

FEDERAL MARITIME COMMISSION

27th Annual Report for Fiscal Year 1988





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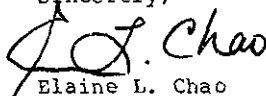
Federal Maritime Commission
Washington, D.C. 20573

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-seventh annual report of the activities of the Federal Maritime Commission for fiscal year 1988 (ending September 30, 1988).

Sincerely,


Elaine L. Chao
Chairman

IN MEMORIAM



EDWARD V. HICKEY, JR.

Chairman of the Federal Maritime Commission

November 4, 1985 - January 9, 1988



Elaine L. Chao
Chairman
Appointed 1988
Term Expires 1991
(R) California



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



Edward J. Philbin
Commissioner
Appointed 1984
Term Expires 1989
(R) California



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



Francis J. Ivancie
Commissioner
Appointed 1985
Term Expires 1992
(D) Oregon

SENIOR COMMISSION OFFICIALS

Secretary.....Joseph C. Polking
Chief Administrative Law Judge.....Charles E. Morgan
General Counsel.....Robert D. Bourgoin
Director, Office of
 Equal Employment Opportunity.....Mary A. Jackson
Managing Director.....Edward P. Walsh
Director, Bureau of Trade Monitoring.....Austin L. Schmitt
Director, Bureau of Domestic Regulation.....Robert G. Drew
Director, Bureau of Economic Analysis....Robert A. Ellsworth
Director, Bureau of Hearing Counsel.....Seymour Glanzer
Director, Bureau of Investigations.....Wm. Jarrel Smith, Jr.
Director, Bureau of Administration.....John Robert Ewers

I

THE 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 Federal Maritime Board was responsible for both the regulation of ocean commerce and the promotion of the U.S. Merchant Marine. Under the reorganization plan, the shipping laws of the United States were separated into two categories -- regulatory and promotional. The responsibilities associated with promotion of an adequate and efficient U.S. Merchant Marine were assigned to the Maritime Administration, now located within the Department of Transportation. The newly-created Federal Maritime Commission was charged with the administration of the regulatory provisions of the shipping laws. The Commission is now responsible for the regulation of oceanborne transportation in the foreign commerce and in the domestic offshore trade of the United States. The passage of the Shipping Act of 1984 brought about a major change in the regulatory regime facing shipping companies operating in the foreign commerce of the United States.

B. FUNCTIONS

The principal statutes or statutory provisions administered by the Federal Maritime Commission are the Shipping Act of 1984, the Shipping Act, 1916, the Intercoastal Shipping Act, 1933, the Foreign Shipping Practices Act of 1988, and section 19 of the Merchant Marine Act, 1920.

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 U.S. foreign oceanborne and foreign-to-foreign trades.
- * Regulating rates, charges, classifications, rules and tariffs of controlled carriers to ensure that such matters are just and reasonable.
- * 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.

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

In addition to monitoring relationships among carriers, the Commission is also responsible for ensuring that individual carriers, as well as those permitted by agreement to act in concert, fairly treat shippers and other members of the shipping public. The 1984 Act prohibits carriers from unduly discriminating among shippers and other members of the shipping public. The 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 is authorized under the Foreign Shipping Practices Act of 1988, under section 19 of the Merchant Marine Act, 1920 and under section 13(b)(5) of the Shipping Act of 1984 to take action to ensure that the foreign commerce of the United States is not burdened by non-market barriers to ocean shipping. The Commission may take countervailing action to correct unfavorable shipping conditions in U.S. foreign commerce and may impose penalties to address actions by carriers or foreign governments that adversely affect the operation of U.S. carriers in the U.S. foreign oceanborne trades and that impair access of U.S.-flag vessels to ocean trade between foreign ports.

The 1916 and 1933 Acts regulate the activities of common carriers and other persons engaged in the domestic offshore trades of the United States. In general, they provide for tariff filing and protect against unduly discriminatory practices in a manner similar to the 1984 Act. In addition, the 1933 Act provides for a more comprehensive scheme of regulation to ensure that the minimum and maximum rates and the practices of common carriers in the domestic offshore trades are just and reasonable.

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 regulations. The Commission also adjudicates disputes involving the regulated community, the general shipping public, and other affected 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, Office of Equal Employment Opportunity, Bureau of Economic Analysis, Bureau of Trade Monitoring, Bureau of Domestic Regulation, 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 1988, the Commission was authorized a total of 216 full-time equivalent positions and had a total appropriation of \$13,585,000. The majority of the Commission's personnel are located in Washington, D.C. with field offices in New York, San Francisco, Los Angeles, New Orleans, Miami, Houston, and Hato Rey, Puerto Rico.

II. THE YEAR IN REVIEW

The FMC experienced another very active and successful year in 1988. Our enforcement program was further refined and achieved excellent results in curbing commercial malpractices and lending stability to our international trades. Similarly, we continued our various actions at combating unfavorable foreign government practices that exist in certain trades. Our future efforts in this area should be significantly strengthened by the newly enacted Foreign Shipping Practices Act of 1988. Agreement filings with major impact in certain trades were reviewed and analyzed, and several important rulemakings in the areas of service contracts and tariffs were either initiated or completed. The Commission also made significant progress in its long-term projects dealing with the automation of tariff filing and the data collection and report preparation required by section 18 of the Shipping Act of 1984.

The Annual Report is essentially structured as an office-by-office synopsis of each operating unit's activities and accomplishments, with separate sections that deal with areas of particular importance. This section of the report is a brief summary of certain of the Commission's major accomplishments during the past year.

A. ENFORCEMENT

The Commission has administered an aggressive enforcement program since passage of the 1984 Act. This program was further restructured this past year, with additional emphasis placed on targeting major industry malpractices on the trade routes where such malpractices are most prevalent. Our enforcement activities continue to be conducted as a collaborative staff program, to ensure continuity of effort and to develop all relevant data and information. And, once an enforcement initiative is completed in a particular trade, the Commission maintains an appropriate level of monitoring to ensure that prohibited activity does not recur.

As a result of its enforcement efforts, the Commission collected \$2,455,605 in fines and penalties in fiscal year 1988. This included a comprehensive settlement with 15 shippers and forwarders of refrigerated produce in the trans-Pacific trade, which represented the largest number of shippers and forwarders ever named by the Commission in a single enforcement action. We continue to concentrate resources in this trade because of its size and importance, and are actively pursuing investigations that should enhance our ability to identify and appropriately address activity violative of the shipping statutes.

The Trans-Atlantic Enforcement Initiative, which began in 1987, continued in 1988. Enhanced neutral-body self-policing established through the program was implemented by the participating carriers, and continuing investigations resulted in the collection of further penalties and in the addition of three participants in the compliance program. Indications are that this initiative has had a stabilizing impact on the North Atlantic.

Additional enforcement activity is under way in other trades, where the Commission continues to initiate action based on trade data, investigatory leads, and indications of malpractices. Our enforcement activities continue to be conducted as a means of achieving fair competition and trade stability.

B. SURVEILLANCE

The Commission's surveillance program is a logical and effective adjunct to its enforcement activities. Regular monitoring of industry trends and concerted carrier activities enables the Commission to more readily identify practices contrary to the shipping statutes. Reports and studies are prepared that contain an in-depth review of several surveillance factors, including market shares, major moving commodities, rate activity, etc., while periodic monitoring reports provide a timely analysis of emerging trends in the U.S. ocean trades.

Among the projects completed this past year were: two periodic monitoring reports; a profile of six Mediterranean subtrades; a special monitoring report on state-controlled carriers operating in U.S. trades; an analysis of U.S. and Canadian cross-border traffic; and studies on conference practices regarding the movement of fresh fruit to the Far East, and the European Community's allegation of price fixing in the North Atlantic trades. Other projects were nearing completion at year's end, all with an eye toward providing an up-to-date and detailed interpretation of evolving carrier and agreement activity, along with changing trade conditions.

C. RESTRICTIVE TRADE PRACTICES

Fiscal year 1988 was another active year for the Commission in addressing conditions unfavorable to shipping in the U.S. foreign trades. The Commission concluded its inquiry on the "high-cube container" situation in the U.S./Japan trade, noting the progress and improvements made in achieving greater flexibility in the use of high-cube containers, and stating that no further Commission action was warranted.

A proposed rule was issued to address conditions unfavorable to shipping in the U.S./Taiwan trade with respect to ownership and operation of dockside equipment and facilities and the operation of container terminals at Taiwan ports by U.S.-flag carriers. Subsequently, based on representations by all affected parties that these issues had been successfully resolved, the Commission discontinued the proceeding.

A final rule was issued to address conditions unfavorable to shipping in the U.S./Peru trade, based on subsequent remedial action by the Government of Peru, the Commission invited the parties to submit additional comments. The rule was still being held in abeyance at fiscal year end.

The Commission continued its ongoing inquiries of the laws, regulations and policies of the Republic of Korea and

the People's Republic of China, to determine if conditions unfavorable to shipping exist in United States trades with those countries. Also, with respect to Korea, a petition was filed by Pacific America Line, alleging harm due to Korea's reservation of virtually all of its waterborne steel exports for Korean-flag carriers. The petition was subsequently withdrawn after satisfactory resolution of the involved issues.

The Commission's ability to effectively act to counter foreign government trade restrictions was strengthened by the Foreign Shipping Practices Act of 1988, which is part of the Omnibus Trade and Competitiveness Act of 1988. The Shipping Practices Act directs the Commission to address adverse conditions affecting U.S. carriers in the U.S. foreign ocean trades that do not exist for carriers of those countries in the U.S. The Act sets forth a wide range of remedies to address these conditions. Shortly after its enactment, a proposed rule was issued to implement the Act. The FMC also proposes to amend its rules implementing section 19(1)(b) of the Merchant Marine Act, 1920, and section 13(b)(5) of the 1984 Act, to incorporate new sanctions authorized under the Shipping Practices Act.

D. AGREEMENT ACTIVITY

Carriers have continued to establish and refine various types of joint arrangements to address the specific conditions they encounter in the U.S. ocean trades. The Commission is responsible for reviewing such agreements to ensure that they do not contain provisions contrary to the 1984 Act.

A highly publicized space charter agreement in the trans-Atlantic trade between Sea-Land, Trans Freight Lines and Nedlloyd Lines was filed with the FMC. The Agreement's impetus was Sea-Land's purchase of the world's twelve largest container vessels, the "Econships," formerly owned by now bankrupt U.S. Lines. The three carriers operate the Econships at less than structured capacity, so as to minimize the increased tonnage in the trade. Additionally,

thirteen carriers established an enhanced self-policing system under the U.S.-North Europe Compliance Agreement (this agreement emanated from the Commission's amnesty settlement with these carriers in 1987).

In the Pacific trade, the Transpacific Discussion Agreement was formed among thirteen carriers (both conference and independent). It acts as a forum to discuss ways of improving conditions inbound.

The Mediterranean trade continued to be characterized by an expansion of vessel capacity, and the carriers in the trade pursued pooling and space charter agreements to deal with this increasing cargo capacity.

The Latin American trades saw the formation of new pools and the filing of various space charter and discussion agreements. A new conference and a discussion agreement between a conference and a major independent were formed in the Middle East, where there have been promising signs of a reversal of an overall trade slump. Additionally, conferences in various trades continue to implement specific procedures and programs regarding independent action and the use of service contracts to address the trends and circumstances in their particular trades.

The Commission closely reviews all such agreements, both at the time of filing and during operation, to ensure that they comport with all technical and substantive requirements of the 1984 Act.

E. SERVICE CONTRACT AND TARIFF RULEMAKINGS

The Commission took several actions to refine and clarify its regulations in the areas of service contracts and the filing of tariffs.

As to service contracts, the Commission adopted a final rule that requires conferences to state, in a designated article in their agreements, their generally applicable rules affecting or implementing conference service contract authority, and to file amendments to their agreements whenever these rules change. Also, a notice of

proposed rulemaking was issued which would permit the correction of service contracts under specific conditions, to correct administrative or clerical errors. Such a rule is necessary since modifications to service contracts are not permitted. A proposed rule was also issued which would prohibit "most favored shipper" provisions that affect rates charged in a service contract by referring to rates offered or published by other carriers or conferences.

Regarding tariff filing, the Commission issued a final rule with respect to equipment interchange agreements. The rule requires carriers to publish in their tariffs all terms and conditions governing the use of carrier-provided equipment by shippers or persons acting on the shippers' behalf. The effective date of this rule was subsequently stayed indefinitely to permit resolution of a number of issues regarding compliance with certain of the requirements. Finally, a proposed rule was issued dealing with the effective date of tariff changes. It would require carriers to publish in their tariffs a rule specifying that rates applicable to a given shipment must be those in effect on the date the cargo is received by the carrier or its agent. This rule is designed to add certainty and fairness to the rate negotiation process.

F. SECTION 18 STUDY

The Commission continued to collect and analyze data to comply with the mandated five-year study of the impact of the 1984 Act. In this regard, over 4,000 surveys on the impact of the Act were sent to carriers, shippers, ports, non-marine terminal operators, and freight forwarders. A major portion of 1988 was devoted to obtaining information to address the section 18 inquiry regarding "increases or decreases in the level of tariffs."

In February 1988, the Commission and the University of Southern California sponsored a second symposium on the 1984 Act. Over 350 individuals attended, and conference participants expressed their views on the state of their respective segments of the industry, with particular focus

on tariffs and independent action, service contracts, and the need for antitrust immunity.

An Advisory Committee was also established to make continuing recommendations on the conduct of the Section 18 Study. The Committee, comprised of 32 members from all segments of the industry, met in March 1988 and addressed the Commission's data-gathering efforts to date, the proposed 1988 surveys, and the concept of obtaining the views of foreign-based shippers.

Finally, the Commission continued to meet with representatives of the Departments of Justice and Transportation and the Federal Trade Commission concerning data collection as required by the 1984 Act, and finalized its plan for preparation of the section 18 report.

G. TARIFF AUTOMATION

The Commission made extensive progress in its program to automate the filing of tariffs, which presently are received and processed manually. A Notice of Inquiry proceeding on the functionality of the system generated numerous comments and resulted in a Commission Report. A presolicitation conference was held, and a second draft Request for Proposals ("RFP") was issued to over 200 potential offerors. A Benefit-Cost Analysis was forwarded to the Office of Management and Budget, and microcomputer equipment and a Local Area Network for accessing the off-site host processor were purchased under an amended delegation of procurement authority obtained from the General Services Administration.

The system will enable tariff filers to file and amend their tariff material by remote access directly to the system almost any time of day. A public reference room at Commission headquarters will be continued for public inspection of tariffs and essential terms of service contracts, while remote access to the FMC database by modem will also be considered. Full implementation of the system will be in phases to allow commercial firms to adapt their operations, with an eight-month prototype planned for

testing and improving functionality and performance. A final RFP is scheduled to be issued in January 1989.

H. LITIGATION

The Commission was successful in several litigation matters this past year. The U.S. Court of Appeals for the District of Columbia Circuit affirmed the Commission in the following three cases: the "50 mile container rules" case, where the Commission had found the rules unreasonable, unjustly discriminatory, and otherwise violative of the shipping statutes, notwithstanding their lawfulness under federal labor laws; the Plaquemines Port Harbor and Terminal District case, where the Commission had held that a port and harbor district's offering of essential safety and emergency services, and controlling access to private facilities in order to enforce a fee charged for these services, made the port district a marine terminal operator subject to the FMC's jurisdiction (the court also held that the Commission had correctly decided the discrimination and liability issues in the case); and, the Petchem case, where the Commission, in holding that a tug operator had failed to prove that the Canaveral Port Authority's refusal to grant it a franchise for commercial tug service amounted to unlawful prejudice and discrimination, clarified the standard of law under which exclusive terminal franchises would be examined. For full names and citations of cases, see pp. 70-71, below.

Additionally, the Commission obtained a consent decree from the U.S. District Court for the Southern District of Florida in an injunctive action brought against a non-vessel-operating common carrier which was guilty of numerous Shipping Act violations and which had not complied with orders issued by the Commission. The terms of the consent decree were negotiated in conjunction with the Department of Justice's Office of Federal Programs, and the Government essentially prevailed in all material aspects of the action. This case demonstrates the Commission's resolve to obtain full compliance with its orders and decisions, and similar action will be initiated in the future as the need arises.

III

SURVEILLANCE AND ENFORCEMENT

A. SURVEILLANCE

An integral part of the Commission's administration of the Shipping Act, 1916, and the Shipping Act of 1984 is the systematic surveillance of carrier activity and trade conditions to ensure continuing compliance with statutory standards and the requirements of the Commission's rules. The Bureau of Trade Monitoring administers a variety of surveillance programs designed to afford the Commission the necessary degree of oversight in these areas.

The 1984 Act provides for the statutory effectiveness of filed agreements following a brief waiting period, unless a given agreement is rejected for technical reasons or for failure to conform with the mandatory conference agreement provisions in sections 5(b) and 5(c), or is contrary to the standards of section 6(g) of the Act. Once an agreement becomes effective, the Commission is responsible for maintaining surveillance over the parties' concerted activities in order to ensure compliance with the standards of the 1984 Act. To fulfill this statutory responsibility, the Commission has continued to direct its activities toward improving the breadth and effectiveness of its monitoring programs.

During fiscal year 1988, the Commission implemented significantly refined programs for the in-depth review of selected critical trades. These programs integrate a number of surveillance factors, including operator market share data, cargo tonnages of major-moving commodities, shipper identification, relevant tariff rates and rate histories, use of service contracts, agreement-document analysis, and investigation for existence of possible malpractice.

In fiscal year 1988, the Bureau of Trade Monitoring produced two periodic Monitoring Reports, which provided timely analysis of emerging trends in agreement filings, conference market shares, and U.S.-flag participation in key subtrades. The Bureau also completed a profile of six Mediterranean subtrades in support of an investigative initiative in that area. In regard to state-controlled carriers, the Bureau completed the second of a series of monitoring reports on the activities of controlled carriers in the U.S. trades. The Bureau provided an analysis of the flow of cross-border traffic of the U.S. and Canada transshipped at each other's ports. The Bureau conducted studies on (1) recent developments in containerization and intermodal integration, (2) the European Community Treaty of Rome provisions on ocean shipping; (3) statistical evaluation of the estimated number of rules and rates in the Commission's tariffs, and (4) various neutral-body penalty provisions of major conferences.

The Bureau also performed analyses of (1) the European Community's allegation of price-fixing in the North Atlantic trades, (2) conference practices regarding the movement of fresh fruit to the Far East, (3) reports from a major trans-Pacific conference on its cost of publishing independent actions on behalf of its members, and (4) problems experienced by certain shippers' associations in negotiating service contracts with conferences.

The Bureau of Trade Monitoring also was nearing the completion of several major projects at the end of fiscal year 1988. These projects included (1) extensive monitoring reports on the U.S./China and U.S./Hong Kong trades, (2) a detailed analysis and recommendation regarding a complaint relative to a major trans-Pacific conference's freight-all-kinds rates and the implications with regard to certain segments of the industry, (3) an economic impact analysis of the Commission's North Atlantic Amnesty Program, and (4) an analysis of the significance of carriers executing agreements involving contract carriage and filing such agreements with the Commission under the 1984 Act.

B. ENFORCEMENT

The Commission recognized that under the Shipping Act of 1984, greater regulatory emphasis must be placed upon enforcement activity. Accordingly, the Commission determined to concentrate its efforts and provide better coordination of long and short term enforcement initiatives across bureau lines. All bureaus that have technical or substantive responsibility for compliance with the Shipping Acts participate in enforcement efforts to varying degrees.

Enforcement initiatives in the Pacific and Central American Trades are examples of long-term programs resulting from this coordinated effort. These programs resulted in settlements of several major cases including a coordinated settlement of alleged violations by a large number of shippers of refrigerated produce to the Far East. It is anticipated that these enforcement programs will continue to have an important impact during the next fiscal year and beyond.

Another such long-term program, the Trans-Atlantic Trade enforcement initiative which began in 1987, continued in 1988. Enhanced neutral-body self-policing established through the program was implemented by participating carriers. Additional penalties were collected in fiscal year 1988 and three carriers joined the original 13 participants in the trade-wide compliance program. The Commission is advised that this initiative is having a substantial stabilizing impact on the Trade.

