FEDERAL MARITIME COMMISSION

40th ANNUAL REPORT

for

Fiscal Year

2001

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TABLE OF CONTENTS

FEDERAL MARITIME COMMISSION
WASHINGTON, D.C 20573-0001

March 31, 2002

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 40th Annual Report of the activities of the Federal Maritime Commission for fiscal year 200 1.

Sincerely,

Harold J. Creel, Jr.
Chairman

MEMBERS OF COMMISSION

Harold J. Creel, Jr.
Chairman
Appointed 1994
Term Expires 2004

Delmond J. H. Won
Commissioner
Appointed 1994
Term Expires 2002

John A. Moran
Commissioner
Appointed 1998
Term Expired 2000

Joseph E. Brennan
Commissioner
Appointed 1999
Term Expires 2003

Antony M. Merck
Commissioner
Appointed 2000
Term Expires 2001

SENIOR COMMISSION OFFICIALS

Counsel to the Chairman . . . . *Thomas Panebianco*

Secretary . . . . *Bryant L. VanBrakle*

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

Acting General Counsel . . . . *David R. Miles*

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

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

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

Deputy Executive Director . . . . *Florence A. Carr*

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

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

Director, Bureau of
Trade Analysis . . . . *Austin L. Schmitt*

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 now 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. All 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 terminals, to ensure that they do not have excessively anticompetitive effects.**

- **Reviewing and maintaining a database of service contracts between ocean common carriers and shippers, and using this database 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 bonds that protect the shipping public from financial loss.**

- **Investigating discriminatory rates, charges, classifications, and practices of common carriers, terminal operators, 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 to address actions by carriers or foreign governments that adversely affect shipping in the U.S. foreign oceanborne trades 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. The 1984 Act prohibits carriers from unduly discriminating among shippers and other members of the shipping public. The 1984 Act also requires carriers to make their rates, charges and practices available in tariffs that must be open to public inspection. Carriers may only assess the published rates and charges. 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. Ocean common carriers also are required to file with the Commission all service contracts negotiated with shippers. The Commission has developed an Internet-based system for the electronic receipt of such contracts. Pursuant to the 1984 Act, all such contracts are provided confidential treatment by the Commission.

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 oftransportation. 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. are appropriately bonded to protect shippers from financial loss. Additionally, the Commission licenses all U.S. intermediaries.

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 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. Not 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 2001, the Commission was authorized a total of 180 full-time equivalent positions and had a total appropriation of $15,465,900. That appropriation supported the actual employment of 128 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

The Commission's fiscal year was influenced significantly by the corresponding slowdown in the U.S. economy and fluctuations in the world economy following September 11, 2001. The Commission closely monitored the effect of reduced consumer spending on carrier efforts to cope with excess vessel capacity and decreasing freight rates.

In addition, the Commission completed and released a study analyzing the impact of the Ocean Shipping Reform Act of 1998 ("OSRA") on the ocean transportation industry. The study found that, overall OSRA has achieved its policy objectives. In this fiscal year, the Commission also enhanced its alternative dispute resolution program with much success, offering parties an economical and efficient means to settle disputes and controversies on ocean shipping matters.

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 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, a slowdown of the U.S. economy in fiscal year 2001 reduced consumer spending on foreign imports. Consequently, the volume of import cargo moving inbound to the U.S. sharply dropped from the high levels of growth that prevailed in past fiscal years, particularly in such trades as the transatlantic and transpacific. As demand declined, carriers endeavored to cope with an excess supply of vessel capacity in many trades. Conditions worsened as previously scheduled vessel upgrades and new services added further excess capacity to the trades. Attempts by agreement carriers to coordinate rate increases generally proved ineffective against falling freight rates. With conditions already weak in many trades, the economic instability stemming from the terrorist attacks in the U.S. and the subsequent war in Afghanistan created additional problems for carriers. As the U.S. economy slipped into a recession, a further contraction in consumer demand reduced cargo growth and pushed freight rates downward by an even greater degree than was previously anticipated. Within the industry, concern over the financial stability of carriers has spread. In addition to the recession, carriers faced cost hikes from increased vessel insurance premiums and heightened security measures. Some carriers reacted by scaling back their services and cutting vessel capacity, particularly in the transpacific. Industry analysts foresee further carrier consolidation resulting from another round of mergers, acquisitions, and possible bankruptcies.

Major carriers continued to move forward in the area of information technology by offering shippers more services over the Internet. Shippers now have on-line access to such information and services as vessel schedules, cargo booking and tracking, payment and invoicing, and remote printing of bills of lading.

In the transatlantic trade between the U.S. and North Europe, the volume of import and export cargo was down from the preceding fiscal year. The imbalance between liner imports and exports continued, with import cargo exceeding export cargo by 5 1 percent by volume. To address the cost of repositioning containers, members of the *Tram-Atlantic Conference Agreement* ("TACA") initiated an equipment repositioning charge on inbound cargo. Freight rates fell in both trade directions due to overcapacity and sluggish demand. TACA endeavored to raise rate levels by implementing several small to moderate tariff GRIs in both trade lanes. Since OSRA, however, TACA's ability to influence rates through tariff GRIs has diminished because the majority of its cargo now moves under individual service contracts. TACA's market share continued to erode as competing independent carriers successfully gained market share. Under its coordinated capacity and space charter program, TACA temporarily withdrew from service one vessel per week during a five-week period of low demand between December 2000 and February 200 1. TACA amended its agreement to reimplement the same program for the period between December 2001 and February 2002.

Despite the U.S. economic slowdown, the volume of import cargo from the Mediterranean continued to grow at a moderate pace, largely sustained by the U.S. demand for home furnishings from the region. In the outbound direction, export cargo to the Mediterranean significantly fell due to a sharp drop in the demand for major U.S. exports such as logs, lumber, and wood pulp. The slump in U.S. export cargo volume drove outbound rate levels downward, while rate levels in the stronger inbound direction rose modestly. Members of the *United States South Europe Conference* implemented two small to moderate tariff GRIs along with several new surcharges on inbound cargo. Vessel capacity in the trade increased by 25 percent relative to the preceding fiscal year. Carriers serving the Mediterranean found it difficult to manage capacity since the region also serves as a transit route between other east/west trade lanes.

In the Middle East, conditions were improving until the events surrounding the terrorist attacks in the U.S. threw the region into greater turmoil. Overall, import cargo from the Middle East grew by 7.6 percent as U.S. consumers continued to purchase furniture, apparel, and other such goods from the region. Gains from higher oil prices during the first half of the fiscal year stimulated efforts to increase productivity within Middle East nations. U.S. export cargo to the region rose by 2.5 percent, with U.S. machinery and other industrial production materials in high demand. Any political and economic stability in the Middle East, however, was cut short after September 11. Fighting between Israeli and Palestinian factions intensified, placing an additional strain on relations between Middle East nations. In addition to the disruptive trade conditions, carriers serving the Middle East incurred higher costs from premiums imposed by insurance companies. To defray those costs, many carriers implemented war risk surcharges for vessel calls at Middle East ports.

In Africa, low rates of economic growth and severe poverty continued to affect much of the continent. Despite these conditions, over the past several years, the volume of import and export cargo has modestly grown. Efforts to improve international commerce are expected to generate additional cargo growth. Some carriers expanded their operations in the trade with new services, additional port calls, and vessel upgrades. Port congestion and delays resulted in higher costs to carriers, but efforts to modernize port facilities have increased efficiency. Over the fiscal year, freight rates fell so sharply from intense competition that conference carriers found it infeasible to proceed with planned GRIs in the trade.

Import cargo from Central America to the U.S. was down by close to 3 percent, largely due to extensive crop damage of fresh produce. The region was hit hard by natural disasters and a drought that ruined major portions of annual crops and hurt local economies. The poor economic conditions throughout Central America also affected the region’s demand for U.S. goods. U.S. export cargo fell by over 5 percent during the fiscal year. Carrier members of agreements within Central America and the Caribbean endeavored to raise freight rates by implementing GRIs; however, the weak demand caused rate levels to remain low. Similarly, trade between the U.S. and South America also declined in the fiscal year. The slowdown in U.S. consumption affected such South American imports as lumber, wood products, paperboard, coffee, and auto parts. Recessionary conditions in South

America and the severe financial crisis in Argentina stunted the region's demand for U.S. goods and caused an overall decrease in U.S. export cargo. Carriers endeavored to improve their capacity utilization levels through a combination of operational agreements and capacity cutbacks. Reductions in excess capacity relieved some of the downward market pressure on freight rates; however, the slump in demand has hindered recent efforts to increase rate levels in the trade. Rate cohesion among members of the South America discussion agreements has become more difficult.

In the transpacific, the growth of import cargo from Asia to the U.S. was disappointingly small in comparison to the high rates of consecutive import growth in past fiscal years. Carriers struggled with overcapacity, as additional vessel space became operational in the trade. Major carriers and operational agreements began removing excess vessel space and cutting capacity toward the end of the fiscal year. Members of the *Transpacific Stabilization Agreement* failed to meet their GRI objectives and peak-season surcharge on inbound cargo for 2001, with freight rates falling by upwards of 25 percent. In the outbound trade direction, the degree of recovery realized in the preceding fiscal year vanished as U.S. export cargo fell. Instability in the outbound direction prevented members of the *Westbound Transpacific Stabilization Agreement* from achieving any cohesion on freight rates. Conditions in the transpacific are projected to worsen as the recession takes hold of the U.S. economy. In addition, political unrest in Pakistan and Sri Lanka caused carriers to impose war risk surcharges to help defray the cost of higher insurance premiums in those countries. Despite the faltering trade conditions, a new controlled carrier based in China, Shanghai Hai Hua Shipping Co., Ltd., entered the transpacific trade.

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 2001, the Commission continued its active approach in this area. In particular, the Commission continued to address situations in the People's Republic of China ("PRC") and Japan.

In 2000, the staff was directed to, and did prepare draft proposals for action in response to unfair shipping practices arising from the laws, regulations and practices of the PRC. The Commission continues to assess whether the release of these proposed responses is appropriate to address the circumstances, and to weigh carefully how the situation may evolve due to the accession of the PRC to the World Trade Organization. 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 continues 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 convened regularly in 200 1. The Task Force identifies, evaluates and attempts to anticipate foreign practices which might have adverse impacts on U.S. shipping interests.

C. TRADE OVERSIGHT

During the fiscal year, the Commission completed and released an impact study on the revised U.S. shipping legislation, entitled: *The Impact of the Ocean Shipping Reform Act* of 1998. This latest study expands on the Commission's previous interim report and gives a comprehensive assessment of the ocean shipping industry's operations two years after OSRA's implementation. In preparing the study, the Commission used various sources, including the public comments from its Notice of Inquiry on OSRA's impact. A broad range of comments were received from carriers and agreement representatives, shippers, shippers' associations, and OTIs. The Commission further conducted an extensive audit of service contracts based on random samples taken from the FMC's electronic tiling system and database ("SERVCON"). The study provides a general regulatory and economic overview and examines such key issues as: service contract developments, agreement and trade activities, voluntary service contract guidelines, tariff publication, and OTI licensing and bonding. The study found that, thus far OSRA has achieved its primary policy objective of providing a more market-driven environment for industry participants. Closing observations in the study identify issues that merit further attention and offer suggestions for possible legislative consideration.

Other specific monitoring and research projects undertaken for fiscal year 2001 included: a confidential report on voluntary service contract guidelines; development of an economic market definition for an enforcement case involving exclusive tug franchises on the Lower Mississippi River; analysis of the activities of certain controlled carriers; economic analyses of industry trade data in response to Congressional inquiries; and responses to informal complaints and requests from shippers on rate and service matters.

D. ALTERNATIVE DISPUTE RESOLUTION

During fiscal year 2001 the Commission implemented a significantly enhanced, comprehensive Alternative Dispute Resolution ("ADR") program in order to find ways to settle disputes without having them processed via costly and time-consuming formal adjudications. To this end, the Commission issued a revised ADR policy statement and issued rules that provided guidelines and procedures for arbitration, as well as making mediation and other ADR services available for conflicts or disputes on ocean shipping matters. While its new ADR policy was under development, staff underwent training in various forms of ADR and began providing mediation services to parties engaged in litigation in formal Commission adjudicatory proceedings. Immediate benefits were obtained, as mediation simultaneously resulted in resolution of a Commission proceeding between two private parties and its companion state court case. Had this matter continued to a hearing, the Commission and the parties would have incurred considerable costs and expenses. Also, the Commission's ADR services were able to facilitate the resolution of a significant dispute by parties at a major port, thereby avoiding litigation that almost certainly would have involved substantial expenses to the parties and to the Commission. Efforts are continuing to engage parties in utilizing ADR to resolve matters at an earlier, less costly stage of litigation.

As part of its ADR services, the Commission provides *ombuds* services to the shipping public by assisting consumers and other complaining parties in resolving a number of problems. During fiscal year 2001, the Commission received a high volume of such complaints, continuing what may become a trend first experienced during the previous fiscal year. Requests for assistance in the aftermaths of multiple cruise line failures continued to account for much of the complaint volume, as affected individuals sought assistance in their efforts to recover cruise fares and deposits. Many of these requests involved cruise lines participating in the Commission's Public Law 89-777 program, including the major operators Premier Cruise Operations Ltd. and Commodore/Crown Cruise Lines. Other inquiries from the public concerned defunct cruise operators exempt from our regulations, such as Renaissance Cruises Inc., and a smaller line, Great Lakes Cruises, Inc. The vessels that these carriers operated did not embark passengers at U.S. ports and thus did not have Public Law 89-777 nonperformance coverage. Moreover, the events of September 11, 2001, generated a number of complaints about handling of special situations by a number of cruise lines. The Commission provided assistance whenever possible.

The Commission's continuing efforts to make its complaint resolution procedures available to a wider public led to increasing complaints in the area of household goods and personal effects. Many of these inquiries resulted from increased information through the Commission's Internet site, while state and local consumer agencies directed many other complainants to the Commission. Complaints in this area encompassed numerous types of problems, such as rate disputes, lost or damaged goods, and unreasonable delays. While in many cases the Commission's efforts enabled affected parties to satisfactorily resolve their problems, in other cases individual shippers were not able to obtain effective recourse. Still, in the latter situations, dissemination of information often made it possible to alert similarly situated individuals about dangers that might affect their own shipments.

