

**FEDERAL MARITIME  
COMMISSION**

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**42nd  
ANNUAL REPORT  
for  
Fiscal Year  
2003**



## **TABLE OF CONTENTS**

LETTER OF TRANSMITTAL .....	iii
<b>MEMBERS OF COMMISSION .....</b>	<b>v</b>
SENIOR COMMISSION OFFICIALS .....	vii
<b>I. THE COMMISSION</b>	
A. History .....	1
<b>B. Functions .....</b>	<b>1</b>
C. Organization .....	3
<b>II. THE YEAR IN REVIEW</b>	
A. Trade Developments .....	4
<b>B. Restrictive Trade Practices .....</b>	<b>7</b>
C. Trade Oversight .....	7
<b>D. Alternative Dispute Resolution .....</b>	<b>8</b>
E. Enforcement .....	10
<b>III. MONITORING AND ENFORCEMENT</b>	
A. Monitoring .....	11
<b>B. Enforcement .....</b>	<b>12</b>
<b>IV. DEVELOPMENTS IN MAJOR U.S. FOREIGN TRADES</b>	
A. Transatlantic .....	13
<b>B. Mediterranean .....</b>	<b>15</b>
C. Middle East .....	16
<b>D. Africa .....</b>	<b>16</b>
E. Latin America and the Caribbean .....	18
<b>F. Transpacific .....</b>	<b>20</b>
G. Worldwide .....	23
<b>V. THE FOREIGN SHIPPING PRACTICES ACT OF 1988</b>	
A. General .....	24
<b>B. Top Twenty U.S. Liner Cargo</b>	
<b>Trading Partners .....</b>	<b>25</b>

**VI. SIGNIFICANT OPERATING ACTIVITIES BY ORGANIZATIONAL UNIT**

A.	Office of the Secretary	27
<b>B.</b>	<b>Office of Administrative Law Judges</b>	<b>28</b>
C.	Office of the General Counsel	30
<b>D.</b>	<b>Office of Equal Employment Opportunity</b>	<b>39</b>
E.	Office of the Inspector General	40
<b>F.</b>	<b>Office of the Executive Director</b>	<b>42</b>
G.	Bureau of Consumer Complaints and Licensing	50
<b>H.</b>	<b>Bureau of Enforcement</b>	<b>55</b>
I.	Bureau of Trade Analysis	57

**APPENDIXES**

A.	Organization Chart	69
<b>B.</b>	<b>Commission Proceedings</b>	<b>70</b>
C.	Agreement Filings and Status	71
<b>D.</b>	<b>Form FMC-1 Tariff Location Addresses - Electronic Service Contract Filings and Special Permission Applications</b>	<b>72</b>
E.	Civil Penalties Collected	73
<b>F.</b>	<b>Investigations</b>	<b>74</b>
G.	Statement of Appropriations, Obligations and Receipts	75



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

March 31, 2004

To the United States Senate and House of Representatives:

Pursuant to section 103(e) of Reorganization Plan No. 7 of 1961, and section 208 of the Merchant Marine Act, 1936, as amended, I am pleased to submit the 42<sup>nd</sup> Annual Report of the activities of the Federal Maritime Commission for fiscal year 2003.

Sincerely,

Steven R. Blust  
Chairman

# MEMBERS OF COMMISSION

*Steven R. Blust  
Chairman  
Appointed 2002  
Term Expires 2006*

*Harold J. Creel, Jr.  
Commissioner  
Appointed 1994  
Term Expires 2004*

*Joseph E. Brennan  
Commissioner  
Appointed 1999  
Term Expired 2003*

*Rebecca F. Dye  
Commissioner  
Appointed 2002  
Term Expires 2005*

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

## SENIOR COMMISSION OFFICIALS

Counsel to the Chairman . . . . . *Rachel E. Dickon*

Acting General Counsel . . . . . *Carol J. Neustadt*

Secretary . . . . . *Bryant L. VanBrakle*

Chief Administrative Law Judge . . . *Norman D. Kline*

Director, Office of  
Equal Employment Opportunity *Alice M. Blackmon*

Inspector General . . . . . *Tony P. Kominoth*

Executive Director . . . . . *Bruce A. Dombrowski*

Deputy Executive Director . . . . . *Austin L. Schmitt*

Director, Bureau of Consumer  
Complaints and Licensing . . *Sandra L. Kusumoto*

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

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

# 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 (“DOT”). 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” or “1984 Act”) brought about a major change in the regulatory regime facing 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 1984 Act, further signaled a significant paradigm shift in shipping regulation.

### B. FUNCTIONS

The principal statutes or statutory provisions administered by the Commission are the 1984 Act, the Foreign Shipping Practices Act of 1988 (“FSPA”), section 19 of the Merchant Marine Act, 1920 (“1920 Act”), and Pub. L. No. 89-777. Most of these statutes were amended and modified by OSRA, which took effect on May 1, 1999.

The Commission’s regulatory responsibilities include:

- **Protecting shippers and carriers engaged in the foreign commerce of the U.S. from restrictive or unfair foreign laws, regulations, or business practices that harm U.S. shipping interests or ocean trade.**
- **Reviewing operational and pricing agreements among ocean common carriers and marine terminal operators (“MTOs”), to ensure that they do not have excessively anticompetitive effects.**
- **Reviewing and maintaining a system containing the service contracts between ocean common carriers and shippers, and using this system to guard against anticompetitive practices and other unfair prohibited acts.**

- **Ensuring that common carriers' 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 and are not unfairly undercutting private competitors.**
- **Issuing passenger vessel certificates evidencing financial responsibility of vessel owners or charterers to pay judgments for personal injury or death or to repay fares for the nonperformance of a voyage or cruise.**
- **Licensing ocean transportation intermediaries ("OTIs") 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.**
- **Investigating discriminatory rates, charges, classifications, and practices of common carriers, MTOs, and OTIs operating in the foreign commerce of the U.S.**

The Commission is authorized by the FSPA, section 19 of the 1920 Act, and section 13(b)(6) of the 1984 Act, to take action to ensure that the foreign commerce of the U.S. is not burdened by non-market barriers to ocean shipping. The Commission may take countervailing action to correct unfavorable shipping conditions in U.S. foreign commerce and may impose penalties. The Commission may address actions by carriers or foreign governments that 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.

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

In addition to monitoring relationships among carriers, the Commission is also responsible for ensuring that individual carriers, as well as those permitted by agreement to act in concert, fairly treat shippers and other members of the shipping public, in accordance with the 1984 Act's prohibition against undue discrimination. The 1984 Act also requires all carriers to make their rates, charges and practices available in automated tariff systems that must be available electronically to the public. Non-vessel-operating common carriers ("NVOCCs") may only assess the rates and charges published in their tariffs. Ocean common carriers are permitted to enter into service contracts with their shipper customers. Such contracts are filed electronically with the FMC in our Internet-based system, and are provided confidential treatment by the Commission as required by



the Act. The Commission does not have the authority to 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.

Pub. L. No. 89-777 requires the operators of passenger vessels with 50 or more berths who embark 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 ensures that all OTIs operating in the foreign commerce of the U.S. 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 and renders decisions, and issues appropriate orders and implementing 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 for five-year terms by the President with the advice and consent of the Senate. 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 Secretary; Office of the General Counsel; Office of the Inspector General; Office of Administrative Law Judges; Office of Equal Employment Opportunity; Office of the Executive Director; Bureau of Consumer Complaints and Licensing; Bureau of Enforcement; and Bureau of Trade Analysis. The Executive Director assists the Chairman in providing executive and administrative direction to the Commission’s bureaus. These offices and bureaus are responsible for the Commission’s regulatory programs or provide administrative support.

In fiscal year 2003, the Commission was authorized a total of 180 full-time equivalent positions and had a total appropriation of \$16,591,000. That appropriation supported the actual employment of 129 full-time equivalent positions during the fiscal year. The majority of the Commission’s personnel are located in Washington, D.C., with Area Representatives in New York, New Orleans, Los Angeles, Miami and Seattle.

## II

### THE YEAR IN REVIEW

This fiscal year saw financial strengthening of ocean carriers over recent years, as well as significant accomplishments and initiatives on the part of the Commission.

Revenues and profits improved among the major carriers, especially in the transpacific trades. At the same time, the trade imbalance continued to grow in the transpacific. The Commission continued to monitor all trades closely. Additionally, the Commission continued to gather information on potentially restrictive trade practices, particularly in the Peoples' Republic of China ("PRC") and Japan.

The Commission looked closely at several issues of significant and evolving interest to the shipping public. For example, the Commission was successful in reaching a settlement with the *Transpacific Stabilization Agreement* that discontinued certain practices of concern to NVOCCs, restructured the agreement, terminated certain related carrier agreements and imposed civil penalties. The Commission enhanced its outreach to the industry and efforts to obtain voluntary compliance with its regulations through a very successful series of seminars on Commission requirements and practice hosted by its Area Representatives.

The Commission reviewed and contemplated recommendations to modify the regulations governing carrier agreements, as well as proposed modifications to regulations governing passenger vessel operators; both efforts will continue into the next fiscal year. In addition, the agency received petitions from four NVOCCs and one national trade association representing NVOCCs seeking significant change in the Commission's service contracting and tariff publication requirements.

This Annual Report is structured on an office-by-office basis and contains a synopsis of each unit's activities and accomplishments during the past fiscal year. Special sections are devoted to areas of particular interest. This section summarizes further some of the Commission's major accomplishments this year.

#### A. TRADE DEVELOPMENTS

International ocean shipping remains a vital link between the U.S. economy and the rest of the world. The Commission continually monitors trade and economic conditions in its oversight of our Nation's oceanborne commerce.

Overall in fiscal year 2003, U.S. foreign commerce continued to grow despite the war in Iraq and related issues. Foreign imports to the U.S., however, continued to surpass U.S. exports due in part to the value of the U.S. dollar against foreign currencies. The value of the dollar kept the yuan in the PRC low and fell against the euro in Europe. In terms of liner cargo, the U.S. trade imbalance

was primarily concentrated in the transpacific trade, and in particular in the inbound trade direction from the PRC to the U.S. The PRC has surpassed other foreign nations as the U.S.'s leading trading partner. In anticipation of future cargo growth, major carriers are planning ahead with new vessel orders with greater capacity to further maximize their economies of scale. During the fiscal year, major carriers reported improvements in their revenues and profits, especially in the transpacific trade. Carriers are hopeful that future revenues and profits will continue to improve in relation to projected increases in cargo growth within the trades. The use of web portals for ocean liner shipping services rose substantially as the features and functions of these web-based services were enhanced. The convenience of electronically filing shipment documentation to meet new security requirements attracted many new registered users to these portals. Carriers stand to incur greater expenses as additional security obligations become effective.

In the transatlantic, the volume of liner imports and exports showed slight to modest growth from the preceding fiscal year. The decline in the dollar against the euro stimulated a degree of foreign demand for U.S. exports and constrained the U.S. demand for imports from North Europe. The reorganization of liner services and vessels by major carriers in the transatlantic resulted in a reduction of vessel capacity in each trade direction. The U.S. continued to face opposition from the European Union ("EU") on trade issues that could potentially disrupt the movement of liner cargo. The *Trans-Atlantic Conference Agreement* ("TACA") (No. 011375) implemented several tariff GRIs as part of its ongoing revenue improvement program. It was estimated on average that freight rates rose by about 5 percent. The lengthy dispute between the European Commission ("EC") and TACA was closed with the decision of a European court to annul the pending fines levied against the TACA carriers by the EC, based on a finding of insufficient evidence by the court. The EC progressed with its review of the EU's maritime regulations that provide ocean liner conferences with immunity from the EU's competition laws. The EC is expected to issue its policy recommendation for consideration before the EU's Council of Ministers.

Between the U.S. and the Mediterranean, liner cargo in the U.S. inbound direction fell slightly in comparison to the preceding fiscal year, while U.S. outbound cargo continued to show healthy growth. While many of these developments related to economic conditions, growth in the trade was also affected by the diversion of cargo through North European ports due to new security measures implemented in the U.S. The overall amount of vessel capacity rose in each trade direction as a result of vessel upgrades and service expansions introduced by certain carriers. However, as excess capacity escalated in the trade, other carriers sought to mitigate this increase by reducing their vessel capacity by entering into operational agreements and restructuring their liner services. The excess capacity kept freight rates down. Nonetheless, the *United States South Europe Conference* (No. 011587) implemented several small to moderate tariff GRIs, and announced plans for further tariff GRIs in 2004.

Despite the war in Iraq and the turmoil in the region, the volume of cargo moving between the U.S. and the Middle East grew moderately in each trade direction during the fiscal year. Major imports from the Middle East included apparel, fabrics, and cotton, while major U.S. exports to the region included wastepaper, wood pulp, and industrial resins. Freight rates, however, remained low.

The heavy port traffic from the movement of military and relief cargoes prompted some carriers to implement port congestion surcharges. The continued fighting in the Middle East created war risk insurance costs for carriers serving the trade.

In Africa, political conflicts, low production levels, and high disease rates affected trade conditions and economic growth in the region; however, some African nations prospered. U.S. trade incentives initiated in 2002 with Africa showed positive results. Cargo growth between the U.S. and Africa significantly improved in each trade direction during the fiscal year. Port congestion and equipment shortages, however, continued to cause problems for carriers. Projects to expand the throughput of African ports are underway, and some carriers expanded their liner services in the trade. In West Africa, however, the *West African Discussion Agreement* (No. 011510) deteriorated as major carriers withdrew from the agreement, leaving only two members.

The trade imbalance between South America and the U.S. continued to escalate as import cargo from the region significantly exceeded U.S. export cargo during the fiscal year. The demand for U.S. exports to the region continued to falter due to weak currency values, recessionary conditions, and political instability in South American nations. Conversely, the strong U.S. housing market drove up the demand for inexpensive imported building materials and furnishings from South America. Fresh produce from Central America boosted import cargo to the U.S., while trade with Caribbean nations remained in a slump. On agreement matters, the FMC denied a petition against the *Caribbean Shipowners Association* (No. 010979) for lack of supporting evidence. The petition was filed by an association of OTIs in South Florida and alleged that the service contract and rate practices of the agreement members violated the shipping statutes. Carriers operating throughout Latin America and the Caribbean continued to expand their liner services despite the trade imbalance and problems with excess capacity and depressed freight rates. Carriers in rate discussion agreements in the trade attempted to increase freight rates; however, industry analysts indicated that such attempts were not very successful.

In the inbound transpacific trade from Asia to the U.S., the growth in import cargo remained strong with a high utilization of vessel capacity. The strong trade conditions encouraged the *Transpacific Stabilization Agreement* (“TSA”) (No. 011223) to recommend that its members implement a GRI and a peak-season surcharge for the 2003 service contract season, which started on April 1. In other TSA matters, the Commission discontinued its fact finding investigation against TSA members after a settlement was approved on September 11, 2003. The settlement restructured TSA and the practices of its members, terminated related carrier agreements, and imposed civil penalties. The Commission’s investigation was initiated in response to a petition for investigation filed by associations of OTIs against the TSA members. In the outbound transpacific trade, U.S. export cargo continued to grow at a steady pace; however, the volume of U.S. export cargo was much less than import cargo. The large disparity in cargo volume between the inbound and outbound trades intensified the trade imbalance in the transpacific. Vessel capacity utilization and, consequently, freight rates in the outbound trade remained low. In addition, a shortage of refrigerated containers resulted due in part to the war in Iraq. Despite these trade conditions, members of the *Westbound Transpacific Stabilization Agreement* (“WTSA”) (No. 011325) endeavored to raise freight rates on certain commodities. In this regard, an association of meat

exporters submitted an informal complaint on a proposed GRI for refrigerated shipments of U.S. meat exports to Asia that WTSA recommended for its members. It was determined that while WTSA members increased rates on meat shipments, on average, the rate increases were not as high as the GRI recommended by WTSA, and moreover, such rates had significantly declined in the preceding years. The meat exporters association was informed of these findings. In other developments, WTSA gained a new member when China Shipping Container Lines Co., Ltd. joined the agreement in January 2003.

## **B. RESTRICTIVE TRADE PRACTICES**

One of the Commission's primary missions is to identify and address 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.

In fiscal year 2003, the Commission continued its active approach in this area. In particular, the Commission continued to address practices of the PRC and Japan.

In 2003, the Commission continued to gather information on possible unfair shipping practices arising from the laws, regulations and practices of the PRC. Should the Commission determine that formal proposals for remedial action are warranted, these proposals will be noticed for public comment prior to their effectiveness.

The Commission also 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 also ordered other carriers serving the U.S./Japan trade to report on the effects of Japanese port practices and changes to Japanese law and regulations which had gone into effect in November 2000.

Finally, a permanent International Task Force, established in 2000 and chaired by the General Counsel and made up of key personnel in that office, the Bureaus of Enforcement, Trade Analysis, and Consumer Complaints and Licensing, was regularly convened in 2003. The Task Force identifies, evaluates and attempts to anticipate foreign practices which might have adverse impacts on U.S. shipping interests.

## **C. 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 to identify potentially unfavorable trade practices that could affect U.S. oceanborne commerce.

During the fiscal year, the Commission reviewed recommendations for a proposed rule to modify the regulations governing carrier agreements and the reporting requirements for those agreements that must be filed with the FMC. The proposed rule would amend the regulations to account for changes that have evolved in the shipping industry attributable to OSRA. On other agreement matters, the Commission conducted an extensive economic overview of the U.S. inbound transpacific trade for its fact finding investigation of activities by the members of the TSA. The Commission also conducted a review of service contract rates and terms in connection with a petition to investigate activities by the members of the *Caribbean Shipowners Association* (No. 010979), filed by an association of OTIs in South Florida. Upon review, the Commission found that the petitioner's allegations were not supported by the evidence and denied the petition. In addition, an association of meat exporters submitted an informal complaint to the Chairman of the FMC against members of the WTSA. The informal complaint concerned a proposed GRI for refrigerated shipments of U.S. meat exports to Asia that WTSA recommended for its members. An in-depth analysis of service contract rates revealed that on average WTSA members did increase the rates for refrigerated shipments of U.S. meat exports to Asia, but did not implement the full GRI recommended by the agreement. Further, the analysis showed that freight rates for refrigerated meat exports in the U.S. outbound transpacific trade had been declining to substantially low levels over the past several years. It was determined that the Commission would continue to monitor the rate activity of WTSA members and take any appropriate action required by the Shipping Act. The meat exporters association was informed of these findings in a response from the Chairman of the FMC.

