

**FEDERAL MARITIME
COMMISSION**

**43rd
ANNUAL REPORT**

for

Fiscal Year

2004

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

March 31, 2005

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 43rd Annual Report of the activities of the Federal Maritime Commission for fiscal year 2004.

Sincerely,

Steven R. Blust
Chairman

MEMBERS OF COMMISSION

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

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

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

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

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

SENIOR COMMISSION OFFICIALS

Counsel to the Chairman *Cory R. Cinque*

General Counsel *Amy W. Larson*

Secretary *Bryant L. VanBrakle*

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

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

Inspector General *Tony P. Kominoth*

Director of Administration . . . *Bruce A. Dombrowski*

Director of Operations *Austin L. Schmitt*

Director, Bureau of Certification
and Licensing *Sandra L. Kusumoto*

Director, Bureau of Enforcement *Vern W. Hill*

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

Vision

Fairness and Efficiency in U.S. Maritime Commerce

FMC Mission

The FMC's Mission is to:

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

I

THE COMMISSION

A. HISTORY

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

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

B. FUNCTIONS

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

The Commission’s regulatory responsibilities include:

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

- **Ensuring that common carriers’ rates and charges are accessible to the shipping public in private, electronically accessible systems.**
- **Regulating rates, charges, and rules of government-owned or -controlled carriers to ensure that they are just and reasonable and are not unfairly undercutting private competitors.**
- **Issuing passenger vessel certificates evidencing financial responsibility of vessel owners or charterers to pay judgments for personal injury or death or to repay fares for the nonperformance of a voyage or cruise.**
- **Licensing ocean transportation intermediaries (“OTIs”) to protect the public from unqualified, insolvent, or dishonest companies.**
- **Ensuring that OTIs maintain sufficient financial responsibility to protect the shipping public from financial loss.**
- **Investigating discriminatory rates, charges, classifications, and practices of common carriers, MTOs, and OTIs operating in the foreign commerce of the U.S.**

The Commission is authorized by the FSPA, section 19 of the 1920 Act, and section 13(b)(6) of the 1984 Act, to take action to ensure that the foreign commerce of the U.S. is not burdened by non-market barriers to ocean shipping. The Commission may take countervailing action to correct unfavorable shipping conditions in U.S. foreign commerce and may impose penalties. The Commission may address actions by carriers or foreign governments that adversely affect shipping in the U.S. foreign oceanborne trades including the intermodal operations of carriers or the operations of OTIs, or that impair access of U.S.-flag vessels to ocean trade between foreign ports.

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

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

contracts with their shipper customers. Such contracts are filed electronically with the FMC in our Internet-based system, and are provided confidential treatment by the Commission as required by the Act. The Commission does not have the authority to approve or disapprove general rate increases (“GRIs”) or individual commodity rate levels in the U.S. foreign commerce, except with regard to certain foreign government-owned or -controlled carriers.

Pub. L. No. 89-777 requires the operators of passenger vessels with 50 or more berths who embark passengers at U.S. ports to establish financial coverage to indemnify passengers in cases of death, injury, or nonperformance of transportation. The Commission certifies such operators upon the submission of satisfactory evidence of financial responsibility. The Commission ensures that all OTIs operating in the foreign commerce of the U.S. have established sufficient financial responsibility to protect shippers from financial loss. Additionally, the Commission licenses all U.S. OTIs.

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

C. ORGANIZATION

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

As of August 23, 2004, the Commission’s organizational units consist of: Office of the General Counsel; Office of the Secretary, including the Library and Office of Consumer Affairs and Dispute Resolution Services; Office of Administrative Law Judges; Office of Equal Employment Opportunity; Office of the Inspector General; Office of Administration, including the Offices of Budget and Financial Management, Human Resources, Information Technology, and Management Services; and Office of Operations, including the Bureaus of Certification and Licensing, Enforcement, and Trade Analysis. These offices and bureaus are responsible for the Commission’s regulatory programs or provide administrative support.

In fiscal year 2004, the Commission was authorized a total of 180 full-time equivalent positions and had a total appropriation of \$18,362,000. That appropriation supported the actual employment of 129 full-time equivalent positions during the fiscal year. The majority of the Commission’s personnel are located in Washington, D.C., with Area Representatives in New York, New Orleans, Los Angeles, South Florida and Seattle.

II

THE YEAR IN REVIEW

Fiscal year 2004 is characterized by a strong international liner market, resulting in a surge of cargo volumes. The Commission has continued to monitor the international liner trade, while responding to the industry and advancing several important initiatives.

International liner trade has continued to expand as import and export cargo volumes reached record highs. The significant rise in cargo volumes has contributed to congestion at ports throughout the U.S. The Commission continues to monitor trade developments and gather information relating to potentially restrictive foreign trade practices.

The Commission is in the process of responding to industry requests to modify regulations pertaining to tariff filing requirements. Numerous petitions, supplemented by a more recent Joint Proposal conveying a more unified approach, have been filed requesting an exemption from tariff filing requirements. The Commission also has continued the process of updating its rules relating to monitoring of ocean common carrier and marine terminal agreements. The revisions to the ocean common carrier and marine terminal agreement rules would provide the regulatory certainty, flexibility and confidentiality which parties to agreements under the Shipping Act need for efficient operation.

Several initiatives have enhanced the Commission's ability to serve the ocean transportation industry. The Commission completed a realignment in order to create a more focused agency – one which is best suited to foster and support an environment of fairness and efficiency in U.S. maritime commerce. The realignment sought to reallocate the Commission's existing resources to maximize the effectiveness of the staff and to facilitate efforts to better serve the ocean transportation industry. Further, the Commission has expanded its outreach efforts by initiating a series of industry briefings as a way of fostering greater awareness and understanding of the current issues and concerns affecting the industry.

This Annual Report highlights areas of particular interest, and then provides an office-by-office synopsis of each unit's activities and accomplishments during the past fiscal year.

A. REALIGNMENT

During fiscal year 2004, the Commission reviewed its work processes and practices in light of changes in the industry to determine how the agency could best perform its duties. Based on this review, a realignment of the agency became effective on August 23, 2004. The new organizational structure did not create any new programs, nor eliminate any agency projects or activities. Rather, the restructuring reallocated the Commission's existing resources to maximize the effectiveness of the staff and facilitate agency efforts to better serve the ocean transportation industry.

The former Office of the Executive Director, with oversight over the three program bureaus and four administrative offices, was separated into two offices. The Office of Operations was formed and given oversight of the three program bureaus: the Bureau of Certification and Licensing (formerly the Bureau of Consumer Complaints and Licensing); the Bureau of Enforcement; and the Bureau of Trade Analysis. Additionally, to better carry out the Commission's compliance and outreach initiatives, the Area Representatives (formerly assigned to the Bureau of Enforcement) now report directly to the Office of Operations. The Office of Administration was formed and given oversight over the four administrative offices: the Office of Budget and Financial Management; the Office of Human Resources; the Office of Information Technology; and the Office of Management Services.

Also, because of the rapid growth of the Commission's consumer complaints program, it was decided to realign some of that program's resources. The complaints program and the alternative dispute resolution function (previously located within the Bureau of Consumer Complaints and Licensing) were renamed the Office of Consumer Affairs and Dispute Resolution Services and transferred to the Office of the Secretary. The Bureau of Certification and Licensing continues to be responsible for passenger vessel certifications, and licensing and financial responsibility requirements of entities regulated by the FMC.

This revised organizational setup should serve FMC stakeholders more efficiently and responsively and provide an effective regulatory structure suitable for today's shipping industry.

B. TRADE DEVELOPMENTS

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

Overall in fiscal year 2004, U.S. international trade continued to expand as the value of goods and services imported and exported between the U.S. and foreign nations reached record highs. In the worldwide liner trades, container traffic grew by over 10 percent, and 3,300 container ships served the trades. Strong trade growth increased vessel capacity utilization rates, prompting the need for more vessel space which put strong upward pressure on vessel charter rates. Looking forward, the construction of new container ships is planned to increase the current fleet's total capacity by over 50 percent. Meanwhile, world trade growth is expected to moderate in 2005 and 2006 due to an anticipated slowdown in economic growth in the more developed countries. Many carriers currently serving the trades reported gains in revenues and profits compared to the previous results of last year. Carriers, however, are facing some significant cost increases brought about by high vessel charter rates, rising fuel prices, port congestion, added security measures, and trade imbalances.

In the transatlantic, the volume of U.S. liner exports bound for North Europe grew at a higher rate than liner imports in the inbound direction to the U.S. The pattern of trade growth was largely influenced by the sharp appreciation of the euro against the U.S. dollar. The growth in U.S. exports

reduced the cargo volume imbalance which has persisted in the trade for many years. Concerns for future growth in both trade directions, particularly with respect to high-valued cargo, are escalating as more U.S. and European manufacturing moves to Asia. Major alliance carriers in the trade restructured their services to reduce their vessel capacity. Overall, however, vessel tonnage in the trade increased during the fiscal year. Members of the *Trans-Atlantic Conference Agreement* (“TACA”) (No. 011375) continued their rate program by implementing a series of small to moderate tariff GRIs in both trade directions. Industry analysts, however, believe that TACA’s GRIs in the first half of 2004 were largely eroded by the influx of new vessel tonnage in the trade. Trade disputes between the U.S. and the European Union (“EU”) continued to erupt, which could harm cargo growth. In 2004 the EU imposed a duty on exports of certain U.S. goods to EU nations, which can escalate up to 17 percent. In its review of the block exemption for shipping conferences, the European Commission (“EC”) issued a white paper recommending that the exemption be repealed and requesting public comments on alternative proposals. Final recommendations will likely go before the Council of the EU toward the end of 2005.

Between the U.S. and the Mediterranean, growth in the volume of U.S. export liner cargo continued; however, import liner cargo growth was minimal. While promising for U.S. exporters, the trade imbalance in liner cargo volume remains very high, with imports from the Mediterranean exceeding U.S. exports by over 50 percent. In addition, weak economic conditions among EU nations in the region could adversely affect U.S. export growth. Major carriers serving the trade redeployed smaller vessels to reduce their capacity. Overall, the capacity cutbacks reduced the total vessel tonnage in the trade by over 10 percent. Members of the *United States South Europe Conference* (No. 011587) implemented three small to moderate tariff GRIs in both trade directions.

In the Middle East, liner import cargo from the region grew at a higher rate than U.S. export cargo, although the trade imbalance substantially favored U.S. exports. Renewed trade growth appears promising in the future as the area stabilizes and greater economic activity is generated from increased oil production, higher oil prices, and the reconstruction of Iraq. In addition, the U.S. has embarked on an ambitious ten-year plan to create a U.S.-Middle East Free Trade Area.

Trade growth between the U.S. and the Indian Subcontinent was positive in both trade directions; however, the amount of import cargo from the region far exceeded U.S. export cargo. The *Indamex Agreement* (No. 011692), a major discussion agreement in the trade, gained two new carrier members. Economic growth within the region, particularly in India, is forecasted to remain strong. Carriers serving the trade, however, faced major problems of port congestion and shutdowns due to strikes by dockworkers and truckers. New projects are underway to address problems with port congestion in India.

In the trade between the U.S. and Australia/Oceania, growth in the volume of liner cargo was strong in both trade directions. U.S. export cargo exceeded import cargo from the region, primarily due to the appreciation of the Australian dollar against the U.S. dollar. To enhance the flow of trade, the Australian government is investing heavily on improvements to its transportation infrastructure by deepening channels, building new roads, and upgrading rail lines. The newly opened AustralAsia Railroad, a north-south transcontinental railroad, will serve as a rail-sea bridge. On other trade

developments, the U.S. government approved the *U.S.-Australia Free Trade Agreement*, which will phase out tariffs on the importation of certain manufactured goods from Australia. Membership changes occurred in carrier agreements within the trade, including the addition of Lykes Lines Limited to several rate agreements. The Australian government is in process of reviewing its laws that cover exemptions for ocean common carrier agreements.

The volume of liner cargo increased in all of the trades between the U.S. and Latin America and the Caribbean, particularly in South America where double-digit growth occurred in both trade directions. Weak currency values in South America boosted import cargo growth, while a measure of economic recovery within the region stimulated U.S. export growth. Brazil remained the leading South American trading partner with the U.S. South American nations began initiatives toward improving trade and economic growth by creating a free trade zone across the continent. Some major carriers operating in the South America trade restructured their services during the fiscal year, and new liner services were initiated. Problems with port congestion persisted in South America, particularly in Brazil. In the U.S. trades with Central America and the Caribbean, the volume of liner cargo grew at a more moderate pace. Trade with Central America, however, is expected to increase under the *Central America Free Trade Agreement*. As U.S. port congestion worsened, more liner cargo is being transhipped through ports in the Caribbean.

In the transpacific, trade growth remained strong in both directions in fiscal year 2004. The transpacific is the largest U.S. liner trade, accounting for 66 percent of all liner imports in the U.S., and 50 percent of all U.S. liner exports. In the inbound direction, import cargo from the Far East grew by 14 percent over the preceding fiscal year, and vessel utilization was at near capacity. Much of the import growth arose from the strong U.S. demand for low-cost consumer goods manufactured in China. The huge influx of import cargo from Asia also created greater congestion at U.S. ports, particularly Los Angeles and Long Beach. Maersk Sealand withdrew from the *Transpacific Stabilization Agreement* (“TSA”) (No. 011223) at the start of the fiscal year. Reportedly, the carrier felt that it could respond to customers’ requirements better by avoiding the delays inherent in a collective discussion process. The remaining members of TSA endeavored to boost rate levels by implementing GRIs; however, reports indicated that the full rate increases were not obtained. Over the fiscal year, the Commission’s staff met with TSA representatives on two occasions to review the compliance of TSA members with the terms of the settlement pursuant to the Commission’s *Fact Finding Investigation No. 25 - Practices of the Transpacific Stabilization Agreement Members Covering the 2002-2003 Service Contract Season*. Since the settlement of the investigation, the Commission has received no complaints involving the activities of TSA members. In the outbound direction of the transpacific trade, U.S. export cargo grew by 10 percent compared to the preceding fiscal year. Nonetheless, the trade imbalance created a substantial amount of excess vessel capacity in the outbound direction, and consequently, freight rates remained low. Many Far East nations continued to maintain bans on U.S. poultry and beef exports stemming from the outbreak of diseases in the U.S.; however, some progress toward restoring the foreign demand for these exports occurred.

C. 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 2004, the Commission continued its active approach in this area. In particular, the Commission continued to address practices of the People's Republic of China ("PRC") and Japan.

On December 8, 2003, the Chinese Minister of Communications and the U.S. Secretary of Transportation signed a bilateral Maritime Agreement. The result of many years of difficult negotiations, this Agreement addressed matters raised in the Commission's proceeding concerning vessel operators and NVOCCs. In fiscal year 2004, the Commission continued to gather information to determine whether the PRC was carrying out the commitments made in the bilateral Maritime Agreement.

The Commission also continued to monitor regulations and port practices of the Government of Japan. In fiscal year 2001, the Commission revised its semiannual reporting requirement for U.S. and Japanese carriers. The Commission continued to require these semiannual reports in fiscal year 2004.