An increasing number of shipping companies sought our assistance in collecting unpaid sums from various customers. Complaints of this nature involved unpaid freight charges, uncollected freight forwarder compensation, and settlement amounts arising from various claims. In some cases, the slow payments reflected serious cash flow problems, and may well have been related to difficulties in the general economy. Even though problems of this nature ordinarily fall outside of the Commission's area of responsibility, our informal assistance frequently helped to resolve situations and forestall formal collection actions.

Also, we continued to receive complaints of the types that have recurred frequently over the years. Shippers often contended that carriers have "rolled over" their cargoes from one vessel to the next, probably in favor of some more lucrative competing cargo, while other shippers approached the staff with grievances concerning unreasonable and untimely routings on the parts of non-vessel-operating common carriers ("NVOCCs"). In these situations, the Commission was able to utilize effectively various ADR techniques to resolve difficulties. With respect to passenger vessel transportation, commonly recurring complaints included such issues as port cancellations, excessive noise, missed flight/cruise connections, inadequate or subpar entertainment, and rude or unfriendly shipboard personnel. While our ability to provide assistance in such matters is limited, often our intervention resulted in amicable resolution of a complaint.

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 Shipping Act of 1984 ("1984 Act").

During fiscal year 2001, the Bureau of Enforcement ("BOE") investigated and prosecuted malpractices, particularly fraudulent cargo descriptions and measurements in the transpacific trades and secret rebates in the South American trades. Other trades were also the subject of malpractice investigations, including the North Atlantic, Central 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, upon submission of reports by BOE to the Commission, Fact Finding Investigation No. 24, a nonadjudicatory investigation into maritime terminal activities of Florida ports related to the provision of exclusive tug services, was instituted, and a formal proceeding was initiated to determine the lawfulness of exclusive tug arrangements at marine terminal facilities on the Lower Mississippi. Also, a Show Cause proceeding for failure to abide by new OTI requirements of OSRA resulted in the cancellation of the licenses of 55 OTI entities.

The Commission collected $1,145,000 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

OSRA IMPACT STUDY

The Commission released a comprehensive study on the regulatory and economic impact of the Ocean Shipping Reform Act of 1998 ("OSRA"). The study assessed the U.S. ocean liner industry's operations during the first two years since the implementation of OSRA. In preparing the study, the Commission relied upon a broad range of sources, including a cross section of industry views provided in response to the Commission's Notice of Inquiry on OSRA's impact.

The study provides a general regulatory and economic overview of ocean liner shipping, and examines several key issues including: service contract developments, agreement and voluntary service contract guideline activities, OTI licensing and bonding, and tariff publication. Other issues covered include: controlled carriers, restrictive shipping practices by foreign governments, port trucking, and e-commerce. The study's closing observations identify issues warranting continuing attention by the Commission and offer several suggestions for possible legislative consideration.

Based on the research and information obtained, the study concludes that OSRA appears to be achieving its primary policy objective of producing a more market-driven ocean liner shipping environment, thereby increasing competition and the efficiency of industry participants. While there continue to be issues for debate and varying views on the overall effect of OSRA among different industry groups, generally responses to the Commission's Notice of Inquiry indicated that OSRA is working as intended.

The study found that the procompetitive reforms aimed at service contracting appear to have contributed to a 200 percent increase in the number of service contracts and amendments filed with the Commission since May 1999, as well as an increase in the volume of cargo moved under those contracts. In several trades where the percentage of cargo volume moving under service contracts had been 50 to 60 percent, some carriers reported a jump to 80 percent or more under OSRA. It appears the primary impetus for these increases is the flexibility and confidentiality of individual service contracting introduced under OSRA. This enables shippers and carriers to design contracts to meet their specific business requirements in a confidential environment.

In the area of agreements, the report notes that there have been a number of significant changes. The deregulatory nature of OSRA, the emergence of global markets, and the improved service of traditionally non-conference carriers, have contributed to the restructuring of the U.S. liner shipping industry. Broad-based rate discussion agreements with non-binding ratemaking authority have essentially replaced traditional rate-fixing conferences as the primary forum for collective carrier pricing activity in most U.S. liner trades. Discussion agreements are less bureaucratic and autocratic than the traditional conference and provide members with the opportunity to exchange commercial information and agree voluntarily on pricing policy. Unlike conferences, which saw a marked decline in their numbers (almost one-third either disbanded or were suspended about the time OSRA became effective in May 1999), the number of rate discussion agreements has remained somewhat stable during the first two years of OSRA. Further, the number of efficiency-enhancing operational agreements on file with the Commission continues to rise, as carriers seek to maintain a competitive market position by expanding their individual service networks through cooperative arrangements.

The study also found that since OSRA's implementation, the number of individual NVOCCs and ocean freight forwarders has declined slightly, whereas the number of OTIs that are both NVOCCs and freight forwarders more than doubled. This may be a function of the consolidation taking place throughout the U.S. shipping industry in an effort to provide better services.

Finally, the study noted the concerns expressed by OTIs in response to the Commission's Notice of Inquiry, as well as in other forums. These concerns include what NVOCCs perceive to be a closer Commission scrutiny of their activities vis-a-vis those of vessel-operating common carriers ("VOCCs"), and an unfair advantage by NVOCCs who do not establish or adhere to published tariffs. In addition, NVOCCs want to be allowed to enter into service contracts with their shipper-customers in order to put the NVOCCs on what they believe to be an equal competitive footing with VOCCs.

The full text of the Commission study can be viewed by visiting the Commission's website at www.fmc.gov.

Separate from the two-year OSRA impact study, the Commission prepared a confidential report on the impact of ocean common carrier agreements' voluntary service contract guidelines for participating members. The purpose of the report was to discern the degree to which agreement members followed these guidelines when negotiating service contracts. In fiscal year 2001, there were 19 agreements that filed confidential service contract guidelines with the Commission. The Commission audited 600 service contracts of carriers who are members of agreements that recommend service contract guidelines in the transatlantic, transpacific, Australia-New Zealand and Latin America trades.

The confidential report found that the success of these agreements in gaining compliance with service contract guidelines depended on underlying market conditions. During times when the demand for ocean liner transportation was high, carriers generally followed the guidelines. However, during times when the demand for ocean liner transportation was low, carriers generally did not abide by the guidelines. The percentage of service contracts adhering to surcharges and/or accessorials was mixed, ranging from 34 to 100 percent, depending on the trade. Adherence to GRIs and specific commodity rates was less successful, ranging from none to 60 percent of the service contracts examined.

IV

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” day after filing or the 30” 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 200 1, 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) the preparation of several sections of the Commission's two-year OSRA Impact Study, including a confidential report on the impact of service contract guidelines; (2) the preparation of the Commission's Notice of Inquiry on the impact of OSRA and review and analysis of industry responses; (3) economic analyses of newly tiled major carrier agreements and amendments under the competition standards of section 6(g) of the 1984 Act; (4) review of quarterly monitoring report data submitted in accordance with the regulations on agreement reporting requirements; and (5) an economic analysis of the activities of certain controlled carriers.

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. A 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 U.S. Customs Service ("Customs"), with respect to the exchange of investigative information, continues to be beneficial. All Area Representatives work closely with Customs in their respective port districts and have established symbiotic working relationships which contribute to the productivity and efficiency of both agencies.

During fiscal year 2001, BOE investigated and prosecuted malpractices, particularly fraudulent cargo descriptions and measurements in the transpacific trades and secret rebates in the South American trades. Other trades were also the subject of malpractice investigations, including the North Atlantic, Central 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, upon submission of reports by BOE to the Commission, Fact Finding Investigation No. 24, a nonadjudicatory investigation into maritime terminal activities of Florida ports related to the provision of exclusive tug services, was instituted, and a formal proceeding was initiated to determine the lawfulness of exclusive tug arrangements at marine terminal facilities on the Lower Mississippi. Also, a Show Cause proceeding for failure to abide by new OTI requirements of OSRA resulted in the cancellation of the licenses of 55 OTI entities.

During fiscal year 200 1, the Commission collected $1,145,000 in civil penalties. Settlements were reached with many different segments of the industry (e.g., carriers, shippers, forwarders, and NVOCCs) operating in the U.S. foreign trades (see Appendix E).

V

DEVELOPMENTS IN MAJOR U.S. FOREIGN TRADES

A. TRANSATLANTIC

Over the course of fiscal year 2001, conditions in the trade between the U.S. and North Europe progressively deteriorated as the cargo volume of imports and exports fell from the preceding fiscal year. The collapse in stock prices and the subsequent economic slowdown curbed U.S. consumer spending on import goods. As U.S. demand softened, import cargo from North Europe decreased by 1.3 percent in fiscal year 2001. The decline marked a clear downturn in the inbound trade direction compared to the preceding fiscal year when import cargo robustly grew by 13 percent. The decline in U.S. demand affected such major import goods from North Europe as paper, furniture, beer, synthetic rubber, and food products, while auto parts from Germany was one of only a few imports remaining strong. In the outbound direction to North Europe, U.S. exports faired even worse as cargo volume dropped by 6.2 percent in fiscal year 2001, compared to a 3 percent increase in the preceding fiscal year. The weak euro against the U.S. dollar, along with sluggish economies in North Europe, reduced the demand for such major U.S. export goods as edible nuts, fruits, auto parts, furniture, wood pulp, and lawn equipment. The September 11 terrorist attacks, and the ensuing war in Afghanistan, created further instability for carriers operating in the transatlantic. As the U.S. economy officially lapsed into a recession during 200 1 and consumer demand stalled, greater declines in cargo volume in both trade directions are now projected for the remainder of calendar year 2001 and into 2002.

The trade imbalance continued to be a major concern for carriers as the disparity between the directional cargo flows increased in the transatlantic. In fiscal year 2001, U.S. import cargo exceeded U.S. export cargo by 5 1 percent, or close to 500,000 TEUs. Carriers were affected by uneven vessel-capacity utilization in the opposing trade directions, which made it difficult to reposition empty containers. For the trade as a whole, the latest industry reports for September 2001 placed vessel-capacity utilization in the stronger inbound direction at 74 percent, while the weaker demand in the outbound direction left vessels about half full. No improvement in the trade imbalance is foreseen in the near future. To address the cost of repositioning empty containers, members of the *Tram-Atlantic Conference Agreement* ("TACA") (No. 202-011375) initiated an equipment repositioning charge of $100 per container on inbound cargo. In the preceding fiscal year, TACA included a repositioning charge in a tariff GRI on inbound cargo. The effect of that GRI was limited, however, because only a small amount of TACA's cargo moves under tariff rates.

The unfavorable trade conditions also affected freight rates in the transatlantic. Industry reports estimated that the decline in import cargo volume from North Europe caused inbound freight rates to fall by 5 percent as of the 2nd quarter of 2001. In the outbound trade direction, the continued effects of overcapacity and dwindling U.S. export cargo volume to North Europe further eroded freight rates to levels that some carriers viewed as record lows. As a conference, TACA endeavored to reverse the downward trend in freight rates by implementing several tariff GRIs. During the fiscal year, TACA implemented two moderate tariff GRIs inbound, and three small to moderate tariff GRIs outbound.

The ability of TACA to collectively influence freight rates through tariff GRIs has diminished considerably. Since OSRA, the vast majority of TACA's cargo moves under individual service contracts with rates independently negotiated outside of the conference. Most recently, TACA reported that only about 10 percent of the cargo carried by its members moved under conference rates. In addition, the conference's collective market share fell slightly from a year ago. According to the latest trade data, TACA's market share in the inbound direction fell from 48 percent during the 2nd quarter of 2000, to 45 percent during the 2nd quarter of 2001. In the outbound direction, TACA's market share remained relatively constant from a year ago at 49 percent. TACA's largest independent competitors in the transatlantic included Evergreen Marine Corporation, COSCO North America, Inc. ("COSCO"), Lykes Lines Limited, LLC ("Lykes Lines"), and Hanjin Shipping Company, Ltd. ("Hanjin"). The leading carrier serving the trade, however, is a TACA member, A.P. Moller-Maersk Sealand ("Maersk Sealand"). It held the highest single market share at approximately 14 percent in both trade directions.

In the preceding fiscal year, carriers operating in the transatlantic reconfigured their services through a series of vessel-sharing and space-chartering agreements. The long-standing agreements between Maersk Sealand, P&O Nedlloyd Limited ("P&O Nedlloyd"), and Orient Overseas Container Line Limited ("OOCL") were terminated and replaced by new arrangements. As such, distinct carrier groups have now evolved in the transatlantic, comprising significant portions of the trade's total vessel capacity. The largest carrier group shares vessels through the Grand Alliance (No. 208-011602) and charters space through an agreement with Americana Ships (No. 232-0 11705). Carriers in this group include Hapag-Lloyd Container Linie GMBH ("Hapag-Lloyd"), Nippon Yusen Kaisha ("NYK Line"), OOCL, P&O Nedlloyd, Lykes Lines, and TMM Lines Limited, LLC. Together, these carriers operate five weekly services between the U.S. and North Europe that account for 33 percent of the trade's total capacity. The second largest carrier group in the trade shares vessels through the New World Alliance (No. 217-011723) and charters space through agreements with Maersk Sealand (No. 232-011722) and Compagnie Maritime d'Affretement-Compagnie Generale Maritime (No. 217-011726). Carrier members of the New World Alliance include APL Co. Pte. Ltd. ("APL Ltd."), Hyundai Merchant

Marine Co., Ltd. (“Hyundai”), and Mitsui O.S.K. Lines, Ltd. (“Mitsui”). As a whole, these carriers provide three weekly services with 24 percent of the trade’s total vessel capacity.

On agreement issues, TACA implemented a coordinated capacity program to temporarily withdraw vessels from service and to charter space between members during the period of historically low demand between the months of December 2000 and February 2001. Under the program, TACA withdrew one vessel per week over a five-week period. The vessels were returned to service starting on the next round-trip voyage rotation from North Europe. During the 2000/2001 program period when vessels were withdrawn, the total amount of vessel space supplied by TACA sufficiently exceeded demand for TACA members’ available vessel space. TACA submitted an amendment to reimplement the same capacity program between December 2001 and February 2002. Under the amendment, TACA proposes to withdraw one vessel per week during the period. The members who withdraw vessels will be allowed to charter space from other TACA members.

B. MEDITERRANEAN

Even though Italy’s gross domestic product (“GDP”) increased 1 percent over last fiscal year, it still remains one of the lowest in the European Union. Economic growth and domestic spending in Spain was sluggish due to a decline in the demand for Spanish goods, such as wine, spirits, foodstuffs, and forest products. The Turkish economy continued to suffer from the effect of a banking crisis and the devaluation of its lira.