To meet the needs of its expanded surveillance and enforcement role, the Commission has continued to augment its professional investigative and legal staff. The Commission also continues to provide training for professional employees at the White Collar Crime Training Program at the Federal Law Enforcement Training Center in Glynco, Georgia. The Program focuses on investigation of fraud-related offenses and offers an opportunity for the exchange of ideas regarding investigative strategies and techniques utilized by other Federal agencies.

Also, a joint support program between the FMC and Bureau of Customs has resulted in interagency coordination of effort on matters of mutual concern.

The greater emphasis by the Commission on enforcement has resulted in a continuing trend of increase in both investigations of major violations and assessment/compromise of civil penalties. See Appendix E.

IV

DEVELOPMENTS IN MAJOR U.S. FOREIGN TRADES

A. TRANSATLANTIC

Overcapacity continues to plague the Transatlantic trades. The financial collapse and subsequent withdrawal of conference operator United States Lines at the conclusion of 1986 only provided temporary relief to the trades' overcrowding problem. By mid-1988, several newcomers to this market had launched services, replacing the surplus capacity removed when U.S. Lines withdrew. The most noteworthy entrant, Maersk Line, joined the U.S. Atlantic-North Europe Conference ("ANEC") and began providing service between Europe and North America in April 1988. Although Maersk operates as a Conference member eastbound, it operates as an independent carrier westbound.

Of great consequence for capacity and, therefore, rate stability in the trades was the implementation of a highly publicized transatlantic space-chartering agreement between Sea-Land, Trans Freight Lines and Nedlloyd Lines (No. 203-011171) in late March 1988. The impetus for the space-sharing arrangement was Sea-Land's purchase of the world's twelve largest container vessels, the Econships formerly owned by bankrupt U.S. Lines. Sea-Land acquired the ships in early February 1988 from a bank consortium which had purchased them at auctions in different ports around the world. Although the ships are each capable of carrying 4,400 twenty-foot equivalent units ("TEUs"), for commercial and operational reasons the three lines agreed to limit capacity to 3,400 TEUs. Since the carriers pulled all of their existing vessels out of the Atlantic and Mediterranean trades, the decision to operate the Econships at less than structural capacity has increased the total capacity in these trades by only approximately four percent. By limiting capacity, this strategy emphasizes efficiency rather than growth.

Over the past year, it appeared that the significant weakening of the U.S. dollar vis-a-vis certain European currencies had finally begun to shrink the persistently large U.S. liner trade deficit in the transatlantic market. However, despite this contraction, liner imports are still more than triple liner exports. Consequently, carriers providing round-trip service still face the uneconomical proposition of shipping full containers westbound and less-than-full or empty containers eastbound.

The combination of additional capacity and shifting trade conditions has had significant consequences for ANEC and the North Europe-U.S. Atlantic Conference ("NEAC"). Both conferences witnessed declines in liner cargo shares and NEAC's membership was reduced when Dart Container Line, a conference operator for eighteen consecutive years, withdrew its membership. Meanwhile, the major independents, namely Evergreen Line, Polish Ocean Line, and Mediterranean Shipping Corporation, refused to reconsider their decisions to reject invitations to become full-fledged conference members. Instead, these carriers prefer their current stabilization arrangements, referred to as the Eurocorde agreements, which provide for voluntary discussion and agreement with the conferences on rates and service contracts.

Eurocorde partnership has been extended to include Dart Container Line, Topgallant Group, Inc., and Lykes Bros. Steamship Co., Inc. Although this approach to collaborative rate setting has become popular, the historical evidence relating to the Eurocorde arrangements indicates little impact on trade stability. It appears that the conferences are in fact losing more cargo volume to their independent Eurocorde partners rather than to other independent carriers in the trades. Thus, the Eurocorde arrangements seem to be benefiting the non-conference partners at the expense of the conference.

Another notable development in the North Atlantic trades were the events flowing from the settlement whereby thirteen carriers, pursuant to an agreement with the

Commission, collectively paid the Commission two million dollars and agreed to establish an enhanced self-policing system under the U.S.-North Europe Compliance Agreement (No. 203-011160). The carriers came forward under the Commission's enforcement initiative, which was instituted to curtail suspected rate malpractices in the trades between the U.S. Atlantic, Gulf and Pacific Coasts and North Europe. The six inbound and outbound ratemaking conferences whose scopes encompass these geographic markets adopted the new self-policing system.

The most recent in a series of developments affecting the once predictably-calm shipping lanes between the U.S. West Coast and North Europe was the mid-September 1988 move by Pacific Europe Express ("PEX"), a joint service of Compagnie Generale Maritime and Incotrans, and Hapag-Lloyd, to each deploy two additional vessels as replacements for five withdrawn Johnson ScanStar vessels. This step enables PEX and Hapag-Lloyd to continue to provide a weekly all-water service, despite the September 1988 departure of Johnson ScanStar from its space-charter consortium. In addition, Sea-Land resigned from the conference in mid-September 1988. With Johnson ScanStar's and Sea-Land's resignations from the Pacific Coast European Conference ("PCEC") (No. 202-005200), the conference membership now includes only Hapag-Lloyd and PEX. These operational changes, like numerous other recent developments in the trade, might be traced to the previously mentioned entrance of Maersk Line. Maersk Line's entrance to the trade, with large vessels and considerable shipper support in other trades, has apparently had a large impact on the West Coast as well as the East Coast. For instance, one reason given for Sea-Land's resignation from the PCEC was that, as an independent operator, it is now afforded greater flexibility in setting rates and, therefore, is better able to compete against Maersk Line for cargo.

In an effort to deal with the competitive nature of the transatlantic trade, operators are increasingly utilizing service rationalization configurations. The

ability to share space with other operators, so as to increase service frequencies without a large capital investment or adding additional capacity, makes rationalization arrangements particularly attractive. However, with the exception of Sea-Land (most notably, through its Econship agreement with Trans Freight Lines and Nedlloyd, discussed above) and American Transport Line, U.S.-flag carriers do not participate widely in this type of arrangement. The following are significant examples of new service rationalization agreements:

The American Transport Line, Ltd./South Atlantic Cargo Shipping N.V. Space Charter Agreement (No. 232-011159) permits the two parties to charter space on each other's vessels, to interchange containers, and to rationalize sailings in the trade between Europe and the United States.

The American Transport Line, Ltd./Senator Linie GmbH & Co., KG, ("Senator Line") Space Charter Agreement (No. 232-011175), covering the trade between U.S. East Coast ports and ports in North Europe, allows the parties to charter space on one another's vessels, to rationalize sailings, and to interchange equipment.

The Senator Line and Atlantik Express Line Reciprocal Space Chartering and Sailing Agreement (No. 203-011165) authorizes the parties to charter space on each other's vessels, to rationalize sailings, and permits the two to agree upon rates and charges in the trade between U.S. Atlantic Coast ports and ports in North Europe.

B. MEDITERRANEAN

The United States Atlantic/Mediterranean trade continues to be characterized by an excess of vessel capacity and a substantially large U.S. liner trade deficit. In spite of the existing overtonnaging, a mid-1988 reorganization of space-sharing arrangements among the South Europe-U.S.A. Freight Conference ("SEUSA") carriers has actually increased available container space.

The previous space-sharing grouping of conference carriers involving Evergreen, Spanish Line, Italian Line and Costa Line has been replaced by two competing arrangements: first, that between P&OCL Ltd. (formerly Trans Freight Line), Sea-Land, and Nedlloyd Lines referred to as the Trans Freight Lines/Nedlloyd/Sea-Land, Cooperative Working Agreement (No. 203-011171) and which Spanish Line was in the process of joining at the end of the fiscal year; and, second, that between Evergreen, Costa Line and Italian Line known as the Mid-Atlantic Service (No. 232-011184). A noteworthy aspect of the first agreement is its use of the former United States Lines' Econships.

As mentioned in the previous discussion of the Transatlantic trades, although the Econships are being limited to 3,400 TEUs rather than the 4,400 TEUs that each is capable of handling, their deployment has, nevertheless, provided at least a moderate increase in the total cargo space offered by the three carriers. This group also plans to rail cargo from Mediterranean to North European ports for transshipment via additional Econships. This latter action is a source of discontent to Italian-flag carriers and ports, which were already dissatisfied with Italian cargo being diverted to North European ports in reaction to higher costs in Italian ports and ongoing labor-management strife in Genoa. An unusual aspect to this agreement is its exclusivity: no member may engage in any other space chartering agreement with any other carrier in the subtrade. As to the success of this new agreement, statements issued by each of the agreement's participants claim that operational efficiencies are already being realized and that increased earnings are expected in the near future.

Available cargo capacity will also increase as a result of the Mid-Atlantic Service space chartering agreement, since Italian Line will be replacing two of its current vessels with extra-large vessels (almost doubling its capacity) in calendar year 1989. Thus, the vessel capacity in this trade will be greater in the coming year than in the recent past. There is no reason to project,

however, a similar increase in cargo volume. Furthermore, the possibility exists that growing quantities of cargo may be shipped out of North European rather than Mediterranean ports. Meanwhile, commercial sources have reported that shippers have expressed some concern about these new space chartering agreements, since they involve a reduction in the number of direct-call ports on both the Mediterranean and North American ends (such as Boston and Gulfport).

Another major development was the extension of the SEUSA Pool Agreement (No. 212-010286). Pool members agreed in principle to a 5-year extension. However, no actual revenue allocations were agreed upon, hinting at discord among the members. According to recent press reports, however, the parties are still attempting to establish agreed upon pool shares.

In another noteworthy development, the U.S. Atlantic and Gulf/Western Mediterranean Rate Agreement ("USAGWM") (No. 202-011102), the outbound counterpart to SEUSA, welcomed five new members this year: Spanish Line, Lykes Bros., Zim Line, and most significantly, high-volume movers Italian Line and Evergreen Line. These additional members increased the conference's market share from approximately 40 percent just after its establishment to a level in the neighborhood of 80 to 90 percent. This new level approaches that acquired by SEUSA in the inbound trade.

In the Mediterranean/U.S. Pacific Coast subtrade, the most noteworthy event was the conclusion of a revised space charter agreement between Italian Line and D'Amico Line. The two carriers handle over 40 percent of the cargo moved in this subtrade. Since Italian Line plans to deploy at least one new extra-large capacity vessel in the Mediterranean-Pacific Coast route in the coming year, unless cargo volume grows, the overtonnaging in the trade can be expected to continue. In addition to the agreement developments discussed above, other significant agreement activity included:

The Iberia/United States Cooperation Agreement (No. 203-011190), between SEUSA, Atlantic Container Line and Gulf Container Line, authorizes the parties to agree upon rates, service contract terms and conditions of service from ports and inland points in Spain and Portugal to United States Gulf and Atlantic ports and inland points.

The Spain-Italy/Puerto Rico Island Pool Agreement (No. 212-011213) authorizes the pooling of revenues between Spanish Line, Nordana and Sea-Land.

The Mediterranean Interconference Agreement (No. 206-011200), between SEUSA and USAGWM, enables the parties to agree upon rates, service contract terms and conditions of service between North American and Mediterranean coastal and inland points.

The Eastern Mediterranean Cooperation Agreement (II) (No. 203-011173), between Nordana Line and the U.S. Atlantic and Gulf Ports/Eastern Mediterranean and North African Freight Conference, authorizes the parties to agree on rates, service contract terms and conditions of service between U.S. and Mediterranean ports (except those in France, Spain and Italy).

C. AFRICA

Economic reform policies continued to produce significant improvements in trading conditions in the U.S./African trade. During fiscal year 1988, the United States re-established guarantees of medium-term credit facilities to Uganda, and instituted guarantees to U.S. exporters selling goods to Uganda on credit, with repayments to be administered through the Export/Import Bank of the United States over a period of up to 10 years. U.S. firms had supplied \$8 million worth of goods by August 1988.

In Harare, Zimbabwe, statistics issued by the Central Office Statistics revealed that in 1987, Zimbabwe purchased \$80 million in U.S. goods which resulted in an increase of 66 percent over the previous year. The report also

indicated that the United States replaced Great Britain as Zimbabwe's second largest supplier behind South Africa.

In other actions, the American West African Freight Conference agreed to establish new shipper's credit agreements in October 1988. All shippers wishing to apply for credit privileges after this date may do so by executing a new agreement with the Conference.

The Bank Line Limited and The South African Marine Corporation Limited established a joint venture under the name Safbank (No. 207-011157-002). The new carrier will provide an independent service between the United States Atlantic and Gulf Coasts and South Africa. While the two privately-held lines had carried cargo for each other under space charter arrangements, their services had been marketed on an individual basis.

The Eastern Mediterranean Cooperation Agreement (No. 203-011145) authorizes the members of the United States Atlantic and Gulf Ports/Eastern Mediterranean and North Africa Freight Conference and Nordana Lines to discuss and agree upon rates and service contracts in the trade from U.S. Atlantic/Gulf and Great Lake ports and U.S. points via such ports to certain Eastern Mediterranean and North African ports and certain inland points via such ports.

D. TRANSPACIFIC

In general, U.S. exports to, and imports from, the Far East remained strong for fiscal year 1988.

Forecasted exports to Japan, China, Korea, and Hong Kong for 1988 (based upon the first six months of 1988) are up 29 percent, 14 percent, 20 percent, and 25 percent, respectively, over 1987 levels. It is not surprising that U.S. exports have increased. The Japanese yen, the South Korean won, and the New Taiwan dollar have increased 48.7 percent, 14 percent, and 31 percent, respectively, against the U.S. dollar in the period from February 1985 to September 1988. Other Asian currencies have experienced

similar increases against the dollar, dramatically lowering the cost of U.S. goods in foreign markets. While the U.S. export boom appears to be broad-based from a geographic standpoint, the significant increases have occurred in manufactured goods, which are price-sensitive.

A trend toward reducing trade barriers is also helping U.S. exports to the Far East. In Taiwan and Korea, import duties are being lowered, and import restrictions eased, creating a business climate more conducive to U.S. exports.

Other reasons for the U.S. export boom are the strong domestic economic growth rates in the Far East, stable U.S. labor costs, increased U.S. productivity, and more attention given to the quality of the American product, born of rigorous foreign competition.

The world economic growth rate is forecast at 3.5 percent for 1988. Japan, China, Korea, Hong Kong, and Taiwan, all have forecasted growth rates for 1988 that exceed this level. Strong domestic growth rates may help U.S. exports if the growth in these countries is focused upon the domestic economy. In fact, since 1987, there has been some indication that this is occurring. Japan in particular has been able to sustain impressive economic growth, in the face of a strengthening yen which was believed to stifle exports. In 1987, attention was redirected toward developing the domestic demand economy, and moving production facilities offshore, particularly to Hong Kong, as the yen appreciated. These measures and others helped push up domestic demand, and reduced any negative impact the strong yen might have had on exports. On the import side, imports from Japan, Hong Kong, and China continue to rise, with imports from China and Hong Kong expected to go up 16 percent and 9 percent, respectively, over 1987 levels. This import growth has surprised U.S. economists, who had predicted that the appreciation of Asian currencies against the U.S. dollar would help reduce imports and trade deficits with these countries.

The recently enacted Omnibus Trade and Competitiveness Act of 1988 ("the Act") reinforces the trend toward strong imports and exports. The Act will not allow for artificial barriers to trade, but does provide tools to help open foreign markets. This should keep Far East imports and exports strong through 1989.

While transpacific trade should remain strong, this is not to say that overcapacity will not be a problem in the trade. Both weak demand for carrier service and the introduction of more vessels will result in overcapacity. In the present case, a zealous program of ordering and introducing larger vessels in 1987-1988, in anticipation of a continued 13-percent eastbound growth rate, is to blame for the overcapacity. Forty-nine new vessels, with a capacity of 159,400 TEU's, were introduced in this time period. While eastbound growth will increase, it is doubtful that a 13-percent growth rate can be sustained in the eastbound direction.

The conferences in the Transpacific trades have been profoundly affected by the currency fluctuations discussed above, resulting in an overall reversal of utilization patterns. Inbound vessels used to sail almost full, while outbound space went unused, but over the course of the past year this pattern shifted. Asian imports grew more expensive, prompting U.S. merchants to find other sources of supply, including more domestically-produced goods, while the declining dollar improved the competitive posture of U.S. manufacturers, prompting increases in the U.S. export trade.

In the Far East inbound trade particularly, vessels were sailing, on average, about 75 percent full - down from about 90 percent in recent years. Consequently, rate-cutting became prevalent in these trades.

The Asia North America Eastbound Rate Agreement ("ANERA") saw increased independent action activity by its members as a reaction to the competitive pressures. Within this competitive climate, ANERA amended its basic agreement

(July 1988) to prohibit individual service contracts by the member lines, thereby authorizing this activity by the conference only as a body.

The Transpacific Westbound Rate Agreement ("TWRA") has been demonstrably affected by the weak U.S. dollar, which has fueled sharp growth in exports to the Far East. Because of the abundance of cargo, rates have taken a steep rise on most commodities. TWRA is apparently confident that this westbound trade will remain strong, and has scheduled two general rate increases to take effect in 1989, in March and September.

In one of the most significant recent developments, the Transpacific Discussion Agreement ("TDA") (FMC Agreement No. 203-011211) was formed late this past summer as a loosely-knit group of 13 Transpacific carriers -- both conference and non-conference -- as a forum in which to discuss ways and means of improving conditions in that inbound trade. The formation of the TDA is aimed at dealing with the existing overtonnaging and the resulting drop in rates. The agreement parties will attempt to reduce vessel capacity in this highly competitive trade lane.

In addition to the agreement activity discussed above, a number of significant new agreements in these trades were filed during the last fiscal year.

The Hyundai Australia Direct Line Joint Service (No. 207-011195) authorizes the parties, Hyundai and PAD Line, to operate a joint service in the trade between the U.S. West Coast and Australia, New Zealand and certain South Pacific islands.

The Japan Line-Yamashita Shinnihon Joint Service/Consortium (No. 207-011202) authorizes the parties to discuss, plan, establish and operate a service called "Nippon Liner System, Ltd." (The parties discontinued their separate liner services in the agreement trade, U.S. all coasts/Far East.)

The Conbulk Carriers Discussion Agreement (No. 203-011193) permits the members, Star Shipping, Westwood

Lines and Gearbulk Container Services, to agree on rates, practices and service contracts in the trade from ports and points in Japan and Korea to ports on the U.S. West Coast and inland points via such ports. Adherence to any agreement reached is on a voluntary basis.

The Australia New Zealand Direct Line/Hoegh Line (U.S.A.) Reciprocal-Space Charter Agreement (No. 217-011166) permits the signatories to cross-charter vessel space and to interchange containers in the trade between the U.S. West Coast and Australia.

The Hyundai/EAC Line Space Charter and Sailing Agreement (No. 232-011181) authorizes the parties to conduct these activities in the trade between U.S. and Canadian West Coast and the Far East and Pacific Basin Ports.

The Mitsui and NYK Space Charter and Sailing Agreement (No. 232-011188) permits the parties to undertake these activities in the trade between U.S. Pacific Northwest and the Far East.

The "K" Line - Hyundai Space Charter and Sailing Agreement (No. 232-011192) authorizes these activities between the parties in the trade between U.S. Pacific Northwest and the Far East.

The Westwood/Gearbulk Reciprocal Space Charter and Sailing Agreement (No. 232-011208) authorizes the signatories to conduct these activities in the trade between the U.S. West Coast and the Far East.

E. LATIN AMERICA AND THE CARIBBEAN

Major developments during fiscal year 1988 included the re-entry of Columbus Line into the U.S. Latin American trades, continued expansion of Crowley Maritime Corporation's U.S.-flag services, and the resolution, in

part, of a longstanding dispute between Peru and Chile.¹

In June 1988, Columbus Line began regular liner service between the East Coast of North America and Brazil, Uruguay and Argentina, after several years' absence from the trade. The line has joined the Inter-American Freight Conference and operates four vessels in its bi-weekly South American service with owned and chartered tonnage. The 650-TEU capacity vessels are equipped with cranes allowing them to work in ports without shoreside facilities. Regular U.S. ports of call are New York, Philadelphia, Baltimore, Norfolk and Savannah. South American ports include Rio de Janeiro and Santos, Brazil; Montevideo, Uruguay; and Buenos Aires, Argentina. Since joining the conference, Columbus Line has steadily increased its market share in the Brazil trades at the rate of about four percent annually.