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

D. TRADE OVERSIGHT

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

During the fiscal year, the Commission issued a proposed rule in Docket No. 03-15, *Ocean Common Carrier and Marine Terminal Agreements Subject to the Shipping Act of 1984*. The proposed rule would amend the Commission's regulations in 46 CFR Part 535. Among the proposed amendments, the regulations on the filing and content of agreements would be modified to account for changes that have occurred in the shipping industry since the enactment of OSRA. In addition,

the proposed rule would modify the Information Form and Monitoring Report regulations and appendices to reflect changes in the amount and kind of data needed for the Commission to monitor the carriers' use of antitrust immunity under filed agreements. The proposed rule also would modify the regulations on the filing of minutes of agreement meetings. Changes to the minutes regulations would be made to obtain more substantive information on carrier discussions, clarify the meaning of meetings between carriers, and provide the Commission with timely access to the materials used or discussed at meetings. Public comments on the proposed rule were due by the end of January 2004. After reviewing the comments, a draft final rule was prepared for consideration before the Commission, with certain revisions to the proposed rule that addressed the issues raised by commenters. The proposed final rule will be addressed by the Commission in a meeting early in fiscal year 2005. On other matters, the Commission's staff met with TSA representatives on two occasions to review the compliance of TSA members with the terms of the settlement pursuant to the Commission's *Fact Finding Investigation No. 25 - Practices of the Transpacific Stabilization Agreement Members Covering the 2002-2003 Service Contract Season*. The meetings revealed that progress has been achieved by TSA members as a result of the investigation. Also, since the investigation, the Commission has received no complaints involving the members' activities under TSA.

Other specific monitoring and research projects undertaken in fiscal year 2004 included: economic expert reports, a deposition, and analyses for various formal proceedings; a draft proposal on an economic methodology for analyzing the rates of controlled carriers under the Shipping Act; quarterly *Trade Profile* publications with economic and industry information on major U.S. trade developments and carrier agreements; analyses on the level of adherence to voluntary service contract guidelines by agreement carriers in the major U.S. trades; responses to Congressional and other informal requests on carrier agreement issues and industry information; and meetings with industry representatives on commercial developments affecting carriers and ocean shipping.

E. ALTERNATIVE DISPUTE RESOLUTION

During fiscal year 2004 the Commission made a significant change designed to address the increasing role of Alternative Dispute Resolution ("ADR") in resolving shipping industry disputes, and to continue encouraging parties to disputes to utilize the program in resolving disputes in lieu of litigation. Under this program, parties to a dispute are encouraged to avail themselves of services provided by the Commission to resolve disputes through conciliation, facilitation, mediation, fact finding, minitrials, arbitration, or the use of *ombuds* services. The Commission makes trained neutrals available to facilitate the resolution of shipping disputes at all stages. Mediation is the most frequently chosen method of dispute resolution for matters being litigated in formal Commission adjudicatory proceedings. Mediation is also made available to resolve disputes which have yet to reach the litigation stage. Docketed cases in which settlement was reached through the use of Commission mediators during fiscal year 2004 included Docket No. 03-09, *Puerto Rico Freight Systems, Inc. v. PR Logistics, Corp.*, and Docket No. 03-10, *Puerto Rico Freight Systems, Inc. v. R&S Trading, Inc.* Also, after staff intervention in a significant service contract dispute, the parties were able to reach an accommodation without disrupting imports of lumber products from South America.

The Commission also provided significant *ombuds* services to the shipping public by assisting consumers and other complaining parties in resolving a number of problems without resorting to litigation. During fiscal year 2004, the Commission continued to process a large number of complaints, continuing a pattern established over the previous three years. The cruise industry continued to experience bankruptcies, the most significant of which was the failure of Royal Olympic Cruises Ltd., which had established an escrow account under Commission regulations to reimburse passengers in the event of such a failure. Staff worked very closely with counsel for the cruise line and the escrow agent in expediting refunds to passengers. The Commission's *ombuds* services were instrumental in facilitating communications and resolving numerous compensation claims. The Commission's informal complaint resolution procedures also assisted numerous consumers in their efforts to resolve service disputes and other problems involving cruise operators.

The Commission continued to publicize its complaint resolution procedures and to make its offices available to all users of shipping services. Information gathered from the Commission's Internet site directed many aggrieved parties to the available services, while state, local and private consumer agencies, as well as various trade organizations, provided contact information to many other complainants. During fiscal year 2004, an increasing share of *ombuds* services were directed to individual and occasional users of shipping services, rather than to shipping companies engaged in disputes with other such entities.

During fiscal year 2004, a significant number of complaints once again involved the movement of personal effects and household goods. Many such cases involved failure on the part of an OTI, and consequences often arising from the OTI's failure to discharge its financial obligations promptly. Others involved problems arising in foreign ports, and often concerned unanticipated problems with foreign Customs agencies. While the Commission's efforts were often successful in resolving such disputes, the experience derived from unsuccessful efforts proved to be of great assistance in advising individuals encountering similar problems. During the year, a growing number of individuals contacted the Commission prior to engaging the services of an OTI, in the hope that the advice obtained might prevent problems from occurring. The *ombuds* program has used its consumer affairs contacts to encourage such inquiries.

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

F. ENFORCEMENT

The Commission maintains a presence in Los Angeles, South Florida, New Orleans, New York and Seattle through Area Representatives. These representatives serve as a liaison between

the Commission and various maritime interests in their respective areas and also investigate activity that may violate the 1984 Act.

During fiscal year 2004, the Bureau of Enforcement investigated and prosecuted malpractices in many trades lanes, including the transpacific, North Atlantic, Central and South American and Caribbean trades. These 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 were resolved informally, some with 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, a formal investigation continued to examine the lawfulness of exclusive tug service arrangements at marine terminal facilities on the Lower Mississippi and remained in litigation at the end of fiscal year 2004. Also, an investigation was commenced into an exclusive arrangement at Portland, Maine, which appeared to foreclose competition among passenger/passenger-vehicle carriers in the Portland/Nova Scotia trade.

The Commission collected \$2,959,000 in civil penalties this past fiscal year (*see* Appendix E). These collections represent a wide range of violations in all of our major trade lanes. Although the Commission continues to undertake enforcement activity, as required by its statutory mandate, its primary objective is to encourage voluntary compliance by the regulated ocean transportation industry.

III

MONITORING AND ENFORCEMENT

A. MONITORING

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

The importance the Commission attaches to its ongoing monitoring activities is a direct consequence of the removal, under the 1984 Act, of the Commission's previous broad discretion to disapprove agreements. The 1984 Act provides that, unless rejected under relevant statutory authority, agreements filed with the Commission shall become effective on the 45th day after filing or the 30th 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 addition to contributing to preparation of proposed and draft final rules in connection with Docket No. 03-15, *Ocean Common Carrier and Marine Terminal Agreements Subject to the Shipping Act of 1984*, in fiscal year 2004 the Bureau of Trade Analysis prepared numerous economic analyses and reports on the activities and practices of carriers and terminal operators serving the U.S. international trades. Projects included: (1) a draft proposed methodology to consider constructive costs when determining whether a controlled carrier's rates or charges are below a level that is just and reasonable; (2) providing economic analysis, deposition and hearing preparations in connection with Docket No. 01-06, *Exclusive Tug Franchises – Marine Terminal Operators Serving the Lower Mississippi River*; (3) auditing member carriers' adherence to the voluntary service contract guidelines recommended by selected agreements during the 2003-2004 service contract season; (4) assisting in the preparation of information required for the Small Business Regulatory Flexibility Act and Congressional review of the final rule regarding *Optional Rider for Proof of Additional NVOCC Financial Responsibility*; (5) preparing for and conducting semi-annual meetings with TSA counsel and representatives as a result of the settlement of *Fact Finding Investigation No. 25, Practices of the Transpacific Stabilization Agreement Members Covering the 2002-2003 Service Contract Season*; (6) preparing a quarterly *Trade Profile* publication spotlighting economic and commercial conditions in various U.S. liner trades; (7) analyzing the economic impact of newly filed major agreements and amendments under the section 6(g) standard of the 1984 Act, one such example being the *West Coast Marine Terminal Operators' Agreement* to institute extended gates hours and traffic mitigation fees at the ports of Los Angeles and Long Beach; (8) reviewing quarterly monitoring report data submitted in accordance with the regulations on agreement reporting requirements; and (9) responding to Congressional and informal requests and inquiries for trade analyses and data.

B. ENFORCEMENT

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

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

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

During fiscal year 2004, the Bureau of Enforcement investigated and prosecuted malpractices in many trades lanes, including the transpacific, North Atlantic, Central and South American and Caribbean trades. These malpractices included market-distorting activities such as various forms of secret rebates and absorptions, misdescription of commodities and misdeclaration of measurements, illegal equipment substitution, unlawful use of service contracts, as well as carriage of cargo by and for untariffed and unbonded NVOCCs. Most of these malpractice investigations were resolved informally, some with 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, a formal investigation continued to examine the lawfulness of exclusive tug service arrangements at marine terminal facilities on the Lower Mississippi and remained in litigation at the end of fiscal year 2004. Also, an investigation was commenced into an exclusive arrangement at Portland, Maine, which appeared to foreclose competition among passenger/passenger vehicle carriers in the Portland/Nova Scotia trade.

During fiscal year 2004, the Commission collected \$2,959,000 in civil penalties. Settlements were reached with many different segments of the industry (*e.g.*, carriers, agreements, shippers, forwarders, and NVOCCs) operating in the U.S. foreign trades (*see* Appendix E).

IV

DEVELOPMENTS IN MAJOR U.S. FOREIGN TRADES

A. TRANSATLANTIC

In fiscal year 2004, the volume of U.S. liner exports to North Europe rose by 7 percent compared to the preceding fiscal year. In particular, significant gains occurred in U.S. exports of automobiles, synthetic resins, and paper products, while auto parts to North Europe declined. In the inbound direction, however, the volume of imports from North Europe remained weak at a growth rate of 2 percent. Auto parts, tires, and wine from Germany and France to the U.S. dropped, while wood flooring products and beer from Belgium rose. The pattern of trade growth in the transatlantic can be attributed largely to the continued appreciation of the euro against the U.S. dollar; the euro has shot up in value by 18 percent since 2003. The currency exchange rates have made U.S. goods less expensive for European consumers and, alternatively, European goods more expensive for U.S. consumers. While future U.S. export growth is expected to continue, concerns over long-term trade growth in the transatlantic are escalating as more U.S. and European manufacturing moves to Asia, leaving only lower-valued cargo in both trade directions. In addition, sluggish economic growth in such major European nations as Germany, France, and the Netherlands has hampered consumer spending in Europe and led to a preference for less expensive Asian goods.

The growth in U.S. exports served to reduce the trade imbalance. The volume of import cargo exceeded export cargo by 32 percent, down from 51 percent in the preceding fiscal year. The utilization of vessel capacity in the outbound direction also showed some improvement, even though new tonnage was added to the trade. On average for the fiscal year, vessel capacity utilization was 66 percent in the outbound direction, while utilization in the tighter inbound direction was 88 percent. Vessel tonnage in the trade grew by 7 percent outbound, and 11 percent inbound. Some carriers in the trade altered their liner services. In March 2004, Norasia Container Lines, Gold Star Line, and China Shipping Container Lines (“CSCL”) formed a round-the-world service agreement (No. 011867) that included a new service in the inbound direction from North Europe to the U.S. By contrast, later in 2004, COSCO Container Lines (“COSCO”), Yangming Marine Transport Corp. (“Yangming”), Kawasaki Kisen Kaisha (“K-Line”), and Hanjin Shipping Co. (“Hanjin”) restructured their liner services under their alliance agreement (No. 011794) to reduce their vessel capacity by 20 percent in the transatlantic. The alliance carriers attributed the capacity reduction to the high cost of chartered vessels and low profitability in the trade.

Members of the *Trans-Atlantic Conference Agreement* (“TACA”) (No. 011375) implemented a series of small to moderate tariff GRIs, which were staggered throughout the fiscal year. Starting in October 2003 through September 2004, the conference initiated four tariff GRIs in the outbound direction and three in the inbound direction. Additional tariff GRIs in both trade directions are

planned for October 2004, and the conference announced plans for more GRIs in 2005. Further, the conference agreed to begin assessing congestion surcharges on cargo moving through the port of Los Angeles/Long Beach starting in November 2004. TACA representatives stressed that rate increases in the trade are necessary due to inadequate investment returns, high vessel charter rates, and container shortages. Industry analysts indicated that TACA's GRIs in the first half of 2004 were likely not very effective because of the influx of new tonnage in the trade. During the fiscal year, the average market share for TACA remained around 50 percent in both trade directions.

Trade disputes between the U.S. and the EU continued in the fiscal year. In a move that could dampen U.S. export growth, the EU initiated a 5 percent duty in March 2004 on exports of certain U.S. goods to EU nations. The duty automatically increases by 1 percent each month, up to 17 percent in 2005. The sanctions were levied in response to U.S. tax laws that allow for concessions on U.S. goods exported through foreign sales corporations. In a separate dispute over U.S. anti-dumping laws, the World Trade Organization ("WTO") allowed the EU to suspend its obligations under international trade agreements with the U.S. The WTO ruling permits the EU to impose anti-dumping measures similar to those under U.S. law. On another issue, the U.S. recently filed a complaint with the WTO against the EU's customs laws and regulations. In its complaint, the U.S. alleges that the customs administration in the EU varies among its member nations and creates barriers to trade. The WTO rules require members to administer their customs laws in a uniform, impartial and reasonable manner.

Recently, the EC issued a white paper on its formal review of Council Regulation 4056/86, which provides liner shipping conferences with a block exemption from the competition laws of the EU. In its white paper, the EC recommended that the block exemption be repealed. The EC further requested public comments on alternative proposals presented by the European Liner Affairs Association ("ELAA"). ELAA recommended that the block exemption be replaced by new laws that would grant carriers limited immunity to set joint surcharges and compile aggregated price and capacity statistics by trade, but no authority to discuss and agree on freight rates. The EC will likely hold another round of oral hearings on the recommended proposals for revising Regulation 4056/86, and present its findings before the Council of the EU toward the end of 2005.

B. MEDITERRANEAN

Between the U.S. and the Mediterranean, growth in the volume of liner cargo continued to improve in the outbound direction, while in the inbound direction liner cargo growth was minimal. Specifically, as compared to the preceding fiscal year, U.S. liner exports to the Mediterranean grew by 9 percent in fiscal year 2004. Positive gains were achieved in U.S. exports of field seeds/bulbs, automobiles, and poultry, while exports of cotton and edible nuts to the region declined. In the inbound trade, the fiscal year ended with a growth rate of only 3 percent for liner imports from the region. Imported products of marble, slate, and paper from the Mediterranean rose, while furniture and grain imports fell. As with Europe in general, U.S. export growth to the Mediterranean was aided by the euro's sharp appreciation against the U.S. dollar, and such growth is expected to continue for the foreseeable future. While this trend is promising for U.S. exporters, the trade imbalance in liner cargo volume still remains very high with imports from the Mediterranean

exceeding U.S. exports by over 50 percent. Moreover, the long-term prospects for U.S. export growth may be adversely affected by weak economic conditions among EU nations in the region. For instance, economic growth in Italy fell to its lowest level since 1993 as the global demand for Italian goods declined due to increased competition from Asian manufacturers, especially in the apparel market. The Italian economy is also burdened with a heavy public debt problem. In 2004, the EC issued a warning against Italy after predicting that its budget deficit would rise above the required limit for EU nations, which poses a violation of Italy's membership in the EU. As such, the country's credit rating could be downgraded. Among other EU nations in the Mediterranean, Greece had the highest rate of economic growth largely due to activities in connection with the 2004 Olympic games.

