental Stevedoring & Terminals, Inc., et al. [Docket No. 06-11]***

On July 2, 2007, the ALJ dismissed the claims against one of the named respondents on the ground that the complaint failed to state a claim against it. On August 7, 2007, the Commission issued a notice that the time to review the decision had expired and the decision had become administratively final.

### **3. Pending Proceedings**

At the close of fiscal year 2007 there were 19 formal proceedings pending before the Office of ALJs. During fiscal years 2008 and 2009, the Office will conduct hearings and render decisions on adjudicatory proceedings and on such rulemaking proceedings as may be referred to the Office.



## **C. OFFICE OF THE GENERAL COUNSEL**

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

### **1. Rulemakings and Decisions**

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

#### **Decisions**

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

These cases came before the Commission for a determination of whether the Puerto Rico Ports Authority (“PRPA”) is an arm of the Commonwealth of Puerto Rico and therefore entitled to sovereign immunity. Odyssea Stevedoring of Puerto Rico, Inc., International Shipping Agency, Inc., San Antonio Maritime Corp. and Antilles Cement Corp. (collectively “complainants”) alleged that PRPA’s marine terminal leasing practices violated sections 10(b)(10), 10(d)(1), 10(d)(3), and 10(d)(4) of the Shipping Act. Further, Intership alleged that PRPA violated section 10(a)(3) of the Shipping Act, by failing to act in

accordance with the terms of an agreement filed with the Commission. PRPA filed motions for summary judgment or motions to dismiss in all three cases, arguing that the complaints were barred by PRPA's sovereign immunity as an arm of the Commonwealth of Puerto Rico. In *Odyssea* and *Intership*, the ALJ ruled that PRPA was not entitled to sovereign immunity. The Commission, *sua sponte*, decided to review the ALJ's decision. On November 30, 2006, the Commission, by a 3-2 vote, issued an order finding that PRPA is not an arm of the Commonwealth of Puerto Rico and is therefore not entitled to sovereign immunity. The Commission's order was appealed to the U.S. Court of Appeals for the D.C. Circuit (Case No. 16-1407). Oral argument was held before that court on October 26, 2007.

***The Lake Charles Harbor and Terminal District v. West Cameron Port, Harbor and Terminal District [Docket No. 06-02], 30 S.R.R. 1043 (June 7, 2007)***

This proceeding was initiated by complaint of Lake Charles Harbor and Terminal District ("Lake Charles Harbor") alleging that West Cameron Port, Harbor and Terminal District ("West Cameron") threatened to impose wharfage on the passage of vessels through the Calcasieu River Ship Channel on the way to, or from, Lake Charles, Louisiana, and that such wharfage does not bear a reasonable relationship to any services, facilities or benefits provided by West Cameron. Lake Charles Harbor alleged West Cameron violated sections 10(d)(1), 10(d)(4) and 5(a) of the 1984 Act.

By Order dated June 7, 2006 the ALJ granted the motion to dismiss filed by West Cameron, ruling that the Commission lacked subject matter jurisdiction because, among other things, West Cameron is not a marine terminal operator under the Shipping Act. Lake Charles Harbor appealed the dismissal to the full Commission for the purpose of determining whether the Commission has subject matter jurisdiction over the matters alleged in the Complaint. The appeal was denied and the proceeding was discontinued on August 2, 2007.

***Premier Automotive Services, Inc. v. Robert L. Flanagan and F. Brooks Royster, III, [Docket No. 06-03], 30 S.R.R. 970 (March 31, 2006)***

Premier Automotive Services, Inc. (“Premier”) filed a complaint against Robert L. Flanagan and F. Brooks Royster, III (collectively “Flanagan”) alleging that Flanagan’s marine terminal leasing practices violated sections 10(b)(10), 10(d)(1) and 10(d)(4) of the Shipping Act of 1984 (“Shipping Act”), 46 U.S.C. §§ 41102, 41104 and 41106. Mr. Flanagan and Mr. Royster were the Maryland Secretary of Transportation and the Executive Director of the Maryland Port Administration (“MPA”), respectively, and were sued because MPA possesses sovereign immunity. Flanagan filed a Motion to Dismiss arguing that (1) the case is barred by constitutional principles of state sovereign immunity; (2) the Shipping Act does not authorize private complaints for injunctive relief, and (3) the respondents should not be held liable as individuals under provisions of the Shipping Act which are specifically applicable to common carriers, OTIs and MTOs. Premier responded to the motion arguing that the action is within the *Ex parte Young*, 209 U.S. 123 (1908), exception to state sovereign immunity and that the Shipping Act provides for prospective injunctive relief. The ALJ granted the motion to dismiss on March 31, 2006, finding that the complaint was barred by sovereign immunity since *Young* did not apply. Premier appealed the ALJ’s decision to the Commission. Oral argument was heard on June 13, 2007. The case is currently pending before the Commission.

## **2. Litigation**

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

The following is representative of matters litigated by the Office:

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

This proceeding is an appeal of the Commission's November 30, 2006, order in Docket Nos. 02-08 (Odyssea Stevedoring of Puerto Rico, Inc. v. Puerto Rico Ports Authority); Docket No. 04-01 (International Shipping Agency, Inc. v. The Puerto Rico Ports Authority); and Docket No. 04-06 (San Antonio Maritime Corp. and Antilles Cement Corp. v. Puerto Rico Ports Authority). The Commission's order, on a 3-2 vote, found that the PRPA is not an arm of the Commonwealth of Puerto Rico and is therefore not entitled to sovereign immunity. PRPA appealed the order arguing that it is entitled to sovereign immunity. The Commission proceedings before the ALJ have been stayed by the Court pending resolution of the appeal. Oral argument was held on October 26, 2007.

### **3. Legislative Activities**

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

During fiscal year 2007, 105 bills, proposals and Congressional inquiries were referred to the OGC for comment. The office prepared briefing materials for a confirmation hearing before the U.S. Senate Committee on Commerce, Science and Transportation. The OGC also assisted Congressional staff with the continuing efforts to revise, codify and enact certain maritime laws as part of Title 46, U.S. Code, Shipping, which was signed into law October 6, 2006.

In fiscal years 2008 and 2009, the OGC will continue to provide assistance and technical advice to Congress as needed. The Commission may recommend legislative amendments as necessary to ensure uniformity



with other federal initiatives, and to allow for the efficient and secure flow of ocean transportation.

#### **4. Other Significant Activity**

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

The Port of Los Angeles and the Port of Long Beach are members of an agreement, currently on file with the Federal Maritime Commission, that permits them to discuss, consult, and agree on the establishment and implementation of programs and strategies to improve port-related transportation infrastructure and to decrease port-related air pollution (FMC Agreement No. 201170, Los Angeles and Long Beach Port Infrastructure and Environmental Programs Cooperative Working Agreement). This agreement became effective on August 10, 2006. The Ports are currently in the process of developing a Clean Trucks Program as the first initiative under their joint Clean Air Action Plan. The Ports' goal is to significantly reduce air pollution from port drayage trucks by replacing or retrofitting an estimated 16,000 trucks servicing the Ports over a five-year period. In early November 2007, each of the Ports adopted identical tariffs requiring a progressive ban on older and non-retrofitted drayage trucks, beginning October 1, 2008. The Ports are considering ways to finance and implement the Clean Trucks Program, including a possible cargo fee and a concessions system, which may require trucking companies to use only employee drivers, rather than independent contractors. The Federal Maritime Commission has received information and letters from various interest groups expressing support for or opposition to certain aspects of the proposed Clean Trucks Program. Certain groups have asserted that the proposed Clean Trucks Program may violate provisions of the Shipping Act, 46 U.S.C. §§ 40101-41309 (2006). The Commission held a closed meeting in November 2007, to review the proposed Clean Trucks Program and continues to monitor developments at the Ports.