Other specific monitoring and research projects undertaken in fiscal year 2003 included: economic expert reports and analyses for various formal proceedings; analyses of controlled carrier rates and research on various approaches for evaluating their pricing behavior under the Shipping Act; analyses on the level of adherence to voluntary service contract guidelines by agreement carriers in the major U.S. oceanborne trades; responses to Congressional and other informal requests and inquiries on carrier agreement issues and industry information; and meetings with industry representatives on commercial developments affecting carriers and ocean shipping.

#### **D. ALTERNATIVE DISPUTE RESOLUTION**

During fiscal year 2003, the Commission continued to implement its enhanced Alternative Dispute Resolution ("ADR") program. Final rules implementing this program became effective August 20, 2001, and provide for the availability of a variety of means of dispute resolution at the Commission. Under this program, parties to a dispute are encouraged to avail themselves of services provided by the Commission to resolve disputes through conciliation, facilitation, mediation, fact finding, minitrials, arbitration, or the use of *ombuds* services. The Commission makes trained neutrals available to facilitate the resolution of shipping disputes at all stages. Mediation is the most frequently chosen method of dispute resolution for matters being litigated in formal Commission adjudicatory proceedings. Mediation also is made available to resolve disputes which have yet to

reach the litigation stage. Significant cases in which settlement was facilitated by Commission mediators during fiscal year 2003 included Docket No. 03-01, *HUAL AS v. Puerto Rico Ports Authority*.

The Commission also provided significant *ombuds* services to the shipping public by assisting consumers and other complaining parties in resolving a number of problems without resorting to litigation. During fiscal year 2003, the Commission continued to process a large number of complaints, continuing a pattern established over the previous three years. Continued turmoil in the cruise industry, including difficulties arising from bankruptcies and other failures, accounted once again for a major portion of the complaint volume. The Commission's *ombuds* services were instrumental in facilitating communications and resolving numerous compensation claims. The Commission's informal complaint resolution procedures also assisted numerous consumers in their efforts to resolve service disputes and other problems involving cruise operators.

The Commission continued to publicize its complaint resolution procedures and to make its offices available to all users of shipping services. Information gathered from the Commission's Internet site directed many aggrieved parties to the available services, while state, local and private consumer agencies, as well as various trade organizations, provided contact information to many other complainants. During fiscal year 2003, an increasing share of *ombuds* services were directed to individual and occasional users of shipping services, rather than to shipping companies engaged in disputes with other such entities.

During fiscal year 2003, a significant number of complaints once again involved the movement of personal effects and household goods. Many such cases involved failure on the part of an OTI, and consequences often arising from the OTI's failure to discharge its financial obligations promptly. Others involved problems arising in foreign ports, and often concerned unanticipated problems with foreign Customs agencies. While the Commission's efforts were often successful in resolving such disputes, the experience derived from unsuccessful efforts proved to be of great assistance in advising individuals encountering similar problems. During the year, a growing number of individuals contacted the Commission prior to engaging the services of an OTI, in the hope that the advice obtained might prevent problems from occurring. The *ombuds* program has used its consumer affairs contacts to encourage such inquiries.

Other complaints and disputes brought to the Commission's attention covered a wide range of problems and situations. Shippers frequently sought assistance in resolving financial claims of various types, as well as a wide range of service problems. Shipping companies on numerous occasions requested assistance in collecting unpaid freight charges, while freight forwarders sought help in enforcing carriers' compensation obligations. While some of these disputes fell outside of the Commission's area of responsibility, informal ADR techniques often helped to resolve situations and forestall formal collection actions and possible litigation.

## E. ENFORCEMENT

The Commission maintains a presence in Los Angeles, Miami, New Orleans, New York and Seattle through Area Representatives. These representatives serve as a liaison between the Commission and various maritime interests in their respective areas and also investigate activity that may violate the 1984 Act.

During fiscal year 2003, the Bureau of Enforcement investigated and prosecuted malpractices in many trades lanes, including the transpacific, North Atlantic, Central and South American and Caribbean trades. This 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 malpractice investigations resulted in compromise settlements of civil penalties. However, some investigations required the institution of formal adjudicatory proceedings in order to pursue remedies under the 1984 Act.

In addition to rate malpractice enforcement activity, several matters arose with respect to activities pursuant to filed and unfiled agreements between and among ocean common carriers. Further, formal investigations were conducted to examine the lawfulness of exclusive tug service arrangements in certain Florida ports and at marine terminal facilities on the Lower Mississippi. The Florida cases resulted in the elimination of exclusive tug service arrangements in Florida ports. The issue for the Lower Mississippi terminal operators remains in litigation. Further, the Commission, based on the report issued in Fact Finding Investigation No. 25, *Practices of Transpacific Stabilization Agreement Members Covering the 2002-2003 Service Contract Season*, addressed the activities of the TSA members. This review concluded with a settlement of all issues and included structural changes to TSA, curtailment of certain agreement activities and payment of a civil penalty to address alleged unlawful anticompetitive activity by TSA and its member carriers.

The Commission collected \$3,135,000 in civil penalties this past fiscal year. These collections represent a wide range of violations in all of our major trade lanes. Although the Commission continues to undertake enforcement activity, as required by its statutory mandate, its primary objective is to encourage voluntary compliance by the regulated ocean transportation industry.



### III

## MONITORING AND ENFORCEMENT

### A. MONITORING

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

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

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

In fiscal year 2003, the Bureau of Trade Analysis prepared a variety of economic analyses and reports on the activities and practices of carriers operating in the U.S. international trades. Projects included: (1) an economic analysis and memorandum concerning rate levels of certain controlled carriers and possible approaches for analyzing controlled carrier pricing behavior; (2) providing economic analysis and testimony for Docket No. 01-06, *Exclusive Tug Franchises - Marine Terminal Operators Serving the Lower Mississippi River*; (3) providing information and data used in evaluating Petition No. P2-02, *Petition of the South Florida NVOCC-NAOCC Association*,

*Inc. for an Investigation of the Service Contracting and Rating Practices of the Caribbean Shipowners Association*; (4) economic analyses of newly filed major agreements and amendments under the section 6(g) standard of the 1984 Act; (5) classifying agreements to determine the monitoring report requirements for each agreement in calendar year 2003; (6) analyzing requests for relief from certain monitoring report requirements; (7) reviewing quarterly monitoring report data submitted in accordance with the regulations on agreement reporting requirements; (8) preparing quarterly controlled carrier reports; and (9) responding to Congressional and informal requests and inquiries for trade analyses and data.

## **B. ENFORCEMENT**

The 1984 Act establishes an integrated system for the regulation of the shipping and related industries in furtherance of the statutory declaration of policy to ensure a nondiscriminatory, efficient, and economic ocean transportation system for the benefit of international trade of the U.S. The enforcement program represents a major area of Commission activity. The principal goal of the program is to achieve compliance with the provisions of the 1984 Act. Compliance, in turn, provides the pathway to the statutory objectives of the 1984 Act. Enforcement is a traditional means to achieve compliance through deterrence.

The Commission maintains a presence in Los Angeles, Miami, New Orleans, New York and Seattle, through Area Representatives based in each of those cities. These representatives also serve the other major port cities and transportation centers within their respective areas. Local presence in major port areas greatly enhances the Commission's ability to perform its various functions and improves communications with the regulated industry and its customers.

Interaction between the Commission's Area Representatives and the Department of Homeland Security's Bureau of Customs and Border Protection ("CBP"), with respect to the exchange of investigative information, continues to be beneficial. All Area Representatives work closely with CBP in their respective port districts and have established working relationships which contribute to the productivity and efficiency of both agencies.

During fiscal year 2003, the Bureau of Enforcement investigated and prosecuted malpractices in many trades lanes, including the transpacific, North Atlantic, Central and South American and Caribbean trades. These malpractices 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 malpractice investigations resulted in compromise settlements of civil penalties. However, some investigations required the institution of formal adjudicatory proceedings in order to pursue remedies under the 1984 Act.

In addition to rate malpractice enforcement activity, several matters arose with respect to activities pursuant to filed and unfiled agreements between and among ocean common carriers. Further, formal investigations were conducted to examine the lawfulness of exclusive tug service

arrangements in certain Florida ports and at marine terminal facilities on the Lower Mississippi. The Florida cases resulted in the elimination of exclusive tug service arrangements in Florida ports. The issue for the Lower Mississippi terminal operators remains in litigation. Further, the Commission, based on the report issued in Fact Finding Investigation No. 25, *Practices of Transpacific Stabilization Agreement Members Covering the 2002-2003 Service Contract Season*, addressed the activities of the TSA members. This review concluded with a settlement of all issues and included structural changes to TSA, curtailment of certain agreement activities and payment of a civil penalty to address alleged unlawful anticompetitive activity by TSA and its member carriers.

During fiscal year 2003, the Commission collected \$3,135,000 in civil penalties. Settlements were reached with many different segments of the industry (*e.g.*, carriers, agreements, shippers, forwarders, and NVOCCs) operating in the U.S. foreign trades (*see* Appendix E).

## IV

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

#### A. TRANSATLANTIC

In fiscal year 2003, the volume of liner imports and exports between the U.S. and North Europe showed modest growth compared to the poor results of the preceding fiscal year. Generally, however, trade growth remained sluggish due to rising unemployment in the U.S. and recessionary conditions in such major foreign countries as France and Germany. The continued decline in the value of the dollar against the euro stimulated a degree of foreign demand for U.S. exports and constrained U.S. demand for foreign imports. In the U.S. inbound trade, import cargo from North Europe rose by only .8 percent in fiscal year 2003. The cargo volume of products such as paper, beer, wine, and bottled water from North Europe dropped, while imports of auto parts, cheese, and plastics rose. In the outbound trade, U.S. export cargo to North Europe grew by 3.3 percent in fiscal year 2003. Automobiles and wood pulp from the U.S. showed the most positive gains, while U.S. exports of sporting goods, edible nuts, and auto parts were down. The trade outlook for the immediate future is not expected to change.

The trade imbalance between the U.S. and North Europe improved slightly during the fiscal year, but remained substantial. Import cargo exceeded export cargo by 51 percent, or around 500,000 TEUs. Such major carriers as Maersk Sealand and Evergreen Marine Corporation reduced their vessel capacity in the trade by redeploying their liner services and vessels. Conversely, a service reorganization by Mediterranean Shipping Co. (“Med Shipping”) added vessel capacity to the trade. Overall, vessel capacity was cut by about 4 percent in each trade direction. On average

for the fiscal year, vessel capacity utilization remained strong at 90 percent in the U.S. inbound trade from North Europe. In the U.S. outbound trade, vessel capacity utilization improved, but remained low at 63 percent.

A major trade disruption between the U.S. and the EU was avoided when the U.S. prematurely terminated its restrictions on steel imports to the U.S., which were initially imposed in 2002 and scheduled to continue for another 15 months. The early termination came after the World Trade Organization (“WTO”) ruled that the U.S. steel restrictions were illegal, and the EU threatened to retaliate with heavy sanctions on U.S. exports to EU nations. In another dispute, the EU has further threatened heavy sanctions against U.S. exports in 2004 if the U.S. does not repeal certain tax laws. The disputed tax laws give U.S.-based companies concessions on their foreign income generated from the sale of U.S. goods and services. The WTO ruled that the U.S. tax concessions are illegal export subsidies that violate international trade rules. Sanctions by the EU could disrupt U.S. foreign commerce, and the movement of cargo in the transatlantic trade.

Members of the *Trans-Atlantic Conference Agreement* (“TACA”) (No. 202-011375) endeavored to increase freight rates in the trade. During the fiscal year, the conference implemented a major tariff GRI in the U.S. inbound trade, and two moderate tariff GRIs in the outbound trade. TACA further announced plans to implement an additional tariff GRI in each trade direction at the start of fiscal year 2004. An official for TACA explained the conference’s rate actions by stating that revenue improvement was necessary in the trade to maintain service quality and capital investment. The full effects of the tariff rate increases by TACA are difficult to assess since most of the cargo in the transatlantic trade moves under individual service contracts, and rate competition among carriers remains intense. By the end of this fiscal year, industry analysts estimated that freight rates in the trade rose by about 5 percent but still remained low in comparison to the rate levels of previous years. As a group, TACA’s overall market share remained around 48 percent in each trade direction. The individual market shares of most of the TACA carriers were unchanged or fell slightly. However, two TACA carriers, Hapag-Lloyd Container Linie GmbH (“Hapag Lloyd”) and Med Shipping, ended the fiscal year with gains in market share. Among the independent carriers, Lykes Lines Limited, LLC (“Lykes”) made impressive gains in market share, especially in the U.S. outbound direction, where it ended the fiscal year with a market share of around 12 percent.

Events in Europe on maritime-related issues progressed during the fiscal year. Notably, the European Court of First Instance annulled the 273 million euros in fines that were levied against the TACA carriers by the EC in 1998. The court found insufficient evidence to support the EC’s allegation of abuse of a dominant market position on the part of TACA, which was connected to the fines. The court, however, upheld the EC’s ruling that TACA violated the competition laws of the EU by imposing restrictions on the service contracting practices of its members, primarily with respect to the conference’s previous prohibition on individual service contracts. The court further found that the EC acted correctly in previously denying the conference an exemption from the EU’s competition laws. In 2002, the EC granted TACA an exemption after its agreement was revised to comply with OSRA and the EC’s directives. The EC has indicated that it will not appeal the court’s recent decision, which brings the eleven-year dispute between the EC and the conference to a close.

In March 2003, the EC issued its consultation paper on the review of Council Regulation No. 4056/86, which provides immunity for ocean liner conferences by specifically exempting them from the EU's competition laws. The EC requested that all interested parties submit comments and support data in response to its consultation paper. A number of European-based shipper and carrier groups submitted comments to the EC. Not unexpectedly, the shipper groups argued in favor of eliminating the exemption for conferences, while carrier groups took the opposite view. Recently, an advisory group for the EC completed its report on the public comments submitted to the EC, and concluded that insufficient evidence was provided to make a case for or against ocean liner conferences. From its own analysis of freight rates, however, the advisory group did conclude that as they presently exist, conferences are not price-setting cartels that stick to set price levels. The EC will move forward with a public hearing on the review of Council Regulation No. 4056/86, scheduled for December 2003. Afterwards, the EC has indicated that it will issue either one preferred policy recommendation, or several policy options for consideration. The EU's Council of Ministers, which represents its member nations, will decide on whether any reform to the EC's regulations governing the immunity of conferences is necessary.

## **B. MEDITERRANEAN**

The U.S./Mediterranean trade continues to show growth, but at a slower pace than fiscal year 2002. Recent industry reports indicate that long-term average annualized growth rates for export and import flows will be in the 5 to 6 percent range. In fiscal year 2003, the volume of import cargo from the Mediterranean fell approximately 1.23 percent compared to last fiscal year cargo volumes. Several factors leading to this decline in U.S. import cargo from the Mediterranean were the rising value of the euro relative to the U.S. dollar and slow economic growth in both the U.S. and the Mediterranean. Other factors accounting for the decline in U.S. imports from the Mediterranean include U.S. consumer demand for lower-priced building materials, home furnishings and wine from Asia, Chile and South Africa, and the diversion of cargo to Northern European out ports due to new security measures implemented by the U.S. Despite all of these factors, the U.S. import trade from the Mediterranean trade is expected to improve as the U.S. economy improves.

U.S. export cargo volumes to the Mediterranean continued to fluctuate during fiscal year 2003. U.S. exports expanded nearly 11 percent in fiscal year 2003 over fiscal year 2002, when U.S. export cargo volumes contracted more than 14 percent over fiscal year 2001 cargo volumes. Modest economic growth during fiscal year 2003 in Mediterranean countries such as Turkey and Italy, and the rising value of the euro relative to the U.S. dollar, continued to help foster greater foreign demand for major U.S. exports such as logs, lumber, wood pulp and raw cotton.

The Mediterranean trade continues to be a logical collection point for in-transit cargo that attracts a number of carriers outside the direct U.S./Mediterranean trade. Managing excess vessel capacity continues to be a major issue for carriers serving the direct trade. While expansion of vessel capacity increased approximately 20 percent during the first half of fiscal year 2003, the latest industry reports project that fiscal year 2003 will end with overall increases in vessel capacity of 11

to 12 percent in each direction. To address the excess capacity situation in the U.S./Mediterranean trade, many carriers, such as Maersk Sealand, CMA-CGM, Hapag Lloyd and Med Shipping, continued to restructure their liner services.

Despite carrier efforts to stabilize vessel capacity, rate levels in the U.S. inbound and outbound trade are depressed. The members of the *United States South Europe Conference* (No. 202-011587), which holds a market share of less than 35 percent, only implemented two small-to-moderate tariff GRIs in the trade during the fiscal year. Further GRIs are planned for fiscal year 2004. The U.S./Mediterranean trade, however, may be unable to sustain further rate increases given depressed freight rates in the U.S. outbound trade due to excess capacity.

### **C. MIDDLE EAST**

During fiscal year 2003, conditions in the U.S./Middle East trade improved despite the U.S. war with Iraq and ongoing violence in the region. U.S. import cargo volumes in the trade increased 8 percent over fiscal year 2002. U.S. consumers continued to import more shipments of commodities such as apparel, fabrics, cotton, and women's and infants' clothing from the region during fiscal year 2003. The countries of Jordan, Kuwait, the United Arab Emirates, and Syria led the region with double-digit gains on shipments to the U.S. of clothing apparel, glassware, rugs and floor coverings.

Despite regional turmoil, fiscal year 2003 U.S. export cargo volumes increased approximately 9 percent compared to fiscal year 2002. Israel, one of the leading U.S. trading partners in the region, experienced more than a 13 percent increase in U.S. exports of low-valued commodities such as wastepaper, wood pulp and industrial resins. Other countries in the region also saw their U.S. export cargo volumes increase. Saudi importers increased their purchases of U.S. furniture, refrigeration equipment, groceries, woodpulp and air conditioners by 5 percent over last fiscal year. United Arab Emirates consumers increased their purchases of U.S. exports of air conditioners, grocery products and fruits by 11 percent over fiscal year 2002. In Kuwait, U.S. exports substantially increased by 58 percent compared to a year ago.

The ongoing conflict between Israeli and Palestinian factions, however, continued to place additional strains on relations among Middle East nations. Because of this, carriers continued to incur costs for war risk surcharges imposed during the previous fiscal year. Carriers also operating in the trade implemented congestion surcharges because military and humanitarian relief cargoes moving through ports in Jordan and Kuwait delayed port operations.