After the expansion of tonnage that occurred in 2002 and 2003, major carriers serving the trade took measures during the fiscal year to alleviate the oversupply of capacity by implementing cutbacks. A.P. Moller-Maersk A/S ("Maersk Sealand") was most prominent with its reduction of 113,000 20-foot equivalent container units ("TEUs") in annualized capacity through the substitution of smaller vessels. The alliance group of COSCO, Yangming, K-Line, and Hanjin also redeployed smaller vessels in the trade to reduce its annualized capacity by 60,000 TEUs. Industry analysts indicated that the capacity cutbacks amounted to a reduction in excess of 10 percent of the total tonnage in the trade.

Continuing their rate restoration program, members of the *United States South Europe Conference* (No. 011587) implemented three small to moderate tariff GRIs in both trade directions. Additional tariff GRIs are planned for October 2004 and on into 2005. In a statement, the conference claimed that the increases were necessary to improve rate viability in order to sustain the level of service demanded by shippers. Industry analysts were skeptical over the success of the conference's past rate increases due to the low value of cargo and the intense rate competition in the trade, despite the rise in U.S. cargo growth from the euro's appreciation. During the fiscal year, the average market share of the conference was around 30 percent in both trade directions.

C. MIDDLE EAST

In fiscal year 2004, U.S. liner exports to the Middle East grew by 9 percent, and U.S. liner imports from the region grew by 10 percent. U.S. export cargo, however, substantially exceeded import cargo from the region by about 80 percent. Our top 3 liner trading partners in the region include Saudi Arabia, the United Arab Emirates, and Jordan. The U.S. has a substantial trade surplus with the United Arab Emirates that contributes to the liner trade imbalance.

As a whole, the economy in the Middle East region is forecasted to expand at Gross Domestic Product ("GDP") rates of 4.1 percent in 2004, and 5 percent in 2005. Factors contributing to economic activity in the region include increased oil production, greater revenues earned from higher oil prices, renewed trade and tourism as the area stabilizes, and the reconstruction of Iraq.

The U.S. is in the process of concluding a bilateral free trade agreement with Bahrain, which most likely will increase trade and liner cargo traffic between the two countries. The agreement with

Bahrain would be the second in the region after a similar agreement with Jordan was reached in 2001. These agreements are an integral part of an ambitious ten-year plan to create a U.S.-Middle East Free Trade Area.

D. INDIAN SUBCONTINENT

In fiscal year 2004, U.S. exports to the Indian Subcontinent grew by 8 percent, and U.S. imports from the region grew by 9 percent. India, our top trading partner in the region, ranks 12th among U.S. liner trading partners. Lykes Lines Limited as well as MacAndrews and Company Limited joined the *Indamex Agreement* (No. 011692), a major rate agreement in the trade.

The economy of India continues to perform well, with growth rates of GDP forecasted at 7.4 percent in both 2004 and 2005. Much of this growth is concentrated in the service sector of India's economy, but the government of India wants to improve the economy's industrial sector by instituting reforms that will privatize state-owned industries.

Indian ports have been affected by congestion and strikes. The Port of Jawaharlal, India's top container port, has been clogged by a surge of imports, particularly scrap metal. In May, P&O Ports' Chennai Terminal was shut down by a dockworkers strike. A truckers strike shut down the Port of Kochi in June.

A number of public and private construction projects are in the planning stages or are underway to address the growing Indian port congestion problem. P&O Ports announced plans to develop new bulk and container facilities at Port Kulpi. The state-owned Ports of Chennai and Ennore announced plans to build two additional terminals. The Inland Waterways Authority of India identified 25 potential projects, including a feeder service from Patna to the Port Halida that was introduced in January 2004 to alleviate the problems.

E. AUSTRALIA AND OCEANIA

In fiscal year 2004, U.S. liner exports to Oceania grew by 17 percent, and U.S. liner imports from Oceania grew by 15 percent. Australia, our top trading partner in the region, ranks 22nd among the top U.S. liner trading partners. Currently, Australia is reviewing antitrust exemptions for agreements among liner shipping companies.

Australia's rate of economic growth, as measured by GDP, is forecasted to peak at 4 percent in 2004, and then drop to 3.4 percent in 2005. The sharp appreciation of the Australian dollar has diminished foreign demand for Australian goods and slowed economic growth in Australia.

Australia has been focusing on improving its transportation infrastructure, including deepening channels, building new roads and upgrading roads and rail lines. The Australian government announced the \$9 billion AusLink project, that includes a host of improvements intended to reduce highway and rail congestion as freight and passenger traffic grow. Additionally,

the Port of Melbourne is pursuing an estimated \$300 million project to deepen its channels by 2007, which has become important as containerships rapidly increase in size.

The grand opening of the AustralAsia Railway in January 2004, a north-south transcontinental railroad from Darwin in the North to Adelaide in the South, will serve as the backbone of an Australia-Asia rail-sea bridge. This service may compete against liners in trade lanes serving Australia, especially feeder services.

The U.S. and Australia concluded negotiations on a bilateral free trade agreement in February. This agreement will eventually eliminate tariffs on manufactured goods, while maintaining protections for U.S. farmers on beef, sugar, and dairy products. The *U.S.-Australia Free Trade Agreement* (“FTA”) was approved by the House and Senate in July and signed into law by the President in August. The FTA also was approved by the lower house of the Australian Parliament, but awaits approval by their Senate.

Several changes in membership were made in the agreements covering Oceania. For example, during the fiscal year, Lykes Lines Limited joined and Contship Containerlines resigned from the *U.S./Australasia Discussion Agreement* (No. 011117). Lykes Lines Limited also joined the *New Zealand/United States Discussion Agreement* (No. 011268), *New Zealand/United States Container Lines Association* (No. 009831), and, in addition to Safmarine Container Lines, the *Australia/United States Discussion Agreement* (No. 011275).

F. LATIN AMERICA AND THE CARIBBEAN

In the trade between the U.S. and South America, the volume of liner cargo substantially grew in both trade directions in fiscal year 2004 compared to the preceding fiscal year. Import cargo from South America rose by 16 percent, and U.S. export cargo shot up by 24 percent. Weak currency values in South America boosted the U.S. demand for imported goods from the region, while economic recovery in South America generated more U.S. export growth. For 2004, the overall economic growth rate for Latin America and the Caribbean is estimated at 4.7 percent, ending a three-year period of stagnation. Economic growth in the region is expected to continue, and level-off to a rate of 3.7 percent by 2006. Less strife and political turmoil within South America helped stabilize the economy. Brazil was the leading South American trading partner, with the U.S. accounting for 40 percent of the region’s total imports to the U.S. and 30 percent of the total U.S. exports to the region.

South American countries have expressed their desire to create a free trade zone across the continent. An important step in that direction was taken in 2004. The two major trading blocks in the region, the Andean Economic Community, consisting of Bolivia, Colombia, Ecuador, Peru, and Venezuela, and the Southern Common Market, consisting of Argentina, Brazil, Paraguay, Uruguay, Bolivia and Chile, reached an agreement in principle that will eventually lead to a trading zone covering 350 million people. Further details will be negotiated under the auspices of the Latin American Integration Association.

The U.S. and Chile implemented a free trade agreement, effective January 1, 2004. Under the agreement, 85 percent of industrial products will be traded duty free. In less than four years, 75

percent of farm products are scheduled to be duty free. The phase-out of tariff and quotas for non-agricultural commodities is 10 years, and 12 years for all agricultural products. In the first quarter of 2004, immediately following the implementation of this agreement, trade between the U.S. and Chile enjoyed double-digit growth.

The highlight of the U.S. inbound liner trade from the West Coast of South America was an increase in imports from Chile. Out-of-season fruits and vegetables were the chief commodities. Imports of other agricultural commodities and manufactured goods also increased when compared with fiscal year 2003. As in previous years, imports of bananas and coffee were a large part of total imports from the West Coast of South America. The U.S. also imported more logs and lumber, and containerized copper ingots.

U.S. exports to the West Coast of South America consisted mainly of paper and paperboard products (including waste paper), general cargo, fabrics (including raw cotton), TV equipment, urea resins, wood pulp, apparel, synthetic resins, plastics, and machinery. Exports increased mainly because of strong demand in Chile, Ecuador, and Colombia. Trade with Chile was very diverse. In fiscal year 2004 the U.S. exported more than five times the volume of paper and paperboard than it exported to Chile in 2003. Also, exports of miscellaneous apparel to Chile increased by more than 20 percent. Almost all export commodities to Ecuador increased in fiscal year 2004. The greatest increases occurred in paper and paperboard, fabrics and industrial chemicals.

In the East Coast of South America trade, the chief imports to the U.S. were furniture, logs and lumber, ceramic and mosaic tiles, footwear, metalware, auto parts, granite, tires and tubes, meat and paper. The U.S. imported 70 percent more furniture from Brazil in 2004 than in the previous fiscal year. Imports from Argentina increased very little compared to the previous year, and imports of wine, fish, field seeds and bulbs, and edible nuts fell.

In fiscal year 2004, U.S. containerized exports to the East Coast of South America increased by 18.2 percent. Wood pulp, auto parts, fabrics, paper and paperboard, general cargo, synthetic resins, synthetic rubber, boxes and cartons, plastics, and unclassified chemicals were the top U.S. exports. All commodities, with the exception of unclassified chemicals, had large increases over 2003. Exports of auto parts to Argentina were particularly strong. Other commodities, such as wood pulp, plastics and other industrial products, also had large increases.

Several carriers changed their shipping services on the East and West Coasts of South America in fiscal year 2004. Mediterranean Shipping Company started a new weekly service between the U.S. and the East Coast of South America. Maersk Sealand pulled out of two joint shipping services between the U.S. East Coast and the East Coast of South America. It then started a new service in the same trade. Crowley Liner Services, American President Line (“APL”), and Mitsui O.S.K. Lines (“MOL”) have announced changes in services effective next year. These changes would add tonnage to the existing services.

Ports in Latin America, especially in Brazil, suffered severe congestion in fiscal year 2004. Port managers, private developers and vessel-operating companies expressed interest in investing

in key strategic ports. Maersk Sealand, Mediterranean Shipping Company, and Hamburg-Südamerikanische Dampfschiffahrtsgesellschaft KG (“Hamburg Süd”) expressed the desire to invest in some ports, such as Sao Francisco do Sol, to expand existing facilities.

Between the U.S. and Central America, liner import cargo bound for the U.S. grew by 8 percent in fiscal year 2004 relative to the preceding fiscal year. For the same period, the growth of U.S. export cargo to Central America was more moderate at 3 percent. Shipments of bananas to the U.S. continued to be the top imported commodity by volume, accounting for 45 percent of the total import cargo from Central America. Trade with Central America is expected to increase in 2005 under the *Central American Free Trade Agreement* (“CAFTA”). Supporters of CAFTA believe that it will provide U.S. exporters with more access to Central American markets, and attract greater investment from U.S. companies in the region. Industry analysts also contend that CAFTA will provide U.S. exporters with thriving markets for capital equipment and industrial goods.

In both trade directions between the U.S. and the Caribbean, growth in the volume of liner cargo moderately improved in fiscal year 2004 compared to the weak results of the last fiscal year. Import cargo from the region grew by 4 percent, and U.S. export cargo rose by 8 percent. Growth in the volume of Caribbean imports was primarily fueled by increases from Haiti and Jamaica. By far, however, U.S. export cargo exceeded the volume of import cargo from the region.

During the fiscal year, ports in Latin America and the Caribbean were utilized more heavily in the transshipment of ocean liner cargo. With congestion worsening in the U.S., transshipment hubs in the region thrived. Leading transshipment hubs in the region include the Manzanillo International Terminal adjacent to the Colon Free Trade Zone at the Atlantic opening of the Panama Canal, the Kingston Transshipment Terminal owned by the Port Authority of Jamaica, and Freeport Container Port in the Bahamas owned by Hutchison Port Holdings.

G. TRANSPACIFIC

Transpacific container traffic witnessed solid growth during fiscal year 2004 due primarily to the strong demand for low-cost consumer goods from China. This growth resulted in ship utilization levels for U.S. Asian imports being very near or at capacity. Growth in container traffic from Asia also has resulted in congestion at U.S. ports, especially at the ports of Los Angeles and Long Beach. Most carriers operating in the transpacific trade are reporting increased earnings and profits due in part to this strong growth. The container trade between the U.S. and Asia is by far our Nation’s largest, accounting for 66 percent of all U.S. liner imports and 50 percent of all U.S. liner exports.

U.S. container imports from Asia grew by 14 percent in fiscal year 2004 to over 10 million TEUs. Northeast Asia accounts for 88 percent of all transpacific container imports, with most of them originating from China. Compared to fiscal year 2003, transpacific container imports from Northeast Asia grew by 16 percent, and from Southeast Asia by 5 percent. Major imports from Asia include furniture, toys, footwear and electronic goods.

The *Transpacific Stabilization Agreement* (“TSA”) (No. 011223) is a discussion and policy-setting agreement with voluntary pricing authority covering the inbound container trade from the Far East to the U.S. Until September 2004, TSA consisted of 14 carrier members with a collective market share exceeding 75 percent. However, in September 2004, Maersk Sealand, the largest liner operator in U.S. trades, announced its withdrawal from TSA, stating that it could respond more quickly to customer needs by operating outside of the Agreement.

TSA members announced a \$450 GRI per 40-foot equivalent container units (“FEUs”) for cargo destined to U.S. Pacific Coast ports, and a \$600 GRI per FEU for cargo destined to U.S. Atlantic Coast ports. According to reports, TSA members were not successful in obtaining the full rate increases during their individual service contract negotiations with shippers.

In September 2003 the Commission reached a settlement with TSA and its members, and the members of several TSA Bridging Agreements, that ended a fact finding investigation into possible violations of certain sections of the 1984 Act. As part of the settlement agreement, representatives of TSA agreed to meet with the Commission semiannually to review TSA activities and developments, including committee and subcommittee structure, service contract activity, economic conditions in the trade and any complaints about TSA that may be received by the Commission. Pursuant to the settlement agreement, representatives of TSA met with the Commission in March and September of 2004. These meetings help to ensure compliance with the settlement agreement and provided the Commission with an in-depth view of related TSA activities. Since implementing the settlement agreement, the Commission has not received any complaints involving TSA activities.

U.S. container exports to Asia grew by a healthy 10 percent in fiscal year 2004, compared to 7 percent in fiscal year 2003. U.S. exports to Asia reached nearly 3.9 million TEUs. Northeast Asia received 87 percent of all U.S. container exports, with most of them going to China and Japan. U.S. container exports to Northeast Asia grew 12 percent, but only by 0.3 percent to Southeast Asia. Major U.S. exports to Asia include wastepaper, metal scrap, animal feed, lumber, and raw cotton.

The outbreak of avian flu and reports of mad-cow disease in the U.S. crippled exports of poultry and beef, as many Asian countries imposed bans on these products for health safety reasons. U.S. poultry exports are beginning to recover as Asian countries, such as Japan, now permit this commodity’s importation, though China and South Korea still have bans in place. Most Asian countries still maintain a ban on the importation of beef from the U.S., so beef exports continue to be impaired. Prior to their bans, Japan and Korea were major importers of U.S. beef. Japan is expected to partially lift its ban sometime in 2005.

Freight rates assessed for U.S. exports tend to be much lower than those for U.S. imports. This is mainly due to the fact that U.S. imports from Asia are approximately twice the volume of U.S. exports to Asia, resulting in substantial excess vessel capacity on outbound voyages to Asia.

