



The Ocean Shipping Reform Act: An Interim Status Report

FEDERAL MARITIME COMMISSION

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Executive Summary

This interim status report provides a preliminary view of some of the effects the Ocean Shipping Reform Act of 1998 (“OSRA”) is having on the liner shipping industry in the very short term. It also details how the Federal Maritime Commission (“Commission”) has responded to its changed responsibilities under the new statute, and points out some of the issues which have arisen in the process of implementing OSRA. This interim report will be followed by a more comprehensive report, scheduled for issuance in the summer of 2001.

- OSRA’s reforms were enacted to produce a more market-driven liner shipping industry. Based on business operations during OSRA’s first year, there are at least preliminary indications that the new law is having some of the positive effects on the business of ocean shipping intended by Congress and the President. Shippers are negotiating one-on-one with carriers for contract terms, including the ability to keep those terms confidential. The number of conferences is declining, leaving discussion agreements - which are prohibited from imposing binding commitments on their members - as the primary means for carriers to exercise their antitrust immunity with regard to rate levels. Indications are that rates and service increasingly are being driven by market forces.

- It is premature to determine the full impact OSRA will have on U.S. ocean shipping. More definitive conclusions may be drawn once all sectors of the industry have had sufficient time to explore new possibilities and appropriately alter their operations.
- In response to OSRA, the FMC implemented an efficient and user-friendly Internet-based system for the receipt of confidential service contracts. This system allows filers to electronically submit their service contract files using off-the-shelf word processing software. From May 1, 1999, through May 2000, 46,035 new service contracts and 95,627 amendments were filed with the Commission.
- Preliminary observations indicate that most service contracts are individual contracts resulting from one-on-one negotiations between shippers and carriers. The majority of contracts involve only one trade lane, and have a term of one year. In addition, many of the contracts reviewed contain no confidentiality provisions, and carriers differed greatly in the manner in which they negotiated confidentiality provisions.
- Based on a random sample, about seventy-five percent of the service contracts filed under the new Internet-based system were signed by beneficial owners of the cargo, twenty percent by NVOCCs, and five percent by shippers' associations.

- While there were 32 conference agreements in effect in 1997, only 22 are in effect today. There is only one conference operating in the major east-west trades. Overall, discussion agreements have replaced conference agreements as the primary vehicle for concerted carrier activity.
- The majority of agreements filed since the passage of OSRA involve operational matters, as opposed to pricing authority. This continues a trend that has been developing over the last several years. These agreements allow carriers to integrate their operations in ways that reduce costs and increase efficiencies.
- OSRA permits agreements to establish guidelines that may be applied to members' individual service contracting. These guidelines must be strictly voluntary and are nonenforceable by the agreement. The Commission has received eleven sets of voluntary service contract guidelines, mostly filed by discussion agreements. These guidelines generally have covered matters such as minimum rates for specific commodities, general rate increases, and a variety of specific charges and fees.
- A preliminary analysis reveals limited adherence to filed guidelines. It appears that guidelines are being followed most closely by agreements whose members are operating closest to vessel capacity.

- While certain automated tariff systems developed to comply with OSRA comport with applicable accessibility requirements, many have deficiencies which affect their accessibility. The Commission issued advisories to the industry and an advance notice of proposed rulemaking, in an attempt to resolve the accessibility problems it identified.

Introduction

The Commission is in the process of studying the effects of the Ocean Shipping Reform Act of 1998 ("OSRA") on the liner shipping industry. The study will cover the two-year period following the implementation of OSRA in May 1999. This Interim Status Report describes the effects of OSRA on the liner shipping industry in the very short term, how the Federal Maritime Commission ("Commission") has responded to its changed responsibilities under the new statute, and some of the issues which have arisen in the process of implementing OSRA. In addition, this report gives an indication of the issues and research methods which are being undertaken for the full two-year OSRA Impact Study, which will be released in the summer of 2001.

Part I of the report gives an overview of OSRA's more prominent changes. It also describes the new regulations the FMC has promulgated in response to OSRA, and discusses the reorganization the FMC effectuated to better carry out its regulatory responsibilities under OSRA.

Part II presents information and statistics on service contract filings under the new Internet-based filing system the Commission implemented as a result of OSRA. Two studies of filed contracts are presented: one dealing with certain provisions contained in contracts, and the second involving the types of shippers who have signed contracts.

Part III discusses agreement filing trends under OSRA, including a general description of the voluntary service contract guidelines that are required to be filed confidentially with the Commission. A discussion of the effectiveness of some of these guidelines is also presented.

Part IV provides information and statistics on ocean transportation intermediaries (“OTIs”). It describes the numbers and types of OTIs that have filed for licenses and established financial responsibility required by OSRA.

Part V discusses tariff issues which have arisen under OSRA. An FMC audit has found that some of the published tariffs do not appear to comport with OSRA’s accessibility requirements. This section describes the measures the Commission is undertaking to ensure that the public has access to carriers’ tariff systems.

The final section focuses on the full two-year study and the types of research that are being undertaken for that study.

Part I: Regulatory and Industry Overview

Regulatory Overview

The Shipping Act of 1984 (“1984 Act” or “Shipping Act”), 46 U.S.C. app. § 1701 et seq., was amended by the Ocean Shipping Reform Act of 1998, Pub. L. 105-258, effective May 1, 1999. OSRA, enacted by Congress in October 1998, was the culmination of a nearly four-year effort to update and revise the Shipping Act, with virtually all segments of the industry represented in the legislative reform process.

Service Contracts

The key components of the new law are the enhanced confidentiality of service contracts between shippers and ocean common carriers and the inability of carrier conferences to prevent conference members from entering into individual service contracts. As before, service contracts are filed confidentially with the Commission, but

now fewer essential terms are public information. The rates are no longer publicly filed; only the origin and destination port ranges, the commodity or commodities involved, the minimum volume or portion, and the duration of the contract are made public. In addition, the parties to a contract can agree on provisions for keeping all, or a portion, of the contract confidential from their competitors. Moreover, similarly situated shippers no longer have “me-too” rights to obtain the same essential terms. Shippers do have the option of entering into service contracts individually, through a shippers’ association, or for the first time, through a group of unrelated shippers, and contracts now may be negotiated for a portion (i.e., percentage) of a shipper’s cargo as opposed to a fixed quantity. Also, the authority to offer joint service contracts has been expanded from solely conferences to any agreement among ocean common carriers.

Agreements

With respect to agreements, OSRA has maintained antitrust immunity for concerted carrier actions, but has limited the permissible activities to which such immunity attaches. Agreements no longer may limit or prohibit service contracting by their members. Moreover, agreements are precluded from requiring members to disclose their service contract negotiations or the details of any contracts into which they have entered. An agreement may publish general guidelines applicable to members' individual contracting practices, but these guidelines must be voluntary and non-enforceable by the agreement and filed confidentially with the Commission.

The notice period for independent action on an agreement rate or charge has been reduced from 10 to 5 days. Also, a conference or group of two or more carriers may not deny its members the right to take independent action, on 5 days’ notice, on the level of

compensation to be paid to an ocean freight forwarder. Nor may a conference agree to limit compensation to less than 1.25 percent of the aggregate of the applicable rates and charges.

