

**FEDERAL MARITIME  
COMMISSION**

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**25th  
Annual Report  
for  
Fiscal Year  
1986**





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Federal Maritime Commission  
Washington, D.C. 20573

Office of the Chairman

To the United States Senate and  
House of Representatives:

Pursuant to section 103(e)(2) of Reorganization Plan No. 7 of 1961, and section 208 of the Merchant Marine Act, 1936, as amended, I am pleased to submit the twenty-fifth annual report of the activities of the Federal Maritime Commission for fiscal year 1986 (ending September 30, 1986).

Sincerely,

*Edward V. Hickey, Jr.*  
Edward V. Hickey, Jr.  
Chairman



# MEMBERS OF THE COMMISSION



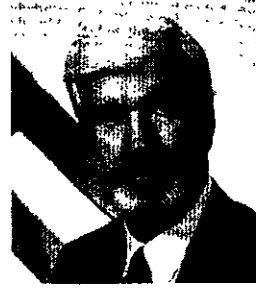
**Edward V. Hickey, Jr.**  
Chairman  
Appointed 1985  
Term Expires 1991  
(R) Virginia



**James J. Carey**  
Vice Chairman  
Appointed 1981  
Term Expires 1990  
(R) Illinois



**Edward J. Philbin**  
Commissioner  
Appointed 1985  
Term Expires 1989  
(R) California



**Thomas F. Moakley**  
Commissioner  
Appointed 1977  
Term Expires 1988  
(D) Massachusetts



**Francis J. Ivancie**  
Commissioner  
Appointed 1985  
Term Expires 1987  
(D) Oregon





## I

### THE FEDERAL MARITIME COMMISSION

#### A. HISTORY

The Federal Maritime Commission was established as an independent regulatory agency by Reorganization Plan No. 7, effective August 12, 1961. Prior to that time, the Commission's regulatory functions were vested with the Federal Maritime Board, which was responsible for the regulation of ocean commerce and the promotion of the U.S. Merchant Marine. As successor to the Federal Maritime Board, the Commission was charged with the administration of the regulatory provisions of the Shipping Act, 1916. The shipping laws of the United States were thus separated into two categories -- regulatory and promotional -- with the responsibilities associated with promotion of an adequate and efficient U.S. Merchant Marine being assigned to the Maritime Administration, now located within the Department of Transportation. The Federal Maritime Commission is now responsible for the regulation of the ocean commerce of the United States, as required by the Shipping Act, 1916 and the subsequently enacted Shipping Act of 1984.

#### B. FUNCTIONS

The Federal Maritime Commission administers a number of Federal statutes. Chief among these are the Shipping Acts of 1984 and 1916, the Intercoastal Shipping Act, 1933 and the Merchant Marine Acts of 1920 and 1936. The Shipping Act of 1984 represents a major change in the regulatory regime facing shipping companies involved in the oceanborne commerce of the United States.

The Commission's regulatory responsibilities include:

- Reviewing and monitoring agreements of common carriers and other persons engaged in the U.S. foreign commerce. These agreements include conference, pooling, joint service and space charter agreements.
- Receipt and review of tariff filings (but not the regulation of rate levels) by common carriers engaged in the U.S. foreign commerce.
- Protecting shippers, and carriers engaged in the foreign commerce of the United States from restrictive or non-market-oriented rules and regulations of foreign governments and/or the practices of foreign-flag carriers that have an adverse effect on the commerce of the United States.
- Protecting the rights of U.S.-flag shipping companies to transport cargoes in the foreign-to-foreign trades.
- Regulating rates, charges, classifications, tariffs and practices of ocean common carriers in the domestic offshore trades of the U.S.
- Licensing of international ocean freight forwarders.
- 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.
- Investigating discriminatory rates, charges, classifications, and practices of ocean common carriers, terminal operators, and freight forwarders operating in the foreign and/or domestic offshore commerce of the United States.
- Rendering decisions, issuing orders, and adopting rules and regulations governing common carriers in U.S. foreign and domestic offshore commerce, terminal operators, freight forwarders, and other persons subject to shipping statutes of the United States.

The Shipping Act of 1984 exempts agreements that have become effective under the 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 Shipping Act or result in an unreasonable increase in transportation cost or unreasonable reductions in service.

In addition to monitoring relationships among carriers, the Commission is also responsible for ensuring that individual carriers, as well as those permitted by agreement to act in concert, fairly treat shippers and other members of the shipping public. The Act prohibits carriers from unduly discriminating among shippers and other members of the shipping public. The Act also requires carriers to make their rates, charges and practices publicly available in tariffs that must be on file with the Commission. Carriers may only assess the rates and charges that are lawfully on file with the Commission. The Commission does not, however have the authority to approve or disapprove general rate increases or individual commodity rate levels in the U.S. foreign commerce except with regard to certain foreign government - owned carriers.

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

### **C. ORGANIZATION**

The Federal Maritime Commission is composed of five Commissioners appointed for five-year terms by the President with the advice and consent of the Senate. Not more than three members of the Commission may belong to the same political party. The President designates one of the Commissioners to serve as Chairman. The Chairman is the chief executive and administrative officer of the agency.

The Commission's organizational units consist of: Office of the Managing Director, Office of the Secretary, Office of the General Counsel, Office of Administrative Law Judges, Bureau of Economic Analysis Bureau of Agreements and Trade Monitoring, Bureau of Tariffs, Bureau of Hearing Counsel, Bureau of Administration and Bureau of Investigations. The Managing Director assists the Chairman in providing executive and administrative direction to the Commission's Offices and Bureaus. These Offices and Bureaus are responsible for the Commission's regulatory programs or provide administrative support.

In fiscal year 1986, the Commission was authorized a total of 214 full-time equivalent positions and had a total appropriation of \$11,360,000. The majority of the Commission's personnel are located in Washington, D.C. with District Offices in New York, San Francisco, Los Angeles, New Orleans, Miami, and Hato Rey, Puerto Rico.

## II

### THE YEAR IN REVIEW

#### A. INTRODUCTION

During fiscal year 1986, the twenty-fifth year since the Federal Maritime Commission was established as an independent regulatory agency in 1961, the Shipping Act of 1984 continued to dominate the Commission and the regulated shipping industry. Most of the Commission's activities involved implementation of the Act so as to encourage innovative commercial combinations and ensure equal opportunity to compete for the carriage of oceanborne commercial cargo.

This part of the Annual Report provides a brief synopsis of the Commission's major initiatives during fiscal year 1986.

#### B. SURVEILLANCE

In keeping with the requirements of the Shipping Act of 1984, the Commission is encouraging innovative combinations, such as joint ventures and the like, which are designed to meet technological changes and shippers' needs. These innovative shipping combinations are encouraged by eliminating uncertainty as to whether and when the arrangements may become effective. In exchange for reduced preemptive review of new operational agreements, the Commission has significantly increased its surveillance and enforcement efforts. See also pp. 13-18. Shifting the Commission's emphasis from pre-approval analysis of agreements to post-effective enforcement has involved a coordinated effort between the Bureaus of Agreements and Trade Monitoring, Investigations, and Hearing Counsel.

## **1. Agreements and Trade Monitoring**

A major reason for the enactment of the Shipping Act of 1984 was to expedite the agreements process and the Commission has been very successful in implementing these provisions. The Commission has successfully met its statutory requirement of reviewing all agreements for anti-competitive effects within 45 days of filing. Due to the streamlined procedures, review of new agreements is still thorough, but much prompter. This allows innovative, timely agreements which result in better service.

The Commission has also reoriented efforts away from agreement processing and toward the meaningful analysis of the operational impact of agreements through a comprehensive program of trade monitoring. While analysts continue to review individual agreements for anti-competitive effects, a significant number of Commission analysts is now studying entire trade routes which may involve relationships among several agreements. The analysts provide a continuous backdrop of maritime industry operations against which individual agreements can be compared. The careful review of relationships between agreements is also designed to uncover violations of the shipping statutes which can then be targeted for enforcement action.

## **2. Enforcement**

In exchange for reduced preemptive review, the Shipping Act of 1984 has given the Commission substantial authority to assess civil penalties against those who abuse the new legislative scheme. Equal commercial freedom to compete is assured through substantial penalties for wrongdoing.

Enhancing the enforcement activity was one of the major initiatives of fiscal year 1986 and, to date, the Commission has increased its investigative staff, improved training, consolidated field offices, and integrated enforcement staff with other agency personnel. The Commission has also entered into a Memorandum of Understanding with the U.S. Customs Service under which the

two agencies will exchange information related to illegal trade activity. These efforts will enable investigators to uncover the major substantive violations -- such as rebating -- which undermine the nondiscriminatory common carriage scheme contemplated by Congress in the 1984 Act.

The role of Hearing Counsel attorneys as prosecutors of the statute's violators is also being given greater emphasis. By enhancing the role of Hearing Counsel, increasing training, and solidifying their working relationship with other agency bureaus, the Commission is confident that the improved quality of enforcement efforts will significantly deter violations of the statute.

Specific activities during fiscal year 1986 include:

- Of the 538 new agreements and modifications filed at the Commission, 137 were processed under shortened review and only 4 required a formal extension of time for review beyond the 45-day statutory deadline.
- All conference agreements are now in full compliance with the form and content requirements required in the 1984 Act.
- The Commission developed its first major trade monitoring report, "The Mediterranean Monitoring Report."
- Seventeen investigations were settled or compromised resulting in civil penalties of \$811,500.
- An industry expert on shipping malpractices was hired as a consultant to develop proposals and strategies to better uncover major malpractices, such as rebating.
- The first service contract audits were completed.

### C. TARIFFS AND SERVICE CONTRACTS

#### 1. Foreign and Domestic Tariffs

The Commission has continued to receive the ever-increasing number of foreign and domestic tariff pages filed annually. During fiscal year 1986, 633,280 foreign tariff pages were filed, representing over 3 million individual rate charges. Independent actions comprised a great deal of these filings. In several enforcement proceedings, tariff

information proved invaluable but, as the number of pages grow, it is becoming increasingly difficult to readily retrieve the necessary information. For this reason and others, the Commission is proposing to automate tariff filings as described more fully below.

## **2. Service Contracts**

During fiscal year 1986, the Office of Service Contracts was formed to receive and review service contracts and provide input into enforcement and rulemaking proceedings. During the first quarter of fiscal year 1986, the number of service contract filings was increasing at a rapid rate, but leveled off by the end of the year due to the decision by several conferences to control individual members' service contracts, as permitted by the 1984 Act. A significant portion of cargo is moving under service contracts, particularly in the inbound trades from Europe and Japan.

## **3. Tariff Automation**

The Commission is proposing automating its tariff filing with the goal of eventually operating in a paperless environment. Recently, the automated tariff advisory committee -- representing 19 industry interests affected by tariff automation -- presented comments to our contractor's feasibility study. See also pp. 29-30. Should the Commission proceed with automation, we hope to have an RFP for a prototype system awarded in fiscal year 1987.

Specific activities during fiscal year 1986 include:

- Processing and analyzing 4,300 service contracts.
- Issuing a comprehensive proposed rule concerning the filing of service contracts and statements of essential terms based upon the experiences gained since the 1984 Act became effective.
- Rulemakings involving domestic tariff petitions in Hawaii, the U.S. Virgin Islands, the Port of New York, and domestic terminal exculpatory clauses.



#### **D. FIVE-YEAR REPORT TO CONGRESS**

The Commission also has an advisory role to Congress on the effects of the 1984 Act upon the industry we regulate. The 1984 Act represents the first major overhaul of foreign oceanborne commerce regulation since the Shipping Act, 1916 and, as such, Congress has expressed an interest in closely monitoring the Act's effects. While we report to Congress on an ongoing basis through various reports, correspondence and hearings, the Act itself calls for a comprehensive five-year report to Congress in 1989. The Commission's Bureau of Economic Analysis is in charge of gathering and processing the necessary information. We are maintaining an "open door" approach to the gathering of information and this has involved a major undertaking. During fiscal year 1986, several thousand surveys on the Act's effects were sent to parties throughout the industry, including carriers, conferences, shippers, ports, and marine terminal operators. See also pp. 31-42. In addition, the Commission sponsored a symposium with Old Dominion University in Norfolk, Virginia, which was attended by almost 200 members of the maritime industry focusing on the Act's impact so far. The record of this proceeding and the responses to the survey provide a sound benchmark for our review of the almost three-year old Act.

Specific activities during fiscal year 1986 include:

- **Three meetings were held with the representatives of the government agencies providing separate reports as specified by the 1984 Act (The Departments of Justice and Transportation and the Federal Trade Commission).**
- **A Carrier Study Group and a Shipper Working Group were formed to facilitate information gathering about the 1984 Act for the Ocean Shipping Industry.**

**E. COUNTERVAILING SANCTIONS ON FOREIGN GOVERNMENTS  
UNDER SECTION 19 OF THE MERCHANT MARINE ACT OF 1920 AND  
SECTION 13(b)(5) OF THE SHIPPING ACT OF 1984.**

**1. Section 19 of the Merchant Marine Act of 1920**

A significant portion of the Commission's activities during fiscal year 1986 involved section 19 of the Merchant Marine Act of 1920, which gives the Commission the power to retaliate when an action of a foreign government or commercial entity creates unfavorable conditions in U.S. foreign ocean trades. Those sanctions ensure equal opportunity to compete for the carriage of oceanborne commercial cargo. The Commission is given a great deal of latitude in forming these sanctions, and in the past, has generally proposed sanctions mirroring the offending actions or barring the carriers of the offending nations outright by tariff suspension. Discriminatory fees and taxes imposed upon U.S.-flag carriers are examples of such offending practices, but the Commission is aware of other types of protectionism such as cargo reservation decrees and new problems relating to intermodal, port, and landside services.

During fiscal year 1986, the Commission reviewed two cargo reservation laws in the countries of Peru and Colombia. Further, the Commission examined the prohibitions in Japan on the use of 9-1/2-foot high containers -- the so-called "high-cube" containers -- which hold over 13% more cargo than standard 8-1/2-foot equipment. This has constrained the efficiency of carriers (primarily U.S.-flag), which have incorporated the high-cube containers into their operations. The Japanese government has since begun implementing a number of liberalizing measures, which appear to be allowing high-cube containers to move more freely on Japanese roads.

As of the end of fiscal year 1986, the Commission is closely monitoring activity in all of these trades to determine whether formal section 19 rulemaking is warranted. While some progress is evident, the situations are being watched very carefully to insure, among other things, that

whatever improvements are made are not illusory, short lived, or replaced by different artificial restraints on the free movement of international commerce.

## 2. Section 13(b)(5) of the Shipping Act of 1984

The 1984 Act gave the Commission authority to take action when a foreign government or foreign carrier, acting alone or in concert with any person, unduly impairs the access of U.S.-flag vessels to ocean trade between foreign ports. It is essential that U.S.-flag carriers be able to serve foreign-to-foreign trades. With the advent of complex intermodal networks, the ability to carry cargo in the cross-trades can be a vital factor in the profitability of a carrier's operations. While, to date, there have been no cases filed at the Commission under section 13(b)(5), we have received informal expressions of concern about some problems in the Asian cross-trades. The Commission is always prepared to look into possible section 13(b)(5) problems, should they arise.

Specific activities during fiscal year 1986 include:

- Two formal requests for information under section 15 of the 1984 Act from carriers in the U.S./Japan trade; the first concerning the limitations on the use of high-cube containers and the second concerning the impact of the liberalizing measures.
- In response to several complaints from shippers concerning a Peruvian cargo reservation decree, the Commission sought information on the situation through a FEDERAL REGISTER notice and the State Department. Based upon assurances from the Peruvian government, the Commission has placed the matter in abeyance for a six-month period at which time the impact of the Peruvian measures will be considered.
- In response to a petition from a bulk carrier concerning a Colombian cargo reservation decree, the Commission has sought comments through a FEDERAL REGISTER notice and diplomatic assistance from the State Department.



### III

#### SURVEILLANCE

##### A. GENERAL

In response to the Shipping Act of 1984, the Commission, during fiscal year 1985, began a number of programs to monitor and survey conditions within the maritime industry. These programs were intended not only to detect malpractices but to measure the impact of the Act and to amass a body of knowledge enabling the Commission to address the changing order of ocean transportation.

During fiscal year 1986, these surveillance programs were expanded and refined, focusing on agreements and trade conditions, service contracts, ocean freight forwarders, and non-vessel-operating common carriers.

As a vital adjunct to the Commission's surveillance programs, in the latter part of fiscal year 1986, the Bureau of Investigations and the Bureau of Agreements and Trade Monitoring began to take the first steps in creating an inter-bureau cooperative effort aimed at providing the Commission with another tool to assist it in enforcing the provisions of the Shipping Act of 1984.

The goal of this effort will be to utilize the investigative function and the monitoring function within the Commission in the common area of developing information about the industry to enable the Commission to foster an effective monitoring and enforcement program.

While this effort was still in its formative stage at the end of fiscal year 1986, during fiscal year 1987 this working relationship will expand to the point where the bureaus will exchange information and provide support which will benefit the Commission's monitoring and enforcement program.

## B. AGREEMENTS AND TRADE CONDITIONS

Under present statutory authority, the Commission is responsible for maintaining adequate surveillance over the activities of parties to filed agreements and others subject to its jurisdiction in order to ensure continued compliance with the Shipping Act, 1916, the Shipping Act of 1984 and Commission rules and regulations. The Office of Trade Monitoring in the Bureau of Agreements and Trade Monitoring is charged with the responsibility for monitoring these activities. **Appendix C** indicates the various types of agreements filed with the Commission.

The drastic changes wrought by the 1984 Act in the area of agreement processing provide, perhaps, the most significant impetus for trade surveillance. Under the new statute, it is clear that, unless a given agreement is subject to rejection for technical reasons or is contrary to the standards of Section 6(g) of the 1984 Act, the agreement should be permitted to take effect, with the Commission maintaining surveillance over the concerted activities. In order to satisfy this statutory need, and the need to detect possible violations of other acts proscribed by the 1984 Act, the Bureau of Agreements and Trade Monitoring refined its surveillance activities to ensure effectiveness in its monitoring area.