Columbus Line has a long tradition of South American service in its background. The company's West German parent (Hamburg Sud) established a Europe/South America service in 1871, and maintained a regular liner service between the United States and Argentina/Brazil until early in this century. Hamburg Sud became a pioneer in cellular service when the company introduced containerization into South America in 1980, which until then had been one of the last trades to be served exclusively by conventional tonnage.

Crowley Maritime Corporation ("Crowley"), was established in 1892 in San Francisco and is considered by many to be one of the world's most diversified maritime organizations, operating 40 business units with 450 vessels and over 4,000 employees worldwide. It has implemented significant expansions in the South American and Central American services operated respectively by the Crowley companies American Transport Lines ("AmTrans") and Crowley Caribbean Transport ("CCT").

¹ The Commission's inquiry regarding the carriage of cargo in the trade between Peru, Chile and the United States, was continuing at the conclusion of fiscal year 1988. Docket 87-6, Actions To Adjust or Meet Conditions Unfavorable To Shipping In the United States/Peru Trade.

AmTrans has added Port Everglades, Florida, as a direct, fortnightly port of call in the trade between the U.S. and Venezuela, Brazil, Argentina, Uruguay and Paraguay. In addition, AmTrans has shortened to 14 days the transit time for U.S. export cargoes moving to Santos, Brazil, by making this major port the first call in Brazil on all weekly southbound voyages. AmTrans continues to serve Santos every week on northbound voyages. AmTrans also added a third 1,300-TEU-capacity, 18-knot containership to its South American service. The six-vessel fleet also includes three 2,000-TEU containerships. Besides the fortnightly Port Everglades call, AmTrans sails every week from Philadelphia, Norfolk and Jacksonville.

CCT, Crowley's Central American service, has strengthened its services between the U.S. East Coast, Panama and Central America. CCT has placed two U.S.-flag ro/ro ships in the service with sailings at 8-day intervals. CCT has also increased sailing frequency in the service between the U.S. Gulf, Panama and other Central American ports by deploying two U.S.-flag ro/ro barges, sailing at regular 9-day intervals from Lake Charles, Louisiana.

In the U.S./West Coast of South America trade, a compromise appears to have been worked out between the Governments of Peru and Chile, at least partially resolving their longstanding maritime dispute. Two of the most important non-conference carriers in the West Coast of South America trade have joined forces in a new service that is a direct response to the Peruvian cargo reservation laws. Empremar, a government-owned line of Chile, and Empresa Naviera Santa, a privately-owned carrier based in Peru, have agreed to pool five vessels in a fortnightly service to the United States. This development comes on the heels of a period of turmoil, both for Empremar and the West Coast South America liner trade generally. Empremar only entered the U.S. trades in 1986, but dropped out in early 1987, saying then that Peruvian cargo preference policies prevented the service from being viable. Nevertheless, Empremar re-instituted the service in July of last year,

relying heavily on two-year contracts to carry Chilean copper exports outbound and U.S.-manufactured mining machinery on the return leg. Both Empremar and Empresa Naviera Santa are independents in a trade dominated heavily by conference operators.

Empremar's agreement with Empresa Naviera Santa will allow the Chilean carrier to return to the Peru-U.S. trade and likewise give the Peruvians access to Chilean markets. In 1986, Peru excluded Chilean carriers from its trade with the U.S., and Chile took similar retaliatory action against Peru. Since then a compromise has been reached whereby carriers from both countries form cooperative ventures and are allowed to cross-trade to each other's ports.

In other developments, Evergreen Line ("Evergreen") announced sharp reductions in its Caribbean service, while Marcomex, a new carrier, has entered the U.S./Colombia trade. Evergreen cut back its port calls in the Caribbean to Kingston, Jamaica and San Juan, Puerto Rico, primarily as a result of ongoing drug-smuggling problems at Kingston over which it and other carriers have little control.

Evergreen began calling at Kingston in 1984, and it has been estimated that Evergreen's service accounted for some sixty percent of all transshipment activity at the port. The improving trade between the United States and Colombia, on the other hand, prompted the formation of a new ship line in the trade. Maritima Colombia Exporta Ltda., or Marcomex, began offering independent bimonthly service between Port Everglades, Florida, and the Colombian ports of San Andres, Barranquilla and Cartagena.

The following summarizes major agreements and related amendments in the Latin American trades for fiscal year 1988:

Agreement No. 212-011180, between Compania Sud Americana de Vapores and Naviera Neptuno, S.A., authorizes the parties to establish a pooling agreement in the trade between ports of the West Coast of South America, Panama and U.S. Gulf and Atlantic Coast ports.

Agreement No. 212-011186, between Empresa Naviera Santa, S.A., and Empresa Maritima Del Estado, authorizes the parties to pool their net revenues in the trade between U.S. Atlantic and Gulf ports and ports in Chile, Peru and Ecuador and Bolivian points.

Agreement No. 212-011189, the CCNI/CPV Service Agreement, authorizes the parties to pool revenues in the trade between U.S. Atlantic Coast ports and the West Coast of South America, including inland and coastal points of both.

The Transnave-Navconsa Joint Service Agreement (No. 207-011174) establishes a joint service between the parties in the trade between U.S. Gulf and Florida ports, and inland points via such ports, and ports and points in Mexico, Costa Rica, Panama and Ecuador. The service is called "Gran Golfo Express."

The Naviera Pacifico/Nedlloyd Lines Space Charter Agreement (No. 217-011151) allows the parties to charter space aboard one another's vessels in the trade between U.S. Pacific Coast ports and ports in Venezuela.

The West Coast South and Central America/West Coast United States Discussion Agreement (No. 203-011154) permits Empresa Lineas Maritimas Argentinas S.A. and Naviera Interamericana Navicana S.A. to meet, discuss and agree upon rates, rules, and service contracts. The scope of the agreement encompasses the trade between the United States Pacific Coast and Chile, Peru, Ecuador, Central America and Mexico. Adherence to any agreement reached is voluntary.

The PANAM Discussion Agreement (No. 203-011162) allows Lykes Lines, Ecuadorian Line, Inc., Transnave, Inc., and members of the United States Atlantic & Gulf/Central America Freight Association, to exchange information and collaborate on rates and rules. A common tariff is not authorized and adherence to any agreement reached is on a voluntary basis.

F. MIDDLE EAST

The Middle East has been a region in which growth and development of liner service has been limited due to risks of war, poorly-developed infrastructures and lack of attractive cargo. However, this trend appears to be changing. There have been promising signs that the slump in conventional cargo trades and liner cargo may be in the process of being reversed. Several Middle Eastern countries have enacted plans that will improve port conditions, attract more cargo, push their exports to finance industrialization and relax or reduce certain shipping barriers.

Further, with the end of the 8-year-old war between Iran and Iraq, the Persian Gulf should win back traffic previously diverted to the Red Sea.

The fiscal year also saw the filing of several agreements for the trade. The parties to the "8900" Lines Agreement and Jugoliniya filed Agreement No. 203-011164, the U.S./Middle East Discussion Agreement, which provides a forum for the discussion, exchange of ideas and voluntary agreement on a number of issues including rates, tariff provisions and service contracts. A new conference agreement was established in the U.S./Red Sea & South Asia trade. The parties to Agreement No. 202-011182, the U.S./Red Sea & South Asia Rate Agreement, are American President Lines, Ltd., and Waterman Steamship Corporation. A space charter agreement between Sea-Land Service, Inc., and United Arab Shipping Company was also filed. This arrangement guarantees Sea-Land 125 TEU spaces per vessel sailing in each direction aboard United Arab Shipping Company vessels, for Sea-Land's freight moving between the United States and the Middle East/India and Pakistan. Under the Commission's Controlled Carrier Program, Ceylon Shipping Corporation ("CSC"), a national flag carrier of Sri Lanka, was classified as a controlled carrier. CSC presently does not serve the U.S. trades directly, but rather through two connecting agreements with A. P. Moller-Maersk Line and with United Arab Shipping Co. CSC's direct services are

primarily to India, Bangladesh, Pakistan, Europe and the Far East.

G. WORLDWIDE

The fluctuation of world currencies has played a significant -- possibly the most important -- role in the worldwide liner shipping industry. The decline of the U.S. dollar vis-a-vis other currencies, particularly against the Japanese yen and other Far East currencies, has caused traditional patterns of export/import trading to shift. As imported goods have become more expensive, U.S. merchants have sought alternative sources of supply, including more domestically-produced products. At the same time, the cheaper dollar has revitalized the purchase of U.S. goods by foreign buyers, thus sharply bolstering the U.S. export market.

While overtonnaging problems persist worldwide, carriers continue to enter into rationalization arrangements as a means of dealing with these problems through space-charter, sailing, joint venture, and similar operational agreements filed under the Shipping Act of 1984.

Containership operators who have been trading with original or "first generation" vessels of some 20 years of age are now involved in replacing such fleets. Such replacement tonnage is larger and more technologically-advanced, resulting in fewer ships with smaller crews. However, the economies resulting from smaller crew sizes are largely offset by the cost and financing of new buildings, which it is generally agreed, are on the upswing.

No significant examples of agreements with worldwide scope were filed during the past fiscal year.

TARIFF AUTOMATION

The FMC has the responsibility under the shipping statutes to:

1. Accept the filing of common carrier tariffs and service contracts containing rates and charges governing transportation of cargo in U.S. waterborne domestic offshore and foreign commerce. (Marine terminal operators also file tariffs of their rates and charges.)
2. Ensure that tariffs and service contract data comply with basic statutory requirements before they are accepted for filing.
3. Maintain the official file of tariffs and service contracts and to certify authentic and accurate tariff data to courts and other tribunals.
4. Make tariffs and the essential terms of service contracts available for public inspection.

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 data base of the Automated Tariff Filing and Information System (ATFI) is intended to be the official tariff file of the Commission. Such a system will 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 receive and use tariff information.

In FY 1987, a study by the FMC's private-sector contractor found that tariff automation was feasible and the FMC's Industry Advisory Committee agreed.

Also in FY 1987, the Commission obtained a private-sector contractor through GSA and other outside technical assistance for the development of cost benefit analyses and the preparation of a Request for Proposals ("RFP") for a pilot or prototype operation of the automated tariff system. The first benefit cost analysis was completed in FY 1987 and submitted to the Office of Management and Budget.

In FY 1988, the Commission conducted a Notice of Inquiry proceeding on the functionality of its ATFI system, which generated comments from the shipping and information industries, and which resulted in a Commission Report in April 1988. A draft RFP was issued to over 125 potential offerors and a presolicitation conference was held, at which over 200 questions were answered. Also, in FY 1988, the Commission purchased, under an amended delegation of procurement authority from GSA, microcomputer equipment and a Local Area Network for accessing the ATFI off-site host processor.

The electronic ATFI system, for which the FMC is seeking a prime contractor, will be run on the contractor's central computer with appropriate terminals at the FMC for tariff review, processing, and retrieval. The format of tariff data to be electronically filed is being developed in conjunction with the industry Transportation Data Coordinating Committee and will emphasize "tariff line items," as opposed to tariff pages, as under the present system. "Tariff line items" are basically equivalent to commodity rate items in current paper tariffs and can be amended directly, without having to issue an entire revised page.

As recommended by the FMC's Advisory Committee, standardized commodity or geographic coding will not be mandated at the beginning, but the system must have the capability to provide for these functions at the appropriate time. The system will also include the essential terms of service contracts.

Full implementation of the system will be in phases to allow commercial firms time to adapt their operations. Exemptions, at least temporary, will be granted to some types of tariff filers who are not economically able to use the electronic system.

The system will be as compatible as possible with existing computer equipment through the use of software for full connectibility. Filing of tariffs will be done primarily by using asynchronous terminals or microcomputers, dialing in with a modem to the FMC's data base. The filing software will provide on-line edit checks to ensure that the tariff information is correct and that basic statutory provisions are complied with before the tariff can be officially on file. Such edit checks, for example, will be able to electronically identify improper effective dates, such as a rate increase on less than 30-days notice. Other problems for which rejection is warranted, such as unclear or conflicting tariff provisions, will still have to be handled by FMC staff and, if necessary, resolved at the Commission level. The system's computer capabilities, however, will facilitate this process also.

The ATFI system will have appropriate security mechanisms to protect the integrity of the data base.

Tariff filers will be able to file and amend their tariff materials by remote access directly to the ATFI system by carriers or conferences almost any time of day. The carrier or conference will be able to screen-scan its tariff so that the appropriate item can be amended. Commercial tariff services can also continue to be used by carriers and conferences for filing, e.g., by direct input into the data base, after creating tariffs on instruction from their clients, or transforming their paper tariffs into electronic form. The FMC will encourage commercial tariff services to assist small firms who may find it difficult to file electronically.

Once the tariff data is officially on file, the FMC will download the entire data base in "flat files",

formatted onto computer tapes or other media which will be sold to any person at the relatively inexpensive, marginal cost of dissemination. This will satisfy the FMC's statutory duty of providing copies of tariffs at a reasonable charge. In order to keep up with a substantial number of rapidly changing freight rates in the shipping industry, interested persons must obtain these updated data-base tapes frequently. FMC will offer a subscription service to provide this capability.

The FMC will not perform any value-added processing of the tariff data for sale to the shipping public in competition with commercial tariff services. It is expected that those services will subscribe to the data-base tapes to facilitate their value-added services. The FMC must, however, use the system to process tariff data internally for investigative and other regulatory purposes and will continue to utilize appropriate and available, value added services of commercial tariff firms for this purpose.

In order to carry out its other statutory function of making tariffs and essential terms of service contracts available for public inspection, the FMC will continue to have a public reference room at its Headquarters in Washington, D.C. Here, interested persons can access a terminal on which information on a particular tariff will be brought up on the screen and scanned to find the necessary rates and rules. Paper copies of tariff data will still be available upon written request, especially for certification to courts and other tribunals for proceedings involving disputes over historical tariff rates.

Another retrieval feature being considered is remote access to the FMC data base by modem, almost any time of day, for retrieval of tariff information by any interested person. For example, the system could enable a shipper on the West Coast to retrieve data from the automated tariff system using a terminal or microcomputer equipped with a device (i.e., a modem) to enable data communications over public telephone lines. In the new system, members of the general public would only be able to perform relatively

rudimentary retrievals, and essentially no analysis of the data. Specifically, members of the public may only be able to retrieve one tariff at a time, in its full format. To retrieve a tariff in this mode, the public user would have to specify the specific tariff of a particular carrier that is desired; the public user would not be able to search by keys (e.g., by route or commodity).

The FMC will operate the ATFI system as a prototype for a period of at least six months to test it and improve its functionality and performance. Volunteers will be sought for this prototype operation, during which there will be public-comment rulemakings on the final format of electronic tariff data and for establishment of user fees.

A second draft RFP is being issued to over 200 potential offerors and, in January 1989, a final RFP will be issued, with a due date for proposals in March 1989. A contract can be awarded in July 1989, and the final system is scheduled to begin full operation in late 1990.

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

Fiscal year 1988 was the last full year of the data collection period outlined in section 18 of the Shipping Act of 1984. Section 18 of the Shipping Act of 1984 (hereafter referred to as the "Act") directs the FMC for a period of five years following its enactment (March 18, 1984) to collect and analyze information concerning the impact of the Act upon the international ocean shipping industry. In section 18(a) Congress specified that the information collected should include data on, among other things, (1) increases or decreases in the level of tariffs; (2) changes in the frequency or 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 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." Thus far the FMC staff has met with the staffs of these agencies over a dozen times.

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

- * 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 requirement that tariffs be filed and enforced by the Commission.

Within six months after expiration of the five-year period of data collection, the Commission will 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 to the Congress and the Advisory 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 having closed or open conferences. The Advisory Commission shall, within one year after its establishment, submit to the President and to Congress a final report containing a statement of findings and conclusions, including recommendations for such administrative, judicial, and legislative actions as it deems advisable.

B. 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 and the period covered

depends partly on what can be obtained from the various sources and partly on the intended analysis.

It is probable 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 no doubt 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 the information reveals nothing which can be traced to an individual carrier or shipper. The guidelines provided by the Bureau of The Census 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.

C. FMC PROGRESS THROUGH FISCAL YEAR 1988

1. Data Collection

(a) A major portion of fiscal year 1988 was devoted to obtaining information to address section 18(a)(1) "increases or decreases in the level of tariffs." The thrust of this effort was directed to tracking the port-to-port tariff rates for major moving commodities in selected trades. These data were obtained from the Commission's tariff records systems. Prior to the Shipping Act of 1984 these data might have been sufficient to determine changes in the level of freight rates. The advent of the 1984 Act, however, has changed all that.

Three of the most significant changes the new Act brought about were in the area of freight rate systems. The 1984 Act requires that each conference permit member lines to take independent action (IA) on no more than 10 days' notice. It also authorizes the FMC to permit conferences to establish intermodal rates. The Act, in a significant departure from the past, provided for ocean common carriers to enter into service contracts with shippers. These revisions of the tariff regime have made the determination of freight rate levels much more interesting and complex.

The staff concluded that in order to obtain reliable data on these other aspects of freight rates it would be necessary to work with carriers and conferences. Forms were sent to relevant conferences or members of conferences to obtain data on IAs, service contract and intermodal rates. (Samples of these forms are found in Appendixes H and I.)

Once all these data are assembled, it is then possible to develop an idea of how the level of freight rates has behaved over time and varied by trade and direction, i.e., inbound and outbound. The Appendix contains a series of charts which have been constructed from the rates data collected thus far. Appendix J shows the dollars per long ton, on a weighted basis, for the 14 top moving commodities in the outbound U.S./Japan trade to the Far East from 1976 to 1986. The rates used were the conference rates for the

Pacific Westbound Conference and its successor, the Transpacific Westbound Rate Agreement. The data shown include IA, intermodal and service contracts allocated on a proportional basis (proportional to the percentage moving under each rating) beginning in 1984. The most obvious conclusion that can be drawn from this chart is that outbound rates to the Far East began to deteriorate in 1981 and bottomed out in early 1986. It is also self-evident that the sharpest decline in this trend occurred in 1984.

The pattern of rates on the inbound U.S./Japan trade, however, presents a picture where rates peak in 1978 and reach a trough in 1982 (Appendix K). Recovery then appears to take place until 1985 when rate levels decline dramatically throughout the year but recover nicely in 1986. Clearly these charts indicate that all rates do not behave equally. In fact, it would appear reasonable to conclude that economic factors such as shifting exchange rates and therefore trade balances are a major force driving freight rates. These and other variables are being tested to help explain the behavior of freight rates.

As previously mentioned, mandatory independent action, service contracts and conference intermodal authority were significantly affected by the Shipping Act of 1984. In fact, most of the carrier displeasure with their economic situation during the past few years has centered around these issues.

Appendix L shows in one picture the relationship of port-to-port tariff and port-to-port service contract rate levels for beef, a major U.S. export to Japan. The stability, and lower level, of the service contract rate can be compared to the port-to-port tariff rate. Caution is advised, however, when comparing service contract rates to tariff rates. In certain cases the preponderance of the traffic is moving under service contract rates rendering the tariff rate little more than a "paper rate" under which, often, no traffic moves. Therefore, when the conference has a general increase in rates there are few affected shippers to protest or demand a roll back.

2. 18(a)(2) and (3)

To fulfill its obligations under section 18(a)(2), "changes in the frequency or type of common carrier services available to specific ports or geographic regions," and 18(a)(3), "the number and strength of independent carriers in various trades," the staff is relying on data being prepared by Lloyd's of London. These data will document the level, type and quality (defined as transit times) of service to various ports and regions. Samples of the types of data being collected can be found in Appendixes M and N.

These data will be used to monitor service levels and also to measure the numbers and strength of independent (non-conference) lines. They will supplement market share data being prepared from Bureau of the Census information. A sample of the market share data being developed from Census data can be found in Appendix O.

3. 18(a)(4)

Section 18(a)(4) requires the collection of information concerning the length of time, frequency, and cost of major types of regulatory proceedings before the Commission. A major purpose of the 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. The staff has been obtaining data for this question from internal documents at the Commission and from carriers in the U.S. trades.

D. SURVEYS

Since 1986 the staff of the Federal Maritime Commission has sent surveys to various industry groups seeking information and opinions on certain aspects of the Shipping Act of 1984. In 1986, surveys were sent to carriers, shippers, ports and non-port marine terminal

operators. In 1987, freight forwarders were added to the list of survey recipients. The 1988 survey was sent to all the above plus NVOCCs and shippers' associations.