### **D. AFRICA**

The International Monetary Fund forecasted that African countries would achieve an average growth rate, measured in Gross Domestic Product ("GDP"), of 3.7 percent in 2003. This is a modest improvement over the 3.2 percent growth in GDP during 2002. GDP rates are projected to vary widely by country and region. In North Africa, the average rate should reach 4.9 percent; East and Central Africa, 4.4 percent; Southern Africa, 3.6 percent; and 3.3 percent in West Africa. GDP rates

are projected to be highest in Uganda and Ruanda at 6 percent. Some other countries including Algeria, Sudan, Tunisia, Tanzania, and Madagascar are expected to achieve 5.5 percent GDP growth.

Low growth in many parts of Africa is attributed to political and religious tension, armed conflict, and a high rate of HIV-AIDS infection. In West Africa, armed conflict in Liberia, Sierra Leone, and the Ivory Coast stalled growth. Recession in Europe and the crisis in the Middle East were cited as the main causes of low growth in North Africa. The general slowdown in the world economy, low agricultural production, and a large number of HIV-AIDS patients slowed growth in Southern Africa.

Despite the problems faced by African countries, trade with the U.S. increased in 2003. This increase was mainly due to the trade improving initiatives of the African Growth and Opportunity Act (“AGOA”), passed by the U.S. Congress in 2002 and extended to 2008.

Imports from Africa increased by 12 percent in the first half of 2003 over the same period in 2002. Imports from the Republic of South Africa, the largest trading partner of the U.S. on the continent, increased by 11 percent in the second quarter of 2003, led by strong increases in textile exports to the U.S.

In the agricultural sector, however, the Ivory Coast and Ghana produced very little cocoa, leading to depressed conditions in agricultural trade. U.S. imports from Egypt increased by 49 percent, with apparel, rugs, and carpets accounting for much of that increase.

U.S. exports to Africa increased by 21 percent in the second quarter of 2003. Shipments of paper, and paperboard for packaging, truck lifts and parts and industrial resins increased. Exports to the Republic of South Africa increased by 5 percent. Exports to Egypt also increased, led by aircraft parts, building material and ammunition. Exports to Ghana increased by 49 percent because of strong demand for autos, cotton, and fabrics. An 11 percent increase in exports to Nigeria was achieved as the U.S. exported capital equipment and other products for Nigeria’s oilfields. Africa accounted for 1 percent of the value of all U.S. imports and exports in 2003.

The U.S.-Africa Trade and Economic Cooperation Forum was founded in 2003 under the aegis of the AGOA to facilitate regular trade and investment policy discussion between the U.S. and African nations. Other initiatives to spur trade and economic development were undertaken by the Common Market for Eastern and Southern Africa (“COMESA”), which coordinates negotiations for economic partnership agreements between Africa and non-African countries. COMESA also generates funds for development projects. The Eastern and Southern Africa Development Bank, with capital of \$500 million, is focused on economic development in Eastern and Southern Africa. Other regional organizations which promoted economic development in 2003 included: The Economic Community of West African States; the West African Economic Union; the Southern Africa Development Community; and the Central African Economic and Monetary Union.

African ports face two main issues, security and congestion. At the International Association of Ports and Harbors conference held in Durban, port security was the main topic. Several countries decided to take security actions similar to the U.S. Container Security Initiative. The South African port of Durban, the largest port in the Southern Hemisphere, experienced severe congestion in 2003. The port was designed to handle 900,000 TEUs. However, it handled more than 1.3 million TEUs. A terminal upgrade, now in progress, is scheduled for completion in 2005. The ports of Capetown and Port Elizabeth also became very congested because of a 60 percent growth in container traffic over the last three years. Elsewhere, the recently privatized port of Maputo in Mozambique started a three-year, \$10 million project to increase throughput fourfold to 18 million tons a year by 2018. Other ports suffering from congestion were Lagos, Nigeria; Tema, Ghana; Monrovia, Liberia; and Mombasa, Kenya.

Some shipping services were added during 2003. Lykes expanded its service with a dedicated feeder service between the Ivory Coast, Ghana and Nigeria. Safmarine Line launched its Commodity and Oil Rig Express service between the U.S. East and Gulf Coast and West Africa. It calls at the Ivory Coast, Nigeria, Equatorial Guinea, Cameroon, and Ghana.

In the West African trade, P&O Nedlloyd, Maersk-Sealand and Zim America-Israel Line resigned from the *West African Discussion Agreement* (No. 011510) during the fiscal year. Their resignations left the Agreement with only two members, Bulk Carriers Ltd. and HUAL A/S.

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

During fiscal year 2003, imports from South America to the U.S. increased, while exports from the U.S. to South America remained unchanged. The U.S. trade imbalance with Latin America hit a record deficit in 2003. The strong dollar, economic downturn, and political instability in South America affected this region's trade. The demand for U.S. manufactured goods, such as consumer electronics and durable goods, especially tractors, was down in fiscal year 2003. Brazil remains the dominant trading partner of the U.S. in South America, accounting for 41 percent of container traffic. In the East Coast of South America trade, the U.S. accounted for about 71 percent of all container traffic.

During fiscal year 2003, weak currencies, economic slowdown, and political instability hindered economic prosperity in the region. Argentina's decline was stabilized, but it remains to be seen if the government can repair the damage from years of economic contraction, double-digit inflation and unemployment. The debate over President Hugo Chavez, as well as a national strike, have disrupted and caused grave harm to the country's already fragile economy. The troubles of Argentina and Venezuela have crossed their borders and affected neighboring countries.

Logs and lumber, furniture, coffee, and footwear are the top commodities imported from the East Coast of South America to the U.S. Brazil, Argentina, and Uruguay are the top trading partners in the trade. The U.S. is the top trading partner of Argentina and Brazil. Logs and lumber are the key raw materials used by the booming U.S. housing sector, and furniture is a complement for new homes, thus the demand for these commodities has been relatively unaffected by recession in the



U.S. Brazil accounts for the bulk of the logs and lumber and furniture, thus accounting for most of the growth in this trade. Woodpulp, auto parts, and general cargo are the top commodities exported from the U.S. to the East Coast of South America.

Bananas, fruit, wood millwork, logs and lumber are the top commodities imported to the U.S. from the West Coast of South America. Chile, Ecuador and Peru are the top trading partners in the trade. The U.S. is the top trading partner of Chile. General cargo, paper, fabrics, and synthetic resins make up the top commodities exported from the U.S. to the West Coast of South America. It has been reported that the revenue carriers are earning from U.S. imports is up, whereas revenue from U.S. exports is down in both the East Coast of South America and the West Coast of South America trades.

The Free Trade Area of the Americas (“FTAA”) initiative, which is still being debated, is expected to play a significant role in shaping trade within this region, especially its direct impact on agricultural subsidies and trade barriers. The FTAA seeks to create a free-trade zone that would stretch from Canada in the north to Chile in the south. Negotiations, following in the footsteps of the North American Free Trade Agreement, include 34 nations in North and South America, as well as the Caribbean.

The annual GDP for most South American countries is forecasted to grow in fiscal year 2004. But the road may be rocky since the economies must work to regain the losses incurred during the past few years of recession. South America’s increase in exports should help fuel growth, which in turn should spur demand for imports. In other words, the demand for and export of U.S. goods and services should increase in fiscal year 2004.

The economies of Central America and the Caribbean were predicted to grow at an average rate of only 1.8 percent in 2003, according to the World Bank. However, average rates are expected to rebound to 3.7 percent and 3.8 percent in 2004 and 2005, respectively.

U.S. trade with Central America increased in 2003. Exports increased by 5.8 percent, and imports by 18.8 percent. The increase in imports was due to a resurgence in the banana trade, which increased by 28 percent in the first half of 2003. Other agricultural products, including pineapples and fruits, helped fuel the increase.

In the Caribbean, trade faltered. Exports to the Caribbean dropped by 1.6 percent below 2002. The drop in U.S. exports was attributed to the decline of industrial activity caused by competition from Asian and Central American countries. U.S. imports from the Caribbean increased by only 3.6 percent. In this sector, loss of market share in the apparel industry was mainly responsible for the decline. Despite some increases in the import of beer, fruits, vegetables, and industrial resins, total imports remained low. The prospects for increased trade between the U.S. and Central America and the Caribbean hinges on the implementation of free trade agreements. Final agreement on the terms of the FTAA was pending at the end of fiscal year 2003. An extension of the Caribbean Basin Trade Partnership Act to 2008 is also under discussion.

The South Florida NVOCC-NAOCC Association (“South Florida”) filed a petition alleging that the Caribbean Shipowners Association (“CSA”) violated the 1984 Act by engaging in practices which were intentionally and unlawfully harmful to OTIs. South Florida petitioned the FMC requesting an investigation of the service contracting and rating practices of CSA. South Florida alleged that these practices were reducing competition, producing an unreasonable reduction in transportation services, and unreasonably increasing transportation costs to OTIs, their customers, and the shipping public. The FMC was asked to sanction and fine CSA. The FMC, however, investigated and issued an order on January 13, 2003, denying South Florida’s petition because it found no evidence supporting the allegations made by South Florida.

Some shipping services were added to the trade during the year. Med Shipping added three new services to its network of ports called in the Caribbean. Lykes expanded its Caribbean service by adding calls to Rio Hania, Puerto Rico, Colombia, and Port Everglades. Seaboard Marine upgraded its equipment and expanded its services throughout the trade. Mitsui O.S.K. Lines, Ltd. expanded both its East Coast and West Coast South America services.

During the year both the Central America Discussion Agreement and the CSA attempted to increase and stabilize freight rates. They proposed GRIs, service contract rate increases, and other revenue enhancing methods. However, competitive conditions forced members to discount rates. The imbalance and overcapacity in the trade also tended to depress rates. Industry sources indicate that the attempts to increase freight rates achieved very little success.

## **F. TRANSPACIFIC**

Despite the deadly SARS epidemic in China and the Iraqi War, the U.S. transpacific trade continued to expand during fiscal year 2003.

The *Transpacific Stabilization Agreement* (“TSA”) (No. 205-011223) is a discussion and policy-setting agreement, with voluntary pricing authority covering the inbound trade from the Far East to the U.S., the largest U.S. liner trade. TSA consists of 14 carrier members, with a collective market share exceeding 80 percent. Members exchange information, discuss their individual vessel capacity deployments and pricing-related issues such as proposed GRIs and peak-season surcharges, and establish voluntary service contract guidelines in the U.S. inbound Far East trade.

For the second consecutive fiscal year, the inbound transpacific trade experienced double-digit growth rates, with cargo volumes increasing 13 percent during fiscal year 2003. Strong cargo volumes resulted in improved vessel utilization and rate levels during the fiscal year compared to last fiscal year. Encouraged by strong trade growth forecasts for the 2003 service contract year (which began on April 1, 2003), TSA members announced a \$700/\$900 GRI and a \$300 peak-season surcharge. Faced with forecasts for robust trade growth and tight vessel capacity, many shippers signed service contracts which included these increases (in whole or in part) in exchange for guaranteed space on eastbound vessels. Carriers’ efforts to increase vessel capacity (by

approximately 12 percent) during the peak shipping season kept pace with the strong seasonal increase in demand for cargo space (13 percent), producing high vessel-utilization levels, with ships often running at 90 percent utilization or more.

Fiscal year 2003 consisted of a number of significant events affecting the transpacific trade. The fiscal year began with the 2002 peak-season surcharges, extending through January 2003. The SARS epidemic, which began early in 2003, had a crippling effect on many Asian countries, particularly Hong Kong and mainland China, but imports from the region continued to flourish. The Commission's Fact Finding Investigation No. 25 also was carried over from the 2002 fiscal year into fiscal year 2003.

In fiscal year 2002, a group of NVOCCs filed Petition No. P1-02, *Petition of the National Customs Brokers and Forwarders Association of America, Inc. and the International Association of NVOCCs, Inc. for an Investigation of the Contracting Practices of the Transpacific Stabilization Agreement*, with allegations that the TSA and its members had violated the 1984 Act by engaging in a concerted practice of discrimination against NVOCCs regarding the negotiation of, and rates implemented pursuant to, their service contracts. Specifically, petitioners alleged that TSA members had charged significantly higher rates than those assessed against proprietary shippers for the same services, and refused to negotiate service contracts with NVOCCs until TSA members had completed negotiations and signed service contracts with proprietary shippers.

The Commission considered the petition and, based on staff research and recommendations, determined to initiate a fact finding investigation into these allegations, Fact Finding Investigation No. 25, *Practices of the Transpacific Stabilization Agreement Members Covering the 2002-2003 Service Contract Season*. Commissioner Joseph E. Brennan conducted the investigation. He issued section 15 orders to TSA and its members, and held hearings in which NVOCCs and carrier witnesses provided testimony regarding the allegations that TSA and its members had treated NVOCCs unfairly vis-a-vis proprietary shippers. These hearings took place in Long Beach and San Francisco, California; Seattle, Washington; and Washington, D.C.

Commissioner Brennan's fact finding report recommended that the Commission continue its fact finding investigation by looking into whether TSA and its members violated certain sections of the 1984 Act by engaging in unjustly discriminatory practices; by prejudicing or disadvantaging NVOCCs as a class; by engaging in unjustly discriminatory practices in the matter of rates and charges with respect to NVOCCs as a class; by producing, through a reduction in competition, an unreasonable decrease in transportation service or an unreasonable increase in transportation cost; by disclosing confidential shipper information related to individual service contracts; and by systematically removing tonnage from the transpacific trades. The Commission voted to continue Fact Finding Investigation No. 25. Subsequently, the Commission issued two additional section 15 orders that requested documents, information, and data from TSA, its members, and certain other carriers and transpacific agreements.

On September 11, 2003, the Commission entered into a settlement agreement with TSA, its members, and the members of the TSA Bridging Agreements. The settlement achieved long-term structural changes to the TSA agreement which addressed a number of concerted carrier practices that the Commission considered problematic. These included commitments by TSA and its members for amendments to TSA agreement authority that reduced TSA's geographic scope (market power); eliminated TSA members' ability to discuss and agree on vessel-capacity matters or shipper information in existing or proposed service contracts; prohibited the establishment of committees whose purpose is to discuss or agree upon rates or terms that apply solely to or separately to NVOCC cargo, the establishment of any voluntary guideline or agreement pertaining to the timing of service contract negotiations, or the application of GRIs or peak-season surcharges that distinguish between shippers based on their status as NVOCC or proprietary cargo owner; required that all communications between TSA members occur at authorized committee or subcommittee meetings for which minutes are filed with the Commission; and imposed stronger minutes reporting requirements for TSA. The settlement also assessed civil penalties and required semiannual meetings to be held between TSA and the Commission to discuss implementation of the settlement and trade developments.

The *Westbound Transpacific Stabilization Agreement* ("WTSA") (No. 205-011325) is the outbound counterpart to TSA and, likewise, operates as a forum for the exchange of information among its members and authorizes the members to discuss and agree on pricing and related matters. In fiscal year 2003, U.S. container exports to Asia modestly increased by 6.9 percent compared to a 3.3 percent increase in fiscal year 2002. As in the previous fiscal year, this cargo growth was comprised mainly of low-valued products such as wastepaper, animal feeds and scrap metals. China imports the largest volume of U.S. containerized goods, followed by Japan. China's largest U.S. container import, by far, was wastepaper, accounting for about a third of all of its U.S. container imports.

In January, China Shipping Container Lines Co., Ltd. became a member of WTSA. As of the end of fiscal year 2003, WTSA consisted of thirteen carriers with a market share of around 75 percent.

In 2003, shippers of fresh and frozen fruits, vegetables, and meats experienced a shortage of refrigerated containers to export their goods to Asia. One reason for this shortage was due to the fact that carriers redeployed refrigerated containers to other trades where they are able to collect a higher return on equipment. All commodity freight rates on the westbound transpacific trade remain low due to the imbalance of trade between the U.S. and Asia. In terms of TEU volume, U.S. imports from Asia are approximately twice as much as the U.S. exports to Asia. Thus, ships coming to the U.S. from Asia are near or at capacity, but upon returning from the U.S. to Asia, vessel-utilization levels are around half of their eastbound levels. Another reason for the shortage of refrigerated containers was due to the Iraq war, as Maersk Sealand and American President Lines, Ltd. ("APL"), two large carriers active in the transpacific trade, had commitments to the Federal Government to supply ships and equipment needed in the military effort. Thus, many of these carriers' refrigerated containers were diverted to the Middle East.

In June 2003, the Commission received a letter from the U.S. Meat Export Federation alleging that WTSA exceeded the authority of their agreement and that WTSA had unreasonably increased transportation costs on meat shipments. In an August letter to the U.S. Meat Export Federation, the Commission noted that even though WTSA had announced an \$800 per 40-foot container rate increase on frozen and chilled meat, staff analysis found that on average, rates increased by less than \$500 per 40-foot container. The staff also found that freight rates prior to July had been consistently declining.

For calendar year 2003, carriers operating in the transpacific trade generally reported increased revenues and profits. The transpacific container growth for 2004 is forecasted to continue at or above 2003 levels. Thus, transpacific carriers are optimistic that freight rates in 2004 also will continue to increase.

## **G. WORLDWIDE**

During fiscal year 2003, U.S. international trade in goods and services reached a record level despite the economic slowdown in the U.S., the war in Iraq, and new security measures against terrorism. The rate of international trade growth, however, slowed, and is projected to rebound in the next fiscal year. The U.S. trade balance for goods and services reached a preliminary \$39.2 billion deficit in August 2003. Both imports and exports increased but grew disproportionately with the value of imports exceeding that of exports. This trade imbalance was closely related to the value of the U.S. dollar against foreign currencies. A strong U.S. dollar translates into less expensive imports, but more expensive U.S. exports. Regions where a trade imbalance gained or declined were closely related to the foreign currency exchange rate of the U.S. dollar. The yuan in the PRC tracked the value of the U.S. dollar, keeping the yuan undervalued. The dollar fell against the EU's euro and the Japanese yen in the fiscal year. In dollar terms, the PRC surpassed Japan in trade with the U.S. for the first time in 53 years, and is now the second largest U.S. trading partner behind Canada. The value of imports from the PRC and the U.S. trade deficit with the PRC were at record highs in August 2003.

The container trade paralleled the U.S. balance of payments. In terms of cargo volume, the transpacific trade accounted for approximately 66 percent of U.S. imports, which made up the bulk of the U.S. container imbalance. The volume of container cargo between the U.S. and the PRC was the single largest trade, accounting for approximately 32 percent of all U.S. container imports, and 15 percent of all U.S. container exports. Container trade with the PRC grew by 16 percent over the fiscal year, most notably in the last quarter as U.S. retailers prepared for the Christmas shopping season.