In the previous fiscal year, the industry, in response to the expanded commercial freedoms granted under the 1984 Act, formed several of the largest conference agreements in the history of the Commission. For example, in the trans-Pacific trades, the Transpacific Westbound Rate Agreement and the Asia-North America Eastbound Rate Agreement encompass the trading areas (excluding the inbound Japan trade) of sixteen previous conferences and include almost all of the major carriers serving the Far East.

Accordingly, in fiscal year 1986, the Bureau of Agreements and Trade Monitoring implemented a monitoring/surveillance program that includes the periodic in-depth review of selected trades, specifically those

covered by the "super-conferences." A series of surveillance reports, including operator market share data, cargo tonnages of major-moving commodities, shipper identification, relevant tariff rates and rate histories, use of service contracts, and an agreement-document analysis, as well as an analysis of the existence of malpractices, was planned. In May of 1986, the Bureau issued its first in-depth surveillance report which analyzed the Mediterranean/United States trades. This report also provided an overall assessment of changing trade conditions and suggested areas of focus for possible investigation of shipping act violations. Data for an extensive report in the U.S./Brazil trades has been gathered and a final report will be completed in early 1987.

In-depth surveillance reports in other specific target trades have been scheduled through the year 1989. Notwithstanding, the Bureau has designed a further ongoing program for monitoring the current activities transpiring in key trades each quarter. This quarterly reporting will commence in 1987 and is intended to provide the Commission with timely trade information necessary to address effectively trade problems as they arise.

Other activities of the Bureau's monitoring office during the past fiscal year involved a preliminary economic analysis of proposed equal access/sailing agreements under Section 6(g) of the 1984 Act; the initial data compilation for a U.S./Japan trade profile which will be completed in the first quarter of fiscal year 1987; and the development of economic interrogatories to support the Commission's Bureau of Hearing Counsel in a complaint case.

Additional activities planned in the coming fiscal year include preparation of discussion papers on various topics of regulatory importance. For example, in anticipation of congressional oversight hearings, the Bureau's monitoring office will be preparing papers on the impact under the 1984 Act of independent rate actions taken by carriers within a conference and service contracts. Other topics will be developed as the need presents itself.

### **C. SERVICE CONTRACTS**

The Shipping Act of 1984 created the service contract, a contract between a shipper and an ocean common carrier or conference in which the shipper, in return for a commitment to a certain rate and defined level of service from the carrier, commits a certain minimum of cargo over a fixed period of time to that carrier. The use of service contracts was immediate and expanded greatly during fiscal year 1986. The Bureau of Tariffs and the Bureau of Investigations jointly initiated a program to monitor service contracts.

The Bureau of Investigations conducts audits or reviews of selected service contracts to ensure that carriers and conferences are abiding by the terms of the contracts and to ensure that acts prohibited by the Shipping Act of 1984 are treated appropriately. Additionally, these audits provide the Commission with a gauge of the impact of service contracts upon the maritime industry.

During the fiscal year, over 200 service contracts, written by more than 50 ocean carriers and conferences, were scheduled for audit. The contracts selected for audit were chosen to provide a broad picture of carriers, conferences, commodities, and trade routes. During the fiscal year 1987, the service contract audit program will continue to be a major activity of the Bureau of Investigations.

### **D. FREIGHT FORWARDERS**

Although the ocean freight forwarder compliance program has been ongoing at the Commission, during the fiscal year 1986, the Bureau of Investigations and the Office of Freight Forwarders of the Bureau of Tariffs streamlined the program to increase the breadth of participation given the limitation of man-hours available. This streamlining permitted 368 compliance checks to be conducted during the fiscal year.



## E. NON-VESSEL-OPERATING COMMON CARRIERS

Until the passage of the Shipping Act of 1984, Non-Vessel Operating Common Carriers had no statutory basis for their existence, they were created by a judicial decision of the Commission. After the passage of the Shipping Act of 1984 and its enactment unto law, the Commission decided that some form of oversight was in order for Non-Vessel Operating Common Carriers.

Thereafter, an audit program was developed whereby Non-Vessel Operating Common Carriers are selected from among those that maintain active tariffs with the Commission. The Non-Vessel Operating Common Carriers selected for this program are contacted for an appointment during which commission field personnel conduct a limited audit of shipment files processed under their tariffs. Fiscal year 1986 was the first full fiscal year of this program.

Although man-hours devoted to this program were limited, 22 audits were completed. This program will continue at an increased level during the next fiscal year.



## IV

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

#### A. TRANSATLANTIC

No significant conference or rate agreement activity took place in these trades during this fiscal year. The U.S. Atlantic-North Europe Conference and the North Europe-Atlantic Conference installed authority to exercise complete control over the use of service contracts by their members. However, since neither conference permitted independent service contracts prior to establishing this authority, no individual contracts were affected. Also, agreements between the two conferences and Evergreen Lines and Polish Ocean Lines, respectively, went into effect early in the year and appear to have had some stabilizing effect in the trades since these lines represent two of the major non-conference operators in the trades. These agreements provide for voluntary discussion and agreement on rates and service contracts.

A two party rate agreement went into effect in the trade between North Europe and the U.S. Virgin Islands. This agreement faces substantial outside liner competition and is not expected to have a major influence in the trade.

By and large, the U.S. trades with Northern Europe (including the United Kingdom and Scandinavia) appear to have experienced the least amount of competitive problems of any of the major U.S. foreign trades. Although over-tonnaging is still a problem, a spirit of cooperation among the conference lines and the non-conference lines seems to prevail and has contributed to the relative stability which the trade enjoys. A significant difference between these and other major trades is the fact that the conference lines have worked within the system (minimal independent action and no individual service contracts) and through various rationalization and cooperative arrangements to maintain

rates at remunerative levels. Also, the conferences committed themselves to effective self-policing from the beginning.

A new joint container service (Agreement No. 217-010823) between Canadian Transport Company and C.M.B. n.v. was established in the European-U.S. West Coast trade. The agreement authorizes the operation of 3 vessels of up to 1700 TEU capacity.

The Atlantic Container Line consortium agreement (Agreement No. 207-009848) expanded its scope to encompass the Gulf/European trade, in addition to its U.S. Atlantic/European operations, and increased its operating authority by 5 vessels. The ACL Gulf operation was subsequently split off into a separate service, Gulf Container Lines, and ACL, GCL, French Line and Hapag-Lloyd entered into Agreement No. 213-010955, to rationalize the operation of up to 20 vessels in the U.S. Atlantic & Gulf/Europe trade.

Agreement No. 217-010855 authorizes Hoegh-Ugland Auto Liners A/S to charter vessel space to V.A.G. Transport in the Northern Europe to U.S. trades. The agreement relates to the operation of up to six 1,500-4,500 passenger-car-unit vessels per month in the trade.

Agreement No. 207-010884 established the Trans Freight Lines Joint Venture, with authority to operate up to twelve 956-4,000 TEU vessels in the U.S./Europe trade.

Agreement No. 207-010907 established the American Transport Line in the U.S. Atlantic & Gulf/Europe trade. The agreement, which is between Crowley Atlantic, Inc. and Automar VI Corporation, is authorized to operate two Ro/Ro vessels in the trade, and is noteworthy in that it is the first joint service to be established between U.S.-flag operators since the 1984 Act became effective.

Agreement No. 203-010973 established a charter, rationalization and ratemaking agreement governing the operations of up to 20 NedLloyd and Trans Freight Lines vessels in the U.S./U.K., Ireland and North Europe trade.

## B. MEDITERRANEAN

Competition in the Atlantic and Gulf/Mediterranean trades has been unusually disruptive during the past year due to excessive overtonnaging, competition from intransit carriers serving adjacent trade routes, and the inability of the conferences to deal effectively with the situation. The U.S. Atlantic and Gulf/Italy, France, and Spain Freight Conference terminated its agreement as of May 1, 1986, after several attempts failed to hold it together. No agreement has yet been filed to replace the conference.

In the westbound trade, the Mediterranean/U.S.A. Conference has been similarly attempting to stabilize its membership and to boost its competitiveness by permitting space chartering among its members, total independence in some subtrades, and short notice of withdrawal. A more drastic action was the recent creation of a separate conference in the Mediterranean/Puerto Rico trade. While obviously not the start of a major move to reverse the 1984 Act trend of conference mergers, it does suggest that in certain situations a more localized conference may be better suited to dealing with the parochial conditions in a given trade.

The U.S. Pacific Coast/Mediterranean trade situation contrasts sharply with that of the U.S. Atlantic and Gulf Coasts. Membership and rate activity in the Mediterranean/North Pacific Coast Freight Conference have been fairly stable and the conference has even been able to institute some modest general rate increases during the year. The reasons for this contrast are not exactly clear. However, it probably has something to do with the fact that the West Coast trade is a long-haul trade which has not suffered from as much non-conference port-to-port competition as the other trades. Also, the difficulties of providing mini-landbridge service via other coasts probably discourages many foreign flag lines from competing on this basis.

The scope of the Medamerica Express joint service agreement between Italian Line and Spanish Line, Agreement No. 207-010737, was expanded with the addition of authority to serve ports on the Black Sea, the Arabian/Persian Gulf and adjacent waters, the Red Sea and the Gulf of Aden, and all ports on the African continent.

Agreement No. 203-010869, between the Mediterranean-U.S.A. Freight Conference (MEDUSA) and the Italy-U.S.A. North Atlantic Pool, authorizing the parties to discuss matters of mutual concern in the trade, was filed and became effective. An accompanying modification to the Italy-U.S.A. North Atlantic Pool Agreement (212-010286-007) authorized the parties to discuss rate matters and make recommendations to MEDUSA.

Agreement No. 213-010886, the Costa/ITALIA/Trasatlantica Space Charter and Sailing Agreement, authorizes the operation of up to eight linehaul vessels in the U.S. Atlantic/Mediterranean-Africa-Middle East trades. This agreement was subsequently modified to authorize the parties to agree upon rates in trades where they are not members of a conference or rate agreement.

Agreement No. 213-010890, the Costa/NedLloyd Space Charter and Sailing Agreement, authorizes rationalization of up to eight linehaul Ro/Ro vessels in the U.S. Atlantic & Gulf/Italy, Spain and France trades.

### C. AFRICA

The only significant conference activity in the African trades during the year was the enlargement of the geographic scope of the U.S. South and East Africa Conference to include rate authority on cargoes originating at ports and points on the U.S. Pacific Coast, except Alaska and Hawaii. The primary aim of the conference in this regard is to be able to offer shippers mini-landbridge service from the Pacific Coast. The conference also established a 48-hour independent action notice requirement on cargoes originating at ports and points in the States of

Washington, Oregon, California, Arizona, and Nevada. This contrasts with a 10-day notice period for all other states.

Although the American West African Conference experienced some fluctuation in its membership, there was nothing to indicate any serious competitive problems in the trade.

The CAMSHIP/BWAL Westbound Space Charter Agreement (217-010858), between Cameroon Shipping Lines and Barber West Africa Line, was the subject of a formal request for additional information pursuant to section 6(d) of the 1984 Act. The agreement was ultimately allowed to become effective.

Agreement No. 217-010867, the USL/Safmarine Space Charter Agreement, authorizes United States Lines (USL) to charter space on Safmarine vessels operating in the U.S./Africa trade, Safmarine to charter space on USL vessels operating in its U.S.-Europe service for transshipment in Europe to Southern Africa, and for both parties to charter space for on-carriage of cargo between Europe and Africa which is moving in the U.S./Southern Africa trade. Agreement No. 217-010882, a space charter agreement between USL, Safmarine and the Southern Africa-Europe Container Service (SEACS), authorizes the charter of space on SEACS vessels for USL and Safmarine cargo moving between Europe and Southern Africa, and complements the operations in this trade contemplated under Agreement No. 217-010867.

#### **D. TRANSPACIFIC**

Severe overtonnaging and an unbalanced trade continued to plague the Transpacific trades during fiscal year 1986. Depressed rates and chaotic competitive conditions forced Hapag-Lloyd and Lykes Bros. Steamship Company to withdraw from the various rate groups and the trades altogether. Evergreen Line also withdrew from the Trans-Pacific Westbound Rate Agreement (TWRA) and the Asia North America Rate Agreement (ANERA) but continued to operate as an independent thus providing strong nonconference competition for these groups.

All rate groups introduced new schemes to control the level of rates and to stabilize internal competition. The TWRA, which encompasses all U.S. trade to most of the Far East, removed the right of independent action on freight forwarder compensation and established central authority over the use of individual service contracts with the intent of phasing out such contracts.

ANERA, which serves the reciprocal trade, (1) authorized its members to disassociate themselves from collective rate reductions on 48 hours' notice; (2) established central control over service contracts; (3) established authority to agree on amounts paid by the members to container and container freight stations; (4) required the managing director to schedule a meeting to discuss a proposed independent action during the notice period; and (5) required each member to cover the tariff publication costs of its independent actions.

The Japanese eastbound conferences: (1) added authority for its' members to adopt the independent action of another member without the full 10 days' notice; (2) introduced intermodal rate authority in the United States; (3) established central authority over the use of service contracts; (4) required members with individual service contracts extending beyond December 31, 1986, to assign those contracts for conference participation; and (5) introduced a provision which prohibited independent action on commodities during the first 30 days of service contract negotiations. The Commission in a formal proceeding, found the last amendment to be contrary to section 5(b)(8) of the Shipping Act of 1984 and ordered it deleted from the agreement.

The Neptune Orient Lines/Orient Overseas Container Line/Kawasaki Kisen Kaisha Space Charter and Rationalization Agreement (Agreement No. 213-010601) was modified with the addition of Yamashita-Shinnihon Steamship Co. and five containerships in the agreement's Pacific Service.



As a result of Hapag-Lloyd's withdrawal from the trade, the Sea-Land/Hapag-Lloyd Transpacific Space Charter and Sailing Agreement (217-010651), which originally became effective on November 1984, terminated.

Agreement No. 203-010852, the Three Lines' Discussion Agreement in the Far East-U.S. Atlantic Coast Trades, was made the subject of a formal request for additional information pursuant to section 6(d) of the 1984 Act in December, 1985. This agreement was withdrawn by the parties, who filed Agreement No. 203-010878, which authorized them to enter into discussions and reach understandings and agreements related to their future rationalization arrangements in the subject trades.

Agreement No. 217-010857, the Sea-Land/Hanjin Reciprocal Space Charter Agreement, authorizes the parties to make vessel capacity available to each other on a space-available or dedicated capacity basis.

Agreement No. 213-010879 authorizes Evergreen Marine Corporation and Japan Line to coordinate the operation of a maximum of 18 vessels with an aggregate capacity of 40,000 TEU's in the U.S./Far East trades.

Agreement No. 225-010887 authorizes Sea-Land to operate as Hanjin's general agent at the Port of Elizabeth, New Jersey, for the carriage of containerized cargo in the Far East/U.S. trade.

Agreement No. 217-010891 established the Hong Kong Islands Line/Gearbulk Container Service Space Charter and Sailing Agreement in the Japan-Korea/Seattle trade.

The Australia-United States Discussion Agreement (203-010894) authorizes the parties to discuss and present a common negotiating position to the Australian Meat and Livestock Corporation concerning the carriage of meat cargo in the Australia to U.S. trade.

Agreement No. 203-010905 established the Japanese-Flag Far East-United States Discussion Agreement among the six major Japanese-Flag operators in U.S. trades.

## E. LATIN AMERICA AND THE CARIBBEAN

Conferences and rate agreements in the Caribbean, Central America, and Northern South America are traditionally affected by a chronic excess of service resulting in relatively unstable agreements with depressed freight rates. Fiscal Year 1986 saw little change in this historic condition. Almost all of the agreements in these areas experienced problems with internal and external competition which manifested itself most prominently by constant membership changes. The only significant agreement activity in these trades was the resurrection of a rate agreement among the regular carriers serving the U.S. Atlantic and Gulf/Netherlands Antilles, entitled the Aruba Bonair Curacao Liner Association.

Other conference action concerned (1) the liberalization of independent action notice by the Florida/Caribbean Liner Association (from seven days to one day) and the U.S. Atlantic and Gulf/Ecuador Freight Association (from ten days to three days) and (2) the addition of intermodal authority by the Atlantic and Gulf/South Eastern Caribbean Conference.

Agreement No. 207-010866 established the WISCO/ATL joint service in the Gulf/Caribbean trade.

Agreement No. 203-010856 established authority for Sea-Land Agencies to provide A. Bottacchi S.A. de Navigacion general agency and intermodal coordinating services in the U.S./South and Central America-Caribbean trades.

Several of the Argentina/Brazil-U.S. Atlantic and Gulf revenue pooling agreements were modified in the course of the fiscal year to accommodate U.S. Line's alternate coast service of Gulf ports through Savannah.

Agreement No. 217-010911 is innovative in that it authorizes SeaExpress to charter the car deck on voyages of SeaEscape cruise vessels operating between Florida and the Bahamas.

A new carrier rate agreement, Bahamas Shipowners Association (202-010982) was established in the Florida/Bahamas trade.

The Hispaniola Discussion Agreement (203-010977) was established in the U.S. Atlantic & Gulf-Puerto Rico-U.S.V.I./Haiti-Dominican Republic trade.

Agreement No. 203-010970 established the Sea-Barge Agreement in the U.S. Atlantic & Gulf-Puerto Rico-U.S.V.I./Mexico-Caribbean-Central and South America trades. This agreement was the subject of a formal Commission request for additional information pursuant to section 6(d) of the 1984 Act.

Agreement No. 202-010979 established the Caribbean Shipowners Association, a rate agreement in the Eastern Florida-Caribbean trade.