OSRA left intact the 45-day period for Commission review of an agreement. Absent Commission action to reject or request additional information, an agreement automatically becomes effective 45 days from its filing. It also left intact the general standard for evaluating substantially anticompetitive agreements; the Commission may seek an injunction in district court against an agreement that the Commission can prove likely, by a reduction in competition, to produce an unreasonable reduction in service or unreasonable increase in costs. However, a Senate Commerce Committee Report accompanying OSRA (S. Rep. No. 61, 105th Cong., 1st Sess. (1997) at 12-17) urged the Commission to take a more active and vigilant role in administering the standard, using “reasoned projections and forward-looking analyses” to head off likely anti-competitive harms.

Tariffs

OSRA eliminates the requirement that carriers file their tariffs with the Commission, and instead requires carriers to develop and utilize their own electronic systems for notifying the public of the prices and practices applicable to their various shipping services. Tariffs must be made available electronically to any person, without time, quantity or other limitation, though a reasonable charge may be assessed for such access. No charge may be assessed a federal agency. The Commission is authorized to prescribe requirements for the accessibility and accuracy of carriers' automated tariff systems.

OSRA also provides that marine terminal operators (“MTOs”) may make available to the public schedules of rates, regulations and practices, including any limitations of liability. Such schedules shall then be enforceable as an implied contract, without proof of actual knowledge of their provisions.

Ocean Transportation Intermediaries

OSRA defines ocean freight forwarders and non-vessel-operating common carriers (“NVOCCs”), as ocean transportation intermediaries (“OTIs”). OSRA requires that all OTIs in the United States, rather than only ocean freight forwarders, obtain a license. Further, the Commission was instructed to reevaluate the amount of financial responsibility required to be furnished by these entities and to establish an alternative procedure for pursuing a claim against an OTI’s financial responsibility.

Foreign Practices

Specific changes have been made to enhance the Commission's ability to guard against foreign government-supported predatory pricing, and to clarify the types of activities that create unfavorable conditions in our foreign trades. OSRA clarifies that pricing practices are among those practices that may constitute a condition unfavorable to shipping, and the suspension of service contracts is now available as a remedy by which to address unfair foreign trade practices. In addition, there are now fewer exceptions to the controlled carrier requirements.

Prohibited Acts

OSRA made several modifications to the prohibited acts found in section 10 of the Shipping Act. In general, the changes comport with the new service contract provisions,

which encourage one-on-one contracts between individual shippers and carriers, and do not require providing the same terms to similarly situated shippers. The prohibitions pertaining to concerted action are more stringent than the restrictions applicable to individual common carriers. Moreover, the prohibited acts applicable to actions in accordance with a tariff are different from those applicable to actions in accordance with a service contract, to better reflect OSRA's encouragement of the use of these individual contracts.

Rulemakings to Implement OSRA

The Commission issued eight proposed rules to implement the changes effectuated by OSRA. We reviewed and assessed the comments submitted by the interested parties and then adopted those consistent with the Commission's mandate. The rules ultimately promulgated as a result of the notice and comment procedures reflect the interests and address the concerns of the industry. In particular, we implemented an Internet-based service contract filing system by which the filers can file via the Commission's website and simply attach, in a variety of formats, the text of the contract.

The new rules governing agreements among ocean common carriers and MTOs set forth that shipping lines are barred from collectively agreeing on prohibitions or restrictions on service contract negotiations or on requirements for disclosure of contract terms or negotiations, but are permitted to establish voluntary guidelines. Moreover, the Commission deleted much of the format requirements for filed agreements, and based on industry requests for further clarification and guidance, issued a notice of inquiry relating to the content of agreements. Those responses are currently under review to determine

whether, and in what manner, another rulemaking would be warranted. In a subsequent proceeding, the Commission adopted a definition of ocean common carrier to better reflect the practical workings of the industry and the intent of Congress. The rules governing tariff publication allow carriers to implement automated systems using the latest technological innovations, to provide easy access to their rates and charges. Since OSRA's effective date, the Commission's staff has experienced several problems relating to tariff accessibility. Working with the industry, we hope to resolve these problems on an informal basis to ensure the public's access to tariffs. Moreover, the Commission has issued an advance notice of proposed rulemaking to assist it in determining reasonable charges for tariff access.

The rules relating to OTIs reflect many constructive suggestions submitted by the commenters involving the licensing and financial responsibility provisions. The rules set forth a range of financial responsibility to be obtained by ocean freight forwarders, NVOCCs in the U.S., and unlicensed foreign NVOCCs. Moreover, foreign NVOCCs are provided the opportunity to obtain a license and maintain a lesser amount of financial responsibility by establishing a presence in the United States. The rules define "transportation-related activities," and set forth an alternative claim procedure for parties seeking payment from an OTI's financial responsibility as a result of damages arising from the OTI's transportation-related activities. Subsequent to OSRA's implementation, in response to a petition filed by an association of OTIs, the Commission lessened the restrictions governing who could be a qualifying individual for purposes of obtaining an OTI license.

Working together with the industry, the Commission was able to effectuate as smooth a transition as possible to the new operational environment resulting from OSRA. We continue to assess the rules promulgated to implement OSRA and are receptive to industry suggestions as to where they might be refined to further Congressional objectives or eliminate unintended burdens.

The FMC Reorganization

On February 27, 2000, the Commission implemented a reorganization designed to meet the new responsibilities and challenges of OSRA. The agency has been streamlined and restructured, and resources have been reallocated, to enhance the efficiency of all oversight efforts. By organizing the Commission differently, the agency stands in a better position to focus on the policy objectives embodied in the new statute. The agency also is able to utilize its limited personnel and other resources in a manner that maximizes effectiveness, promotes efficient ocean transportation, and places greater reliance on the dynamics of the marketplace. The Commission will continue to foster an environment that facilitates statutory compliance and ensures equitable trade conditions.

Specifically, the Commission formed the new Bureau of Consumer Complaints and Licensing to enhance its consumer assistance efforts. We have augmented our ombudsman-type services and will devote additional attention to consumer fraud and informal complaints. We also will increase our emphasis on alternative dispute resolution, conciliation, and mediation, so as to avoid the costs and time commitments attendant to formal adjudications, where possible. Additionally, the new bureau will oversee and streamline the licensing and financial responsibility of OTIs, and will be responsible for

the oversight of the certification of passenger vessels for financial responsibility. This function has become more important given the increasing popularity of ocean cruising and the continual attention that must be given to cruise lines' various forms of financial coverage packages.

Additionally, certain functions of two former bureaus were merged into one - the Bureau of Trade Analysis. This Bureau will be responsible for processing agreement filings, performing competition oversight and analysis, and providing assistance regarding service contracts and tariffs. More resources will be devoted to substantive analysis of industry practices and trends, with a reduced emphasis on the technical review of filed documents. This structure gives the Commission a more efficacious mechanism to address its statutory responsibilities concerning the filing of service contracts and the accessibility and accuracy of carriers' automated tariff systems.

The Commission's Bureau of Enforcement will continue to respond to evidence of statutory violations so as to ensure equitable trading conditions in U.S. ocean commerce. OSRA requires the Commission to address malpractices that are market-distorting or violate the statute in a manner that negatively affects U.S. ocean shipping. Within this framework, however, the Commission's preference, whenever possible, is to achieve compliance through outreach to and cooperation with the stakeholders.

The reorganization also resulted in the elimination of a layer of management in the administrative support area - all administrative functions have been placed under the direction of an Executive Director, who is also responsible for operational oversight within the Commission in addition to providing policy advice. Also, a permanent task force on

international affairs was established to enhance Commission efforts to address the restrictive practices of foreign governments, and to more effectively oversee controlled carrier matters.

The Commission is making a concerted effort to meet the challenges of the new statute within the limits imposed by staffing and funding resources. We have focused on improving efficiency, reducing burdens on the industry, and enhancing our ability to assist industry compliance efforts.