The *Westbound Transpacific Stabilization Agreement* (“WTSA”) (No. 011325) is the outbound counterpart to TSA. Like TSA, WTSA operates as a forum for the exchange of information between its members and authorizes them to discuss and agree upon pricing and related

matters for cargo exported from the U.S. to Asia. WTSA's geographic scope covers Northeast and Southeast Asia as well as the Indian Subcontinent. WTSA's membership consists of 13 carriers that have a market share exceeding 70 percent.

The transpacific container growth for 2005 is forecasted to remain close to 2004 levels. Carriers operating in this trade are optimistic that continued growth will translate into sustained revenues and profits. However, if continued growth exacerbates the congestion that already exists at some U.S. ports, carriers' profits could be affected if they incur higher costs arising from such congestion.

H. WORLDWIDE

Since sliding in real terms by 1 percent in 2001, world trade has been on the rise, and this year marked a second year of very strong growth. After expanding in 2004 by an estimated 4 percent, world trade growth is expected to be moderate in 2005 and 2006, led by a slowing of expansion among the economies of developed countries. Throughout fiscal year 2004, U.S. international trade in goods and services set numerous new records. For example, the U.S. trade deficit grew to a record \$50.9 billion in September 2004, as imports continued to increase more than exports. The value of U.S. goods and services exported also set a new record of \$97.5 billion in September with the weak U.S. dollar helping to fuel export demand. In August a record \$150.2 billion of imported goods and services was reached. The dollar's weakness failed to deter U.S. demand for foreign imports, perhaps because although the dollar weakened against Western European currencies, it held up relatively well against most Asian currencies.

Buoyant world trade and continuing U.S. trade imbalances are reflected in container shipping activity. The world's container trades continued their strong expansion. By the end of fiscal year 2004, world container traffic amounted to about 100 million TEUs, representing an annual increase in demand of over 10 percent. About 40 percent of world container traffic is generated in the East-West trades (*e.g.*, the transpacific and transatlantic); another 40 percent occurs in intra-regional trades (*e.g.*, within Asia and Europe); and about 20 percent is generated in the North-South trades (*e.g.*, North America to Latin America, Europe to Africa, and Asia to Australasia).

Almost 3,300 container ships were plying the world's container trades in fiscal year 2004. At the end of July, the capacity of the world's dedicated containership fleet was about 6.8 million TEUs, and by the end of the fiscal year, the order book for new containerships was approximately 3.5 million TEUs. The planned construction of new containerships amounts to over 50 percent of the current fleet's total capacity. More than half the new ships that are due for delivery in 2005 and 2006 will have a container capacity of 5,000 TEUs or more. Ships larger than 8,000 TEUs are expected to account for over 20 percent of containership deliveries in 2005, and over 40 percent in 2006.

The past year was good to most liner shipping companies. APL, Hamburg Süd, Hanjin, Hapag-Lloyd Container Linie GmbH, K-Line, MOL, Nippon Yusen Kaisha, Inc, Orient Overseas Container Line, Limited and P & O Nedlloyd Limited each reported substantial gains in revenue and

profit compared to the previous year's results. Higher average freight rates and increases in container liftings boosted several carriers' revenues substantially. Not surprisingly, the stronger liner market encouraged some carriers to issue bonds and launch initial public offerings, CSCL being one such example.

Looking ahead, liner companies generally seem confident that fiscal year 2005 will be another good year for cargo growth and rates. Nevertheless, there are some issues that may be of concern to the sector's continued financial health. For example, time charter rates are escalating rapidly. Daily charter rates over the last 12 months have increased 30-50 percent, depending on ship specification. Also, the average fixture period has increased to around 16 months, compared to just 8 months one year earlier. Carriers are dealing with several other significant cost pressures, such as rising fuel costs, more port and inland transportation infrastructure congestion, added security measures, an accentuation in container imbalances, and escalating prices for new ships and steel containers. As fiscal year 2005 unfolds, it remains to be seen what impact widespread cost pressures and a large influx of new capacity will have on cargo volumes, capacity utilization, rates and, ultimately, the industry's financial condition.

V

THE FOREIGN SHIPPING PRACTICES ACT OF 1988

A. GENERAL

The Foreign Shipping Practices Act of 1988 ("FSPA") became effective on August 23, 1988.

The FSPA directs the Commission to investigate and address adverse conditions affecting U.S. carriers in U.S. oceanborne trades, which conditions do not exist for foreign carriers in the U.S., either under U.S. law or as a result of acts of U.S. carriers or others providing maritime or maritime-related services in the U.S.

In fiscal year 2004, the Commission monitored potentially unfavorable or discriminatory shipping practices by a number of foreign governments. However, no FSPA action was taken in 2004.

In fiscal year 2004, the Commission's Permanent Task Force on International Affairs continued to meet. The Task Force, chaired by the Deputy 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.

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

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

The Journal of Commerce’s Port Import Export Reporting Service (“PIERS”) database was used to derive the Commission’s list of top twenty trading partners. PIERS obtains data on U.S. import and export shipments from tapes of bill-of-lading manifests filed electronically with CBP via the Automated Manifest System (“AMS”). PIERS also stations personnel at individual ports to collect manually shipment data that is incomplete or not filed through AMS. PIERS staff edits the raw shipment data and distinguishes liner shipments from non-liner shipments. The individual shipment data also is compiled into a more general and useful format for convenience. PIERS uses standardized spellings of company names, coding of ship lines, port names, and country code assignments. The Journal of Commerce also employs proprietary artificial intelligence software to increase the accuracy of its data.

The most recent complete calendar year for which data are available is 2003. The table on the next page lists the twenty foreign countries that generated the largest volume of oceanborne liner cargo in bilateral trade with the U.S. in 2003. 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 (2003)

<u>Rank</u>	<u>Country</u>	<u>TEUs</u> <u>(000s)</u>
1	China (PRC)	5,811
2	Hong Kong ¹	1,672
3	Japan	1,655
4	Taiwan	977
5	South Korea	930
6	Germany	650

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.

7	Italy	601
8	Brazil	535
9	Thailand	517
10	United Kingdom (Incl. N. Ireland)	430
11	Indonesia	402
12	India	397
13	Belgium & Luxembourg	396
14	Netherlands	390
15	Malaysia	309
16	France	282
17	Honduras	273
18	Guatemala	266
19	Spain	245
20	Costa Rica	240

There were several changes to the Top Twenty list for 2003, in comparison with the list for 2002. Hong Kong moved up to second place, while Japan slipped to third. Taiwan moved into 4th place, and South Korea moved down to 5th place. Brazil edged out Thailand for 8th place, while the Netherlands fell from 11th to 14th place, behind Indonesia, India, and Belgium and Luxembourg (combined). While Malaysia and France retained their 15th and 16th positions, Honduras advanced from 19th to 17th place, and Guatemala declined from 17th position to 18th. Spain also moved down, from 18th to 19th position, and Costa Rica replaced the Dominican Republic in 20th place.

In terms of ranking order, China (PRC) continued its lead with an increase in volume of 16 percent over 2002's volume, though less than its previous 24 percent increase over 2001's volume. Hong Kong registered a 5 percent increase in trade volume, about double that of Japan. Taiwan experienced an almost 7 percent growth in trade volume over the previous year, as did Guatemala. Brazil's trade with the U.S. also increased significantly -- almost 13 percent over its 2002 level. India advanced from 14th to 12th position with a 17 percent increase in trade volume. Honduras also registered a 17 percent increase in trade with the U.S., climbing from 19th to 17th place. Other countries, *i.e.*, South Korea, Italy, the United Kingdom, Indonesia, the Netherlands, and Malaysia experienced decreases in trade volume ranging from 2 to 7 percent. The volume of trade with Thailand and France remained approximately the same as in the previous year.

VI

**SIGNIFICANT
OPERATING
ACTIVITIES**

BY

ORGANIZATIONAL UNIT

A. OFFICE OF THE SECRETARY

1. General

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

The Secretary's Office also participates in the development of rules designed to reduce the length and complexity of formal proceedings, and participates in the implementation of legislative changes to the shipping statutes. During fiscal year 2004:

- **The Commission issued decisions concluding two formal proceedings. One initial decision of an administrative law judge became administratively final without Commission review. Fifteen proceedings were dismissed or discontinued. The Commission also concluded two special docket applications and six informal dockets. During the same period, the Commission issued final rules in one rulemaking proceeding.**

Seven rulemaking proceedings were pending at the end of the year. Five petitions for Commission action were granted or dismissed during the fiscal year, while 10 others were pending decision at year's end.

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

2. Office of Consumer Affairs and Dispute Resolution Services

With the realignment of the Commission's organization towards the end of fiscal year 2004, the Office of the Secretary now also is responsible for overseeing the administration of the Commission's

Office of Consumer Affairs and Dispute Resolution Services (“CADRS”). CADRS has responsibility for developing and implementing the Commission’s Alternative Dispute Resolution (“ADR”) program. Through this program, the Commission provides services to assist parties in resolving disputes and shipping problems in the U. S. ocean shipping commerce. These include a broad range of services designed to avoid the expense and delays inherent in litigation, and to facilitate the flow of U.S. ocean commerce.

With respect to matters already involved in litigation, or moving toward initiation of litigation, parties to a dispute are encouraged to avail themselves of mediation and other ADR services such as conciliation, facilitation, fact finding, minitrials, or even arbitration, as a means to resolve the dispute. The Commission makes trained neutrals available to facilitate the resolution of shipping disputes at all stages. Outside neutrals also may be contracted for as needed. During fiscal year 2004, Commission mediators assisted parties in arriving at settlements in three proceedings where the parties were already engaged in litigation. In another significant matter, office staff facilitated the resolution of a service contract involving shipments from Chile to the west coast of the U.S. under the service contract offered by a discussion agreement operating in that trade. After executing the service contract, the carriers twice attempted to increase rates by imposing a GRI in their tariffs to the service contract. In the end, the parties agreed to a smaller increase.

The Office also provides *ombuds* services to participants in ocean shipping transactions. During fiscal year 2004, more than 3,200 complaints and information requests were processed. Of those, 802 complaints required resolution of disputes and attempts to resolve difficulties with shipments or cruise matters. This represents an increase of 42 percent over the 566 such complaints received in fiscal year 2003. Complaints involving the transportation or handling of cargo continued to increase, partly due to the Commission’s revitalized focus on informal and non-adjudicatory means of complaint resolution, and the increased awareness of the availability of assistance through electronic and other means of communication. In fiscal year 2004, 336 complaints were received from individuals and shippers/importers about the transportation or handling of cargo, while 466 complaints against cruise operators were received.

Other functions of the ADR program include the adjudication of small claims, currently those seeking reparations up to \$50,000, for violations of the shipping statutes. Whereas the vast majority of small claims received in earlier years comprised freight overcharge actions against ocean common carriers, the majority of cases now concern claims by shippers against NVOCCs. Those complaints generally involve alleged prohibited acts in connection with the international transportation of household goods, or the failure to establish, observe, and enforce just and reasonable regulations and practices. The latter half of fiscal year 2004 saw a marked increase in such matters, particularly involving delivery problems such as failure to deliver or extensive delays, and excessive or duplicate payments demanded prior to delivery. Many of these difficulties involved shipments arranged and contracted via online intermediaries.

ADR staff also evaluates and adjudicates 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.

In fiscal year 2005, the Commission anticipates a growing number of complaints. Also, it intends to continue development of its ADR program, encouraging the use of mediation services to assist in resolving formal proceedings or other significant disputes in a more informal and effective manner. Outreach programs will be expanded to make the shipping industry aware of these less adversarial, more cost-effective means of resolving disputes in a manner that enables the parties to control the outcome. Also, conflict resolution training will be encouraged for other Commission managers, to better equip all Commission programs with the skills and knowledge to be more flexible in seeking outcomes that are responsive to industry needs. As the ocean shipping community becomes more aware of the agency's ADR services, we anticipate more inquiries and an increasing use of mediation to resolve disputes.

3. Library

The FMC Library serves the Commission's research and information needs. Its holdings consist of specialized material primarily covering the various segments of the shipping industry, as well as historical and current regulatory materials covering all phases of shipping in the U.S. foreign trades. It also contains material on several related fields such as engineering, economics, political science and an extensive collection of legal publications. The library includes such sources of information as law encyclopedias, engineering textbooks, legal treatises, Comptroller General Decisions, and editions of the various National Reporter systems. The Library's holdings consist of approximately 4,000 volumes and numerous microfiches, CD-ROMs and on-line services.

B. OFFICE OF ADMINISTRATIVE LAW JUDGES

1. General

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

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

At the beginning of fiscal year 2004, eleven formal proceedings were pending before the ALJs. During the year, twelve formal cases and one informal case were added. The ALJs formally settled four

formal proceedings and dismissed or discontinued six formal proceedings. One formal proceeding before the ALJs was dismissed by the Commission.

2. Commission Action

The Commission adopted four orders of approval of settlement and six dismissals of complaints of the ALJs, and dismissed one formal proceeding of the ALJs.

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

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

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

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

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

4. Pending Proceedings

At the close of fiscal year 2004, there were twelve formal proceedings and one informal proceeding pending before the ALJs, of which four were investigations initiated by the Commission. The remaining eight formal proceedings and one informal proceeding were instituted by the filing of complaints by common carriers by water, shippers, conferences, port authorities or districts, terminal operators, trade associations, and stevedores.

C. OFFICE OF THE GENERAL COUNSEL

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

1. Rulemakings and Decisions

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

(a) Rulemakings

The Content of Ocean Common Carrier and Marine Terminal Operator Agreements Subject to the Shipping Act of 1984 [Docket No. 03-15], (December 1, 2003).

The Commission issued a Notice of Proposed Rulemaking to seek comments from interested parties regarding possible changes to the Commission's rules governing the content of ocean common carrier and MTO agreements that are filed with the Commission in accordance with the Shipping Act. The proceeding was initiated in response to comments received in the rulemaking proceeding in Docket No. 99-13, a Notice of Inquiry published in the *Federal Register* on August 3, 1999. Comments were received from carriers, shippers, and other interested parties. A Commission meeting was held on November 19, 2003, and a Notice of Proposed Rulemaking was published in the *Federal Register* on December 1, 2003. Comments were due January 30, 2004. The Commission is currently reviewing the comments and expects to issue a Final Rule early in fiscal year 2005.

(b) Decisions

Exclusive Tug Franchises - Marine Terminal Operators Serving the Lower Mississippi [Docket No. 01-06], 30 S.R.R. 441 (May 21, 2004).

On June 11, 2001, the Commission issued an Order to Show Cause directing 12 MTOs on the lower Mississippi River to show cause why they have not violated sections 10(d)(1) and 10(d)(4) of the Shipping Act, 46 U.S.C. app. §§ 1709(d)(1) and (d)(4), by entering into exclusive tug assist service arrangements resulting in unreasonable practices and/or undue or unreasonable preference or advantage or unreasonable prejudice or disadvantage, respectively. In October 2001, the Commission referred the entire case to the Office of Administrative Law Judges to handle all aspects of the proceeding because of its complexity and factual nature. The ALJ consequently ordered that the parties enter ADR

procedures. Two respondents have since settled the proceeding. The Commission also addressed a respondent's request that the Commission issue orders pursuant to section 15 of the Shipping Act, 46 U.S.C. app. § 1714, to obtain information from several overseas companies. The Commission denied the request, holding that private parties do not have a procedural right to gather information in an adjudicatory proceeding by issuance of section 15 orders by the Commission. The respondent filed a petition for reconsideration, which also was denied by the Commission. Another respondent has since settled the proceeding. An Initial Decision is due by July 1, 2005.