The Island Ocean Terminal Agreement (003-010965), which authorizes the parties to agree on terminal and accessorial services at Puerto Rico, became effective under the 1984 Act with regard to cargo moving in U.S. foreign commerce. The Commission's consideration of the agreement under the Shipping Act, 1916, with regard to cargo moving in domestic offshore commerce was pending at the conclusion of the fiscal year.

Agreement No. 204-010986, the United States/Peru Equal Access and Sailing Agreement, was pending completion of review under the Shipping Act of 1984 at the conclusion of the fiscal year.

#### F. MIDDLE EAST

Conference activity in the Middle East trade was minimal during the year. Only two major actions took place - the merging of the Red Sea Rate Agreement into the "8900" Lines Rate Agreement and the enlargement of the West Coast/Middle East and West Asia Rate Agreement to include India, Bangladesh and Burma.

Agreement No. 203-010739-001 modified the NedLloyd/Barber Blue Sea North America-Middle East Reciprocal Space Charter and Sailing Agreement to authorize the agreement on rates and pooling of revenue.

#### **G. WORLDWIDE**

Agreement No. 203-010851 established the Advisory Commission Study Agreement for the purpose of assisting the FMC in developing information for its five-year study of international shipping issues under section 18 of the 1984 Act.

Agreement No. 226-010916 provides for the formation of Global Equipment Management Limited, which manages and controls 17 carriers' empty containers and associated equipment on a worldwide basis.

Agreement No. 207-010943 established the ScanCarriers joint service in U.S. trades, with authority to operate up to 12 vessels. Agreement No. 207-010942, between ScanCarriers and the Barber Blue Sea joint service, is a cooperative working arrangement authorizing chartering and rationalization of services of up to 12 vessels.

#### **H. MARINE TERMINALS**

The Port of New York and New Jersey Terminal Customs Agreement authorizes six marine terminal operators to establish rates, charges and practices relating to the clearance and inspection of cargoes by the U.S. Customs Service at the Port of New York.

Agreement No. 224-010989, the North Atlantic Range of Ports Talking Agreement, was pending completion of statutory review at the conclusion of the fiscal year.

**TARIFF AUTOMATION**

Tariff filings continue to be manually received and processed by the Commission. This highly labor intensive operation is proposed to be replaced with automation utilizing modern data processing techniques. The Automated Tariff Filing and Information System (ATFI) is under consideration to be the official tariff file of the Commission. Such a system would have to have the ability to capture, review, process, retrieve and manipulate tariff type information in an automated environment that would be responsive to the needs of the Commission, private sector users, and other Governmental agencies and would fully automate the existing manual manner in which the Commission and the public receives and uses tariff information. It is presumed that such a system would be on-line, interactive and provide its users with real-time access to officially filed and accepted tariff information from world-wide locations. It is envisioned that the system could be largely financially self-supporting, with the Government incurring only the costs of development and follow-on utilization of the system for purposes mandated by the Congress in the shipping statutes.

During Fiscal Year 1986, the Commission created an Industry Advisory Committee (pursuant to the Federal Advisory Committee Act) composed of all segments of the steamship industry including carriers, conferences, shippers, freight forwarders, non-vessel-operating common carriers, ports and terminals. The purpose of the Advisory Committee was to advise and monitor the Commission's efforts towards tariff automation. Three public meetings of the Committee were scheduled to closely review a Commission sponsored feasibility study of tariff automation conducted by a private sector contractor. The final assessment of the study is that tariff automation is practical and will meet the needs of the industry and Government. The Study

recommended the utilization of a standard data base approach for tariff automation; the services of non-government owned computers, competitive procurement of development and operations, and the inclusion of provisions for future uniform commodity coding.

The Advisory Committee, in its review of the feasibility study, has been generally favorable and supportive. It was a Committee recommendation that the project continue to involve the private sector in the planning process; and for the Commission to pay particular attention to the costs and benefits of the automation effort. The Commission intends to review the feasibility study and the Advisory Committee's recommendation during the second quarter of fiscal year 1987.

VI

SECTION 18 STUDY

**A. SECTION 18: THE MANDATE FOR A FIVE-YEAR STUDY OF  
THE IMPACT OF THE SHIPPING ACT OF 1984**

Section 18(a) of the Shipping Act of 1984 (hereafter referred to as the "Act") directs the FMC for a period of five years following the enactment to collect and analyze information concerning the impact of the Act upon the international ocean shipping industry. Congress specified that the information the FMC collects should include data on (1) increases or decreases in the level of tariffs; (2) changes in the frequency and type of common carrier services available to specific ports or geographic regions; (3) the number and strength of independent carriers in various trades; and (4) the length of time, frequency, and cost of major types of regulatory proceedings before the Commission.

Section 18(b) of the Act also states that the FMC shall consult with the Department of Justice (DOJ), the Department of Transportation (DOT), and the Federal Trade Commission (FTC) annually concerning data collection, and that these agencies "shall at all times have access to the data collected under this section to enable them to provide comments concerning data collection."

Within six months after expiration of the five-year period of data collection, the Commission shall report the information, with an analysis of the impact of the Act, to Congress, to the Advisory Commission on Conferences in Ocean Shipping (Advisory Commission) and to the DOJ, DOT, and FTC. The Advisory Commission will be established by Congress at that time. The three aforementioned agencies will also submit their own analyses on the impact of the Act 60 days after the FMC submission.

The Act further specifies, in section 18(c), that the following three topics should be addressed in the analyses:

- The advisability of adopting a system of tariffs based on volume and mass of shipment;
- The need for antitrust immunity for ports and marine terminals; and
- The continuing need for the statutory requirements that tariffs be filed and enforced by the Commission.

The Advisory Commission is charged with conducting a comprehensive study of, and making recommendations concerning conferences in ocean shipping. The study shall specifically address whether the Nation would be best served by prohibiting conferences, or by closed or open conferences. The Advisory Commission shall, within one year after its establishment, make its recommendations to Congress.

#### **B. THE DATA-COLLECTING TASK**

From the FMC's perspective, the section 18 mandate involves three major areas of responsibility. The first is the collection of data, the second is ongoing consultation with the DOJ, DOT and FTC concerning data collection, and the third is the analysis of the data in order to determine the impact of the 1984 Act on the ocean transportation industry.

The task of data collection can also be separated into three functions. The first is the compilation of the data specifically listed in the Act. Section 18(a)(1) can be viewed as being concerned with pricing behavior in the liner shipping industry. Similarly, section 18(a)(2) can be seen as being concerned with changing levels of output (i.e., levels of service), and may include changes in the type of service. Section 18(a)(3) relates primarily to the impact of the Act on competition in liner shipping. As such, in referencing 18(a)(3), the "number" of independents can be interpreted to mean the number of individual liner operators who are not members of a conference in various trades, while



the "strength" of independents can be interpreted to include the market share of cargo transported by independent carriers, as well as the number and capacity of vessels operated by independent carriers.

The second task of data collection concerns the compilation of information which, although not specified in the Act, is nevertheless important to the proper evaluation of that which is specified. For example, the extent to which cargo moves by service contract or by through rates is a necessary ingredient to an assessment of the way in which pricing behavior in the liner industry became altered after the Act. Such information is also important in determining the extent to which tariff rates (as opposed to service contract rates or through rates) are indicative of the "price" of liner services. Similarly, the frequency of independent action by conference members and the average spread between rates filed by independent action and those contained in the conference tariff may also be valuable in assessing the impact of the Act on the level of competition in the liner industry.

The third task of data collection involves information which is descriptive of the cargo and shippers, and which reflects the costs to the carriers in providing the liner service. It could include stowage factors and value per ton of the cargo, a measure of shipper size or bargaining power, the average utilization rate for vessels, foreign exchange rates, and differences in operating costs for vessels in different trades. In many cases, data are not immediately available to satisfy the information requirement and it will be necessary to construct indexes or to establish "scores" based upon the limited information which can be obtained directly. Such data series, taken individually, may not reflect an accurate picture of the ocean shipping industry, but when used in conjunction with more precise information, the data may assist in determining the impact of the Act in comparison with changes which could have occurred independently of the Act. For example, it is generally recognized that liner tariffs will differ substantially

among the various trade routes, due at least partly to differences in operating costs and in the amounts of cargo carried. An index which conveys these differences, while less informative than the actual level of costs or the quantities carried, may nevertheless account for a significant part of the observed differences in tariff levels.

The first type of information mentioned above will be referred to as the "basic data" since that information was considered by Congress to be essential to the intent of section 18 and the data represent a minimum amount of information which is necessary to meet the requirements of the section. The second set of data may be called "accompanying data" in the sense that they exist along with the basic data and jointly describe the salient features of the ocean shipping industry. The third set of data are "ancillary" since they supplement the information contained in the other data sets.

### **C. CONSULTATION WITH OTHER AGENCIES**

Sources of information available to the Commission include tariffs and service contracts on file, published material (such as exchange rates compiled by the International Monetary Fund), Bureau of Census data, and information requested from carriers, shippers and ports. The choice of data to be collected for a period of several years before and after the Act depends partly on what can be obtained from the various sources and partly on the intended analysis.

It is expected that the analytical approach which will be adopted by the FMC will differ in some respects from the approach of the other agencies. It was the apparent intention of Congress to allow for a reasonable diversity by forming an Advisory Commission whose task, among other things, is to evaluate the separate opinions. The sharing of data was clearly intended to avoid the costly duplication of activity by the separate agencies.

Accordingly, the FMC will be the major repository for the data and will be given the responsibility for distributing it in an accessible and immediately usable form. There are, however, two limitations to an open distribution of information. First, portions of the Bureau of Census data have been obtained on the condition that any release of information reveals nothing which can be traced to an individual carrier or shipper. The guidelines provided by the Bureau specify that quantities which are formed from three or less firms or which reflect a share by one firm of more than 90 percent of the total are to be regarded as traceable to a specific individual. An evaluation of such quantities may be made by the FMC without releasing the quantities themselves and without reference to the individuals to whom the quantities apply. In such cases it will therefore be necessary to share the evaluation, rather than the data.

The second limitation concerns a similar desire to maintain the confidentiality of responses to FMC surveys and requests for information from industry representatives. In all cases, except those which were otherwise agreed upon, the names of the respondents will be withheld from the released information and data. Similarly, data supplied by individual carriers, shippers, ports and other business enterprises within the international shipping industry will be presented in a form which does not reveal the information source.

#### **D. ANALYSIS OF THE IMPACT OF THE ACT**

The approach which is being adopted by the FMC is based on two major considerations. First, while it may not be possible to provide statistical evidence to show what effects can be attributed solely to the Act, it should nevertheless be possible to show what cannot be attributed to the Act. The distinction is important since all of the basic data are affected by a large number of influences and it may be difficult to sort out the contribution of each.

The most that can be expected is to net out the influence of the more obvious and potentially important covariates to the Act, leaving a residual which contains the influence of the Act, the influence of covariates not accounted for, and random influences. The magnitude of the residual will therefore give an indication of the maximum importance which can be attributed to the Act.

The second consideration involves a study of the interrelationships among the basic data sets and between the basic data and the "accompanying" data. For example, the potential relationship between changes in the level of tariffs and the level of service is shown schematically on the following page. If the level of tariffs decreased significantly after the Act went into effect and if a negative correlation is observed between rate changes and service level changes then the "free market" argument is supported since the changes after the Act would be consistent with the view that fewer restrictions in the liner market should result in better services at lower cost to the shipper. But if the level of service declined as the tariff level increased, then the lower left-hand possibility, as shown in the scheme, is given support.

#### Positive Correlations Between Rate and Service Levels

with rate increases then:

**market share argument**

maintaining market shares  
produces excess capacity  
and raises operating costs

with rate decreases then:

**closed conferences argument**

greater utilization of  
resources occurs with  
rationalization of liner  
services

#### Negative Correlations Between Rate and Service Levels

with rate increases then:

**conventional cartel argument**

price fixing always moves  
prices up and quality of  
service down.

with rate decreases then:

**free market argument**

services are improved at  
lower cost to the shipper.

A similar procedure for analyzing the relationship between market shares and other indicators of competitiveness (such as the frequency of independent action and the utilization rate of vessels) may yield information on the type of competition in the various trades as well as further confirmation (or the lack of it) regarding the level of competitiveness. In all such cases, the analysis is directed toward specific patterns in the interrelationships among the data sets, so that the impact of the Act (including what, if anything, the Act failed to accomplish) can be assessed.

The analysis of the basic data and the accompanying data will begin with a simple test for differences in means for the subset of data before the Act, compared with the subset of data after the Act. The same tests can then be performed with several covariates factored in so that patterns in the relationships might be observed. The data which prove useful as covariates will be entered as independent variables in a statistical regression analysis of the tariff levels for all commodities selected for study (using quarterly intervals for approximately five years before enactment and five years after enactment).

Tariffs on major moving commodities for the selected trades will constitute the dependent variable which is to be explained statistically. The commodities will represent more than 50 percent of the trade in 1984, and will be used throughout the time interval even if the percentage share of the total trade becomes less than 50 percent. Similarly, the tariff rate on the selected commodities will be retained initially even if evidence exists that most of the cargo in those rate classes are shipped under service contracts. An important part of the analysis is to determine what relationship, if any, exists between changes in service contract rates and changes in the tariff rate for the same item. If the analysis indicates that little or no relationship exists for specific commodities and if most of that cargo is shipped under service contracts (indicating that the tariff rate is a "paper rate" only and is therefore

not indicative of the price for liner services) then it may be necessary either to remove that commodity from the list of items to be analyzed further or to replace the tariff rate with the rate under which most of the commodity moves. A more complete discussion of "paper rates" is given in the next section of this report.

#### **D. FMC PROGRESS TO DATE**

##### **1. General**

In February 1984, when it became clear that section 18 was likely to become part of the Shipping Act of 1984, the FMC prepared a preliminary operational plan which identified the major areas of anticipated activity. See Federal Maritime Commission, 24th Annual Report for Fiscal Year 1985, pp. 73-79, and relevant Appendixes. Progress since that date is reported under a similar list of major areas:

- **Establish and maintain an Interagency Group of representatives from the DOJ, DOT, FMC, and FTC.**
- **Identify major issues and problems.**
- **Work with the industry in acquiring sources of information, advice and opinion.**
- **Research the usefulness of analytical and statistical procedures which can be applied to the collected data.**
- **Continue the data collection effort.**

##### **2. The Interagency Group of Representatives**

The FMC held its initial consultative meeting with the section 18 Interagency Group on June 8, 1984. Six additional meetings were held in FY 1984, seven meetings were held in FY 1985, and three meetings were convened during FY 1986. Although a wide range of topics was discussed, from confidentiality problems of certain data sources to interpretations of what Congress intended under section 18, the discussions have become increasingly more specific regarding the nature of the intended analysis of the FMC and the information requirements of the other

agencies in fulfilling their reporting obligations. At the first meeting in FY 1986, the FMC staff distributed to the members of the Interagency Group copies of the data which have been compiled in electronically accessible files. Subsequent meetings were convened when substantial additions to the data-set became available. That trend is expected to continue during FY 1987.

### **3. Identify Major Issues and Problems**

The FMC's initial assessment of the data collection mandate focused on sections 18(a)(1), (2), and (3) of the new Act by examining the conceptual issues and problems associated with data collection pursuant to each section. Although specific tasks continue to be assigned on a section-by-section basis, the need for a more integrated approach became apparent during FY 1985. The need arose partly in response to the desire to automate the data-collecting tasks for the years following the establishment of the data files, and partly from the concern that all pertinent data should be listed and compiled now rather than at some later date when the information is no longer current. Accordingly, a decision was made to update the status report each six months and to distribute copies of the report to various people in the international shipping industry who have expressed an interest in the progress of the study.

### **4. Work with the Ocean Shipping Industry**

Arrangements have been made to establish study groups of carriers and shippers to assist the FMC in compiling information for the section 18 study. These arrangements have become known as Carrier Study Group and the Shipper Working Group, respectively, and have already served two important purposes. First, they provide organized procedures whereby FMC staff can obtain data for which the carriers or shippers are considered to be the primary data sources. Second, the study groups have also proved to be

useful as verifying authorities for data which are FMC-sourced. Similar arrangements may be initiated with ports and marine terminal operators, with freight forwarders, and with NVOCCs.

## **5. Continuation of Data Collection**

Of greatest interest during FY 1986 was the compilation of tariff rates for the following country-to-country trades which were selected for the section 18 study:

### **Australia -**

- U.S. West Coast to Australia
- U.S. East Coast to Australia
- Australia to U.S. West Coast
- Australia to U.S. East Coast

### **Brazil -**

- U.S. East Coast to Brazil
- U.S. Gulf Coast to Brazil
- Brazil to U.S. East Coast
- Brazil to U.S. Gulf Coast

### **Italy -**

- U.S. East Coast to Italy
- Italy to U.S. East Coast

### **Japan -**

- U.S. West Coast to Japan
- U.S. East Coast to Japan
- Japan to U.S. West Coast
- Japan to U.S. East Coast

### **West Germany -**

- U.S. North Atlantic to West Germany
- U.S. South Atlantic to West Germany
- West Germany to U.S. North Atlantic
- West Germany to U.S. South Atlantic

### **Taiwan -**

- U.S. West Coast to Taiwan
- U.S. East Coast to Taiwan
- Taiwan to U.S. West Coast
- Taiwan to U.S. East Coast



Other important data which were collected during FY 1986 include market shares for conference carriers and non-conference carriers. See **Appendix H**. A survey of shippers, carriers, ports and marine terminal operators regarding facts and opinions relating to the Act was completed during FY 1986. The survey results and a detailed analysis of the responses is being prepared; see **Appendix I** for an outline of the surveys.

## **6. Data Relating to Major Types of Regulatory Proceedings**

Section 18(a)(4) requires the Commission to collect information concerning the length of time, frequency, and cost of major types of regulatory proceedings before the Commission. A major purpose of the 1984 Act was to establish a nondiscriminatory regulatory process for the common carriage of goods by water in the foreign commerce of the United States with a minimum of government intervention and regulatory costs. The objective of section 18(a)(4) is therefore to determine if important elements of that purpose have been achieved. A procedure for collecting the relevant information is currently being devised.