The results of the 1986 and 1987 surveys have now been released to the public. The 1988 survey results are still being tabulated. Perhaps the issue which evoked the most interesting results in these surveys was service contracts.

The service contract question contained two separate elements: the question of whether they should be filed with the FMC and whether the terms of the contracts should be made publicly available or be made confidential. Appendixes P through S contain the results of the survey on each of these questions. As can be seen, whereas all parties favor continuation of the filing requirement (Appendixes P and Q), there was some division on the question of confidentiality (Appendixes R and S). It is also interesting to note that whereas shippers in 1986 were in favor of confidentiality by a 47% to 39% margin, the 1987 results find almost an even split in the issue (Appendix R). It should be mentioned, however, that the populations in the 1986 and 1987 surveys are not identical, in fact the number of respondents was double in 1987, therefore one cannot necessarily conclude that shippers have shifted on the issue. The carrier sentiment seems to have shifted the other way, i.e., towards not making the essential terms public, from a 73% to 20% in favor of in 1986 to a 58% to 36% vote in favor of in 1987 (Appendix S).

A related issue deals with the topic of requiring mandatory independent action on service contracts (Appendixes T and U). The Shipping Act of 1984 requires that conferences give member lines the right to take independent action on tariff items required to be filed. Independent action on service contracts, however, is discretionary and as of 1986 virtually all conferences have exercised their prerogative to deny independent action authority to member lines on service contracts. The issue of mandatory IA on service contracts is a topic that Congress expects the Advisory Commission to address.

Perhaps no other issue in the survey produced such diametrically opposed views as did the question of independent action on service contracts. As can be seen in the Appendix, whereas shippers were overwhelmingly in favor of such a requirement (Appendix T), carriers were just as adamant in their opposition to it (Appendix U).

The ultimate question arising from the five-year review process will be whether the conference system should continue to be tolerated in U.S. trades. Not unexpectedly, carriers were virtually unanimous in supporting the proposition that conferences should not be prohibited (Appendix V). Perhaps more surprising was the fair amount of support for the conference system shown by shippers in 1987, who voted 50% to 38% for not prohibiting conferences (Appendix W).

E. SYMPOSIUM ON THE SHIPPING ACT OF 1984

In February 1988, the Federal Maritime Commission and the University of Southern California sponsored a conference entitled "The Shipping Act of 1984: A Debate of the Issues." The conference was held on board the Queen Mary in Long Beach and was attended by over 350 individuals.

The objectives of the conference were to elicit information on the current status of various sectors of the shipping industry; to explore the impact of expected global changes in the industry on U.S. trade and shipping; and to exchange views on current theories and practices of government regulation in international transportation.

Conference participants discussed various topics during the meetings, including such controversial issues as tariffs and independent action, service contracts and antitrust. Leading industry executives expressed their views on the state of their respective industries four years after passage of the Act. The future of liner regulation in the United States and in other countries was discussed by a panel of international experts.

The proceedings of "The Shipping Act of 1984: A Debate of the Issues," was published by the University of Southern California. Copies are available at cost and can be obtained by writing to the USC Sea Grant Program; University of Southern California; University Park; Los Angeles, California 90089-1231.

F. SECTION 18 STUDY ADVISORY COMMITTEE

The Federal Maritime Commission established an Advisory Committee to make continuing recommendations on the conduct of the section 18 study. The committee is comprised of 32 members. The members are representatives from the conferences, ocean common carriers, non-vessel-operating common carriers, ocean freight forwarders, customs brokers, shippers, shippers' associations, ports, non-port marine terminal operator and other transportation service firms.

The first meeting of the Advisory Committee took place on March 10, 1988 at the FMC headquarters building in Washington, D.C.

The first matter discussed at the initial Advisory Committee meeting was the progress the staff had made gathering information for the section 18 study. Committee members were given a briefing and then offered their advice on other data that might be captured or better ways to obtain information the staff was seeking.

The next item on the agenda was a discussion and critique of the staff's proposed industry surveys for 1988. Each survey was discussed and comments were received from all parties as to whether certain questions were germane and if so, if they were properly phrased to evoke a meaningful response.

As an adjunct to the discussion of surveys to U.S.-based shippers, the subject of seeking the views of foreign-based shippers was discussed. There was a consensus that the staff should attempt to obtain the views of foreign-based shippers. The staff had already received the views of certain foreign-based shippers' councils and organizations.

The meeting closed with several participants offering their views on additional items they wished to have addressed in the study. It was agreed that if any other items arose before the next meeting then the member should send a letter to the committee secretary explaining the issue so that all members would have an opportunity to respond.

VII

THE FOREIGN SHIPPING PRACTICES ACT OF 1988

A. THE NEW STATUTE

The Omnibus Trade and Competitiveness Act of 1988, enacted by Congress and effective with the President's signing on August 23, 1988, contains at Title X, Subtitle A, the Foreign Shipping Practices Act of 1988 ("1988 Act").

The 1988 Act directs the Commission to address adverse conditions affecting United States carriers in U.S.-foreign oceanborne trades, which conditions do not exist for carriers of those countries in the United States, either under U.S. law or as a result of acts of U.S. carriers or others providing maritime or maritime-related services in the U.S.

B. IMPLEMENTATION

The Commission issued a proposed rule to add a new part to its regulations to implement the Foreign Shipping Practices Act of 1988. The new part sets forth general procedures for investigatory proceedings to address adverse conditions affecting U.S.-flag carriers that do not exist for foreign carriers in the United States. The Commission also proposed to amend its rules implementing section 19(1)(b) of the Merchant Marine Act, 1920 and section 13(b)(5) of the Shipping Act of 1984, to add new sanctions made available to the Commission in proceedings under those statutes, pursuant to the Foreign Shipping Practices Act. The proposed rule has been published in the Federal Register and comments are due by January 15, 1989.

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

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

The most recent year for which Census data was available to the Commission is calendar year 1987. The table below indicates the twenty foreign countries which generated the largest volume of oceanborne liner cargo in bilateral trade with the United States in 1987, in descending order of tonnage. The figures below are in thousands of long tons, and represent each country's total United States liner imports and exports during this period.

**Top Twenty U.S. Liner Cargo
Trading Partners (1987)**

<u>COUNTRY</u>	<u>THOUSANDS OF TONS</u>
JAPAN.....	13,775
TAIWAN.....	8,481
REPUBLIC OF KOREA.....	5,035
FEDERAL REPUBLIC OF GERMANY.....	3,941
ITALY.....	3,103
UNITED KINGDOM & NORTHERN IRELAND.....	2,760
PEOPLE'S REPUBLIC OF CHINA.....	2,235
NETHERLANDS (HOLLAND).....	2,215
HONG KONG.....	2,205
FRANCE.....	2,149
BRAZIL.....	2,085
AUSTRALIA.....	1,750
BELGIUM AND LUXEMBOURG.....	1,718
SPAIN.....	1,484
INDONESIA.....	1,164
THAILAND.....	1,001
VENEZUELA.....	940
INDIA.....	896
PHILIPPINES.....	893
SAUDI ARABIA.....	874

The data used to derive the Commission's list of top twenty trading partners were furnished by the Bureau of the Census ("Census"). Census distinguishes between liner, tramp, tanker and dry cargo service. Liner service is defined by Census as that "offered by a regular line operator of vessels on berth [whose] itineraries and sailing schedules of vessels in liner are predetermined and fixed." The data supplied to the Commission by Census exclude all non-liner shipments, in accordance with this definition.

Export and import data supplied by Census are compiled primarily from Shipper's Export Declarations and Foreign Trade Zone documents, the import entry and warehouse withdrawal forms which importers are required by law to file with Customs officials. Both export and import statistics exclude shipments between the U.S. possessions. Also excluded are shipments of mail or parcel post, exports and imports of vessels themselves, and such other transactions as military household goods shipments, bunker fuels and other supplies, intransit shipments through the United States, etc.

VIII

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, and participates in the implementation of legislative changes to the shipping statutes.

During fiscal year 1988:

- * The Secretary serves as the Commission's Privacy Act Officer and in connection with this activity, the Office was responsible for amending the Commission's Privacy Act regulations as set forth in 46 CFR Part 503, to adopt exemptions from disclosure requirements in regard to information about individuals which is included in certain investigatory records. [Docket No. 87-23] 24 S.R.R. 792 (February 8, 1988)
- * The Office was responsible for issuing an amendment to section 502.92 of the Commission's Rules of Practice and Procedure which governs the filing of special docket applications. The amendment repealed the requirement for the joinder of conferences in special docket applications filed by their member lines, clarified language regarding designation of the appropriate tariff for notice purposes, and made other changes to conform to the Shipping Act of 1984. [Docket No. 88-10] 24 S.R.R. 1076 (July 19, 1988)

- * The Office continued its efforts to automate systems and determine more efficient and economical methods for publication of the hardbound volumes of Commission decisions. The docket tracking system implemented in fiscal year 1987 continues to be refined and the project to establish a local area network system linking various offices within the Commission continues to receive high priority. Substantial progress has been made in developing automated methods for the coding, archiving and editing of appropriate materials for inclusion in each volume of the Commission's decisions. It is anticipated that the first volumes to be issued utilizing these new methods will be available in calendar year 1989.

- * The Commission heard oral argument in 2 formal proceedings and issued decisions concluding 10 formal proceedings. Sixteen formal proceedings were discontinued or dismissed without decision (including determinations not to review Administrative Law Judge orders terminating proceedings). Three cases were also remanded back to the Administrative Law Judge and one case was referred to an Administrative Law Judge for decision. The Commission also concluded 90 special docket applications and 19 informal dockets which involve claims against carriers for less than \$10,000. During the same period the Commission issued final rules in nine rulemaking proceedings.

- * Six rulemaking proceedings were pending before the Commission at the end of the year. Final decisions in these matters are anticipated in fiscal year 1989.

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, 1916, 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 1988, the Informal Docket Activity received 14 new cases. During the same period 19 informal docket claims were concluded.

3. Office of Informal Inquiries and Complaints

This Office coordinates the informal complaint handling system throughout the Agency. A total of 1,386 complaints and information requests were processed in fiscal year 1988, including those handled through the District Offices. Recoveries to the general public of overcharges, refunds and other savings attributable to the complaint handling activities amounted to \$379,210. Since 1981, this Office has helped complainants recover over \$2,200,000.

The Office coordinated meetings between maritime industry representatives and Commission officials, and supplied copies of procedures, dockets and other information requested by the general public. During fiscal year 1988, this Office responded to 673 such requests and inquiries. The Office maintained liaison with members of the President's Consumer Affairs Council in which it participated throughout the fiscal year.



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 1988, 35 proceedings were pending before Administrative Law Judges. During the year, 106 cases were added, which included 4 proceedings remanded to Administrative Law Judges for further proceedings. The judges held 5 prehearing conferences, held no formal oral hearings, formally settled 5 proceedings, dismissed or discontinued 9 proceedings, and issued 10 initial decisions in formal proceedings, one initial decision in an informal proceeding, and 84 initial decisions in special docket applications.

2. Commission Action

The Commission adopted 3 formal decisions, and 3 formal decisions became administratively final. One informal decision became administratively final. Special docket decisions in 78 proceedings became administratively final, one decision was adopted, and one decision was partially adopted.

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

Mobil Oil Corporation v. Barber Blue Sea Line [Docket No. 86-17].

This was a complaint proceeding wherein the Complainant alleged that Respondent had collected freight charges in excess of those provided for in the applicable tariff. The question presented was whether or not the shipment involved, "asphalt cutbacks," a specific item having a lower rate or was, "Dangerous or Hazardous Cargo N.O.S." having a higher rate.

Before hearing the parties submitted a settlement agreement calling for a cash payment of \$12,500. The initial decision approved the settlement but the Commission remanded it for a determination of whether or not the settlement met the standards set forth in Glidden-Durkee. On remand, the second initial decision again approved the settlement holding that the Glidden-Durkee standards had been met and noting that, "the facts critical to the resolution of the dispute were not reasonably obtainable. . . ."

Investigation of Rebates and Other Malpractices - Yangming Marine Line, A.K.A., Yangming Marine Transport Corporation and Yang Ming Line [Docket No. 87-2].

This proceeding was instituted by a Commission Order of Investigation and raised issues as to whether or not the Respondent had violated the Shipping Acts by collecting charges that differed from those set forth in its tariff, by extending certain privileges not set forth in its tariff, and by engaging in other prohibited practices, including paying deferred rebates.

After extensive preliminary discovery Hearing Counsel and the Respondent entered into a settlement agreement wherein the Respondent agreed to pay the Commission \$168,666.67, plus accrued interest, and agreed to a cease and desist order and the reformation of certain of its bookkeeping procedures. The initial decision approved the settlement.

Atlantis Lines, Ltd. v. American President Lines, Ltd.
[Docket No. 87-19].

This was a complaint proceeding wherein the Complainant alleged the Respondent had violated the Shipping Act by refusing to apply a discount to all containers shipped by the Complainant. The language in the tariff stated:

. . . after 100 TEU's have been tendered in a nine month period a discount of \$100/20' and \$200/40' will apply to any containers accepted by carrier. . . .

The Complainant argued the discount should apply to all the containers it shipped not just those shipped after the first 100 containers, as the Respondent alleged. The Initial Decision found that at best, the tariff was ambiguous and, therefore, had to be construed against the Respondent.

Judges also issued initial decisions in Docket Nos. 83-49, 86-30, 87-10, 87-13, 87-16, 87-17, 88-6, Informal Docket No. 1601(F), Special Docket Nos. 1513, 1524, 1552, 1559, 1570, 1572, 1575, 1576, 1577, 1578, 1579, 1580, 1582, 1583, 1584, 1585, 1586, 1587, 1588, 1589, 1590, 1591, 1592, 1593, 1594, 1595, 1596, 1597, 1598, 1599, 1600, 1601, 1602, 1603, 1604, 1605, 1606, 1607, 1609, 1610, 1611, 1612, 1613, 1614, 1615, 1616, 1617, 1618, 1619, 1620, 1621, 1622, 1623, 1624, 1625, 1626, 1627, 1628, 1629, 1630, 1631, 1632, 1633, 1634, 1635, 1636, 1637, 1638, 1639, 1640, 1641, 1642, 1643, 1645, 1646, 1647, 1648, 1650, 1652, 1654, 1658, 1661, 1662, and 1666 described under "Decisions of the Commission."

4. Pending Proceedings

At the close of fiscal year 1988 there were 32 pending proceedings, of which 4 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

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.

1. Adjudicatory Decisions and Rulemakings

The following are adjudicatory decisions and rulemakings representative of matters prepared by the Office:

Actions to Adjust Or Meet Conditions Unfavorable To Shipping in the United States/Taiwan Trade, [Docket No. 87-25], 24 S.R.R. 866 (March 2, 1988).

The Commission issued a proposed rule pursuant to section 19 of the Merchant Marine Act, 1920 to address conditions unfavorable to shipping in the United States/Taiwan trade with respect to the ownership and operation of dockside equipment and facilities and the operation of container terminals at Taiwan ports by U.S.-flag carriers. Subsequently, the Commission received a petition from Taiwan authorities which represented that these two issues had been substantially resolved and which requested that this proceeding be discontinued. The petition was supported by Taiwan-flag carriers and the affected U.S.-flag carriers. Based on the representations by all affected parties of a successful resolution of these issues, the Commission discontinued the proceeding.

In The Matter of Maximum Potential Liability In Independent Ocean Freight Forwarder Bonds, [Docket No. 87-12], 24 S.R.R. 587 (October 9, 1987).

The Commission granted a petition for a declaratory order with respect to the question of the maximum aggregate liability under the freight forwarder bond required under the Shipping Act of 1984 and the Commission's Rules and held that such liability does not exceed the \$30,000 penal sum stated on the bond.

Actions to Adjust or Meet Conditions Unfavorable to Shipping in the United States/Peru Trade, [Docket No. 87-6], 24 S.R.R. 636 (December 7, 1987).

The Commission issued a Proposed Rule on April 13, 1987, and, subsequently, a Final Rule on December 7, 1987, pursuant to section 19 of the Merchant Marine Act, 1920, to address conditions unfavorable to shipping in the United States/Peru trade with respect to a Peruvian cargo reservation decree reserving 100 percent of Peruvian import and export cargoes for Peruvian-flag carriers. The Final Rule would suspend the tariffs of the Peruvian-flag carriers in the U.S./Peru trade unless those carriers receive authorization from the Commission to participate in the trade.

Following the issuance of the Final Rule, the Government of Peru rescinded decrees to which the Final Rule was directed. Subsequently, the Commission determined to reconsider the Final Rule, insofar as the unfavorable conditions found to exist in the United States/Peru trade arose from certain laws and decrees which had been rescinded. The Commission further decided to continue the docketed proceeding to determine whether the unfavorable conditions previously found continue to exist and whether some other disposition is warranted with respect to the Final Rule.

Due to ongoing diplomatic negotiations and other developments in the trade, the Commission has requested interested parties to comment further on conditions in the trade and sanctions proposed by a certain commenter. No disposition has been issued thus far.

Investigation of Unfiled Agreements - Yangming Marine Transport, Evergreen Marine Corporation and Orient Overseas Container Line, Inc., [Docket No. 86-30], 24 S.R.R. 910 (March 30, 1988).

The Commission initiated this proceeding to determine whether three carriers had violated the Shipping Act, 1916, or the Shipping Act of 1984 by discussing rates and attempting to set rates in the United States to Taiwan trade without an effective agreement on file at the Commission.

The Commission approved a settlement negotiated with the respondent carriers by the Commission's Bureau of Hearing Counsel, whereby the respondents agreed to cease and desist permanently from discussing and attempting to fix rates for the common carriage of commodities in the United States to Taiwan trade, until such time as an agreement authorizing such activity is filed with the Commission and becomes effective pursuant to the Shipping Act of 1984. Without admitting any violations of law, respondents further agreed to pay civil penalties totaling \$400,000, with interest.

Agreement No. 003-010965 - Island Ocean Terminal Agreement, [Docket No. 86-28], 24 S.R.R. 895 (March 25, 1988).

The Commission issued a decision addressing the extent of its jurisdiction over the Island Ocean Terminal Agreement ("IOTA"), an agreement relating to terminal and other ancillary services provided by Sea-Land Service, Inc., TMT and PRMSA in Puerto Rico. Although the Commission concluded that it had personal jurisdiction over the parties by virtue of their limited port-to-port service between the U.S. mainland and Puerto Rico, the Commission declined to assert jurisdiction over those aspects of the agreement relating to terminal and other services performed in connection with the parties' ICC-regulated joint-through services. The Commission found that services being provided in connection with the parties' ICC-regulated joint-through service had not been shown to have any impact on the parties' FMC-regulated traffic. Nor could the Commission discern any Congressional intent that the Commission regulate such terminal services absent a nexus with all-water carriage. As a result of the decision, the Commission's jurisdiction over IOTA is limited to those aspects of the agreement relating to terminal and other services provided in connection with the parties' all-water carriage.

Conference Service Contract Authority, [Docket No. 86-16], 24 S.R.R. 846 (March 4, 1988).

The Commission adopted a Final Rule that required conferences to state in their agreements their generally

applicable rules affecting or implementing conference service contract authority. The Final Rule further required that conferences file an amendment to their agreements whenever these rules are changed. The Final Rule also required that conference service contract authority be located in a designated article of the conference agreement.

Palmetto Shipping and Stevedoring Co., Inc. v. Georgia Ports Authority, [Docket No. 85-20], 24 S.R.R. 761 (January 29, 1988).

The Commission determined that tariff provisions published by Georgia Ports Authority which make vessel agents liable for collection and payment of vessel and terminal charges are reasonable under the Shipping Act of 1984.

Tariff Publication of Free Time and Detention Charges Applicable to Carrier Equipment Interchanged With Shippers or Their Agents, [Docket No. 85-19], 24 S.R.R. 836 (February 18, 1988).

The Commission amended its tariff filing rules to require the publication of equipment interchange agreements ("EIA's") between ocean common carriers and persons acting on behalf of shippers when the ocean carriers' tariffs provided that published free time and detention rules for carrier equipment could be superseded by such agreements. The Commission held that the fact that EIA's were entered into with inland truckers did not divest the Commission from asserting jurisdiction over the agreements as practices of ocean common carriers. Finally, the Commission determined that allegations of unreasonable burdensomeness of the new rules were unfounded.