Industry Overview

There are at least two important trends in international liner shipping that may affect the longer term impact of OSRA reforms. The first is the increasing concentration in liner shipping, either by mergers and acquisitions, or through the formation of multi-trade alliances. The second is the virtual replacement of traditional conferences by discussion agreements. This latter trend began in the 1980s with the creation of “stabilization” agreements that included both conference and non-conference lines operating in the same trades, and has – following the implementation of OSRA – culminated in the suspension or dissolution of several major conferences. These two trends will be addressed more fully in the Commission’s final OSRA Impact Study.

Increasing Industry Concentration

Although the trend towards greater industry concentration can be traced back to the containerization revolution of the late 1960s, it has been surging in recent years for several reasons, e.g., the rapid growth of international trade and the technological innovations that have supported intermodalism, the building and operation of post-panamax vessels,

greater use of specialized containers, and innovations in terminal handling technologies. As worldwide trade continues to expand, carriers are building ever larger vessels, expanding their containership fleets, modernizing and expanding terminals, and providing electronic cargo tracking systems, while struggling to minimize costs. One result has been the formation of global alliances as a vehicle for expanding the scope of service networks and realizing operational savings, while minimizing financial outlays and risks. The situation also has led to a dramatic series of both major and minor carrier acquisitions.

Current expectations are that economies of scale and scope in liner shipping will continue to create incentives for additional acquisitions, and possibly even for the formation of additional global alliances. One consequence, some industry analysts have predicted, may be the creation of an oligopoly in the provision of liner services. However, even if that degree of industry concentration is not achieved soon, there remains the prospect that the diminishing number of surviving carriers may attempt to use discussion agreements as a forum for developing trade-lane capacity policies to complement their collective pricing policies – either by reintroducing a formal capacity management program, or by attempting to influence member lines' individual capacity plans.

Either possibility, the eventual creation of a stable and effective oligopoly or the introduction of a capacity management function among discussion agreement activities, could affect the extent to which the expected benefits of OSRA reforms would be achieved.

The Movement Towards Discussion Agreements

The rise in the 1970s of new independent container lines, often based in Asian nations, introduced an increasingly effective alternative to conference carriers, and created

competitive pressures that eroded conference market power in major U.S. trades. These new independent competitors, frequently established with government support, initially did not offer levels of service that could match leading conference lines and tended to compete mainly on price, typically charging an estimated 10 - 15 percent below conference rates. In effect, two overlapping markets were created: a premium service market that was largely catered to by conference lines, and a discount market in which the new independents could compete successfully against conference lines. Over time, the new independents' asset base, technologies, and operational experience improved to the point where their overall level of service was increasingly comparable to that offered by many conference lines – and, at least at the level of port-to-port ocean carriage, the initial two markets blended into one.

This homogenization of basic service heightened rate pressure on conference lines, whose market share began to erode. This presented conference lines with two basic options: either persuade the non-conference lines to sharply reduce and eventually eliminate the existing rate differentials, ideally by joining the conference, or else reduce the rate differentials by cutting conference rates to a level that matched the independents.

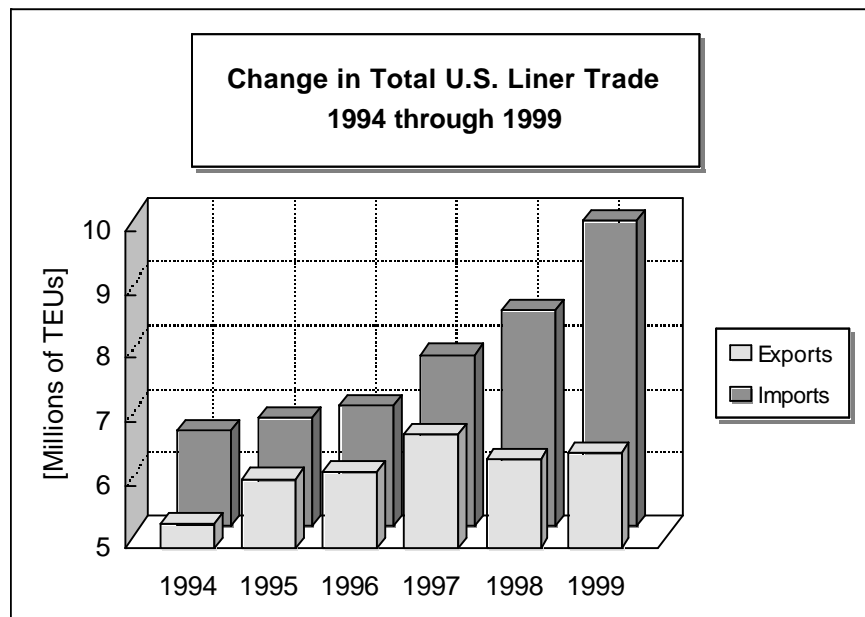
In the Europe trades, the creation of the Eurocorde Discussion Agreement in the mid-1980s, and eventual creation of an enlarged conference, the Trans-Atlantic Agreement (“TAA”), both of which followed periods of excess capacity and heavy rate discounting, aligned independent lines with conference carriers. TAA also introduced a capacity management program into the Atlantic trades as part of its broader stabilization effort.

The use of capacity management programs was introduced in the transpacific trades in 1989 when conference and non-conference lines joined to establish the Transpacific Stabilization Agreement (“TSA”) as a response to a precipitous rate decline and overcapacity of approximately 25 percent. Although TSA’s capacity management program ended in 1995, in the face of a potential legal challenge by the Commission, discussion agreements have become a fixture in the Pacific trades and also have been established in the US/South American and US/Caribbean trades.

In short, discussion agreements became prevalent in the late 1980s and early 1990s as a forum within which conference lines could meaningfully participate with non-conference rivals to discuss and voluntarily act together with respect to rates, capacity, and various charges and fees. Their existence was evidence that traditional conferences lacked the flexibility to attract participation by the new independent lines, but that a broader and sufficiently flexible, collective arrangement was possible.

Recent Trade Conditions

Beginning in late 1997, the U.S. liner trades have experienced a rapidly growing trade imbalance with imports far outstripping exports. U.S. liner imports totaled more than 10 million containers during 1999, while exports totaled 6.5 million containers. Although imports are growing at a rate of over 11 percent per year, the export market remains depressed (see graph below).



Source: *Piers/Journal of Commerce Trade Horizons - Winter 2000*

The imbalance between imports and exports exists largely due to the strong U.S. economy, the collapse of the export market as a result of Asia's 1997 financial crisis, and the euro's decline in value against the dollar under the EU's newly integrated monetary system. Trade developments in three of the largest U.S. trades - Asia, Europe, and Latin America - are discussed below.

Asia

The transpacific trades are the largest and fastest growing U.S.-foreign trade area. Total cargo volumes between the U.S. and the Far East make up more than 50 percent of all U.S. liner trade. Imports from Asia are growing at almost 20 percent per year, totaling 6 million containers. Exports in the smaller U.S. to Asia trade are increasing at over 5 percent per year, totaling slightly less than 3 million containers.