## **7. Section 18(c) Topics**

During FY 1986, background information was compiled on the third topic specified in section 18(c), namely, the continuing need for the statutory requirements that tariffs be filed and enforced by the Commission. From the FMC's perspective, it is certainly one of the more important issues, since it will have a significant impact on the structure of U.S. regulation of liner shipping.

Thus far the staff has completed draft reports on the activities of foreign governments in the area of tariff filing and enforcement and the historical evolution of the tariff filing and enforcements provisions in U.S. law. Furthermore, the Commission has retained the services of a professor of maritime economics from the University of Wales Institute of Science and Technology to analyze the economic consequences on the market process of the requirement that tariffs be filed and enforced.



## VII

### SIGNIFICANT OPERATING ACTIVITIES BY ORGANIZATIONAL UNIT

#### A. OFFICE OF THE SECRETARY

##### 1. General

The Office of the Secretary is responsible for preparing the regular and notation agenda of matters subject to consideration by the Commission and recording subsequent action taken by the Commission on these items; receiving and processing formal complaints involving violations of the shipping statutes and other applicable laws; issuing orders and notices of actions of the Commission; maintaining official files and records of all formal proceedings; receiving and responding to subpoenas directed to Commission personnel and/or records; 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; authenticating publications and documents related to formal proceedings before the Commission; and compiling and publishing bound volumes of Commission decisions. The Secretary's Office also participates in the development of rules designed to reduce the length and complexity of formal proceedings, the ongoing evaluation of the efficiency of the Commission's organizational structure, and implementation of legislative changes to the shipping statutes.

During fiscal year 1986:

- Certain offices, previously under the Office of the Secretary, were transferred into the Bureau of Administration. These functions included the Office of Energy and Environmental Impact, the Administrative Services Activity, and the Management Analysis Activity.
- The Office continued implementation of automated systems including a proposed docket tracking system and more efficient storage/retrieval of minute/docket records.

- The Commission heard oral argument in 4 formal proceedings and issued decisions concluding 13 formal proceedings. Fifteen formal proceedings were discontinued or dismissed without decision (including determinations not to review Administrative Law Judge orders terminating proceedings). One case was also remanded back to the Administrative Law Judge. The Commission also concluded 97 special docket applications and 55 informal dockets which involve claims against carriers for less than \$10,000. During the same period the Commission issued final rules in three rulemaking proceedings.
- Nine rulemaking proceedings were pending before the Commission at the end of the year. Final decisions in these matters are anticipated in fiscal year 1987. Additional new rulemakings will be initiated in fiscal year 1987, e.g. a revision of the Commission's freedom of information rules in 46 CFR 503 to conform with recent amendments to the Freedom of Information Act.

## **2. Informal Dockets Activity**

This activity is responsible for the initial adjudication of claims filed by shippers against common carriers by water engaged in the foreign and domestic offshore commerce of the United States. These claims must be predicated upon violations of the Shipping Act of 1984, or the Intercoastal Shipping Act, 1933, for which reparation of less than \$10,000 is sought. The vast number of claims received under this program constitute shippers' requests for freight adjustments arising from alleged overcharges by carriers. During fiscal year 1986, the Informal Docket Activity received 59 new cases. During the same period 60 informal docket claims were concluded. The Activity also continued to review certain legal matters that have arisen in light of changes brought about by the Shipping Act of 1984.

## **3. Office of Informal Inquiries and Complaints**

This Office coordinates the informal complaint handling system throughout the Agency. The Office processed 1022 complaints and information requests during fiscal year 1986, approximately the same as during the previous year. Based on this activity, complainants recovered over \$95,000

through savings and refunds in fiscal year 1986. Since 1981, the Office has assisted in the recovery of nearly \$1,700,000. This figure includes several large sums which the Office was instrumental in recovering for U.S. shippers.

The Office acted as liaison between shippers, carriers, forwarders, conference executives and offices and bureaus within the Agency, and assisted in setting up meetings with industry representatives and appropriate Commission officials. During fiscal year 1986, this Office responded to inquiries and provided information on the Shipping Act of 1984, the Tax Reform Act of 1986 and also continued to represent the Commission on the President's Consumer Affairs Council, which presents the Administration's views on consumer topics to federal agencies.

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

### **1. General**

Administrative Law Judges preside at hearings held after receipt of a complaint or institution of a proceeding on the Commission's own motion.

Administrative Law Judges 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 1986, 37 proceedings were pending before Administrative Law Judges. During the year, 127 cases were added, which included 3 proceedings remanded to Administrative Law Judges for further proceedings and 1 proceeding which is being counted as two proceedings, inasmuch as two separate decisions will be issued by two judges. The judges held 8 prehearing conferences, held 2 completed oral hearings, and issued 12 initial decisions in formal proceedings, one initial decision in an informal proceeding, and 94 initial decisions in special docket applications.

Cases otherwise disposed of involved 12 formal proceedings and 3 special docket applications.

### **2. Commission Action**

The Commission adopted 4 formal decisions and 13 special docket decisions. Four formal decisions, one informal decision, and 62 special docket decisions became administratively final.

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

• Reefer Express Lines Pty., v. Uiterwyk Cold Storage Corporation, Eller & Company, Inc., and Tampa Port Authority [Docket No. 82-49].

The initial decision found that the Tampa, Florida, Port Authority's tariff providing for the assessment by the Port's terminals of charges for "warehouse checking" for the account of the vessel is lawful; that such charges should not be allocated by the Port's terminals among the vessel and the shipper/consignee in proportion to any benefits alleged to be conferred; that such charges are the responsibility of the vessel in providing its transportation services, including the necessity to provide a safe and convenient place to receive cargo and issue a receipt therefor; that the costs of warehouse checking should not be borne in any proportion by the Port's terminals; and that the definition of warehouse checking should be amended insofar as it unlawfully exculpates the Port's terminals.

• Member Lines of the Transpacific Westbound Rate Agreement - Possible Violations of the Shipping Act of 1984 [Docket No. 85-18].

The initial decision approved a settlement negotiated by the Commission's Bureau of Hearing Counsel and by the carrier respondent members of the Transpacific Westbound Rate Agreement. Respondents were ordered to pay a civil penalty totaling \$300,000, and they were ordered to undertake certain other actions intended to compromise the issues set out in this investigation, which had sought to determine whether the respondents had violated sections 10(a)(2) or 10(a)(3) of the Shipping Act of 1984. The respondents had stipulated that certain of their activities were terminated prior to the commencement of settlement discussions, and the respondents had proposed to modify Article 5 of the Agreement to provide that any minimum rates adopted under the Agreement in the future shall remain subject to further adjustment or revocation under the Agreement's ratemaking processes, including its independent action provisions.

Judges also issued initial decisions in Docket Nos. 82-15, 83-2, 83-46, 84-28, 84-31, 85-2, 85-11, 85-13, 85-14, 85-24, Informal Docket No. 1547 (F), Special Docket Nos. 1305, 1353, 1354, 1356, 1357, 1358, 1359, 1361, 1364, 1366, 1367, 1369, 1370, 1371, 1372, 1373, 1374, 1375, 1377, 1378, 1379, 1380, 1381, 1382, 1383, 1384, 1385, 1386, 1387, 1388, 1389, 1390, 1391, 1392, 1393, 1394, 1395, 1396, 1397, 1398, 1399, 1400, 1401, 1402, 1403, 1404, 1405, 1406, 1407, 1408, 1409, 1410, 1411, 1412, 1413, 1414, 1415, 1416, 1417, 1419, 1421, 1422, 1423, 1424, 1425, 1426, 1427, 1428, 1429, 1430, 1431, 1432, 1433, 1434, 1436, 1437, 1438, 1439, 1440, 1442, 1443, 1444, 1445, 1446, 1449, 1450, 1452, 1456, 1458, 1462, 1463, 1464, 1465, and 1470 described under "Decisions of the Commission."

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

At the close of fiscal year 1986 there were 42 pending proceedings, of which 5 were investigations initiated by the Commission. The remaining proceedings were instituted by the filing of complaints or applications by common carriers by water, shippers conferences, port authorities or districts, terminal operators, trade associations, and stevedores.



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

### **1. General**

The Office of the General Counsel provides legal counsel to the Commission. The Office reviews for legal sufficiency staff recommendations for Commission action, drafts proposed rules to implement Commission policies, and prepares final decisions, orders, and regulations for Commission ratification. In addition, it provides written or oral legal opinions to the Commission, its staff, or the general public in appropriate cases. The Office of the General Counsel also represents the Commission in litigation before courts and other administrative agencies. Although the litigation work largely consists of representing the Commission upon petition for review of its orders filed with the U.S. Courts of Appeals, the Office 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 Office is responsible for preparing or presenting testimony to Congress on various maritime regulatory matters.

The Office also has the responsibility for monitoring and reporting on international maritime developments, including practices of foreign governments which affect ocean shipping. In addition, this Office represents the Commission on U.S. Government interagency groups dealing with international maritime issues, and participates as a technical advisor on regulatory matters in bilateral and multilateral maritime discussions.

### **2. Commission Actions**

The following are representative of matters prepared by the Office:

• Modifications to the Trans-Pacific Freight Conference of Japan Agreement, the Japan-Atlantic and Gulf Freight Conference Agreement, and the Japan-Puerto Rico and Virgin Islands Freight Conference Agreement, [Docket No. 86-3], 23 S.R.R. 1390, (September 30, 1986).

The Commission issued a report and order which held that a provision in the conferences' agreements which prohibited the exercise of independent action on tariffed rate or service items during the pendency of service contract negotiations affecting those items was contrary to section 5(b)(8) of the Shipping Act of 1984, and ordered to be deleted from the agreements. The Commission also held (with one Commissioner dissenting) that a provision in the conferences' agreements which withdrew any adopting independent action whenever the originating independent action was withdrawn prior to its effectiveness was contrary to section 5(b)(8) of the Shipping Act of 1984. This provision was ordered to be deleted from the agreements or modified to ensure that an adopting independent action stands on its own unless the adopting member line voluntarily advises otherwise.

• Matson Navigation Company, Inc. - Proposed Overall Rate Increase of 2.5 Percent Between United States Pacific Coast Ports and Hawaii Ports, [Docket No. 85-24], 23 S.R.R. 1216 (June 26, 1986).

The Commission found that due to declines in the cost of fuel and interest rates as well as lower than average business risks, a proposed rate increase filed by Matson Navigation Company, Inc. in the Hawaiian Trade was unjust and unreasonable under the Intercoastal Shipping Act, 1933. The Commission further found that these same considerations indicated that Matson's existing rates were unjust and unreasonable and ordered a 1.5 percent overall rate reduction under the Shipping Act, 1916.

• Application of the Loyalty Contract Provisions of the Shipping Act of 1984 to a Proposed Rule on Refunds, [Docket No. 85-12], 23 S.R.R. 1098 (May 16, 1986).

Two conferences filed a petition requesting that the Commission declare a proposed rule for tariff refunds not a "loyalty contract" within the meaning of section 3(14) and section 10(b)(9) of the Shipping Act of 1984. The rule

provided that the conferences would pay a prompt refund of no greater than 10 percent to any shipper which shipped all or a fixed percentage of its cargo with the conferences during any period not to exceed four consecutive months. The Commission denied the petition, finding that under the proposed rule, a shipper's performance of the conference's offer constituted valid consideration and gave rise to a loyalty contract.

• Independent Action - Notice and Meeting Provisions in Conference Agreements, [Docket 85-7], 23 S.R.R. 1022 (April 25, 1986).

The Commission issued a final rule requiring conference agreements to: (1) establish a maximum notice period of not more than 10 days for member lines taking independent action; (2) provide for a single notice to the conference of a member line's independent action; and (3) state that a member line taking independent action is not required to attend a meeting, or to comply with other procedures, for the purpose of explaining, justifying or compromising a proposed independent action.

• Section 19 Inquiry, United States/Argentina and United States/Brazil Trades, [Docket No. 84-33], 23 S.R.R. 926 (March 25, 1986).

The Commission discontinued the inquiry into shipping conditions in the U.S. trades with Argentina and Brazil. Continuation of the proceeding did not appear to constitute an efficient and effective use of Commission resources, given the apparent lack of concern of affected shippers, and given the U.S. Executive Agencies' apparent dissatisfaction with the proceeding and lack of response to the Commission's earlier "Notice" (See 23 S.R.R. 251) concerning restructuring the proceeding.

• Southeastern Maritime Co. v. Georgia Ports Authority, [Docket No. 83-46], 23 S.R.R. 941 (March 14, 1986).

The Commission found that, consistent with other recent decisions, an exculpatory tariff provision based upon a fictional "borrowed servant" relationship imposed by the port tariff, violated section 10(d)(1) of the Shipping Act of 1984. The Commission also rejected the argument that the provision

was lawful because it was a negotiated "quid pro quo" for certain operational concessions to stevedores and other port facility users. The record of the proceeding revealed that due to the unequal bargaining position of the parties, the "quid pro quo" alleged by the port was actually a contract of adhesion and could not be cited to sustain the reasonableness of an unlawful exculpatory tariff provision.

• Stevens Shipping and Terminal Co. v. South Carolina State Ports Authority, [Docket No. 83-44], 23 S.R.R. 685 (December 27, 1985).

The Commission found that a port tariff provision, that purported to make crane operators the "borrowed servants" of renting stevedores, when in fact the port retained fundamental control over crane operations, did not correspond to the actual practices at the port, and, therefore, violated section 10(d)(1) of the Shipping Act of 1984. The Commission also found that the tariff provision operated as an exculpatory provision relieving the port authority from responsibility for its own negligence and imposing such liability on crane users without regard to fault. Such exculpatory provisions violated section 17 of the Shipping Act, 1916, and were found to also violate the corresponding provision in the Shipping Act of 1984, section 10(d)(1).

• Intermodal Service to Portland, Oregon, [Docket No. 70-19], 23 S.R.R. 571 (November 22, 1985).

The Commission set aside that part of its order in this proceeding (See 17 F.M.C. 106, 141 (1973)) which required member lines of a conference to call directly at Portland on at least alternate sailings if they provide indirect overland service to Portland. The modification in the Commission's order was based upon Portland's changed competitive position and a change in the law.

• In the Matter of Interpool Ltd. Petition for Order to Show Cause, 23 S.R.R. 899 (February 18, 1986).

Interpool Ltd., a container leasing company, requested the Commission to direct a conference to show cause why a tariff rule which it had published did not violate certain provisions of the Shipping Act of 1984. The rule in question prohibited

conference members from paying any charges relating to the use of containers which were not owned or leased by them prior to delivery to a shipper. The Commission denied Interpool's petition because the rule on its face did not violate the Act and Interpool had failed to provide sufficient facts upon which the Commission could rely to establish the prima facie case necessary to initiate a show cause proceeding. The Commission did indicate, however, that, given the nature of allegations raised by the various commenters, it intended to address the entire neutral container system in a separate proceeding.

• In the Matter of Petition of the U.S. Atlantic-North Europe Conference and the North Europe-U.S. Atlantic Conference for a Rule Regarding the Term "Shipper", 23 S.R.R. 1381 (September 17, 1986).

The Commission denied the conferences' petition that the phrase "person for whose account the ocean transportation of cargo is provided" in the definition of "shipper" in the Shipping Act of 1984 be further clarified. The Commission found that the problem which was the subject of the petition could be resolved under other provisions of the Act. Moreover, the Commission concluded that such a significant departure from the Congressional definition of "shipper" might engender considerable confusion over the rights and obligations of shippers' associations.

• Application of Compania Chilena de Navegacion Interoceanica S.A. for the Benefit of General Board Church of Nazarene, Kash Inc. and Calco Hawaiian Management, Inc., [Special Docket No. 1353], 23 S.R.R. 1317 (August 14, 1986).

In this proceeding the Commission reaffirmed an earlier holding which denied special docket relief for permission to waive or refund applicable freight charges when the carrier did not intend to file the rate quoted to the shipper until after the vessel had sailed. Because the record here was unclear as to when the carrier/applicant intended to file the quoted rates, the Commission remanded the record to the presiding officer for further proceedings.

• In Application of Sea-Land Corporation on Behalf of Sea-Land Service, Inc. as Agent for Pana-York Shipping Corporation/Frito Lay (Pana-York), [Special Docket No. 1412], 23 S.R.R. 1153 (March 5, 1986).

In this proceeding the Commission held that the 180-day statute of limitation in section 8(e)(4) applies to the additional refund and waiver adjustments contemplated in section 8(e)(3) for the benefit of other shippers of the same commodity, as well as to the grant of refunds or waivers on the basis of the application.

• Application of U.S. Atlantic-North Europe Conference for the Benefit of the Ford Motor Co., [Special Docket No. 1354], 23 S.R.R. 1246 (July 9, 1986).

In this proceeding the Commission determined that the carrier/applicant had filed a new tariff prior to filing its application to refund a portion of the applicable freight charges as required by section 8(e) of the Shipping Act of 1984. In so doing, the Commission held that the correcting tariff conformed to the statutory requirement notwithstanding that it set forth a rate higher than that quoted to the shipper. Because the higher rate resulted from a general rate increase, the Commission reasoned that it included the rate that had not been filed due to error.

• Application of Sea-Land Corporation for the Benefit of SDS Biotech Corporation, [Special Docket No. 1345], 23 S.R.R. 786 (February 6, 1986).

The Commission reaffirmed that it may grant "special docket" permission to a carrier to deviate from its tariff and waive or refund freight charges to a shipper, pursuant to section 8(e) of the Shipping Act of 1984, only when the carrier has committed a clerical or administrative error directly related to its tariff. Operational errors such as failure to follow booking instructions do not meet the statute's requirements. The Commission further held that it did not have legal authority to grant equitable relief to the shipper under the Commission's declaratory order procedures.