Application of Evergreen International (U.S.A.) Corp. for the Benefit of Service Contract Shipper, [Special Docket No. 1513], 24 S.R.R. 753 (January 12, 1988).

The Commission, on its own motion, adopted the initial decision of an administrative law judge that held that the waiver/refund relief procedures of section 8(e) of the Shipping Act of 1984 do not apply to errors made in connection with service contracts.

Petition of Bi-State Harbor Carriers Conference of the New Jersey Motor Truck Association for Institution of Investigation and Rulemaking, 24 S.R.R. 788 (February 3, 1988).

The Commission denied a petition (1) for an investigation of practices and procedures of ocean common carriers serving the Port of New York with respect to the payment of inland divisions to motor carriers participating in intermodal service, and (2) for a rule prescribing time periods within which ocean carriers must pay inland divisions to motor carriers and establish penalties for failure to pay within the prescribed periods.

Section 19 Petition of Navios Management, Inc., d/b/a Pacific America Line, Shipping Conditions in the United States/Korea Trade, Order, 24 S.R.R. 1144 (August 23, 1988).

The Commission received a petition from Navios Management, Inc. d/b/a Pacific America Line, requesting the issuance of regulations to meet unfavorable conditions in the United States/Korea trade, pursuant to section 19 of the Merchant Marine Act, 1920. The petition alleged that Korea's cargo preference laws reserve for Korean-flag ocean carriers 100% of all the steel products exported from Korea by water, subject to a waiver system, resulting in irreparable harm to the Petitioner.

The petition was published in the Federal Register and the Commission invited the submission of comments from interested parties. The Commission also requested the Department of State to review the matter to determine whether the situation could be resolved through diplomatic channels.

Comments received indicated that the Government of Korea had taken action to meet and alleviate the basis for the petition, and that a satisfactory resolution of the problems complained of by Petitioner had been achieved.

On the basis of these comments and the fact that Pacific America Line, in effect, withdrew its petition, the Commission on August 23, 1988, issued an order discontinuing the proceeding.

2. Litigation

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 following are representative of matters litigated by the Office:

Petchem, Inc. v. Federal Maritime Commission, 853 F.2d 958 (D.C. Cir. 1988).

The U.S. Court of Appeals for the District of Columbia Circuit affirmed the Commission's decision holding that Petchem, a tug operator, had failed to prove that the Canaveral Port Authority's refusal to grant it a franchise to provide commercial tug service in Port Canaveral, Florida, amounted to unlawful prejudice and discrimination under the Shipping Act. The Commission's decision had clarified previous FMC case law on the proposition that, while exclusive terminal arrangements generally are disfavored by the Shipping Act, they sometimes are commercially necessary.

Plaquemines Port Harbor and Terminal District v. Federal Maritime Commission, 838 F.2d 536 (D.C. Cir. 1988).

The U.S. Court of Appeals for the District of Columbia Circuit upheld the Commission finding that it had jurisdiction over Plaquemines Port Harbor and Terminal District as a "marine terminal operator" within the meaning of section 3(15) of the Shipping Act of 1984 because the port authority conditioned access to private terminal facilities on the payment of a harbor fee to compensate the port authority for providing essential health and safety services in connection with cargo handling operations at the private facilities. The court also held that the charge was

not an unconstitutional "toll" prohibited by the tonnage clause of the U.S. Constitution. Finally, the court held that the Commission correctly decided that the port authority had discriminated in exempting certain classes of users from paying the harbor fee and that the liability provisions of the port's tariff were reasonable and lawful under the Shipping Act of 1984.

New York Shipping Association, Inc., et al. v. Federal Maritime Commission and the United States of America, 854 F.2d 1338 (D.C. Cir. 1988).

The Commission ruled that the publication and enforcement by ocean common carriers of the "50 Mile Container Rules," whereby cargo originating from or destined to points within 50 miles of Atlantic and Gulf Coast ports must be loaded or unloaded at the ocean piers by longshoremen, were unreasonable and unjustly discriminatory and therefore violated the Shipping Act, 1916, the Shipping Act of 1984 and the Intercoastal Shipping Act, 1933.

The Commission further ruled that, under the maritime statutes, the Rules could not be defended on the ground that they are the result of collective bargaining agreements between the carriers and the International Longshoremen's Association ("ILA") intended to preserve work for longshoremen. The Commission concluded that the proper accommodation for national labor policy under the shipping laws was in the construction of the remedy for shipping violations. The Commission accordingly limited the remedy to an order to cease and desist further publication and enforcement of the Rules.

The carriers and the ILA filed a petition for review with the U.S. Court of Appeals for the District of Columbia Circuit, which upheld the Commission's action. At fiscal year end, the matter was before the United States Supreme Court on Petition for Certiorari and the Commission's cease and desist order has been stayed pending review.

United States of America and the Federal Maritime Commission v. Jorge Villena, a/k/a George Villena, Sea Trade Shipping, Inc., et al., No. 88-0495, (S.D. Fla. filed April 21, 1988).

On April 21, 1988, the U.S. District Court for the Southern District of Florida entered a Consent Decree in an injunctive action brought by the Federal Maritime Commission and the U.S. Department of Justice against Jorge Villena for violations of the Shipping Act of 1984. Attorneys from the FMC's Office of General Counsel and DOJ's Office of Federal Programs negotiated the terms of the Consent Decree with Mr. Villena and essentially prevailed in all material aspects of the action.

The Consent Decree enjoins Mr. Villena, a/k/a George Villena, from doing business under the names Sea-Trade Shipping, Star Bright Container Line and Caribbean Sun International, from operating as an NVOCC in the domestic and foreign commerce of the United States without a tariff on file with the Commission for all the firms under which he does business, failing to adhere to the tariffs that he has filed, misdeclaring cargo, falsifying shipping documents and failing to pay freight charges due the underlying ocean carrier on shipments for which he has collected freight money from shippers. The Consent Decree granted the FMC a preliminary injunction enjoining Mr. Villena from engaging in the alleged unlawful conduct pending the completion of an FMC investigation, Docket No. 88-6 - Jorge Villena a/k/a George Villena, Sea-Trade Shipping, Star Bright Container Line, and Caribbean Sun International.

The U.S. Department of Justice, at the request of the Commission, joined in the court action for purposes of collecting \$100,000 in civil penalties and enforcing a Commission cease and desist order issued against Mr. Villena and related firms in a prior FMC proceeding, Docket No. 85-14, Cari-Cargo International, Inc., Jorge Villena and Sea-Trade Shipping. The Consent Decree enforced the Commission's cease and desist order by permanent injunction and awarded the Commission a monetary judgment for the full amount of the assessed civil penalties.

3. Legislative Activities

The Office also represents the Commission's interests in all matters before Congress. This includes commenting on proposed legislation, proposing legislation, preparing testimony for Commission officials, and responding to Congressional requests for assistance.

This Office followed the progress of H.R. 3, the "Omnibus Trade and Competitiveness Act of 1988" and offered technical assistance to both the House and Senate. The portion of H.R. 3 that ultimately passed Congress and that directly affects the Federal Maritime Commission is subtitle A of Title X, the "Foreign Shipping Practices Act of 1988." It gives the Commission a new standard under which to judge foreign maritime practices that impact on U.S.-flag ocean carriers, additional means to develop information concerning such practices, and a wide range of remedies in the event certain conditions are found to exist.

On August 23, 1988, the President signed the "Omnibus Trade and Competitiveness Act of 1988," Public Law No. 100-418.

In May 1988, comments were provided to the Committee on Merchant Marine and Fisheries on H.R. 3106, a bill to revise certain parts of title 46 of the United States Code. The Commission had previously submitted a draft recodification of those portions of title 46 that are within the Commission's jurisdiction. Most of the Commission's suggestions were included in H.R. 3106. However, differences remained between the FMC draft and H.R. 3106, and these were addressed in FMC comments.

Further, during fiscal year 1988, testimony was prepared and coordinated for six Congressional hearings.

4. International Affairs

Lastly, 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, it 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.

Several reports and recommendations were prepared and submitted to the Commission on matters arising under section 19(1)(b) of the Merchant Marine Act, 1920. The subject of these section 19 matters included Peruvian (See Docket No. 87-6) and Korean cargo reservation laws and restrictions on intermodal activities on carriers operating in the U.S./Taiwan trade. (See Docket No. 87-25).

Further, pursuant to section 15 of the Shipping Act of 1984, the Commission sought information, in three separate inquiries, from carriers operating in the U.S./Korea trade, U.S./Taiwan trade and U.S./People's Republic of China trade, regarding laws, regulations and policies of those nations which may unfairly burden or restrict the operations of certain ocean common carriers, including United States-flag carriers, and the U.S. importers and exporters which depend upon their services. The Commission is assessing the impact of these nations' laws, regulations and policies to determine whether action under section 19 is warranted. Of particular concern to the Commission are indications that United States-flag and possibly other carriers are prevented from conducting shipping and ancillary activities in these trades. The Commission has issued orders and notices regarding these possible impediments to trade in the U.S./Taiwan and U.S./Korea trades.

In an ongoing inquiry into the impact on shipping in the U.S./Japan trade of Japanese laws, rules and regulations restricting the movement of "high-cube," or 9'6" high, marine containers over the roads within Japan, responses to the Commission's orders pursuant to section 15 of the Shipping Act of 1984 on the ocean carriers serving the trade, including two Supplemental Section 15 Orders indicated that new guidelines issued by the Government of Japan shortly after the Commission initiated its inquiry had substantially alleviated the problems encountered by U.S.-

flag and other carriers. Based on these responses, the Commission concluded its inquiry.

The Office of the General Counsel 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 served as liaison on international shipping matters between the Commission and other U.S. government agencies, as well as private parties. The Office also coordinated and participated in briefings of foreign visitors to the Commission.

Finally, under the Commission's controlled carrier program relating to the status of controlled carriers, several common carriers were classified as such during the fiscal year.

5. Significant Ongoing Activities

(a) Korea Shipping Conditions

The Commission initiated an inquiry into the existence and effects of laws, regulations and policies of the Republic of Korea ("ROK") on the ability of U.S.-flag and other non-ROK-flag ocean carriers to undertake ancillary maritime activities in the ROK by service of a Section 15 Order on all non-ROK-flag carriers serving the trade on April 14, 1987. The Section 15 Order requested information on laws, rules, policies or administrative interpretations which prevent carriers from owning or operating their own facilities, or conducting specific shore-side shipping operations. The Commission was particularly concerned that non-ROK-flag carriers are requested to operate through a Korean-owned general agent and are apparently unable to perform their own sales, marketing, contracting, warehousing, trucking and equipment maintenance and repair functions in the ROK.

The responses to the Section 15 Order show a complex pattern of legislation, regulations and administrative agency oversight consisting of some 10 laws and 6 sets of implementing decrees which affect the transaction of maritime-related business activities in the ROK. The restrictions established in these laws and decrees appear to unfairly burden non-ROK carriers and may result in conditions unfavorable to shipping in the trade by preserving certain business opportunities in the ROK for Korean nationals, effectively handicapping non-ROK international shipping lines in their competition with ROK-flag carriers. The Departments of State and Transportation/MARAD have engaged in consultations with representatives of the ROK Government regarding those issues on several occasions.

The commitment to permit U.S.-flag carrier operation of branch offices in the ROK, to directly conduct a variety of business activities, requires legislative action and implementing regulations. The U.S.-flag carriers requested an extension of time to comment further, to allow time for the Korean National Assembly to address the remaining issues in its Fall, 1988 session. On August 23, 1988, the Commission issued an Amended Notice which granted the request and extended the comment period until January 30, 1989.

- (b) Inquiry Into Laws, Regulations and Policies of Taiwan Affecting Shipping In The United States/Taiwan Trade, [Supplemental Section 15 Order], 24 S.R.R. 1045 (June 22, 1988).

The Commission issued a Section 15 Order seeking additional information regarding shipping conditions in the United States/Taiwan trade. The order noted that although there had been positive developments in the trade, there remained matters which caused continuing concern over certain practices and conditions in the trade. The responses to the Order are currently being evaluated by the Commission's staff.

(c) Inquiry Into Laws, Regulations and Policies of the People's Republic of China Affecting Shipping in the United States/China Trade.

The Commission has served a Section 15 Order seeking information regarding actions of the Chinese government which may discriminate against non-Chinese carriers. The Commission's staff is currently evaluating conditions in the trade in light of the responses to the Section 15 Order and recent maritime discussions between the U.S. and the P.R.C. held on October 18-20, 1988.

(d) Petition No. P5-88 - Matson Navigation Company, Inc. - Application for Section 35 Exemption.

Matson Navigation Company has petitioned for an order from the Commission, pursuant to section 35 of the Shipping Act, 1916, to allow it to institute individual rate reductions in the Hawaiian domestic offshore trade on one day's notice. At present, such tariff filings can go into effect only upon 30 days' notice, pursuant to the Intercoastal Act, 1933. Matson contends that its requested relief will benefit shippers and will allow it to compete with Interstate Commerce Commission-regulated carriers that can reduce rates on one day's notice.

(e) Docket No. 87-24 - Foreign-to-Foreign Agreements - Exemption.

The Commission has proposed to amend its regulations so as to explicitly permit voluntary filing of agreements among ocean common carriers governing ocean transportation wholly between foreign countries, where the parties to the agreement deem it to have a direct, substantial and reasonably foreseeable effect on the commerce of the United States. This change would enable such "foreign-to-foreign" agreements, though not subject to the mandatory filing requirements of the Shipping Act of 1984, to qualify for immunity from the U.S. antitrust laws.

The proposed rule also would exempt from the notice, waiting period and information requirements of the 1984 Act foreign-to-foreign agreements that are part of broader agreements covering contiguous U.S.-foreign trades. Such

foreign-to-foreign agreements thus would be effective immediately upon filing.

Comments in support of the proposed rule were filed by various carriers, carrier associations and ports. The U.S. Department of Justice, however, opposed the rule on the ground that it would be an unlawful extension of the Commission's jurisdiction.

D. OFFICE OF EQUAL EMPLOYMENT OPPORTUNITY

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

The Office is responsible for affirmative employment program planning and complaints processing and adjudication, with the assistance of collaterally assigned EEO counselors and Special Emphasis Program Coordinators.

The Office works closely with the Office of Personnel, managers and supervisors to:

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

The Director of Equal Employment Opportunity arranges for counseling of employees who raise allegations of discrimination; provides for the investigation, hearing, fact-finding, adjustment, or early resolution of such complaints of discrimination; accepts or rejects formal complaints of discrimination and prepares proposed dispositions of such formal complaints; and monitors and evaluates the program's impact and effectiveness.

Significant accomplishments in fiscal year 1988 include:

- (1) Developed an EEO Information Computer System in concert with the Office of Special Studies with full implementation of the system set for fiscal year 1989;
- (2) Initiated special emphasis and EEO counselor meetings and training each month;
- (3) Established an information, training and EEO counseling support network for the Commission with the U.S. Immigration and Naturalization Service and the U.S. Customs Service in Los Angeles, California, and with the Department of Interior, National Park Service, Securities and Exchange Commission, and Small Business Administration in Washington, D.C.;
- (4) Closed over fifty percent of the existing formal complaint workload prior to the appeal level; and
- (5) Developed, in conjunction with the Office of Personnel, a model recruitment program for hiring investigators.

During fiscal years 1989 and 1990, the Office will continue and expand its existing programs and initiate activities designed to increase management and employee understanding of EEO principles.

E. OFFICE OF THE MANAGING DIRECTOR

The Office of the Managing Director 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 Trade Monitoring.
- . Bureau of Domestic Regulation.
- . 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.
- . Office of Equal Employment Opportunity.

A significant achievement of the Office during FY 88 was the continued coordination of an enhanced enforcement program involving all operating Bureaus. Several aspects of the major initiative in the Trans-Atlantic trade were addressed and concluded, and the necessary planning and initial groundwork was laid for future enforcement programs.

The Office is currently:

- (1) Effectuating the expansion of its general trade monitoring program;
- (2) Guiding the development of the agency's Automated Tariff Filing and Information (ATFI) System;
- (3) Directing the collection of data and preparation of the report required by section 18 of the Shipping Act of 1984, 46 U.S.C. app. 1717;
- (4) Executing the streamlining of the staffing and procurement processes of the Commission; and
- (5) Supervising the reorganization of the Commission's training program to provide a more structured effort to improve the skills and productivity of the agency's personnel.

The Managing Director Office's key objectives for fiscal years 1989 and 1990 are the coordination and oversight of all aspects of staff input in preparation of the report required by section 18 of the Shipping Act of 1984 and continued coordination of staff efforts regarding the development of ATFI.

F. BUREAU OF TRADE MONITORING

1. General

The primary function of the Bureau is to plan, develop and administer programs related to the oversight of concerted activity of common carriers by water under the standards of the Shipping Act of 1984 and the Shipping Act, 1916. The Bureau's major program activities include:

- * Administering comprehensive trade monitoring programs to identify and track relevant competitive, commercial and economic activity in each major U.S. trade, in order to keep the Commission and its staff apprised of current trade conditions, emerging trends and regulatory needs impacting on waterborne liner transportation;
- * Systematic surveillance programs overseeing carrier activity in areas relevant to the Commission's administration of statutory standards;
- * Processing and analysis of agreements involving common carriers; and
- * Support of formal Commission proceedings in the Bureau's areas of expertise.

2. Surveillance (See Chapter III)

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. 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 1988, the Commission concluded the processing of 195 conference and rate agreements, including amendments to existing agreements, pursuant to the Shipping Act of 1984. There were 71 conference/rate agreements in effect at the end of the fiscal year.

(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 1988, there were 22 agreements in effect with pooling and/or equal access authority. Eleven agreements of this type have a significant impact on U.S. ocean liner commerce with Argentina, Brazil, Chile, Peru and Colombia. While the majority of these agreements continue to apply to the U.S./South American trades, carriers in other trades around the world are beginning to use this type of arrangement.

(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 rationalize sailings and to exchange equipment.

During fiscal year 1988, 31 space charter agreements and amendments were filed under the 1984 Act, and 96 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 operators as a joint venture in a given trade. The resulting service operates 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.

Sixteen joint service/consortia agreements and amendments were filed during fiscal year 1988 and 31 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. Seventy-eight cooperative working agreements, and amendments to effective agreements, were filed during fiscal year 1988, and 69 such agreements were in effect at the conclusion of the fiscal year.

4. Future Plans and Proposed Activities

During the first half of the coming year, the Bureau anticipates concluding its compilation and analysis of data for the 5-year study mandated by section 18 of the Shipping Act of 1984.

The Bureau's overall monitoring program will continue to focus on the systematic oversight of carrier and trade activity in areas relevant to the administration of the standards of the Shipping Act of 1984. To this end, the Bureau plans to continue with its series of periodic monitoring reports to provide a framework and methodology for the in-depth monitoring of key subtrades and analyzing rate and service activity under the standards of sections 5, 6(g) and 10 of the Act. The Bureau's monitoring reports provide periodic trend analyses of agreement activities and other topics while its trade studies provide an overview of trade conditions between the United States and selected countries. The Bureau's controlled carrier reports support the Commission's activities under section 9 of the Act. Also, specific monitoring of selected carrier agreements will be continued. In addition to periodic updates to various ongoing monitoring reports, the Bureau plans to expand the breadth of these reports by providing analyses and discussions on additional subtrades. In aggregate, the Bureau's trade monitoring reports and studies provide an up-to-date and detailed interpretation of evolving carrier and agreement activity, and changing trade conditions, under the Act's standards. Although they are informative in their own right, they are not an end in themselves. Rather, the report/study program develops a factual basis that can isolate and identify activity that may contravene the Act's standards for appropriate follow-up by the Bureau or the Commission itself, as warranted by the circumstances of each case.

The Bureau anticipates continuing pre-effectiveness analysis of newly-filed agreements to determine if an agreement is likely to raise any section 5, 6(g) or 10 issues, or policy issues; the preparation of recommendations to the Commission on more complex agreements or issues; and the disposition of routine agreements under authority delegated by the Commission. In addition, a program to audit individual agreement compliance with the Commission's rules will be implemented.

The Bureau also plans continued maintenance of databases for the Work-in-Process System (WIPS) and the Required Reports Profile System (RRPS), programming changes in current programs for the systems, and development of programs for additional functions in support of its monitoring efforts.

It is also anticipated that the Bureau will continue to become more involved in projects related to various investigative issues.