The fiscal year saw a spike in orders for new ships, particularly post-Panamax vessels capable of carrying in excess of 7,000 TEUs. The liner shipping industry continues to build and operate larger container vessels, thus maximizing their economies of scale. The average ship size had grown to 1,999 TEUs by July 2003. The top 20 carriers have an average of 12 ships on order. Med Shipping, Evergreen Line, China Shipping Container Lines, Maersk Sealand, and P&O Nedlloyd lead the industry in terms of ships and vessel capacity on order. The shipping industry is anticipating increased cargo growth and responding by adding new vessel capacity.

With an upturn in cargo volume, most carriers experienced an increase in revenues and profits during the first three quarters of calendar year 2003. Carriers operating in the inbound transpacific and transatlantic trades raised freight rates during 2003. APL reported that its overall average freight rate in the first half of calendar year 2003 increased by 17 percent. Most other carriers operating in the inbound transpacific trade also reported increased revenues. CP Ships, which owns and operates multiple shipping lines, reported that its average container volume grew by 6 percent and freight rates increased by 11 percent during the third quarter of calendar year 2003 in comparison to the same period in 2002. Carriers are hopeful that revenues and profits will keep pace with projected cargo growth in 2004.

The growth of web-based portals for liner shipping services was substantial, specifically with respect to Cargo-Smart, GT Nexus, and INTTRA. These portals allow the users to effectively and efficiently manage ocean transportation and associated logistical services with a single integrated system. The number of registered users increased by approximately 400 percent with Cargo-Smart, 600 percent with GT Nexus, and 800 percent with INTTRA. The portals have added new features and functions. Each of the three portals has signed on between 3,000 and 4,000 companies. The new U.S. security measures fueled the growth of the portals by aiding users with their shipping documentation.

Containership operators are among the broader universe of vessel operators that are subject to a variety of vessel and cargo security initiatives imposed by national and international agencies and organizations. The International Ship and Port Facility Security Code developed by the International Maritime Organization (“IMO”) essentially applies to all large commercial vessels in any trade. Pursuant to the Maritime Transportation Security Act, the U.S. Coast Guard and the Transportation Security Administration are implementing similar vessel security assessment, planning, and reporting requirements on U.S. flag vessels. Thus, all vessels calling at U.S. ports or foreign ports in IMO member countries will incur some additional operating expense to comply with these vessel security obligations.

## V

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

## **A. 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, which conditions do not exist for foreign carriers in the U.S., either under U.S. law or as a result of acts of U.S. carriers or others providing maritime or maritime-related services in the U.S.

In fiscal year 2003, the Commission monitored potentially unfavorable or discriminatory shipping practices by a number of foreign governments. However, no FSPA action was taken in 2003.

In fiscal year 2003, the Commission's Task Force on Restrictive Foreign Practices continued to meet. The Task Force, chaired by the General Counsel, is a network of representatives from a number of Commission bureaus and offices, and 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. The regular meetings of the Task Force also aid the Commission in developing efficient methods to address conditions as they arise.

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

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

The 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 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. PIERS edits the raw shipment data and distinguishes liner shipments from non-liner shipments. The individual shipment data also is compiled into a more general and useful format for convenience. PIERS uses standardized spellings of company names, coding of ship lines, port names, and country code assignments. The Journal of Commerce also employs proprietary artificial intelligence software to increase the accuracy of its data.

The most recent complete calendar year for available data is the year 2002. 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 2002. 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 (2002)

<u>Rank</u>	<u>Country</u>	<u>TEUs</u> <u>(000s)</u>
1	China (PRC)	5,005
2	Japan	1,616
3	Hong Kong <sup>1</sup>	1,591
4	South Korea	948
5	Taiwan	917
6	Germany	627
7	Italy	614
8	Thailand	519
9	Brazil	476
10	United Kingdom (Incl. N. Ireland)	457
11	The Netherlands	419
12	Indonesia	417
13	Belgium & Luxembourg	414
14	India	338
15	Malaysia	317
16	France	283
17	Guatemala	251
18	Spain	242
19	Honduras	234
20	Dominican Republic	234

There were several changes to the Top Twenty list for 2002, in comparison with the list for 2001. South Korea replaced Taiwan in the 4<sup>th</sup> place (Taiwan placed 5<sup>th</sup>); Brazil replaced the United Kingdom in the 9<sup>th</sup> place (United Kingdom placed 10<sup>th</sup>); The Netherlands and Indonesia occupy the 11<sup>th</sup> and 12<sup>th</sup> positions, respectively; Belgium and Luxembourg fell to the 13<sup>th</sup> position compared to 11<sup>th</sup> place in 2001; Honduras and Guatemala were new entrants to the list, ranked in the 19<sup>th</sup> and 17<sup>th</sup> positions, respectively; and the Philippines and Costa Rica did not have the volume of cargo to remain in the Top Twenty.

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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.*



In terms of ranking order, China (PRC) continued its lead with an increase in volume of 24 percent over 2001's volume and more than a 40 percent increase over 2000's volume. Hong Kong was another country registering a substantial increase in volume, 19.71 percent over its 2001 volume. Other countries, e.g., Japan, Dominican Republic and United Kingdom, registered modest decreases in volumes of 2.65 percent, .86 percent and 2.35 percent, respectively, less than their 2001 levels. All other countries on the Top Twenty list registered slight growth in volumes from 3 percent to 17 percent more than 2001 levels.

## **VI**

# **SIGNIFICANT OPERATING ACTIVITIES BY ORGANIZATIONAL UNIT**

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

### **1. General**

The Office of the Secretary serves as the focal point for all matters submitted to and emanating from the members of the Commission. Accordingly, the Office is responsible for preparing and submitting regular and notation agenda of matters for consideration by the Commission and preparing and maintaining the minutes of actions taken by the Commission on these items; receiving and processing formal and informal complaints involving violations of the shipping statutes and other applicable laws; receiving and processing special docket applications and applications to correct clerical or administrative errors in service contracts; issuing orders and notices of actions of the Commission; maintaining official files and records of all formal proceedings; receiving all communications, petitions, notices, pleadings, briefs, or other legal instruments in regulatory and quasi-judicial proceedings and subpoenas served on the Commission or members and employees thereof; administering the Freedom of Information, Government in the Sunshine, and Privacy Acts; responding to information requests from the Commission staff, maritime industry, and the public; issuing publications and authenticating instruments and documents of the Commission; compiling and publishing bound volumes of Commission decisions; and maintaining and promulgating official copies of the Commission's regulations.

The Secretary's Office also participates in the development of rules designed to reduce the length and complexity of formal proceedings, and participates in the implementation of legislative changes to the shipping statutes. During fiscal year 2003:

■ **The Commission issued decisions concluding two formal proceedings. One initial decision of administrative law judges became administratively final without Commission review. Ten proceedings were dismissed or discontinued. The Commission also concluded one special docket application. During the same period, the Commission issued final rules in one rulemaking proceeding.**

Six rulemaking/inquiry proceedings and ten formal petitions were pending before the Commission at the end of the year. Final decisions in these matters are anticipated in fiscal year 2004.

The Office of the Secretary also serves as a public information/press office for the Commission. It manages the Commission's website content; coordinates the issuance of Commission News Releases; directs public inquiries to the appropriate Commission bureau/office for response; and monitors the trade press for matters of agency interest for referral to the Chairman, Commissioners and Commission staff.

## **2. Library**

The FMC Library serves the Commission's research and information needs. Its holdings consist of specialized material primarily covering the various segments of the 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 an extensive collection of legal publications. The library includes such sources of information as law encyclopedias, engineering textbooks, legal treatises, Comptroller General Decisions, and editions of the various National Reporter systems. The Library's holdings consist of approximately 4,000 volumes and numerous microfiches, CD-ROMs and on-line services.

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

## **1. 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.

ALJs have the authority to administer oaths and affirmations; issue subpoenas; rule upon offers of proof and receive relevant evidence; take or cause depositions to be taken whenever the ends of justice would be served thereby; regulate the course of the hearing; hold conferences for the settlement or simplification of the issues by consent of the parties; dispose of procedural requests

or similar matters; make decisions or recommend decisions; and take any other action authorized by agency rule consistent with the Administrative Procedure Act.

At the beginning of fiscal year 2003, eleven formal proceedings were pending before the ALJs. During the year, eleven cases were added. The ALJs formally settled five formal proceedings, dismissed or discontinued one formal proceeding, and issued five initial decisions in formal proceedings.

## **2. Commission Action**

The Commission adopted one formal initial decision, four orders of approval of settlement, and one dismissal of a complaint of the ALJs. One initial decision of the ALJs was modified and the proceeding settled formally by the Commission. Three initial decisions and one approval of settlement of the ALJs were pending consideration by the Commission at the end of the fiscal year.

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

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

In this proceeding the Commission had found that two ocean carriers had overcharged shippers and had earned excessive overall revenues in violation of various sections of the Shipping Act, 1916, and the Intercoastal Shipping Act, 1933, since repealed by Congress. On remand to the presiding ALJ to determine money damages, the judge found that complainants' unprecedented legal theory for determining the amount of money damages was invalid because it did not show a causal link between the overall excess revenues received by the carriers and the particular financial injury claimed by individual shippers. Consequently, no money damages were awarded.

*Sea-Land Service, Inc. - Possible Violations of Sections 10(b)(1), 10(b)(4) and 19(d) of the Shipping Act of 1984* [Docket No. 98-06].

In this major investigation ordered by the Commission, the Commission found that respondent Sea-Land Service, Inc., the then-largest American carrier, had violated various sections of the 1984 Act by charging shippers inapplicable rates under its tariff, paying ocean freight forwarders compensation for which they had not performed requisite services, and paying compensation to other forwarders who were not entitled to it. On remand to the presiding ALJ, he assessed civil penalties amounting to \$4,082,500, but assessed no penalties in regard to certain freight forwarder issues because he believed the Commission regulation was unclear and respondent had not had fair notice of its duties under the regulation.

*Hudson Shipping (Hong Kong) Ltd. d/b/a Hudson Express Lines – Possible Violations of Section 10(a)(1) of the Shipping Act of 1984* [Docket No. 02-06].

In this proceeding the Commission ordered an investigation into the activities of a Hong-Kong based NVOCC who, the presiding ALJ found, had violated section 10(a)(1) of the 1984 Act 120 times in 1998 and 1999 by knowingly and willfully providing other NVOCCs with access to Hudson's service contracts with vessel-operating common carriers ("VOCCs"), thereby enabling such NVOCCs to obtain ocean transportation at lower rates than they were entitled to be charged. Hudson also was found to have operated without a surety bond, required by law, for 208 days. The presiding ALJ assessed a civil penalty for these violations amounting to \$7,900,000.

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

At the close of fiscal year 2003, there were eleven pending proceedings before the ALJs, of which three were investigations initiated by the Commission. The remaining eight proceedings were instituted by the filing of complaints by common carriers by water, shippers, conferences, port authorities or districts, terminal operators, trade associations, and stevedores.

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

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

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

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

##### **(a) Rulemakings**

***The Content of Ocean Common Carrier and Marine Terminal Operator Agreements Subject to the Shipping Act of 1984 [Docket No. 03-15].***

The Commission reviewed and contemplated recommendations to modify the rules governing the content of ocean common carrier and MTO agreements that are filed with the Commission in accordance with the 1984 Act. This action was initiated in response to comments received in the rulemaking proceeding in Docket No. 99-13, a Notice of Inquiry published in the *Federal Register* on August 3, 1999. Comments were received from carriers, shippers, and other

interested parties. The matter was to be taken up at a Commission meeting early in fiscal year 2004.

## **(b)Decisions**

### ***Canaveral Port Authority - Possible Violations of Section 10(b)(10), Unreasonable Refusal to Deal or Negotiate (Order to Show Cause) [Docket No. 02-02], 29 S.R.R. 1455 (July 8, 2003).***

On February 25, 2002, the Commission issued an Order directing the Canaveral Port Authority (“CPA”), an MTO, to show cause why it should not be found to have violated section 10(b)(10) of the 1984 Act, 46 U.S.C. app. 1709(b)(10), for unreasonably refusing to deal or negotiate when it refused to consider the application for a tug franchise at Port Canaveral filed by Tugz International, LLC (“Tugz”). Tug service providers seeking to operate at Port Canaveral are required to obtain a “franchise” from CPA in order to provide those services, which may be obtained only by filing an application to be considered by CPA at a public hearing to determine its convenience and necessity. Seabulk Towing, Inc. has been granted an exclusive franchise to provide tug services at the port since 1958; no other company has ever been awarded a franchise. The Commission issued a decision on February 24, 2003, finding that CPA violated section 10(b)(10) beginning on July 19, 2000, and continuing until May 20, 2002, by refusing to consider the application for a tug and towing franchise submitted by Tugz on June 13, 2000, and updated on September 18, 2001. The Commission determined that although Tugz requested that its application be considered at a public hearing of convenience and necessity, and CPA conducted such a hearing to consider another tug operator’s application, CPA refused to grant that consideration to Tugz and thus CPA refused to deal or negotiate with Tugz. Moreover, the Commission held that CPA’s refusal was unreasonable because CPA’s justifications for failing to consider Tugz’s application, that there was insufficient time, that the other applicant objected and that there was insufficient business at the port, were inadequate. The violation continued for almost two years and finally was tolled when CPA published a notice inviting applications for an additional tug franchise. The Commission also found that it did not have sufficient information to make a determination of the appropriate amount of civil penalties, and ordered the parties to submit further briefs on the issue.

On April 28, 2003, the parties submitted a settlement agreement in this proceeding and a companion case, Docket No. 02-03, *Exclusive Tug Arrangements in Port Canaveral, Florida*, an investigation to determine whether CPA violated sections 10(d)(1) and/or 10(d)(4) of the Shipping Act, 46 U.S.C. app. §§ 1709(d)(1) and 1709(d)(4), by failing to establish, observe and enforce just and reasonable regulations and practices relating to tug and towing services, and/or by giving an undue or unreasonable preference or advantage to Seabulk, Inc., holder of the sole tug franchise in the port, or by imposing undue or unreasonable prejudice or disadvantage with respect to other potential tug providers, including Petchem, Inc. and Tugz. The ALJ issued an Initial Decision in Docket No. 02-03, finding that CPA violated those sections of the Shipping Act, assessing a civil penalty in the amount of \$214,500, and ordering CPA to cease and desist from operating a tug service franchise operation. The settlement agreement provides that (1) CPA shall pay a civil penalty in the amount of \$750,000 no later than 30 days following approval by the Commission; (2) CPA shall eliminate the tug franchise system and shall permit vessels calling at the port to select the

tug company of their choice, provided that the tug company has obtained and maintains a towing permit from CPA based upon evidence of certain insurance and payment of permit fees; and (3) both proceedings shall be discontinued and any future claims by the Commission based on the violations found in Docket Nos. 02-02 and 02-03 will be barred. On July 8, 2003, the Commission approved the settlement agreement in full and discontinued the proceedings in Docket Nos. 02-02 and 02-03.

***Petition of the South Florida NVOCC-NAOCC Association, Inc. for an Investigation of the Service Contracting and Rating Practices of the Caribbean Shipowners Association [Petition No. P2- 02], 29 S.R.R. 990 (January 13, 2003).***

This petition was brought before the Commission by the South Florida NVOCC-NAOCC Association, Inc. (“South Florida” or “Petitioner”), requesting that the Commission initiate an investigation to determine whether certain alleged activities by the Caribbean Shipowners Association (“CSA”) constitute violations of the Shipping Act.

South Florida alleged that CSA and its members were engaged in practices intentionally and unlawfully harmful to OTIs in violation of sections 10(c)(1), 10(c)(3), 10(c)(7), and 10(c)(8) of the Shipping Act and that these activities resulted in a reduction of competition and transportation services in the trades served by CSA’s members, as well as produced unreasonable increases in transportation costs to OTIs, their customers, and the shipping public within the meaning of section 6(g) of the Shipping Act. In addition, South Florida maintained that CSA and its members may also have been in violation of section 5(c) of the Shipping Act, by either adopting mandatory agreements or failing to file true copies of their voluntary guidelines with the Commission relating to OTI rates and services. Finally, South Florida stated that, in taking these actions, CSA was operating in violation of Article 10 of its agreement on file with the Commission, which is a violation of section 10(c)(3) of the Shipping Act. Petitioner requested that the Commission impose a number of sanctions against CSA and seek appropriate injunctive relief to enjoin further operation of the CSA agreement, pursuant to section 6(g) of the Shipping Act.

In addition to CSA’s reply to the petition, comments were submitted by the National Customs Brokers & Forwarders Association of America (“NCBFAA”) and Tropical Shipping & Construction Co., Ltd.

The Commission issued an order on January 13, 2003, denying the petition on the grounds that Petitioner had not established sufficient facts to warrant the initiation of an investigation. Further, the Commission denied Petitioner’s request to seek injunctive relief against CSA under section 6(g) of the Shipping Act, finding that there was no evidence of illegal concerted activity by CSA or its members or that the agreement had resulted in, or was likely to result in, an unreasonable reduction in transportation service or an unreasonable increase in transportation costs.

***Green Master Int'l Freight Services Ltd. - Possible Violations of Sections 10(a)(1) and 10(b)(1) of the Shipping Act of 1984 [Docket No. 01-10], 29 S.R.R. 1303 (February 28, 2003).***

This proceeding was initiated by the Commission to determine whether Green Master Int'l Freight Services, Ltd. ("Green Master") violated sections 10(a)(1) and 10(b)(1) of the Shipping Act, 46 U.S.C. app. §§ 1709(a)(1) and (b)(1) (1998). In the event Green Master was found to have committed the specified violations, the Commission also sought to determine whether civil penalties should be assessed against it and in what amount, and whether Green Master's tariff should be suspended.

On July 30, 2002, the ALJ issued an Initial Decision finding that Green Master violated the stated sections on 68 occasions from 1997 to 1999, and assessing penalties against it in the amount of \$1,530,000. The ALJ also issued a cease and desist order barring Green Master from committing these violations in the future.

Green Master filed exceptions objecting to 23 alleged errors contained in the decision. On February 28, 2003, the Commission issued an order affirming the ALJ's decision. Subsequently, the Commission denied Green Master's Petition for Stay and Reconsideration on June 10, 2003.