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

The OGC is responsible for the administration of the Commission's international affairs program. The OGC monitors potentially restrictive foreign shipping laws and practices, and makes recommendations to the Commission for investigating and addressing such practices. The Commission has the authority to address restrictive foreign shipping practices under section 19 of the 1920 Act and the FSPA. Section 19 empowers the Commission to make rules and regulations governing shipping in the foreign trade to adjust or meet conditions unfavorable to shipping. The FSPA directs the Commission to address adverse conditions that affect U.S. carriers in foreign trade and that do not exist for foreign carriers in the U.S.

In fiscal year 2007, the Commission continued to monitor potentially restrictive shipping practices of the Government of Japan, including the effects of amendments to the Port Transportation Business Law enacted in 2000 and 2005. The Commission continued to receive and evaluate semi-annual reports from its proceeding in Docket No. 96-20, *Port Restrictions and Requirements in the United States/Japan Trade*. The OGC also pursued informally several matters that involved potentially restrictive foreign practices including new legislation, new interpretations of existing legislation and new regulations of non-domestic carriers' terminal handling charges.

OGC staff served as technical advisors to the U.S. delegation to the semi-annual US-Japan Regulatory Reform talks held in Washington, D.C. on March 26 and 27, 2007.

The Commission's Permanent Task Force on International Affairs is a network of representatives from a number of Commission bureaus and offices. The Task Force meets to exchange information regarding new or continuing areas of concern relating to restrictive foreign shipping practices possibly necessitating action under one of the Commission's statutory authorities in this area.

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

In fiscal years 2008 and 2009, the OGC will continue to take the lead in accomplishing the agency's performance goals relating to eliminating restrictions that unjustly disadvantage U.S. interests. Through the Permanent Task Force on International Affairs, OGC will monitor foreign laws and practices to determine whether there are any unjust non-market barriers to trade. The OGC will recommend appropriate action to the Commission.

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

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

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



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

The Office of Equal Employment Opportunity (“OEEO”) follows federal equal employment opportunity (“EEO”) and personnel management laws, regulations and directives to develop, implement, and manage a comprehensive program of equal employment opportunity. The EEO program promotes equal employment opportunity, processes complaints of discrimination and identifies and eliminates any discriminatory practices and policies.

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

The Director of EEO works independently under the direction of the Chairman to provide advice to the Commission’s senior staff and management in improving and carrying out its policies and program of non-discrimination, workforce diversity and affirmative employment program planning. In accordance with regulations and guidance issued by the Equal Employment Opportunity Commission, the DEEO arranges for EEO counseling or alternative dispute resolution for employees who raise allegations of discrimination; provides for the investigation, hearing, fact-finding, adjustment, or early resolution of such complaints of discrimination; accepts or rejects formal complaints of discrimination; prepares and issues decisions for resolution of formal complaints; and monitors and evaluates the program’s impact and effectiveness. Additionally, the DEEO represents the Commission on intergovernmental committees, directs programs of special emphasis, and coordinates the activities of the Selective Placement and Federal Equal Opportunity Recruitment Coordinators. The DEEO also supervises two collaterally assigned EEO counselors.

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

### **Significant Accomplishments for fiscal year 2007**

For the third year in a row, women and minorities continue to represent a majority of the workforce in fiscal year 2007. Significant accomplishments include the following: (1) provided EEO briefings to senior staff and new employees; (2) continued providing information to employees about Internet sites with diversity/EEO related information; (3) updated the Commission's No FEAR Act statistics on the FMC website at <http://www.fmc.gov/home/NoFEARAct.asp> and coordinated the No FEAR Act refresher training for all employees; (4) provided counseling assistance to Commissioners, managers, supervisors, and employees; (5) continued providing support and assistance to managers and supervisors in maintaining and effectively managing a diverse workforce; (6) reviewed and assessed human resource activities and actions; (7) maintained an effective discrimination complaint process that resolved issues informally, expeditiously, and at the lowest possible level; (8) held special commemorative programs for all FMC employees for National Hispanic Heritage, National Disability Employment Awareness, National American Indian Heritage, African American History, Women's History, Asian Pacific American, Gay and Lesbian Pride months, and Dr. Martin Luther King, Jr. Day; (9) participated in meetings of several inter-agency councils regarding special emphasis matters; (10) coordinated activities of the FMC's Advisory Council on Women's Issues; (11) participated in EEO-related training/conferences; (12) prepared all required affirmative employment program accomplishment reports and plans; and (13) managed the Commission's Emerging Leaders Program.

During fiscal years 2008 and 2009, the OEEEO will continue all existing programs and initiate activities designed to increase an understanding of EEO concepts and principles, including monitoring workforce diversity, outreach, retention, and career-development initiatives.





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

The Inspector General Act of 1978 (“IG Act”), as amended, creates independent audit and investigative units called Offices of Inspector General (“OIGs”) at 61 federal agencies, including the Federal Maritime Commission. The mission of the OIGs, as spelled out in the IG Act, is to:

- **Conduct and supervise independent and objective audits and investigations relating to agency programs and operations.**
- **Promote economy, effectiveness, and efficiency within the agency.**
- **Prevent and detect fraud and abuse in agency programs and operations.**
- **Review and make recommendations regarding existing and proposed legislation and regulations relating to agency programs and operations.**
- **Keep the agency head and Congress informed of problems in agency programs and operations.**

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

During Fiscal Year 2007, the OIG issued the following audit reports and evaluations:

<b><u>Audit Report Number</u></b>	<b><u>Subject of Audit</u></b>
<b>A07-01</b>	<b>Audit of the Federal Maritime Commission's Financial Statements for the Fiscal Year Ending September 30, 2006</b>
<b>A07-01A</b>	<b>Management Letter to the FY 2006 Audited Financial Statements</b>
<b>A07-02</b>	<b>Audit of Contracts FMC-05-00021 and FMC-06-00007, Procurement of Consulting Services</b>
<b>A07-03</b>	<b>Penetration Test of FMC's Outward-Facing Network</b>
<b>OR07-01</b>	<b>Review of FMC's Information Technology Plan of Actions &amp; Milestones</b>
<b>OR07-02</b>	<b>Data Accuracy of FMC's FY 2006 Performance and Accountability Report</b>
<b>OR07-03</b>	<b>The Federal Maritime Commission's Implementation of the Federal Information Security Management Act (OMB Template)</b>

An OIG audit report during the period questioned approximately \$56,000 in agency expenditures and recommended that the agency collect these funds from the vendor.

In addition to these completed audits and reviews, the OIG began its annual financial statement audit and information security evaluation, performed an investigation into allegations of wrongdoing by FMC staff, responded to two public requests to look into various maritime-related

issues and referred five “hotline” complaints to the appropriate FMC program offices for disposition.

The OIG underwent a peer review of its audit quality control program, receiving an “unqualified” opinion by independent auditors from a sister OIG, and performed an identical review of another Federal agency’s OIG. OIG also prepared a narrative summary of “management challenges” facing the FMC for inclusion in the FY 2006 PAR.

In addition to these audit and investigative outcomes, the OIG revised its strategic plan for fiscal years 2008-2013, developed a memorandum of understanding between the Office of Inspectors General at the FMC and the Federal Trade Commission to implement a quality assurance program for its audit function and worked with FMC senior management to implement an internal control questionnaire to assist management to comply with regulations issued by the Office of Management and Budget (OMB) in Circular A-123, *Management’s Responsibility for Internal Control*.