Finally, the Bureau's support of formal Commission proceedings is expected to continue. The Bureau's degree of involvement will, of course, turn on the number and subject matter of the proceedings initiated during the next fiscal year.



G. BUREAU OF DOMESTIC REGULATION

1. General

The Bureau of Domestic Regulation plans, develops, administers and analyzes programs and activities in connection with pricing by common carriers by water, conferences of such carriers, and terminal operators in the foreign and domestic offshore commerce of the United States; reviews and maintains both new and amended tariff filings, rejecting those which fail to conform to the Commission's regulations; approves or disapproves special permission applications involving requests to deviate from certain tariff filing rules; processes service contracts and essential terms publications filed by ocean common carriers and conferences of such carriers; initiates recommendations, in collaboration with other offices of the Commission as warranted, for formal action and proceedings by the Commission; and plans, develops, and administers programs for processing, evaluating, and monitoring agreement activity of marine terminal operators.

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 owners and operators of passenger vessels in the United States trade with respect to the financial responsibility of such owners and operators to satisfy liability incurred by non-performance of voyages or for death or injury to passengers or other persons. Thus, the Bureau of Domestic Regulation is responsible for all tariffs filed by ocean common carriers and terminal operators; marine terminal agreements; service contracts; the licensing of ocean freight forwarders; and the certification of passenger vessels for financial responsibility.

The Bureau develops long-range plans, new or revised policies and standards, and rules and regulations, with respect to its program activities. The Bureau also

cooperates with other Commission components with regard to enforcement of the Commission's regulatory requirements.

2. Foreign Commerce, Tariff, and Service Contract Activity

(a) Service Contracts

The Shipping Act of 1984 permits ocean common carriers and conferences of such carriers 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 offered to all similarly situated shippers.

The essential terms of a service contract include:

- * **The origin and destination port ranges or geographic area;**
- * **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.

During the fiscal year, the Commission proposed to revise its regulations governing the modification of service contract essential terms. The purpose of the proposed rule is to permit the modification of service contracts to correct administrative or clerical error. Current regulations prohibit the modification of a contract's essential terms during the duration of the contract. This prohibition may work a hardship upon the contract parties in instances where the contract provisions filed with the Commission, due to clerical or administrative error, do not contain the exact provisions agreed to by the parties. Because current Commission regulations do not permit amendments to filed and active contracts, carriers and shippers may be bound by unintended terms. Under the proposed rule, requests to modify service contract essential terms would be made to the Commission and, if approved, the modified essential terms would be made available to all other shippers and shippers' associations for a specified period of time. Final Commission action on this proposed rule change should be accomplished early in fiscal year 1989.

The Commission addressed two other service contract issues in Docket No. 88-7, "Most-Favored-Shipper" Provisions, during fiscal year 1988: (1) so-called "most-favored shipper" clauses; and (2) the use of de minimis liquidated damages provisions in service contracts. The final rule addressing these matters will be completed during the first part of fiscal year 1989.

During fiscal year 1988, the Bureau received 4,696 service contracts totaling approximately 70,000 pages. These contracts were filed by 71 individual ocean common carriers and 22 conferences. The contracts involved approximately 5,900 shippers and the entire scope of the U.S. foreign commerce, both inbound and outbound.

(b) Controlled Carriers

A controlled carrier is an ocean common carrier whose operating assets are directly or indirectly owned or controlled by the government under whose registry the vessels of the common carrier are operated. Section 9 of the Shipping Act of 1984 (46 U.S.C. app. 1708) provides that no controlled carrier may maintain rates or charges in its tariffs filed with the Commission that are below a level that is just and reasonable, nor may any such carrier establish or maintain unjust or unreasonable classifications, rules or regulations in those tariffs. In addition, such rates, charges, classifications, rules, or regulations of a controlled carrier may not, without special permission of the Commission, become effective sooner than the 30th day after the date of filing with the Commission.

The Bureau of Domestic Regulation monitors the tariff filings of controlled carriers to assure that the required notice for rate increases and decreases is given. During fiscal year 1988, controlled carriers filed approximately 7,000 tariff pages. The Bureau also acted on eight special permission applications filed by controlled carriers.

(c) Common Carrier Anti-Rebate Certification (ARC) Program

Every common carrier by water in the foreign commerce of the United States and ocean freight forwarder is required by section 15(b) of the Shipping Act of 1984 (46 U.S.C. app. 1714) and 46 CFR Part 582, to file a sworn Certification of Company Policies and Efforts to Combat Rebating in the Foreign Commerce of the United States. This certification is to be filed with the Secretary of the Commission annually and is to be signed by the Chief Executive Officer of the common carrier or ocean freight forwarder. Section 15(b) and 46 CFR 582.1(b) provide that failure to file the required certification may result in a civil penalty of \$5,000 for each day the violation continues. The information obtained under the anti-rebating program is used

to maintain continuous surveillance over common carrier activities and to provide a deterrent against rebating practices.

An automated program was implemented to insure the receipt of certifications from all those required to file. During the year, 2,756 certifications were filed in a timely manner. In conjunction with the Bureau of Hearing Counsel, the Bureau undertook an enforcement program with respect to non-filers of certifications.

(d) Inactive Tariffs

During fiscal year 1988, the Bureau of Domestic Regulation continued a comprehensive review of foreign commerce tariffs currently on file with the Commission. The purpose of this review was to identify tariffs of firms which appeared to be inactive or no longer operating as carriers in the waterborne foreign commerce of the United States. Inactive tariffs reflect inaccurate information and serve no useful purpose while adding to administrative cost. A carrier was deemed to be inactive if it had not amended its tariff during the preceding twelve month period, had not filed the required anti-rebating certification, and could not be contacted by mail or telephone. As a result of this review, orders to show cause why 715 carrier tariffs should not be cancelled were prepared. These orders were served during fiscal year 1988, and resulted in the cancellation of 623 inactive tariffs.

(e) Tariff Processing

During fiscal year 1988, the Bureau of Domestic Regulation received and reviewed 687 new foreign tariffs, of which 150 were rejected. In addition, 702,501 tariff pages amending existing tariffs and 155 special permission applications were processed. The program of microfiching cancelled tariffs and cancelled pages to active tariffs is continuing. During fiscal year 1988, approximately 570,000 cancelled tariff pages were recorded on microfiche.

3. Domestic Tariff Activity

(a) Authority

Common carriers operating in the U.S. domestic offshore commerce are required pursuant to section 18(a) of the Shipping Act, 1916, 46 U.S.C. app. 817, and section 2 of the Intercoastal Shipping Act, 1933, to file tariffs of rates, charges and rules with the Commission. The Bureau of Domestic Regulation must ensure that these tariffs comply with applicable statutory requirements. The Commission's regulations also require the filing of annual reports of financial and operating data by vessel operating common carriers in the domestic trades.

(b) Inactive Tariffs

During fiscal year 1988, the Bureau of Domestic Regulation continued a program, similar to that with respect to foreign tariffs, to identify tariffs of firms which appeared to be inactive or no longer operating as carriers in the domestic offshore waterborne commerce of the United States. As a result of this program, an order to show cause why 100 carrier tariffs should not be cancelled was served early in fiscal year 1988, and resulted in the cancellation of 87 inactive domestic tariffs during the fiscal year.

(c) Tariff Processing

During fiscal year 1988, 38 new domestic offshore tariffs were received and reviewed. In addition, 27 domestic special permission applications were processed. The Bureau also processed over 5,000 tariff pages amending existing tariffs.

4. Marine Terminal Activities

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

(a) Agreements

During fiscal year 1988, the Bureau received 242 agreements and agreement modifications relating to port and terminal services and facilities. Of these: 228 agreements became effective upon filing under Commission rules which exempt entitled marine terminal agreements from the waiting period requirements of the Shipping Act of 1984 and/or the approval requirements of the Shipping Act, 1916; 5 agreements not entitled to the Commission's exemption provisions were processed under the applicable statutory filing requirements; and 9 agreements were considered not subject to the Commission's jurisdiction. Six hundred and twenty-three terminal agreements were in effect at the end of the fiscal year.

The Commission is also charged with processing certain labor-management agreements pursuant to the Maritime Labor Agreements Act of 1980 (P.L. 96-325, 94 Stat. 1021). This 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 1988, 3 labor-management agreements of this type were filed.

During fiscal year 1988, the Commission continued its moratorium on the assessment of penalties against certain unfiled terminal service agreements. Resumption of potential enforcement activities is pending completion of a

fact-finding investigation to determine whether such agreements are subject to the Commission's jurisdiction and, if so, whether they should be exempt from filing requirements. The fact finding in question, Fact-Finding Investigation No. 17, was still in progress at the end of the fiscal year.

The Bureau also initiated a monitoring and surveillance program regarding all existing terminal agreements on file with the Commission.

(b) Terminal Tariffs

The Bureau carried out its responsibilities with respect to terminal tariffs by reviewing 4,216 terminal tariff pages filed during fiscal year 1988. At the end of the fiscal year there were 399 terminal tariffs on file with the Commission.

During fiscal year 1988, the Bureau achieved satisfactory compliance with the Commission's rule prohibiting terminal tariffs from containing provisions that exculpate, obligate others to indemnify, or otherwise relieve marine terminal operators from liability for their own negligence. In a few cases, compliance efforts are still continuing.

The Bureau's efforts to remove inactive terminal tariffs from the Commission's files resulted in the cancellation of 13 inactive tariffs by Commission Order, effective May 25, 1988. An additional 70 tariffs applying to exempted bulk commodities or forest products were cancelled and/or removed from the active tariff files at the request of the tariff publishers. Also, in fiscal year 1988, a tariff filing enforcement program prompted the filing of three terminal tariffs. The Bureau is in the process of performing a complete review of all terminal tariffs in the Commission's files.

5. 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 exports. Ocean freight forwarders receive a fee from the exporter for handling an export shipment as well as compensation from the ocean carrier whose vessel is selected to carry the cargo.

Congressional findings in 1961, focusing on malpractices within the ocean freight forwarding 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 licensed 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 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 of a forwarder 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 statute, the basic licensing requirements remain essentially in place. However, the prohibition against export shippers receiving a license has been eliminated, i.e., they no longer have to be "independent." Licensed forwarders are barred from collecting compensation from carriers on shipments in which they have a beneficial interest. Also under the statute, agreements by and among forwarders engaged in 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.

The Shipping Act, 1916, as amended, does not require persons operating as forwarders in the domestic off-shore trades of the United States to obtain a license to do so, nor are such entities required to file a surety bond.

During fiscal year 1988, the Commission received one hundred fifty-nine applications for ocean freight forwarder licenses, in addition to the forty-two applications pending from fiscal year 1987. One hundred and nine of these applications were approved; three were withdrawn during the processing stage; and forty-five incomplete applications were returned to the applicants. Forty-four applications were pending at the close of the fiscal year. Eighty-six previously-issued licenses were revoked, primarily due to the forwarder's failure to maintain a valid surety bond as required by statute.

In addition to applications for new licenses, in fiscal year 1988, the Commission received seventy-five applications requesting approval of license transfers and other

organizational changes. Twenty such applications were carried over from the previous fiscal year. Seventy-five of these requests were approved during fiscal year 1988. Seven requests were withdrawn by the applicants. Thirteen requested actions were pending at the close of fiscal year 1988.

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, fifty-nine investigative reports were received by the Bureau; with twelve reports pending review from fiscal year 1987. Forty-six 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. Eighteen cases were determined to require no formal corrective action. Seven reports were pending review at the close of fiscal year 1988.

Other activities during the year included:

- * The processing of 1,255 surety bond actions including new bonds, riders to bonds and cancellations of bonds;
- * The review and processing of 12 informal complaints concerning, in the majority of cases, the non-payment of freight charges by forwarders to carriers;
- * The issuance of 104 new licenses and the reissuance of 12 revoked licenses after new surety bonds were obtained;
- * The receipt of information about 34 claims, totaling in excess of \$352,000, that were filed against forwarder bonds.

During fiscal year 1987, the Commission acted on a Petition for Rulemaking filed by the National Customs Brokers and Forwarders Association of America, Inc. (NCBFAA) to amend six areas of the Commission's ocean freight forwarder rules (46 CFR Part 510). The NCBFAA petition was

denied in all respects. NCBFAA then filed a Petition for Reconsideration of the denial of its rulemaking request. Upon review, the Commission determined to reject the petition for reconsideration. The NCBFAA is currently seeking judicial review of the Commission's denial of its rulemaking request.

The Commission also had under review at the close of fiscal year 1987 a Petition for Declaratory Order filed by the Old Republic Insurance Co., the Surety Association of America, and the NCBFAA, to end a controversy and remove any uncertainty which might exist concerning the maximum potential liability of a surety under a freight forwarder bond. The issue to be decided was whether a surety's liability under a forwarder's bond is limited to the \$30,000 face amount of the bond or carries with it an open-ended liability to be derived by multiplying said face amount by the number of shipments, bills of lading, claims, occurrences, or periods covered by the bond. During fiscal year 1988, the Commission ruled that the maximum potential liability of a surety is limited to the face amount of the bond.

At the end of the fiscal year, there were 1589 licensed ocean freight forwarders, approximately 2% more than the total number of licensees at the close of fiscal year 1987.

6. Passenger Vessel Certification

The Commission is responsible for administering sections 2 and 3 of Public Law 89-777 (46 U.S.C. 817d and 817e), 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 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 factors such as 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 for its fleet under the casualty provisions at a level based on the passenger capacity of its largest vessel. The maximum amount with respect to performance is \$10 million (except as a self-insurer which could require a greater amount).

The certificates must be presented to 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 will refuse clearance of a vessel if it does not have proper certificates on board, or until such time as the Commission confirms compliance with the law.

During fiscal year 1988, the Commission received 93 applications for passenger vessel certificates. Of these, 22 were new applications for performance certification, 21 were new applications for casualty certification, and 50 were applications for amendments to existing certificates.

At the close of fiscal year 1988, 32 applications were pending. Holders of passenger vessel certificates have filed with the Commission evidence of financial responsibility in excess of \$220 million for performance certification and \$1 billion for casualty certification.

7. Automated Database Systems

The Bureau of Domestic Regulation maintains several automated database systems. These are: (1) the service contract system; (2) the regulated persons index; (3) the tariff profile system; (4) the microfiche system and (5) the ocean freight forwarder system. The service contract system provides certain key service contract data, such as geographics, shipper names, commodities and rates. The regulated persons index assigns a discrete number to each person the Commission regulates and provides their address and business name. The tariff profile system lists key data contained in tariffs on file with the Commission. The microfiche system provides a means of locating cancelled tariffs which have been microfiched. The ocean freight forwarder system provides pertinent data necessary for the tracking of licensees, including surety bond information.

During fiscal year 1988, the Bureau began to develop another automated system for its terminal agreement filing activity. Primary data connected with 367 terminal agreements has been compiled, thus far, and database programming is nearly completed.

8. Shippers Associations

The Shipping Act of 1984 recognized 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 the carriers and conferences negotiate with shippers' associations. It also

provides that 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 1988, 52 service contracts were filed involving 22 shippers' associations. Since the Shipping Act of 1984 became effective, a total of 31 shippers' associations have entered into a total of 156 service contracts with certain carriers and conferences.

9. Financial Analysis

The Bureau of Domestic Regulation 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 domestic offshore waterborne commerce of the United States. The Bureau also provides technical assistance to other activities within the Commission, e.g., in fiscal year 1988, the Bureau provided financial advice to Commission attorneys with respect to a formal Commission proceeding involving terminal charges.

The Bureau 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.

During the year, the Bureau reviewed two general rate increases filed in the U.S. Virgin Islands Trade and one general rate increase in the Alaska Trade. The Bureau was also involved in an inquiry into a proposed rate increase in the Guam Trade, which was subsequently withdrawn. One such increase was withdrawn, while another was never filed.

Financial expertise is also provided with respect to the passenger vessel certification program. During fiscal year 1988, a full on-site audit was conducted for unearned passenger vessel revenue collected by one passenger vessel operator.

Accounting assistance was provided to the Bureau of Hearing Counsel in connection with its enforcement program and litigation activities.

10. Support Activities

The Bureau of Domestic Regulation acts as one of the primary information and data sources for other Commission activities and programs.

Investigative activities require substantial tariff research and supporting documentation which is provided by Bureau staff. Automated data bases, such as the regulated persons index and service contract system, are utilized for initial data identification purposes and actual hard copy of relevant material is retrieved and provided to the Bureau of Investigations and/or the appropriate field office.

The Commission's field offices are also provided with general data lists of regulated persons situated in specific field office jurisdictions. This data assists not only with investigative efforts, but serves localized public needs for information concerning Commission regulated industries.

During the past fiscal year, the Bureau has also supported the Commission's Section 18 Five-Year Study of the effects of the Shipping Act of 1984 by providing the raw tariff rate data which is tracked to study pricing behavior in the liner shipping industry.

Exercise of the Commission's section 19 authority to respond to complaints concerning discriminatory actions by foreign flag carriers and governments in the U.S. liner trades is contingent upon identification of appropriate foreign operators in a particular trade. The Bureau has assisted in this capacity during fiscal year 1988 in cases involving Taiwan and Peru.

11. Rulemaking and Docketed Proceedings

The Bureau initiates or supports formal rulemakings and Commission docketed proceedings. During fiscal year 1988, the Bureau was involved with: Docket No. 88-7, Service Contracts - "Most-Favored-Shipper" Provisions, to amend service contract regulations to prohibit clauses referencing rates of other carriers and conferences; Docket No. 85-19, Tariff Publications of Free Time and Detention Charges Applicable to Carrier Equipment Interchanged with Shippers and Their Agents, to require the publication of terms and conditions governing the use of carrier provided equipment; and Docket No. 87-12, Declaratory Order in the Matter of Maximum Potential Liability in Independent Ocean Freight Forwarder Bonds, to fix the surety's total maximum liability under an independent ocean freight forwarder bond; Docket No. 88-16, Proposed Rulemaking to Permit Correction of Administrative or Clerical Errors in Service Contracts, to permit the modification of service contracts under specific circumstances. The Bureau also participated in Fact Finding Investigation No. 17, Rates, Charges and Services Provided at Marine Terminal Facilities, to determine the Commission's jurisdiction over certain marine terminal industry practices.

The Bureau was involved with petitions for rulemaking concerning truck detention filed by the Waterfront Rail Truckers Union, the California Trucking Association, and the Bi-State Harbor Carriers Conference of the New Jersey Motor Trucking Association, all of which were denied by the Commission.

H. BUREAU OF ECONOMIC ANALYSIS

1. General

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

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 ocean shipping industry;
- * Coordinating the input of various industry study groups which were organized to assist the staff in gathering information and trade data for the Section 18 Study.
- * Organizing and coordinating the activities of the Section 18 Study Advisory Committee which was formed to receive, in a public forum, industry advice on the conduct of the five-year study;
- * Preparing financial and economic data and reports for use in overseeing the activities of carriers in the domestic offshore trades;
- * Preparing special reports on economic and financial developments in liner shipping; and
- * Providing information in response to Commission needs for economic, political, and policy information.

2. Section 18 Study

The Bureau's major project during FY 1988 was the continuing effort to fulfill the requirement for the collection and analysis of data required by section 18(a) and drafting the reports required by section 18(c) of the Shipping Act of 1984. A comprehensive review of the progress to date in this five-year study is set forth in the Chapter on the Section 18 Study.

3. Future Plans and Proposed Activities

The Bureau will concentrate its efforts next year on writing the various reports required by section 18. These include reports on the impact of the Act, the continuing need for tariff filing and enforcement, antitrust immunity for marine terminal operators and the advisability of adopting a tariff system based on volume and mass of shipment. These reports will be based in part on the responses received to the various industry surveys, information obtained from the Advisory Committee and analytical research.

A second meeting of the Section 18 Study Advisory Committee is also planned. It is expected that a major topic of discussion at this meeting will be various parties' views on the Act, and areas where they would like to see changes made.

I. BUREAU OF HEARING COUNSEL

The Bureau of Hearing Counsel participates as trial counsel in formal adjudicatory (docketed) proceedings, rulemaking proceedings when designated by Commission Order, and other proceedings initiated by the Commission. The Bureau's 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. Bureau attorneys also are designated Investigative Officers in non-adjudicatory formal proceedings.