The strong U.S. economy coupled with the economic crisis in Asia resulted in a large increase in U.S. purchases of imported goods, causing space on inbound liner carriers to become extremely tight - capacity utilization grew to 100 percent in the peak season of 1998. Members of the Asia to U.S. Transpacific Stabilization Agreement successfully implemented a \$900 per 40-foot equivalent unit ("FEU") general rate increase ("GRI") in 1999, as well as a \$300 per FEU peak season surcharge. In contrast, the U.S. to Asia trade was decimated as sales to Asia dropped off significantly as a result of the Asian economic crisis. Members of the Westbound Transpacific Stabilization Agreement have continued to struggle with a relatively low demand for cargo space, very low capacity utilization, and plunging rate levels, although rates in the trade have recently appeared to bottom out.

North Europe

In the transatlantic trades, trade volume has been growing in the North Europe to U.S. trade since 1997 at an average annual rate of 11 percent, although there was a drop-off in the growth rate in 1999. As in the transpacific trade, the strong U.S. economy and a strong dollar have resulted in good growth rates for imports. In the U.S. to North Europe

trade, strong growth in outbound cargo volume in 1997 has given way to a rapid fall in export cargo volumes. This decline was caused by the financial crisis in Russia that depressed demand in much of eastern Europe, as well as a weak euro and stagnating North European economies.

The Trans-Atlantic Conference Agreement (“TACA”), the major carrier agreement in the trade, holds about a 50 percent market share. However, as a result of regulatory and competitive market pressures, TACA’s membership has dropped from 17 carriers in 1997 to 7 members by late 1999. As a result of poor market conditions and increasingly competitive conditions in the trade, rates have been declining over the past two years.

Latin America

Trade volume in the South America to U.S. trade grew modestly in 1997, remained stagnant in 1998, then took off in 1999, growing almost 25 percent. On the other hand, volume on the other leg from the U.S. to South America declined 8 percent in 1998 from its 1997 levels, and a further 22 percent in 1999. The surge in imports over exports is attributable primarily to a 40 percent devaluation of the Brazilian currency due to a financial crisis similar to that in Asia, as well as to the strong U.S. economy. There also has been a significant increase in capacity in the trades as a number of large carriers have entered the Latin American markets, putting pressure on the trade in general and the smaller niche carriers in particular.

This dramatic turnabout in the direction of the trade has had a negative impact on carriers in this trade lane, mainly because many of the commodities carried into the U.S. face highly competitive world markets, and cannot bear large rate increases. Thus, the

strong, or northbound, leg of the trade has been unable to support rate increases sufficient to offset the significant decline in rate levels experienced in the weak, or southbound, leg of the trade. In response to the changing competitive conditions, a number of the major conferences have disbanded, including: the West Coast of South America Agreement, the Inter-American Freight Conference, and the Venezuelan American Maritime Association. The two South American discussion agreements, the East Coast South America Discussion Agreement and the West Coast South America Discussion Agreement, have become the major focus for carrier joint rate-making activity. In addition, alliances, joint service agreements, and mergers have been used to reduce the excess capacity recently put into the trades and to make more efficient use of each carrier's assets.

Part II: Service Contracts

Overview of the OSRA Service Contract System

The 1984 Act provided the specific statutory authority for vessel-operating common carriers and conferences to enter into service contracts with shippers and shippers' associations. Service contracts stipulate the terms and conditions wherein the shipper party commits to a certain volume of cargo over a fixed time period in exchange for the carrier party's commitment to charge a certain rate and provide a defined level of service. Service contracts evolved in significance as an alternative to shipping under the more standardized rates and terms of tariffs. The appeal of shipping under service contracts is the ability of the parties to negotiate and tailor contracts to meet their specific shipping needs. Since first initiated, the use of service contracts has grown substantially.

OSRA expanded the statutory authority to allow service contracting by all agreements between carriers, not just conferences. It also prohibits agreements from setting any mandatory rules or requirements that would obstruct the right of their members to enter into individual service contracts. Prior to OSRA, conferences collectively regulated the service contracts of their members, and few conferences permitted their members to enter into any form of individual service contracts.

To safeguard against statutory violations, carriers and agreements are required to confidentially file their service contracts with the Commission and make available certain essential terms to the general public in tariff format. Prior to OSRA, service contracts were filed with the Commission in paper form, and their essential terms were published and made available through the Commission's Automated Tariff Filing and Information ("ATFI") system. With the implementation of OSRA, the number of annual service contract filings was projected to increase by 200 percent or more. Consequently, the Commission sought to replace its paper-based filing system with an electronic filing system that could efficiently accommodate the anticipated large increase in filings without being burdensome to the industry.

Beginning May 1, 1999, the Commission placed in operation two electronic filing systems. Filers were given the option of electronically submitting their service contracts via the Internet, or as an alternative, using a modified and secure version of the defunct ATFI system. The modified ATFI system was adapted from the system formerly used to publish the essential terms of service contracts and tariffs, and expanded to include such additional terms as the contract signatories and the shippers' status. Among its

drawbacks, the modified ATFI system required that service contracts be filed in a prescribed format using specific software. Both the Commission and the industry favored the ease and flexibility of the Internet filing system. Given the time constraints placed on implementing an electronic filing system, the Commission offered the modified ATFI system on a transitional basis until the industry had fully adjusted to the Internet system. The option to file service contracts using the modified ATFI system was discontinued on October 1, 1999.

The Internet system was created as an easy filing method that would safely and efficiently accommodate the electronic submission of a large number of files. The system offers many user-friendly features. It places a minimal burden on the filer and requires only basic information to submit a service contract. The system operates within a Windows environment and employs the latest security and encryption to ensure confidentiality. No special software is required to submit a service contract, other than Windows and an Internet provider. While service contracts must comply in content with 46 CFR §530.8, the system does not require contracts to be filed in any prescribed format. Contracts may be submitted as originally drafted without having to re-format them for filing purposes. The system also will accept files in a variety of word processing software including WordStar, WordPerfect, and Microsoft Word, as well as ASCII formats. In addition, filers may submit multiple service contract or amendment files into the system. Using the Internet, filers access the Service Contract Filing System (“SERVCON”) through the Commission’s home page on the World Wide Web at www.fmc.gov. The SERVCON is a secure area of the Commission’s web site that allows files to be electronically transmitted in a protected environment.

Since OSRA's implementation on May 1, 1999, through May 31, 2000, the Commission has received a total of 141,662 service contracts and amendments. Of this total, 46,035 were original service contracts and 95,627 were amendments.

Preliminary Observations on Service Contracts under OSRA

As a preliminary effort to gauge the effects of OSRA's reforms on service contracting, the Commission conducted a study of contracts of the top 13 ocean common carriers operating in the U.S. foreign trades based on their total annual cargo carriage. A total of 408 contracts filed via the Commission's Internet filing system on or after May 1, 1999, were reviewed. It should be emphasized, however, that these contracts were not a random statistical sample; approximately 30 original contracts from each of the top 13 ocean carriers were retrieved for review. Therefore, only guarded and preliminary generalizations about the entire service contract database can be made from this study. A more comprehensive examination of service contracts, one based on random sampling methods, will be included in the Commission's final two-year OSRA Impact Study.

The study focused on several key service contract provisions: contract duration, number and type of shippers and carrier parties to contracts, minimum quantity commitments, geographic scope, and contract confidentiality provisions. The contract's duration was measured from its effective date to its expiration date. Contracts were examined to determine whether they were signed by a single shipper party or multiple, non-affiliated shipper parties, outside of a shippers' association, as now permitted under OSRA. For purposes of this review, shippers' associations and multiple affiliated shipper parties under one signatory were classified as a single shipper.