Petition of United Parcel Service, Inc. for Exemption Pursuant to Section 16 of the Shipping Act of 1984 to Permit Negotiation, Entry and Performance of Service Contracts [Petition No. P3-03]; Petition of the National Customs Brokers and Forwarders Association of America, Inc. for Limited Exemption from Certain Tariff Requirements of the Shipping Act of 1984 [Petition No. P5-03]; Petition of Ocean World Lines, Inc., for a Rulemaking to Amend and Expand the Definition and Scope of "Special Contracts" to Include All Ocean Transportation Intermediaries [Petition No. P7-03]; Petition of BAX Global Inc. for Rulemaking [Petition No. P8-03]; Petition of C.H. Robinson Worldwide, Inc. for Exemption Pursuant to Section 16 of the Shipping Act of 1984 to Permit Negotiation, Entry and Performance of Confidential Service Contracts [Petition No. P9-03]; Petition of Danzas Corporation d/b/a Danmar Lines Ltd.; Danzas AEI Ocean Services and; DHL Danzas Air and Ocean for Exemption from the Tariff Publishing Requirements of Section 8 of the Shipping Act of 1984, as Amended [Petition No. P1-04]; Petition of BDP International, Inc. for Exemption from the Tariff Publishing Requirements of Section 8 of the Shipping Act of 1984, as amended [Petition No. P2-04]; Petition of FEDEX Trade Networks Transport & Brokerage, Inc. for Exemption from the Tariff Publishing Requirements of Sections 8 and 10 of the Shipping Act of 1984, as Amended [Petition No. P4-04], 30 S.R.R. 349 (September 2, 2004).

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

United Parcel Service (“UPS”), C.H. Robinson Worldwide, Inc., Danzas Corporation, BDP International, Inc. and FEDEX Trade Networks Transport & Brokerage, Inc. each request individual exemptions from the Shipping Act. They argue that changes in the ocean freight industry since the passage of OSRA, the growth of integrated logistics services, the promotion of greater competition in the marketplace, and the ability to provide lower-cost and more efficient service for shippers warrant the Commission granting their requests to provide confidential service contracts as carriers to their shipper customers. The National Customs Brokers and Forwarders Association of America, Inc. (“NCBFAA”), a national trade association representing the interests of freight forwarders, NVOCCs and customs brokers in the shipping industry, seeks an exemption from the tariff filing requirements for all NVOCCs. NCBFAA presents arguments similar to UPS and C.H. Robinson, but also asserts that the tariff system is outdated and impractical. As such, NCBFAA requests that the Commission exempt NVOCCs from certain provisions of sections 8 and 10 of the Shipping Act, which require NVOCCs to establish, publish, maintain and enforce tariffs setting forth ocean freight rates, thereby relieving NVOCCs from the administrative burden and cost of tariff publication, and enabling them to negotiate rates specific to shippers’ requirements. In the alternative, if the Commission finds that it does not have the authority to issue the requested exemption, NCBFAA seeks a more limited exemption from section 8 and a rulemaking modifying part 520 of the Commission’s regulations that would allow NVOCCs to establish and maintain “range rates” in lieu of specific rates covering their rates and charges. Ocean World Lines, Inc. requests a rulemaking to expand the definition and scope of the term “special contracts” in the Commission’s regulations to include NVOCCs if UPS and/or NCBFAA’s petitions are not granted. Finally, BAX Global Inc. seeks a rulemaking to permit BAX and other similarly situated entities (a determination to be based on assets, corporate format, and regulatory history) to enter confidential service contracts as “ocean common carriers” with their shipper customers. The Commission sought comment on the petitions from interested persons.

On August 2, 2004, the National Industrial Transportation League, UPS, BAX, FEDEX, Transportation Intermediaries Association, C.H. Robinson Worldwide, Inc. and BDP International, Inc. filed a Motion for Leave pursuant to Rule 73, 46 CFR § 502.73, to file Joint Supplemental Comments Requesting Expedited Adoption of a Conditional Exemption from Tariff Publication. The moving parties sought acceptance of their Supplemental Comments into the record, as the comments reflect an updated, unified version of the various forms of relief requested in the original individual petitions. The moving parties request that the Commission use its authority under section 16 of the Shipping Act to exempt certain NVOCC agreements with shippers from the tariff publication requirements in the Shipping Act and the Commission’s Rules and Regulations, as well as the tariff-related prohibited acts found in the Shipping Act. The proposed exemption would apply to any written agreements between an NVOCC and shipper (excluding bills of lading, receipts or other transport documents), where the shipper pledges to provide a specific volume/portion of cargo over a fixed time period while the NVOCC commits to a defined rate and service level. According to the Movants, the proposed exemption would be subject to the following conditions: (1) the agreements and their essential terms must be filed confidentially with the Commission; (2) the NVOCC must publish a tariff that includes the origin and destination port ranges, commodity involved, minimum volume/portion, and duration of the agreement; and (3) the Commission would retain jurisdiction to the same extent as it does over service contracts under the Shipping Act. The Commission granted the Motion for Leave and reopened the comment period until September 30, 2004. Comments were received, and the Commission is

reviewing those and analyzing its options. The Commission anticipates addressing this matter in a meeting early in fiscal year 2005.

Petition of the Association of Bi-State Motor Carriers, Inc. to Investigate Truck Detention Practices of the New York Terminal Conference at the New York/New Jersey Port District [Petition P3-02], 30 S.R.R. 104 (February 20, 2004).

The Commission denied a petition involving the truck detention regulations of MTO members of the New York Terminal Conference (“NYTC”) in the New York/New Jersey Port District. The petitioner, the Association of Bi-State Motor Carriers, Inc., is an organization comprised of approximately 40 members of various small- to medium-sized independent trucking companies that provide the majority of local drayage at the port. Bi-State claimed that the NYTC’s truck detention regulations were deliberately crafted and executed to avoid the fair calculation of truck detention penalties. As such, Bi-State argued that NYTC and its MTO members were in violation of section 10(d)(1) of the Shipping Act, 46 U.S.C. app. § 1709(d)(1), which prohibits MTOs from establishing, observing and enforcing unjust and unreasonable practices and regulations relating to receiving, handling, storing or delivering property. Bi-State requested that the Commission initiate an investigation of the NYTC’s truck detention activities under section 11(c) of the Shipping Act, 46 U.S.C. app. § 1710(c).

Bi-State also requested that the Commission reconsider its 1994 decision to eliminate truck detention penalty requirements for the port from Commission regulations. From the 1960s to the early 1990s, the Commission administered truck detention regulations directed specifically at the Port of New York in an effort to alleviate the excessive and unusual delays caused by MTOs in the handling and interchange of freight between ocean and motor carriers. In 1992 the Commission undertook a comprehensive review of its regulations to eliminate outdated provisions. The Commission’s view was that modern containerization and technological advancements had altered marine terminal operations in such a way that removal of the regulations was justified. Public comment failed to prove otherwise, and the Commission determined to abrogate the regulations in 1994.

The Commission’s reason for denial was that the petition failed to establish sufficient facts to warrant both the initiation of an investigation and the reconsideration of the abrogation of the former truck detention rules.

2. Litigation

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

The following is representative of matters litigated by the Office:

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

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

On August 15, 2002, NOS filed a petition for review in the U.S. Court of Appeals for the District of Columbia Circuit. The Commission, joined by the Department of Justice, filed a brief on January 29, 2003, urging the Court to uphold the Commission’s dismissal of the complaint. Oral argument was heard on September 12, 2003. On September 29, 2003, the Court issued a memorandum opinion in which it affirmed the Commission’s decision in all respects. NOS filed a petition for rehearing on November 13, 2003. That petition was denied on November 20, 2003.

3. Legislative Activities

The General Counsel represents the Commission’s interests in all matters before Congress. This includes preparing testimony for Commission officials, responding to Congressional requests for assistance and information, commenting on proposed legislation, proposing legislation, and responding to requests from the Office of Management and Budget (“OMB”) regarding proposed bills and testimony.

During fiscal year 2004, 135 bills, proposals and Congressional inquiries were referred to the Office of the General Counsel for comment. The Office prepared and coordinated testimony for the agency’s fiscal year 2005 budget authorization hearing before the U.S. House of Representatives Committee on Transportation and Infrastructure, Subcommittee on Coast Guard and Maritime Transportation. The Office also submitted comments to Congressional staff on the continuing efforts to revise, codify and enact certain maritime laws as part of Title 46, U.S. Code, *Shipping*.

In fiscal year 2005, the Office will continue to take the lead in providing assistance and technical advice to Congress regarding issues for possible legislative consideration, with particular emphasis on port and maritime security initiatives. The Office will recommend legislative and regulatory amendments as necessary to ensure uniformity with other Federal initiatives to allow for the efficient and secure flow of ocean transportation. The Office will continue to serve as liaison with other Federal agencies with respect to port and maritime security, promoting information-sharing and a coordinated approach to maritime security.

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 2004, the Commission continued to monitor potentially restrictive shipping practices of the Governments of Japan and the PRC.

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

The Commission also continued to follow restrictive practices in China through Docket No. 98-14, *Shipping Restrictions, Requirements and Practices of the People's Republic of China*. On August 12, 1998, the Commission issued Information Demand Orders to vessel-operating carriers of the U.S. and the PRC for information on Chinese policies and practices regarding port access, the licensing of multimodal transport operations, and the establishment of representative and branch offices. The Commission stated in June 1999 that the responses to the FMC's inquiries indicated that Chinese laws and regulations discriminate against and disadvantage U.S. carriers and other non-Chinese shipping lines with regard to a variety of maritime-related services.

However, a number of subsequent developments made it desirable for the Commission to further review these matters and supplement the record: the entry into the U.S. trades of a new Chinese controlled carrier, China Shipping Container Lines; resumed bilateral maritime talks between the U.S. and China; acquisition of the U.S.-flag carrier, Sea-Land Service, Inc., by the parent of Maersk Line; a new Chinese Regulation on International Maritime Transport, effective January 1, 2002, issued by the PRC; and *Implementing Rules for the Regulations of the PRC on International Maritime Transportation* issued by the Chinese Ministry of Communications.

A bilateral U.S.-China Maritime Agreement was signed by Secretary of Transportation Norman Y. Mineta and his Chinese counterpart on December 8, 2003. On March 31, 2004, the Commission met to review developments in this docket and on April 1, 2004, determined to reopen the comment period in this docket, soliciting comments particularly on the impact and effects of the recently-signed bilateral Maritime Agreement. Comments were due June 1, 2004. Diplomatic notes bringing the Agreement into effect were exchanged on April 21, 2004. The Commission is reviewing the comments to determine whether any matters previously identified in this docket by the Commission merit further action.

The Commission's Permanent Task Force on International Affairs, chaired by the Deputy General Counsel, is a network of representatives from a number of Commission bureaus and offices. The Task Force meets to exchange information regarding new or continuing areas of concern relating to restrictive foreign shipping practices possibly necessitating action under one of the Commission's statutory authorities in this area. The regular meetings and activity reports of the Task Force also aid the Commission in developing efficient methods to address conditions as they arise.

Another responsibility of the Office is the identification and verification of controlled carriers under section 9 of the Shipping Act. Common carriers that are owned or controlled by foreign governments are required to adhere to certain requirements under the Act, and their rates are subject to Commission review. The Office investigates and makes appropriate recommendations to the Commission regarding the status of potential controlled carriers. The Office, in conjunction with other Commission components, also monitors the activities of controlled carriers. One common carrier was redesignated by the office as a "controlled carrier" on September 27, 2004.

In fiscal year 2005, the Office will continue to take the lead in accomplishing the agency's performance goals related to eliminating restrictions that unjustly disadvantage U.S. interests, by monitoring, through the Permanent Task Force on International Affairs, foreign laws and practices to determine whether there are any unjust non-market barriers to trade. The Office will recommend appropriate action to the Commission as warranted.

5. Designated Agency Ethics Official

The Ethics Official is structurally located within the Office of the Chairman, but the position is performed as a collateral duty by the Deputy General Counsel.

The Commission's Ethics Official is responsible for administering public and confidential financial disclosure systems in order to prevent conflicts of interest from arising in the execution of the agency's regulatory functions. The Ethics Official also conducts annual training and the day-to-day dispensing of advice and guidance to ensure compliance with the standards of ethical conduct that apply to Executive Branch officials. In March 2004, the Commission's ethics program received an award from the U.S. Office of Government Ethics, in recognition of outstanding achievement in the administration of the program.

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, implement and manage a comprehensive program of equal employment opportunity. The EEO program is statutorily mandated with required activities in complaints processing, adjudication, affirmative program planning, special emphasis programs, community outreach, monitoring and evaluation. The Director, EEO ("DEEO")

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 DEEO arranges for EEO counseling or ADR for employees who raise allegations of discrimination; provides for the investigation, hearing, fact-finding, adjustment, or early resolution of such complaints of discrimination; accepts or rejects formal complaints of discrimination; prepares and issues decisions for resolution of formal complaints; and monitors and evaluates the program's impact and effectiveness. The DEEO represents the agency on several intergovernmental committees, coordinates all affirmative program planning efforts, directs programs of special emphasis, and coordinates the activities of the Selective Placement and Federal Equal Opportunity Recruitment Coordinators. The DEEO also supervises two collaterally-assigned EEO counselors.

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.**

Significant accomplishments in fiscal year 2004 included the following:

1. **Provided briefings to senior staff.**
2. **Planned EEO training for all employees.**
3. **Provided counseling assistance to managers, supervisors and employees.**
4. **Conducted a survey on women's issues and compiled and distributed the responses to all managers/supervisors and women.**
5. **Reviewed and assessed management and personnel human resource activity and actions.**
6. **Maintained an effective discrimination complaint process that attempted to resolve issues informally, expeditiously, and at the lowest possible level.**
7. **Provided support and assistance to managers and supervisors in maintaining and effectively managing a diverse workforce.**

- 8. Developed information and materials for training senior executives, Area Representatives, EEO counselors and other staff.**
- 9. Planned and developed special emphasis programs for FMC employees, including multicultural and Black history programs.**
- 10. Improved FMC's image and identity among Federal agencies and the community by developing cooperative programs in the special emphasis areas.**
- 11. Continued non-discrimination policy and programs in response to Pub. L. No. 103-123.**

During fiscal year 2005, the Office will continue all existing programs and initiate additional activities designed to increase an understanding of EEO concepts and principles.

E. OFFICE OF THE INSPECTOR GENERAL

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

It is the duty and responsibility of the OIG to:

- **Provide policy direction for and conduct, supervise, and coordinate audits and investigations relating to the Commission's programs and operations.**
- **Review existing and proposed legislation and regulations relating to the Commission's programs and operations and to make recommendations concerning the impact of such legislation or regulations on the economy and efficiency in, and the prevention and detection of fraud and abuse in, the administration of the Commission's programs and operations.**
- **Recommend policies for, and conduct, supervise, or coordinate other activities carried out or financed by the Commission for the purpose of promoting economy and efficiency in the administration of, or preventing and detecting fraud and abuse in, the Commission's programs and operations.**
- **Recommend policies for, and conduct, supervise, or coordinate relationships between the Commission and other Federal agencies, state and local governmental agencies, and nongovernmental agencies with respect to all matters relating to: the promotion of economy and efficiency in the administration of, or the prevention and detection of fraud and abuse in, programs and operations administered or**

financed by the Commission; and the identification and prosecution of participants in any fraud or abuse.