Despite the U.S. economic slowdown during the fiscal year, the volume of import cargo from the Mediterranean continued to grow at 7 percent over fiscal year 2000 cargo volumes, largely sustained by U.S. demand for home furnishings from the region. After expanding by 14 percent in fiscal year 2000, U.S. export cargo volume to the Mediterranean contracted by nearly 14 percent during fiscal year

200 1. A weak euro and sluggish economies in the Mediterranean region contributed to a sharp drop in the demand for major U.S. exports such as logs, lumber, wood-pulp, and cotton. Each of these top-ranked commodities suffered double-digit percentage losses compared to fiscal year 2000.

As the Mediterranean trade is a logical collection point for in-transit cargo which 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. The expansion in vessel capacity that started in fiscal year 2000 showed no signs of abating during the fiscal year. The latest industry reports indicate that vessel capacity in the trade increased by 25 percent relative to the preceding fiscal year. For example, Zim Israel Navigation Co., Ltd., Hapag-Lloyd, P&O Nedlloyd, CP Ships (UK) Limited, and Italia Di Navigazione SPA expanded their operations in the trade with new services, additional port calls, and vessel upgrades.

Continued excess vessel capacity and the drastic drop in U.S. export cargoes drove outbound rate levels downward, while rate levels in the stronger inbound direction rose modestly. Members of the *United States South Europe Conference (No.* 202-011587) ("USSEC") whose members held a market share of less than 50 percent, implemented two small to moderate tariff GRIs along with several new surcharges on inbound cargo. However, given the depressed trade conditions in the U.S. export trade, members of the USSEC decided not to implement any GRIs in that trade lane during the fiscal year.

C. MIDDLE EAST

During fiscal year 2001, conditions were improving in the U.S./Middle East trade until the events surrounding the terrorist attacks in the U.S. threw the region into greater turmoil. Gains from higher oil prices during the first half of the fiscal year stimulated efforts to increase productivity within Middle East nations. Overall, import cargo from the Middle East grew by 7.6 percent, as U.S. consumers continued to purchase such goods as apparel, plastics, furniture and chemical compounds from the region. However, due to a slowing U.S. housing market and reduced U.S. spending, shipments of furniture from Israel, and rugs and floor coverings from Saudi Arabia, did not do as well as a year earlier.

Higher oil prices in Saudi Arabia and Kuwait during the first half of the fiscal year improved the fiscal positions of governments in the oil-producing nations, thus increasing the amount of money available to spend on U.S. goods. In addition, foreign investment that started a year ago in Israel has changed the types of U.S. exports shipped to that region from lower-valued cargo to higher-valued products. Overall U.S. export cargo volume to the Middle East increased by 2.5 percent, even though the top-moving commodity, paper and paper board, dropped 12 percent during the fiscal year.

Any political and economic stability in the Middle East, however, was cut short after September 11. Fighting between Israeli and Palestinian factions intensified, placing an additional strain on relations between Middle East nations. In addition to the disruptive trade conditions, carriers serving the Middle East incurred higher costs from premiums imposed by insurance companies. To defray those costs, many carriers serving the trade implemented war risk surcharges for vessel calls at Middle East ports. Many carriers also tiled special permission applications with the Commission to advance the effective date of these surcharges.

D. AFRICA

While many sub-Saharan countries achieved some degree of economic growth during calendar year 200 1, the estimated overall GDP growth rate for the region of approximately 4.3 percent will fall short of what is required to reduce the number of people living in poverty. The Poverty Reduction Strategy, an initiative undertaken by 30 sub-Saharan countries, with strong backing from the World Bank and other international financial agencies, was largely unsuccessful. North of the Sahara, 33 percent of Egypt's population was classified as poor and 7 percent as extremely poor. Some industry reports calculate that Africa would need a GDP growth rate of 7 to 8 percent to begin a reduction of poverty conditions.

During the fiscal year, the World Bank and its affiliate agencies invested more than $1 billion to fund various projects such as transportation infrastructure, education, and other programs to improve government services and planning. In addition, African institutions and the United Nations contributed resources focused on improving both domestic and international commerce including: establishing a new set of payment mechanisms under the West Africa Economic and Monetary Union to facilitate commerce across the eight countries of the Union; programs to facilitate global trade expansion; and promoting economic development ventures through loan and technical assistance programs.

Despite low rates of economic growth and severe poverty levels over much of the continent during the past several years, the volume of liner cargo transported between the U.S. and Africa has continued to grow. During fiscal year 200 1, U.S. export cargo volume to Africa grew by 3.3 percent, while U.S. imports from Africa grew by 6.7 percent over fiscal year 2000.

African ports continued to be considered sub-standard due to inadequate equipment and infrastructure, which resulted in lower efficiency, higher port costs and congestion. Efforts are being made to address these problems. For example, South Africa developed a comprehensive plan to improve infrastructure at its ports.

Freight rates, which had begun to stabilize and increase moderately in 1999 and 2000, fell sharply during the fiscal year as a result of intense competition from non-conference and non-discussion agreement carriers serving the trade. Falling rates were aggravated by what was described, in some cases, as extremely low rates offered by some independent carriers serving the trade. Rates fell so sharply that conference members of the *U.S. South Africa Conference* (No. 202-011259) found it unfeasible to proceed with planned GRIs in the trade.

Some carriers expanded their operations in the trade with new services, additional port calls, and vessel upgrades. South African Safmarine Container Lines N.V. started a 2 1 -day express service to West Africa from Houston; Atlantic Container Line A.B. added a new service with fixed-day weekly calls between North America and West Africa; and Lykes Lines introduced two new multi-purpose vessels in its North America to Africa service. Amendments were made to existing agreements, but no new agreements were filed in the trade during the fiscal year.

E. LATIN AMERICA AND THE CARIBBEAN

Overall trade between the U.S. and South America declined during fiscal year 2001, with U.S. imports and exports declining 7 and 5 percent, respectively. On a regional basis, a deep economic recession, political unrest, and foot-and-mouth disease in Argentina, along with power shortages in Brazil, the region's main economy, severely dampened trade between the U.S. and the East Coast of South America during the fiscal year. Underlying Argentina's financial difficulties is the fact that its products are too expensive to export, partly because the peso is pegged to the U.S. dollar and the euro. Brazil's real also depreciated 28 percent during calendar year 200 1, increasing the competitiveness of Brazilian exports. Argentina reintroduced tariffs on Brazilian exports to counter Brazil's currency advantage, exasperating the already weak economic situation. The Brazilian government continued to stand by its prediction of 4.5 percent growth in GDP for calendar year 2001, despite the energy crisis.

While U.S. imports from the East Coast of South America benefitted from the surge in U.S. construction activity during 2000, the slowdown in U.S. consumption during 2001 translated into a 9 percent decline in cargo shipments to the U.S. during fiscal year 2001, compared to the same period last year. In particular, U.S. imports of logs and lumber, veneers and plywood, along with paperboard, engines and auto parts, plunged. Brazilian coffee suffered from low production, also leading to lower US. import cargo volumes. U.S. exports to the East Coast of South America region fell by nearly 1 percent during fiscal year 200 1, relative to the previous fiscal year. Industry reports noted that vessel-capacity-utilization levels through the first three quarters of the fiscal year were weak, at approximately 59 percent for U.S. imports and 58 percent for U.S. exports.

On the West Coast of South America, economic conditions within certain countries showed signs of improvement over last fiscal year. Chile will likely post a 4 percent growth in GDP, and Peru 3 percent growth. Although the Columbian economy continues to suffer from political unrest, Cartegena is fast becoming a major cargo transhipment hub, and Puerto Cabello in Venezuela aspires to do the same. Despite some economic setbacks, Columbia is forecasting a 2 percent growth in GDP for calendar year 200 1, while Venezuela is forecasting 3 percent growth for the same period.

The decline in consumer confidence, global financial volatility, and a stagnating global economic environment took a heavy toll on the trade between the U.S. and the West Coast of South America. U.S. imports from the West Coast of South America declined by 4.2 percent during fiscal year 2001, while U.S. exports to the region dropped by nearly 12 percent. Struggling agricultural and fishing industries continued to weaken U.S. imports from several countries, including coffee and bananas from Columbia. The contraction in demand for U.S. goods covered a broad commodity mix. However, U.S. goods with the largest decline in demand were paperboard, certain resins, urea (fertilizer) and automobiles. The contraction in the trade between the U.S. and the West Coast of South America also was shown through weak vessel-capacity-utilization levels during the fiscal year -- approximately 62 percent for U.S. imports and 54 percent for U.S. exports.

Excessive vessel overcapacity and economic instability in the region's largest economies led to rate reductions in previous years. Toward the end of fiscal year 2000, as trade conditions improved, some carriers initiated rate recovery programs and elected to carry them forward into 200 1. At the end of calendar year 2000 and early 2001, improving economic conditions in South American countries, with the exception of Argentina, and a significant reduction in excess vessel capacity by carriers through operational alliances and capacity cutbacks, relieved some of the downward market pressure on freight rates. However, the softening market conditions during the second half of calendar year 200 1 have hindered recent efforts to increase rate levels in the trade. Discussions on any further rate recovery programs by the *West Coast of South America Discussion Agreement* (No. 205-011426) and the *East Coast of South America Discussion Agreement (No.* 205-011421) temporarily were suspended until late spring 2002, at the earliest.

The economies of Central America and the Caribbean continued to be depressed during fiscal year 2001. Nicaragua, Honduras, Guatemala and El Salvador experienced drought conditions, which led to a decline in their exports. Hurricane Iris devastated Belize, causing floods which completely destroyed the shrimp business and severely damaged the banana industry. Costa Rica also was damaged by Hurricane Iris, and lost more than 10 percent of its banana and coffee crops. In Jamaica, the sugar crop declined relative to previous years, due in part to drought conditions.

For the fiscal year, U.S. imports from Central America and the Caribbean fell by 2 percent, largely due to extensive agricultural crop damage. The poor economic conditions throughout Central America and the Caribbean also harmed the region's demand for U.S. goods. U.S. exports to the region fell by 5.2 percent during the fiscal year. Nonetheless, carrier members of agreements serving

Central America and the Caribbean trades endeavored to raise freight rates by implementing GRIs. The decline in cargo volume and excess vessel capacity, however, have caused rate levels to remain low.

F. TRANSPACIFIC

During fiscal year 2001, the transpacific trade was plagued by overcapacity and slumping U.S. and Asian economies. Trade conditions were deteriorating prior to the events of September 11; however, the terrorist attacks served to worsen the situation. In particular, while both U.S. import and export cargo growth declined during the fiscal year, carriers also faced rising costs associated with increases in vessel insurance premiums and heightened security measures as a result of the attacks.

The *Transpaczjk Stabilization Agreement* ("TSA") (No. 205-01 1223) covers the inbound trade from the Far East to the U.S. and is a prime example of a discussion and policy-setting agreement with voluntary pricing authority. The discussion agreement presides over the largest and most lucrative U.S. liner trade, where Asian imports surpassed 6 million TEUs for the third consecutive fiscal year. TSA consists of 14 carrier members, with a collective market share exceeding 80 percent. Members exchange information and discuss proposed GRIs, standardized surcharges, and other pricing-related issues in the U.S. inbound Far East trade.

In fiscal year 2001, the cohesiveness of TSA and its ability to effectively implement surcharges and rate increases have been restricted by weakening trade conditions. During the fiscal year, the growth of import cargo from the Far East to the U.S. was disappointingly small (3 percent) in comparison to the double-digit growth rates achieved in preceding fiscal years.

Despite weak cargo volumes following declines in retailers' orders from Asia and rising U.S. unemployment rates, many carriers added capacity early in the fiscal year as a result of vessel upgrades and expansionary plans previously scheduled in anticipation of greater cargo growth. As the fiscal year progressed and the U.S. economy continued to weaken along with demand for Asian imports, carriers serving the trade, struggling with overcapacity and falling rates, began removing excess vessel capacity.

While TSA members considered a coordinated capacity management plan to address the overcapacity situation, those joint discussions were abandoned in favor of capacity cutbacks undertaken by individual carriers or through operational agreements. Maersk Sealand undertook capacity reductions by removing a string of vessels from the trade, as did the New World Alliance and the Grand Alliance. The New World Alliance includes Mitsui, APL Ltd., and Hyundai, while the Grand Alliance members consist of OOCL, Malaysia International Shipping Corp. Bhd., P&O Nedlloyd, Hapag-Lloyd, and NYK Line. Industry reports expect the combined effect of the cutbacks to reduce total weekly capacity deployed in the U.S./Far East trade by approximately 10 percent.

Under these depressed trade conditions, members of TSA failed to meet their GRI objectives and peak-season surcharge on inbound cargo for 2001. Freight rates reportedly fell by upwards of 25 percent.

The *Westbound Transpacific Stabilization Agreement* ("WTSA") (No. 205-O 11325) is the outbound counterpart to TSA and, likewise, provides a forum for the exchange of information (including pricing) among its members. In the outbound trade to the Far East, the degree of recovery realized in the preceding fiscal year vanished, as U.S. export cargo volume fell by nearly 15,000 TEUs below fiscal year 2000. Despite the growing post-OSRA prominence of discussion agreements in the transpacific, the continued dramatic trade imbalance, declining cargo growth, and excess vessel capacity during the fiscal year prevented WTSA members from achieving cohesion on proposed rate increases. WTSA members were somewhat successful in implementing a chassis usage charge designed to encourage more efficient use of equipment during the first half of 2001. However, industry reports observed that overall rate levels in the outbound transpacific trade had reached unprofitable levels.

As fiscal year 2001 came to a close, a number of war risk surcharges were introduced as a result of political unrest in war-torn countries and terrorism. Prior to September 11, members of TSA and WTSA adopted a Sri Lankan war risk surcharge. After the September 11 attacks, many carriers serving the trade imposed a war risk surcharge on cargo moving through ports in the Middle East, including Pakistan. These war risk surcharges were a result of the higher premium costs to insure vessels operating in the trade.

Despite the faltering trade conditions during the fiscal year, a new controlled carrier based in the PRC, Shanghai Hai Hua Shipping Co., Ltd., entered the transpacific trade through a vessel-sharing agreement with Great Western Steamship Company.