### 3. Litigation

• Petchem, Inc. v. Canaveral Port Authority, et al., [Docket No. 84-28], 23 S.R.R. 974 (March 26, 1986).

This complaint proceeding involving a port's franchise system for tug and towing services resulted in clarification of certain aspects of the Commission's jurisdiction. The Commission held that vessel operators offering round-trip passenger cruises at U.S. ports are common carriers within the meaning of the Shipping Acts. The Commission further held that, although it does not have jurisdiction over tug operators themselves, when a terminal operator through an exclusive franchise agreement has made carrier access to its facilities dependent upon employment of a particular tug service, the furnishing of tug service is transformed into a terminal function subject to Commission jurisdiction. On the merits of the case, the Commission concluded that complainant Petchem had not proven that respondent Port Canaveral's exclusive franchise system was unreasonable and unlawful under the Shipping Acts. This case is presently under review by the U.S. Court of Appeals.

• New Orleans Steamship Association v. Plaquemines Port, Harbor and Terminal District, [Docket No. 83-2], 23 S.R.R. 1363 (September 16, 1986).

The Commission reaffirmed a prior ruling concerning jurisdiction over the Port and held that tonnage charges for ancillary port facilities and services not directly involved in the loading and unloading of cargo were nonetheless subject to scrutiny under the Shipping Act of 1984. The Port's tariff practices were generally found to be lawful except for certain exemptions found to unfairly favor local interests. (This case is presently under review by the U.S. Court of Appeals.)

• California Cartage Co., Inc. v. United States and Federal Maritime Commission, 802 F.2d 353 (9th Cir. 1986).

The U.S. Court of Appeals for the Ninth Circuit affirmed the Commission's decision in Docket No. 82-1, 82-10, California Cartage Co., Inc. v. Pacific Maritime Association, 21 S.R.R. 1533 (January 31, 1983), holding that the Commission correctly determined that the amendments to the Maritime Labor

Agreements Act included in the Shipping Act of 1984 eliminated off-dock container freight stations' standing to challenge an assessment agreement between Pacific Maritime Association and the International Longshoremen's and Warehousemen's Union. The Commission had held that the Shipping Act of 1984 made the "any person" standing standard inapplicable to MLAA cases and repealed the MLAA's "detriment to commerce" substantive standard thereby removing the bases of standing upon which California Cartage Co. had previously relied. The Commission had also held that California Cartage Co. could not assert the rights of third parties under the MLAA "discrimination" standard.

#### **4. Legislative Counsel**

The Commission's legislative activities include: (1) preparation of reports to Congressional committees and the Executive Office of the President concerning draft legislation or bills, especially as they may affect the responsibilities or jurisdiction of the Commission; (2) proposing legislation to provide the Commission with the statutory authority it needs to effectively regulate parties engaged in the U.S. foreign and domestic offshore waterborne commerce; (3) preparation of testimony for Congressional hearings; and (4) preparation of responses to referrals from Congressional offices regarding constituent mail.

The Office prepared and followed through the Congress the Commission's draft bill to amend title 28, United States Code, to provide for judicial review of certain orders of the Federal Maritime Commission in the United States courts of appeals. It was signed by the President on June 19, 1986.

During Fiscal Year 1986, 63 bills, proposals and Congressional inquiries were referred to the Office of Legislative Counsel for comment. Action was completed on all referrals. The Office also prepared and coordinated testimony for five Congressional hearings.



## 5. International Affairs

The international affairs functions of the Commission were transferred to the Office of the General Counsel in May, 1986. This section summarizes all of the Commission's FY 1986 international affairs activities.

Several reports and recommendations were prepared and submitted to the Commission on matters arising under section 19 of the Merchant Marine Act of 1920. These matters included the movement of high-cube containers on Japanese roads, Peruvian cargo reservation laws, and a petition by a U.S.-flag carrier concerning U.S. military cargo moving to Iceland.

The Office participated in interagency groups and international maritime discussions, particularly as technical advisors to the Interagency Maritime Policy Group, whose other members include representatives of the U.S. Departments of Transportation, State, Commerce, and Justice, and the Office of the U.S. Trade Representative. In addition, the Office participated in the drafting of the international shipping section of a report by the Interagency Committee on Service Industries Development and served as liaison on international shipping matters between the Commission and other U.S. government agencies, as well as private parties.

The Office provided written reports and oral briefings to the Commission on such topics as: the impact of the United Nations Code of Conduct for Liner Conferences, the European Community's Rules on Competition, and Colombian cargo preference laws consistent with its responsibility to keep the Commission informed of international maritime developments likely to affect the Commission.

Additions to a series of reports on the cargo preference laws and decrees of foreign governments were prepared for consideration by Commission and top agency staff. A broad program of monitoring the maritime laws, decrees, and actions of foreign governments remained in place. The Office also coordinated and participated in briefings of foreign visitors to the Commission.

Finally, in August, 1986 the Office of the General Counsel assumed responsibility for those aspects of the Commission's controlled carrier program relating to the status of controlled carriers. As the fiscal year closed, the Office was beginning a review of those new responsibilities, with the aim of revising some aspects of the controlled carrier program.

#### **D. OFFICE OF THE MANAGING DIRECTOR**

The Office of the Managing Director was reestablished in January, 1986. It is responsible for the direct administration and coordination of Commission staff activities and programs to ensure the timely and proper achievement of Commission goals and objectives.

The Office provides direct administrative and technical supervision to the:

- **Bureau of Agreements and Trade Monitoring.**
- **Bureau of Tariffs.**
- **Bureau of Economic Analysis.**
- **Bureau of Hearing Counsel.**
- **Bureau of Investigations.**
- **Bureau of Administration.**

Additionally, the Office of the Managing Director furnishes administrative direction to the:

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

A key element of the Office's function during FY 86 was the development and initiation of a Commission-wide reorganization plan which, when complete, will restructure the agency and enable the Commission to more effectively meet its statutory mandate. Implementation of the plan is expected to continue during fiscal year 1987.

## E. BUREAU OF AGREEMENTS AND TRADE MONITORING

### 1. General

The primary function of the Bureau is to plan, develop and administer the programs related to the regulation of concerted actions of common carriers by water and other persons within the definitions of the Shipping Act of 1984 and the Shipping Act, 1916.

### 2. Surveillance

[See pp. 13-18.]

### 3. Types of Agreements

#### (a) Conference and Ratemaking Agreements

Conference and ratemaking agreements provide for the collective discussion, agreement and establishment of ocean freight rates and practices by groups of ocean carriers. Such agreements are limited to a geographic area or trade route, with the traditionally accepted distinction between "conference" and "rate" agreement being that a "conference" agreement is usually a more formal institution exercising a dominant influence on rates within the trade, whereas a "rate" agreement is more loosely structured and has a lesser influence on rates. The Commission's rules currently do not distinguish between conference and rate agreements for purposes of determining applicability of the so-called "mandatory provisions."

During fiscal year 1986, the Commission concluded the processing of 206 conference and rate agreements, including amendments to existing agreements, pursuant to the Shipping Act of 1984.

Three conferences enlarged their agreements to include intermodal authority in the United States. Twenty-two agreements were completely reformatted during the year to comply with the Commission's form and content requirements. All conference agreements are now in full compliance with

these requirements. Thirty-six conferences filed amendments to comply with the Commission's amended requirements relative to independent action adopted in Docket No. 85-7, Independent Action - Notice and Meeting Provisions in Conference Agreements. Thirteen agreements are still delinquent in this respect and appropriate measures have been initiated to achieve compliance.

(b) Pooling and Equal Access Agreements

Pooling agreements are commercial arrangements among carriers in given trades which provide for the pooling and apportionment of cargo and/or revenues in the interest of the increased efficiencies which such arrangements can provide as a result of their stabilization of competitive conditions. These agreements also often set forth sailing requirements and other features relating to overall service efficiency. Equal access agreements serve to formalize national-flag carrier access to cargo which is controlled by the governments of reciprocal trading partners as a result of cargo preference laws, import quotas or other restrictions.

At the conclusion of Fiscal Year 1986, there were 15 agreements in effect with pooling and/or equal access authority. The preponderance of these agreements continue to apply to the U.S./South American trades. Eleven agreements of this type have a significant impact on U.S. ocean liner commerce with Argentina, Brazil, Chile and Colombia.

(c) Space Charter and Sailing Agreements

Space charter agreements authorize the chartering (or cross-chartering) of vessel space or container slots between or among vessel operators. The essential objective of arrangements of this type is to facilitate carrier access to vessel accommodation in given trade routes beyond that which would otherwise be available, to facilitate the rationalization of overall fleet operations and to reduce overtonnaging in given trades. These agreements also generally contain authority to agree on schedules, itineraries and the exchange of equipment.

During Fiscal Year 1986, 27 space charter agreements and amendments were filed under the 1984 Act, and 63 were in effect at the conclusion of the fiscal year.

(d) Joint Service/Consortia Agreements

Joint service and consortia agreements generally establish a new and separate line or service to be operated by otherwise independent liner operators as a joint venture in a given trade. The resulting line or service operates generally as a single carrier, fixing its own rates, publishing its own tariffs and issuing its own bills of lading, but its authority is strictly confined to that which is specifically set forth in the agreement authorizing its operation.

Fifteen joint service/consortia agreements and amendments were filed during Fiscal Year 1986, and 21 such agreements were in effect at the conclusion of the fiscal year.

(e) Cooperative Working Arrangements

Cooperative working arrangements run the gamut from discussion agreements, which authorize the participants to discuss competitively-sensitive trade matters, to specialized inter-carrier operational undertakings which do not precisely fit the other categories reported above. Twenty-eight cooperative working agreements, and amendments to effective agreements, were filed during Fiscal Year 1986, and 42 such agreements were in effect at the conclusion of the fiscal year.

(f) Marine Terminal and Shoreside Agreements

Marine terminals, operated by both public and private entities, provide the facilities and labor for the interchange of cargo between land and sea carriers, and for the receipt and delivery of cargo to shippers and consignees. During Fiscal Year 1986, the Bureau processed to completion 154 agreements and agreement modifications relating to port and terminal services and facilities. Three hundred and eighty-five such agreements were in effect at the conclusion of the fiscal year.

The Bureau also furnished support to the Commission's June 25, 1986 Notice of Waiver of Penalties concerning unfiled marine terminal services agreements between marine terminal operators and ocean common carriers. This action provided for the waiver of penalties for the pre-filing implementation of such agreements, provided that they be filed within a 120-day period. The Bureau also furnished support in the analysis of comments and the preparation of a draft final rule in Docket No. 85-10, relating to the exemption of certain classes of marine terminal agreements.

The Commission is also charged with handling certain labor-management agreements pursuant to the Maritime Labor Agreements Act of 1980 (P.L. 96-325, 94 Stat. 1021). The Act provides that such agreements, to the extent they provide for the funding of collectively bargained fringe benefit obligations on other than a uniform man-hour basis, regardless of the cargo handled or type of vessel or equipment utilized, shall be deemed effective upon filing with the Commission. During Fiscal Year 1986, 3 labor-management agreements of this type were filed.

## F. BUREAU OF TARIFFS

### 1. General

The Bureau of Tariffs plans, develops, administers and analyzes programs and activities in connection with the pricing of services provided by common carriers by water, conferences of such carriers and terminal operators in the foreign and domestic offshore commerce of the United States; reviews, files and rejects tariff filings; receives and processes service contract filings; approves or disapproves special permission applications; and initiates recommendations, collaborating with the Bureau of Hearing Counsel and other elements of the Commission as warranted, for formal action and proceedings by the Commission. The Bureau is also responsible for the licensing of ocean freight forwarders under the provisions of the Shipping Act of 1984; and under Public Law 89-777, the certification of the financial responsibility of owners and operators of passenger vessels to satisfy liability incurred by nonperformance of voyages or resulting from injury or death. The Bureau develops long-range plans, new or revised policies and standards, and rules and regulations with respect to its program activities.

### 2. Foreign Commerce

#### (a) Common Carrier Anti-Rebate Certification (ARC) Program

Every common carrier by water in the foreign commerce of the United States is required by section 15(b) of the Shipping Act of 1984 (46 U.S.C. app. 1714) and 46 CFR 582 promulgated by the Commission pursuant thereto, to file annually with the Secretary of the Commission a sworn Certification of Company Policies and Efforts to Combat Rebating in the Foreign Commerce of the United States signed by the Chief Executive Officer of that common carrier. Section 15(b) and 46 CFR 582.1(b) specify a civil penalty of \$5,000.00 for each day a common carrier continues in a failure to file the required Certification. The information



obtained under the ARC Program is used to maintain continuous surveillance over common carrier activities and to provide a deterrent against rebating practices.

The Commission experienced difficulty in compliance with the annual certification requirement, especially with respect to Non-Vessel Operating Common Carriers (NVOCC or NVO) who came under the umbrella of the ARC Program with the changes contained in the Shipping Act of 1984. During Fiscal Year 1986 the Commission ordered 367 NVO's to show cause why they should not be found in violation of the statutory requirement to make the annual certification. Many of these carriers eventually responded while 37 replied that they were out of business and 88 NVO's failed to respond. A separate proceeding was initiated to cancel the tariff publications of the non-respondents and to determine if penalties should be assessed.

The Bureau recognized a need to simplify and streamline the ARC Program. Freight Forwarders, for instance, have been required to submit separate certifications although in many instances these firms are also in the business of providing services as NVO's. Additionally, the regulations implementing the program were considered vague concerning the periods covered by the certification. To rectify these deficiencies, the Bureau initiated a rulemaking proceeding and proposed revised regulations for the ARC Program were published in the Federal Register May, 1986. The revised regulations were virtually unopposed and became effective in October, 1986. They eliminate any duplications and established a uniform anti-rebate rule for ocean common carriers, non-vessel operating common carriers and freight forwarders. The rule also specifies the time period covered by the anti-rebate certification and provides a uniform due date for submission of the certificate.

(b) Controlled Common Carrier Activity

During the fiscal year the Commission removed South African Marine Corporation Limited (Safmarine) from the

Commission's list of controlled common carriers. The Commission's determination to remove Safmarine from the list was based on information submitted by Safmarine and verified by the Department of State. By its removal from the list of controlled common carriers, Safmarine is relieved from the advance tariff filing requirements and from other requirements of section 9 of the Shipping Act of 1984.

Also continued under review for possible listing as controlled common carriers are Nauru Pacific Line (Republic of Nauru) and National Shipping Corporation of the Philippines (Philippines).

At year's end, the responsibility for designating controlled carriers was transferred from the Bureau of Tariffs to the Commission's Office of General Counsel.

(c) Pacific Rate Instability

The recently formed Asia North American Eastbound Rate Agreement (ANERA), representing the trade from Far East ports, except Japan, to the United States, published its common tariffs, effective April 15, 1986. Prior to filing the common tariffs, the staff closely monitored the more than 250 former conference and independent tariffs adopted by ANERA. Filings to the ANERA tariffs dramatically increased in the first quarter of Fiscal Year 1986, due to independent action rate reductions published by certain carriers in the trade.

It was evident throughout the year that the transpacific trades are unstable. The instability was marked by constant erosion of the rate structures, poor vessel utilizations and turmoil among the memberships of two newly formed conferences in the trade. The turmoil was evidenced by the apparent unwillingness of conference members to maintain level rates without constant rate cutting and the turn-over in conference memberships.

(d) Rulemakings

In an effort to determine whether a person who has no financial or other interest in a shipment other than its

transportation is allowed to enter into a service contract with a carrier or conference, the U.S. Atlantic-North Europe and the North Europe-U.S. Atlantic Conferences petitioned the Commission to define the term "shipper." Public comments were received on the petition which were reviewed by the Bureau. It was decided by the Commission to deny the petition on the basis that sufficient facts were not known or available. In lieu of defining the term "shipper" without a sufficient factual basis, the Commission initiated a non-adjudicatory fact finding investigation into the practices of various entities who are acting as intermediaries for the transportation of goods in our waterborne foreign commerce. It is anticipated that this investigation will be concluded in Fiscal Year 1987, and thereafter appropriate action will then be taken by the Commission to resolve this issue.

Another area of uncertainty surrounds the relationships among shippers and carriers or their agents with respect to free time and detention charges on carrier interchanged equipment. It had been argued to the Commission that the relationships are typically established by agreements among the parties for the use of the equipment which frequently contain rates, charges and provisions more properly published in carriers' tariffs. Public comment on the issue was invited which resulted in substantial disagreement concerning the Commission's role, responsibility, and jurisdiction in this issue. The Bureau of Tariffs recommended, and the Commission ordered, the issues referred to an Administrative Law Judge for legal briefing and evidentiary hearing. The hearing was directed to address whether equipment interchange agreements, between ocean common carriers, and shippers or inland carriers, should be published in tariffs and whether there exist sufficient policy reasons to exempt such agreements from the Commission's tariff filing requirements. (See Docket No. 85-19, Free Time and Detention Charges Applicable to Carrier Equipment Interchanged with Shippers or Their Agents.)

(e) Administration

In order to reduce unnecessary tariff filings, the Bureau of Tariffs amended its procedures to permit the filing of a single tariff page which "reserved" a group of pages to allow for future tariff expansion. In order to implement this change the Bureau issued a letter to the industry providing detailed instructions for the filing of reserved pages.

During fiscal year 1986, the Office received and recorded 633,280 foreign tariff pages and rejected 7,622 pages. In addition, 103 special permission applications were processed.

The program of microfiching canceled tariffs and canceled pages to active tariffs is continuing. During fiscal year 1986, approximately 571,000 canceled tariff pages were recorded on microfiche.

### 3. Domestic Tariff Activity

Sections 17 and 18(a) of the Shipping Act, 1916, and section 2 of the Intercoastal Shipping Act, 1933, require the filing of rates, charges and rules describing practices of common carriers operating in the U.S. domestic offshore commerce and terminal operators. The Bureau of Tariffs must ensure that these tariffs comply with statutory requirements and rules pertaining to filing tariffs by terminal operators and domestic offshore carriers.