In Fiscal Year 2008, the OIG will continue to place a high priority on audits and reviews with the objective of improving agency programs and operations. The OIG will complete statutorily-required reviews to include separate audits of the FMC’s Fiscal Year 2007 Financial Statements and its management of telephone services, an evaluation of the agency’s information security program and privacy assurance controls, as required by the Federal Information Security Management Act, and reviews of the agency’s filing fee-setting procedures (pursuant to OMB Circular A-25, *User Charges*) and agency controls over furnishing or redecorating offices of presidential appointees.



## **F. OFFICE OF ADMINISTRATION**

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

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

The Director of OA provides administrative guidance to the:

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

and administrative assistance to the:

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

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

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

The Office of the Director had significant program achievements in fiscal year 2007. The Office guided the agency's continuing efforts to enhance its IT program; during the fiscal year the agency mitigated a significant deficiency identified during an Inspector General review of agency IT operations. The agency received an "unqualified" opinion in its fiscal year 2007 financial statement audit. The Office again directed preparation of the Annual Performance Plan and the Annual Program Performance Report, as required by the Government Performance and Results Act of 1993. The Office also prepared the Federal Activities Inventory Reform Act report and the Performance and Accountability Report (which included the Management's Discussion and Analysis and the Federal Managers Financial Integrity Act report). Also during the fiscal year, the Office directed the update of the internal Commission issuances that specify procedures for a variety of programs and activities, including the creation of a comprehensive draft policy with respect to training and development, and guided Commission efforts to comply with the Government Paperwork Elimination Act and the Federal Information Security Management Act of 2002 ("FISMA"). Additionally, the Office guided the development of the fiscal year 2009 budget request to the Office of Management and Budget ("OMB") and the fiscal year 2008

President's Budget submission, and directed all efforts involving the audit of the Commission's fiscal year 2007 financial statements. Additionally, the Office developed, in coordination with the OIG, several documents designed to improve the assessment of agency internal controls. Also during the year, the Office provided primary support for the OMB clearance and records management programs, guided the further development of the agency's Continuity of Operations ("COOP") Plan, and coordinated the initiation of the agency's Individual Development Plan program. Further, the Office guided development of the agency's breach notification policy, responsive to new OMB requirements.

OA's key objectives for fiscal year 2008 are to: continue to implement policy directions aimed at refining and enhancing agency administrative programs and operations; monitor the accomplishment of agency performance goals, particularly those related to the implementation of Pay.gov; initiate further IT improvements, including the replacement, integration or update of agency database systems, the upgrading of network and desktop operating systems, and the implementation of Voice over Internet Protocol ("VoIP"); and work with senior managers to ensure effective strategic succession planning. The Office also will take the lead in assuring that the agency-wide computer security program is effective, that the agency's financial management system receives an unqualified opinion in annual financial audits, and that the agency complies fully with the government-wide identity card ("HSPD-12") initiative.

## **1. Office of Financial Management**

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

The Office of Financial Management (“OFM”) administers the Commission’s financial management program and is responsible for offering guidance on optimal utilization of the Commission’s fiscal resources. OFM is charged with interpreting government budgetary and financial policies and programs, and developing annual budget justifications for submission to the Office of Management and Budget (“OMB”) and to Congress. The Office also administers internal control systems for agency funds, travel, and cash management.

### **(b) Achievements**

During fiscal year 2007, OFM:

- **Collected and deposited in the General Fund \$1,964,837 from fines and penalty collections, publications, reproductions, and user fees.**
- **Coordinated and prepared budget justifications and estimates for the fiscal year 2008 Congressional budget and fiscal year 2009 OMB budget.**
- **Prepared a variety of external reports, including: the Annual Leave Year Report and the Report on Workyears and Personnel Costs for 2006 (Office of Personnel Management – “OPM”); the Report on International Travel for FY 2006 (OMB); the Report on First-Class Airline Accommodations for fiscal year 2006 (General Services Administration – “GSA”); and Monthly Report of Full-Time/Equivalent Work-year Civilian Employment (OPM).**
- **Prepared monthly status reports on workyears, funding, travel and receivables, and monthly allocation**



reports to provide management with meaningful, timely expense data by program.

- Completed a process for the individual bureaus/offices to forecast annual goals in accordance with the Commission's strategic goals.
- Worked with Bureau of Public Debt ("BPD") staff and auditors regarding the audits of fiscal years' 2006 and 2007 financial statements.
- Pursued all delinquent receivables and referred applicable debts to the Department of Treasury for collection.
- Worked with the Director of Administration to finalize the Commission's fiscal year 2006 Management's Discussion and Analysis and prepare the Commission's fiscal year 2006 Performance and Accountability Report, and to initiate fiscal year 2007 versions of those reports.
- Served on the Commission's committee to review and update user fees assessed to the public for Government goods and services.

**(c) Future Plans**

Goals in fiscal year 2008 include: facilitating implementation of Pay.gov for agency-wide and industry acceptance of electronic payments; continuing to pursue initiatives leading to economy and efficiency in budget and financial operations; and improving OFM's Cash Management Program, including migrating to updated platforms for the Paperless Check Conversion through the Federal Reserve Bank in Cleveland.

## **2. Office of Human Resources**

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

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

### **(b) Achievements**

During fiscal year 2007, OHR:

- **Monitored the activities of the agency’s payroll/personnel service provider, National Finance Center (“NFC”), and worked with OA staff to ensure security, continuity and accuracy of payroll and personnel services.**
- **Coordinated with senior management in administering the Senior Executive Service (“SES”) Candidate Development Program and the Emerging Leaders Program to address executive succession.**
- **Conducted a comprehensive training program, including drafting agency policy on training and employee development, providing executive training for SES candidates and training for participants of the Emerging Leaders Program, and continuing the college tuition reimbursement program.**
- **Planned, implemented, and promoted new programs for Personal Financial Literacy Education and Volunteer/Community Service Awareness.**

- **Conducted a comprehensive personnel and information security program, including initiating and adjudicating security investigations for new and reinvestigated employees, completing work necessary for reporting and updating data in the Clearance Verification System pursuant to OPM's e-clearance initiative, and collaborating with the U.S. Customs and Border Protection to gain access to the Automated Commercial Environment/International Trade Data System.**
- **Coordinated with OPM in administering a number of agency-wide surveys.**
- **Implemented provisions of the Federal Workforce Flexibility Act and related legislation and continued to work to establish a Human Capital Plan.**
- **Promoted the Preventive Health and Awareness Program and OPM's *Healthier Feds* initiatives, and hosted wellness seminars sponsored by the Employee Assistance and Federal Occupational Health Programs.**
- **Conducted numerous employee benefit and charitable contributions programs and open seasons.**
- **Administered agency compliance with the Enterprise Human Resources Integration project and other e-Gov initiatives such as e-payroll, e-clearance, and e-learning, and worked with other entities on pre-implementation issues related to eOPF (Electronic Official Personnel Folder).**
- **Worked with agency staff and GSA to implement pertinent provisions of HSPD-12.**
- **Evaluated contractor performance in the areas of classification/position management and personnel suitability adjudication.**

- **Coordinated implementation of a new training reporting system required by OPM.**

**(c) Future Plans**

In fiscal year 2008, OHR plans to: continue to advise agency management and staff on all human resources matters and ensure the maintenance of a sound and progressive human resources program; implement pertinent portions of the agency's strategic, training and related performance plans, particularly performance goals related to the management of human resources; explore and implement simplification, flexibility, and accountability of human resources management programs, including investigating automated solutions to address program requirements; in conjunction with administrative components and the GSA, evaluate the implementation of eOPFs; continue to implement pertinent provisions of HSPD-12; monitor the processes and database modernization activities of the NFC in conjunction with the government-wide e-payroll initiative and to ensure timely and accurate payroll and personnel services; and evaluate the agency's Human Capital Plan and associated metrics to assess progress in meeting strategic and performance goals and to determine necessary modifications.