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 legal 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 notice 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 1987, 47 investigations of possible violations prepared by the Bureau of Investigations were pending final resolution by the Bureau of Hearing Counsel. During fiscal year 1988, 49 new reports of possible violations were received from the Bureau of Investigations. Sixty-nine such cases were compromised,

settled, administratively closed, or referred for formal proceedings. As a result, 27 investigations of possible violations were pending resolution by the Bureau of Hearing Counsel as of September 30, 1988.

During fiscal year 1987, the Bureau participated in the compromise or assessment of \$2,360,500, as set forth in Appendix E.

At the close of fiscal year 1987, the Bureau was party to 12 formal proceedings. During the year, the Bureau participated in 4 new formal proceeding, and 7 proceedings in which the Bureau was participating were completed. Accordingly, the Bureau was party to 9 formal proceedings on September 30, 1988.

On September 30, 1987, 26 requests for legal advice were being analyzed by the Bureau. During the year, 83 new requests were received and 61 legal advice projects were completed. Accordingly, responses to 48 requests for legal advice were being prepared at the close of the fiscal year.

During fiscal years 1984 and 1985, a new operating plan was developed for the Bureau. This plan, fully implemented in fiscal years 1986 and 1987, enhanced the Bureau's functions as legal advisor to the Commission staff by providing for closer coordination with other bureaus and offices. This operating plan was further refined and implemented during fiscal year 1988. As a consequence of the continued effectiveness of this operating plan and the Bureau's role in the Commission's enhanced enforcement program, it is anticipated that there will be a marked increase in all areas of Bureau activity in the next several fiscal years.

J. Bureau of Investigations

The Bureau of Investigations monitors the activities of ocean common carriers, non-vessel-operating common carriers, freight forwarders, passenger vessel owners and operators, and ports and terminals, as an integral part of the Commission's responsibility for the regulation of U.S. ocean commerce. The Bureau performs this function to ensure compliance with the statutes and regulations administered by the Commission and conducts investigations of alleged violations. These violations can include, but are not limited to, the following:

- * Carrier and shipper malpractices, such as illegal rebating 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.

The Bureau maintains a staff of 40 personnel located in the Headquarters Office in Washington, D.C., and District Offices in the major port cities of Houston, Los Angeles, Miami, New Orleans, New York, San Francisco and Hato Rey, Puerto Rico. In addition to representing the Commission within its assigned jurisdiction, each District Office is responsible for: (1) monitoring the activities of the shipping industry to ensure compliance with the U.S. Shipping Acts and investigating alleged violations, (2) providing liaison with the shipping industry and the general public, and (3) assessing industry-wide conditions for the Commission.

The Bureau focused its resources in fiscal year 1988 on the identification and investigation of industry malpractices, with a special emphasis on the major trade routes. As a result, several enforcement initiatives were developed, including investigations into malpractices in the Pacific and Central American trades and continued surveillance in the Trans-Atlantic trades.

A forty-one percent increase in enforcement actions was realized in fiscal year 1988, as a result of the emphasis placed on the major malpractice programs. The Bureau conducted 163 investigations and special inquiries, of which 65 were forwarded to the Bureau of Hearing Counsel for enforcement action. (See Chapter III.)

A total of 65 surveillance matters were conducted in fiscal year 1988, including audits of selected service contracts, freight forwarder compliance checks, and audits of non-vessel-operating common carriers. The Service Contract Surveillance Program will be expanded in fiscal year 1989 with an increased number of service contracts being forwarded to the District Offices for audit.

Bureau resources in fiscal year 1989 will continue to be directed toward malpractice programs in the major trade routes and the enhancement of the Non-Vessel-Operating Common Carrier Audit Program.

In fiscal year 1988, the Bureau initiated hiring actions to increase the number of investigative personnel in the Houston, Los Angeles, New York and Puerto Rico District Offices. The total number of Bureau personnel is anticipated to increase to 50 in fiscal year 1989.

The Commission's District Offices and the Customs Regional Offices continued to coordinate closely on investigative matters of joint concern, as a part of the 1986 Memorandum of Understanding (MOU) between the two agencies. This coordination primarily involved the sharing of industry intelligence and investigative information, and the development of important leads. Part of the focus of fiscal year 1988 activities was the development of a system

whereby Commission investigators may access information filed by the shipping industry in Custom's Automated Commercial System (ACS). The senior investigative staff participated in an orientation on the utilization of Custom's ACS in investigations. In fiscal year 1989, both agencies will complete a two-year review of the MOU in an effort to expand upon the current agreement of mutual support.

The investigative staff continued to participate in the White Collar Crime Training Program at the Federal Law Enforcement Training Center (FLETC), in Glynco, Georgia. In addition to improving the investigators' skills in fraud detection, the Program provided an opportunity for them to discuss investigative strategies and techniques with guest lecturers and investigators from other Federal law-enforcement agencies. In fiscal year 1989, the Commission will send its new investigators through FLETC's new two-week course which provides a basic introduction to investigations, and will send select journeymen investigators through a similar two-week course on the subject of investigations in an automated environment.

The industry expert, hired in September 1987, continued to provide technical assistance to the Bureau through August 1988. He provided the investigative staff with otherwise unavailable expertise and guidance in the planning, coordination, and evaluation of the Bureau's target malpractice program in the Pacific trades.

At the beginning of fiscal year 1988, there were 190 field investigations and surveillance matters in progress. During the year, 228 new investigations and surveillance matters were initiated, providing 418 cases on hand and scheduled for inquiry. Completed investigations and surveillance activities totaled 231, leaving 187 cases pending at the end of the fiscal year. Appendix F summarizes the Bureau of Investigations' activities.



K. BUREAU OF ADMINISTRATION

The Bureau of Administration is responsible for the direct administration and coordination of the:

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

Many of the functions and achievements of the Bureau of Administration are reflected in the narratives for these Offices.

In fiscal year 1987, the Office of the Bureau Director was assigned responsibility for coordinating the procurement of the Commission's ATFI system. In fiscal year 1988, the following major accomplishments were achieved: (1) submission of a Commission-approved, Benefit-Cost Analysis to the Office of Management and Budget; (2) acquisition of procurement authority from the GSA; (3) a Notice of Inquiry proceeding on the proposed functionality of the ATFI system, which generated comments from the shipping and information industries, and which resulted in a Commission report in April 1988; (4) issuance of a draft Request for Proposals (RFP) to over 125 potential offerors on the bidders' list; and (5) conduct of a presolicitation conference, at which over 200 questions from potential offerors were answered.

In fiscal year 1989, the Commission plans to issue a second draft, and then a final Request for Proposals to 200 bidders, and will award a contract to the successful offeror, enabling the major phases of the ATFI system to be implemented. These include design, development, and operation as a prototype system, with the assistance of volunteers from the shipping industry. Full operation of the system is expected to begin in fiscal year 1990.

The Office of the Director coordinated and edited the Commission's 26th Annual Report to Congress and assisted in the preparation of the Commission's comments to Congress on the codification of Title 46, United States Code.

The Director is the Commission delegate to the Administrative Conference of the United States; Agency Contact for FEMA; and Commission representative, as Principal Management Official, to the Small Agency Council. Additionally, the Director is the Executive Secretary and Committee Management Officer of the Commission's Section 18 Study Advisory Committee, which met once in fiscal year 1988, and is expected to meet again in fiscal year 1989 and thereafter.

1. Office of Administrative Services

(a) General Office Responsibilities

The Office of Administrative Services directs and administers a variety of management services functions that principally provide administrative support to the regulatory program operations of the Commission. The Director of the Office 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.

(b) Office Program Objectives

The program objectives of the Office of Administrative Services are to:

- * Execute Commission contracts and administer these and any other procurement matters which obligate the Government to expenditures of funds;
- * Control and administer the Commission's acquisition, utilization, inventory, maintenance, and disposition of property;
- * Develop and coordinate a comprehensive telecommunications program for Washington headquarters and at all Commission field offices, which includes installation and maintenance of all telecommunications equipment and features;
- * Administer programs for improvement of the workplace environment and other space utilization operations for headquarters and field locations, which include planning; negotiating; drafting and interpreting architectural drawings and specifications; and assigning space to and providing furnishings for offices;
- * Manage the receipt, storage, issuance and inventory of all supplies, forms and accessories required in support of Commission operations;
- * Coordinate and control all printing, duplicating, copying, and graphic services, whether provided in-house or by outside sources;
- * Regulate receipt, distribution and dispatching of mail;
- * Coordinate the use of the building's physical facilities at headquarters with respect to maintenance, security and parking;
- * Arrange for transportation services for all Commission locations;
- * Conduct safety inspections and coordinate the Commission's emergency evacuation program;
- * Manage the retention, transfer, and disposal of Commission records; and
- * Direct the Commission's participation, development and goal setting under the Small Business Act.

(c) Major Office Achievements

During fiscal year 1988, the Office of Administrative Services:

- * Developed a comprehensive staff project and assignment(s) tracking system for providing office services to all Commission elements.
- * Solicited requests for quotations (RFQ) and finalized award for reporting services contract.
- * Upgraded the Commission's telexing and teletype messaging system.
- * Established a facsimile messaging system for Commission-wide use, including field elements.
- * Coordinated the printing, distributing and mailing of the initial Automated Tariff Filing and Information System's (ATFI) draft request for proposal (RFP).
- * Automated the office's administrative supply inventory process.
- * Directed a study of Headquarters space utilization in connection with our building's lease renewal through the General Services Administration.

(d) Office Prognosis

In fiscal year 1989, the office plans to conclude the initiatives begun in fiscal year 1988 regarding (a) office structure and staffing; (b) automation of our property inventory and supply requisitioning systems; (c) computerizing our purchase order procurement process; (d) establishing an FMC Ridesharing program; and (e) renovation/relocation of our District Offices in New York, Los Angeles and Houston.

2. 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 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. The Office also administers internal controls 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;
- * Assist management in ensuring that resources are used properly to avoid fraud, waste, error, and abuse;
- * Process travel orders and vouchers within established time limits;
- * Review internal controls and accounting procedures to ensure that they conform to existing regulations, and develop procedures to correct deficiencies; and
- * Administer the Commission's Imprest Fund program.

(c) Achievements

During fiscal year 1988, the Office of Budget and Financial Management:

- * Collected and deposited \$2,598,290 from user fees, fines, collections, freight forwarder licensing and vessel certification fees;
- * Provided the Cash Management Division of the Department of Treasury with data on the agency's participation in the electronic funds transfer of employee paychecks and allotments as well as the agency's participation in the Diner's Club Credit Card System for the third and fourth quarters of the year;
- * Established a policy for the quarterly verification of Agency imprest funds by disinterested individuals as required by Treasury guidelines;
- * Completed a reporting system that improves the Commission's fund control capabilities. Monthly computer reports are provided by the Federal Home Loan Bank Board depicting budgeting and accounting data by program and object class. The data is also accessed daily through a communications data link with FHLBB, providing timely funding information;
- * Prepared Merit Pay and award calculations;
- * Coordinated and prepared budget justifications and estimates for the fiscal year 1989 Congressional budget and the fiscal year 1990 budget to OMB;
- * Participated in OMB and Congressional budget hearings;
- * Managed the Commission's travel program;
- * Participated on agency task forces both for the establishment of a Physical Fitness Center at Headquarters, and the tariff automation project;
- * Provided management with monthly status reports on workyears, funding, travel and receivables;
- * Transferred depository services to the bank that was awarded the Treasury General Account by the Financial Management Service of the Department of Treasury;
- * The Director, Office of Budget and Financial Management, was appointed the Chief Financial Officer.
- * Established a Notary Public for the Agency;
- * Reviewed and updated financial management and accounting control procedures to ensure compliance with OMB, GAO and Treasury guidelines; and
- * Assisted the Federal Home Loan Bank Board in producing the Prompt Payment Report to OMB for 1988.

3. Office of Personnel

The Office of Personnel plans and administers personnel management programs, including recruitment and placement, training, position classification and pay administration, occupational safety and health, employee counseling services, employee relations, performance appraisal, incentive awards, and retirement. The Director of the Office of Personnel reports to the Director, Bureau of Administration. Significant achievements during fiscal year 1988 are outlined below.

(a) Program Development

The Office was assigned responsibility for management of the Commission's training program at mid-year and immediately initiated a major overhaul of the entire program. A Training Advisory Council was established with membership comprised of the Training Officer, Training Coordinators representing the major bureaus and offices, the EEO Director, and others. The Council developed training plans and identified common training needs throughout the agency. These training needs were met by a major redirection of training policy from off-site to on-site training. Approximately 130 instances of on-site and 125 instances of off-site training were provided to Commission employees by the end of the fiscal year. Additionally, a cooperative training arrangement was negotiated with the Federal Trade Commission which worked to the mutual benefit of both agencies and a proposal for a Management Development Program was submitted to the Executive Resources Board for review.

A massive program was conducted by the Office to implement the new Federal Employees Retirement System (FERS) and advise employees of both last minute changes to the system contained in deficit reduction legislation, and the belated election opportunity through June 30, 1988. The Office successfully conducted two Thrift Savings Plan (TSP) Open Seasons, which resulted in a high participation rate of over 50%.

The Office prepared a comprehensive agency drug-free workplace program which was submitted to the Interagency Coordinating Group for review and approval, and worked with the Budget Office to prepare cost estimates for the program which were submitted to OMB. In connection with this program, the Office updated the Commission's list of sensitive positions.

New Commission Orders issued by the Office included Guidelines for Dismissal and Leave Treatment of Employees During Emergency Situations, and Workforce Discipline and Adverse Actions. Commission Orders were completed on the Annual Leave Transfer Program and the Performance Management System Including Senior Executive Service (SES) Performance Appraisal System and OPM approval of the plan was secured. Commission Orders on Management Development Program and Occupational Safety and Health were drafted.

Program development efforts currently under way include a revised order on Time and Attendance. A policy statement on AIDS was prepared and issued during the year.

(b) Recruitment and Placement

Having concluded the largest concentrated recruitment effort since 1978, the personnel staff worked closely with management officials to maintain staffing at authorized levels. Close coordination with the Managing Director's Office, Budget Office, and selecting officials, as well as careful monitoring of turnover and the quick advertising and filling of vacancies, was essential to this effort to maximize workyears available to the Commission. During the year, the Commission maintained its high standing among all agencies in percentage of employees with targeted disabilities and offered special salary rates to clerical employees in Washington, D.C., New York, Florida, and California.

The Office worked closely with the Executive Resources Board to effect the appointment of two senior executives and provide guidance on appropriate pay rates and bonuses. The

Office also sponsored a summer youth employment program providing employment for six youths. An orientation session was held for participants as well as training programs on motivation and drug awareness.

(c) Employee Relations

The Office implemented a new counseling services contract for Headquarters and advised supervisors and employees of the services provided by the new contractor. This confidential, voluntary program makes professional counseling and assistance available to employees at no charge.

The Office also monitored the implementation of new counseling services contracts in Miami, Los Angeles, and San Francisco; and sponsored numerous wellness programs including seminars on dealing with problem employees, time management, AIDS, assertiveness in the workplace, taxes, etc. Employees were polled to determine their preferences as to topics for seminars. A bi-monthly counselling services newsletter was distributed to all employees.

Arrangements were made for interested employees nearing retirement to participate in a week-long retirement planning program held by the Federal Aviation Administration at no cost to the Commission. The Office also conducted a Health Benefits Open Season; sponsored the Annual Employee Health Fair, and made the Check Book Health Benefits guide available to employees at no charge.

The Office worked closely with the Red Cross to improve agency participation in the blood donor program by establishing a system of coordinators within each bureau and office. These coordinators were trained in the latest techniques to encourage blood donations. Two on-site blood drives were held.

The Office continued to advise supervisors concerning their responsibilities in the areas of employee conduct and performance, including the granting of within-grade

increases and awards, and correcting discipline and other problems as described in the new Commission Order on Workforce Discipline. 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 publication of an agency newsletter.

(d) Training

The following on-site training programs were offered to agency employees during the year: Salute to Secretaries Reception and Letter Writing Workshop; Critical Thinking Course Preview for Supervisors; Critical Thinking Course; Effective Writing Course Preview for Supervisors; Effective Writing Course; and a Proofreading Course. In addition, new procedures were put in place to speed the approval of training requests and follow up, once the training was completed, to obtain and review course evaluations and assure prompt payment.

The Office also arranged for two SES candidates to participate in OPM's Young Executive Program.

(e) Position Classification and Pay Administration

The major recommendations contained in a comprehensive study of the Commission's grade structure were implemented during the year. In addition, efforts were made to expedite the processing of promotion requests.

(f) Performance Appraisal

During the year, SES, PMRS, and non-PMRS performance appraisal milestones were charted and issued to all employees and supervisors; reminder memos and instructions covering mid-year progress reviews, performance appraisals, and the preparation of new performance plans were prepared

and issued on schedule. A plan for the payment of PMRS performance awards for the FY 88 appraisal cycle was prepared jointly by the Personnel Office and the Office of Budget and Financial Management. All performance awards were timely. On-site audits of mid-year progress reviews were conducted as well as audits to determine that all employees had a position description and performance standards.

(g) Incentive Awards

The Office continued to administer the Commission's Incentive Awards Program in a timely fashion. This included: prompt action on internal awards; successful efforts to revitalize the Employee of the Month Award; and the nomination of several employees for external awards (e.g. an SES rank award; the Arthur S. Flemming Award; and a handicapped employee award). In addition, the Office launched a campaign to promote the suggestion program and encourage employees to make greater use of the program.

(h) Program Evaluation

Extensive preparation by the Office for an on-site OPM review of the SES program resulted in a close-out session very favorable to the Commission's program. This review did not result in a written report or any recommended corrective actions.

4. Office of Special Studies

The Office of Special Studies is responsible for management analysis activities; provides leadership and guidance for the agency's information resource management efforts; supports the tariff automation effort; and is responsible for energy and environmental impact studies.

(a) Information Resources Management Function

The Information Resources Management function provides automation planning and coordination of the information management efforts of the Commission. Accordingly, the Office has provided constant technical advice and assistance on the tariff automation project.

During fiscal year 1988, plans for utilization of computer hardware, software, and developing databases for transferring of information between PC and NCR wordprocessing software and networking were refined, and evaluation of automation efforts continued. These specific efforts will continue in fiscal year 1989. Additional studies will help to determine additional opportunities for automating labor-intensive operations wherever possible throughout the Commission.

During fiscal year 1989, the Commission will continue with information resources management strategies that will further refine and develop efficient, effective, and economical use of information management principles, systems, and guidelines.

The Office operates a program to assist agency employees in becoming computer literate and develops formal on-site training courses in microcomputer operations and applications software development. Headquarters employees continue to participate in the computer literacy training curriculum which includes computer-based instruction, hands-on training, and coaching in microcomputer operations. Those efforts will be continued during fiscal year 1989 as additional computer-based instructional courses become

available and District Office employee training is started. The Office provides on-call hardware and software troubleshooting services. The Office has also developed programming capabilities to support the efforts of operating offices and will continue its software research and evaluation activities.

(b) Management Analysis Program

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

(c) Environmental and Energy Program

The Office ensures Commission compliance with the National Environmental Policy Act of 1969 and the Energy Policy and Conservation Act of 1975. These duties and responsibilities are to: (1) examine all Commission actions to determine whether the Commission's decisions will have a significant impact upon environmental quality or energy consumption; (2) issue environmental assessments and impact statements, when appropriate; and (3) recommend to the Commission regulatory strategies which are consistent with national environmental goals or designed to promote energy efficiency and conservation.