- **Keep the Chairman and the Congress fully and currently informed by means of semiannual and other reports concerning fraud and other serious problems, abuses, and deficiencies relating to the administration of programs and operations administered or financed by the Commission; recommend corrective action concerning such problems, abuses, and deficiencies; and report on the progress made in implementing such corrective action.**

During fiscal year 2004, the Office issued the following audits in final:

- A04-01 *Audit of Simplified Acquisitions***
- A04-02 *Audit of User Fees (OTI Applications)***
- A04-03 *Review of EEO Program***
- A04-04 *Financial Statement Audit - FY 04***
- A04-05 *Federal Information Security Management Act - Inspector General Evaluation Report***

In addition to these completed audits, the OIG initiated a review of the Commission's agreement filings to determine whether the Commission has proper controls in place in connection with the receiving and processing of fees in connection with agreement filings.

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 2005, the OIG plans to conduct two statutorily required audits – one in the information technology area pursuant to the Federal Information Security Management Act ("FISMA"), and the other in the financial area relating to the required audit of the agency's financial statements for fiscal year 2005. The Office will continue to perform evaluations of agency programs and operations as it carries out the OIG's statutory mandate to combat waste, fraud and abuse in agency programs. These audits are tied to both the agency and the OIG strategic plans. The Office also will initiate investigations, both formal and informal, as warranted.

The IG, as an active member of the Executive Council on Integrity and Efficiency, will continue working with that group on joint projects which affect the IG community.

F. OFFICE OF ADMINISTRATION

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

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

The Director, OA, provides administrative guidance to the:

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

and administrative assistance to the:

- **Offices of the Chairman and Commissioners,**
- **Office of the Inspector General, and**
- **Office of Equal Employment Opportunity.**

The Director, OA, is the FMC’s Chief Acquisition Officer and Audit Followup and Management (Internal) Controls Official. The Director also serves as the FMC’s representative, as Principal Management Official, to the Small Agency Council (“SAC”). As the Chief Financial Officer, the Director provides program oversight for the agency’s budget and financial management responsibilities, and ensures agency compliance with the Financial Integrity Act, the Antideficiency Act, and the Debt Collection Improvement Act of 1996. The Director also serves as the agency’s lead executive for strategic planning and implementation of the Government Performance and Results Act of 1993 (“GPR”).

The Deputy Director of Administration is the FMC’s Chief Information Officer (“CIO”). He also serves as the FMC’s Competition Advocate.

At the start of fiscal year 2004, the activities of OA were part of the Office of the Executive Director (“OED”). The OED was eliminated during an agency-wide realignment in August 2004, and OA was created with responsibilities for a number of the functions of the former OED.

The former OED accomplished significant programmatic achievements in the administrative arena during fiscal year 2004. Recruiting a full-time IT Security Officer was a major element in OED's efforts to enhance the agency's IT program and address recommendations made by the Inspector General through a contractor assessment of agency IT operations. Also, the agency's financial management system received an unqualified opinion in its fiscal year 2004 financial audit. OED again directed preparation of an update of the agency's five-year Strategic Plan, as well as preparation of the Annual Performance Plan and the Annual Program Performance Report, as required by GPRA. OED also prepared the Federal Activities Inventory Reform Act report, the Federal Managers' Financial Integrity Act report, and transmittal letters for the Inspector General's semiannual reports to Congress, as well as a report to Congress on the Commission's current IT improvement initiatives and long-term technology improvement plan. Also during the fiscal year, OED oversaw efforts to address remaining transition activities related to the conversion to the agency's new personnel/payroll and accounting cross-service providers (the National Finance Center - "NFC" - and the Bureau of Public Debt - "BPD," respectively). OED also directed the update of the internal Commission issuances that specify procedures for a variety of programs and activities, and guided Commission efforts to comply with FISMA. Additionally, OED guided the development of the fiscal year 2006 budget request to OMB and the fiscal year 2005 President's Budget submission, and directed all efforts involving the audit of the Commission's fiscal year 2003 financial statements, including preparation of the Management Discussion and Analysis ("MD&A") portion. Also, for a portion of the year, the OED served as coordinator for the agency-wide Technical Users Group, which seeks to improve IT decisionmaking and provide better dissemination of IT-related information.

OA's key objectives for fiscal year 2005 are implementing the Chairman's policy directions aimed at refining and enhancing agency administrative programs and operations, as well as monitoring the accomplishment of agency performance goals; facilitating further IT improvements, including the enhancement of the Commission's mission-critical Internet-based Service Contract Filing System ("SERVCON"), the redesign of the agency's Internet website, and the automation of forms and reporting requirements; further development of emergency preparedness and continuity of operations planning; and ensuring effective strategic succession planning for upper-level managers. OA also will take the lead in ensuring an effective agency-wide computer security program, and that the agency's financial management system receives an unqualified opinion in annual financial audits. Additionally, OA will continue to emphasize improved customer services for Commission staff and externally mandated government-wide programs.

1. Office of Budget and Financial Management

(a) General Office Responsibilities

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

(b) Achievements

During fiscal year 2004, OBFM:

- **Collected and deposited \$3,392,355 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 2005 Congressional budget and fiscal year 2006 budget to OMB.**
- **Prepared a variety of external reports, including: the Annual Leave Year Report and the Report on Workyears and Personnel Costs for 2003 (Office of Personnel Management - "OPM"); the Report on International Travel for FY 2003 (OMB); the Report on First-Class Airline Accommodations for fiscal year 2003 (General Services Administration - "GSA"); and the quarterly Continuation of Pay Reports (Department of Labor).**
- **Prepared monthly status reports on workyears, funding, travel and receivables.**
- **Managed the Commission's travel, transit benefits and cash management programs.**
- **Worked with management to develop a process for the individual offices/bureaus to forecast annual budgets in accordance with the Commission's strategic goals.**
- **Developed new allocation reports to provide management with timely expense data by program.**
- **Worked with BPD staff and auditors regarding the audit of fiscal year 2003 financial statements.**
- **Pursued all delinquent receivables and referred a number of debts to the Department of Treasury for collection.**
- **Served on the biennial committee to review and update user fees.**
- **Prepared the Commission's draft MD&A for fiscal year 2004.**

(c) Future Plans

Financial management goals in fiscal year 2005 include: (1) continued development of a fully integrated financial management system; (2) in conjunction with the Offices of Management Services and Information Technology, continued implementation of electronic commerce to automate the processing of official travel documents, purchase orders, obligations and payments; (3) reviewing

procedures and controls for cash management; and (4) an ongoing pursuit of initiatives leading to economy and efficiency in budget and financial operations.

2. Office of Human Resources

(a) General Office Responsibilities

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

(b) Achievements

During fiscal year 2004, OHR:

- **Monitored activities of the agency’s payroll/personnel service provider, NFC, and responded to internal and external financial audits and related inquiries.**
- **Served as advisor for the agency’s Senior Executive Service (“SES”) Candidate Development Program to address executive succession, and coordinated Program close-out activities, including obtaining certification of candidates through OPM qualifications review boards.**
- **Conducted a comprehensive training program in accordance with the agency’s budget and strategic and annual performance plans, providing executive training for SES candidates, promoting e-learning and on-line training opportunities, implementing the college tuition reimbursement program, coordinating with the IT Security Officer to ensure the conduct of computer security awareness training, and participating in the SAC Training Program.**
- **Conducted a comprehensive security program, including initiating and adjudicating security investigations for new and reinvestigated employees, and completing work necessary for reporting and updating data in the Clearance Verification System pursuant to the e-clearance initiative.**
- **Conducted a comprehensive recruitment program utilizing alternatives for recruitment such as those under the Direct-Hire Authority, delegated examining, and the Veterans Employment Opportunities Act.**
- **Coordinated with OPM, OMB and pertinent partners on a variety of human capital initiatives, such as the Partnership for Public Service.**

- **Promoted the Preventive Health and Awareness Program and issued a semi-monthly newsletter and e-mail notices focusing on monthly preventive health themes and related health issues, e.g., Employee Assistance and Federal Occupational Health Programs.**
- **Administered action on e-government initiatives such as Recruitment One-Stop, e-payroll, Enterprise Human Resources Integration, and e-learning.**
- **Coordinated post-appointment followup and career development for Presidential Management Fellows.**
- **Managed and conducted numerous employee benefit and charitable contribution programs and open seasons, such as the Combined Federal Campaign, Thrift Savings Plan, Federal Employees Government Life Insurance Program, Long Term Care Insurance Program, and Flexible Spending Account Program.**
- **Conducted a cyclical position management review program to maintain balanced organizational structures, ensure positions remained current and accurately classified, and to effect realignment of organizational programs and functions.**

(c) Future Plans

In fiscal year 2005, 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 performance goals related to the management of human resources; (3) explore and implement simplification, flexibility, and accountability of human resources management programs; and (4) monitor processes and database modernization activities of the NFC in conjunction with the government-wide e-payroll initiative and ensure timely and accurate payroll and personnel services.

3. Office of Information Technology

(a) General Office Responsibilities

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

The OIT Director oversees the IT security program and serves as the Commission's Information Technology Officer, Information Resources and Data Telecommunications Manager, Forms Control Officer, and Records Management Officer. OIT plans, coordinates, and facilitates the use of automated information systems.

(b) Achievements

During fiscal year 2004, OIT:

- **Developed and realigned the structure of the IT program for more streamlined operations.**
- **Implemented service-level agreements and standard operating procedures for providing Help Desk support to FMC staff.**
- **Initiated the upgrade of the Commission's network infrastructure to include increased network bandwidth.**
- **Upgraded the Commission's e-mail system and workstations (desktops and laptops).**
- **Created an Asset Management Committee to research and implement processes to manage and guide acquisition, use, disposal, risks, and costs of assets over their entire life.**
- **Initiated the development of an IT Test Lab and User Support Center for testing hardware and software and to provide user assistance.**
- **Implemented a formal IT change control process which incorporates major changes being reviewed and approved by the Configuration Control Board/Technical Users Group.**
- **Furnished agency-wide advice and coordination on records management, OMB clearances and information management issues, including performing an agency-wide records management review to identify records eligible for disposal, and assisting program units in securing OMB extensions for a number of information collections.**
- **Initiated a contract for the replication of and enhancements to the FMC's SERVCON system.**
- **Maintained and enhanced the FMC website, and provided advice and technical support to all bureaus and offices in developing Internet and database applications.**
- **Initiated and administered contracts to provide IT support and other services to further the Commission's mission.**

(c) Future Plans

Major OIT initiatives for fiscal year 2005 include plans to: (1) increase network bandwidth; (2) ensure compliance with government programs such as FISMA and the President's Management Agenda; (3) lead the major enhancement or rewrite of SERVCON; (4) establish a plan to develop an FMC Enterprise Architecture; (5) improve the Capital Planning and Investment Control process; (6) continue to develop plans to stabilize all critical systems and recommend enhancements to the existing IT infrastructure; (7) develop and submit to the National Archives and Records Administration schedules for electronic records and other records not currently scheduled or covered by the General Records Schedule; (8) provide continued agency-wide advice and coordination on records management, OMB clearances and information management issues; (9) continue maintenance and updating of the Commission's website; (10) implement the Government Paperwork Elimination Act ("GPEA") Execution Plan; (11) continue to investigate options to partner with other agencies' initiatives to better serve the public in the dissemination and collection of information; (12) upgrade the network security infrastructure (*i.e.*, firewall, routers, switches, and DMZ); and (13) further implement the IT Test Lab and User Support Center.

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 2004, OMS:

- **Coordinated and completed tenant improvement alterations at the agency's Headquarters facilities to include redesign and construction throughout the office space.**
- **Coordinated and completed the renovation of the agency's Headquarters facilities to include re-painting and re-carpeting of all office space.**
- **In coordination with OHR, acquired, and established policies and procedures for implementation of a new ID Security Access System for Headquarters space.**

- **Coordinated with GSA and served as lead agency for monitoring and oversight of the new security force contract at the agency's Headquarters location, and served as Chairman of the tenants' Building Security Committee.**
- **Revised and distributed a building-wide Occupant Emergency Plan for Headquarters building.**
- **Developed and distributed new Emergency Preparedness Manuals to agency personnel in response to the changes in security and emergency preparedness throughout the Metropolitan area.**
- **Developed and implemented a Headquarters Sheltering-In-Place ("SIP") plan and held an initial SIP drill with DHS's Federal Protective Service as observer.**

(c) Future Plans

In fiscal year 2005, the Office's objectives include: (1) complete the construction alterations required by the agency's realignment of August 2004; (2) continue to work with GSA, DHS, and other tenant agencies at Headquarters facilities and field locations to upgrade and/or improve the buildings' security measures and emergency preparedness for better control of office space and safety of agency personnel; and (3) continue to provide advice and assistance to FMC activities regarding innovative support service approaches.

G. OFFICE OF OPERATIONS

The Director of Operations, as senior staff official, is responsible to the Chairman for the management and coordination of the following Commission bureaus:

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

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

In addition, the Office of Operations oversees the Area Representatives. The Commission maintains a presence in Los Angeles, South Florida, 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.

At the start of fiscal year 2004, the activities of the Office of Operations were part of the Office of the Executive Director. In an agency-wide realignment in August 2004, the Office of Operations was created and assumed responsibility for a number of the functions of the former Office of the Executive Director.

The former Office of the Executive Director supported the operational bureaus through oversight and guidance towards the accomplishment of many programmatic achievements during fiscal year 2004. In particular, the Office guided staff efforts in preparing a comprehensive update and revision of the Commission's regulations dealing with the filing and oversight of ocean common carrier and marine terminal agreements. Additionally, the Office oversaw the continuation of a series of outreach seminars conducted by the agency's Area Representatives around the country, designed to further the FMC's visibility in port locations and to provide the public with a greater understanding of the agency's role, responsibilities and services. The Office assisted the staff and the General Counsel in consideration of several petitions asking the Commission to grant NVOCCs the authority to offer individualized arrangements to their customers.

The Office of Operation's key objectives for fiscal year 2005 include instituting the Chairman's policy directions aimed at refining and enhancing agency programs and operations, as well as monitoring the accomplishment of agency performance goals. In particular, the Office will oversee the implementation of two rulemakings initiated in fiscal year 2004 -- the ocean common carrier and marine terminal agreements rule, and the rule creating NVOCC service arrangements. The Office will coordinate operational bureaus in their efforts to further automate various Commission forms and processes. In addition, the Office will work with the other components of the agency to coordinate various outreach programs in both the public and private sectors.

H. BUREAU OF CERTIFICATION AND LICENSING

1. General

The Bureau of Certification and Licensing has responsibility for the Commission's OTI licensing program and passenger vessel certification program. At the start of fiscal year 2004, activities of the ADR program were part of the Bureau, but now have been assigned to the Office of the Secretary. The Bureau:

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

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

The Bureau is organized into two offices. The Office of Transportation Intermediaries has responsibility for reviewing and approving 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, for 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.