The contracts also were examined to determine whether carriers were entering into service contracts individually or collectively with other carriers under an effective agreement. In addition, the levels of minimum quantity commitments, and the commitment specifications, were reviewed to detect changes in light of OSRA's reforms and the revised service contract definition that allows for commitments based on a portion of a shipper's cargo.¹ For geographic scope, the origin and destination port ranges and areas of the contracts were reviewed and divided into categories of either: (1) a single U.S. trade lane or area, (2) multiple U.S. trade lanes or areas, or (3) global trade lanes or areas. Contracts in the single trade category had scopes confined to one U.S. trade lane or area, such as between the U.S. and Germany, or the U.S. and the Far East. Contracts with multiple scopes spanned two or more U.S. trade lanes or areas, such as between the U.S. and South America, Europe, and the Far East, or U.S. worldwide. Contracts categorized as global included foreign-to-foreign trades within their scopes in addition to U.S. foreign trades.

An important feature of the reforms initiated under OSRA is the provision for confidentiality of certain service contract information. Confidentiality provisions allow shippers and carriers to agree to restrictions on the sharing of service contract information with third parties, with the exception of those terms required to be published or disclosed under sections 8(c)(3) and (4) of the 1984 Act, as amended. The study sought to discern the degree to which shippers and carriers were using confidentiality provisions in their service contracts. Contracts were examined for the inclusion of

¹Where possible, each contract's commitment was converted to 20-foot equivalent units ("TEUs") for standardization purposes.

confidentiality provisions, and to assess the extent of any such provisions. Confidentiality provisions were considered “complete” where the contracting parties were mutually prohibited from disclosing any terms to third parties. Confidentiality provisions that required only certain aspects of a contract to be confidential were considered “partial”. In addition, the study examined the specific methods and contract language used by the carriers to achieve confidentiality between the parties.

It should be noted that because OSRA was enacted in May, one of the heaviest periods of contract renewal, most of the terms and conditions of contracts entered into by shippers and carriers in 1999 varied little from traditional contracts. Negotiations for a good deal of these contracts may have taken place entirely under the previous regulatory framework. It has been during 2000 that the flexibility introduced by OSRA has begun to affect the contents of new contracts. Thus, this snapshot of contracts is a preliminary view of the early and transitional stages of contracting under OSRA.

In general, the contracts examined showed one significant difference from pre-OSRA contracts. Conference contracts were negligible, with the vast majority of new service contracts being negotiated between a single carrier and shipper. Shippers signing contracts under one signatory included single shippers identified as owners of the cargo, multiple affiliated shippers identified as owners of the cargo, NVOCCs, and shippers’ associations. The study found no multiple, non-affiliated shippers jointly entering into service contracts outside of shippers’ associations. Based on these data, shippers do not appear to be taking advantage of this new service contract feature at this time.

In terms of service contract length, most of the contracts had a duration of 12 months or less. The average duration of all 408 contracts was approximately 10 months, with the range spanning from a low of one half of a month to a high of 38 months. In general, a one-year contract appears to remain an industry standard thus far.

Upon examination, it was found that the level of minimum quantity commitment for the majority of contracts was set at 100 TEUs or higher. The variability of the commitment levels was high, however, ranging from a low of one TEU to a high of 11,000 TEUs. While most commitments were stated in terms of TEUs or FEUs, the study found one contract's quantity commitment specified as a percentage of the shipper's total cargo within the scope of the contract.

Geographically, almost all the contracts were confined to a single U.S. trade lane or area. Contracts categorized as global primarily included Canada and/or Mexico in their origin or destination ranges, along with the specified U.S. foreign trade(s). Some global contracts, however, included foreign-to-foreign trades that did not border the United States. The predominance of contracts with single scopes may relate to shipper size. The majority of shippers are small or mid-sized firms. The transportation needs of small to mid-size shippers may be limited to a particular U.S. trade or area. The needs of large, multi-national shippers are often much broader, spanning multiple U.S. trade lanes or globally throughout foreign-to-foreign trades. One can assume that a greater number of global contracts have been negotiated by larger shippers and will become more prevalent as both shippers and carriers reconfigure their transportation logistics and operations for efficiency under OSRA.

As for confidentiality clauses, an initial review of the contracts showed that the use of confidentiality provisions varied greatly among carriers. For some carriers, almost all of the contracts contained confidentiality clauses, while for others, few of the contracts contained such clauses. For some carriers, confidentiality provisions were a standard part of their contract language. Other carriers included confidentiality provisions in contracts only upon the request of a shipper.

Further, the initial review of contracts showed that only about 17 percent contained clauses in the text of the contract which ensured confidentiality. However, additional research and follow-up inquiries with certain filers showed that the percentage of contracts with some type of confidentiality provision was significantly greater, i.e., close to 50 percent. Several factors account for the variances in treatment of confidentiality.

Some shippers and carriers enter into their confidentiality agreements prior to the commencement of negotiations, under a separate confidentiality agreement covering both the negotiations and the final rates and service terms; therefore, no clause appears in the service contract text. Other carriers have standard confidentiality language in their tariffs that may be briefly referenced, but not spelled out, in the service contract text. Thus, service contracts which do not contain specific confidentiality provisions still may be treated confidentially by the parties.

Of perhaps greater significance is the variety in the types of confidentiality language that appeared in the new service contracts. Some contracts provided for complete confidentiality that precludes sharing information with outside parties such as other shippers or carriers. Less restrictive provisions for partial confidentiality allowed carriers

to share rate and service information with the secretariat of a discussion agreement or other carrier members of an agreement but without identifying the shipper's name. Finally, some of the contracts contained confidentiality provisions which contained very brief and vague statements that may or may not be clearly understood by the parties to the negotiation. The contract review also found several examples of very detailed confidentiality language that specified the types of information which may be shared, what procedures will be used to protect information, and what penalties apply in the case of breach of confidentiality.

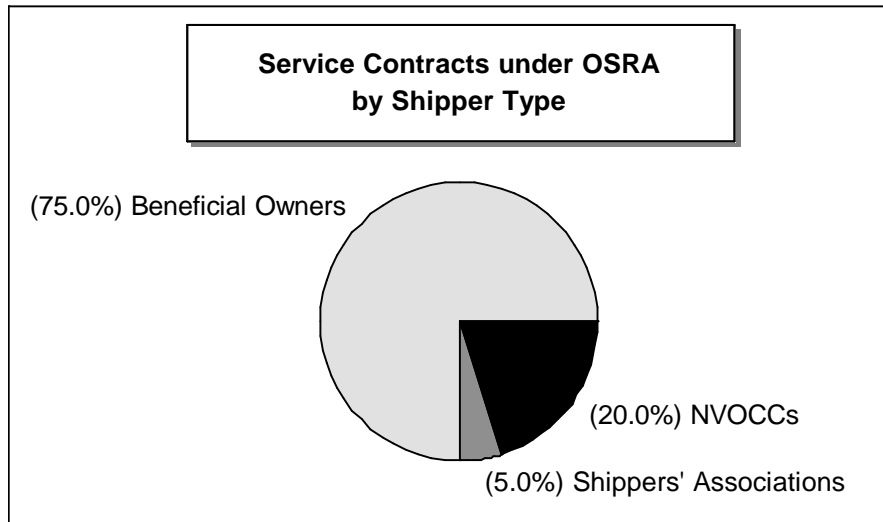
Service Contract Filings Among Shipper Groups

In a separate study, the Commission conducted an examination of service contracts strictly focused on the status of the shipper as stated in the contract. The study sought to evaluate the proportional dispersion of service contracts among the various types of shipper groups since OSRA became effective.