Government-owned, controlled carriers are active primarily in the U.S. transpacific trade. While there are currently 14 carriers on the Commission's list of controlled carriers, over the past several years carriers based in the PRC have been the largest group of controlled carriers. Currently there are six PRC-controlled carriers operating in the U.S. liner trades. COSCO, the largest of the group, has grown from a very modest beginning to become one of the largest carriers in the world -- during 2000 it ranked as one of the top five carriers serving the U.S. liner trades. COSCO's fleet consists of more than 500 ships which call at ports in approximately 180 countries. It also is a very diversified company, offering non-shipping services such as real estate, finance, and insurance. China Shipping Container Lines Co., Ltd. ("CSCL"), one of the newest controlled carriers, has grown considerably. During the fiscal year it operated more than 100 ships worldwide, and embarked on a building program to further expand its fleet. CSCL's market share in the trade between the U.S. and the rest of the world increased from .02 percent (2,707 TEUs) in 1999 to 1.1 percent (205,616 TEUs) in 2000. During the same period, it increased its market share in the trade between the U.S. and the PRC from .01 percent (1,328 TEUs) to 3.9 percent (139,947 TEUs).

G. WORLDWIDE

After two years of solid trade growth, firming freight rates, and some improvement in carrier profitability, an economic slowdown began in the U.S. Consequently, the volume of import cargo moving inbound to the U.S. sharply dropped from the high levels of growth that prevailed in past fiscal years, particularly in such trades as the transpacific and the transatlantic. The impact was immediately felt, for example, in the large transpacific trade, as U.S. consumers reduced spending on imports from the Far East causing cargo volume growth to plunge to 3 percent -- down from a high of 14 percent a year earlier. U.S. export cargo volume growth in the trade also was down during the fiscal year, but to a lessor extent relative to U.S. imports. The U.S. Commerce Department reported that the U.S. trade gap narrowed by a record amount during the fiscal year. While both U.S. imports and exports fell, the reduction in the U.S. trade gap was primarily a result of the drastic decline in U.S. imports.

As demand declined, carriers attempted to deal with the excess vessel capacity in many U.S. liner trades. Conditions worsened as a record number of new containerships were deployed under previous plans for scheduled vessel upgrades, and new services added further excess capacity in the trades. Attempts by agreement carriers to coordinate rate increases generally proved ineffective against falling freight rates and excess vessel capacity.

With conditions already weak in many trades, the economic instability stemming from the September 11 terrorist attacks in the U.S. and the ensuing war in Afghanistan created additional problems for carriers. The increased threat of terrorist attacks, and/or military actions in response, increased shipping costs for war risk vessel insurance coverage and heightened port security. As the U.S. slipped into a recession, a further contraction in U.S. consumer demand stands to reduce cargo growth and push freight rates downward by an even greater degree than was previously projected. Within the industry, concern over the financial stability of carriers spread, with industry analysts foreseeing further carrier consolidation resulting from another round of mergers, acquisitions, and possible bankruptcies.

During the fiscal year, carriers continued to try to cope with the overcapacity situation through vessel and service rationalization arrangements in all U.S.-foreign trades. These operational agreements comprised 5 8 percent of all effective agreements on file with the Commission during the fiscal year. They range in scope and complexity from simple space-sharing arrangements, to the highly integrated multi-carrier, multi-trade lane, global strategic alliance. COSCO, Kawasaki Kisen Kaisha, Ltd., Hanjin, and Yangming Marine Transport Corporation, for example, recently announced discussions that may lead to a new global strategic alliance arrangement that would involve joint liner services between the U.S., Far East, and Europe.

Fiscal year 200 1 also saw the further development of confidential contracting in the "post-conference" OSRA environment. The ability to deal with individual carriers, the elimination of the "me-too" requirements for similarly situated shippers, and the confidentiality of certain commercially sensitive service contract terms, have fostered a shift to contract carriage. In several trades where the percentage of cargo volume moving under service contracts had been 50 to 60 percent, some carriers reported through the Commission's Notice of Inquiry on the economic impact of OSRA that the percentage jumped to 80 percent or more under OSRA. The number of service contracts and amendments filed with the Commission since May 1999 has increased approximately 200 percent. This increase, along with increased cargo moving under service contracts, is due in part to the flexibility and confidentiality of individual service contracts.

Major carriers continue to make large capital investments in information technology. As such, cargo-based, e-commerce portals are gaining in importance and popularity and are receiving support from major liner carriers. These Internet portals provide a centralized location for “one-stop shopping” for various participating carrier services and obviate the need for shippers to refer to numerous individual carriers’ websites. INTTRA, GT Nexus and Cargo-Smart, the three ocean carrier-backed Internet portals, are focusing on track-and-trace systems as a core capability. Extensive carrier collaboration is expected to continue in this area. In addition, one carrier member of INTTRA, P&O Nedlloyd, recently unveiled six products that it will provide shippers along with a track-and-trace feature. These products include: vessel schedule information, on-line booking capability, on-line shipping instructions, ability to print remote bills of lading, automated shipment tracking, and a complete on-line invoicing and payments system.

VI

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 2001, the Commission monitored potentially unfavorable or discriminatory shipping practices by a number of foreign governments. However, no FSPA action was taken in 2001.

In fiscal year 2001, 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 Customs via the Automated Manifest System ("AMS"). PIERS also stations personnel at individual ports to manually collect shipment data that is incomplete or not tiled through AMS. PIERS edits the raw shipment data and distinguishes liner shipments from non-liner shipments. The individual shipment data is also 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 which data were available is 2000. The table on the next page gives the twenty foreign countries that generated the largest volume of oceanborne liner cargo in bilateral trade with the U.S. in 2000. 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 (2000)

Rank	Country	TEUs (000s)
1	China (PRC)	3,587
2	Japan	1,809
3	Hong Kong[1]	1,374
4	Taiwan	961
5	South Korea	899
6	Germany	628
7	Italy	558
8	United Kingdom (Incl. N. Ireland)	505
9	Thailand	485
10	Brazil	427
11	Indonesia	410
12	The Netherlands	401
13	Belgium & Luxembourg	392
14	Malaysia	310
15	France	296
16	Philippines	267
17	India	257
18	Dominican Republic	241
19	Spain	229
20	Australia	222

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

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

The only change to the Top Twenty list for 2000, in comparison with the list for 1999, is the addition of Australia, which replaced Costa Rica, now in 21st place.

In terms of ranking order, China (PRC) continued its lead, with an increase in volume of almost 37 percent over 1999's volume, which represented an 18 percent increase over 1998's. Hong Kong and Taiwan registered a slight decrease of 3.45 and 1.35 percent, respectively, over the 1999 levels. Japan's volume grew 3.40 percent over its 1999 share. Countries with an increase of over 10 percent above 1999 levels were: South Korea, 10.60 percent; Germany, 12.15 percent; Italy, 13.65 percent; Thailand, 18.60 percent; Indonesia, 16.50 percent; Malaysia, 13.55 percent; Philippines, 10.80 percent; and India, 15.80 percent. Only minor changes occurred among the rankings of the other top twenty countries.

VII

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 subpenas 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 2001:

- **The Commission issued decisions concluding eight formal proceedings. Three initial decisions of administrative law judges became administratively**

final without Commission review. Nine proceedings were dismissed or discontinued, including two rulemaking proceedings. The Commission also concluded thirteen special docket applications, and three informal dockets which involved claims sought against carriers for up to $10,000. During the same period, the Commission issued final rules in three rulemaking proceedings.

Six rulemaking proceedings and three formal petitions were pending before the Commission at the end of the year. Final decisions in these matters are anticipated in fiscal year 2002.

Finally, the Office of the Secretary 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 subpenas; 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 200 1, 18 formal proceedings were pending before the ALJs. During the year, eight cases were added. The ALJs formally settled three formal proceedings, dismissed or discontinued three formal proceedings, issued one award of attorney's fees, and issued five initial decisions in formal proceedings.

2. Commission Action

The Commission adopted one formal initial decision, four orders of approval of settlement, two dismissals of complaints, and one award of attorney's fees of the ALJs. Four initial decisions and one award of attorney's fees 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)

Stallion Cargo, Inc. -- Possible Violations of Sections IO(a)(l) and 1 O(b)(l) of the Shipping Act of 1984 [Docket No. 99-18].

In this proceeding respondent Stallion Cargo, Inc., an NVOCC serving the Florida-Aruba trade, was found to have violated sections 1 O(a)(l), 1 O(b)(1) and 10(b)(2)(A) of the 1984 Act, as amended, at various times in 1998, 1999, and 2000, by misdescribing cargoes tendered to vessel-operating carriers on 15 occasions and by failing to charge its applicable tariff rates on 152 occasions. After the proceeding had begun, respondent amended and corrected its tariff and attempted to correct its unlawful practices. However, respondent had carried on its unlawful activities knowingly and willfully, even to some extent after being warned by the Commission's staff. In view ofrespondent's weak financial condition and other mitigating factors, civil penalties in the amount of $50,000 were assessed, respondent was ordered to cease and desist from committing its unlawful activities, and its license was not revoked or suspended.

World Line Shipping, Inc. and Saeid B. Maralan (AKA Sam Bustani) Order to Show Cause [Docket No. 00-OS].

In this proceeding the Commission remanded a case to the Office of ALJs to determine the amount of civil penalties to be assessed against respondent, who had been operating as an NVOCC without having a public tariff, license or proof of financial responsibility, in violation of sections 8, 19(a), 19(b), and 23(a) of the 1984 Act. Respondent had also violated a cease and desist order previously issued by the Commission. The presiding judge found that maximum civil penalties allowed by the 1984 Act should be assessed, that is, $27,500 per each violation, and that because of 25 proven violations, the total amount of such penalties would be $687,500. However, the judge did not tack on separate penalties for acts which had violated different sections of the 1984 Act under the rationale that to do so would circumvent the maximum amount allowed by law per violation.

Universal Logistic Forwarding Co., Ltd. -- Possible Violations of Sections 1 O(a)(l) and IO(b)(l) of the Shipping Act **of** *1984* **[Docket No. 00-10].**

In this proceeding an NVOCC located in Taiwan was found to have violated sections lO(a)(1) and lO(b)(1) of the 1984 Act by improperly using another carrier's service contract and by failing to charge its tiled tariff rates. Respondent was also found to have committed 45 separate violations of these laws and to have done so knowingly and willfully. Respondent disregarded the proceeding and failed to present any defense for its behavior. The presiding judge assessed respondent the maximum penalty permitted by law, namely, $1,237,500, as had been done in previous cases of this kind.

New Orleans Stevedoring Company v. Board of Commissioners of the Port of New Orleans **[Docket No. 00-11].**

In this proceeding complainant, an MTO seeking to obtain a lease from respondent Port of New Orleans, was denied such lease and alleged that respondent had violated sections 10(d)(3) and 1 O(d)(4) of the 1984 Act by refusing to deal with complainant and by giving a competitor a preference or advantage at the Port. The presiding judge found that the Port did not provide an unreasonable preference or advantage to complainant's competitor nor unreasonably refuse to deal with complainant, who had voluntarily terminated its status as a lessee of facilities along the Mississippi River in order to avoid the costs associated with such status while the Port was undergoing new construction of facilities.

4. Pending Proceedings

At the close of fiscal year 2001, there were fourteen pending proceedings before the ALJs, of which four were investigations initiated by the Commission. The remaining 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

***Agency Reorganization and Delegations of Authority* [Docket No. 00-13], (December 19, 2000).**

The Commission issued a Final Rule revising 46 C.F.R. Parts 501 and 502, to reflect the reorganization of the agency which took effect on February 27, 2000. The Rule updated the descriptions of the Commission's organizational components, as well as the descriptions of delegations of authority within the agency. The Rule also removed the few remaining references to the Shipping Act, 19 16, which was abrogated by the Interstate Commerce Commission Termination Act of 1995.

***The Content of Ocean Common Carrier and Marine Terminal Operator Agreements Subject to the Shipping Act of* 1984 [Docket No. 99-13], (August 3, 1999).**

The Commission issued a Notice of Inquiry to seek comments from interested parties regarding possible changes to the Commission's rules governing the content of ocean common carrier and MTO agreements which are filed with the Commission in accordance with the 1984 Act. The proceeding was initiated in response to comments received in the rulemaking proceeding in Docket *No. 98-26, Ocean Common Carrier and Marine Terminal Operator Agreements Subject to the Shipping Act* of *1984,* which amended the Commission's agreement regulations to implement changes made by OSRA. Those comments requested that the Commission's rules on content standards for agreement filing be updated and refined. Interested parties were given 60 days to comment in response to the Notice of Inquiry, which was published in the *Federal Register* on August 3, 1999. Comments were received from carriers, shippers, and other interested parties and are currently under review to determine what further action may be warranted.

(b) Decisions

***Revocation of Licenses, Provisional Licenses and Order to Discontinue Operations in U.S.-Foreign Trades for Failure to Comply with the New Licensing Requirements of the Ocean Shipping Reform Act of 1998* [Docket No. 00-12], _ S.R.R. _ (April 12, 2001).**

The Commission initiated this proceeding by issuing an Order to Show Cause directing 81 companies to show cause why it should not revoke their existing licenses or provisional licenses, and issue a cease and desist order barring them from operating as OTIs for failure to comply with the requirements of sections 8 and/or 19 of the 1984

Act, 46 U.S.C. app. §§ 1701 and 1718, and 46 C.F.R. Parts 515 and 502 (1999). Following the issuance of the Order to Show Cause, 23 OTIs contacted the Commission and complied with the requirements, while 3 OTIs canceled their bonds. No responses were filed by the remaining 55 entities ("respondents"), and they continued to remain in non-compliance.

The Commission, therefore, proceeded to revoke respondents' licenses and provisional licenses, and issued a cease and desist order barring them from providing OTI services in the U.S.

***World Line Shipping, Inc. and Saeid B. Maralan (AKA Sam Bustani)* -- Order to Show Cause [Docket No. oo-OS]) __ S.R.R. ___ (January 8, 2001).**

In this Commission-initiated investigation, the FMC ruled that World Line Shipping and Saeid B. Maralan (AKA Sam Bustani) had violated sections 8, 19(a), and 19(b) of the 1984 Act, and cease and desist orders from a previous proceeding, by serving as an NVOCC without a public tariff, license, or proof of financial responsibility. The Commission had earlier sought and obtained a preliminary injunction in the U.S. District Court for the Central District of California, *Federal Maritime Commission v. World Line Shipping et al.*, 28 S.R.R. 1464, to prevent World Line Shipping and Sam Bustani from operating during the pendency of this investigation. The Commission found a total of 32 violations, and referred the case to an ALJ for an assessment of civil penalties.