(a) U.S. Virgin Islands

On September 9, 1985, the Government of the Virgin Islands (GVI) petitioned the Commission to reconsider its August 13, 1985 decision to neither suspend nor investigate a general rate increase filed by Trailer Marine Transport Corporation (TMT) in the Puerto Rico/Virgin Islands trade. Taking into account a Commission staff audit of financial data submitted by TMT in support of the increase, the GVI's petition was denied.

(b) Hawaii

Early in fiscal year 1986, Matson Navigation Company, Inc. filed a proportional rates tariff governing transportation in containers of cargo having prior movement in interstate or foreign commerce. The tariff, which applies from Honolulu, Hawaii to Hilo, Kahului and Nawiliwili, Hawaii, was protested by the State of Hawaii and Young Brothers, Limited. After consideration of the allegations set forth in the protests, the Commission allowed the proportional tariff to become effective as scheduled.

The Commission discontinued its proceeding in Docket No. 85-3 on December 27, 1985. The proceeding involved a proposed 2.5 percent overall rate increase filed by Matson Navigation Company, Inc. applicable to the U.S. Pacific Coast/Hawaii trade which became effective on January 1, 1985. Matson filed an additional 2.5 percent overall rate increase scheduled to become effective on January 1, 1986 which was protested by the State of Hawaii. This increase was suspended through June 30, 1986 and placed under investigation in Docket No. 85-24. Although during the proceeding Matson subsequently reduced its proposed increase by one percent, the Commission by order served June 26, 1986, found all of the increase unreasonable and additionally found Matson's existing rates to be too high. The Commission refused to allow the January 1, 1986 increase to become effective, and further, ordered Matson to reduce its existing rates by one percent.

(c) Terminal Activities

The Commission issued a proposed rule governing the filing of terminal tariffs by marine terminal operators to prohibit certain tariff provisions that exculpate or otherwise relieve marine terminal operators from liability for their own negligence, or that impose upon others the obligation to indemnify or hold harmless terminal operators from liability for their own negligence. This rule was adopted as final by the Commission in November, 1986.

In response to a petition, the Commission proposed to amend its truck detention rules at the Port of New York to increase penalty charges for truck delays at marine terminals. The Commission also invited comment on whether there is a continuing regulatory need for Commission mandated truck detention rules. This proceeding will be concluded in fiscal year 1987.

(d) Administration

During fiscal year 1986, there were 6,177 domestic offshore tariff pages and 6,341 terminal tariff pages received and reviewed, of which 424 domestic tariff pages were rejected for failure to comply with the tariff filing requirements. In addition, 56 domestic special permission applications were processed during the fiscal year. Activities during this period included the review of general rate increases together with the preparation of investigation and suspension recommendations where necessary; preparation of correspondence relating to criticisms of tariff filings; and publication of the annual 'Automobile Measurement Guide.'

**4. Service Contracts**

(a) General

The Shipping Act of 1984 permitted carriers and conferences to enter into service contracts with shippers and or shippers' associations. A service contract is defined in the Act as ". . . a contract between a shipper and an ocean common carrier or conference in which the shipper makes a commitment to provide a certain minimum quantity of cargo over a fixed time period, and the ocean common carrier or conference commits to a certain rate or rate schedule as well as a defined service level--such as, assured space, transit time, port rotation, or similar service features; the contract may also specify provisions in the event of nonperformance on the part of either party." Each contract entered into under section 8(c) of the Shipping Act of 1984 must be filed confidentially with the

Commission and, at the same time, a concise statement of its essential terms must be filed with the Commission and made available to the general public in tariff format. The essential terms must be available to all shippers similarly situated.

The essential terms of a service contract include:

- \* The origin and destination port ranges or geographic areas;
- \* The commodity involved;
- \* The minimum volume;
- \* The line-haul rate;
- \* The duration;
- \* Service commitments; and
- \* Liquidated damages for nonperformance, if any.

The variables which can be prescribed in service contracts are almost infinite, thereby, giving carriers and shippers significant freedom to tailor transportation arrangements suitable to their commercial needs.

The Commission established an Office of Service Contracts on June 4, 1986, in order to effectively administer the service contract program. The Office's activities incorporated the duties and responsibilities previously handled by a special Service Contract Task Force that was established in fiscal year 1986 to handle an increase in the volume of service contracts filed with the Commission, to eliminate any existing backlogs in the processing and coding of service contracts, and to maintain the service contract program on a current basis. The Office of Service Contracts assumed the Task Force's responsibilities for all matters involving service contracts, i.e., receipt and review of service contracts and essential terms filings, development of an effective service contract enforcement program, encoding of data for a service contract ADP system, and development and modification of rules governing service contract filings.

The service contract review process ensures that service contracts and essential terms comply with statutory requirements of the Shipping Act of 1984 and Commission regulations. In the event a service contract and essential terms do not meet all the necessary requirements, appropriate corrective action is taken. Recent records indicate that 20% of all service contract filings contain deficiencies. If deficient service contracts and essential terms are not corrected within 15 days from the date of filing the Commission returns such filings to the filing party. Returned service contracts once corrected and refiled, are again reviewed to ensure compliance. Returned service contracts which do not comply with the directives of the Commission are referred to the Commission for rejection.

(b) Rulemakings involving Service Contracts

On February 18, 1986, the Commission published proposed rules concerning the filing of service contracts and statements of essential terms. Basically, the Commission proposes to substantially revise its service contract regulations, based on comments received and experience gained in processing service contracts over the past years.

The proposed rules would reaffirm that a shipper cannot commit all or a fixed portion of its cargo without the resulting arrangement becoming a Loyalty Contract and would clarify statutory concepts relating to parties to, and duration and geographical scope of, contracts. The rule would provide for additional filings to facilitate Commission surveillance and availability of contract terms to similarly situated shippers, and would also refine procedures involving the essential terms publication and statements, contingency clauses, termination, and rejection of filings by the Commission. In addition to the rule revisions, the Commission also invited comments on whether there is a need to establish specified minimums for liquidated damages and cargo and service commitments; a new, combined format for filing; the use of "most-favored-shipper" clauses; and a possible exemption for carriers and



conferences from the requirement of making foreign port ranges available to shippers under certain circumstances. Each of these issues could be the subject of a future rulemaking.

The Commission received numerous comments in this proceeding from conferences, carriers, shippers, shipper organizations, shipper associations, a port authority and state and federal government agencies. The comments are being considered and a final rule will be issued in fiscal year 1987.

In addition to issues to be considered in Docket No. 86-6, another rulemaking is considered necessary for the Commission to establish and maintain an effective enforcement program. The Commission, therefore, intends to promulgate regulations in fiscal year 1987 which will require carriers and conferences to maintain adequate service contract records in the United States.

(c) Complaints

During fiscal year 1986, three formal complaints were filed with the Commission by shippers alleging that certain carriers violated the Shipping Act of 1984 by not allowing them to secure service contracts as similar situated shippers. One complaint was dismissed because the complainant failed to provide sufficient information for the processing of the complaint while the other two complaints were dismissed after resolution of the issues between the parties.

(d) Shippers' Associations

The Shipping Act of 1984 recognizes shippers' associations for the first time as entities in international ocean transportation. They are defined in the Act as groups of shippers which, on a non-profit basis, consolidate their cargoes to secure volume rates or enter into service contracts. The Act expressly requires that carriers and conferences negotiate with shippers' associations. It also provides that such associations can enter into service contracts on behalf of their members. Shippers'

associations have not been granted antitrust immunity under the 1984 Act. In fiscal year 1986, 36 service contracts were filed involving 13 shippers' associations. Since the Shipping Act of 1984 became effective a total of 16 shippers' associations have entered into a total of 57 service contracts with certain carriers and conferences.

(e) Administration

Since the passage of the Shipping Act of 1984 the Commission has received 6,598 service contracts from carriers and conferences under the provisions of section 8(c) of the Act and the Commission's service contract and essential terms filing regulations. These contracts were filed by 80 individual ocean common carriers and 27 conferences, and involved approximately 5,550 primary and secondary shippers. A primary shipper is the person or firm signing a service contract, and a secondary shipper is a person or firm included under a contract as a subsidiary or affiliate of the signatory shipper entitled to receive services under the contract. Of the total contracts filed 50% are presently active.

The service contracts filed cover specifically described commodities as well as "freight all-kinds." The geographic scopes of the contracts included the Atlantic, Pacific and Gulf coasts of the United States and the Far East, Australia, Europe, Africa, Central and South America, both inbound and outbound. The largest number of contracts were filed in the Transpacific trades.

During the first quarter of fiscal year 1986, the number of service contract filings was increasing at a rapid pace. However, due to the decision by the super rate agreements in the Pacific trades to control individual members' service contracts and the decrease in overcapacity in the Far Eastern trades, the number of service contract filings have leveled off and it is estimated that the present level of filings will remain constant. In the inbound trade from Europe and Japan, a significant portion of cargo is moving pursuant to the terms of service contracts.

During fiscal year 1986, a total of 4300 service contracts were filed with the Commission. (See Appendix D)

## 5. Financial Analysis

The Office of Financial Analysis provides accounting and financial expertise to help ensure the reasonableness of rates for the transportation of cargo and other services provided by common carriers in the offshore waterborne commerce of the United States. The Office also provides technical assistance to other activities within the Commission.

The Office continued to monitor the activities of carriers in the domestic offshore commerce of the United States. The effort involved the receipt and review of financial and operating data submitted in compliance with 46 CFR Part 552. The staff also evaluated the financial data submitted in support of a rate increase in the Hawaii Trade.

With respect to the financial and operating data referred to above, work was completed on amendments to the governing regulations and the revision of the forms used to report financial and operating data. Completion of this project will result in a lessening of the regulatory burden imposed on carriers in the domestic offshore trades.

The Office has devoted and will continue to devote substantial efforts to the Commission's automation program. This activity includes the development and maintenance of various data bases. These data bases include:

(a) Regulated Persons Index - a listing of persons regulated by the Commission with their address, contact person and person type, i.e., freight forwarder, vessel operating common carrier, etc.;

(b) Tariff Profile System - a listing of all tariffs on file with the Commission with selected characteristics, e.g., the tariff number, agent, direction, etc.;

(c) Service Contract System - a listing of all contracts on file, whether active or inactive and selected

information, e.g., carrier name, contract number, direction, shipper name, geographics, etc.;

(d) Microfiche Index - a listing of all canceled tariffs on microfiche with the locator number and the date canceled.

## 6. Freight Forwarders

The ocean freight forwarding industry is comprised of persons who, in effect, hold themselves out to shippers as export departments for hire. Ocean freight forwarders serve export shippers by arranging for the ocean transportation of cargo by common carriers, and by handling the paperwork, legal requirements, safety requirements and other incidentals related to such exports. Ocean freight forwarders receive a fee for handling an export shipment from the exporter. Forwarders also receive forwarding compensation from the ocean carrier whose vessel was selected by the forwarder to carry the cargo.

Congressional findings in 1961, focusing on malpractices within the ocean freight forwarder industry, led to the enactment of section 44 of the Shipping Act, 1916 (46 U.S.C. 841b) which vested the Commission with authority for the licensing and regulation of independent ocean freight forwarders. At that time, malpractices in the export trades were rampant. Given the importance of maintaining a favorable climate for U.S. businesses, especially small businesses which lacked the expertise to do their own exporting, Congress found that licensing and limited oversight of ocean freight forwarders was necessary to eliminate secret, illegally preferential rebates, and to ensure that unscrupulous, incompetent and financially irresponsible persons were prevented from operating as ocean freight forwarders. Although the number of ocean freight forwarders has increased since 1961, forwarder-initiated malpractices are now more the exception than the rule.

The continued maintenance of fiduciary responsibility, technical qualifications and the financial responsibility of

an ocean freight forwarder are currently assured by means of a license issued by the Commission and a surety bond which is required to be maintained on file with the Commission. Once issued, a license need not be renewed. However, Commission approval for a change in the business form of a licensee or a license transfer to another person is required. The amount of the bond depends upon the number of offices through which an ocean freight forwarder provides ocean freight forwarding services. The basic bond amount is \$30,000.00. It is increased by \$10,000.00 for each unincorporated branch office of a forwarder. Each separately incorporated office is required to obtain its own license.

With the enactment of the Shipping Act of 1984, the Commission's regulatory responsibilities over the forwarding industry are now found in section 19 of that Act. Under this shipping statute, the basic licensing requirements remain essentially in place. However, the prohibition against export shippers receiving a license has been eliminated. Thus, any person (that is, an individual, a corporation or a partnership) may receive a license, if found qualified. However, licensed forwarders are barred from collecting compensation from carriers on shipments in which they have a beneficial interest.

Under the statute, persons operating as forwarders in the domestic off-shore trades of the United States are not required to obtain a license to do so, nor are such entities required to file a surety bond. Nevertheless, such forwarders are still subject to the applicable sections of the 1916 Act that now apply solely to the domestic trades of the United States. Also under the statute, agreements by and among forwarders engaged in the foreign commerce of the United States are no longer required to be filed with the Commission for approval. Hence, such agreements are afforded no anti-trust immunity.

During fiscal year 1986, the Commission received one hundred forty-five applications for ocean freight forwarder licenses, in addition to the sixteen applications pending

from fiscal year 1985. One hundred eighteen of these applications were approved; one was denied; four were withdrawn during the processing stage; and twenty-eight incomplete applications were returned to the applicants. One hundred fifty-five previously-issued licenses were revoked, primarily because the forwarders failed to maintain the surety bonds required by statute.

In addition to applications for new licenses, in fiscal year 1986, the Commission received one hundred twenty-eight applications requesting approval of transfers of licenses and other organizational changes. Eight applications for transfers and other organizational changes were carried over from the previous fiscal year. One hundred twenty-two of these requests were approved during Fiscal Year 1986. Thirteen requests were administratively closed because the applicants did not pursue their requests.

On-site compliance investigations are conducted as part of the Commission's effort to ensure that licensed ocean freight forwarders comply with the provisions of the shipping statutes and the Commission's regulations. During the year, three hundred sixty-seven investigative reports were reviewed. Two hundred thirty-seven of these reports resulted in the issuance of warning letters or referral to the Bureau of Hearing Counsel for the assessment of appropriate civil penalties. One hundred five cases were determined to require no formal corrective action.

Other activities during the year included:

- The processing of 1,102 surety bond actions including new bonds, riders to bonds and the cancellation of bonds;
- The review and processing of 39 informal complaints concerning, in the majority of cases, the non-payment of freight charges by forwarders to carriers;
- The receipt and review of 1,573 anti-rebate certifications required to be filed by forwarders pursuant to the 1984 Act and the Commission's implementing regulations;

- The review of 4 Dunn and Bradstreet reports; and
- The review of 56 claims, totaling in excess of \$900,000.00 that were filed against forwarder bonds.

During the fiscal year, the Commission completed a rulemaking (Docket 86-19) concerning a clarification of the anti-rebating certification requirements. The major thrust of the rulemaking was to allow an entity which functions in a dual capacity (such as a freight forwarder who is also an NVOCC) to satisfy the annual certification requirement by filing only one certificate.

At the end of the fiscal year, there were 1,571 licensed ocean freight forwarders, representing a decrease of 24 licensees from fiscal year 1985.

## 7. Passenger Vessel Certification

The Commission is responsible for administering sections 2 and 3 of Public Law 89-777 (46 U.S.C. 817d and e), which have been implemented by the Commission's regulations found in 46 CFR 540 - "Security for the Protection of the Public." Owners, charterers and operators of American and foreign vessels having berth or stateroom accommodations for fifty or more passengers and embarking passengers at United States ports must establish financial responsibility (1) to meet any liability incurred for death or injury to passengers or other persons on voyages to or from United States ports and (2) to indemnify passengers for nonperformance of transportation to which they would be entitled under ticket contracts.

Upon the submission of evidence of financial responsibility in accordance with Subpart B of 46 CFR 540, the Commission will issue a Certificate of Financial Responsibility to Meet Liability Incurred for Death or Injury to Passengers or Other Persons on Voyages (Certificate (Casualty)). Upon the submission of similar evidence in accordance with Subpart A of 46 CFR 540, the Commission will issue a Certificate of Financial Responsibility for Indemnification of Passengers for

Nonperformance of Transportation (Certificate (Performance)).

With respect to the Certificate (Casualty), financial responsibility must be established in accordance with a schedule provided in section 2 of Public Law 89-777 and Commission regulations. The extent of financial responsibility required under section 3 of Public Law 89-777 for the issuance of a Certificate (Performance) is determined by the Commission taking into account the number of vessel accommodations; fare structure; collection policy; sailing schedule; itinerary; and past experience. An applicant operating more than one vessel must evidence financial responsibility under the casualty provisions for its largest vessel. The maximum amount with respect to performance is \$10 million (except a self-insurer which could require a greater amount).

The certificates must be presented to the United States Customs officials at the port or place of departure of the vessel from the United States. Under the law, the U.S. Customs Service shall refuse clearance of the vessel, if it does not have certificates on board, until such time as the Commission confirms compliance with the law.

During fiscal year 1986, the Commission approved 10 new applications for performance certificates, 13 new applications for casualty certificates and 35 applications for amendments to existing certificates. At the end of the year over 120 vessels remained certified.



## **G. BUREAU OF ECONOMIC ANALYSIS**

### **1. General**

The Bureau of Economic Analysis provides economic, statistical and financial analysis in support of the Commission in its statutory mission. The Bureau also augments the Commission's planning capabilities and enhances the agency's responsiveness to new developments and trends in U.S. ocean commerce and the liner shipping industry.