***Exclusive Tug Franchises - Marine Terminal Operators Serving the Lower Mississippi [Docket No. 01-06], 29 S.R.R. 1475 (April 16, 2003).***

On June 11, 2001, the Commission issued an Order to Show Cause directing 12 MTOs on the lower Mississippi River to show cause why they have not violated sections 10(d)(1) and 10(d)(4) of the 1984 Act, 46 U.S.C. app. §§ 1709(d)(1) and (d)(4), by entering into exclusive tug assist service arrangements resulting in unreasonable practices and/or undue or unreasonable preference or advantage or unreasonable prejudice or disadvantage, respectively. In October 2001, the Commission referred the entire case to the Office of Administrative Law Judges to handle all aspects of the proceeding because of its complexity and factual nature. On March 6, 2003, upon request for guidance from the ALJ assigned to the case, the Commission issued an order addressing the possible establishment of settlement procedures when not all the parties agreed to such procedures. The Commission advised that although the Commission's rules do not provide for mandatory settlement negotiations and, in fact, provide that the establishment of a settlement procedure is prohibited if a party opposes it, the ALJ could waive that part of the rule if he finds that requiring such discussions would prevent undue hardship, manifest injustice or if the expeditious conduct of business so requires, and he finds that it would not be inconsistent with any statute. The ALJ consequently ordered that the parties enter ADR procedures. An Initial Decision is due by July 1, 2004.

***James J. Flanagan Shipping Corp. v. Lake Charles Harbor and Terminal Dist., et al. [Docket No. 94-32] , 30 S.R.R. 8, (August 26, 2003).***

In this adjudicatory proceeding, the Commission had earlier found that a supplemental rail car switching charge imposed by the respondent port and stevedore on the complainant violated section 10(d)(1) of the Shipping Act because the complainant stevedore was not a user of the

switching service and derived no allocable benefit from it. The Commission had further concluded that an increase in the port's pallet use charge from \$.75 to \$1.50 per short ton did not violate the Shipping Act, because the increase was justified by expensive cleaning and construction costs. The case was appealed to the U.S. Court of Appeals for the District of Columbia Circuit, which granted the Commission's motion to dismiss for a lack of administrative finality. The case then proceeded on remand to the Commission's ALJ for a calculation of the reparations owed to the complainant for the harm caused by the illegal switching charge. The judge determined that the complainant had received a refund of the actual monies it had paid in switching charges, plus interest, and that the complainant's request for additional reparations for alleged lost profits should be denied.

The Commission affirmed the judge's decision on exceptions filed by the complainant. The Commission concluded that, on the facts of the case, the complainant had not supplied adequate proof that its alleged lost profits were proximately caused by the imposition of the illegal switching charge; the losses were just as likely caused by other lawful factors. The Commission also rejected the complainant's proposed methodology for assessing lost profits, finding that it was excessively static and did not adequately account for shifting market factors.

***Petition of United Parcel Service, Inc. for Exemption Pursuant to Section 16 of the Shipping Act of 1984 to Permit Negotiation, Entry and Performance of Service Contracts [Petition No. P3-03]; Petition of the National Customs Brokers and Forwarders Association of America, Inc. for Limited Exemption from Certain Tariff Requirements of the Shipping Act of 1984 [Petition No. P5-03]; Petition of Ocean World Lines, Inc., for a Rulemaking to Amend and Expand the Definition and Scope of "Special Contracts" to Include All Ocean Transportation Intermediaries [Petition No. P7-03]; Petition of BAX Global Inc. for Rulemaking [Petition No. P8-03]; Petition of C.H. Robinson Worldwide, Inc. for Exemption Pursuant to Section 16 of the Shipping Act of 1984 to Permit Negotiation, Entry and Performance of Confidential Service Contracts [Petition No. P9-03].***

The Commission received petitions from four NVOCCs and one national trade association representing NVOCCs seeking relief from the Shipping Act's restriction on NVOCCs from offering service contracts in their capacity as carriers with their shipper customers and the requirement that NVOCCs adhere to the rates published in their tariffs. 46 U.S.C. app. §§ 1702(19) and 1709(b). The basis for the petitions is that after the passage of OSRA, ocean common carriers (*i.e.*, VOCCs) were for the first time allowed to provide service to their shipper customers pursuant to the rates and terms of service specified in confidential service contracts as opposed to tariffs. NVOCCs may enter into a service contract with an ocean common carrier as a shipper customer of the ocean common carrier; however, OSRA did not extend to NVOCCs the ability to offer service contracts as carriers to their shipper customers. Instead, NVOCCs must provide service pursuant to its tariffs, which are open for public inspection.

United Parcel Service ("UPS") and C.H. Robinson Worldwide, Inc. each request individual exemptions from the Shipping Act. They argue that changes in the ocean freight industry since the passage of OSRA, the growth of integrated logistics services, the promotion of greater competition in the marketplace, and the ability to provide lower cost and more efficient service for shippers



warrant the Commission granting their requests to provide confidential service contracts as carriers to their shipper customers. The NCBFAA, a national trade association representing the interests of freight forwarders, NVOCCs and customs brokers in the shipping industry, seeks an exemption from the tariff filing requirements for all NVOCCs. NCBFAA presents arguments similar to UPS and C.H. Robinson, but also asserts that the tariff system is outdated and impractical. As such, NCBFAA requests that the Commission exempt NVOCCs from certain provisions of sections 8 and 10 of the Shipping Act, which require NVOCCs to establish, publish, maintain and enforce tariffs setting forth ocean freight rates, thereby allowing NVOCCs to enter confidential service contracts with their shipper customers as carriers. In the alternative, if the Commission finds that it does not have the authority to issue the requested exemption, NCBFAA seeks a more limited exemption from section 8 and a rulemaking modifying part 520 of the Commission's regulations that would allow NVOCCs to establish and maintain "range rates" in lieu of specific rates covering their rates and charges. Ocean World Lines, Inc. requests a rulemaking to expand the definition and scope of the term "special contracts" in the Commission's regulations to include NVOCCs if UPS and/or NCBFAA's petitions are not granted. Finally, BAX Global Inc. seeks a rulemaking to permit BAX and other similarly situated entities (a determination to be based on assets, corporate format, and regulatory history) to enter confidential service contracts as "ocean common carriers" with their shipper customers. The Commission sought comment on the petitions from interested persons, and is reviewing those and analyzing its options.

## **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:

***New Orleans Stevedoring Co. v. Federal Maritime Commission and United States of America,***  
**D.C. Cir. No. 02-1259.**

New Orleans Stevedoring Co. ("NOS"), a division of James J. Flanagan Shipping Corporation, filed a complaint against the Port of New Orleans, alleging that it had violated sections 10(d)(3) and 10(d)(4) of the Shipping Act by refusing to lease or assign to NOS certain marine terminal space that was under construction. The ALJ assigned to the case determined that the Port had not unreasonably refused to deal or negotiate with NOS, because NOS was aware of the Port's policy not to lease or assign space under construction in order to avoid costly delays. The ALJ further determined that although the Port had allowed limited use of the space for short periods by some of NOS's competitors, the Port was entitled to attempt to compensate its lessees who may have lost space elsewhere in the Port due to the construction. As a result, the ALJ dismissed NOS's

complaint. The Commission affirmed the dismissal of the complaint, finding that NOS had not provided any basis to warrant overturning the ALJ's Initial Decision.

On August 15, 2002, NOS filed a petition for review in the U.S. Court of Appeals for the District of Columbia Circuit. The Commission, joined by the Department of Justice, filed a brief on January 29, 2003, urging the Court to uphold the Commission's dismissal of the complaint. Oral argument was heard on September 12, 2003. On September 29, 2003, the Court issued a memorandum opinion in which it affirmed the Commission's decision in all respects.

### **3. Legislative Activities**

The General Counsel represents the Commission's interests in all matters before Congress. This includes commenting on proposed legislation, proposing legislation, preparing testimony for Commission officials, responding to Congressional requests for assistance, and preparing agency responses to requests from OMB on proposed bills and testimony.

During fiscal year 2003, 125 bills, proposals and Congressional inquiries were referred to the Office of the General Counsel for comment. The Office prepared and coordinated testimony for one Congressional hearing. The Office also worked closely with Congressional staffs on proposed legislation that affected the Commission. On October 1, 2002, the Commission submitted comments to the Office of Management and Budget ("OMB") on the revised final version of the draft bill to revise, codify and enact certain maritime laws as part of Title 46, U.S. Code, Shipping. The Office had collaborated with DOT's Office of General Counsel to prepare a codification of title 46 of the U.S. Code as it relates to shipping. The new sections of the proposed codification pertaining to the Commission include the 1984 Act, 46 U.S.C. app. § 1701, as amended by OSRA, Pub. L. No. 105-258; the 1920 Act, 46 U.S.C. app. § 876; the FSPA, 46 U.S.C. app. § 1710a; and Evidence of Financial Responsibility - Passenger Transportation, 46 U.S.C. app. §§ 817d and 817e.

In fiscal year 2004, the Office will continue to take the lead in accomplishing the agency's performance goal related to providing assistance and technical advice to Congress regarding issues for possible legislative consideration.

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

***Fact Finding Investigation No. 25 - Practices of Transpacific Stabilization Agreement Members Covering the 2002-2003 Service Contract Season, 30 S.R.R. 26 (October 8, 2003).***

The Commission initiated a fact finding proceeding in August 2002 to investigate whether service contract practices of the Transpacific Stabilization Agreement ("TSA") during negotiation of service contracts for 2002/2003 violated the anti-discrimination provisions and other prohibited acts of the 1984 Act. The Commission acted in response to a petition filed by two groups representing NVOCCs and freight forwarders, the NCBFAA and the International Association of NVOCCs. These groups alleged that TSA members had entered into and implemented an unfiled agreement to complete the negotiation and signing of service contracts with proprietary shippers

before negotiating with NVOCCs. They also claimed that TSA members colluded to charge NVOCCs significantly higher rates than proprietary shippers for the same services, by discriminatory subsection of NVOCC service contracts to a GRI and peak-season surcharge not applied to the service contracts of proprietary shippers.

Commissioner Joseph E. Brennan, designated Fact Finding Officer, held hearings in San Francisco, Los Angeles/Long Beach, Seattle, and Washington, D.C. to hear testimony from each of the carriers and a number of NVOCCs and shippers, and required the carriers to submit information and documents pursuant to section 15 of the 1984 Act. Commissioner Brennan's report was filed on April 11, 2003. By order dated May 30, 2003, the Commission extended Fact Finding Investigation No. 25, and appointed the Director, Bureau of Enforcement ("BOE"), and a senior BOE attorney, as the Investigative Officers. The Commission simultaneously issued two section 15 orders directing the carrier members of TSA and related "bridging" agreements to produce additional information and documents. The Commission entered into a settlement agreement with the 14 ocean carrier members of TSA, and four members of other agreements, on September 11, 2003. The settlement provided for structural changes in the TSA agreement, resulting in removal of authority with respect to the sharing of shipper-specific information on service contracts, discussion of capacity rationalization, and rate discussions outside meetings for which minutes are filed with the FMC.

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

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

In fiscal year 2003, the Commission continued to monitor potentially restrictive shipping practices of the Governments of Japan and the PRC.

The Commission continued to monitor developments relating to restrictive practices in Japanese ports, including the effects of amendments to the Port Transportation Business Law enacted in 2000. The Commission continued to receive and evaluate reports from its ongoing proceeding in Docket No. 96-20, *Port Restrictions and Requirements in the United States/Japan Trade*.

The Commission also continued to follow restrictive practices in China through Docket No. 98-14, *Shipping Restrictions, Requirements and Practices of the People's Republic of China*. On August 12, 1998, the Commission issued Information Demand Orders to vessel-operating carriers of the U.S. and the PRC for information on Chinese policies and practices regarding port access, the

licensing of multimodal transport operations, and the establishment of representative and branch offices. The Commission stated in June 1999 that the responses to the FMC's inquiries indicated that Chinese laws and regulations discriminate against and disadvantage U.S. carriers and other non-Chinese shipping lines with regard to a variety of maritime-related services.

As a result of this proceeding, the Commission could take actions under section 19, including limitations on sailings, suspension of tariffs, suspension of regulated agreements, fees not to exceed \$100,000 per voyage, or any other measure necessary and appropriate to address the unfavorable conditions. Such proposed measures would be noticed to the public for comment by interested parties prior to becoming effective.

However, a number of subsequent developments made it desirable for the Commission to further review these matters and supplement the record in November 1999, to reflect: entry into the U.S. trades of a new Chinese controlled carrier, China Shipping Container Lines; resumed bilateral maritime talks between the U.S. and China; and acquisition of the U.S.-flag carrier, Sea-Land Service, Inc., by the parent of Maersk Line.

On March 12, 2002, the Commission issued a new Notice of Inquiry concerning a new Regulation on International Maritime Transport, effective January 1, 2002, issued by the PRC. It appeared that while this new Chinese law may have alleviated a few of the concerns the Commission had previously expressed, it also may have created new restrictions on shipping in the U.S.-China trade, especially on the operations of OTIs in that trade. On June 28, 2002, the Commission issued a Further Notice of Inquiry ("FNOI") on the *Implementing Rules for the Regulations of the PRC on International Maritime Transportation* issued by the Chinese Ministry of Communications. The FNOI specifically requested information about the impact of these Implementing Rules. The Commission received comments in response to these notices. This matter will be addressed further in fiscal year 2004.

The Commission's Task Force on Restrictive Foreign Practices, chaired by the General Counsel, 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. The regular meetings and activity reports of the Task Force also aid the Commission in developing efficient methods to address conditions as they arise.

Another responsibility of the Office is the identification and verification of controlled carriers under section 9 of the 1984 Act. Common carriers that are owned or controlled by foreign governments are required to adhere to certain requirements under the 1984 Act, and their rates are subject to Commission review. The Office investigates and makes appropriate recommendations to the Commission regarding the status of potential controlled carriers. The Office, in conjunction with other Commission components, also monitors the activities of controlled carriers.

In fiscal year 2003, the Office reviewed documents and information relating to the controlled carrier status of a number of carriers. The Office published a new list of controlled carriers on June

3, 2003. Nine carriers which had either ceased operating entirely or ceased operating vessels in the U.S. foreign trades were removed from the list and one carrier was added, resulting in six carriers currently classified as controlled carriers under section 9.

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

The Office of Equal Employment Opportunity (“EEO”) applies knowledge of Federal EEO and personnel management concepts, procedures and regulations to develop and manage a comprehensive program of equal employment opportunity. The Office works independently under the direction of the Chairman to provide advice to the Commission’s management in improving and carrying out its policies and program of non-discrimination and affirmative program planning.

The Office is responsible for EEO program planning, special emphasis programming, complaints processing, ADR, and adjudication, with the assistance of collaterally-assigned EEO counselors.

The Office works closely with the Commission’s Office of Human Resources, managers and supervisors to:

- **Improve recruitment and representation of women, minorities and persons with handicapping conditions in the workforce.**
- **Provide adequate career counseling.**
- **Facilitate early resolution of employment-related problems.**
- **Develop program plans and progress reports.**

The Director, Office of EEO, arranges for counseling or ADR for employees who raise allegations of discrimination; provides for the investigation, hearing, fact finding, adjustment, or early resolution of such complaints of discrimination; accepts or rejects formal complaints of discrimination; prepares and issues decisions for resolution of formal complaints; and monitors and evaluates the program’s impact and effectiveness.

Significant accomplishments in fiscal year 2003 included the following:

- 1. Provided briefings to senior staff.**
- 2. Facilitated EEO workshops on respect in the workplace, conflict resolution and sexual harassment.**
- 3. Provided counseling assistance to managers, supervisors and employees.**

- 4. Instituted an Advisory Council on Women's Issues.**
- 5. Reviewed and assessed management and personnel human resource activity and actions.**
- 6. Maintained an effective discrimination complaint process that attempted to resolve issues informally, expeditiously, and at the lowest possible level.**
- 7. Provided support and assistance to managers and supervisors in maintaining and effectively managing a diverse workforce.**
- 8. Developed information and materials for training senior executives, Area Representatives, EEO counselors and other staff.**
- 9. Planned and developed special emphasis programs for FMC employee participation.**
- 10. Improved FMC's image and identity among Federal agencies and the community by developing cooperative programs in the special emphasis areas.**
- 11. Continued non-discrimination policy and programs in response to Pub. L. No. 103-123.**

During fiscal year 2004, the Office will continue all existing programs and initiate additional activities designed to increase an understanding of EEO concepts and principles.

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

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

It is the duty and responsibility of the OIG to:

- **Provide policy direction for and conduct, supervise, and coordinate audits and investigations relating to the Commission's programs and operations.**
- **Review existing and proposed legislation and regulations relating to the Commission's programs and operations and to make recommendations concerning the impact of such legislation or regulations on the economy and**

efficiency in, and the prevention and detection of fraud and abuse in, the administration of the Commission's programs and operations.

- **Recommend policies for, and conduct, supervise, or coordinate other activities carried out or financed by the Commission for the purpose of promoting economy and efficiency in the administration of, or preventing and detecting fraud and abuse in, the Commission's programs and operations.**
- **Recommend policies for, and conduct, supervise, or coordinate relationships between the Commission and other Federal agencies, state and local governmental agencies, and nongovernmental agencies with respect to all matters relating to: the promotion of economy and efficiency in the administration of, or the prevention and detection of fraud and abuse in, programs and operations administered or financed by the Commission; and the identification and prosecution of participants in any fraud or abuse.**
- **Keep the Chairman and the Congress fully and currently informed by means of semiannual and other reports concerning fraud and other serious problems, abuses, and deficiencies relating to the administration of programs and operations administered or financed by the Commission, recommend corrective action concerning such problems, abuses, and deficiencies, and report on the progress made in implementing such corrective action.**

During fiscal year 2003, the Office issued the following audits in final:

- A03-01**      *Review of the Agency GPRA Performance for FY2001*
- A03-02**      *Review of the Alternative Dispute Resolution Program*
- A03-03**      *Review of the FEDLINK Interagency Agreement*
- A03-04**      *Review of Employees Compensation and Benefits*
- A03-06**      *Federal Information Security Management Act - Inspector General Evaluation Report*

In addition to these completed audits, we initiated a review of the agency's financial statements in accordance with the Accountability of Tax Dollars Act of 2002, which extended the provisions of the Chief Financial Officers Act, with the requirement for audited financial statements, to numerous smaller agencies, including the FMC. For fiscal year 2003, the agency requested and was granted a waiver from OMB from the auditing requirements. However, the agency did contract for an independent analysis of the financial records, and this review is underway and is being

monitored by the OIG. This review will provide additional guidance for the required audited statements beginning in fiscal year 2004.