2. Licensing of Ocean Transportation Intermediaries

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

To be licensed, an OTI must establish that it is qualified in terms of experience and character, as well as establish its financial responsibility by means of a bond, insurance or other instrument. Licensed ocean freight forwarders must establish financial responsibility in the amount of \$50,000, and licensed NVOCCs, \$75,000. An additional \$10,000 coverage is required for each unincorporated U.S. 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 2004, the Commission received 313 new OTI applications and 209 amended applications, issued 245 OTI licenses, revoked 217 licenses, and reissued approximately 115 licenses. At the end of the fiscal year, 1,242 freight forwarders, 1,401 U.S. NVOCCs, 946 joint NVOCC/ocean freight forwarders, and 36 foreign NVOCCs held active OTI licenses. An additional 775 foreign NVOCCs maintained proof of financial responsibility on file with the Commission but chose not to be licensed. During fiscal year 2004, the Commission received 20 riders providing optional proof of financial responsibility for carriers serving in the U.S./China trade. Docket No. 04-02, *Optional Rider for Proof of Additional NVOCC Financial Responsibility*, implemented rules that permit U.S. NVOCCs to file riders to their existing NVOCC bonds to meet financial responsibility requirements imposed by the Chinese government.

The Bureau continues to post on the FMC website a list of licensed and bonded OTIs, which assists carriers in complying with their statutory mandate to do business only with those licensed by the Commission. The list is updated weekly.

3. Passenger Vessel Certification

The Commission administers sections 2 and 3 of Pub. L. No. 89-777 (46 U.S.C. app. §§ 817d and 817e), which require evidence of financial responsibility for vessels which have berth or stateroom accommodations for 50 or more passengers and embark passengers at U.S. ports and territories. The program now encompasses 190 vessels and 51 operators, which have evidence of financial responsibility coverage in excess of \$318 million for nonperformance and over \$618 million for casualty. The certificates issued pursuant to this program are necessary for CBP's clearance of thousands of passenger vessel sailings annually. During fiscal year 2004, the Commission received applications for 109 certificates (casualty and performance), while 53 casualty certificates and 54 performance certificates were approved and issued.

In conjunction with the newly organized Office of Consumer Affairs and Dispute Resolution Services, 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.

Despite the war in Iraq, a weak economy, and the increased cost of safety and security for passengers and crews, the North American cruise industry continues to grow. The cruise industry is a rapidly expanding global industry. During the current decade, it has continued to expand capacity by adding more than 20 ships and over 50,000 berths to its fleets. According to *The Cruise Industry 2003 Economic Summary*, the cruise industry has increased its contribution to the U.S. economy by 11 percent, to \$25.4 billion. This is due to the passenger growth reflected by the changing deployment strategy of the cruise industry to smaller ports near major coastal cities close to large population centers. Even though the cruise industry is growing, smaller cruise operators continue to have difficulty competing with larger cruise lines. In recent years, this has been evidenced by the bankruptcy or suspension of operations of Premier Cruise Operations Ltd. (dba Premier Cruises), New Commodore Cruise Lines Ltd. (dba Commodore Cruise Lines and Crown Cruise Lines), Cape Canaveral Cruise Line, Inc., American Classic Voyages Company (dba Delta Queen Steamboat Company and American Hawaii Cruise), and Regal Cruises, Inc. During fiscal year 2004, Royal Olympic Cruises, Ocean Club Cruises, and Society Expeditions discontinued operations. When cruise lines become bankrupt, the Commission works closely with the cruise line and financial responsibility provider to facilitate the refund process. The public is kept informed through the issuance of press releases posted on the Commission's website and dispensing advice when the passenger public contacts the staff.

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

4. 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.

The Bureau maintains a list of licensed and bonded OTIs on the Commission's website, thus assisting carriers in complying with their statutory mandate to do business only with those licensed by the Commission. This is especially helpful as carriers may incur liability for doing business with an unlicensed OTI. An up-to-date list is a safeguard to the shipping public, and also protects licensees from losing business because of an inaccurate determination by a carrier as to whether the OTI is licensed. During fiscal year 2004, the Bureau added a field to indicate whether an NVOCC had filed an Optional Rider to its NVOCC OTI bond evidencing additional coverage to meet the NVOCC financial responsibility requirements of the Chinese government.

In fiscal year 2002, a database of passenger vessel operators was created; and during fiscal year 2004, the Bureau developed a number of reports to aid in monitoring the cruise lines.

I. BUREAU OF ENFORCEMENT

The Bureau of Enforcement is the primary prosecutorial arm of the Commission. Attorneys of the Bureau serve as trial attorneys in formal proceedings instituted under section 11 of the 1984 Act, and in investigations instituted under the FSPA. Bureau attorneys serve as legal advisors to the Office of Operations 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 Director of Operations and the other bureaus. The Bureau also participates in the development of Commission rules and regulations. On occasion, under the direction of the General Counsel, attorneys from the Bureau may participate in matters of court or other agency litigation to which the Commission is a party.

Through investigative personnel, and most often as the result of information provided by the industry and other government entities, the Bureau monitors and participates in 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 involve alleged violations of the full range of statutes and regulations administered by the Commission, including: illegal or unfiled agreements; abuses of antitrust immunity; unlicensed OTI activity; 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 Bureau prepares and serves notices of violations of the shipping statutes and Commission regulations and may compromise and settle civil penalty demands arising out of those violations. If settlement is not reached, Bureau attorneys act as prosecutors in formal Commission proceedings that may result in settlement or in the assessment of civil penalties. The Bureau also participates, in conjunction with other bureaus, in special enforcement initiatives, fact finding investigations and rulemaking efforts.

During fiscal year 2004, the Bureau of Enforcement investigated and prosecuted malpractices in many trades lanes, including the transpacific, North Atlantic, Central and South American and Caribbean trades. These malpractices included market-distorting activities such as various forms of secret rebates and absorptions, misdescription of commodities and misdeclaration of measurements, illegal equipment substitution, unlawful use of service contracts, as well as carriage of cargo by and for untariffed and unbonded NVOCCs. Most of these malpractice investigations were resolved informally, some with 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 activity, several matters arose with respect to activities pursuant to filed and unfiled agreements between and among ocean common carriers. Further, a formal investigation continued to examine the lawfulness of exclusive tug service arrangements at marine terminal facilities on the Lower Mississippi and remained in litigation at the end of fiscal year 2004. Also, an investigation was commenced into an exclusive arrangement at Portland, Maine, which appeared to foreclose competition among passenger/passenger vehicle carriers in the Portland/Nova Scotia trade.

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

In fiscal year 2004, the compliance audit program continued. This program, conducted from Headquarters primarily by mail, reviews the operations of licensed OTIs to assist them in complying with the statutory requirements and the Commission's rules and regulations. The audit program also includes review of entities holding themselves out as VOCCs with no indication of vessel operations.

At the beginning of fiscal year 2004, 41 enforcement cases were pending final resolution by the Bureau, the Bureau was party to 9 formal proceedings, and there were 80 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; 32 were compromised and settled, administratively closed, or referred for formal proceedings; and 39 enforcement cases were pending resolution at fiscal year's end. Also, the Bureau participated in 4 new formal proceedings, 6 proceedings were completed, and 7 formal proceedings were pending at the end of the fiscal year. Additionally, 44 matters involving monitoring or legal advice were received during the fiscal year, 64 such matters were completed, and 60 were pending in the Bureau on September 30, 2004.

In fiscal year 2005, the Bureau will continue to pursue market-distorting, fraudulent and anticompetitive practices and will continue to monitor U.S. trades and the implementation of the changes and regulations resulting from OSRA, to the extent that resources permit. It will pursue initiatives aimed at entities not in compliance with the Commission's regulations for OTI participation in transportation, its definition of VOCC, as well as instances of noncompliance with regulatory requirements for service contracts and NVOCC service arrangements.

J. 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 MTO 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, carrier pricing and service activities.

For a description of the Bureau's monitoring activities for fiscal year 2004, *see* Section III. A, *Monitoring*.

3. General Economic Analysis

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

Key projects begun or completed by the Bureau in fiscal year 2004 under this heading included: (1) exploring a methodology to consider constructive costs when determining whether a controlled carrier's rates or charges are below a level that is just and reasonable; (2) providing economic analysis, deposition and hearing preparations in connection with Docket No. 01-06, *Exclusive Tug Franchises - Marine Terminal Operators Serving the Lower Mississippi River*; (3) preparing an audit report of selected agreements' Voluntary Service Contract Guidelines for the 2003 contracting season; (4) assisting in the preparation of information for the Small Business Regulatory Flexibility Act and Congressional review of the final rule regarding *Optional Rider for Proof of Additional NVOCC Financial Responsibility*; (5) preparing a quarterly *Trade Profile* publication spotlighting economic and commercial conditions in various U.S. liner trades; (6) preparing for and conducting semiannual meetings with TSA counsel and representatives as a result of the settlement of Fact Finding Investigation No. 25, *Practices of Transpacific Stabilization Agreement Members Covering the 2002-2003 Service Contract Season*; (7) preparing OMB forms and justification materials including burden estimates of the proposed rules on affected entities, reviewing comments received as a result of the Notice of Proposed Rulemaking, and drafting the final rule in connection with Docket No. 03-15, *Ocean Common Carrier and Marine Terminal Agreements Subject to the Shipping Act of 1984*; (8) classification of agreements to determine each agreement's monitoring report requirements for calendar year 2004; (9) responding to informal requests and inquiries for industry data or information; (10) involvement with the Automated Commercial Environment/International Trade Data System; (11) economic analyses of newly filed major agreements and amendments under the section 6(g) standard of the 1984 Act; (12) responding to complaints and requests from shippers on various matters, including the imposition of rate increases and/or surcharges by certain major agreements; (13) responding to Congressional requests for trade analyses and data; and (14) 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 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 also can be enjoined on a similar showing by the Commission. The 1984 Act empowers the Commission to investigate and order the disapproval, cancellation, or modification of any effective agreement it finds to be in violation of the Act. In an investigation, the Commission may seek to enjoin, in U.S. district court, conduct that violates the Act. Under the Commission's regulations, certain routine or nonsubstantive agreements are exempt from the 45-day waiting period and are effective on filing with the Commission.

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

(a) Conference Agreements

Conference agreements provide for the collective discussion, agreement, and establishment of ocean freight rates and practices by groups of ocean common carriers. Although conference carriers are allowed to act independently, the expectation is that they will adhere to rates and terms and conditions of service adopted by the group. These agreements publish a common rate tariff in which all the parties participate. The significance of conferences as a primary pricing forum has diminished, especially in the major east-west trade lanes, since the enactment of OSRA in 1999. This role for the most part has been taken over by voluntary rate discussion agreements. There have been no new conference agreements filed since 1999.

The Bureau received 14 modifications to existing conference agreements and analyzed 12 modifications in fiscal year 2004. These filings consisted of name and membership changes and continuing suspensions for two conference agreements. At the beginning of the fiscal year, three conference agreements had suspended their activities; during the fiscal year, two of those conference agreements were terminated. A conference agreement in the Colombian trade also was terminated during fiscal year 2004, and a conference agreement in the Indian subcontinent trade was converted to a voluntary rate discussion agreement. At the end of the fiscal year, there were 15 conference agreements on file; however, activities under one conference remain suspended.

(b) Discussion Agreements

Discussion agreements fall under two types: rate and non-rate agreements. Like conference agreements, rate discussion agreements focus on the fixing of rates; but unlike conferences, any consensus reached under rate discussion 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 two new discussion agreements and 63 modifications to currently effective agreements; modifications were mostly membership and name changes. In fiscal year 2004, the Bureau analyzed and processed 62 filings. At the end of the fiscal year, there were 31 rate discussion agreements and nine non-rate discussion agreements on file. Four rate discussion agreements and one non-rate discussion agreement were terminated during the fiscal year.

The most significant filing under this category in the past year was a new rate discussion agreement in the Indian Subcontinent trade. That agreement, entered into by some of the parties from the TSA, was filed following the removal of the Indian Subcontinent from the geographic scope of the TSA. The other major filing in this category was a new bridging agreement between a carrier and MTO rate discussion agreement and an MTO rate discussion agreement for the discussion of maritime security matters.

(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 cooperation. The objective of these agreements is to provide a high-quality service, while reducing individual operating costs.

During fiscal year 2004, the Bureau received 24 new VSAs, which represented 86 percent of all new agreement filings during the year, and 57 modifications to VSAs. The Bureau processed 73 filings during the fiscal year and 15 VSAs were terminated. One new VSA was withdrawn after questions were raised about the ocean common carrier status of one of the two parties. At the end of the fiscal year, there were 157 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.

No new joint service agreements and only one modification to an existing agreement were filed during fiscal year 2004. The Bureau processed the single filing during the year. One joint service agreement was terminated, leaving only six joint service agreements on file at the conclusion of the fiscal year.

(e) Cooperative Working and 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.

The Bureau received and processed 13 filings under these categories of agreements in fiscal year 2004. One new equipment interchange agreement was filed, and 12 modifications were filed amending CWAs and equipment interchange agreements. Ten CWAs and four Other agreements were on file at the end of fiscal year 2004. A CWA and an equipment interchange agreement were terminated during the year.

(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 2004, the Bureau received 32 and analyzed 30 terminal agreement filings relating to port and marine terminal services and facilities. Certain terminal agreements become effective upon filing under Commission rules that exempt particular classes of MTO 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, 322 terminal agreements were on file with the Commission.

Significant filings in this category during the fiscal year included a new MTO agreement between the Port of Long Beach and the Port of Los Angeles, an amendment to an MTO agreement among MTOs on the U.S. West Coast, and a CWA between the Port of Portland, Maine, and a cruise line. The new MTO agreement between the Ports of Long Beach and Los Angeles and the amendment to the West Coast MTO agreement both were intended to allow the parties in those respective agreements to discuss and develop a program for extended gate hours at the two ports. The CWA between the Port of Portland and the cruise line has an exclusivity clause that is currently being examined by the Commission in a formal proceeding.

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

5. Overview of Agreement Filings

In fiscal year 2004, the Bureau received 231 agreement filings, an amount identical to the number of agreement filings received in the previous fiscal year. The Bureau processed 220 agreement filings during fiscal year 2004. At the end of the fiscal year, there were 232 carrier agreements and 322 terminal agreements on file. Appendix C contains a breakdown of receipts and processing categories for fiscal year 2004.

6. Tariffs

Since May 1, 1999, section 8 of the 1984 Act, as amended by OSRA, requires common carriers and conferences to publish tariffs in private automated systems. These electronic tariffs contain rates, charges, rules, and practices of common carriers operating in the U.S. foreign commerce. The Bureau reviews and monitors the accessibility of the private systems, and reviews published tariff material for compliance with the requirements of the Shipping Act. The Bureau also determines whether to grant applications for special permission to deviate from tariff publishing rules and regulations and recommends Commission action on tariff publishing activities and regulations.

Two Circular Letters, No. 00-1, *Public Access to Tariffs and Tariff Systems under the Ocean Shipping Reform Act of 1998*, and No. 00-2, *Charges Assessed for Access to Tariffs and Tariff Systems*, have been issued by the Commission to address the carriers' automated tariff systems ("CATS"). The circulars were issued because the Commission was concerned that the public's ability to access some tariff systems appeared to be limited. In fiscal year 2004, the Commission's staff continued to contact carriers, conferences and tariff publishers to assist in the resolution of problems in certain CATS. Further, the staff reviewed electronically published tariffs to ensure that the provisions of the tariffs were in compliance with the Commission's tariff content rule. The Bureau continues to monitor electronically published tariffs to ensure that appropriate public access is provided and tariff content provisions are compliant.