Three separate random samples were conducted of service contracts filed via the Commission's Internet-based filing system since May 1, 1999. Original service contracts, and amendments to service contracts, were examined separately. The study included a total of 550 original service contracts, and 612 amendments to service contracts. Based on the stated shipper status, contracts were divided into three mutually exclusive groups of shippers: (1) owners of the cargo, (2) NVOCCs, or (3) shippers' associations.

For both original service contracts and amendments, the study found that the majority of contracts were with shippers identified as owners of the cargo. Among the other groups, contracts with NVOCCs accounted for a significant portion, while the number

of contracts with shippers' associations was proportionally the smallest. However, shippers' associations vary in size and may include a few, or many individual shippers, including NVOCCs. Of the original contracts, the average percentage dispersion for the three samples was 75 percent owners, 20 percent NVOCCs, and 5 percent shippers' associations (see graph below).

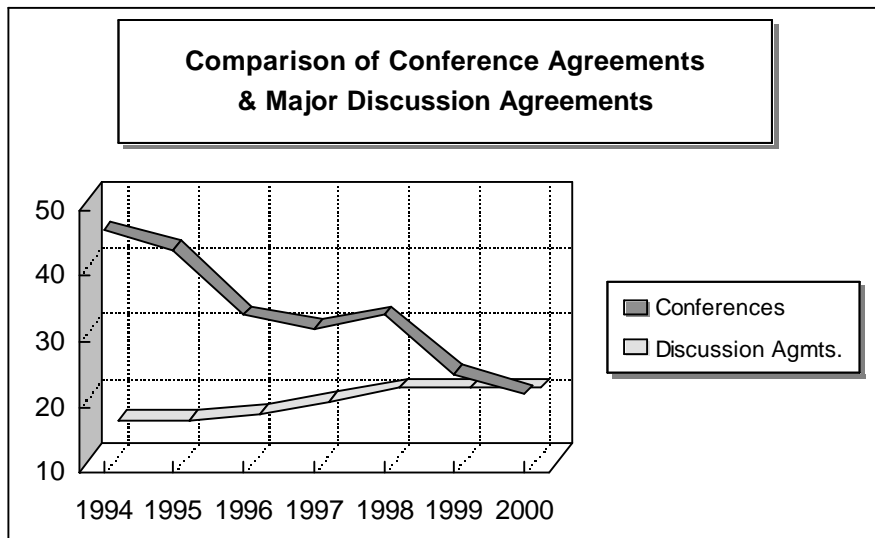


Results for the amendments were similar, with an average percentage dispersion of 76 percent owners, 19 percent NVOCCs, and 5 percent shippers' associations.

Part III: Agreements

Agreement Filings

The number of agreements on file with the Commission has remained fairly constant since 1997, despite the passage of OSRA. There are currently 271 agreements on file with the Commission, only 4 fewer than the 275 on file in 1997. However, there has been a shift in the types of agreements filed, with the most important change being the decline in conference agreements (see graph below).



While there were 32 conferences on file with the Commission in 1997, there were only 22 as of May 2000. In fact, there is only one conference operating in the major east-west trades today, the Trans-Atlantic Conference Agreement. The majority of the remaining conference agreements are in the Latin American trades. Moreover, most trades that have a conference also have an active discussion agreement.

Conferences and Discussion Agreements

As aforementioned, the movement towards discussion agreements and away from conferences began with the rise of independent carriers who offered a level of service close or equal to that of the conference members, but priced at a discount to conference rates. These independent carriers were not interested in joining the conference and giving up their pricing freedom. However, they were willing to join the conference carriers in an agreement which allowed for the discussion of rate levels in general, means to control falling rates and capacity within the trade during periods of overcapacity, and mutual agreements on surcharges. As these independents gained market share, the conferences' ability to affect rate levels declined. Discussion agreements were flexible enough to accommodate the concerns of the independents, and gave the conference members a forum to cooperate with the independents.

One of the major purposes of OSRA was to introduce greater competition into the liner shipping market. The decline of conferences and rise of discussion agreements has resulted in a looser structuring among carriers. However, the ultimate question of whether there exists greater competition in liner shipping as a result of OSRA depends on how effective the discussion agreements are, and to what extent discussion agreement

members operate in accordance with any adopted voluntary guidelines. This in turn may depend on the types of confidentiality clauses contained in contracts, and the degree to which the carriers are able to share this information. For any agreement to yield the intended effects, whether conference or discussion agreement, its members must be able to determine if all the members are following the agreed upon policies. OSRA permits agreements to establish guidelines applicable to their members' individual service contracting, although these guidelines must be strictly voluntary and nonenforceable by the agreement. A later section will discuss the guidelines on file with the Commission and generally the extent to which they are being followed.

Operational Agreements

The majority of the agreements that have been filed by carriers since the passage of OSRA are operational agreements. In fact, this continues a trend which has existed for a number of years. Most of these agreements include vessel-sharing arrangements, where the parties seek to expand their services and minimize their costs and risks. Approximately 140 of the close to 260 agreements on file with the Commission are vessel-sharing agreements.

The continued filing of such agreements indicates that carriers are still making use of antitrust immunity to rationalize service and lower their costs. These agreements, in addition to permitting vessel sharing, allow carriers to integrate their operations so as to reduce the costs of terminal and shoreside service, equipment use, and information and electronic data management. They provide an opportunity for greater efficiencies in the marketplace and improve use of carriers' assets. These greater efficiencies also should

be beneficial to shippers because efficiencies would be expected to be passed on in the form of lower rates given sufficient competition in the market.

One special type of joint carrier agreement which has become prominent is the alliance. Alliances, or global strategic alliances, are operational agreements among two or more carriers that operate on a continuing basis in several major trade lanes. These global alliances allow the participating lines to integrate their ocean, shoreside, and some inland operations in a way that lets them offer their customers access to a large transportation network, while keeping cost per participant line relatively low, reducing risk, and freeing capital for other uses, such as upgrading electronic information systems. While alliances have experienced a number of membership changes in the recent past, their basic purpose and operational format does not appear to have been changed as a result of the passage of OSRA. Although some anticipated that alliances would amend their agreements to include joint service contracting authority, this has not materialized. However, since the passage of OSRA three agreements have been filed with the Commission whose primary purpose is to permit joint service contracting among its members.

Voluntary Service Contract Guidelines

As previously stated, OSRA allows agreements to adopt voluntary collective guidelines with respect to the contents of their members' individual service contracts, and the sharing of information in them. Those guidelines are filed confidentially with the Commission, where they are reviewed in the context of existing economic conditions and

carrier agreement activities in the affected trades to ensure that they will not result in an unreasonable increase in transportation costs or unreasonable reduction in service.

Since OSRA went into effect, the Commission has received eleven sets of guidelines. Nine of the guidelines were filed by discussion agreements, and the remaining two were filed by conferences. One of those conference guidelines was put into place in a trade which also has a discussion agreement that has filed identical guidelines.

The guidelines on file with the Commission cover most of the major U.S. trade lanes, including the Transpacific, South America, and the Caribbean Basin. The only major exception is in the trade between the United States and the nations of the European Union. Because the competition authorities in the European Commission ("EC") have taken a position that prohibits carrier agreements operating in its trades from establishing collective commercial guidelines related to individual or multi-carrier service contracts negotiated outside of the conference's framework, U.S./European agreements have filed no voluntary service contract guidelines with the Commission. However, the EC does permit standard/model agreement service contract forms, and conference service contract rate matrices. In developing individual or multi-carrier service contracts, conference members may refer to, but are free to depart from, these conference model service contract forms and matrices. The conference operating in the U.S./ North Europe trade, for example, publishes its agreement standard/model service contracts and refers to its service contract rate matrices on its Internet web site under the rules of its Essential Terms Publication. The conference also files its service contract rate matrices with the Commission as an attachment to its confidential minutes filings.