During the year, various Hotline complaints were received, and investigations, both informal and formal, were opened and pursued. At the end of the fiscal year, there was one formal investigation pending.

In compliance with the *Government Auditing Standards*, the OIG had an external quality control review conducted of its operations covering the three year period ending March 31, 2003. An unqualified opinion was issued. During this same fiscal year, the Commission's OIG conducted a similar peer review of another Executive Council on Integrity and Ethics ("ECIE") OIG.

In fiscal year 2004, the OIG plans to conduct two statutorily required audits -- one in the information technology ("IT") area, and the other in the financial area relating to audited financial statements. The Office will continue to perform evaluations of agency programs and operations as it carries out the OIG's statutory mandate to combat waste, fraud, and abuse in agency programs. These audits are tied to both the agency and the OIG strategic plans. The Office also will initiate investigations, both formal and informal, as warranted.

The IG, as an active member of the ECIE, will continue working with that group on joint projects which affect the IG community.

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

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

- **Bureau of Consumer Complaints and Licensing,**
- **Bureau of Enforcement, and**
- **Bureau of Trade Analysis,**

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

Also, the Executive Director provides administrative guidance to the:

- **Office of the Secretary,**
- **Office of the General Counsel, and**
- **Office of Administrative Law Judges,**

and administrative assistance to the:



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

The following offices report directly to the Office of the Executive Director:

- **Office of Budget and Financial Management,**
- **Office of Human Resources,**
- **Office of Information Resources Management, and**
- **Office of Management Services.**

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

In addition, the Executive Director is the Commission's Chief Operating Officer and Senior Procurement Executive. The Executive Director is also the Commission's Audit Follow-up and Management (Internal) Controls Official.

The Deputy Executive Director serves as the Commission's designated Chief Financial Officer and Competition Advocate, and is its representative, as Principal Management Official, to the Small Agency Council ("SAC"). At the start of fiscal year 2003, the Deputy Executive Director also was the FMC's designated Chief Information Officer ("CIO"), serving as CIO as a collateral duty. During fiscal year 2003, the Commission created and filled a full-time CIO position. The CIO serves as the agency's senior expert and consultant on the design, development and integration of IT systems. The Office also is responsible for directing and administering the Commission's Information Security Program.

Recruiting a full-time CIO was a major element in the Office's efforts to enhance the agency's IT program, and address recommendations made by the IG through a contractor assessment of agency IT operations. Another significant achievement during fiscal year 2003 was the policy guidance provided to staff activities in Fact Finding Investigation No. 25, *Practices of Transpacific Stabilization Agreement Members Covering the 2002-2003 Service Contract Season*, which culminated in a settlement agreement which addressed a wide range of concerns regarding competitive practices in the involved trades. The Office also guided staff efforts in preparing a comprehensive update and revision of the Commission's regulations dealing with the filing and oversight of ocean common carrier and marine terminal agreements. Additionally, the Office oversaw the institution of a series of outreach seminars conducted by the agency's Area Representatives around the country, designed to further the agency's visibility in port locations and to provide the public with greater understanding of the agency's role, responsibilities and services. The Office again directed preparation of an update of the agency's five-year Strategic Plan, as well as 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, the Federal Managers Financial Integrity Act report, and transmittal letters for the IG's semiannual reports to Congress. Also during the fiscal year, the

Office oversaw efforts to address remaining transition activities related to the conversion to the agency's new personnel/payroll and accounting cross-servicing providers (the National Finance Center - "NFC" - and the Bureau of Public Debt - "BPD," respectively).

The Office also directed the update of the internal Commission issuances that specify procedures for a variety of programs and activities, and guided Commission efforts to comply with the Government Paperwork Elimination Act ("GPEA") and the Government Information Security Reform Act and its successor legislation, the Federal Information Security Management Act of 2002 ("FISMA"). Additionally, the Office guided the development of the fiscal year 2005 budget request to OMB and the fiscal year 2004 President's Budget submission, and directed all efforts involving the audit of the Commission's fiscal year 2003 financial statements, including preparation of the Management Discussion and Analysis portion. Also, the Office served as coordinator for the agency-wide Technology Users Group, which seeks to improve IT decisionmaking and provide better dissemination of IT-related information.

The Office's key objectives for fiscal year 2004 are implementing the Chairman's policy directions aimed at refining and enhancing agency programs and operations; initiating further IT program improvements, including operational and structural changes based upon the advice and recommendation of the new CIO; overseeing staff efforts related to revision of agency regulations dealing with agreement filing and oversight, and passenger vessel financial responsibility requirements; furnishing policy guidance to staff working on a revised program to fulfill the Commission's responsibilities under the Controlled Carrier Act; ensuring effective planning for implementation of future outreach seminar series; and coordinating the refurbishment of headquarters office space. The Office also will continue to take the lead in accomplishing the agency's performance goals related to ensuring an effective agency-wide computer security program, assessing all forms, processes and systems changed to comport with GPEA, and ensuring compliance with the agency's Information Quality Guidelines, as well as coordinating the updating of the Commission's schedule of user fees.

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

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

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

### **(b) Achievements**

During fiscal year 2003, OBFM:

- Collected and deposited \$3,645,713 from user fees, fines and penalty collections, and ocean freight forwarder and OTI application and passenger vessel certification fees.
  - Coordinated and prepared budget justifications and estimates for the fiscal year 2004 Congressional budget and fiscal year 2005 budget to OMB.
  - Prepared a variety of external reports, including: the Annual Leave Year Report and the Report on Workyears and Personnel Costs for 2002 (Office of Personnel Management - "OPM"); the Report on International Travel for FY 2002 (OMB); the Report on First-Class Airline Accommodations for fiscal year 2002 (General Services Administration - "GSA"); and the quarterly Continuation of Pay Reports (Department of Labor).
  - Prepared monthly status reports on workyears, funding, travel and receivables.
  - Managed the Commission's travel, transit benefits and cash management programs.
  - Updated several Commission orders dealing with a variety of financial management issues.
  - Continued to work with BPD regarding the conversion to BPD for accounting and financial services for fiscal year 2003.
  - Implemented Treasury's new collection mechanism, Paper Check Conversion, whereby receivables are processed by electronic funds transfer transactions.
  - Prepared an initial draft of the Commission's Management Discussion and Analysis for fiscal year 2003.
- (c) **Future Plans**

Financial management goals in fiscal year 2004 include: (1) continued development of a fully integrated financial management system; (2) in conjunction with the Offices of Management Services and Information Resources Management, continued implementation of electronic commerce to automate the processing of official travel documents, purchase orders, obligations and payments; (3) reviewing procedures and controls for cash management; and (4) ongoing pursuit of initiatives leading to economy and efficiency in budget and financial operations.

## **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 2003, OHR:

- **Monitored post-conversion activities of the agency’s new payroll/personnel service provider, NFC, and responded to internal and external audit inquiries.**
- **Administered the agency’s Senior Executive Service (“SES”) Candidate Development Program following selection of candidates to address executive succession.**
- **Conducted a comprehensive training program in accordance with the agency’s strategic and annual performance plans, providing executive training for SES candidates, promoting e-learning and on-line training opportunities, ensuring the conduct of computer security awareness training, and participating in the SAC Training Program.**
- **Conducted a comprehensive security program, including the initiation and adjudication of security investigations for new and reinvestigated employees, and completed work necessary for implementation of the Clearance Verification System pursuant to the e-clearance initiative.**
- **Conducted a comprehensive recruitment program, utilizing alternatives for recruitment, such as those under the Presidential Management Interns program and the Veterans Employment Opportunities Act.**
- **Administered action on Presidential initiatives such as teleworking and increasing opportunities for veterans and employees with disabilities.**
- **Revised, obtained approval for, and implemented the revised agency performance management system.**
- **Coordinated post-appointment follow-up, orientation, and career development for Presidential Management Interns.**

- **Managed and conducted numerous employee benefit and charitable contribution programs and open seasons, such as the Combined Federal Campaign, Thrift Savings Plan, Long Term Care Insurance Program, and Flexible Spending Account Program.**
- **Conducted a cyclical position management program review to maintain balanced organizational structures and ensure positions remained current and accurately classified.**

**Coordinated activities with the Office of Special Counsel (“OSC”) to educate agency employees with respect to the Whistleblower Protection Act and took all actions necessary to obtain OSC certification.**

**(c) Future Plans**

In fiscal year 2004, OHR plans to continue to: (1) advise agency management and staff on all human resources matters and ensure the maintenance of a sound and progressive human resources program; (2) implement pertinent portions of the agency’s strategic, training and related performance plans; (3) explore and implement simplification, flexibility, and accountability of human resources management programs; and (4) monitor processes and database modernization activities of the NFC in conjunction with the government-wide e-payroll initiative and ensure timely and accurate payroll and personnel services.

### **3. Office of Information Resources Management**

**(a) General Office Responsibilities**

The Office of Information Resources Management (“OIRM”) provides management support with respect to IT to the program and administrative operations of the Commission, and thus is responsible for ensuring that the Commission’s IT program is administered in a manner consistent with applicable rules, regulations and guidelines. OIRM receives programmatic guidance from the CIO. The Director, OIRM, serves as the Commission’s Information Technology Officer, Information Resources and Data Telecommunications Manager, Forms Control Officer, and Records Management Officer, and oversees the IT security program. OIRM plans, coordinates, and facilitates the use of automated information systems.

OIRM also is responsible for ensuring that the Commission’s information resources management (“IRM”) functions are administered in a manner consistent with applicable rules, regulations and guidelines. These IRM functions include: conducting IRM management studies and surveys; managing data telecommunications; developing and managing databases and applications; coordinating records management activities; administering IRM contracts; and developing Paperwork Reduction Act clearances for submission to OMB.

**(b) Achievements**

During fiscal year 2003, OIRM:

- **Contracted for a Network Design and Storage Capacity Study to document the agency's current network architecture and analyze server capacity, and to propose options for reconfiguration to stabilize the system, improve security, and upgrade to promote efficiency and future network growth.**
- **Procured a commercial off-the-shelf software tool to replace the Commission's former equipment inventory system, and provide IT problem-tracking and an IT request-for-services system.**
- **Conducted the annual Commission-wide systems security assessment to determine data sensitivity and systems criticality as part of the annual FISMA evaluation process.**
- **Cooperated in an assessment of the Commission's information security program performed by the OIG and a private contractor.**
- **Furnished agency-wide advice and coordination on records management, OMB clearances and information management issues, including performing an agency-wide records management review to identify records eligible for disposal, and assisting program units in securing OMB extensions for a number of information collections.**
- **Cooperated in the development of refinements to the Commission's mission-critical Internet-based Service Contract Filing System ("SERVCON").**
- **Maintained and enhanced the FMC homepage, and provided advice and technical support to all bureaus and offices in developing Internet and database applications.**
- **Initiated contracts to provide IT support and other services to further the Commission's mission.**

**(c) Future Plans**

In fiscal year 2004, OIRM will continue to emphasize ongoing support for Commission and externally mandated government-wide programs. Major initiatives include plans to: (1) ensure compliance with government programs such as FISMA, e-Government, and the President's Management Agenda; (2) assist in the administration of the Internet-based SERVCON; (3) establish a plan to develop an FMC Enterprise Architecture; (4) implement a Capital Planning and Investment

Control process; (5) implement a formal IT Change Control Process; (6) develop and align the structure of IT operations; (7) develop plans to stabilize all critical systems and recommend enhancements to the existing IT infrastructure; (8) develop and submit to the National Archives and Records Administration schedules for electronic records and other records not currently scheduled or covered by the General Records Schedule; (9) provide continued agency-wide advice and coordination on records management, OMB clearances and information management issues; (10) continue maintenance and the update of the Commission's homepage to accommodate information to the public; and (11) facilitate the Commission's ability to take advantage of e-commerce.

#### **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 telecommunications, procurement of administrative goods and services, property management, space management, printing and copying management, mail and records 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 2003, OMS:

- **Implemented a new Government purchase card program and automated procurement system (PRISM) through the BPD.**
- **Executed a new building lease and occupancy agreement with GSA for the agency's Headquarters location.**
- **Conducted an office space survey of the Commission's Headquarters and provided recommendations to senior management on redesign of the floor layouts and selections for renovation.**
- **Continued working with GSA and the building owner's representative to coordinate the complete renovation of FMC's office space at the Headquarters location.**

- **Arranged for the printing of two new FMC brochures on the Commission and its programs.**
- **Coordinated with GSA, the Department of Homeland Security, OPM, and member agencies of the SAC on emergency preparedness in response to the changes in alert status, including the development and distribution of information and guides to agency personnel on this subject.**
- **In coordination with the Bureau of Enforcement, arranged for a new office space lease for the Miami Area Representatives.**

**(c) Future Plans**

In fiscal year 2004, the Office's objectives include the following: (1) complete the full renovation of the Commission's Headquarters office space; (2) upgrade the Headquarters building's and agency's security measures for better control of office space and safety of agency personnel; (3) coordinate with OHR on the upgrade and installation of a new Headquarters photo identification system, in conjunction with a new Headquarters Security Access Control System for better employee protection; and (4) continue to provide advice and assistance to FMC activities regarding innovative support service approaches.

## **G. BUREAU OF CONSUMER COMPLAINTS AND LICENSING**

### **1. General**

The Bureau of Consumer Complaints and Licensing has responsibility for the Commission's OTI licensing program, passenger vessel certification program, alternative dispute resolution ("ADR") program, and consumer assistance program. In administering these programs, 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.**



- **Responds to consumer inquiries and complaints, acting as an intermediary to resolve difficulties encountered by consumers with respect to cruises and shipments of cargo.**
- **Develops and maintains an ADR program, arranging for and providing mediation and other dispute resolution services where appropriate.**
- **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, provides guidance with respect to licensing and bonding, and where appropriate, advises about various means available to resolve complaints, both informally and formally. The Bureau also focuses on facilitating conflict resolution through informal and non-binding approaches in an effort to minimize litigation expenses.

The Bureau is organized into three offices. The Office of Consumer Complaints ("OCC") has responsibility for responding to consumer inquiries and complaints, and assists with the development and implementation of the ADR program. The Office of Transportation Intermediaries has responsibility for reviewing applications for OTI licenses, and maintaining and updating records about licensees. The Office of Passenger Vessels and Information Processing has responsibility for reviewing applications for certificates of financial responsibility with respect to passenger vessels, managing all activities with respect to evidence of financial responsibility for OTIs and passenger vessel owner/operators, and for developing and maintaining all Bureau databases and records of OTI applicants and licensees. All offices respond to a number of inquiries and concerns about programs for which they are responsible. During fiscal year 2003, the Bureau responded to more than 9,220 inquiries.

## **2. Alternative Dispute Resolution**

During fiscal year 2003, the Commission continued to implement its enhanced ADR program. Final rules implementing this program became effective August 20, 2001, and provide for the availability of a variety of means of dispute resolution at the Commission. Under this program, parties to a dispute are encouraged to avail themselves of services provided by the Commission to resolve disputes through conciliation, facilitation, mediation, fact finding, minitrials, arbitration, or the use of *ombuds* services. The Commission makes trained neutrals available to facilitate the resolution of shipping disputes at all stages. Mediation is the most frequently chosen method of dispute resolution for matters being litigated in formal Commission adjudicatory proceedings. Mediation also is made available to resolve disputes which have yet to reach the litigation stage. Significant cases in which settlement was facilitated by Commission mediators during fiscal year 2003 included Docket No. 03-01, *HUAL AS v. Puerto Rico Ports Authority*.

At the same time, the OCC provides *ombuds* services, and has responsibility for the Commission's informal complaint handling activities, serving as an intermediary between parties in an attempt to resolve disputes, such as those involving delay or mishandling of shipments. It receives, records, and tracks complaints received by OCC and other Commission components, assuring timely replies. Through these services, the Bureau helps secure the recovery of funds improperly collected by industry entities, facilitates the international movement of household goods, and communicates to cruise vessel operators the substance of consumer complaints arising from their services. During fiscal year 2003, the OCC processed a total of 2,389 complaints and information requests. Of those, 566 complaints required resolution of disputes and attempts to resolve difficulties with shipments. Refunds to the general public of overcharges, refunds and other savings attributable to complaint-handling activities amounted to \$223,175. Since 1993, the OCC and its predecessor office have helped complainants recover more than \$1,600,000.

The Bureau also adjudicates small claims of entities seeking reparations for violations of the shipping statutes. The dollar limitation for claims which may use this small claims procedure was increased in fiscal year 2001 from \$10,000 to \$50,000. By agreement of the parties, these claims are adjudicated by Settlement Officers, rather than ALJs, saving the expense and encumbrances of more formal administrative proceedings. Although the vast majority of small claims received a few years ago comprised freight overcharge actions against ocean common carriers, the majority of cases now concern claims by individuals against NVOCCs. Those complaints generally involve alleged prohibited acts in connection with the international transportation of household goods. Typical complaints include situations where an NVOCC has received cargo from its customer and taken payment for the transportation of the cargo, but failed to deliver the cargo. Tracking down the whereabouts of a shipment can be difficult, and often additional charges have accrued because of delay or because the NVOCC has not made a necessary payment, thus necessitating payment of additional funds to obtain release of the shipment. During fiscal year 2003, one claim was filed, while six pending cases were carried over from the previous year. There was one pending case at the close of the fiscal year.

The Bureau also has responsibility for the adjudication of special docket applications. These are applications for permission to apply other than tariff rates and to waive or refund freight charges arising from various errors in tariff publications, an inadvertent failure to publish an intended rate, or a misquotation of a rate. During fiscal year 2003, one special docket application was processed. None were pending at the close of the fiscal year.

In fiscal year 2004, the Commission intends to expand its ADR program, resulting in more ADR involvement both prior to and after the onset of litigation. The Bureau also plans to continue the expansion of its consumer outreach programs, and through electronic and other means, continue the cultivation of its relationship with public and private consumer agencies and organizations. The Bureau's efforts in this area are directed towards maximizing responsiveness and consumer satisfaction.

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

OTIs are transportation middlemen. There are two different types of such transportation middlemen, NVOCCs and ocean freight forwarders. Both NVOCCs and ocean freight forwarders must be licensed if located in the U.S. Foreign NVOCCs may choose to become licensed, but do not require a license. Whether licensed or not, foreign NVOCCs must establish financial responsibility. In addition, all NVOCCs must publish electronic tariffs.