***Inlet Fish Producers, Inc. v. Sea-Land Service, Inc.* [Docket No. 00-03], ___ S.R.R. ___ (September 19, 2001).**

The complaint in this proceeding alleged that Sea-Land Service had engaged in unlawful discrimination by permitting Inlet Fish's competitors, but not Inlet Fish, to subtract packing weight from cargo in the calculation of freight rates. Sea-Land filed a motion to dismiss Inlet Fish's complaint as untimely under the three-year statute of limitations. The presiding ALJ denied the motion, and Sea-Land appealed the ALJ's decision to the Commission. The Commission affirmed the ALJ, ruling that a cause of action can in some circumstances accrue not when an injury occurred, but when a party learns that it was injured, or should have learned, by exercising reasonable diligence, that it was injured. In this instance, the Commission found that Inlet Fish had filed its complaint within three years of learning that it may have been injured. This case was referred to the ALJ for further action.

Cargo One, Inc. v. COSCO Container Lines Company, Ltd. [Docket No. 99-24], 28 S.R.R. 1635 (October 31, 2000).

This proceeding was initiated by a complaint filed by Cargo One, Inc., an NVOCC, against COSCO Container Lines Company, Ltd., an ocean common carrier. Cargo One alleged that COSCO violated several provisions of the Shipping Act by denying container space in deference to larger shippers contrary to the agreement in their service contract, demanding payment of tariff rates in lieu of service contract rates, and failing to rectify Cargo One's complaints. COSCO filed a motion to dismiss on the grounds that section 8(c) of the Shipping Act provides that "[t]he exclusive remedy for a breach of contract entered into under this subsection shall be an action in an appropriate court, unless the parties otherwise agree." The ALJ denied the motion to dismiss, and subsequently granted COSCO's motion to appeal the issue to the Commission.

The Commission vacated the ALJ's order and remanded the proceeding to the ALJ. The Commission held that allegations of violations of sections 1 O(b)(1) and 1 O(b)(3) (pre- 1998 amendments) will normally be dismissed pursuant to section 8(c), unless the complainant rebuts the presumption that those claims are merely coexistent with claims for breach of contract; and that allegations of violations of sections 1 O(b)(6)(e), 1 O(b)(1 1), 1 O(b)(12) and 1 O(d)(1) (pre-1998 amendments) will be presumed actionable before the Commission, as those sections invoke considerations peculiar to Shipping Act concerns beyond the confines of breach of contract actions.

***Stallion Cargo, Inc. -- Possible Violations of Sections 1 O(a)(l) and 1 O(b)(l) of the Shipping Act of* 1984 [Docket No. 99-18], _ S.R.R. _ (October 18, 2001).**

This proceeding was initiated by the Commission on October 5, 1999, as an investigation into the activities of Stallion Cargo, Inc. ("Stallion"), an NVOCC. The investigation sought to determine whether Stallion violated sections lO(a)(1) and 10(b)(1) of the Shipping Act, 46 U.S.C. app. §§ 1709(a)(l) and (b)(l), by willfully and knowingly obtaining transportation at less than the rates and charges otherwise applicable by misdescribing the commodities actually shipped; and by charging, demanding, collecting or receiving less or different compensation for the transportation of property than the rates and charges shown in its NVOCC tariff. The Order also directed the presiding officer, in the event violations were found, to determine: whether civil penalties should be assessed against respondent and in what amount, whether respondent's tariff should be suspended, whether respondent's OTI license should be revoked, and whether a cease and desist order should be issued. The presiding ALJ issued a decision in which he found that Stallion knowingly and willfully violated sections 1 O(a)(1) and 1 O(b)(1) at various times in 1998, 1999, and 2000, by misdescribing cargoes tendered to VOCCs on 15 occasions and by failing to charge its applicable tariff rates on 152 occasions. The ALJ determined that a civil penalty in the amount of $50,000 should be assessed and a cease and desist order should issue.

On Exceptions, the Commission affirmed those portions of the ALJ's decision finding that Stallion knowingly and willfully violated section 10(a)(1) on 15 occasions and 10(b)(1) on 152 occasions. The Commission, however, vacated the ALJ's findings that: Stallion's interpretation of its tariff could be construed as reasonable; Stallion's violations ceased after June 2000, and thus this constituted a mitigating factor in assessing penalties; 33 of the section 10(b)(1) violations were technical in nature and did not warrant a civil penalty; 10 footwear violations did not cause harm to shippers, thus no civil penalties should be assessed for them; and assessing civil penalties for shell tariffs would run "counter to the Commission's efforts to eliminate 'shell' tariffs." The Commission also vacated the ALJ's assessment of a $50,000 penalty and imposed instead a civil penalty in the amount of $1,340,000. Finally, the Commission revoked Stallion's license to operate as an OTI and issued a cease and desist order barring it from operating in the U.S. as an OTI.

***Compania Sud Americana de Vapores S.A. v. Inter-American Freight Conference, et al.* [Docket No. 96-14], 28 S.R.R. 12 (March 19, 1998).**

This proceeding was initiated by a complaint tiled by Compania Sud Americana de Vapores S.A. ("CSAV") against respondents Inter-American Freight Conference ("IAFC"), and Section C of the IAFC. CSAV alleged that the respondents violated sections 10(a)(2) and 10(a)(3) of the 1984 Act, 46 U.S.C. app. § 1709(a)(2) and (3), by charging CSAV for expenses allegedly not authorized by the IAFC Agreement. CSAV claimed to have been damaged by the IAFC's action in drawing on a CSAV-supplied letter of credit to pay for a portion of the winding-up expenses of a juridical entity known as the Sociedade Brasileira de Administracao de Conferencias de Frete. In response to the complaint, respondents submitted a Motion to Dismiss and/or for Summary Judgment. CSAV then tiled a Cross-Motion for Partial Summary Judgment. The presiding ALJ issued a decision in which he granted the respondents' Motion for Summary Judgment and dismissed the complaint. The ALJ found that, as a matter of law, the respondents had provided sufficient language in their filed FMC Agreement to satisfy the agency's filing requirements. The CSAV appealed the ALJ's decision to the Commission. Disagreeing with the ALJ's conclusion, the Commission issued an order in which it determined that the respondents had not tiled the agreement to dissolve the corporation, and that this failure to file produced a violation of section 1 O(a)(2) of the 1984 Act. After the Commission issued its Order, the respondents tiled a Petition for Reconsideration, and several outside parties filed an *amicus curiae* brief in support of the Petition for Reconsideration. That Petition was being reviewed by the Commission at fiscal year end.

Rose International, Inc. v. Overseas Moving Network International, Ltd. **[Docket No. 95-06], ____ S.R.R. ____ (June 1, 2001).**

This proceeding was initiated by a complaint filed by Rose International, Inc., an NVOCC, against Overseas Moving Network International, Ltd. ("OMNI, Ltd."), a corporation of moving and storage companies, OMNI Shipping Services, Inc. ("OSSI"), an alleged NVOCC, and various members of both OMNI Ltd. and OSSI. Complainant alleged that respondents violated section lO(a)(1) of the 1984 Act (pre-OSRA), 46 U.S.C. app. § 1709(a)(l), by knowingly and willfully creating OMNI Shippers' Association ("OSA") as an unfair device or means to circumvent the tariff and bonding requirements and to allow unbonded and non-tariffed members of OMNI, Ltd. to access service contracts, thereby obtaining transportation by water at less than the rates or charges that would otherwise be applicable. Complainant also alleges that respondents violated section 10(a)(1) by knowingly and willfully creating OSSI, an allegedly sham corporation, as an unfair device or means to circumvent the tariff and bonding requirements of the Shipping Act and to allow unbonded and non-tariffed members of OMNI, Ltd. to access service contracts, thereby obtaining transportation by water at less than the rates or charges that would otherwise be applicable. Rose further alleged that respondent Federal Forwarding, a freight forwarder, received unlawful carrier compensation in violation of section 19(d)(4) of the 1984 Act, 46 U.S.C. app. $17 18(d)(4), and 46 C.F.R. §§ 5 10.23(g) and (h). Complainant claimed that as a result of these violations, respondents caused it to lose business and sought reparations for lost profits, lost growth opportunity, and for reimbursement of a liquidated damages penalty imposed by a conference. The presiding ALJ issued a decision in which he dismissed all of complainant's claims.

On Exceptions, the Commission decided to review the case *de novo* to develop the facts more fully. The Commission agreed in part with the ALJ, finding that complainant had failed to prove that OSA was an improper shippers' association and that respondent Federal Forwarding had violated section 19(d)(4) and 46 C.F.R. § 510.23(h) in receiving unlawful carrier compensation. The Commission overturned the ALJ, however, to find that OSSI was indeed a sham NVOCC corporation run by OMNI, Ltd., and that it was created to allow certain OMNI, Ltd. members to operate as NVOCCs without the requisite bonds and tariffs, thereby allowing them to access service contracts and obtain rates for less than would have otherwise been applicable. The Commission further found that respondent Federal Forwarding received unlawful carrier compensation in violation of 46 C.F.R. § 510.23(g). The Commission did not grant reparations for these violations, however, as it found that complainant's evidence as to lost profits and lost growth opportunity were flawed and did not prove these claims with reasonable certainty. Moreover, the Commission found that complainant was not entitled to reimbursement for the liquidated damages penalty imposed by the conference for complainant's failure to meet its cargo commitments because it failed to mitigate its damages.

2. Litigation

The General Counsel represents the Commission in litigation before courts and other administrative agencies. Although the litigation work largely consists ofrepresenting 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 are representative of matters litigated by the Office:

Federal Maritime Commission v. South Carolina State Ports Authority, et al., Sup. Ct. No. 01-46.

The Commission filed a petition for a writ of certiorari on July 10, 2001, seeking Supreme Court review of the opinion of the U.S. Court of Appeals for the Fourth Circuit in *South Carolina State Ports Authority v. Federal Maritime Commission et al., 243* F.3d 165 (March 12, 2001). In that decision, the court of appeals had overturned the Commission's conclusion that the Eleventh Amendment to the U.S. Constitution does not bar privately-initiated complaint proceedings before the agency. The South Carolina State Ports Authority and the U.S. Solicitor General each filed briefs in opposition to the Commission's petition on September 10, 2001. On that same day, the National Association of Waterfront Employers, the Carriers Container Council, and the United States Maritime Alliance filed *amici curiae* briefs in support of the Commission's petition. The Commission filed a reply brief addressed to the arguments of the Solicitor General and the Ports Authority on September 20, 2001. The Supreme Court granted the Commission's petition on October 15, 2001, and ordered the Commission to tile its opening brief by November 29,200 1.

South Carolina State Ports Authority v. Federal Maritime Commission et al., 4th Cir. No. 00-1481.

This case was initiated in the U.S. Court of Appeals for the Fourth Circuit by the South Carolina State Ports Authority, as a Petition for Review of the Commission's decision in *South Carolina Maritime Services, Inc. v. South Carolina State Ports Authority,* Docket No. 99-2 1. That decision held that the Eleventh Amendment and state sovereign immunity do not extend to administrative proceedings like those conducted by the Commission, but instead only apply to judicial proceedings before courts. The practical result of the FMC's determination was that the South Carolina State Ports Authority was found not to be immune from private complaint proceedings before the Commission. The Ports Authority appealed this decision. The case was docketed on April 24, 2000. The Ports Authority's brief was filed on July 20, 2000. Twenty-one states filed an *amicus curiae* brief on July 3 1, 2000, in support of the Ports Authority. The National Association of Waterfront Employers filed an *amicus curiae* brief in support of the FMC's decision on September 11, 2000. The FMC filed its brief on September 20, 2000, and the U.S. tiled a separate brief, supporting the FMC's decision, on the same day. Oral argument was heard on January 22, 2001. The Court issued its opinion on March 12,200 1, reversing the FMC and ordering the complaint dismissed, 243 F.3d 165 (4" Cir. 2001). The Commission filed a petition for writ of certiorari with the Supreme Court seeking reversal of the Fourth Circuit's decision. The Solicitor General filed a request on August 1 to extend from August 9 to September 10 the period for filing a response to the petition. The Court granted the request on August 1 and extended to September 10 the period for tiling a response to the petition, and ordered the extension applicable to all parties. The Commission filed a petition for a writ of certiorari with the Supreme Court seeking reversal of the Fourth Circuit's decision. On October 15,200 1, the Supreme Court granted the Commission's petition and agreed to review the Fourth Circuit's opinion.

Federal Maritime Commission v. World Line Shipping, Inc. and Saeid B. Maralan (a/k/a Sam Bustani), C.D. Ca., No. 00-CV-423.

The Commission filed a Complaint for Injunctive Relief against World Line Shipping, Inc. and Saeid B. Maralan in the U.S. District Court for the Central District of California, seeking to enjoin the Defendants from violating the Shipping Act during the pendency of FMC Docket *No. 00-05, World Line Shipping, Inc. and Saeid B. Maralan (a/k/a Sam Bustani) -- Order to Show Cause.* Docket No. 00-05 will determine whether World Line Shipping Inc. and Saeid B. Maralan have violated and continue to violate sections 8(a), 19(a), and 19(b) of the Shipping Act by acting as an NVOCC without a public tariff, license, or bond. The Complaint for Injunctive Relief sought to enjoin such conduct through the decision in Docket No. 00-05. The Court granted the preliminary injunction on June 12, 2000. The Commission subsequently requested that the Court dissolve the injunction. On January 18, 2001, the Court granted the request to dissolve the injunction.

Maryland Port Administration v. Federal Maritime Commission, 4th Cir. No. 97-2418.

This proceeding sought review of the Commission's decision in Docket *No. 94-O* 1, *Ceres Marine Terminals, Inc. v. Maryland Port Administration* ("MPA"). Ceres, an MTO alleging violations of sections 10(b)(1 l),lO (b)(12), 10(d)(1) and 10(d)(3) of the 1984 Act, and sections 16 and 17 of the Shipping Act, 19 16, claimed that MPA engaged in unjust preference and prejudice and unreasonable discrimination by failing to grant it equivalent lease terms and terminal facilities that it provided to an ocean common carrier in its lease with the Port. MPA argued that ocean common carriers and MTOs are not similarly situated and thus, any disparate treatment was not unjust or unreasonable.