### **3. Office of Information Technology**

**(a) General Office Responsibilities**

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

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

**(b) Achievements**

During fiscal year 2007, OIT:

- **Implemented the automated Form FMC-18 required for OTI licensing purposes; redeveloped and implemented the Regulated Persons Index and the Form FMC-1 system; and redesigned the FMC's Service Contract Filing System ("SERVCON") system to include a user ID and password system linked to Forms FMC-1 and FMC-18.**
- **Implemented new secure socket layer virtual private network ("VPN") to provide staff with remote access needed under COOP Plan, and to accommodate teleworking.**
- **Tested hardware and software configurations in advance of implementing Internet Protocol Version 6 ("IPv6"), a government-wide initiative mandated by OMB for effectiveness by June 2008.**
- **Initiated and administered contracts to provide IT support and other services to further the Commission's mission.**
- **Continued to lead the Asset Management Committee, the Technical Users Group, and the IT Change Control Process.**
- **Assumed management of FMC's telecommunications services.**
- **Prepared a test plan and successfully conducted a COOP test.**
- **Improved IT compliance with FISMA and the President's Management Agenda by reviewing and completing security assessments for FMC systems, and**

**conducting computer security awareness training for all employees.**

- **Continued the development and enhancement of FMC systems to automate processes consistent with the E-Government Act.**
- **Continued to update the policies and procedures associated with the technical assistance provided to FMC staff and changes in the IT infrastructure.**

**(c) Future Plans**

Major OIT initiatives for fiscal year 2008 include plans to: maintain compliance with FISMA requirements; conduct advance planning to implement VoIP; update the FMC Enterprise Architecture Plan; upgrade the existing desktop operating system, software applications, and equipment; improve the VPN security infrastructure; support the Pay.gov and HSPD-12 initiatives; and begin development of an Online Agreements system.

**4. Office of Management Services**

**(a) General Office Responsibilities**

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

The Office’s support programs include procurement of administrative goods and services, property management, space management, printing and copying management, mail and record services, facilities and equipment maintenance, and transportation. The Office’s major functions are to secure and furnish all supplies, equipment and services required in support of the Commission’s mission, and to formulate regulations, policies, procedures, and methods governing the

use and provision of these support services in compliance with the applicable Federal guidelines.

**(b) Achievements**

During fiscal year 2007, OMS:

- **Through the Office Director, served as the agency's Technical Representative for oversight of the Headquarters ("HQ") building security contract, and served as Chairman of the tenants' Building Security Committee ("BSC") for the HQ site.**
- **Worked through the BSC and the Department of Homeland Security's Federal Protective Service ("FPS") in resolving outstanding concerns surrounding the physical security services at FMC's HQ building.**
- **Coordinated the expansion of the agency's security card access program to provide additional security for physical access to office areas which control files containing personally identifiable information.**
- **Completed the office space renovation project required to accommodate the activities of the Offices of Administration and Operations at the agency's HQ facility.**
- **Coordinated with GSA to acquire temporary office space, motor pool vehicle, and other necessities required for establishing an Area Representative office in Houston, Texas.**
- **Arranged for the upgrade of voice telecommunications equipment in the Los Angeles, California, and Florida Area Representatives' offices.**
- **Worked with OIT on a seamless transfer of the agency's voice telecommunications program to OIT's control.**

- **Implemented full-service procurement support through BPD's Administrative Resources Center, which expanded the agency's contracting and procurement program.**
- **Coordinated with BPD for award of a follow-on contract for ongoing IT assistance during critical application implementation while a new contract for continuing support was established.**
- **Implemented use of the Library of Congress Federal Library and Information Network ("FEDLINK") program to acquire annual publications and on-line subscription services to ensure no disruption in service.**

**c) Future Plans**

In fiscal year 2008, the Office's objectives include: continuing to work with GSA, FPS, and other tenant agencies at HQ facilities and field locations to upgrade and/or improve the buildings' security measures and emergency preparedness; in conjunction with the agency's other administrative offices, continuing the process for implementing HSPD-12; working with BPD on streamlining the FMC's acquisition and procurement program for better efficiency; and continuing to provide advice and assistance to FMC activities regarding innovative support services.



## G. OFFICE OF OPERATIONS

The Director of Operations, as a senior staff official, is responsible to the Chairman for the management and coordination of the following Commission bureaus, in addition to direct oversight of the Commission's Area Representatives ("AR"):

- **Bureau of Certification and Licensing**
- **Bureau of Enforcement**
- **Bureau of Trade Analysis**

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

The Commission maintains a presence in Los Angeles, South Florida, New Orleans, New York, and Seattle through ARs based in each of those cities, and in fiscal year 2007 placed an additional AR in Houston, TX, due to significant growth in container volumes transiting the port in that area. These representatives serve other major port cities and transportation centers within their respective areas. In addition to monitoring and investigative functions, Area Representatives represent the FMC within their jurisdictions, provide liaison between the FMC and the maritime industry and the shipping public, collect and analyze information of regulatory significance, and assess industry conditions. The Area Representatives support the functions of each Bureau under The Office of Operations. Liaison activities include: cooperation and coordination with other governmental agencies and departments; providing regulatory information and relaying FMC policy to the shipping industry and the public; and handling informal complaints.

In fiscal year 2007, hundreds of informal complaints were handled by Area Representatives, over 50 investigations were opened and conducted with the support of BOE attorneys into potential violations of the Shipping Act. Five investigations were completed and sent to BOE for further action. Public service announcements were published in each major port area in fiscal year 2007 warning against the use of unlicensed OTIs. These led to numerous inquiries and reports to ARs regarding

licensed and unlicensed OTI activity. In South Florida, ARs addressed the Dominican-American Chamber of Commerce, the Surfside Business Association, the Greater Miami Chamber of Commerce, and the Florida Customs Brokers and Freight Forwarders Association. In New York, Univision aired an interview with the New York AR resulting in receipt of over 50 complaints of unlicensed OTI activity.

The Office continued to support the operational bureaus through oversight and guidance towards the accomplishment of many programmatic achievements during fiscal year 2007. In particular, the Office worked extensively with the bureaus and other agency offices to review Commission rules and regulations with regard to business practices in the OTI sector. The Office worked with the Bureau of Certification and Licensing and the Bureau of Enforcement to report to the Commission with regard to emerging industry changes in the OTI sector. As well, Area Representatives made several presentations in the OTI sector to encourage compliance with licensing and other requirements.

The Office continues to lead the Bureau of Enforcement and the Bureau of Certification and Licensing in review and coordination of compliance and enforcement policy. The Office worked with staff members from all bureaus to make technological advances, including work on the automated form FMC-18.

The Office's key objectives for fiscal year 2008 are to continue to pursue refinement, enhancement and integration of agency programs and operations in line with the Commission's policy directions, as well as monitor the development and accomplishment of agency strategic and performance goals. In particular, the Office will expand the agency's outreach effort and raise public awareness of agency regulations and services. The Office also will review agency policies and regulations to ensure alignment between the FMC and the industry, and to automate certain processes.

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

### **1. In General**

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

- **Licenses and regulates OTIs, including ocean freight forwarders and NVOCCs.**
- **Issues certificates to owners and operators of passenger vessels that have evidenced financial responsibility to satisfy liability incurred for nonperformance of voyages or for death or injury to passengers and other persons.**
- **Manages programs assuring financial responsibility of OTIs and passenger vessel operators, by developing policies and guidelines, and analyzing financial instruments and financial statements.**
- **Develops and maintains information systems that support the Bureau's programs and those of other Commission entities.**

In carrying out these functions, the Bureau provides information and referrals in response to a wide array of informal inquiries and provides guidance with respect to licensing and bonding.