The Bureau provides expert economic testimony in the Commission's formal administrative proceedings in the international and domestic offshore trades. Major activities of the Bureau include:

- **Preparing the five-year study required by section 18 of the Shipping Act of 1984 as to the impact of the Act on the international shipping industry;**
- **Assisting Commission legal staff in the preparation of testimony or recommendations in various areas such as restrictive trade practices in foreign countries and rate increases in the domestic offshore trades;**
- **Forecasting trade developments and world economic trends;**
- **Preparing special reports on economic and financial developments in liner shipping; and**
- **Participating in the planning process to evaluate the feasibility of automating tariffs.**

### **2. Section 18(a) Study**

A major effort during FY 1986 was the continuing requirement for the collection and analysis of data as required by section 18(a) and writing the reports required by section 18(c) of the Shipping Act of 1984. A detailed analysis of the progress to date in this five-year study is set forth at pp. 31-42.

### **3. Conference on the Shipping Act of 1984**

The Federal Maritime Commission and Maritime Trade and Transport, Old Dominion University, sponsored a conference

which was held at the Omni Hotel in Norfolk, Virginia, on June 12-13, 1986. The theme of the conference was "The Shipping Act of 1984: Evaluating Its Impact," and its stated purpose was as follows:

The Shipping Act of 1984 revised the system for regulation of international shipping. It was expected that the new Act would significantly alter the competitive situation in liner shipping trades and, as a consequence, have wide-reaching impacts on all segments of the industry. Now that two years have passed since enactment of the Act, it is appropriate to have a public forum to receive the views of those in the industry who have been affected by the Shipping Act of 1984.

The objectives of this conference were to:

- Elicit information on the current status of various sectors of the shipping industry;
- Explore the impacts of expected global changes in the industry on U.S. trade and shipping; and
- Exchange views on current theories and practices of government regulation in international transportation.

Industry representatives, together with government and academic personnel, were invited to speak on the various panels and more than 160 people attended. The collected papers and a summary of the discussion is available from Old Dominion University (see **Appendix J**). It forms an important document associated with the section 18 study and reflects the current opinions of a wide cross-section of industry participants.

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

For the coming year, the Bureau plans to increase its efforts to gather and analyze the data required to comply with the mandated five-year study as required by section 18 of the Shipping Act of 1984.

Specifically, the staff will concentrate its efforts on collecting information from conferences as to which service contracts or intermodal tariffs moved most of the

commodities for which the staff is tracking port-to-port rates.

It is also planned that a second survey will be sent to carriers, shippers, ports and terminal operators. The intention is to send out surveys to each of the industry groups every year until 1989. These subjective views of the impact of the Act will supplement the more quantitative data being collected.

It is also anticipated that portions of the drafts of each report required by section 18(c) will be prepared during next fiscal year. These reports will then be circulated to other components of the Commission for their review and comment.

## H. BUREAU OF HEARING COUNSEL

The Bureau of Hearing Counsel participates as trial counsel in formal adjudicatory (docketed) proceedings, non-adjudicatory investigations, rulemaking proceedings when designated by Commission Order, and other proceedings initiated by the Commission. Bureau attorneys serve as Hearing Counsel, when intervention is permitted, in formal complaint proceedings instituted under section 22 of the Shipping Act, 1916, and section 11 of the Shipping Act of 1984. In addition to the formal proceedings in which the Bureau participates as a party, the Bureau monitors all other formal proceedings in order to ascertain that major issues affecting the shipping industry and the general public, as distinguished from purely private disputes between litigating parties, are adequately developed. The Bureau also participates in an advisory capacity in the development of Commission rules and regulations. On request, the Bureau furnishes advice to the staff. On occasion, the Bureau may participate in court litigation by or against the Commission. Bureau attorneys provide legal advice to the Bureau of Investigations during field investigations and review enforcement reports completed by that Bureau. When appropriate, the Bureau of Hearing Counsel prepares and serves notices of violations of the shipping statutes and regulations, and may compromise and settle civil penalties arising from those violations. The Bureau also acts as prosecutor in formal Commission proceedings that may result in assessment of civil penalties.

At the close of fiscal year 1985, 44 investigations of possible violations prepared by the Bureau of Investigations were pending final resolution by the Bureau of Hearing Counsel. During fiscal year 1986, 48 new reports of possible violations were received from the Bureau of Investigations. Forty-six such cases were compromised, settled, administratively closed, or referred for formal proceedings or action by other Bureaus. As a result 46

investigations of possible violations were pending resolution by the Bureau of Hearing Counsel on September 30, 1986.

The amounts of civil penalties assessed or compromised by the Commission in fiscal year 1986 are set forth in Appendix E.

At the close of fiscal year 1985, the Bureau was party to 23 formal proceedings. During the year, the Bureau participated in 11 new formal proceedings, and 19 proceedings in which the Bureau was participating were completed. Accordingly, the Bureau was party to 15 formal proceedings on September 30, 1986. The Bureau also provided advice to the Commission's staff on more than 30 projects during the fiscal year.

During fiscal years 1984 and 1985, a new operating plan was developed for the Bureau. This plan, gradually implemented in fiscal year 1986, enhanced the Bureau's functions as legal advisor to the Commission staff by providing for closer coordination with other bureaus and offices. Consequently, it is anticipated that there will be a marked increase in all areas of Bureau activity in the next several fiscal years.

## I. BUREAU OF INVESTIGATIONS

The Bureau of Investigations monitors the ocean commerce of the United States in an effort to curtail illegal rebating and other malpractices by carriers, shippers, consignees, and other persons subject to the Shipping Acts. In addition to the headquarters office in Washington, D.C., offices are located in New York, San Francisco, New Orleans, Miami, Los Angeles and Hato Rey, Puerto Rico. These offices represent the Commission within their geographical area; provide liaison between the Commission and the maritime industry and the shipping public; monitor and conduct surveillance activities of the shipping industry to determine compliance with the various shipping statutes; maintain a high awareness of industry-wide conditions; and investigate alleged violations of the statutes and regulations administered by the Commission. Such violations can include, but are not limited to the following:

- **Carrier and shipper malpractices, such as illegal rebates of freight charges, and misclassification, misdescription or misdeclaration of cargo shipments;**
- **Unlawful common carrier rates in U.S. foreign and domestic offshore trades;**
- **Unlawful agreements among carriers or other persons subject to the Commission's jurisdiction; and,**
- **Unlicensed ocean freight forwarder activity.**

In Fiscal Year 1986, the Bureau devoted a major portion of its available man-hours to surveillance activities including audits of selected service contracts, freight forwarder compliance checks, and audits of non-vessel-operating common carriers. These activities are discussed in greater detail in the Surveillance chapter of this Report. See pp. 13-18. These surveillance programs are in addition to the Bureau's ongoing investigative activities into alleged violations of the Shipping Acts of 1984 and other statutes and regulations administered by the Commission.

On August 1, 1986, the Chairman of the Federal Maritime Commission and the Commissioner of the U.S. Customs Service signed a Memorandum of Understanding (MOU) which formalized a long standing but informal relationship between the agencies. The agreement, which calls for review in two years, seeks to strengthen each agency's enforcement efforts by promoting the exchange of information relative to each agency's regulatory and enforcement responsibilities. All information exchanges in this program are to be made with the understanding that such information will be used only for official law enforcement purposes.

Also in August 1986, the Bureau of Investigations hired an industry expert to act as a consultant in the area of serious industry malpractices. His primary tasks are to develop proposals to better target major malpractices and to assist the Bureau in implementing new investigative strategies.

During Fiscal Year 1987, the Bureau will increase its emphasis on detecting and investigating major malpractices. Additionally, the Bureau of Investigations will complete a number of actions during Fiscal Year 1987, designed to increase its overall effectiveness. Among these are the bolstering of the field investigative staff by adding five new hires, two in New York, and one each in San Francisco, Los Angeles, and Miami; providing selected investigators with formal training in the White Collar Crime Training Program at the Federal Law Enforcement Training Center at Glynco, Georgia; and the review of field office locations and staffing to ensure a balanced approach to providing investigative and surveillance coverage throughout the major port areas of the United States. The Bureau will continue to expand its efforts to use electronic databases with its computer and telecommunications equipment to enhance its monitoring capability.

At the beginning of the Fiscal Year 1986, there were 181 field investigations in progress. During the year, 825 new investigations and surveillance activities were initiated, providing 1006 cases on hand and scheduled for

inquiry. Completed investigations and surveillance activities totaled 701, leaving 305 cases pending at the end of the fiscal year. **Appendix F** summarizes the Bureau of Investigations' activities.



## **J. BUREAU OF ADMINISTRATION**

The Bureau of Administration was established in fiscal year 1986. It is responsible for the direct administration and coordination of the:

- **Office of Budget and Financial Management.**
- **Office of Personnel.**
- **Office of Administrative Services.**
- **Office of Special Studies.**

During FY 1986, the Director of the Bureau of Administration was the Executive Secretary of the ATFI Advisory Committee; Commission Delegate to the Administrative Conference of the United States; and Commission representative to the Small Agency Council. Most functions and achievements of the Bureau are reflected in the narratives under the Bureau Offices, as follows:

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

#### **(a) General**

The Office of Budget and Financial Management administers the Commission's financial management program and is responsible for optimal utilization of the Commission's physical, fiscal, and staffing resources. The Director of the Office of Budget and Financial Management reports directly to the Director, Bureau of Administration.

The Office is charged with interpreting government budgetary and financial policies and programs, and developing annual budget justifications for submission to the Congress and the Office of Management and Budget. See **Appendix G**. The Office also administers internal control systems for agency funds, travel and cash management programs, and the commission's imprest fund.

(b) Objectives

The objectives of the Office are to:

- **Submit annual budget justifications and estimates to OMB and the Congress;**
- **Execute the budget to ensure appropriated funds are properly expended;**
- **Prepare regular financial reports to aid management decisions;**
- **Administer the control system over workyears of employment;**
- **Collect all fees and forfeitures due the Commission;**
- **Process payments to vendors as efficiently and expeditiously as possible;**
- **Make certain resources are used properly to avoid fraud, waste, error, and abuse;**
- **Process travel orders and vouchers within established time limits; and**
- **Review internal controls and accounting procedures to ensure they conform to existing regulations and develop procedures to correct deficiencies.**

(c) Achievements

During fiscal year 1986, the Office:

- **Prepared Merit Pay and award Calculations;**
- **Participated on the task force formed to review and evaluate the capabilities of other Federal agencies to provide personnel processing and accounting services;**
- **Participated in the conversion of accounting and payroll functions to the Federal Home Loan Bank Board;**
- **Developed fiscal year 1986 and 1987 budget estimates under the Balanced Budget and Emergency Deficit Control Act of 1985, P.L. 99-177;**
- **Participated in OMB and Congressional budget hearings;**
- **Assisted in the preparation of the Commission's official travel handbook;**
- **Evaluated the costs of services and publications provided by the agency to determine new user fees;**

- Improved processing of payment of bills to make optimum utilization of available prompt-payment discounts and to eliminate the backlog of prior year problem payments;
- Provided management with information and analysis of positions in grades GS/GM 11-15;
- Participated in the tariff automation project;
- Monitored workyears, obligations and outlays to ensure conformity to amounts approved and appropriated;
- Collected and deposited receipts from user fees, fines, collections, freight forwarder licensing and vessel certification fees. Developed accelerated procedures for cash deposits to the U.S. Treasury;
- Developed proposed procedures and responsibilities for collecting debts owed the United States by Commission employees;
- Managed the Commission's travel program;
- Assisted in developing a Diner's Club Card program for the Commission;
- Performed Cash Management review and reported findings to Department of Treasury;
- Increased Office computer capability;
- Developed monthly report on fines and penalties to provide to agency management for their review and action; and
- Reviewed files for disposal, disposition or microfiching.

(d) Prognosis

During fiscal years 1987 and 1988, this Office will continue to update financial control procedures, refine the financial management system, improve processing of payments, and pursue initiatives leading to economy and efficiency in budget and financial operations.

## 2. Office of Personnel

The Office of Personnel plans and administers personnel management programs, including recruitment, placement, position classification, occupational safety and health, and employee relations. The Director of the Office of Personnel reports directly to the Director, Bureau of Administration. Significant achievements in these functional areas during fiscal year 1986 are outlined below.

### (a) Program Development

The Office completed its implementation of Title II of Public Law 98-615 establishing a Performance Management and Recognition System (PMRS), by publishing an internal Commission Order on PMRS procedures. Under PMRS, supervisors and management officials in grades GM-13 through GM-15 are recognized and rewarded for good performance. The Office cooperated with the U.S. Office of Personnel Management (OPM) staff in completing the implementation of PMRS within the very short time limits specified in the law. In addition, it continued to monitor further actions taken and legislation proposed by OPM in the areas of reduction in force and performance appraisal.

The Office began the massive task of analyzing the ramifications of legislation overhauling the Federal retirement system, and planned for disseminating information on the new law to Commission employees, as well as comprehensively training them on options available under the new system. In response to OMB's Reform '88 initiative, the Commission entered into an agreement with another agency to provide automated personnel, payroll, and administrative payment services at a substantial savings from the amount previously expended for payroll and administrative payments alone, and has completed a full-data transition to that system. The conversion upgrades Office capabilities to respond to employee, agency, OPM/OMB inquiries and reporting requirements.

The Office also: completed draft Commission Orders on the new Performance Management System for GS, prevailing rate, and SES employees and on Workforce Discipline and Adverse Actions; published Commission Orders on advisory committees and part-time employment; and revised Commission Orders on the administration of highest previous rate rules and the Senior Executive Service.

(b) Program Evaluation

The Office cooperated with the OPM staff in agency assessment visits; audited all employee performance appraisals and progress reviews for sufficiency of documentation; assisted in the review of performance standards of PMRS employees by a Performance Standards Review Board; monitored the operation of the Employee Counseling Services Program in order to determine if employees were aware of the availability of this confidential assistance program; and audited each employee's payroll data to ensure that such data is adequately and accurately documented.

(c) Employee Relations

During fiscal year 1986, the Office continued to promote the availability of its comprehensive new employee counseling and assistance program, expanded the counseling program to its New York District, and arranged for a counselor to be available at headquarters in addition to satellite counseling stations. This confidential, voluntary program makes professional help available to employees free of charge. A reduction-in-force was conducted, abolishing the Great Lakes District office. The Office participated in employee counseling and job out-placement activities for that district. In connection with a planned major reorganization of Commission functions, the Office prepared and submitted to OPM a request for approval to grant early retirement to eligible employees. Retirements processed under this authority enabled the Commission to effectively accomplish a planned reorganization without the need to adversely impact employees. The Office continued its

efforts to enhance the working environment of all Commission employees, offering numerous programs relating to health and safety. The annual comprehensive health fair was conducted. Counseling services continued to be provided to those employees contemplating retirement and included the offer to participate in a pre-retirement planning seminar. The Office also purchased a sophisticated calculator for computation of employee retirement information which will facilitate the preparation of quarterly annuity estimates. Efforts continued during 1986 to educate supervisors concerning their responsibilities in the areas of employee conduct and performance, including the granting of within-grade increases and awards, and correcting discipline problems. In this connection, the Office issued memoranda discussing these matters and supervisory responsibilities, as well as recent case law of the Merit Systems Protection Board. Supervisors were informally counseled with respect to particular problems which they faced. In seeking to resolve performance or conduct-related problems, the Office worked closely with Commission legal advisors to ensure that employees affected by adverse actions were accorded their due rights. The Office also administered the agency's grievance procedure and continued the bi-monthly publication of an agency newsletter.

(d) Performance Appraisal

The Office of Personnel administered the Commission's annual performance evaluation and pay out for employees covered by the Performance Management and Recognition System. In addition, the Office refined and developed common standards for managerial and supervisory employees, assisted supervisors in preparing new or revised performance standards necessitated by changes in employee duties, and developed procedures to be followed in connection with detail and collateral duty assignments for mid-level managers and other employees.

(e) Incentive Awards

The Office administered the Commission's program of granting awards to employees for outstanding performance, special achievements, and suggestions which were adopted.

(f) Staffing

In addition to regular recruitment efforts, during fiscal year 1986, the Office responded to Commission needs to fill newly-established or redefined positions in offices whose missions were directly affected by enactment of the Shipping Act of 1984. New recruitment strategies were developed in traditionally hard-to-fill occupations. A Senior Executive Service candidate development program was successfully planned and conducted. As a result of nationwide recruitment efforts, several critical managerial positions were filled. Advice was provided on the feasibility of effecting internal reassignments to meet critical program needs. Efforts continued to provide human resources within funding limitations, including the use of consultants, and summer employment, part-time employment, volunteer, and cooperative education programs.

(g) Position Classification

The Office of Personnel participated with management officials in preparing position descriptions for newly-created positions, and in organizing work for realigned organizations. Specifically, position descriptions were prepared for several newly-established Senior Executive Service positions and senior positions in the Bureau of Investigations.

### 3. Office of Administrative Services

The Office of Administrative Services directs and administers a variety of management services functions that are principally program supporting, without which, the operation of the Commission would be impaired or stopped. The Director of the Office of Administrative Services reports directly to the Director, Bureau of Administration.

The Office's support programs include communications, procurement of administrative goods and services, property management, space management, printing management, mail and records services, reproduction and graphic services, facilities and equipment maintenance, and transportation. The Office's major functions are to secure and furnish all necessary 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 Federal Acquisition Regulations (FAR), the Federal Property Management Regulations (FPMR), and other appropriate Federal guidelines.

In fiscal year 1986, the Office of Administrative Services' major accomplishments included:

- **Establishment of Commission's workplace environmental program.**
- **Issuance of Commission Order on Procurement.**
- **Realignment of the Commission's printing and reproduction activities.**
- **Initiation of procedures for automating our telecommunications order process and establishment of a telecommunications data base for lines and features.**
- **Automation of procurement obligation activity with the Federal Home Loan Bank Board.**
- **Realignment of the Commission's facilities maintenance activity.**

During fiscal year 1987, the Office will continue to coordinate and administer the program objectives initiated over the past several years, including: (1) revision of the Managing Directives relative to the Office's operations; (2) automation of the telecommunications program; (3) renovation of Commission space in both headquarters and the field for better utilization and cost effectiveness; (4) realignment of the Commission's property management program, through automation; (5) reestablishment of a sound, properly-supported procurement program, including staffing



considerations and training; and (6) review of all Office positions for correct classification and grade levels.