To be licensed, 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 coverage is required for each unincorporated branch office of a licensee. In addition, unlicensed foreign NVOCCs must maintain \$150,000 in coverage. The financial instrument must be available to pay any order of reparation assessed under the 1984 Act, claims against the OTI arising from its transportation-related activities, and any judgments for damages against an OTI arising from its transportation-related activities under the 1984 Act.

During fiscal year 2003, the Commission received 296 new OTI applications and 252 amended applications, issued 345 OTI licenses, revoked 360 licenses, and reissued approximately 90 licenses. At the end of the fiscal year, 1,262 freight forwarders, 1,317 U.S. NVOCCs, 900 joint NVOCC/ocean freight forwarders, and 40 foreign NVOCCs held active OTI licenses. An additional 721 foreign NVOCCs maintained proof of financial responsibility on file with the Commission but chose not to be licensed.

During fiscal year 2003, the Bureau began to post on the FMC website a list of licensed and bonded OTIs, which assists carriers in complying with their statutory mandate to do business only with those licensed by the Commission. The list is updated weekly. Also during this fiscal year, the Bureau developed an internal database of OTIs to facilitate compliance and enforcement activities. It also revised the OTI license application form to collect additional information, streamline the application, and clarify some of the questions asked of the applicants.

### **4. Passenger Vessel Certification**

The Commission administers sections 2 and 3 of Pub. L. No. 89-777 (46 U.S.C. app. §§ 817d and 817e), 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 184 vessels and 49 operators, which have evidence of financial responsibility coverage in excess of \$318 million for nonperformance and over \$618 million for casualty. The certificates issued pursuant to this program are necessary for CBP's clearance of thousands of passenger vessel sailings annually. During fiscal year 2003, the Commission received applications for 99 certificates (casualty and performance), while 60 casualty certificates and 57 performance certificates were approved and issued.

The Bureau offers information and guidance to the cruising public throughout the year on their rights and obligations regarding monies paid to cruise lines who experience financial difficulties and nonperformance problems. This is in addition to those disputes between cruise lines and the cruising public that are resolved by OCC as part of its ADR responsibilities.

The cruise industry has grown tremendously over the past decade. New cruise lines have entered the business, and existing cruise lines continue to build and/or purchase additional vessels to serve an increasing demand. In addition, applicants continue to develop more sophisticated means of establishing their required financial responsibility. Cruise line industry financial fundamentals have deteriorated during the last few years for a number of reasons, including a weaker economy, industry competition, acts of terrorism, and increased vessel safety requirements that no longer allow older vessels to continue to operate without expensive capital improvements. In particular, the smaller and value cruise operators have had difficulty competing with the larger operators that continue to build new and larger vessels. In recent years, this has been evidenced by the bankruptcy or suspension of operations of Premier Cruise Operations Ltd. (dba Premier Cruises), New Commodore Cruise Lines Ltd. (dba Commodore Cruise Lines and Crown Cruise Lines), Cape Canaveral Cruise Line, Inc. and American Classic Voyages Company (dba Delta Queen Steamboat Company and American Hawaii Cruises). Fortunately, Delta Queen Steamboat Company, with new owners, has been able to successfully return to operating on the Mississippi, Missouri and Ohio Rivers. During fiscal year 2003, another small cruise line, Regal Cruises, Inc., ceased operations. In these instances, Commission staff monitors the situation and works with the cruise line and financial responsibility provider, whenever possible, to facilitate the refund process and keep the public informed through the issuance of news releases posted on the Commission's website and dispensing advice when the passenger public contacts staff.

During fiscal year 2003, the Commission issued a proposed rulemaking, Docket No. 02-15, *Passenger Vessel Financial Responsibility*, to amend other portions of the rules, including removal of the \$15 million cap on performance coverage, a redefinition of unearned passenger revenue to eliminate certain credit card ticket purchases which are covered under the Fair Credit Billing Act, and increasing the frequency of reports of unearned passenger revenue. The purpose of these proposed rules is to protect passenger fares fully and increase the Commission's ability to monitor the adequacy of the coverage provided. Comments were received, and a final rule is expected to be issued in early 2004.

During this fiscal year, the Commission also dealt with some innovative cruise arrangements, including the condo-style cabins offered by ResidenSea Resorts Ltd, aboard the *World of Residencea*. Though some cabins are offered on a cruise basis, most cabins aboard this vessel are purchased by individuals who may use the cabin as their residence. The vessel is operated by an association of the cabin-owners.

## **5. Automated Database Systems**

A significant function of the Bureau is to support all Commission programs by providing information about all regulated entities and those doing business with the Commission. In addition, a database is maintained that provides information about financial coverage for all OTIs, as well as the status of license applications.

During fiscal year 2003, the Bureau began to post a list of licensed and bonded OTIs on the Commission's website, thus assisting carriers in complying with their statutory mandate to do business only with those licensed by the Commission. This is especially helpful as carriers may incur liability for doing business with an unlicensed OTI. An up-to-date list is a safeguard to the shipping public, and also protects licensees from losing business because of an inaccurate determination by a carrier as to whether the OTI is licensed.

In fiscal year 2002 a database of passenger vessel operators was created, and during fiscal year 2003 it was expanded to collect more detailed information on evidence of financial responsibility.

## **H. BUREAU OF ENFORCEMENT**

The Bureau of Enforcement is the primary investigatory and prosecutorial arm of the Commission. Attorneys of the Bureau serve as trial attorneys in formal proceedings instituted under section 11 of the 1984 Act, and in investigations instituted under the FSPA. Bureau attorneys serve as legal advisors to the Executive Director and other bureaus, and also may be designated Investigative Officers in nonadjudicatory fact finding proceedings. The Bureau monitors all other formal proceedings in order to identify major regulatory issues and to advise the Executive Director and the other bureaus. The Bureau also participates in the development of Commission rules and regulations. On occasion, under the direction of the General Counsel, attorneys from the Bureau may participate in matters of court 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 conducts investigations into 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 reviews to determine compliance with applicable statutes and regulations; (2) reviews of OTI operations, including compliance with licensing, tariff, and bonding requirements; (3) audits of passenger vessel operators to ensure the financial protection of cruise passengers; and (4) various studies and analyses to support Commission programs. Investigations are conducted into 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; illegal rebating; misdescriptions or misdeclarations of cargo; untariffed cargo carriage; unbonded OTI and passenger vessel operations; and various types of consumer abuses, such as

failure of carriers or intermediaries to carry out transportation obligations, resulting in cargo delays or financial losses for shippers. The Bureau adheres to the agency's objectives of obtaining statutory compliance and ensuring equitable trading conditions and focusing enforcement efforts on activities which have market-distorting effects.

The Commission maintains a presence in Los Angeles, Miami, New Orleans, New York and Seattle through Area Representatives based in each of those cities. 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 Commission within their jurisdictions, provide liaison between the Commission and the maritime industry and the shipping public, collect and analyze intelligence of regulatory significance, and assess industry conditions. Liaison activities involve cooperation and coordination with other government agencies and departments, providing regulatory information, including educational seminars, and relaying Commission policy to the shipping industry and the public, and handling informal complaints.

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

During fiscal year 2003, the Bureau of Enforcement investigated and prosecuted malpractices in many trades lanes, including the transpacific, North Atlantic, Central and South American and Caribbean trades. These malpractices 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 malpractice investigations resulted in compromise settlements of civil penalties. However, some investigations required the institution of formal adjudicatory proceedings in order to pursue remedies under the 1984 Act.

In addition to rate malpractice enforcement activity, several matters arose with respect to activities pursuant to filed and unfiled agreements between and among ocean common carriers. Further, formal investigations were conducted to examine the lawfulness of exclusive tug service arrangements in certain Florida ports and at marine terminal facilities on the Lower Mississippi. The Florida cases resulted in the elimination of exclusive tug service arrangements in Florida ports. The issue for the Lower Mississippi terminal operators remains in litigation. Further, the Commission, based on the report issued in Fact Finding Investigation No. 25, *Practices of Transpacific Stabilization Agreement Members Covering the 2002-2003 Service Contract Season*, addressed the activities of the TSA members. This review concluded with a settlement of all issues and included structural changes to TSA, curtailment of certain agreement activities, and payment of a civil penalty to address alleged unlawful anticompetitive activity by TSA and its member carriers.

Interaction between the Commission's Area Representatives and the Department of Homeland Security's CBP with respect to the exchange of investigative information continues to be beneficial to both parties. Cooperation with CBP included 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 when necessary.

In fiscal year 2003, the Bureau continued its OTI audit program. This program is conducted from Headquarters, primarily by mail, and 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 2003, 43 enforcement cases were pending final resolution by the Bureau, the Bureau was party to 14 formal proceedings, and there were 83 matters pending which the Bureau was monitoring or for which it was providing legal advice. During the fiscal year, 34 new enforcement actions were commenced; 36 were compromised and settled, administratively closed, or referred for formal proceedings; and 41 enforcement cases were pending resolution at fiscal year's end. Also, the Bureau participated in 3 new formal proceedings, 8 proceedings were completed, and 9 formal proceedings were pending at the end of the fiscal year. Additionally, 73 matters involving monitoring or legal advice were received during the fiscal year, 76 such matters were completed, and 80 were pending in the Bureau on September 30, 2003.

In fiscal year 2004, the Bureau will continue to pursue market-distorting, fraudulent and anticompetitive practices and will continue to monitor U.S. trades and the implementation of the changes and regulations resulting from OSRA, to the extent that resources permit. It will pursue initiatives aimed at entities not in compliance with the Commission's regulations for OTI participation in transportation, and its definition of VOCC, as well as instances of noncompliance with statutory requirements for service contracting.

## **I. BUREAU OF TRADE ANALYSIS**

### **1. General**

The primary function of the Bureau is to plan, develop, and administer programs related to the oversight of concerted activity of common carriers by water under the standards of the 1984 Act as amended by OSRA. Further, the Bureau is responsible for administering the Commission's agreements and service contract programs, and monitoring the accessibility and accuracy of all tariffs published by common carriers, conferences of such carriers, and MTOs. The Bureau's major program activities include:

- **Administering comprehensive trade monitoring programs to identify and track relevant competitive, commercial, and economic activity in each major U.S. trade, and to advise the Commission and its staff on current trade conditions, emerging trends, and regulatory needs affecting waterborne liner transportation.**
- **Conducting systematic surveillance of carrier activity in areas relevant to the Commission's administration of statutory standards.**
- **Developing economic studies and analyses in support of the Commission's regulatory responsibilities.**
- **Providing expert economic testimony and support in formal proceedings, particularly regarding unfair foreign shipping practices.**
- **Processing and analyzing ocean common carrier and marine terminal agreements.**
- **Reviewing and processing service contracts and service contract amendments filed by ocean common carriers and conferences of such carriers, including service contract statements of essential terms published by such entities.**
- **Reviewing tariff publications in private automated systems of carriers and conferences and ensuring that tariffs under OSRA are accessible and accurate.**

## **2. Monitoring**

The goal of the Bureau's monitoring activities is to ensure that carriers operating in U.S. ocean trades comply fully with applicable statutory standards and Commission regulations. To that end, the Bureau administers a variety of monitoring programs and other research efforts designed to apprise the Commission of current trade conditions, emerging commercial trends, and carrier pricing and service activities.

For a description of the Bureau's monitoring activities for fiscal year 2003, *see* Section III. A, *Monitoring*.

## **3. General Economic Analysis**

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



Key projects the Bureau completed in fiscal year 2003 included: (1) an economic analysis and memorandum concerning rate levels of certain controlled carriers and possible approaches for analyzing controlled carrier pricing behavior; (2) economic analyses of newly filed major agreements and amendments under the section 6(g) standard of the 1984 Act; (3) economic analysis and testimony provided in connection with Docket No. 01-06, *Exclusive Tug Franchises - Marine Terminal Operators Serving the Lower Mississippi River*; (4) economic testimony and additional analyses of materials for a Commission enforcement proceeding pertaining to Docket No. 02-03, *Exclusive Tug Arrangements in Port Canaveral, Florida*; (5) providing information and data used in evaluating a petition for investigation filed with the Commission concerning the pricing practices of the Caribbean Shipowners Association; (6) assisting in the preparation of guidelines that detailed the Commission's procedures for addressing the impact of small businesses in rulemakings in accordance with the Small Business Regulatory Flexibility Act; (7) providing economic analyses on the level of adherence in individual carrier service contracts to agreement voluntary service contract guidelines in major trade lanes; (8) performing an economic analysis of WTSA carriers' average revenue data, market share data, and service contract rates in response to an informal complaint filed by the members of the U.S. Meat Export Federation; (9) an economic analysis of service contract rate data submitted in connection with the Commission's Fact Finding Investigation No. 25 - *Practices of Transpacific Stabilization Agreements Covering the 2002-2003 Service Contract Season*; (10) responding to various complaints and requests from shippers on matters including the imposition of rate increases and/or surcharges by certain major agreements; (11) preparation of recommendations for proposed changes to rules governing the filing of minutes, information forms and monitoring reports; (12) classification of agreements to determine each agreement's monitoring report requirements for calendar year 2003; (13) responding to informal requests and inquiries for industry data or information; (14) responding to Congressional requests for trade analyses and data; and (15) meeting with industry representatives to discuss trends and anticipated commercial developments.

#### **4. Agreement Analysis**

Under sections 4 and 5 of the 1984 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 ocean common carriers are also required to be filed with the Commission.

Generally, an agreement becomes effective 45 days after filing, unless rejected by the Commission, made the subject of a formal Commission request for additional information, or enjoined by a U.S. district court under section 6(h) of the 1984 Act when it can be demonstrated that it will unreasonably increase transportation costs or unreasonably decrease service. An agreement already in effect can also be enjoined on a similar showing by the Commission. The 1984 Act empowers the Commission to investigate and order the disapproval, cancellation, or modification

of any effective agreement it finds to be in violation of the Act. In an investigation, the Commission may seek to enjoin, in U.S. district court, conduct that violates the Act. Under the Commission's regulations, certain routine or nonsubstantive agreements are exempt from the 45-day waiting period and are effective upon filing with the Commission.

There are two broad categories of agreements filed with the Commission. The first category is pricing agreements, where the main focus is the discussion and fixing of rates. Types of pricing agreements include conferences and rate discussion agreements. The other category is non-pricing agreements, where the focus can range from the sharing of vessel space to the management of an Internet portal. Types of non-pricing agreements include non-rate discussion agreements, vessel-sharing agreements, and cooperative working agreements. Brief descriptions follow of the various agreement types.

**(a) Conference Agreements**

Conference agreements provide for the collective discussion, agreement, and establishment of ocean freight rates and practices by groups of ocean common carriers. Although conference carriers are allowed to act independently, the expectation is that they will adhere to rates and terms and conditions of service adopted by the group. These agreements publish a common rate tariff in which all the parties participate. The significance of conferences as a primary pricing forum has diminished, especially in the major east-west trade lanes, since the enactment of OSRA in 1999. This role has for the most part been taken over by voluntary rate discussion agreements. The last new conference agreement was filed in March 2000.

The Bureau received and analyzed nine modifications to existing conference agreements in fiscal year 2003. The majority of these filings extended the suspension period of two conferences in the transpacific trades and provided for the initial suspension of the outbound conference from the U.S. to Australia. At the end of the fiscal year, there were 19 conference agreements on file. Activities under three conferences remain suspended, however. The conversion of one conference into a voluntary rate discussion agreement remained pending at year's end, and another conference agreement was terminated during fiscal year 2003.

**(b) Discussion Agreements**

Discussion agreements fall under two types: rate and non-rate agreements. Like conferences, rate discussion agreements focus on the fixing of rates, but any consensus reached under these agreements is non-binding on the parties. There is no common rate tariff; each party publishes its own tariff.

Non-rate discussion agreements are not geared to rate matters and generally provide a forum for discussing matters of mutual interest; in some instances, they operate much like a trade association. Examples of this latter description are the cruise association agreements and the

International Council of Containership Operators “Box Club,” a group of containership operators that meet once or twice a year to discuss policy and legislative issues that affect their industry.

During the fiscal year, the Bureau received one new discussion agreement and 38 modifications to currently effective agreements; modifications were mostly membership changes. In fiscal year 2003, the Bureau analyzed and processed 40 filings including one pending from 2002. At the end of the fiscal year, there were 34 rate discussion agreements and nine non-rate discussion agreements on file. Five rate discussion agreements and one non-rate discussion agreement were terminated during fiscal year 2003.

**(c) Vessel-Sharing Agreements**

Vessel-sharing agreements (“VSAs”) make up the largest group of agreements on file with the Commission. There are several different varieties of these agreements, ranging from agreements that involve a high degree of operational cooperation with respect to space and services, down to the simple swap of container slots. The high end of these agreements are so-called alliances, while the low end are routine space charters. Most VSAs authorize some level of service rationalization. The objective of these agreements is to provide a high-quality service, while reducing individual operating costs.

During fiscal year 2003, the Bureau received 37 new VSAs, which represented 90 percent of all new agreement filings during the year, and 56 modifications to the VSAs. Including those pending, the Bureau processed 98 filings during the fiscal year, and 31 VSAs were terminated. At the end of the fiscal year, there were 145 VSAs on file.

**(d) Joint Service Agreements**

Parties to joint service agreements operate a joint venture under a single name in a specified trading area. The joint venture issues its own bills of lading, sets its own rates, and acts as one individual ocean common carrier.

Two new joint service agreements and two modifications to existing agreements were filed during the fiscal year. The Bureau processed all four filings during the year. Also last year, an existing VSA was changed to a joint service agreement. Two joint services were terminated last year, leaving only seven joint service agreements on file at the conclusion of the fiscal year.

**(e) Cooperative Working & Other Agreements**

Cooperative working agreements (“CWAs”) do not fall under any of the foregoing agreement types. Generally, they deal with policing matters, unique management arrangements between carriers, joint service contracting, and sharing administrative services. Other agreements include agency, transshipment, and equipment interchange agreements.

The Bureau received six filings under these categories of agreements in fiscal year 2003. There were 17 CWAs and other agreements on file at the end of fiscal year 2003. Two CWAs were terminated.

A significant filing last year under this category of agreement was a non-compete agreement that was ancillary to the purchase of assets. Under the Shipping Act, the Commission generally has no jurisdiction over the purchase of assets. *See* section 4(c) of the Act. Notwithstanding, if the purchase of assets contains provisions that directly affect competition and would otherwise be subject to the Commission's jurisdiction, such as a non-compete provision, that portion of the acquisition must be filed with the Commission.