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

owner/operators, and develops and maintains all Bureau databases and records of OTI applicants and licensees.

## **2. Licensing of Ocean Transportation Intermediaries**

OTIs are transportation middlemen for oceanborne cargo moving in the U.S.-foreign trades. There are two types: NVOCCs and ocean freight forwarders. Both NVOCCs and ocean freight forwarders must be licensed by the Commission if they are located in the U.S. NVOCCs doing business in the U.S. foreign trades but located outside the U.S. (“foreign NVOCCs”) may choose to become licensed, but are not required to do so. Whether licensed or not, foreign NVOCCs must establish financial responsibility. All NVOCCs must publish electronic tariffs.

To become licensed by the Commission, an OTI must establish that it is qualified in terms of experience and character, as well as establish its financial responsibility by means of a bond, insurance, or other instrument. Licensed ocean freight forwarders must establish financial responsibility in the amount of \$50,000, and licensed NVOCCs, \$75,000. An additional \$10,000 of coverage is required for each unincorporated U.S. branch office of a licensee. Furthermore, unlicensed foreign NVOCCs must maintain \$150,000 in coverage. The financial instrument must be available to pay claims against the OTI arising from its transportation-related activities, any order of reparation assessed under the Shipping Act, and any judgments for damages against an OTI arising from its transportation-related activities under the Shipping Act.

During fiscal year 2007, the Commission received 484 new OTI applications and 267 amended applications, issued 506 OTI licenses, revoked 237 licenses, and reissued approximately 35 licenses. At the end of the fiscal year, 1,146 ocean freight forwarders, 1,662 U.S. NVOCCs, 1,222 joint NVOCC/ocean freight forwarders, and 42 foreign NVOCCs held active OTI licenses. An additional 978 foreign NVOCCs maintained proof of financial responsibility on file with the Commission, but chose not to be licensed. U.S. NVOCCs may file riders to their existing NVOCC bonds to meet financial responsibility requirements imposed by the Chinese government. The Commission received 86 riders providing

optional proof of financial responsibility for NVOCCs serving in the U.S./China trade.

During fiscal year 2007, the Bureau made significant progress in the development of an automated Form FMC-18, Application for an Ocean Transportation Intermediary License. The Bureau completed testing of the automated FMC-18 filing system, published a rulemaking to permit filing on a voluntary basis, and the new optional electronic method for filing Form FMC-18 became available. To encourage the use of the online electronic filing system, the Commission is assessing lesser filing fees of \$250 for new applicants and \$125 for existing licensees wishing to update their records or submit changes requiring Commission approval. Applicants who continue to submit the Form FMC-18 in paper format will be charged \$825 and \$525 for new and amended applications respectively. Electronic submission will facilitate completeness of the application and will contribute to a more user-friendly application process.

### **3. Passenger Vessel Certification**

The Commission administers 46 U.S.C. §§ 44102-44103, which require evidence of financial responsibility for vessels which have berth or stateroom accommodations for 50 or more passengers and embark passengers at U.S. ports and territories. The program now encompasses 200 vessels and 48 operators, which have evidence of financial responsibility coverage in excess of \$354 million for nonperformance and over \$690 million for casualty. The certificates issued pursuant to this program are necessary for U.S. Customs and Border Protection's clearance of thousands of passenger vessel sailings annually. During fiscal year 2007, the Commission received applications for 73 certificates (casualty and performance), while 25 casualty and 35 performance certificates were approved and issued.

The cruise industry continues to be the fastest growing category in the leisure travel market. The volume of passengers reached an all-time high of 12.6 million passengers during 2007, which is an increase of 0.5 million passengers exceeding 2006 bookings. New cruise lines have entered the business and existing cruise lines continue to build and purchase additional vessels to serve an increasing demand. The industry

continues to develop new destinations, new ship designs, and new and diverse onboard amenities, facilities, and services. In fiscal year 2007, 12 new vessels were added to the industry with an additional 29 new ships contracted or planned to be added to the North American fleet by 2010.

In conjunction with CADRS, the Bureau offers information and guidance to the cruising public throughout the year on passenger rights and obligations regarding monies paid to cruise lines that fail to perform voyages. Over the past few years, a number of cruise operators filed for bankruptcy or discontinued operations. When cruise lines become bankrupt, the Commission works closely with the cruise line and the financial responsibility provider to facilitate the refund process. The public is kept informed through press releases posted on the Commission's website and advice given to passengers who contact the staff. During fiscal year 2007, no cruise operator under the Commission's PVO program ceased operation or left the trade. However, staff continued its efforts to assist passenger vessel operators and financial responsibility providers to resolve passenger claims for several cancelled cruises.

One component of the Bureau's PVO monitoring program is to perform on-site reviews to evaluate PVOs' financial responsibility with respect to oversight of cruise lines participating in the Commission's PVO program. During fiscal year 2007, staff issued two on-site review reports. The first on-site review was conducted of a cruise line which established its financial responsibility with an escrow account and the second one performed at the site of a PVO which established its financial responsibility with a bond. Also, the Bureau assessed the effectiveness of the PVO monitoring procedures previously implemented to ensure compliance with FMC rules and regulations, particularly with respect to unearned passenger revenue ("UPR") calculation and submission of reports.

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

During fiscal year 2007, BCL completed its modernization of the Regulated Persons Index ("RPI"). The RPI contains contact information of regulated entities as well as OTI licensing and bonding information. A primary function of the Bureau is to maintain up-to-date records of

licensed OTIs. The Bureau posts on the Commission's website a list of OTIs which are licensed, bonded, and have provided their tariff location, if required, so that carriers and others can ascertain whether an OTI has met FMC requirements. The OTI list also indicates whether an NVOCC has filed an optional rider for additional proof of additional NVOCC financial responsibility. Furthermore, the Bureau successfully implemented an electronically filed Form FMC-18 and systems integration among Commission databases, and has taken the lead to ensure accomplishment of the agency's performance goals related to improving the program for updating OTI data.

## **5. Future Plans**

In fiscal year 2008, the Bureau will: continue its efforts to improve the electronic FMC-18 system to permit fully electronic processing of an OTI application and licensing; develop the functionality for electronic payments and E-signature capability; and implement a plan to support the electronic filing of OTI bonds. In addition, it will seek to improve compliance by VOCCs and OTIs with the Shipping Act and to reduce the number of transportation users currently impacted by actions of unlawful operators by expanding awareness of its education, training, and other outreach efforts. The Bureau will continue its efforts to accomplish the Commission's goal related to assuring that the PVO program meets the contemporary needs of the cruising public by developing a plan to automate the Form FMC-131, Application for Certificate of Financial Responsibility, and conduct corresponding requirements analysis to facilitate the filing of PVO applications. Finally, it will continue work on a rulemaking with respect to the Commission's statutory obligation to the passenger vessel operator financial responsibility program derived from 46 U.S.C. 44102 and 46 U.S.C. 44103.





# I. BUREAU OF ENFORCEMENT

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

Through investigative personnel, and most often as the result of information provided by the industry and other government entities, the Bureau monitors and investigates the activities of ocean common carriers, OTIs, shippers, ports and terminals, and other persons to ensure compliance with the statutes and regulations administered by the Commission. Monitoring activities include: (1) service contract and NVOCC service arrangement (“NSA”) reviews to determine compliance with applicable statutes and regulations; (2) reviews and audits of ocean common carrier, NVOCC and ocean freight forwarder operations, including compliance with licensing, tariff, and bonding requirements; (3) audits of passenger vessel operators to ensure the financial protection of cruise passengers; (4) monitoring of agreements among ocean carriers and MTOs; and (5) various studies and analyses to support Commission programs. Investigations involve alleged violations of the full range of statutes and regulations administered by the Commission, including: illegal or unfiled agreements; abuses of antitrust immunity; unlicensed OTI activity, including servicing of noncompliant OTIs by VOCCs and licensed NVOCCs; illegal rebating; misdescriptions or misdeclarations of cargo; untariffed cargo carriage; unbonded OTI and passenger vessel operations; and various types of consumer abuses,

including failure of carriers or intermediaries to carry out transportation obligations, resulting in cargo delays or financial losses for shippers. The Bureau adheres to the agency's objectives of obtaining statutory compliance and ensuring equitable trading conditions.