The Bureau also collaborates with other components of the Commission to verify that NVOCCs comply with the Commission's licensing, bonding and tariff publication requirements. Further, the Bureau is directly involved in processing the electronic Form FMC-1 required to be filed with the Commission by carriers, conferences and MTOs. The data on this form identifies the location of carrier tariffs, including carrier and conference service contract essential terms publications or any MTO schedules. At the end of fiscal year 2004, a total of 3,613 tariff location addresses were posted on the Commission's website. Of the 3,613 tariff locations, 10 involve single carriers with multiple locations where their tariffs can be viewed. An additional 77 MTOs with Form FMC-1 submissions opted not to make tariff schedules publicly available.

During fiscal year 2004, the Bureau received and processed seven special permission applications to deviate from the statutory provisions of the 1984 Act and/or the Commission's tariff publishing regulations.

7. Service Contracts

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

In fiscal year 2003, the Commission added a new rule to its service contract regulations (Docket No. 03-03, *Amendment to Service Contract Regulations*) to permit VOCCs to correct an original filing that is defective due to an electronic transmission clerical error. The time to correct such SERVCON filing errors is limited to two business days after the initial, defective, electronic transmission. The rule became effective September 8, 2003. During fiscal year 2004, 1,480 records were filed into SERVCON involving electronic corrected transmission copies of service contract filings.

During fiscal year 2004, the Commission received 46,025 new service contracts (compared to 46,492 in fiscal year 2003), and 216,526 amendments (compared to 192,807 in fiscal year 2003).

8. Controlled Carriers

A controlled carrier is an ocean common carrier that is, or whose operating assets are, owned or controlled directly or indirectly by a government. Section 9 of the 1984 Act provides that no controlled carrier may maintain rates or charges in its tariffs or service contracts that are below a level that is just and reasonable, nor may any such carrier establish, maintain, or enforce unjust or unreasonable classifications, rules or regulations in those tariffs or service contracts. In addition, tariff rates, charges, classifications, rules, or regulations of a controlled carrier may not, without special permission of the Commission, become effective sooner than the 30th day after the date of publication.

By Order on March 27, 1998, the Commission granted one controlled carrier, China Ocean Shipping (Group) Company ("COSCO"), a limited exemption from the 30-day notice period applicable to controlled carriers to reduce rates to meet or exceed the filed rates of competing ocean common carriers. (Petition No. P1-98, *Petition of China Ocean Shipping (Group) Company for a Limited Exemption from Section 9(c) of the Shipping Act of 1984*.) The Commission streamlined and updated the procedures for COSCO to comply with this Controlled Carrier Act limited exemption in fiscal year 2001. In fiscal year 2004, COSCO exercised the authority granted by the Commission's Order in six instances.

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

In fiscal year 1999, COSCO petitioned for a further exemption from the 30-day notice period applicable to controlled carriers in order to publish rate decreases in the U.S. foreign commerce that would be effective upon publication without regard to whether they were the same as, or lower than, rates published by competing carriers. (Petition No. P3-99, *Petition of China Ocean Shipping (Group) Company for a Partial Exemption from the Controlled Carrier Act.*) In fiscal year 2003, similar petitions were made by China Shipping Container Lines Co., Ltd. (No. P4-03) and Sinolines (No. P6-03). These three petitions were granted on April 1, 2004.

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

On September 23, 2004, American President Lines, Ltd., and APL Co. Pte., Ltd. (“APL”), the ocean common carrier subsidiaries of Neptune Orient Lines (“NOL”), notified the Commission that Temasek Holdings (Private) Ltd., a holding company of the Government of Singapore, had acquired an ownership interest in NOL that exceeded 50 percent. Consequently, APL was classified as a controlled carrier effective September 27, 2004.

9. Non-Vessel-Operating Common Carriers

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

At the end of fiscal year 2004, a total of 3,105 tariff location addresses for NVOCCs had been posted on the Commission’s website. The Commission has been considering various petitions filed on behalf of NVOCCs to establish a service contract mechanism similar to the confidential service contracting system that became effective May 1999 under OSRA for ocean common carriers. The Commission anticipates addressing this matter early in fiscal year 2005.

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.

A total of 244 MTOs have Form FMC-1 filings. At the close of fiscal year 2004, of these 244 MTOs, 167 published their terminal schedules. The electronic location addresses for these MTO terminal schedules were posted on the Commission's website. Further, follow-up letters were sent to 49 other MTO entities to clarify whether they were still providing marine terminal services and, if so, informing them of the regulatory requirements to file a Form FMC-1 with the Commission.

11. Automated Database Systems

The Bureau currently maintains and uses the following automated databases and filing systems: (1) Form FMC-1 System; (2) Tariff Profile System; (3) SERVCON, the system for filing service contracts, and related Form FMC-83 system for registration to file service contracts; (4) Microfiche System; (5) historical ATFI tariff database system; (6) the tariff and service contract portions of the FMC Imaging System; and (7) the Agreement Profile System.

During fiscal year 2004, the Form FMC-1 System reflected the tariff location addresses of 315 VOCCs, 3,105 NVOCCs, 15 conferences, and 167 MTOs. The FMC-1 System also allows the Commission to quickly track the current status of any Form FMC-1 submitted. Information in the Tariff Profile System is used to review and analyze carrier tariffs and service contract essential terms publications to ensure compliance with Commission rules and regulations under OSRA, particularly the accessibility of carrier tariffs. SERVCON contains service contract data, most of which is only available to the Commission's staff due to OSRA's confidentiality requirements. Registration to file service contracts into the system is authorized through the submission of Form FMC-83. The historical ATFI database contains all tariff and service contract essential terms publication data filed electronically with the Commission between February 22, 1993, and April 30, 1999. The Microfiche System provides a means of locating canceled tariffs and amendments that have been microfiched. The FMC Imaging System, among other things, provides for document storage and retrieval of canceled tariffs and service contracts. The Agreement Profile System contains information about the status of carrier and terminal agreements, as well as related monitoring reports.

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

12. Future Plans and Proposed Activities

The Bureau's overall monitoring program will: focus on systematic oversight of carrier and trade activity with emphasis on upgrading monitoring systems to incorporate data and information that will be provided by carriers and MTOs; assess the impact of key issues facing the industry in order to monitor and anticipate developments in major trades and analyze agreements in the foreign trades under the standards of the 1984 Act; and continue to refine its section 6(g) monitoring methodology in evaluating the degree of anticompetitiveness generated by agreements within the context of their commercial environments. The Bureau also will continue to review tariffs and service contracts to ensure that they comply with the Shipping Act and the Commission's regulations, including the statutes and regulations related to controlled carriers. Proposed activities include: (1) streamlining features necessary to enhance the reliability and efficiency of SERVCON; (2) redesigning the internal agreement

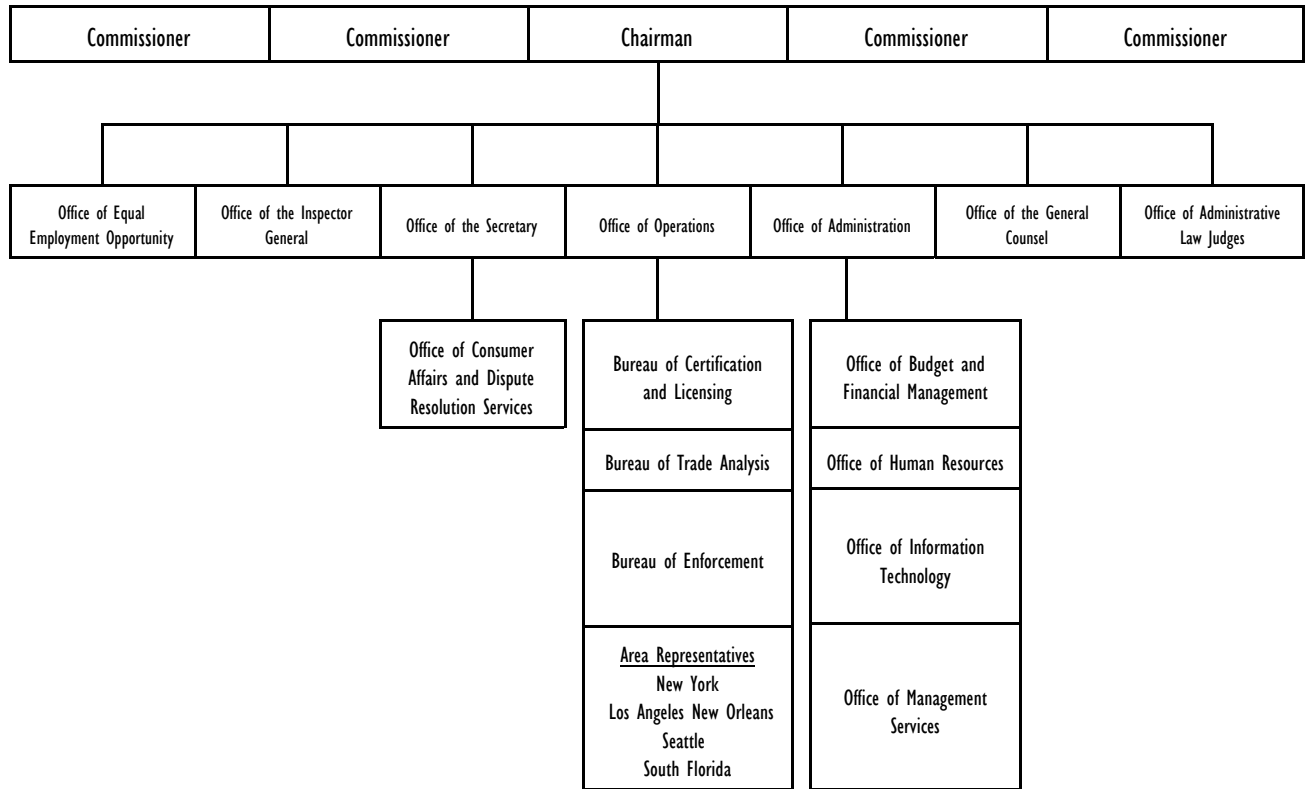
database to enable more efficient oversight of agreement activities; (3) improving staff understanding of the shipping industry relating to activities of carriers agreements, tariffs, service contracts and MTOs; and (4) implementing any provisions that may be adopted by the Commission addressing the NVOCC petitions to, among other things, file NVOCC confidential service arrangements. Final Rulemakings will be recommended in connection with Docket No. 03-15, *Ocean Common Carrier and Marine Terminal Agreements Subject to the Shipping Act of 1984*, and the establishment of criteria for determining ocean common carrier status under the 1984 Act. Further, a system is being developed to facilitate electronic filing of carrier agreements, minutes, monitoring reports and signatures for various FMC information forms to comply with the requirements of GPEA.

The Bureau also will continue to furnish support and prepare economic testimony in formal Commission proceedings arising in the areas of its expertise; provide analyses and recommendations on petitions, information demand orders, and Commission-initiated rulemakings; perform pre-effectiveness analyses of newly filed agreements to determine whether they are likely to raise issues and specific questions under sections 5, 6(g) and 10 of the 1984 Act, or to 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 2004



APPENDIX B

COMMISSION PROCEEDINGS Fiscal Year 2004

Formal Proceedings

<i>Decisions</i>	2
<i>Discontinuances & Dismissals</i>	15
<i>Initial Decisions Not Reviewed</i>	1
<i>Rulemakings - Final Rules</i>	1

***Total*** 19

***Special Dockets*** 2

***Informal Dockets*** 6

APPENDIX C

AGREEMENT FILINGS AND STATUS Fiscal Year 2004

Agreements Filed in FY 2004 (including modifications)

Carrier	199
Terminal	32
Total	231

Agreement Processing Categories in FY 2004

Forty-Five Day Review	49
Shortened Review	28
Exempt-Effective Upon Filing	141
Rejection of Filing	0
Formal Extension of Review Period	0
Not Subject	0
Withdrawals	2

Total 220

Carrier Reports Submitted for Commission Review

Minutes of Meetings and Ad Hoc Reports 661
Monitoring Reports 272

Total 933

Agreements on File as of September 30, 2004

Conference 15
Discussion 40
Joint Service 6
Vessel-Sharing 157
Cooperative Working & Other 14
Terminal 322

Total 554

APPENDIX D

**FORM FMC-1
TARIFF LOCATION ADDRESSES - ELECTRONIC SERVICE CONTRACT
FILINGS AND SPECIAL PERMISSION APPLICATIONS
Fiscal Year 2004**

Form FMC-1 Filings

VOCC 315
OTI/NVOCC 3,105 *MTO*
244
Conferences 15

Electronic Service Contract Documents

New Service Contracts 46,025
Service Contract Amendments 216,526

Special Permission Applications

Granted 6
Denied 0
Withdrawn 1

APPENDIX E

CIVIL PENALTIES COLLECTED Fiscal Year 2004

Antillean Marine Shipping Corp.	\$60,000.00
Atallah Business Group.	20,000.00
Cap Barbell, Inc., et.al.	180,000.00
China Shipping Container Lines	1,850,000.00
Deans International Shipping	50,000.00
Formerica Consolidation Services, Inc.	25,000.00
FSL International	120,000.00
Global Alliance Logistics.	50,000.00
Green Master International.	105,000.00
Hub Shipping Co. d/b/a Hub Logistics.	35,000.00
Logical Logistics International Ltd.	50,000.00
Margaret J. Zimmer	20,000.00
MP Line de Mexico SA de CV	45,000.00
Patron Services	45,000.00
Perfect Express Corp.	52,500.00
Quality Express USA , Inc... ..	45,000.00
Ronald Pfeiffer d/b/a Auto Shipping Int'l.	17,500.00
Sea Line Cargo, Inc..	25,000.00
Star Trans Container Line Ltd., et.al.	85,000.00
Zen Continental & Sunway Line, Inc..	<u>79,000.00</u>
Total Civil Penalties Collected	\$2,959,000.00

APPENDIX F

INVESTIGATIONS Fiscal Year 2004

Investigations Opened:

VOCC Audits:	1
NVOCC Audits:	19
Freight Forwarder Audits:	4

Total Openings:	24
Investigations Completed:	
VOCC Audits:	10
NVOCC Audits:	15
Freight Forwarder Audits:	9
Total Completions:	34

APPENDIX G

STATEMENT OF APPROPRIATIONS, OBLIGATIONS AND RECEIPTS FOR THE FISCAL YEAR ENDED SEPTEMBER 30, 2004

APPROPRIATIONS:

Public Law 108-199, 108th Congress: For necessary expenses of the Federal Maritime Commission as authorized by section 201(d) of the Merchant Marine Act of 1936, as amended (46 App. U.S.C. 1111), including services as authorized by 5 U.S.C. 3109; hire of passenger motor vehicles authorized by 31 U.S.C. 1343 (b); and uniforms or allowances therefor, as authorized by 5 U.S.C. 5901-5902, \$18,471,000: Provided, that not to exceed \$2,000 shall be available for official reception and representation expenses.

\$18,471,000

Public Law 108-199, 108th Congress
Government Wide Rescissions, 2004

- 108,979

Revised Appropriation

\$18,362,021

OBLIGATIONS AND UNOBLIGATED BALANCE:

Net obligations for salaries and expenses for the fiscal year ended September 30, 2004.

\$18,347,203

STATEMENT OF RECEIPTS: Deposited with the General Fund of the Treasury for the Fiscal Year Ended September 30, 2004:

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

\$ 433,287

Fines and penalties

\$2,959,068

Total general fund receipts

\$3,392,355