Guideline Content

Since voluntary guidelines filed with the Commission are confidential, a discussion of their content must focus on their general features, as opposed to specific information. Though each set of guidelines takes a different format, there are certain broad characteristics among the differing sets of guidelines. The most common elements found in the filed guidelines pertain to minimum rates for specific commodities, GRIs, and a variety of specific charges, including surcharges. The underlying goal of all of these elements is to make it possible for discussion agreement members to agree on rate levels.

Other common elements are limitations on the duration of contracts, and language allowing the termination of contracts 30 days after the minimum cargo quantity terms have been met. These provisions are aimed at establishing a common contracting season, making it easier to coordinate collective GRIs and the implementation of minimum rates.

A few discussion agreements' guidelines specify the minimum volume necessary to qualify for a service contract, set limitations on credit and discount policies, and agree on set percentage increases for inland rates. Some guidelines also involve a voluntary agreement to provide information to other agreement members and/or the agreement secretariat about service contracts being negotiated.

Some discussion agreements have also suggested standardized service contract confidentiality language in their guidelines. For example, the Transpacific Stabilization Agreement, which made its initial guidelines public, suggested service contract confidentiality clauses which state that members may provide information about pending contracts to other members and to the secretariat, provided the shipper's name not be

included. The purpose of such contract language would be to provide the members with some indication as to whether members are adhering to the guidelines and allow information to be exchanged on what rates and terms are being offered in the market. Such guidelines, if effectively implemented, may create an asymmetry in the commercial information available to the negotiating parties to the disadvantage of shippers.

Adherence to Service Contract Guidelines

A preliminary analysis of several of the largest agreements which file voluntary service contract guidelines shows that overall carrier compliance with them has been limited, depending on the trade in question. The review focused on five trade lanes which carry a significant amount of cargo into and out of the United States. The analysis examined the extent to which rates, surcharges, and other guideline provisions specific to the trade were being followed. A total of over eighty contracts were examined in this analysis.

In any agreement, compliance with group decisions depends on a number of factors. The most important factor is the general economic conditions in the trade. When there is overcapacity and competitive pressures are high, agreement members generally find it impossible to hold to group decisions, and they act unilaterally. When the converse is true, i.e., capacity is tight and rates have been low, carriers' solidarity tends to be strong and group decisions on rate increases are easier to follow. The analysis of the guidelines shows that this pattern held true - those agreements whose guidelines were being followed were the ones operating under the economic conditions most favorable to the carriers.

One set of guidelines attempted to steer its members to use time-volume rates as opposed to offering service contracts to their customers. This appears to have been an attempt to maintain rate levels and allow for checking the rates in the member carriers' separate tariffs. However, the review shows that the members of the agreement have not followed this guideline as a large number of service contracts have been filed in this trade.

Part IV: Ocean Transportation Intermediaries

OSRA created a new entity, the Ocean Transportation Intermediary. An OTI is an ocean freight forwarder or NVOCC. OSRA introduced a new requirement that NVOCCs in the United States be licensed. The Commission's regulations require that to be licensed, each OTI in the United States must appoint a qualifying individual with good character, who holds an acceptable position, and who possesses at least three years of OTI experience obtained in the United States. The Commission's regulations further require that for NVOCCs in the United States, proof of financial responsibility must be increased from \$50,000 to \$75,000, plus \$10,000 for each unincorporated branch office in the United States. Ocean freight forwarders are required to increase their proof of financial responsibility from \$30,000 to \$50,000, plus \$10,000 for each unincorporated branch office. OTIs may, in addition to surety bonds, provide proof of financial responsibility in the form of an acceptable guaranty, insurance, or group coverage using any of these forms of financial responsibility. NVOCCs have been permitted these financial responsibility options since 1993; all of the various options became available to ocean freight forwarders with the enactment of OSRA.

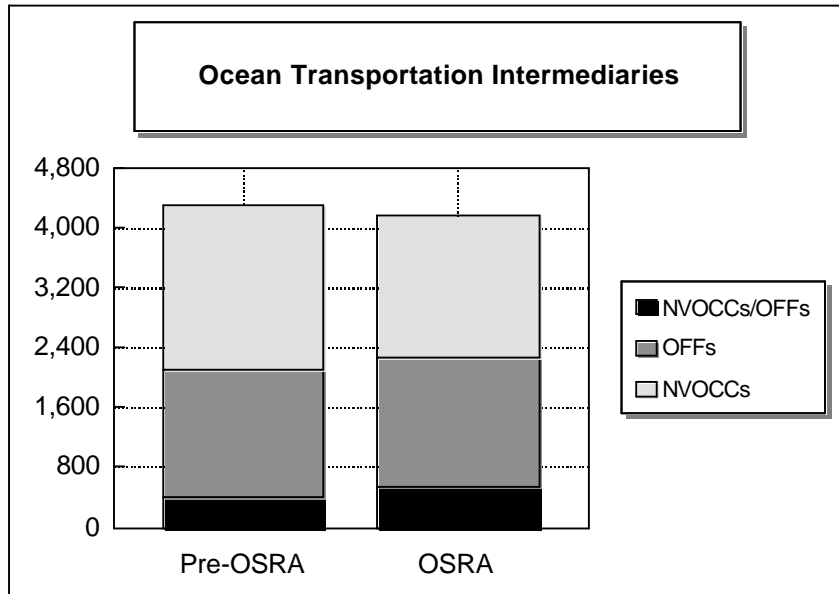
NVOCCs not in the United States are not required to obtain a license, but Commission regulations provide them the option of being licensed. If a foreign NVOCC wishes to be licensed, it must submit an application and fee, appoint a qualifying individual (whose OTI experience may be outside the United States), maintain an unincorporated branch office in the United States, and provide acceptable proof of financial responsibility in the amount of \$75,000, plus \$10,000 for each additional unincorporated branch office in the United States. If a foreign-based NVOCC chooses to remain unlicensed, it must provide acceptable proof of financial responsibility in the amount of \$150,000.

All NVOCCs must provide the Commission with the location of their electronically available tariffs published in compliance with the requirements of 46 CFR Part 520.

OTI Statistics

Number of OTIs

OSRA has had minimal impact on the number of tariffed and bonded NVOCCs and licensed and bonded ocean freight forwarders (see graph below). Prior to the passage of OSRA, there were a total of 2,200 NVOCCs both in and outside the United States with active ATFI tariffs and proof of financial responsibility on file with the Commission; 1,700 licensed ocean freight forwarders; and 400 firms that were both NVOCCs and ocean freight forwarders. Altogether, there were approximately 4,300 OTIs. A year after the effective date of OSRA, there are 1,900 NVOCCs (1,300 in the United States and 600 outside the United States); 1,750 licensed ocean freight forwarders; and 525 firms that are both NVOCCs and ocean freight forwarders, for a total of approximately 4,200 OTIs.



Amounts of Financial Responsibility on File with the Commission

Financial protection for the public for the transportation-related activities of NVOCCs has increased dramatically since OSRA became effective. Before OSRA, each NVOCC was required to provide financial responsibility in the amount of \$50,000. The total amount of financial responsibility in place was approximately \$130 million for the 2,600 NVOCCs. Because of the increased amount of financial responsibility now required of NVOCCs, along with the new requirement that \$10,000 be posted for each unincorporated branch office in the United States, NVOCC proof of financial responsibility now totals approximately \$243 million.