The Bureau prepares and serves notices of violations of the shipping statutes and Commission regulations and may compromise and settle civil penalty demands arising out of those violations. Other Bureau investigations may be resolved through compliance measures. If settlement is not reached, Bureau attorneys act as prosecutors in formal Commission proceedings that may result in settlement or in the assessment of civil penalties. The Bureau also participates, in conjunction with other Commission units, in special enforcement initiatives, fact-finding investigations and rulemaking efforts.

During fiscal year 2007, the Bureau of Enforcement investigated and prosecuted possible illegal practices in many trade lanes, including the transpacific, North Atlantic, North and West African, Central and South American and Caribbean trades. These market-distorting activities included various forms of secret rebates and absorptions, misdescription of commodities and misdeclaration of measurements, illegal equipment substitution, and unlawful use of service contracts, as well as carriage of cargo by and for untariffed and unbonded NVOCCs. Most of these investigations were resolved informally, some with compromise settlements and civil penalties.

In addition, several matters arose with respect to activities pursuant to filed and unfiled agreements between and among ocean common carriers. A major enforcement action was also continued into the operations of unlicensed and unbonded NVOCCs specializing in the carriage of used household goods, and was expanded to include licensed OTIs providing service to the unlicensed.

Interaction between the Bureau, the Commission's Area Representatives, and the CBP with respect to the exchange of investigative information continues to be beneficial to all parties. Cooperation with CBP included staff interactions and joint field operations to investigate entities suspected of violating both agencies' statutes or regulations. Such

cooperation also has included local police and other government entities, including the Federal Bureau of Investigation, when necessary.

In fiscal year 2007, the compliance audit program continued. This program, conducted from headquarters primarily by mail, reviews the operations of licensed OTIs to assist them in complying with the statutory requirements and the Commission's rules and regulations. The audit program also includes review of entities holding themselves out as VOCCs with no indication of vessel operations. At the beginning of fiscal year 2007, 2 audits were pending. During the fiscal year, 106 audits were commenced, 102 audits were completed, and 6 were pending in the Bureau on September 30, 2007.

At the beginning of fiscal year 2007, 34 enforcement cases were pending final resolution by the Bureau, the Bureau was party to 5 formal proceedings, and there were 67 matters pending which the Bureau was monitoring or for which it was providing legal advice. During the fiscal year, 16 new enforcement actions were commenced; 32 were compromised and settled, administratively closed, or referred for formal proceedings; and 18 enforcement cases were pending resolution at fiscal year's end. Also, 4 formal proceedings were initiated; 2 formal proceedings were completed, and 7 were pending at the end of the fiscal year. Additionally, 72 matters involving monitoring or legal advice were received during the fiscal year, 61 such matters were completed, and 78 were pending in the Bureau on September 30, 2007.

In fiscal year 2008, the Bureau will continue to investigate market-distorting, fraudulent and anticompetitive practices not in compliance with the statutes and regulations administered by the Commission, including the operations of licensed and unlicensed OTIs and possible non-compliance by the parties with the regulatory requirements for service contracts and NSAs.



# **J. BUREAU OF TRADE ANALYSIS**

## **1. In General**

The primary function of the Bureau is the oversight of concerted activity by ocean common carriers and marine terminal operators under the standards of the Shipping Act. Further, the Bureau administers the Commission's agreements, service contract, and NSA programs, and monitors the accessibility and accuracy of all published tariffs. The Bureau's major program activities include:

- **Administering comprehensive trade monitoring programs to identify and track relevant competitive, commercial, and economic activity in each major U.S. foreign trade, and to advise the Commission and its staff on current trade conditions, trends, and regulatory concerns affecting oceanborne liner transportation.**
- **Conducting systematic surveillance of carrier activity in areas relevant to the Commission's administration of statutory standards.**
- **Developing economic studies and analyses in support of the Commission's regulatory responsibilities.**
- **Providing expert economic testimony and support in formal proceedings, particularly regarding unfair foreign shipping practices.**
- **Processing and analyzing ocean common carrier and MTO agreements.**
- **Reviewing and processing service contracts, NSAs, and amendments filed by ocean common carriers, conferences of such carriers, and NVOCCs, including**

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

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

## **2. Agreement Filings and Review**

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

In fiscal year 2007, the Bureau received 191 agreement filings, a decrease of 93, or 33 percent from the previous year. The Bureau analyzed and processed 190 agreement filings during the year. Statistics on agreement filings for fiscal year 2007 are contained in Appendix C.

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

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

## **(1) Pricing Agreements**

Conference agreements provide for the collective discussion, agreement, and establishment of ocean freight rates and practices by groups of ocean common carriers. Conferences publish a common rate tariff in which all the member lines participate. There are currently eight conference agreements on file with the Commission. No new conference agreements have been filed with the Commission since 2000. During fiscal year 2007, the Bureau received only one modification to an existing conference agreement, a non-substantive change in address. While no existing conference agreement was terminated in fiscal year 2007, we expect that the significance of conference agreements will continue to decline in coming years, especially given the upcoming elimination of immunity for pricing agreements in the European trades.

Rate discussion agreements (“RDAs”) also focus on rate matters, but unlike conferences, any consensus reached under RDAs is non-binding on the parties. RDAs do not have common rate tariffs; each party publishes its own tariff. These agreements have become the primary pricing forum in most U.S. trade lanes. During fiscal year 2007, there were no new RDAs filed. Forty-nine modifications to existing RDAs were filed and processed, the vast majority being adding or deleting members and name changes.

One rate discussion agreement was terminated during the fiscal year; *the BBC Chartering and Logistics – Beluga Chartering Cooperative Working Agreement*.

## **(2) Non-pricing Agreements**

Non-rate discussion agreements (“NRDAs”) provide ocean common carriers with a forum for discussing matters of mutual interest other than rates. During the fiscal year, the Bureau received and processed 11 modifications to existing NRDAs. No new NRDA was filed last year.

Vessel-sharing agreements (“VSAs”) make up the largest type of agreements on file with the Commission. There are currently 159 VSAs on file with the Commission. Most VSAs authorize some level of service cooperation with the goal of reducing individual operating costs. VSAs

range from alliance agreements, which involve considerable operational cooperation, to slot charter agreements, which require only minimal cooperation. During fiscal year 2007, the Bureau received 37 new VSAs, representing 90 percent of all new carrier agreements filed during the year, and 51 modifications to existing VSAs. This continues a trend we have seen recently, with VSAs increasing from 61 percent of all filed carrier agreements to 69 percent over the past five years. Twenty-seven VSAs were either terminated or expired by their own terms last year.

Under joint service agreements (“JSAs”), two or more carriers operate a joint venture under a single name in a specified trading area. The JSA issues its own bills of lading, sets its own rates, and acts as an individual ocean common carrier. One new JSA, the *Evergreen Line Joint Service Agreement*, and two modifications to that same agreement were received and processed during the fiscal year.

Cooperative working agreements (“CWA”) are non-pricing agreements that tend to deal with unique operational considerations relating to acquisitions, joint service contracting, sharing of administrative services, or internet portal management. Other agreements filed with the Commission in small numbers include agency, sailing, transshipment, and equipment interchange (including chassis pooling) agreements. During fiscal year 2007, the Bureau received and processed one new CWA and one new chassis pool agreement. Nineteen modifications to existing CWAs or other agreements were also filed last year.