On October 10, 1997, the Commission found that the ALJ had failed to consider or address the evidence or to reflect the applicable standards for his decision. Therefore, the Commission vacated the Initial Decision and decided the case *de novo.* The Commission found that MPA had violated sections 10(b)(11) and 10(b)(12) of the 1984 Act by relying on a vessel call guarantee to justify granting more favorable lease terms to an ocean common carrier and refusing those same, or substantially similar, terms to an MTO solely because of its status, where the vessel call guarantee did not provide to the port any more security or assurances than the MTO could have provided, and further violated section 10(d)(1) by imposing on the MTO rates and charges that were excessive in relation to the benefit received, particularly where the degree of disparity in the rates so greatly disfavored the party committed to moving substantially more cargo. The Commission also found that respondent violated sections 10(b)(11) and 10(b)(12) by refusing to grant the MTO rates for its barge service that were comparable to those offered to another barge operator unless the MTO dropped its existing state court lawsuit and paid amounts allegedly due, and further violated section 10(d)(1) by imposing on the MTO rates for its barge service that were excessive in comparison to the rates provided to the operator of another barge service for the same service and that was not reasonably related to any legitimate goal of the port.

Respondent appealed the Commission's decision to the U.S. Court of Appeals for the Fourth Circuit in Richmond, Virginia, and Ceres intervened in the proceeding. Briefing was completed on February 19, 1998, and argument was heard on April 8, 1998. On October 13, 1998, the Court issued an unpublished decision in which it affirmed in part, reversed in part, and remanded the case to the Commission. The Court affirmed the Commission's decision that Ceres' barge traffic counts towards the container guarantee in its lease with MPA. However, the Court further found that the Commission failed to consider fully MPA's claim that Ceres was estopped from challenging the terms of its lease from MPA. The Commission's decision rejected MPA's claim but did not elucidate that rejection to the Court's satisfaction; therefore, the Court remanded the issue to the Commission for its consideration. The Court also noted that should the Commission determine that MPA's estoppel challenge is without merit, the Commission is encouraged to revisit its determination with respect to the measure of damages due Ceres.

On October 23, 1998, MPA filed with the Commission a "Petition to Establish a 'Chinese Wall,' or in the alternative, to permit discovery regarding communications between Ceres and the Federal Maritime Commission staff," to which Ceres replied on November 10, 1998. On April 16, 1999, the Commission issued a Report and Order denying MPA's petition, finding that the participation of agency staff in a remanded proceeding presented no conflicts with the Administrative Procedure Act or due process considerations. On May 26, 1999, the Commission issued an Order establishing a procedural schedule for disposition of the remanded issues. Opening briefs were tiled on June 25, 1999, and reply briefs on July 20, 1999. In its reply, MPA contended that in view of recent Supreme Court decisions, it is immune from Ceres' damages claim under the Eleventh Amendment to the Constitution. On August 16, 1999, MPA filed a response in which it did not object to Ceres' motion, but also filed a motion for leave to amend its answer and a request for a briefing schedule on the sovereign immunity issues. On September 10, 1999, the parties tiled a joint Motion to Approve Stipulation, in which they sought to preserve the sovereign immunity issues for resolution in a future Federal court proceeding. The Commission granted the Motion on September 17, 1999.

The Commission issued an Order on August 15, 2001, addressing the issues remanded by the Court. Initially, the Commission held that the common law doctrines to waiver and estoppel may not be invoked to prohibit a party to an agreement subject to the Commission's jurisdiction from challenging that agreement in a complaint filed with the Commission alleging that one of the parties to the agreement violated a duty imposed on it by the

1984 Act. In addition, the Commission reiterated its view that the proper measure of damages, in a case where a duty imposed by the 1984 Act is absolute and a competitive relationship is not necessary to prove undue or unreasonable preference or prejudice, is the difference between the rate charged and the rate that would have been charged but for the violation of the 1984 Act. The parties also were directed to file supplemental briefs addressing the merits of MPA's sovereign immunity defense, which issue had not previously been presented to the Commission.

On October 1, 2001, Ceres filed its opening brief and MPA filed a motion to dismiss on sovereign immunity grounds. On October 18, 2001, the Commission issued an order holding this proceeding in abeyance, pending the decision by the U.S. Supreme Court in *Federal Maritime Commission v. South Carolina State Ports Authority.*

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 the Office of Management and Budget ("OMB") on proposed bills and testimony.

During fiscal year 2001, 93 bills, proposals and Congressional inquiries were referred to the Office of the General Counsel for comment. The Office also worked closely with Congressional staffs on proposed legislation that affected the Commission. The Office also collaborated with the Office of General Counsel, DOT, 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 Shipping Act of 1984, 46 U.S.C. app. § 170 1, as amended by the Ocean Shipping Reform Act of 1998, Pub. L. No. 105-258; section 19 of the Merchant Marine Act, 1920, 46 U.S.C. app. § 876; the Foreign Shipping Practices Act of 1988, 46 U.S.C. app. § 1710a; and Evidence of Financial Responsibility - Passenger Transportation, 46 U.S.C. app. §§ 817d and 817e. The Commission is awaiting further action by DOT.

4. 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 2001, the Commission met to discuss and monitor potentially restrictive shipping practices of the government of the PRC. The Commission also met to revise the semiannual reporting it receives on restrictive port practices in Japan.

The Commission has continued to follow with interest developments relating to the issues of restrictive practices in Japanese ports, including amendments to the Port Transportation Business Law which became effective in November 2000. The Commission issued an order in its ongoing proceeding in Docket *No. 96-20, Port*

Restrictions and Requirements in the United States/Japan Trade, on August 9,200 1, amending and rescheduling the reports required to be tiled by Japanese and US. carriers. The Commission's order was "necessary to gather further information and to update the record in this proceeding" in light of recent legislative and ministerial enactments of the Government of Japan. In a related development, the Commission at the same time required various other carriers whose operations at Japanese ports may be affected to report on recent developments and current conditions, pursuant to Commission authority to require special or periodic reports on carrier operations in section 15 of the 1984 Act, 46 U.S.C. app. $1714. Responses to those orders are due on November 7, 2001.

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 met 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 meetings of the Task Force also aid the Commission in developing efficient methods to address conditions as they arise.

On August 12, 1998, the Commission initiated Docket No. 98-14, *Shipping Restrictions, Requirements and Practices of the People's Republic of China,* with the issuance of 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 there.

The Commission met in January and June 1999 to review information collected in this docket. In a press release dated June 24, 1999, the Commission stated that the responses to the FMC 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. For example, U.S. carriers are barred from opening wholly-owned companies or branch offices in the PRC in locations where carriers' vessels do not make monthly calls; thus, U.S. carriers must rely on Chinese agents (affiliates of the state-owned Chinese shipping lines) to solicit business, book space, accept goods, and perform other functions in many port cities and inland locales. U.S. carriers also are subject to high-minimum capital requirements, and are barred by Chinese law from performing a number of integral vessel agency services for themselves, such as arranging for entry departure, customs clearance, consignment, transshipment and multimodal transport. The Commission also expressed concerns about: Chinese restrictions on U.S. carriers' freight forwarding operations; existing requirements that ocean carriers obtain governmental permission before beginning or changing international vessel services; and proposed rules that could require the disclosure of confidential service contract rates or terms, and further restrict non-Chinese carriers' ability to offer multimodal transport services in China. To address these restrictions, the Commission directed its staff to prepare a formal proposal for action under section 19 of the 1920 Act. The Commission may take actions including limitations on sailings, suspension of tariffs, suspension of regulated agreements, fees not to exceed $ 1 ,lOO,OOO per voyage, or any other measure necessary and appropriate to address the unfavorable conditions. Such proposed measures would, upon Commission approval, be noticed to the public for comment by interested parties prior to becoming effective.

Later in 1999, there were a number of further developments. A new Chinese controlled carrier, China Shipping Container Lines ("CSCL"), announced plans to enter the U.S. trades, and bilateral maritime talks resumed between the U.S. and China. Also, the U.S.-flag carrier, Sea-Land Service, Inc., announced that it was to be acquired by the parent of Maersk Line. In light of these developments the Commission, in November 1999, determined to further review these matters and supplement the record before taking up the issue of whether to initiate a section 19 rulemaking proceeding targeting practices of Chinese carriers. Accordingly, the Commission issued an information demand order to CSCL inquiring about the scope of its operations in China and the US.; CSCL's response was received February 29, 2000. Also, after the closing of Maersk's acquisition of Sea-Land's services, the Commission issued an order demanding information about the extent of that company's services in China, and the effect of Chinese restrictions on its operations in U.S. commerce. Maersk Sea-Land's responses were received March 24, 2000. The Commission met several times in fiscal year 2001 to consider these and other developments, and had the matter under review at fiscal year end.

In fiscal year 200 1, the Office of the General Counsel met on many occasions with carrier, OTI and shipper organizations to discuss those entities' concerns about foreign practices. These matters were still under review by the General Counsel at fiscal year end. The Office also participated in interagency groups and international maritime discussions, and coordinated and participated in briefings of foreign visitors.

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 tariff-publication 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. In fiscal year 2001, the Office reviewed documents and information relating to the controlled carrier status of a number of carriers.

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 affirmative program planning, special emphasis programing, and complaints processing and adjudication, with the assistance of collaterally-assigned EEO counselors and a Special Emphasis Program Coordinator.

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 of 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 2001 include the following:

1. Provided briefings to senior staff.

2. Provided workshops on equal employment opportunity.

3. Provided counseling assistance to managers, supervisors and employees.

4. Reviewed and assessed management and personnel human resource activity and actions.

5. Developed information and materials for training senior executives, Area Representatives, and staff and EEO Counselors.

6. Planned and developed special emphasis programs for FMC employee participation.

7. Continued to improve FMC's image and identity among Federal agencies and the community by developing cooperative programs in the special emphasis areas.

8. Continued non-discrimination policy and programs in response to Pub. L. No. 103-123.

During fiscal year 2002, the Office will continue all existing programs and initiate additional activities designed to increase an understanding of EEO concepts and principles.

E. OFFICE OF 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 2001, the Office issued the following five audits in final:

A01-01 *Review of the Commission's Property Management System*

A01-02 *Evaluation of the Office of Transportation Intermediaries Program*

A01-03 *Evaluation of the Administrative Law Judges' Workload 1990-l 999*

A01-04 *Review of the Transit Benefit Program*

The Office also responded to Congress with respect to two requests for information in connection with recently enacted legislation.

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 were no formal investigations pending.

In fiscal year 2002, we plan to conduct audits in the information technology area, and will continue to perform evaluations of agency programs and operations. Other audits also will be handled as the Office 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 Executive Council on Integrity and Efficiency, 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 Audit Follow-up and Management (Internal) Controls Official for the Commission, and the Office manages those programs. The Executive Director is also the agency's Senior Procurement Executive, its Designated Chief Information Officer, and the Commission's Chief Operating Officer.

The Deputy Executive Director serves as the Commission's Competition Advocate, its Chief Financial Officer, and is its representative, as Principal Management Official, to the Small Agency Council. The Office also is responsible for directing and administering the Commission's Information Security Program.

A significant achievement of the Office during fiscal year 2001 was overseeing the progress, completion and issuance of a comprehensive study on the impact of OSRA on the maritime community, which presented the findings of a detailed two-year analysis of OSRA's legislative reforms and the first years of operations under the revised regulatory regime. The study was a follow-up to the Status Report issued in fiscal year 2000 on this subject, which explained how the industry had been adapting to the statutory and regulatory changes brought about by OSRA. The Commission conducted interviews and discussions with industry representatives to obtain their input on relevant OSRA issues, and issued a Notice of Inquiry on OSRA's impact to obtain additional information for assessment in the study. The Study described the manner in which OSRA shaped and affected developments in liner shipping, and furnished details on service contracting, carrier use of antitrust immunity, tariff publishing, and the activities of OTIs.

The Office also prepared an initial assessment of agency operations under the February 2000 reorganization. The intent of this review was to assess whether the agency is structured and operating so as to accomplish OSRA's objectives effectively, and whether resources are allocated appropriately. The results of the assessment will be considered with the findings of the OSRA Study to determine if specific organizational or operational changes will be implemented. Further, the Office coordinated development and implementation of the agency's telework plan. The Office also oversaw both an implementation plan to bring the Commission into compliance with section 508 of the Rehabilitation Act Amendments of 1998, and the revision of several internal Commission orders on procedures for certain programs and activities. Additionally, the Office continued to coordinate implementation of the agency's five-year strategic plan and Annual Performance Plan, as well as preparation of the Annual Program Performance report, as required by the Government Performance and Results Act of 1993 ("GPRA"), and oversaw the semiannual review of the user fee schedule for Commission services.

The Office's key objectives for fiscal year 2002 are guiding Commission efforts regarding continued development or redesign of programs to support the Commission's statutory mandates; managing the Commission's conformance with the requirements of GPRA; refining and finalizing the Commission's teleworking program; ensuring a smooth transition with a new cross-servicing provider for accounting, payroll and other services; and bringing the Commission into compliance with the Government Paperwork Elimination Act of 1998 ("GPEA") and the Government Information Security Reform Act ("GISRA").

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 providing guidance on the 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 2001, OBFM:

- **Collected and deposited** $1,616,835 **~~$3,857,092~~ 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 2002 Congressional budget and fiscal year 2003 budget to OMB.**

- **Prepared a variety of external reports, including: the Annual Leave Year Report and the Report on Workyears and Personnel Cost for 2000 (Office of Personnel Management - "OPM"); the Report on International Travel for FY 2000 (OMB); and the Report on First-Class Airline Accommodations for fiscal year 2000 (General Services Administration - "GSA").**

- **Prepared monthly status reports on workyears, funding, travel and receivables.**

- **Managed the Commission's travel and cash management programs.**

- **Participated on a task force to review and update user fees collected by the FMC.**

- **Conducted extensive research on standardizing and modernizing the agency's financial systems environment.**

- **Participated on a task force to identify a new cross-service provider to contract for payroll/personnel and accounting service support.**

- **Assumed the responsibility for the Commission's Transit Benefit Program.**

(c) Future Plans

Financial management goals in fiscal year 2002 include refinement of the agency's accounts receivable system and development of a fully integrated financial management system. OBFM also will: (1) continue to implement electronic commerce to automate the processing of purchase orders, obligations and payments, in conjunction with the Office of Management Services and the Office of Information Resources Management; (2) review procedures and controls for cash management; and (3) continue to pursue 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 2001, OHR:

- **Assumed responsibility for the agency's training program, including the development of a training needs assessment, strategic training plan, implementation of LAN-based multimedia training, and established e-learning opportunities by developing on-line university training.**

- **Administered action on recent Presidential initiatives such as teleworking and increasing opportunities for employees with disabilities.**

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

- **Conducted a comprehensive internal recruitment and placement program to staff critical vacancies.**

- **Initiated an extensive external recruitment program, using alternatives such as the Presidential Management Intern Program.**

- **Coordinated with OPM on the completion of the 2000 Plum Book.**

- **Updated retirement eligibility lists and timely processed all retirements.**

- **Developed and established a program to promote Preventive Health Services, including monthly e-mails advising employees of information and resources.**

- **Managed and conducted numerous employee benefit and charitable contributions' programs, and coordinated and publicized family-friendly initiatives.**

- **Conducted a cyclical position management program review and a comprehensive personnel security program.**

- **Continued automation of human resources programs and records, including developing and testing mechanisms for posting of information on FMC's Intranet.**

- **Implemented a smoking cessation program.**

(c) Future Plans

In fiscal year 2002, 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, particularly the performance goal calling for a comprehensive recruitment effort; and (3) continue to explore and implement simplification, flexibility, and accountability of human resources management programs.