By fiscal year 1988, the goal of the Office of Administrative Services is to complete the evaluation of all of its existing programs and support activities to better serve the Commission's needs and to conform with the many significant changes within the support management field. This evaluation will include recommendations on office structure and staffing, as well as functional operations.

#### **4. Office of Special Studies**

Created in March, 1986, the Office of Special Studies is responsible for performing management analysis activities, conducting energy and environmental impact studies, and providing leadership and guidance for the Commission's information resource management efforts. The Office Director, who reports to the Director, Bureau of Administration, also served as the Commission's Training Officer during fiscal year 1986.

##### **(a) Management Analysis Activities**

The Management Analysis program includes conducting internal studies and audits to: (1) assess efficiency, effectiveness, and economy in the use and management of agency resources, and (2) determine if desired program results and objectives are being effectively achieved. The Office is also responsible for obtaining clearances from the Office of Management and Budget for recordkeeping and reporting requirements imposed on the public; carrying out other phases of the Paperwork Reduction Act of 1980; and for coordinating government-wide programs such as emergency preparedness and records management.

##### **(b) Energy and Environmental Analysis**

The Office ensures Commission compliance with the National Environmental Policy Act of 1969 (NEPA) and the Energy Policy and Conservation Act of 1975 (EPACA) by: (1) examining all Commission actions to determine whether the

Commission's decisions will have a significant impact upon environmental quality or energy consumption; (2) issuing environmental assessments and impact statements when appropriate; and (3) recommending to the Commission regulatory strategies which are consistent with national environmental goals or designed to promote energy efficiency and conservation.

(c) Information Resources Management

The Office plans and coordinates the automation and information resources management efforts of the Commission. An evaluation of automation efforts was begun and plans are under way to study utilization rates of the equipment currently in use. Additional studies will help to determine other opportunities for automating labor-intensive operations wherever possible throughout the Commission.

During the past fiscal year, significant automation projects were completed in the service contract, tariff, freight forwarder, and agreement areas. These automation efforts included the development of systems to enhance the Commission's ability to perform its regulatory responsibilities, e.g., Tariff Profile System, an automated Freight Forwarder Information System, the Regulated Persons Index, Library Automation, and Project Tracking Systems. Commercial data bases were rented to help the agency to: meet section 18 study goals; perform legal research; ascertain financial responsibility of applicants for licenses; conduct monitoring and surveillance activities; conduct legislative research; and monitor commodity movements.

The Office of Special Studies implemented an Information Resources Management strategy that will further refine and develop efficient, effective, and economical use of information management principles, systems, and guidelines. Additional activities included consideration of such automation efforts as electronic mail and bulletin boards, optical character recognition equipment, new forms of micrographics, improved forms and correspondence

management, information processing, local area networks, and other information management improvements that will permit employees to be assigned to more productive tasks.

The Office was also responsible for managing the conversion of all personnel, payroll, administrative payments, and purchasing management activities to an automated system operated for the Commission by the Federal Home Loan Bank Board.

(d) Training

During Fiscal Year 1986, virtually all headquarters employees participated in a computer literacy training curriculum which included computer-based instruction, hands-on training, coaching of employees in micro-computer operations, and formal classroom training conducted by commercial and interagency trainers. A survey of supervisory training needs was also conducted to form a basis for training plans to ensure that supervisors are well equipped to manage their workforce within the constraints of limited resources.

(e) Other Specific Achievements

During fiscal year 1986, other achievements of the Office of Special Studies included:

- Participation in the Tariff Automation Project;
- Preparation of a new FMC Travel Manual;
- Evaluation of new user-friendly microcomputer software;
- Revision of the Commission Order on Internal Controls;
- Evaluation of Computer Assisted Microfilm Systems;
- Evaluation of the central word processing system;
- Evaluation of tariff page counting equipment;
- Evaluation of Text Retrieval Software;
- Establishment of an FMC-led, interagency Toastmasters Club for employee development opportunities;

- Establishment of an OMB Clearance Data Base;
- Evaluation of options for networking personal computers with the central word processing system;
- Initiation of market research to determine microcomputer "best-buys" twice monthly;
- Preparation of management audits in the Bureau of Tariffs and Office of Administrative Services;
- Development of security options in the event Guard Services are diminished;
- Initiation of a twice-monthly computer user tips bulletin;
- Participation on the Interagency Committee on Information Resources Management;
- Research and evaluation of facsimile terminal equipment;
- Development of the annual Vulnerability Assessment under the Financial Manager's Integrity Act and preparation of reports for The President, The Senate, The House of Representatives, and OMB;
- Development of the capability to be an alternate administrator for the central word processing system;
- Provision of on-call assistance for hardware/software problems experienced by microcomputer users; and
- Review of all Commission Actions and Agreements filed for potential impact under NEPA and EPACA.

(f) Prognosis

The Office of Special Studies plans to conduct a physical inventory of all microcomputer equipment, including boards, accessories, cables, and software and will provide programming support and training; examine current operating data bases to suggest shortcuts and speed improvements; and survey systems to determine which should be networked. This office will also provide administrative and technical support for the tariff automation project and will continue to evaluate both software and new microcomputer systems to determine the most efficient utilization of agency

acquisition funds. During fiscal year 1987, the office will develop a comprehensive plan for automating those functions which have not yet received microcomputers and will conduct liaison activities with other agencies and commercial operators which could result in improved means of operations.

The Management Analysis activities will be continued as they were in fiscal year 1986 and the office will recommend Commission Orders relating to Information Resources Management and the Management Evaluation Plan required by the Financial Managers Integrity Act. Work on an OMB Reporting Burden Data Base will be completed so that all offices responsible for information collections will have adequate, advance notice of expiration dates and public burdens. Also planned for the Management Analysis Activity is development of a computerized data base for the Commission's Records Retention Schedules.

Finally, all Commission actions and agreements filed will continue to be reviewed by the office of Special Studies for potential impact under both the National Environmental Policy Act of 1975 and the Energy Policy and Conservation Act of 1975.

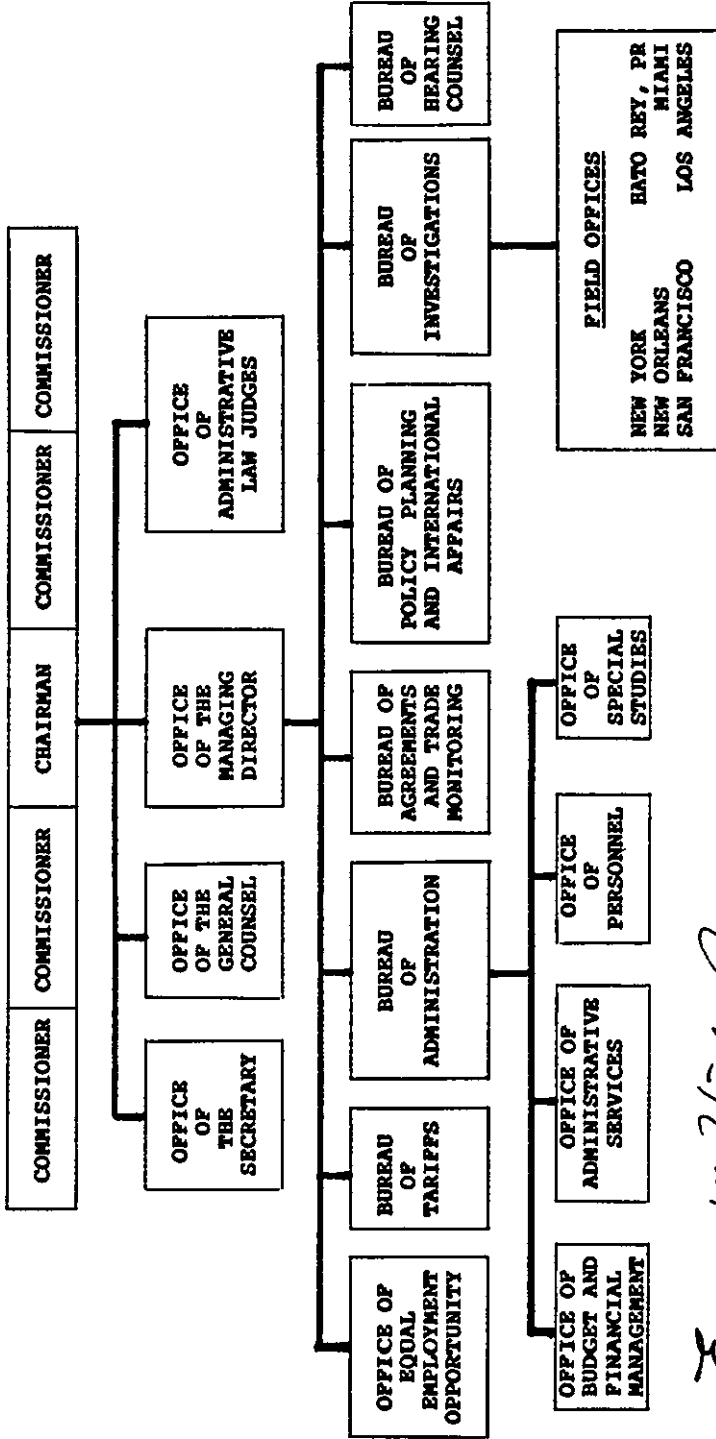


## APPENDICES





FEDERAL MARITIME COMMISSION



*Edward V. Hickey, Jr.*

Edward V. Hickey, Jr., Chairman  
 March 28, 1986



APPENDIX B

COMMISSION PROCEEDINGS -- FISCAL YEAR 1986

**Formal Proceedings**

Decisions.....	13
Reconsiderations.....	0
Discontinuances & Dismissals.....	9
Not Reviewed.....	6
Remand.....	1

**TOTAL.....29**

**Special Dockets .....97**

**Informal Dockets .....55**

**Oral Arguments .....4**

**Rulemaking**

**Final Rules Issued.....3**

APPENDIX C

**AGREEMENT FILINGS AND STATUS  
FISCAL YEAR 1986**

**Agreements Filed in FY 1986 (including modifications)**

Foreign and Domestic Commerce.....	320
Terminals.....	200
Labor-Management.....	3
	_____
<b>TOTAL.....</b>	<b>523</b>

**Agreements Processing Categories in FY 1986**

Forty-Five Day Review.....	290
Shortened Review.....	137
Exempt-Effective Upon Filing.....	96
Determination of No Jurisdiction.....	11
Formal Extension of Review Period.....	4
	_____
<b>TOTAL.....</b>	<b>538</b>

**Conference Reports Submitted for Commission Review**

Shippers' Requests and Complaints.....	60
Minutes of Meetings.....	1688
Pooling Statements.....	18
Operating Reports.....	20
Index of Documents.....	189
Consultations.....	44
	_____
<b>TOTAL.....</b>	<b>2019</b>

**Agreements on File as of September 30, 1986**

Conference.....	60
Interconference.....	8
Pooling & Equal Access.....	15
Joint Service.....	21
Sailing & Charter.....	63
Transshipment.....	5
Cooperative Working, Agency & Equipment Interchange	42
Terminal.....	385
Labor-Management Agreements.....	93
	_____
<b>TOTAL.....</b>	<b>692</b>

APPENDIX D

**TARIFF FILING AND STATUS - FISCAL YEAR 1986**

**Tariff Filings (Pages)**

Foreign Filings.....	633,280
Domestic Filings.....	6,177
Terminal Filings.....	<u>6,341</u>
<b>TOTAL .....</b>	<b>645,798</b>
Foreign Rejections.....	7,622
Domestic Rejections.....	424

**Tariff Publications**

Foreign:	On Hand 10/1/85.....	4,998
	On Hand 10/1/86.....	5,377
Domestic:	On Hand 10/1/85.....	275
	On Hand 10/1/86.....	308
Terminals:	On Hand 10/1/85.....	440
	On Hand 10/1/86.....	445

**Special Permission Applications**

Total Received - Foreign.....	103
Granted .....	82
Denied .....	18
Withdrawn .....	3
Total Received - Domestic.....	56
Granted .....	52
Denied .....	3
Withdrawn .....	1

**Investigation and Suspension Memoranda**

Domestic:	
Completed .....	2
Pending .....	1

**Service Contracts**

Filed .....	4,308
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APPENDIX E

CIVIL PENALTIES COMPROMISED OR ASSESSED

FISCAL YEAR 1986

Armada Great Lakes/East Africa Service, Ltd.....	\$ 40,000
A.R. Torrico & Sons.....	7,500
Bermuda Ocean Shipping.....	5,000
Cari Cargo Int'l, Inc.....	25,000
Great Lakes Trans Caribbean Line.....	40,000
Hyundai Merchant Marine.....	6,000
Jersey/N.Y. Export Hassman & Baxt.....	5,000
Jorge Villena.....	50,000
Joseph Chen d/b/a Tung Tai Enterp.....	23,000
Marcella Shipping Co., Ltd.....	150,000
Mitsui OSK.....	100,000
Overocean Transport Corp.....	5,000
Sea Trade Shipping.....	25,000
Toyo Cotton.....	10,000
Trans Pacific Westbound Rate Agreement.....	300,000
Trans-Senko Corp. d/b/a Senko Ctr. Line.....	10,000
West Indies Shipping Corp.....	10,000
	<hr/>
<b>TOTAL.....</b>	<b>\$811,500</b>

APPENDIX F

FIELD INVESTIGATIONS -- FISCAL YEAR 1986

	Surveillance Actions	Other	TOTAL
Pending 10/1/85	62	119	181
Opened FY 1986	666	159	825
Closed FY 1986	513	188	701
Pending 9/30/86	215	90	305

APPENDIX G

**STATEMENT OF APPROPRIATIONS, OBLIGATIONS AND RECEIPTS  
FOR THE FISCAL YEAR ENDED SEPTEMBER 30, 1986**

**Appropriations:**

Public Law 99-180, approved December 13, 1985: For necessary expenses of the Federal Maritime Commission, including services as authorized by 5 U.S.C. 3109; hire of passenger motor vehicles; and uniforms or allowances therefore, as authorized by 5 U.S.C. 5901-5902; Provided, that not to exceed \$1,500 shall be available for official reception and representation expenses.....\$11,870,000

Public Law 99-177, Balanced Budget and Emergency Deficit Control Act of 1985, approved December 12, 1985.....\$-510,000

**Revised Appropriation                      \$11,360,000**

**Obligations and Unobligated Balance**

Net obligations for salaries and expenses for the fiscal year ended September 30, 1986

**\$11,360,000**

**Statement of Receipts: Deposited with the General Fund of the Treasury for the Fiscal Year Ended September 30, 1986:**

Publications and reproductions, Fees and Vessel Certification, and Freight Forwarder Applications  
\$ 179,000

Fines and penalties.....397,680

**Total general fund receipts                      \$576,680**



APPENDIX H

EXAMPLE OF MARKET SHARE DATA

U.S. ATLANTIC COAST EXPORTS TO THE UNITED KINGDOM

January to December 1984

North Atlantic/United Kingdom Freight Conference

<u>Operator</u>	<u>Percent of tonnage*</u>	<u>Percent of value‡</u>
C1.....	17.62.....	9.63
C2.....	17.02.....	11.55
C3.....	15.01.....	18.74
C4.....	14.43.....	29.56
C5.....	9.94.....	9.25
C6.....	9.57.....	12.06
Conference total with greater than 1% shares.....	82.59.....	90.79
Conference total with less than 1% shares.....	0.01.....	0.02
<b>CONFERENCE SHARE.....</b>	<b>83.60.....</b>	<b>90.82</b>
<u>Nonconference</u>		
NC1.....	2.32.....	0.98
NC2.....	1.84.....	0.62
NC3.....	1.80.....	1.92
NC4.....	1.59.....	1.28
NC5.....	1.21.....	0.46
NC6.....	1.05.....	0.11
Nonconference total with greater than 1% shares.....	9.82.....	5.38
Nonconference total with less than 1% shares.....	5.47.....	2.63
<b>NONCONFERENCE SHARE.....</b>	<b>15.29.....</b>	<b>8.00</b>
<b>SHARES NOT ELSEWHERE CLASSIFIED.....</b>	<b>1.11.....</b>	<b>1.18</b>
<b>TOTAL FOR TRADE.....</b>	<b>100.00.....</b>	<b>100.00</b>

\*Tonnage is calculated in long tons.

‡Value is calculated in thousands of U.S. dollars.

APPENDIX I

OUTLINE OF SURVEY QUESTIONS

Carrier Survey

Characteristics of Firm  
Service Contracts  
Shippers' Associations  
Independent Action  
Agreements  
Intermodalism  
Tariffs and Rates  
Port Antitrust Immunity  
Access to Cross Trades  
General

Port Survey

Characteristics of Port  
Competitive Environment  
Antitrust Immunity  
Port Development  
Container Terminals  
General

Shipper Survey

Characteristics of Firm  
Service Contracts  
Shippers' Associations  
Independent Action  
Agreements  
Intermodalism  
Tariffs and Rates  
Port Antitrust Immunity  
Conference Behavior  
Service Levels  
General

Marine Terminal Operator Survey

Modified Version  
of Port Survey

**APPENDIX J**

**CONFERENCE PROCEEDINGS**

**TITLE**

**PROCEEDINGS - The Shipping Act of 1984, Evaluating Its Impact.** A Conference sponsored by the Federal Maritime Commission and Old Dominion University, Norfolk, Virginia, June 12-13, 1986. Mark Lincoln Chadwin, Editor.

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**This report was prepared by  
The Commission's Staff**

**and**

**Edited by  
John Robert Ewers**

**With special thanks to  
Mary McPherson, Darlene Harrison and  
Lyvette Hillian**