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

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

During fiscal year 2007, the Bureau received ten MTO agreement filings, including four terminations/withdrawals. The one new lease that was filed was found not subject to the Commission’s jurisdiction and returned. A port authority decided to take advantage of the filing exemption for leases and withdrew the two agreements it had on file.



A notable filing last year was an amendment to the *West Coast MTO Agreement* that added authority for parties to discuss matters related to air quality in a Southern California port area. We expect that environmental issues will become a significant focus of MTO agreements throughout the country in the coming years as air quality in and around port areas becomes a more pressing concern to the surrounding communities.

### **3. Monitoring and Economic Analysis**

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

The importance of the Commission's monitoring activities is a direct consequence of the immunity for filed agreements from prosecution under the antitrust laws provided for by the Shipping Act. The Commission's monitoring program examines carrier competition, including market share, concentration, barriers to market entry, coordination between carriers or groups of carriers, sources of services, as well as pricing trends, service offerings, vessel capacity utilization, capacity management programs, service contracting activity, and shipper complaints.

In addition to the Bureau's monitoring and analysis projects arising in connection with the *Los Angeles–Long Beach Infrastructure and Environmental Programs Cooperative Working Agreement* and an evaluation of the competitive impact of an amendment to the *Transpacific Stabilization Agreement* ("TSA") as discussed in detail earlier, major projects begun or completed by the Bureau in fiscal year 2007 included:

(1) an economic review of the PierPASS program under the *West Coast MTO Agreement* focusing on the impact of the program's pricing mechanisms, cost allocation methods, and revenue redistribution system on the various stakeholders; (2) a report, in response to an informal complaint, on the formation and operation of cooperative chassis pools at U.S. rail and marine terminals implemented by the *Ocean Carrier Equipment Management Association* (OCEMA) and its related agreements; (3) an economic analysis of the amendment to include New Zealand in the geographic scope of the *Australia/United States Discussion Agreement*; (4) various other economic analyses and reports of filed agreements and agreement modifications; (5) an analysis of service contract data from random samples of SERVCON [the FMC's electronic management system of service contract filings] evaluating the application of charges, terms, and other practices of carriers with agreement rate authority; (6) statistical time series forecasts of the growth in container volume in 48 separate U.S. shipping trades; (7) a report on the comments and statements of interested parties on the Shipping Act presented before the Antitrust Modernization Commission (AMC), along with a review of the AMC's final report and an analysis of the relevant issues raised; (8) ongoing staff participation in the development of the Automated Commercial Environment/International Trade Data System (ACE/ITDS); (9) the development of a system to facilitate the electronic filing of agreements and related reports that agreement parties are required to file; (10) a series of interviews with industry stakeholders focusing on the future outlook of the industry; (11) responses to requests, inquiries, and informal complaints on carrier agreements and related matters; and (12) meetings with industry representatives on agreement and trade matters.

The Bureau also provides economic expertise for a variety of Commission initiatives, including rulemaking proceedings. Bureau economists prepare testimony in fact-finding investigations and cases of unfair shipping practices under section 19 of the 1920 Act and FSPA. They also contribute to speeches and provide briefings for senior agency officials.

#### **4. Tariffs**

The Shipping Act requires common carriers and conferences to publish their tariffs electronically. These electronic tariffs contain rates, charges, rules, and practices of common carriers operating in the U.S. foreign commerce. The Bureau monitors the public accessibility of these private tariff systems and reviews published tariff material for compliance with the requirements of the Shipping Act. The Bureau also determines whether to grant applications for special permission to deviate from tariff publishing rules and regulations. During fiscal year 2007, the Bureau received and processed three special permission applications.

The Bureau also collaborates with other Commission bureaus and offices to verify that NVOCCs comply with the Commission's licensing, bonding and tariff publication requirements. Further, the Bureau is directly involved in processing the electronic Form FMC-1, *Tariff Registration Form*, required to be filed with the Commission by common carriers, conferences, and MTOs. The data on this form identifies the location of common carrier tariffs, including common carrier and conference service contract essential terms publications or any MTO schedules. At the end of fiscal year 2007, a total of 4,372 tariff location addresses were posted on the Commission's website. Of that number, 3,875 tariff addresses were for NVOCCs.

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

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

During fiscal, 2007, the Commission received 44,608 new service contracts, compared to 46,682 in fiscal year 2006, and 262,076 amendments, compared to 252,566 in fiscal year. 2006. The number of new service contract filings decreased nearly four percent from fiscal year 2006, and amendment filings increased nearly three percent over fiscal year 2006. Over the last two fiscal years the number of original filings has decreased, while the filings of amendments to those original service contracts have increased. Original service contract or NSA filings that

contain errors due to clerical errors can be corrected within two business days by filing a “corrected transmission” copy into SERVCON. During the fiscal year, 2,053 records involving corrected transmission copies were filed into SERVCON.

## **6. NVOCC Service Arrangements**

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

At the end of fiscal year 2007, there were 533 NVOCCs registered with the Commission to file NSAs, of which 518 designated a tariff publishing agent to file NSAs on their behalf and 15 named a person or persons within their company to file. During fiscal year 2007, approximately 741 NSAs and 886 amendments were filed by 65 NVOCCs. Since January 2005, there have been 1,421 NSAs and 1,389 amendments filed by 96 NVOCCs.

## **7. Controlled Carriers**

A controlled carrier is an ocean common carrier that is, or whose operating assets are, owned or controlled directly or indirectly by a government. The Shipping Act provides that no controlled carrier may maintain rates or charges in its tariffs or service contracts that are below a level that is just and reasonable, nor may any such carrier establish, maintain, or enforce unjust or unreasonable classifications, rules or regulations in those tariffs or service contracts. In addition, tariff rates, charges, classifications, rules, or regulations of a controlled carrier may not, without special permission of the Commission, become effective sooner than the 30th day after the date of publication.

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

## **8. Marine Terminal Activities**

Pursuant to OSRA, an MTO may make available to the public, subject to section 10(d) of the Shipping Act, a schedule of rates, regulations, and practices, including limitations of liability for cargo loss or damage, pertaining to receiving, delivering, handling, or storing property at its marine terminal. Any such schedule made available to the public shall be enforceable by an appropriate court as an implied contract without proof of actual knowledge of its provisions. Pursuant to the Commission's regulations governing MTO schedules, any terminal schedule that is made available to the public must be available during normal business hours and in electronic form. Each MTO must notify the Bureau of the electronic location of its terminal schedule by submitting Form FMC-1 before commencing operations. A total of 258 MTOs have filed Form FMC-1. At the close of fiscal year 2007, 153 of these MTOs had published their terminal schedules. The internet addresses for these MTO terminal schedules are posted on the Commission's website.

## **9. Automated Database Systems**

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

At the end of fiscal year 2007, the Form FMC-1 System reflected the tariff location addresses of 336 VOCCs, 3,875 NVOCCs, eight conferences, and 153 MTOs. The FMC-1 System also allows the Commission to quickly track the status of any Form FMC-1 submitted. The FMC-1 System was upgraded in fiscal year 2007 to include major security features.

SERVCON contains service contract and NSA data, most of which is only available to the Commission's staff due to confidentiality requirements. Carriers must register to file service contracts by submitting FMC Form FMC-83 and NVOCCs must submit Form FMC-78 to file NSAs. During fiscal year 2008, the Bureau intends to implement an

electronic registration procedure for carriers/OTIs filing service contracts and NSAs.