3. Office of Information Resources Management

(a) General Office Responsibilities

The Office of Information Resources Management ("OIRM") plans, coordinates and directs the management of automated information systems with respect to information resources management ("IRM"). OIRM provides administrative support to the program and administrative operations of the Commission. The Director, OIRM, serves as the Commission's Senior IRM Manager, FMC Computer Security Officer, Forms Control Officer, and Records Management Officer.

OIRM is responsible for ensuring that the Commission's 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. The Office also is responsible for managing the computer security and forms programs.

(b) Achievements

During fiscal year 2001, OIRM:

- **Coordinated and monitored all technical, logistical, procedural and security issues related to database systems created, owned and maintained by the Commission.**

- **Administered the agency's information technology ("IT") technical support and technical assistance contracts.**

- Compiled a GPEA Report to OMB identifying the Commission's Information Collections and Information Dissemination Products. The report includes an Action Plan to establish electronic reporting options where practicable by October 21, 2003, to ensure Commission compliance with the Act.

- Initiated a GPEA Study Contract to acquire contractor assistance in performing risk assessments, and cost/benefit analyses for the Commission's information collections electronic reporting options.

- Conducted an agencywide Information Systems Security Review as required by GISRA, working with the IG and contractor staff performing the Independent Computer Security Evaluation. This effort included compiling the Commission's inventory of information systems, assessing bureau and office Systems Security Plans, and making recommendations as appropriate.

- Initiated compliance activities pursuant to Section 508 of the Rehabilitation Act, as amended, to include drafting policies, assessing technical and administrative needs and requirements, and employing contractual language and contractor assistance as needed.

- Initiated a contract for an independent vulnerability assessment of the Commission's Local Area Network ("LAN"). Reviewed the contractor's LAN Vulnerabilities Report and performed recommended remediation.

- **Provided guidance, coordination and liaison support to the Commission to obtain OMB approval and clearance of forms and paperwork reduction clearances.**

- **Conducted an agencywide records management review to identify records eligible for disposition, to update Record Disposition Schedules, and to assess recordkeeping practices for paper and electronic records.**

- **Conducted an annual inventory of IT equipment to ensure management accountability and control of the Commission's IT investments, and to update the Commission's IT Architecture.**

(c) Future Plans

In fiscal year 2002, OIRM will continue to emphasize ongoing support for Commission and externally mandated programs. Major initiatives include plans to: (1) establish the Commission's Enterprise Architecture ("EA"), ensuring that the Commission's EA subscribes to the Federal Enterprise Architecture Framework; (2) ensure Commission compliance with major Governmentwide initiatives such as GPEA, E-Sign, GISRA, and Section 508 of the Rehabilitation Act; (3) coordinate the development of a Capital Planning and Investment Control Strategy for the Commission; (4) assist Commission staff on issues related to accessibility of private automated tariff systems; (5) provide continued agencywide advice and coordination on records management, OMB clearances, and information management; and (6) continue the maintenance and update of the Commission's homepage to ensure that information is provided to the public in an expedient manner.

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 2001, OMS:

- **Developed and distributed to bureau and office heads a guide to assist them in preparing Government estimates for their requirements.**

- **Revised the property management guide entitled, *Accountability and Control of Personal Property*, for reissuance to all bureau and office heads.**

- **Coordinated with GSA's Potomac Services Team concerning our Headquarters' building lease**

expiration and GSA's new building lease renewal process.

- **Negotiated with GSA for a significant reduction in the FMC's Headquarters' guard services cost and the inclusion of all Government building tenants in the sharing of this cost.**

- **Executed a new enhancement contract for the Commission's Internet-based service contract filing system project.**

- **Coordinated with the Office of Thrift Supervision on the final award contract for accounting services and personnel and payroll support to the FMC.**

- **Arranged for the printing and distribution of the FMC's *39th Annual Report.***

(c) Future Plans

In fiscal year 2002, the Office's objectives include the following: (1) award a new cross-servicing contract(s) for the Commission's personnel and payroll services and administrative accounting services support; (2) renew the FMC's Smart Card purchase program and revise/update the manual; (3) resolve outstanding lease renewal issues with GSA and execute a new long-term occupancy agreement for Headquarters space needs; (4) resolve outstanding building security issues with GSA and other building tenant agencies; and (5) continue to provide advice and assistance to FMC units 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 an 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 200 1, the Bureau responded to more than 6,650 inquiries.

2. Alternative Dispute Resolution

The Bureau, through its Deputy Director, has responsibility for developing and implementing the Commission's ADR program. Complaints against shipping entities are at an all-time high, and in the long run, it is anticipated that an enhanced ADR program will result in lower costs both to the agency and to the shipping public by offering quicker and less expensive means for dispute resolution.

During fiscal year 2001, the Bureau continued work on program development and program-specific training for its personnel. Personnel received training to mediate a broad range of disputes -- from informal disputes to those involving already commenced litigation. Also, the Bureau developed rules to implement the Commission's expanded ADR program; the final rules were issued by the Commission in August 2001. The new rules set forth guidelines and procedures for arbitration and provide for mediation and other ADR services to be provided by the Commission.

The Bureau's Deputy Director served as a mediator in two Commission proceedings, and in one instance was instrumental in the parties reaching an agreement that resolved not only the formal proceeding pending at the Commission, but also pending suit before a state court. In addition, in a significant dispute at a major East Coast port on the verge of erupting into a major law suit, the Commission's ADR services enabled the parties to resolve their differences without resorting to legal processes.

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 2001, the OCC processed a total of 2,797 complaints and information requests. Of those, 821 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 $208,600. Since 1991, the OCC and its predecessor office have helped complainants recover more than $1,600,000.

The Bureau also adjudicates small claims of shippers seeking reparations for violations of the shipping statutes. During fiscal year 200 1, the dollar limitation for claims which may use this small claims procedure was increased 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 2001, three claims were filed, while two pending cases were carried over from the previous year. There were three pending cases 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 200 1, twelve special docket applications were processed. None were pending at the close of the fiscal year.

In fiscal year 2002, the Commission intends to more actively implement its expanded ADR program, resulting in more ADR involvement both prior to and after the onset of litigation. The Bureau plans to continue to expand its consumer outreach programs, and strengthen its growing ties to Federal, state, local and private consumer assistance agencies. Also, the Bureau will continue to take advantage of new outreach possibilities made possible by electronic means of communication.

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 instruments. 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 2001, the Commission received 277 new OTI applications and 223 amended applications, issued more than 390 OTI licenses, and revoked 270 licenses. At the end of the fiscal year, 1,33 1 freight forwarders, 1,25 1 U.S. NVOCCs, 844 joint NVOCC/ocean freight forwarders, and 38 foreign NVOCCs held active OTI licenses. An additional 599 foreign NVOCCs maintained proof of financial responsibility on file with the Commission but chose not to be licensed. License revocations included the licenses of 55 OTIs that, by April 2001, still had not met the licensing, financial responsibility and/or tariff publication requirements imposed by OSRA and the Commission's implementing regulations that were effective May 1, 1999, despite many efforts by Commission staff to obtain their compliance.

During fiscal year 2001, BCCL made progress towards publishing a list of licensed and bonded OTIs on the Commission's homepage, which would assist carriers in complying with their statutory mandate to do business only with those licensed by the Commission. In fiscal year 2002, the Bureau plans to publish that list and develop an internal database of OTIs to facilitate compliance and enforcement activities.

4. Passenger Vessel Certification

The Commission administers sections 2 and 3 of Pub. L. No. 89-777 (46 U.S.C. app. §§ 8 17d 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 175 vessels and 45 operators, which have evidence of financial responsibility coverage in excess of $350 million for nonperformance and over $1 billion for casualty. The certificates issued pursuant to this program are necessary for Customs' clearance of thousands of passenger vessel sailings annually. During fiscal year 2001, the Commission received applications for 145 certificates (casualty and performance), while 74 casualty certificates and 82 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. However, financially many cruise line fundamentals began to show deterioration during fiscal year 2001. Following on the heels of the bankruptcy of a major cruise line, Premier Cruise Operations Ltd. (d/b/a Premier Cruises and Premier Cruise Lines) in September 2000, three more cruise lines ceased operations during fiscal year 2001. New Commodore Cruise Lines Ltd. (d/b/a Commodore Cruise Lines and Crown Cruise Lines) and Cape Canaveral Cruise Line, Inc., participated in the Commission's program at the time operations ceased. Renaissance Cruises Inc. did not participate in the Commission's program since it did not embark passengers at U.S. ports, even though its cruises were marketed primarily to passengers in the U.S. At the close of fiscal year 2001, it was apparent that yet another major cruise operator likely would file for bankruptcy early in fiscal year 2002.

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 200 1, the Bureau made progress toward publishing a list of licensed and bonded OTIs on the Commission's homepage, 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 that it may not be licensed.

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, 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 freight forwarding; 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 ofregulatory significance, and assess industry conditions. Liaison activities involve cooperation and coordination with other government agencies and departments, providing regulatory information 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 in rulemaking efforts.

During fiscal year 2001, the Bureau investigated and prosecuted malpractices, particularly fraudulent cargo descriptions and measurements in the transpacific trades and secret rebates in the South American trades. Other trades were also the subject of malpractice investigations, including the North Atlantic, Central 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, upon submission of reports by the Bureau to the Commission, Fact Finding Investigation No. 24, a nonadjudicatory investigation into maritime terminal activities of Florida ports related to the provision of exclusive tug services, was instituted, and a formal proceeding was initiated to determine the lawfulness of exclusive tug arrangements at marine terminal facilities on the Lower Mississippi. Also, a Show Cause proceeding for failure to abide by new OTI requirements of OSRA resulted in the cancellation of the licenses of 55 OTI entities.

Interaction between the Commission's Area Representatives and Customs with respect to the exchange of investigative information continues to be beneficial to both parties. Cooperation with Customs has expanded into several joint field operations to investigate entities suspected of violating both agencies' statutes or regulations. Such cooperation also has included local police and the U.S. Immigration and Naturalization Service, when necessary.

In fiscal year 2001, 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, particularly as modified by OSRA. 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 2001, 36 enforcement cases were pending final resolution by the Bureau, the Bureau was party to 9 formal proceedings, and there were 60 matters pending which the Bureau was monitoring or for which it was providing legal advice. During the fiscal year, 30 new enforcement actions were commenced; 40 were compromised and settled, administratively closed, or referred for formal proceedings; and 26 enforcement cases were pending resolution at fiscal year's end. Also, the Bureau participated in 10 new formal proceedings, 10 proceedings were completed, and 9 formal proceedings were pending at the end of the fiscal year. Additionally, 70 matters involving monitoring or legal advice were received during the fiscal year, 70 such matters were completed, and 60 were pending in the Bureau on September 30, 2001.

In fiscal year 2002, 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 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 2001, see Section IV. 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 2001 included: (1) the preparation of several sections of the Commission's two-year OSRA Impact Study, including a confidential report on the impact of service contract guidelines; (2) the preparation of the Commission's Notice of Inquiry on the impact of OSRA and the review and analysis of industry responses; (3) economic analyses of newly filed major agreements and amendments under the section 6(g) standard; (4) an analysis and critique of a World Bank draft paper calling for an end to carrier antitrust immunity in liner shipping; (5) an economic analysis and development of a market definition in Docket *No.* 01-06, *Exclusive Tug Franchises - Marine Terminal Operators Serving the Lower Mississippi River;* (6) an economic analysis of activities of certain controlled carriers; (7) participation in inter-Bureau working groups to coordinate the preparation of three separate, but related proposed rules covering agreement content, minutes, and information forms and monitoring reports; (8) responding to various informal complaints and requests from shippers on matters including the imposition of rate increases and/or surcharges by certain major agreements; (9) review of quarterly monitoring report data submitted in accordance with the regulations on agreement reporting requirements; (10) classification of agreements to determine each agreement's monitoring report requirements for calendar year 2001; (11) analyzing requests by agreements for amending their monitoring report requirements; (12) responding to Congressional requests for trade analyses and data on issues such as Japanese trade statistics; and (13) 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 also are 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 is 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. 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. Further, 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.

There are two broad categories of agreements tiled 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 conference and rate discussion agreements. The other category is operational agreements that authorize operational cooperation between the parties, such as sharing vessel space. The following is a brief description of the various types of agreements:

(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.

Although the last new conference agreement was filed in March 2000, the Bureau did receive 28 modifications to existing conference agreements. These were mostly membership changes. In fiscal year 200 1, the Bureau analyzed and processed 30 tilings. At the end of the fiscal year, there were 21 conference agreements on tile. Activities under two conferences in the inbound transpacific trades remain suspended, however.

(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 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 69 modifications to currently effective agreements, again mostly membership changes. At the end of the fiscal year, there were 36 rate discussion agreements and 9 non-rate discussion agreements on file.

(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 2001, the Bureau received 43 new VSAs, which represented over 90 percent of all new agreement filings during the year, and 66 modifications to the VSAs. The Bureau processed 120 filings during the fiscal year, and 4 1 VSAs were terminated. At the end of the fiscal year, there were 150 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 an individual ocean common carrier.

One new joint service agreement and four modifications to existing agreements were filed during the fiscal year. The Bureau processed all five filings during the year. Four joint services were terminated last year, leaving only 10 joint service agreements on file at the conclusion of the fiscal year.

(e) Cooperative Working & Other Agreements

Cooperative working agreements ("CWAs") do not fit 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.