Before OSRA went into effect, each ocean freight forwarder was required to provide a surety bond in the amount of \$30,000 plus \$10,000 for each unincorporated branch office, for a total amount of surety bond financial responsibility equal to approximately

\$84.6 million. After the Commission's implementing rules became effective, the ocean freight forwarder proof of financial responsibility now totals approximately \$135 million.

In summary, total consumer protection against losses caused by NVOCCs and ocean freight forwarders has increased from \$214.6 million to \$378 million since OSRA went into effect.

Surety Companies

Even though Commission regulations permit guaranties and insurance policies as proof of financial responsibility for OTIs, all coverage currently is provided by surety bonds. At this time approximately 75 surety companies underwrite OTI surety bonds. The top two companies underwrite approximately 55 percent of the total number of bonds, the top five approximately 75 percent, and the top 10 approximately 90 percent of the bonds.

Two group surety bonds currently are on file. The *Federation Internationale des Associations de Transitaires et Assimiles* ("FIATA") NVOCC bond covers approximately 160 members. The other is a bond filed by a household goods movers association with approximately 35 members.

Part V: Tariffs

OSRA requires carriers and conferences to publish their rates in private, automated tariff systems, and stipulates that these tariffs be made available electronically to any person, without time, quantity, or other limitation. OSRA also authorizes that "a

reasonable charge" may be assessed for tariff access. The Commission is charged with prescribing requirements for the "accessibility and accuracy" of these systems; the periodic review of these systems; and the prohibition of the use of systems that fail to meet the Commission's requirements.

The Commission has been reviewing the accessibility of tariffs since its OSRA tariff publication requirements became effective on May 1, 1999. The Commission's staff experienced a number of tariff access problems in the first few months following the implementation of OSRA tariff publishing. The staff worked with several tariff publishers to assist them in complying with OSRA requirements and conducted an audit of OSRA carrier tariffs in August 1999 to further examine tariff accessibility. In conducting this audit, approximately 120 tariffs were selected. The tariffs selected for the audit were for each of the top 30 ocean common carriers;² five randomly-selected NVOCCs from each of the major tariff publishing companies; and several NVOCCs that published their own tariffs. The audit's framework was structured on a series of questions along with narrative comments. The audit elements were programmed into an electronic Tariff Profile System on the Commission's Local Area Network. This audit identified several fairly common problems which were hampering tariff access. The staff again worked informally with publishers in an attempt to remedy these deficiencies.

In January 2000, the staff conducted a second audit to ascertain if any changes had occurred since the August audit. That audit found that tariff systems had different

²Carriers were selected based on their total cargo carriage and ranking as listed by the PIERS/Journal of Commerce "U.S. Global Container Report." Many of the audited ocean common carriers' tariffs are accessible from their home pages, which may be linked to one of the publishers' systems.

strengths and weaknesses. For example, one tariff system did not charge access fees, but a user would spend several hours to locate a rate because of poor search features. Another tariff system provided a commodity search feature, but did not provide access to historical tariff information. Yet another system provided historical tariff information, but did not provide user instructions.

The audit also found that several carriers and conferences have published electronic tariffs in accordance with OSRA and the Commission's implementing regulations. Overall, the Commission's review found that some tariff systems continued to limit the public's ability to access tariffs.³ Therefore, the Commission issued a press release and a circular letter to alert the industry that certain carriers' tariff systems:

- Fail to contain required user instructions, or publish incomplete instructions;
- Do not contain an alphabetical commodity index, or render commodity description searches impermissibly difficult;
- Pose problems relative to access to historical tariff information;
- Require an inordinate amount of time to download information or are exceedingly slow in moving between system functions; and,
- Effectively may be limiting the public's access to them due to excessive fees or monthly minimum requirements.

The press release and circular letter noted the Commission's preference to achieve the tariff access envisioned by OSRA via voluntary carrier compliance, but made it clear that necessary corrective action would be initiated should informal attempts to achieve statutory compliance prove unsuccessful. The Commission voiced its hope that the

³The Commission plans to review tariff accuracy matters at a later date.

industry will cooperate to ensure that tariffs are the information tools contemplated by OSRA.

Additionally, the informal complaints received by the Commission regarding tariff access predominantly have concerned the level of access fees. For example, it has been brought to the Commission's attention that in some tariff systems, a public user who wanted to check one term of a bill of lading or one rate would have to subscribe to a tariff for a minimum of three months at a cost as high as \$1,500. In contrast, other carriers do not charge any fees to access their tariffs. Accordingly, the Commission issued an advance notice of proposed rulemaking ("ANPR") seeking comments on how the Commission might propose to define "reasonable charge" for tariff access. The Commission indicated that if an access fee is to be assessed at all, a reasonable charge for providing public access under OSRA and the Commission's regulations should be minimal. The ANPR solicited public comment on specific questions attendant to a possible Commission regulation on tariff access fees.

The Final Report

This interim report presents the initial observations with which the Commission begins its systematic inquiry into the impact of OSRA's amendments to the 1984 Act. It offers a preliminary look at some of the more immediate and manifest industry responses to OSRA's implementation: the decline in traditional liner conferences, the growth in individual carrier service contracting, and the development of voluntary service contract guidelines. Greater insight into OSRA's effects will require both a slightly longer time-

frame, to allow emerging commercial changes to become clearer, and a more comprehensive analysis of the views of all sectors of the industry and pertinent data and information.

In its final report, the Commission expects to provide a detailed picture of how agreement activity is evolving under OSRA. The role of global alliances and other operational agreements will be examined, as will the structure and operation of major, trade-wide discussion agreements, including their information exchange, pricing, and service-related activities. Of particular importance will be the question of how effective discussion agreements are at developing and implementing voluntary service contract guidelines, and what forms those agreements take.

The final report also will examine the development of service contracts under OSRA. Drawing on its service contract database, the Commission has begun research into how service contracting, in the aggregate, is functioning under OSRA. In addition to basic data on the numbers and types of contracts signed by shippers, the OSRA Impact Study will develop information on such key issues as contract confidentiality, the growth of innovative contract terms, multi-trade contracting, and any significant changes in the commercial relations between carriers and their customers that are embodied in new contracts. The voluntary guidelines also will be examined to determine the extent to which they affect the development of service contracts.

The OSRA Impact Study will appraise several broad trends affecting international liner shipping, such as the beginnings of e-commerce, the growing importance of logistics services and supply chain management, and continued carrier consolidation via

acquisitions and mergers. The final report will evaluate, where possible, how these factors might affect price and service competition under OSRA.

The final report also will address OSRA's effect on OTIs, shippers' associations, port authorities, independent port drivers, and other shipping-related industries. For example, the relations between vessel-operating common carriers and transportation intermediaries, in their role as shippers and as NVOCCs, will be evaluated. The final report also will revisit the accessibility and accuracy of carrier automated tariff systems, and will discuss any other substantive issues that arise involving the application of carrier tariffs.

The Commission's final report, to be made public next summer, will present a broader and more detailed evaluation of the extent to which OSRA is yielding the benefits it was expected to produce, and whether it is having any unintended detrimental impact. In preparing that report, the Commission will be seeking relevant information and insight from all segments of the international shipping community, initially through informal dialogue about some of the key issues mentioned above, and possibly including a formal Notice of Inquiry as well. It is the Commission's intention to make the OSRA Impact Study as definitive as possible.