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

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

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

## **10. Future Plans**

During fiscal year 2008, the Bureau will review and evaluate various MTO agreements, including proposals developed under the *Los Angeles and Long Beach Port Infrastructure and Environmental Programs Cooperative Working Agreement*; research competition policy and related issues in light of the proposed regulatory changes in the European Union, China and India; and assist in the evaluation of any industry petitions that may be filed with the Commission. The Bureau will also pursue enhanced automation of several of its data collection processes.

The Bureau will monitor the activities of common carrier and MTO agreements; assist other bureaus by providing relevant information and analysis; work to automate the filing, publishing and tracking of certain data; participate in agency planning activities; and implement a variety of industry research projects on issues likely to affect liner shipping, marine terminal operations, and inter-modal transportation affecting U.S. foreign trade.

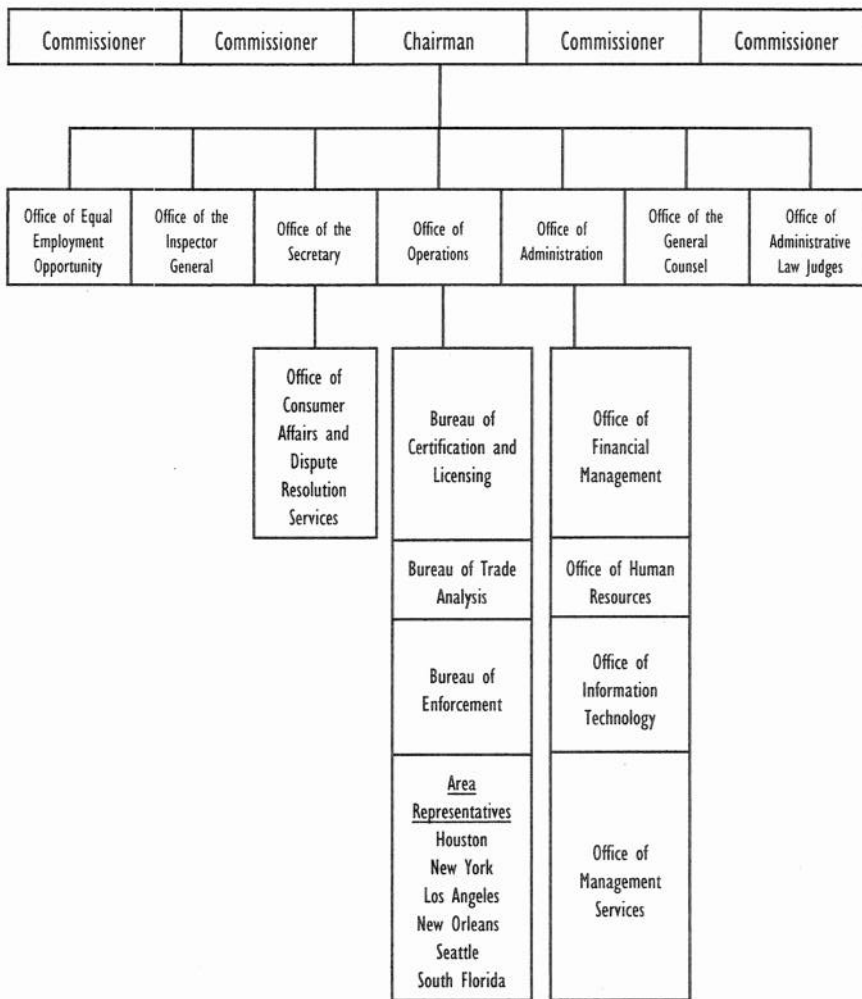
## **APPENDICES**





# APPENDIX A

## FEDERAL MARITIME COMMISSION ORGANIZATION CHART Fiscal Year 2007



# APPENDIX B

## COMMISSION PROCEEDINGS Fiscal Year 2007

### *Formal Proceedings*

<i>Discontinuances, Dismissals and Settlements .....</i>	<i>18</i>
<i>Rulemakings - Final Rules .....</i>	<i>2</i>
<i>Total .....</i>	<i>20</i>

<i>Informal Dockets .....</i>	<i>5</i>
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# APPENDIX C

## AGREEMENT FILINGS AND STATUS Fiscal Year 2007

### Agreements Filed in FY 2007 (including modifications and terminations)

Carrier .....	181
Terminal .....	10
Total .....	191

### Agreement Processing Categories in FY 2007

Forty-Five Day Review .....	42
Shortened Review .....	25
Exempt-Effective Upon Filing .....	121
Rejection of Filing .....	0
Formal Extension of Review Period .....	1
Withdrawals .....	1
Not Subject .....	0
Total .....	190

### Carrier Reports Submitted for Commission Review

Minutes of Meetings .....	908
Ad Hoc Reports .....	24
Monitoring Reports .....	97
Total .....	1,029

### Agreements on File as of September 30, 2007

Conference .....	8
Rate Discussion .....	28
Non-Rate Discussion .....	8
Joint Service .....	8
Vessel-Sharing .....	159
Cooperative Working and Other .....	18
Terminal .....	255
Total .....	484

# APPENDIX D

## FORM FMC-1 TARIFF LOCATION ADDRESSES - ELECTRONIC SERVICE CONTRACT AND NSA FILINGS AND SPECIAL PERMISSION APPLICATIONS Fiscal Year 2007

### Form FMC-1 Filings

VOCCs .....	336
OTI/NVOCCs .....	3,875
MTOs .....	153
Conferences .....	8

### Electronic Service Contract Documents

New Service Contracts .....	44,608
Service Contract Amendments .....	262,076

### NVOCC Service Arrangement ("NSA") Documents

New NSAs .....	741
NSA Amendments .....	886

### Special Permission Applications

Granted .....	2
Denied .....	0
Pending .....	1
Withdrawn .....	0

# APPENDIX E

## CIVIL PENALTIES COLLECTED Fiscal Year 2007

<b>Air &amp; Ocean Shipping Inc.</b> .....	<b>\$110,000.00</b>
Hyundai Merchant Marine Co. ....	680,000.00
<b>Mediterranean Shipping Co.</b> .....	<b>280,000.00</b>
Oconca Shipping NY, Inc. ....	40,000.00
<b>Seaboard Marine Ltd.</b> .....	<b>200,000.00</b>
S.F. Systems, Inc. ....	32,000.00
<b>SWAT International Inc.</b> .....	<b><u>30,000.00</u></b>
<b>Total Civil Penalties Collected</b> .....	<b>\$1,372,000.00</b>

# APPENDIX F

## STATEMENT OF APPROPRIATIONS, OBLIGATIONS AND RECEIPTS FOR THE FISCAL YEAR ENDED SEPTEMBER 30, 2007

### *APPROPRIATIONS:*

Public Law 110-5, 110<sup>th</sup> Congress: For necessary expenses of the Federal Maritime Commission as authorized by section 201(d) of the Merchant Marine Act of 1936, as amended (46 App. U.S.C. 1111), including services as authorized by 5 U.S.C. 3109; hire of passenger motor vehicles authorized by 31 U.S.C. 1343(b); and uniforms or allowances therefor, as authorized by 5 U.S.C. 5901-5902, \$20,427,910: Provided, that not to exceed \$2,000 shall be available for official reception and representation expenses.

\$20,427,910

### *OBLIGATIONS AND UNOBLIGATED BALANCE:*

Net obligations for salaries and expenses for the fiscal year ended September 30, 2007.

\$20,423,399

*STATEMENT OF RECEIPTS:* Deposited with the General Fund of the Treasury for the Fiscal Year Ended September 30, 2007:

Publications and reproductions, Fees and Vessel Certification, and Freight Forwarder Applications	\$ 592,720
Fines and penalties	<u>\$1,372,117</u>
<b>Total general fund receipts</b>	<b>\$1,964,837</b>