An interesting new type of CWA was filed last year: Internet portal agreements. These agreements (two were filed) authorize the parties to establish a common Internet portal and platform through which they, other transportation service providers, intermediaries, and shippers interact through a common set of transactions pertaining to the tracking of shipments, booking of cargo, generating shipping documentation, and the like.

The Bureau received 13 filings under these categories of agreements in fiscal year 2001. There were 17 CWAs and other agreements on file at the end of fiscal year 200 1.

(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 2001, the Bureau received and analyzed 53 terminal agreements relating to port and marine terminal services and facilities. Certain terminal agreements become effective upon filing under Commission rules that exempt certain 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, 421 terminal agreements were on file with the Commission.

The number of marine terminal agreement filings has been generally 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. Although there was an increase in the number of filings last year over the previous year (53 versus 46), the number received was still almost half of what was filed five years ago.

5. Overview of Agreement Filings

In fiscal year 200 1, the Bureau received 324 agreement filings, a decrease of 10 percent from the previous year. The Bureau processed 333 agreement filings during fiscal year 200 1. At the end of fiscal year 2001, there were 243 carrier agreements and 42 1 terminal agreements on tile. Appendix C contains a breakdown of receipts and processing categories for fiscal year 2001.

6. Tariffs

Since May 1, 1999, section 8 of the 1984 Act requires common carriers and conferences to publish tariffs in private automated systems. These tariffs set forth the 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, as prescribed under the 1984 Act, and reviews published tariff material for compliance with the Act's requirements.

The Bureau acts on applications for special permission to deviate from tariff publishing rules and regulations and recommends Commission action on tariff publishing activities and regulations. The Bureau also collaborates with other components of the Commission to verify OTI/NVOCC financial responsibility as it relates to tariff publication.

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 Assessedfor Access to Tariffs and Tariff Systems,* were issued by the Commission to address the carriers' automated tariff systems ("CATS"). The circulars were issued because the Commission found that the public's ability to access some tariff systems appeared to be limited. In fiscal year 2001, the Commission's staff contacted representatives of tariff publishers and carriers to encourage voluntary compliance through cooperative efforts before any other type of remedial action is considered. The staff has been in regular contact with the carriers, conferences and tariff publishers to assist in the resolution of problems in certain CATS. This matter will continue to be monitored to ensure appropriate statutory compliance is achieved.

The Bureau is directly involved in processing the Commission's Form FMC-1. The data on that form identifies the location of carrier tariffs or MTO schedules, including carrier and conference service contract essential terms publications. At the end of fiscal year 2001, a total of 2,88 1 Form FMC-1 tariff location addresses for VOCCs and OTI/NVOCCs were posted on the Commission's homepage.

During fiscal year 2001, the Bureau also received and processed 41 foreign commerce special permission applications to deviate from the statutory provisions of the 1984 Act and/or the Commission's tariff publishing regulations. The total number of special permission applications received more than doubled over the previous fiscal year's 19, because a number of VOCCs sought to advance the effective dates of war risk surcharges applicable to Colombo, Sri Lanka, as a result of events related to an armed conflict in the region. Thirty-two additional special permission applications regarding war risk surcharges in the Middle East and Pakistan were also received in October 200 1, as a result of the September 11,200 1, tragedies at the World Trade Center and the Pentagon.

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 which used a dial-up, ATFI-based approach. The dial-up system was discontinued September 1999, and since that time all service contracts have been filed in SERVCON. The Internet-based system is designed for flexibility. It does not require contract terms to be filed in any prescribed order, and it allows carriers to submit service contracts in such electronic formats as WordStar, WordPerfect, Microsoft Word, ASCII, Excel and HTML. Certain enhancements have been made to the original system, e.g., providing the contract filer with the ability to retrieve its individual directory and service contracts at the Commission.

During fiscal year 200 1, the Commission received thousands of service contract filings. There were 47,629 new service contracts (compared to 35,190 in fiscal year 2000), and 182,403 amendments (compared to 110,780 amendments in fiscal year 2000).

8. Controlled Carriers

A controlled carrier is an ocean common carrier that is, or whose operating assets are, directly or indirectly, owned or controlled 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, 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.* PI-98, *Petition of China Ocean Shipping (Group) Companyfor a Limited Exemption from Section 9(c) of the Shipping Act of* 2984.) Subsequently in March 1999, COSCO submitted a separate petition under P3-99, seeking to publish rate decreases in the U.S. foreign commerce that would be effective upon publication, without regard to whether they are the same as or lower than rates published by competing carriers. On April 17, 2001, the Commission streamlined and updated the procedures for COSCO to comply with the Controlled Carrier Act limited exemption. In fiscal year 2001, COSCO exercised the authority granted by the Commission's Order in 11 instances. In October 2000, China National Foreign Trade Transportation (Group) Corp. ("Sinotrans") petitioned (No. P2-00 at the Commission) 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. The matters regarding COSCO under P3-99 and Sinotrans under P2-00 were still pending at the end of fiscal year 200 1. The most recent list of controlled carriers issued by the Commission was published in the *Federal Register* on September 27, 2000.

9. Non-Vessel-Operating Common Carriers

Ocean freight forwarders and NVOCCs in the U.S. have been combined by OSRA into a new entity known as OTIs. The Commission's Bureau of Consumer Complaints & 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 the carriers' private automated systems. At the end of fiscal year 200 1, a total of 2,508 tariff location addresses for OTI/NVOCCs had been posted on the Commission's homepage.

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 2001, a total of 152 operators' electronic location addresses for MTO terminal schedules were posted on the Commission's homepage. An additional 34 MTOs opted not to make tariff publications publicly available.

11. Automated Database Systems

The Bureau currently maintains and uses the following automated database 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 2001, the Form FMC-1 System reflected the tariff location addresses of 373 VOCCs, 2,508 OTI/NVOCCs, 21 conferences, and 152 of the 186 MTOs. 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. The Service Contract System 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 which 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 provide support for many of the Commission's programs. Certain information contained in the databases is also available to the public.

12. Future Plans and Proposed Activities

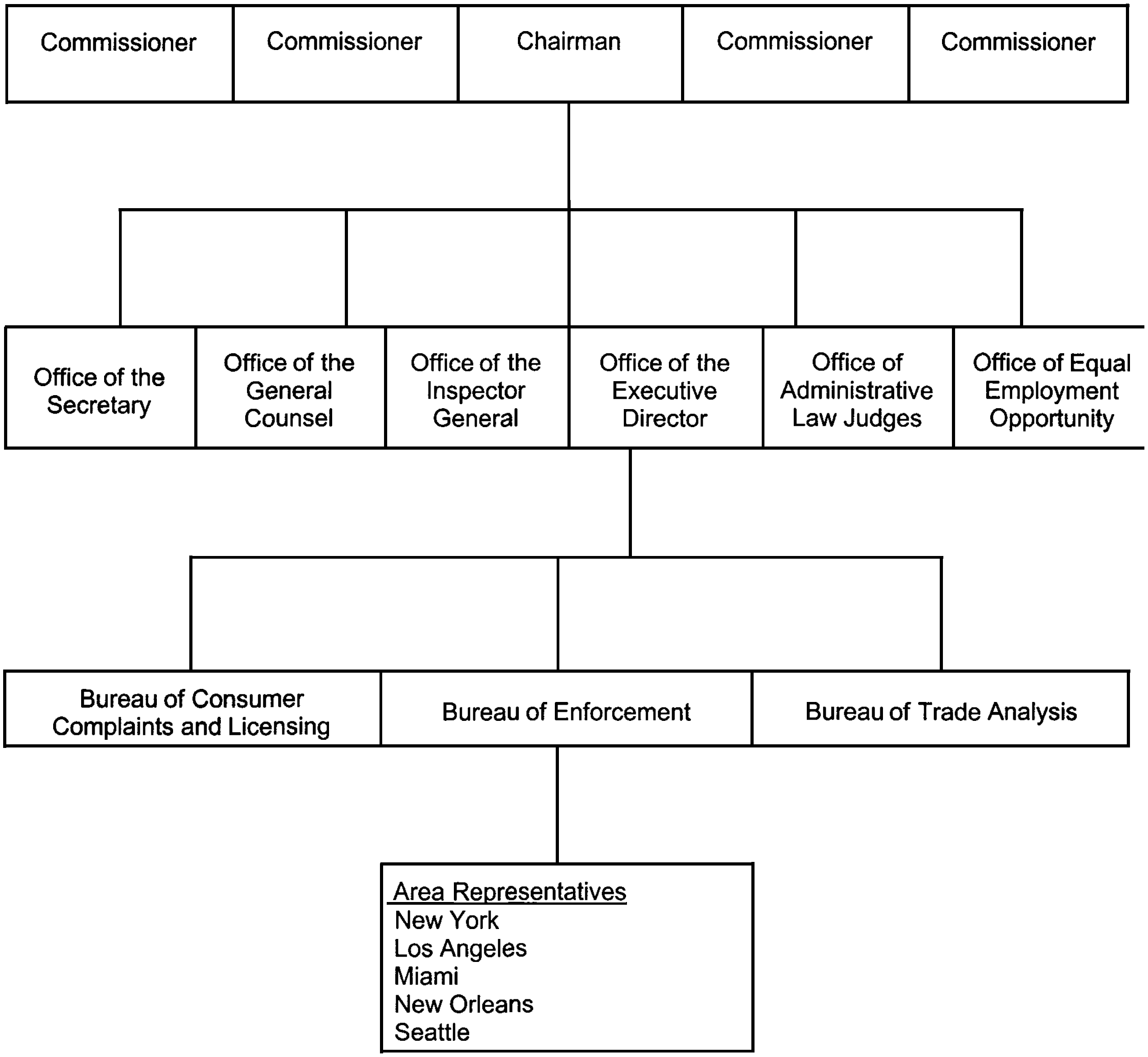
The Bureau's overall monitoring program will: focus on systematic oversight of carrier and trade activity with emphasis on upgrading monitoring systems to incorporate data and information that will be provided by carriers pursuant to Docket No. 94-3 1, *Information Form and Post-Effective Reporting Requirements for Agreements Among Ocean Common Carriers Subject to the Shipping Act of* 1984; 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. Additionally, reports concerning carriers' adherence to voluntary service contract guidelines of various agreements will be prepared. Further, a system is being developed to facilitate electronic signatures for various FMC information forms to comply with requirements of GPEA by October 2003.

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 2001



APPENDIX B

COMMISSION PROCEEDINGS
Fiscal Year 2001

Formal Proceedings

Decisions	*8*
Discontinuances & Dismissals	*9*
Initial Decisions Not Reviewed	*3*
Rulemakings - Final Rules	*3*
Total	*23*

Special Dockets	***13***
Informal Dockets	*3*

APPENDIX C

AGREEMENT FILINGS AND STATUS
Fiscal Year 2001

Agreements Filed in FY 2001 (including modifications)

Carrier	271
Terminal	53
Total	324

Agreements Processing Categories in FY 2001

Forty-Five Day Review	90
Shortened Review	26
Exempt-Effective Upon Filing	208
Rejection of Filing	0
Formal Extension of Review Period	4
Not Subject	2
Withdrawals	3
Total	333

Carrier Reports Submitted for Commission Review

Minutes of Meetings and Ad Hoc Reports	510
Monitoring Reports	221
Total	731

Agreements on File as of September 30, 2001

Conference	21
Discussion	45
Joint Service	10
Vessel-Sharing	‘150
Cooperative Working & Other	17
Terminal	‘421
Total	664

APPENDIX D

FORM FMC-1
TARIFF LOCATION ADDRESSES - ELECTRONIC SERVICE CONTRACT FILINGS AND SPECIAL PERMISSION APPLICATIONS
Fiscal Year 2001

Form FMC-1 Filings

VOCC	*373*
OTI/NVO	*2,508*
MTO	*186*
Conferences	*21*

Electronic Service Contract Documents

New Service Contracts	*4 7,629*
Service Contract Amendments	*182,403*

Special Permission Applications

Granted	*3 8*
Denied	*1*
Withdrawn	*2*

APPENDIX E

CIVIL PENALTIES COLLECTED
Fiscal Year 2001

Asia North America Eastbound Rate Agreement	**$110,000.00**
Dedola International Inc.	40,000.00
D. Kelly & West Indies Shipping	**30,000.00**
Fortune Network Limited	80,000.00
Interocean Lines, Inc.	**30,000.00**
Mark VII Transportation Company	60,000.00
Newport Cargo Consolidated, Inc.	**45,000.00**
OEC Freight Worldwide Co., Ltd.	145,000.00
Panalpina, Inc.	**150,000.00**
Robert Rullo/ABA Forwarding	15,000.00
Signet Shipping Company	**20,000.00**
Tecmarine Lines, Inc.	80,000.00
Transunion, SA	**90,000.00**
Trinity Shipping Line, SA	30,000.00
Universal Freightways	**45,000.00**
Wallenius Lines AB	110,000.00
Yatari Express Co., Ltd.	65.000.00
Total Civil Penalties Collected	**$1,145,000.00**

APPENDIX F

INVESTIGATIONS
Fiscal Year 2001

Investigations/Special Inquiries Opened:	*81*
Audits/Compliance Checks Opened:	*14*
Total Openings:	***95***
Investigations/Special Inquiries Completed:	***83***
Audits/Compliance Checks Completed:	*10*
Total Completions:	***93***

APPENDIX G

STATEMENT OF APPROPRIATIONS, OBLIGATIONS AND RECEIPTS FOR THE FISCAL YEAR ENDED SEPTEMBER 30, 2001

APPROPRIATIONS:

Public Law 106-553: For necessary expenses of the Federal Maritime Commission as authorized by section 20 1 (d) of the Merchant Marine Act of 1936, as amended (46 App. U.S.C. 111 I), including services as authorized by 5 U.S.C. 3 109; 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. 5901-02; Provided, that not to exceed $2,000 shall be available for official reception and representation expenses.

	$15,500,000
Public Law 106-554, 1 06th Congress Government-Wide Rescissions, 2001	34.100
Revised Appropriation	**$15,465,900**

OBLIGATIONS AND UNOBLIGATED BALANCE:

Net obligations for salaries and expenses for the fiscal year ended September 30, 2001.	**$15,465,473**

STATEMENT OF RECEIPTS: Deposited with the General Fund of the Treasury for the Fiscal Year Ended September 30, 2001:

Publications and reproductions, Fees and Vessel Certification, and Freight Forwarder Applications		$471,835
Fines and penalties	$1,145,000	~~$3,385,257~~
Total general fund receipts	$1,616,835	~~**$3,857,092**~~