#### **(f) Marine Terminal Agreements**

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

During fiscal year 2003, the Bureau received and analyzed 34 terminal agreements relating to port and marine terminal services and facilities. Certain terminal agreements become effective upon filing under Commission rules that exempt particular classes of marine terminal agreements from the waiting period requirements of the 1984 Act. Terminal agreements not entitled to an exemption are processed under applicable statutory requirements. At the end of the fiscal year, 335 terminal agreements were on file with the Commission.

The number of marine terminal agreement filings generally has been declining since 1992. That year, to lessen the regulatory burden on the industry, the Commission exempted terminal lease agreements from filing. Prior to that time the Commission was receiving approximately 340 terminal agreements a year

### **5. Overview of Agreement Filings**

In fiscal year 2003, the Bureau received 231 agreement filings, a decrease of 10 percent from the previous year. The Bureau processed 237 agreement filings during fiscal year 2003. At the end of the fiscal year, there were 231 carrier agreements and 335 terminal agreements on file. Appendix C contains a breakdown of receipts and processing categories for fiscal year 2003.

### **6. Tariffs**

Since May 1, 1999, section 8 of the 1984 Act, as amended by OSRA, requires common carriers and conferences to publish tariffs in private automated systems. These electronic tariffs contain rates, charges, rules, and practices of common carriers operating in the U.S. foreign commerce. The Bureau reviews and monitors the accessibility of the private 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 and recommends Commission action on tariff publishing activities and regulations.

Two Circular Letters, No. 00-1, *Public Access to Tariffs and Tariff Systems under the Ocean Shipping Reform Act of 1998*, and No. 00-2, *Charges Assessed for Access to Tariffs and Tariff Systems*, have been issued by the Commission to address the carriers' automated tariff systems ("CATS"). The circulars were issued because the Commission was concerned that the public's ability to access some tariff systems appeared to be limited. In fiscal year 2003, the Commission's staff was in regular contact with the carriers, conferences and tariff publishers to assist in the resolution of problems in certain CATS. The Bureau continues to monitor electronically published tariffs to ensure that appropriate public access is provided.

The Bureau also collaborates with other components of the Commission to verify that NVOCCs comply with the Commission's licensing, bonding and tariff publication requirements. Also, the Bureau is directly involved in processing the electronic Form FMC-1 required to be filed with the Commission by carriers, conferences, and MTOs. The data on this form identifies the location of carrier tariffs, including carrier and conference service contract essential terms publications or any MTO schedules. At the end of fiscal year 2003, a total of 3,510 tariff location addresses were posted on the Commission's website. An additional 64 MTOs with FMC-1 submissions opted not to make tariff schedules publicly available.

During fiscal year 2003, the Bureau received and processed 16 special permission applications to deviate from the statutory provisions of the 1984 Act and/or the Commission's tariff publishing regulations.

## **7. Service Contracts**

Service contracts offer an alternative to transportation under tariff terms. Their flexibility enables contract parties to tailor transportation services to accommodate specific commercial and operational needs.

Since OSRA's effective date of May 1, 1999, all contracts are required to be filed electronically. Initially, two systems were available to file service contracts, one which was Internet-based, *i.e.*, SERVCON, and another that used a dial-up approach based on the Commission's former Automated Tariff Filing and Information ("ATFI") system. The dial-up system was discontinued in September 1999, and since that time all service contracts have been filed in SERVCON.

In fiscal year 2003, the Commission added a new rule to its service contract regulations (Docket No. 03-03, *Amendment to Service Contract Regulations*) to permit VOCCs to correct an original filing that is defective due to an electronic transmission clerical error. The time to correct

such SERVCON filing errors is limited to two business days after the initial, defective, electronic transmission. The rule became effective September 8, 2003.

Also this fiscal year, enhancements were made regarding the ability of the contract filer to retrieve its individual SERVCON user directory and service contracts at the Commission.

During fiscal year 2003, the Commission received 46,492 new service contracts (compared to 48,154 in fiscal year 2002), and 192,807 amendments (compared to 210,172 in fiscal year 2002).

## **8. 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. Section 9 of the 1984 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.

By Order on March 27, 1998, the Commission granted one controlled carrier, China Ocean Shipping (Group) Company (“COSCO”), a limited exemption from the 30-day notice period applicable to controlled carriers to reduce rates to meet or exceed the filed rates of competing ocean common carriers. (Petition No. P1-98, *Petition of China Ocean Shipping (Group) Company for a Limited Exemption from Section 9(c) of the Shipping Act of 1984.*) The Commission streamlined and updated the procedures for COSCO to comply with this Controlled Carrier Act limited exemption in fiscal year 2001. In fiscal year 2003, COSCO exercised the authority granted by the Commission’s Order in 17 instances.

In October 2000, China National Foreign Trade Transportation (Group) Corp. (“Sinotrans”) petitioned (No. P2-00) for an exemption similar to that granted COSCO under P1-98, so that it could lawfully reduce rates to meet or exceed the published rates of competing ocean common carriers on one day’s notice. This petition was withdrawn in June of 2003 in favor of the petition by Sinotrans Container Lines Co., Ltd. (“Sinolines”) discussed below.

In fiscal year 1999, COSCO petitioned for a further exemption from the 30-day notice period applicable to controlled carriers in order to publish rate decreases in the U.S. foreign commerce that would be effective upon publication without regard to whether they were the same as, or lower than, rates published by competing carriers. (Petition No. P3-99, *Petition of China Ocean Shipping (Group) Company for a Partial Exemption from the Controlled Carrier Act.*) In fiscal year 2003, similar petitions were made by China Shipping Container Lines Co., Ltd. (No. P4-03) and Sinolines (No. P6-03). These three petitions remained pending at the end of fiscal year 2003.

On June 9, 2003, the Commission published an updated list of controlled carriers in the *Federal Register* to supersede the list published on September 27, 2000. Eight carriers were removed from the previously published list because they no longer operated as ocean common carriers in the U.S. trades. Some of these carriers had gone out of business altogether. One carrier, Sinolines, was added to the list as a replacement for Sinotrans.

## **9. Non-Vessel-Operating Common Carriers**

OSRA amended the 1984 Act by creating a new, combined, term for ocean freight forwarders and NVOCCs under the generic label of ocean transportation intermediaries (“OTIs”). OTIs must comply with the licensing and bonding requirements as also modified by OSRA. The Commission’s Bureau of Consumer Complaints and Licensing now monitors and reviews compliance with OTI/NVOCC financial responsibilities under OSRA, while the Bureau of Trade Analysis reviews the accessibility requirements of NVOCC tariff publications in private automated systems.

At the end of fiscal year 2003, a total of 2,938 tariff location addresses for NVOCCs had been posted on the Commission’s website. Also at the end of fiscal year 2003, petitions filed by NVOCCs and an association seeking authority to permit NVOCCs to enter into service contracts with their shipper clients were pending further Commission action. Also, petitions filed by NVOCCs and an association seeking authority to permit NVOCCs to establish a full or limited exemption from tariff filing were pending further Commission action.

## **10. Marine Terminal Activities**

Pursuant to OSRA, an MTO may make available to the public, subject to section 10(d) of the 1984 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. At the close of fiscal year 2003, a total of 156 operators’ electronic location addresses for MTO terminal schedules were posted on the Commission’s website. Letters were sent to 135 MTOs that existed prior to OSRA that had not submitted FMC-1 Forms.

## **11. Automated Database Systems**

The Bureau currently maintains and uses the following automated databases and filing systems: (1) Form FMC-1 System; (2) Tariff Profile System; (3) SERVCON, the system for filing service contracts, and related Form FMC-83 system for registration to file service contracts;

(4) Microfiche System; (5) historical ATFI tariff database system; (6) the tariff and service contract portions of the FMC Imaging System; and (7) the Agreement Profile System.

During fiscal year 2003, the Form FMC-1 System reflected the tariff location addresses of 335 VOCCs, 2,938 NVOCCs, 17 conferences, and 156 of the 220 MTOs. The FMC-1 System also allows the Commission to quickly track the current status of any Form FMC-1 submitted. Information in the Tariff Profile System is used to review and analyze carrier tariffs and service contract essential terms publications to ensure compliance with Commission rules and regulations under OSRA, particularly the accessibility of carrier tariffs. SERVCON contains service contract data, most of which is only available to the Commission's staff due to OSRA's confidentiality requirements. Registration to file service contracts into the system is authorized through the submission of Form FMC-83. The historical ATFI database contains all tariff and service contract essential term publication data filed electronically with the Commission between February 22, 1993, and April 30, 1999. The Microfiche System provides a means of locating canceled tariffs and amendments that have been microfiched. The FMC Imaging System, among other things, provides for document storage and retrieval of canceled tariffs and service contracts. The Agreement Profile System contains information about the status of carrier and terminal agreements, as well as related monitoring reports.

These databases and systems provide support for many of the Commission's programs. Certain information contained in the databases also is available to the public.

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

The Bureau's overall monitoring program will: focus on systematic oversight of carrier and trade activity with emphasis on upgrading monitoring systems to incorporate data and information that will be provided by carriers and MTOs; assess the impact of key issues facing the industry in order to monitor developments in major trades and analyze agreements in the foreign trades under the standards of the 1984 Act; and continue to refine its section 6(g) monitoring methodology in evaluating the degree of anticompetitiveness generated by agreements within the context of their commercial environments. The Bureau also will continue to review tariffs and service contracts to ensure that they comply with the Shipping Act and the Commission's regulations, including the statutes and regulations related to controlled carriers. Proposed activities include: (1) developing and implementing an automated agreement library that will be accessible online through the agency's website and also to use the agency's website to announce agreement filings; (2) developing a prototype for confidential, semiannual Commission trade profiles on economic and liner trade conditions in major U.S. trade lanes; and (3) refining and updating the methodology to develop freight rate indices for major U.S. trade lanes. Other rulemakings will be recommended addressing certain service contract filing problems, and the possible establishment of criteria for determining ocean common carrier status under the 1984 Act. Further, a system is being developed to facilitate electronic signatures for various FMC information forms to comply with the requirements of GPEA.

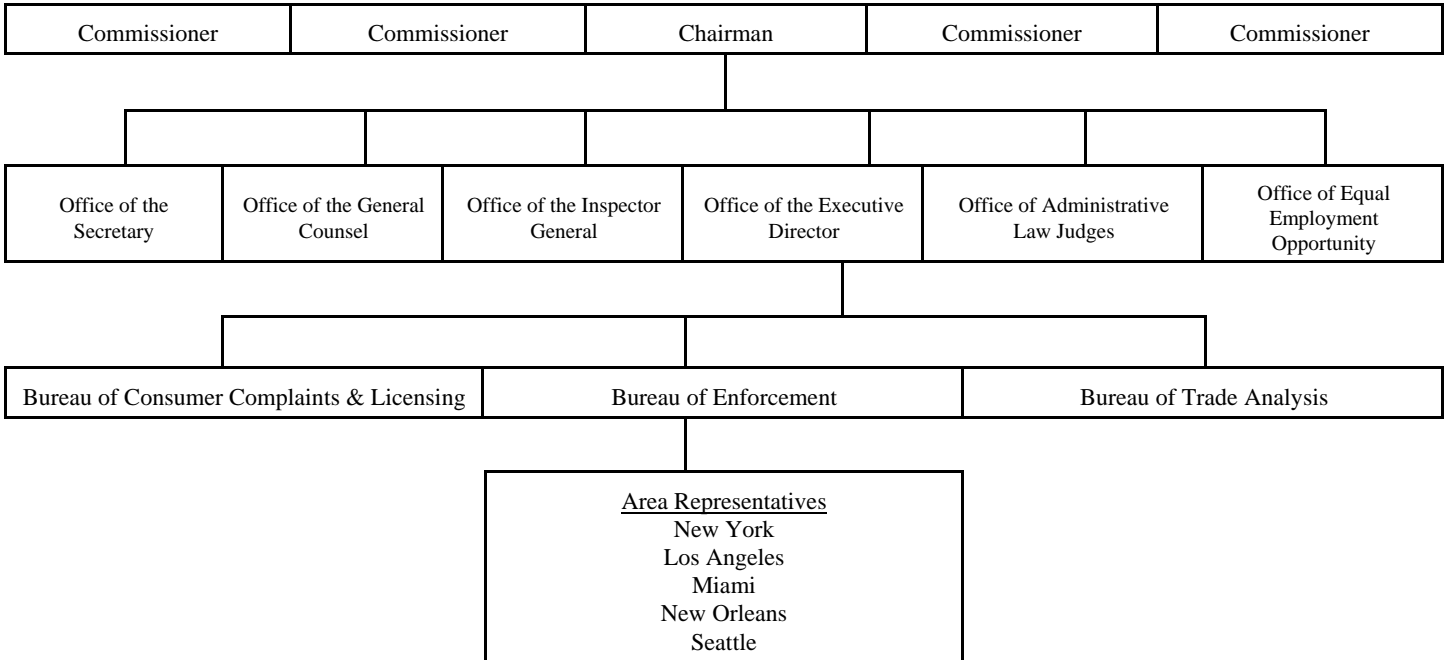


The Bureau also will continue to furnish support and prepare economic testimony in formal Commission proceedings arising in the areas of its expertise; provide analyses and recommendations on petitions, information demand orders, and Commission-initiated rulemakings; perform pre-effectiveness analyses of newly filed agreements to determine whether they are likely to raise issues and specific questions under sections 5, 6(g) and 10 of the 1984 Act, or raise general policy questions; prepare recommendations to the Commission on the more complex agreements and those agreements that raise policy issues; and process other agreement matters under authority delegated by the Commission.

## **APPENDIXES**

# APPENDIX A

## FEDERAL MARITIME COMMISSION ORGANIZATION CHART Fiscal Year 2003



# APPENDIX B

## COMMISSION PROCEEDINGS Fiscal Year 2003

### *Formal Proceedings*

<i>Decisions</i> .....	2
<i>Discontinuances &amp; Dismissals</i> .....	10
<i>Initial Decisions Not Reviewed</i> .....	1
<i>Rulemakings - Final Rules</i> .....	1

***Total* .....** 14

*Special Dockets* ..... 1

*Informal Dockets* ..... 0

# APPENDIX C

## AGREEMENT FILINGS AND STATUS Fiscal Year 2003

### Agreements Filed in FY 2003 (including modifications)

Carrier .....	197
Terminal .....	34
Total .....	231

### Agreement Processing Categories in FY 2003

Forty-Five Day Review .....	75
Shortened Review .....	24
Exempt-Effective Upon Filing .....	133
Rejection of Filing .....	1
Formal Extension of Review Period .....	1
Not Subject .....	0
Withdrawals .....	3
Total .....	237

### Carrier Reports Submitted for Commission Review

Minutes of Meetings and Ad Hoc Reports .....	457
Monitoring Reports .....	284
Total .....	741

### Agreements on File as of September 30, 2003

Conference* .....	19
Discussion .....	43
Joint Service .....	7
Vessel-Sharing .....	145
Cooperative Working & Other .....	17
Terminal .....	335
Total .....	566

\* Two of the three suspended conferences had no published tariffs at the end of the fiscal year.

# APPENDIX D

## FORM FMC-1 TARIFF LOCATION ADDRESSES - ELECTRONIC SERVICE CONTRACT FILINGS AND SPECIAL PERMISSION APPLICATIONS Fiscal Year 2003

### *Form FMC-1 Filings*

<i>VOCC</i> .....	335	
<i>OTI/NVO</i> .....	2,938	<i>MTO</i>
<i>220</i>		
<i>Conferences</i> .....	17	

### *Electronic Service Contract Documents*

<i>New Service Contracts</i> .....	46,492
<i>Service Contract Amendments</i> .....	192,807

### *Special Permission Applications*

<i>Granted</i> .....	12
<i>Denied</i> .....	3
<i>Withdrawn</i> .....	1

## APPENDIX E

### CIVIL PENALTIES COLLECTED Fiscal Year 2003

<b>Aimar Cargo Services Inc.</b> .....	<b>\$20,000.00</b>
All Flags Forwarding Inc. ....	40,000.00
<b>Alspac Miami Corporation</b> . ....	<b>25,000.00</b>
Canaveral Port Authority .....	750,000.00
<b>Compania Sud Americana de Vapores</b> .....	<b>50,000.00</b>
Dynalink Systems .....	40,000.00
<b>Embassy Cargo</b> .....	<b>75,000.00</b>
Empire United Lines Co., Inc. ....	40,000.00
<b>Famous Target Logistics Inc.</b> .....	<b>20,000.00</b>
Glacier Bay Park Concessions Inc. ....	20,000.00
<b>Grampter International (USA) Co., Inc.</b> .....	<b>45,000.00</b>
Golden Bridge International Inc.. ....	70,000.00
<b>JJB Trucking Service Corp</b> .....	<b>20,000.00</b>
Ocean Carriers/TSA Members .....	1,350,000.00
<b>Orient Star Transport International.</b> .....	<b>45,000.00</b>
Rich Shipping (USA) Inc.. ....	300,000.00
<b>Shanghai Pudong Int'l Transport.</b> .....	<b>70,000.00</b>
Team Ocean Services Inc. ....	100,000.00
<b>Transit Worldwide Corp/ Guerrero.</b> .....	<b>15,000.00</b>
Tropical Shipping & Construction. ....	<u>40,000.00</u>
 <b>Total Civil Penalties Collected</b> .....	 <b>\$3,135,000.00</b>

## **APPENDIX F**

### **INVESTIGATIONS Fiscal Year 2003**

*Investigations Opened:* 23

*Audits Opened:* 31

***Total Openings:* 54**

*Investigations Completed:* 39

*Audits Completed:* 23

***Total Completions:* 62**



# APPENDIX G

## STATEMENT OF APPROPRIATIONS, OBLIGATIONS AND RECEIPTS FOR THE FISCAL YEAR ENDED SEPTEMBER 30, 2003

### *APPROPRIATIONS:*

Public Law 108-007, 108<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, \$16,700,000: Provided, that not to exceed \$2,000 shall be available for official reception and representation expenses.

\$16,700,000

Public Law 108-007, 108<sup>th</sup> Congress  
Government-Wide Rescissions, 2003

- 108,550

### **Revised Appropriation**

**\$16,591,450**

### *OBLIGATIONS AND UNOBLIGATED BALANCE:*

Net obligations for salaries and expenses for the fiscal year ended September 30, 2003.

**\$16,585,565**

**STATEMENT OF RECEIPTS:** Deposited with the General Fund of the Treasury for the Fiscal Year Ended September 30, 2003:

Publications and reproductions,  
Fees and Vessel Certification,  
and Freight Forwarder Applications

\$ 510,713

Fines and penalties

\$3,135,000

**Total general fund receipts**

**\$3,645,713**