APPENDIXES





APPENDIX B

COMMISSION PROCEEDINGS -- FISCAL YEAR 1988

Formal Proceedings

Decisions.....	10
Reconsiderations.....	1
Discontinuances & Dismissals.....	12
Not Reviewed.....	4
Remanded.....	3
Referred to ALJ.....	1
Rulemakings - Final Rules.....	9

Total.....40

Special Dockets.....90

Informal Dockets.....19

Oral Arguments.....2

APPENDIX C

**CARRIER AGREEMENT FILINGS AND STATUS
FISCAL YEAR 1988**

Carrier Agreements Filed in FY 1988
(including modifications)

Foreign and Domestic Commerce.	353
	<u>353</u>

Agreements Processing Categories in FY 1988

Forty-Five Day Review.	214
Shortened Review	66
Exempt-Effective Upon Filing	91
Rejection of Filing.	1
Formal Extension of Review Period	0
Approved Under Shipping Act, 1916	1
	<u>373</u>

Carrier Reports Submitted for Commission Review

Shippers' Request and Complaints	56
Minutes of Meetings	1103
Pooling Statements	10
Operating Reports	8
Index of Documents	220
Consultations	57
	<u>1454</u>

Carrier Agreements on File as of September 30, 1988

Conference	71
Interconference	16
Pooling & Equal Access	22
Joint Service	31
Sailing & Charter	96
Cooperative Working, Agency, & Equipment Interchange	69
	<u>305</u>

APPENDIX D

**TARIFF AND TERMINAL AGREEMENT
FILING AND STATUS - FISCAL YEAR 1988**

Tariff Filings (Pages)

Foreign Filings.....	702,101
Domestic Filings.....	8,823
Terminal Filings.....	4,216
TOTAL.....	715,140

Tariff Publications

Foreign:	On Hand 10/1/87.....	4,530
	On Hand 10/1/88.....	4,399
Domestic:	On Hand 10/1/87.....	320
	On Hand 10/1/88.....	317
Terminals:	On Hand 10/1/87.....	487
	On Hand 10/1/88.....	399

Special Permission Applications

Total Received - Foreign.....	163
Granted.....	132
Denied.....	29
Withdrawn.....	2
Total Received - Domestic.....	27
Granted.....	24
Denied.....	2
Withdrawn.....	1

Investigation and Suspension Memoranda

Domestic:	
Completed.....	3
Pending.....	0

Service Contracts

Filed.....	4,696
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Terminal Agreements

Total Received.....	242
On Hand 10/1/87.....	518
On Hand 10/1/88.....	623

APPENDIX E

**Civil Penalties Compromised or Assessed
Fiscal Year 1988**

A. P. Moller-Maersk Line.....	\$10,000.00
Air Land Forwarders, Inc.....	10,000.00
American Export Produce.....	20,000.00
Baton Rouge Marine Contractors, Inc.....	195,000.00
Bermuda Ocean Shipping Services, Inc.....	12,000.00
Cal-West Produce Enterprises, Inc & Sequoia Forwarders Co.....	55,000.00
CMB, N.V.....	300,000.00
Crowley Caribbean Transport, Inc.....	75,000.00
E. Chow Company Inc. & Chung Kee (USA) Inc.....	45,000.00
EAC Lines Transpacific Services Ltd.....	5,000.00
EOS Trading Co.....	7,500.00
Evergreen Marine Corp.....	133,333.33
Exploration Cruise Lines, Inc.....	5,000.00
F. J. McCarty Co., Inc.....	12,500.00
Fresh Western Marketing Inc.....	35,000.00
Golden Frog Investment Corporation.....	10,000.00
Great Oriental Corp.....	150,000.00
Greater Baton Rouge Port Authority.....	7,000.00
Hanstai International, Inc.....	2,500.00
Hoegh Lines.....	10,000.00
Impex Services Inc.....	35,000.00
Lux Chemical Corporation.....	5,000.00
Lykes Bros. Steamship Co., Inc.....	275,000.00
Mediterranean/USA Freight Conference.....	40,000.00
National Food Corp.....	35,000.00
Nexos Lines, Inc.....	80,000.00
Ocean Star Container Line, A.G.....	35,000.00
Orient Overseas Container Line, Inc.....	133,333.33
Pan American Container Corporation.....	30,000.00
Pandol Bros. Inc.....	35,000.00
Paramount Export Co.....	45,000.00
Rainier Overseas, Inc.....	10,000.00
Ryan-Walsh, Inc.....	3,000.00
Sesko International, Inc.....	1,000.00
Sesko Marine Trailers, Inc.....	1,000.00
Sunset Produce Co., Inc.....	100,000.00
T.W. International Inc.....	4,000.00
Transportacion Maritima Mexicana, S.A. de C.V. (Mexican Lines).....	190,000.00
United Fruits (Calif.) Corp.....	20,000.00
Vencaribe, C.A.....	10,000.00
Vernon Calhoun Packing Company.....	10,000.00
Yamashita-Shinnihon Steamship Co. Inc.....	30,000.00
Yangming Marine Transport.....	<u>133,333.33</u>

TOTAL CIVIL PENALTIES COMPROMISED
OR ASSESSED

\$2,360,499.99

APPENDIX F

FIELD INVESTIGATIONS -- FISCAL YEAR 1988

	<u>Surveillance Actions</u>	<u>Other</u>	<u>TOTAL</u>
Pending 10/7/87	90	100	190
Opened FY 1988	65	163	228
Closed FY 1988	114	117	231
Pending 9/30/88	41	146	187

APPENDIX G

**STATEMENT OF APPROPRIATIONS, OBLIGATIONS AND RECEIPTS
FOR THE FISCAL YEAR ENDED SEPTEMBER 30, 1988**

Appropriations:

Public Law 100-202, approved December 22, 1987: 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 therefor, 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.....\$13,585,000

Obligations and Unobligated Balance

Net obligations for salaries and expenses for the fiscal year ended September 30, 1988.

\$13,585,000

Statement of Receipts: Deposited with the General Fund of the Treasury for the Fiscal Year Ended September 30, 1988:

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

Applications..... \$142,685

Fines and penalties..... 2,455,605

Total general fund receipts \$2,598,290

APPENDIX H

TRADE: U.S. West Coast to Japan
COMMODITY: Beef - ITEM NUMBER: 1051000

INFORMATION ABOUT CARGO MOVEMENTS BY TARIFF ARRANGEMENTS

For the commodity listed above, please indicate the approximate percentage of the conference traffic in that commodity which moved under each of the following tariff arrangements during 1986:

 0 % by port-to-port conference tariffs
 30 % by single-factor through-rates
 70 % by service contracts

BRIEF EXPLANATIONS

Single-factor through-rates include movements by port to point, point to port, and point to point, but do not include intermodal movements by service contract.

Unless the percentages shown above for single-factor through-rates and service contracts are 5% or less, additional information is requested on the accompanying sheets.

Similar information will be requested for 1987, 1988, and part of 1989.

APPENDIX I

TRADE: U.S. West Coast to Japan
 COMMODITY: Beef - ITEM NUMBER: 1051000

QUESTIONS ABOUT SERVICE CONTRACTS

1. Between which points or ports did MOST of the service contract cargo carried by conference members move during 1985 for the commodity shown above?

1986

From WEST COAST to JAPAN BASE PORTS

2. Approximately what percentage of the conference total for service contract cargo in this commodity does the answer to question 1 represent?

76 %

3. On the basis of the geographical points established in question 1 as indicative of MOST of the conference service contract shipments for the commodity shown above, under what rates did that cargo move during each quarter of 1985?

1986

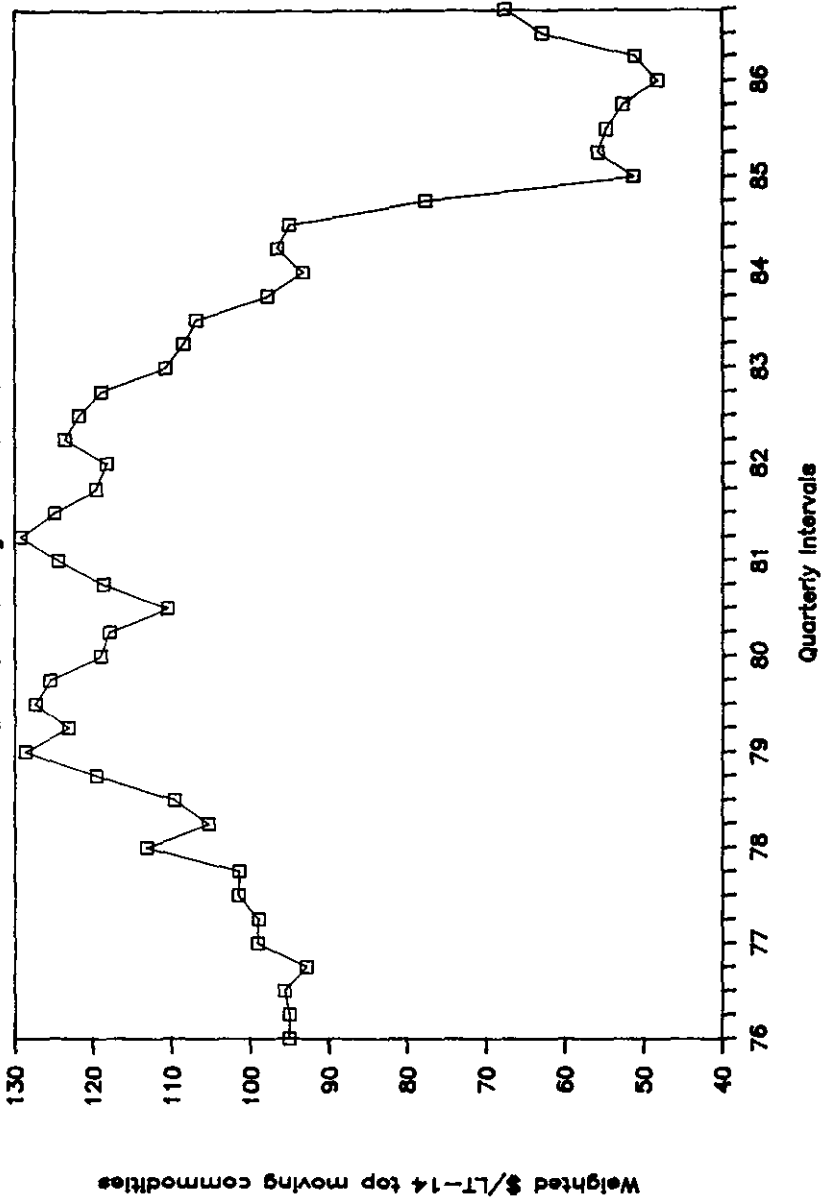
	1st qtr.	2nd qtr.	3rd qtr.	4th qtr.
Rate	\$ <u>120</u>	\$ <u>120</u>	\$ <u>120</u>	\$ <u>120</u>
Rate unit	<u>wt</u>	<u>wt</u>	<u>wt</u>	<u>wt</u>
CAF/rate unit	\$ <u>n/a</u>	\$ <u>n/a</u>	\$ <u>n/a</u>	\$ <u>n/a</u>
BAF/rate unit	\$ <u>n/a</u>	\$ <u>n/a</u>	\$ <u>n/a</u>	\$ <u>n/a</u>
<u>cv</u>	\$ <u>n/a</u>	\$ <u>n/a</u>	\$ <u>n/a</u>	\$ <u>n/a</u>
<u> </u>	\$ <u> </u>	\$ <u> </u>	\$ <u> </u>	\$ <u> </u>

(The last two lines are for addons -- please specify.)

APPENDIX J

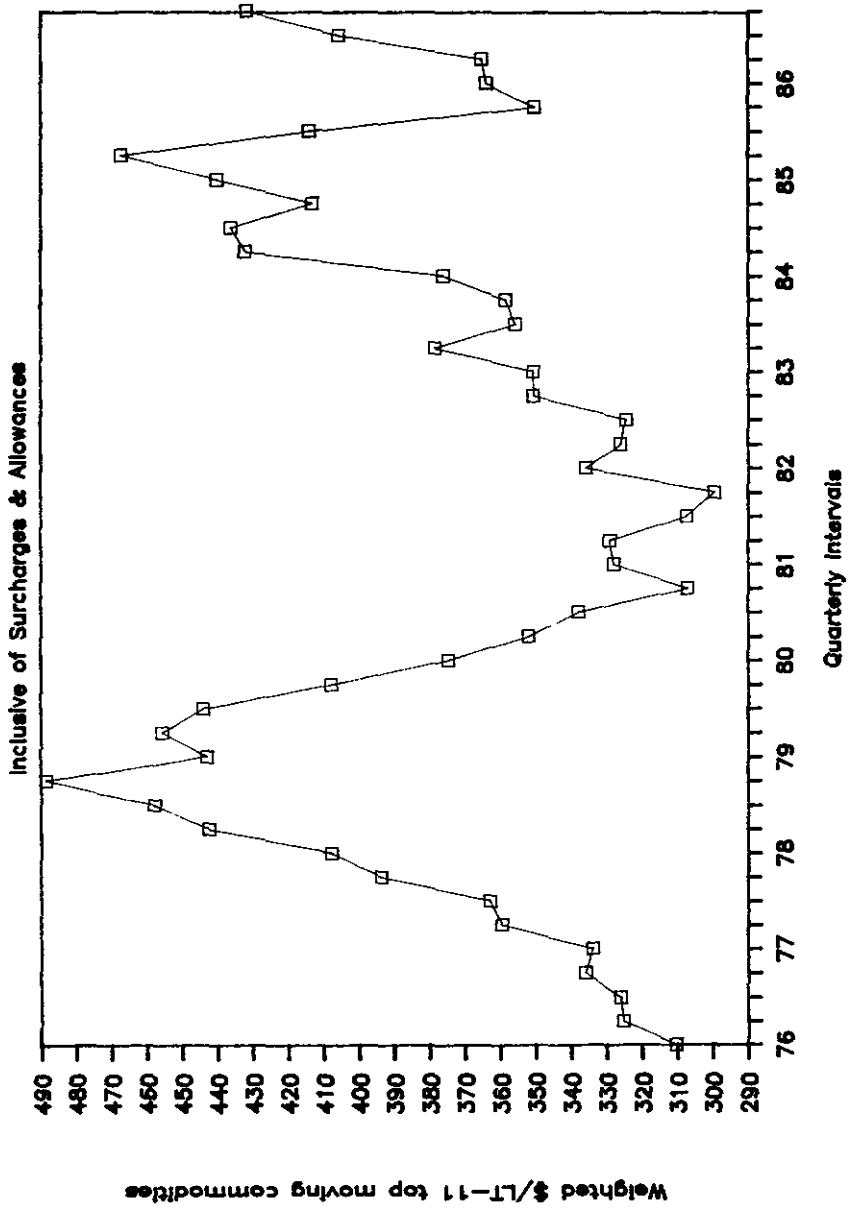
PWC/TWRA USWC to Japan

Inclusive of Surcharges & Allowances



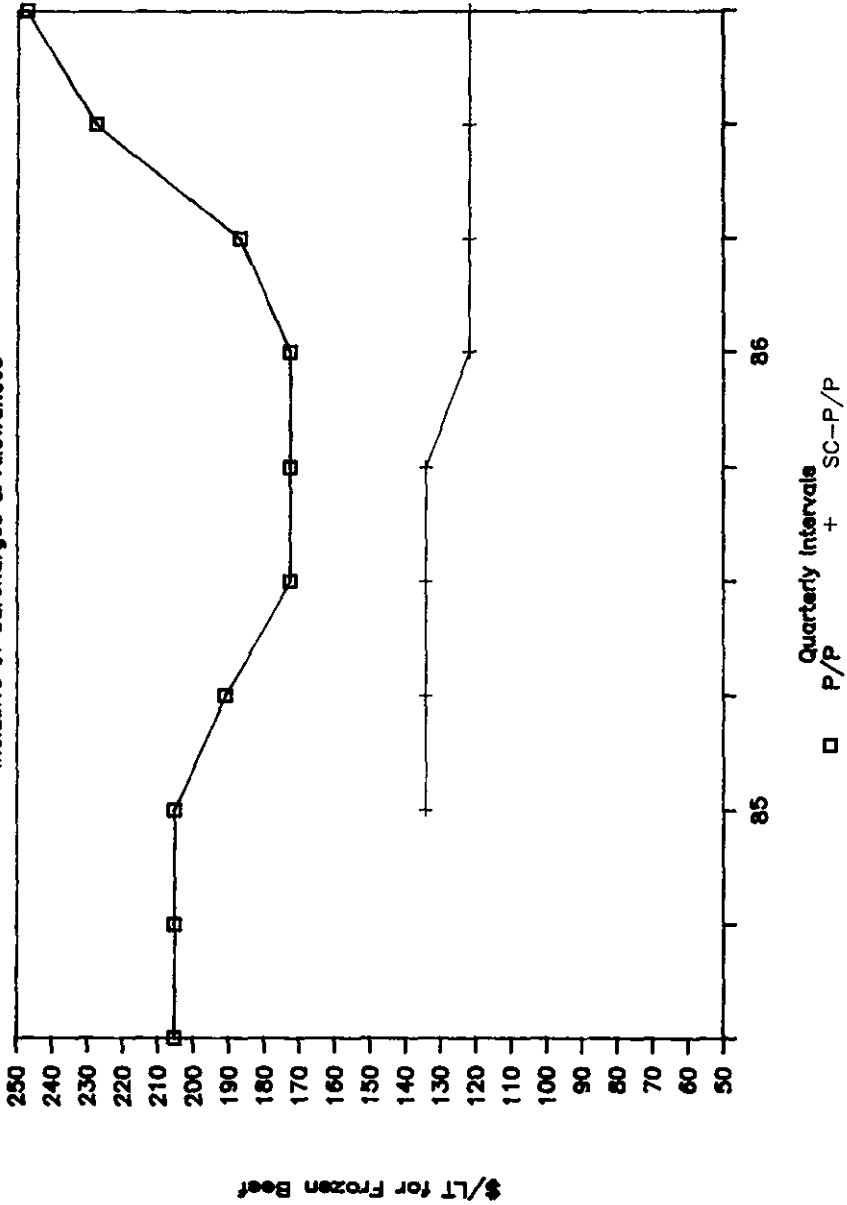
APPENDIX K

Trans-Pacific Freight Conf. of Japan



APPENDIX L

PWC/TWRA USWC to Japan
Inclusive of Surcharges & Allowances



APPENDIX M

OWNERSHIP ANALYSIS: UNITED STATES ATLANTIC, PACIFIC & GULF COASTS

TABLE 5

TO THE FAR EAST NORTH PACIFIC

OPERATOR	VESSEL TYPE	NATIONALITY	NO. OF VOYAGES	AGGREGATE CAPACITY		PERCENTAGE MARKET SHARE	
				TEU	DWT	TEU	DWT
CONFERENCE SERVICES:							
A P. L.	CC/SC	U. S. A	137	272,008	4,488,930	8.7%	8.6%
A. P. MOLLER-HAERSK	CC	DENMARK	110	225,112	4,046,404	7.2%	7.7%
EVERGREEN	CC	TAIWAN	36	63,966	1,048,004	2.0%	2.0%
HANJIN	CC	SOUTH KOREA	83	123,156	816,792	3.9%	1.6%
HYUNDAI	BC/CC	SOUTH KOREA	52	74,780	1,555,799	2.4%	3.0%
JAPAN LINE	CC	JAPAN	31	47,298	882,713	1.5%	1.7%
KAWASAKI	CC/SC	JAPAN	92	182,484	2,944,237	5.8%	5.6%
LYKES	RR/CC	U. S. A	17	17,903	300,740	0.6%	0.6%
M. O. L	CC/BC	JAPAN	86	168,174	2,633,409	5.4%	5.0%
N. O. L	CC	SINGAPORE	75	186,714	3,123,928	6.0%	6.0%
N. Y. K.	CC/SC	JAPAN	65	101,066	1,842,679	3.2%	3.5%
O. O. C. L	CC	SINGAPORE	74	162,476	2,567,223	5.2%	4.9%
SEA-LAND	CC	HONG KONG	88	209,552	2,535,877	6.7%	4.8%
SHOWA	CC	JAPAN	56	89,675	1,655,971	2.9%	3.2%
U. S. L.	CC	U. S. A	92	270,138	3,658,662	8.7%	7.0%
Y. S. L.	CC	JAPAN	57	97,274	1,647,235	3.1%	3.1%
TOTAL CONFERENCE			1,151	2,291,776	35,748,603	73.4%	68.4%
INDEPENDENT SERVICES:							
A. S. E	SC	GREECE	4	2,205	87,022	0.1%	0.2%
CONTIHAR	SC	W. GERMANY	2	620	12,044	0.0%	0.0%
COSCO	CC	CHINA	42	49,282	948,789	1.6%	1.8%
EVERGREEN	CC/SC	TAIWAN	121	258,372	4,136,930	8.3%	7.9%
E. A. C.	CC	DENMARK	13	20,596	376,371	0.7%	0.7%
F. M. G	SC	COLOMBIA	4	1,424	63,640	0.0%	0.1%
H. K. I.	BC/CC/SC	HONG KONG	46	52,790	984,687	1.7%	1.9%
K. S. C.	CC	SOUTH KOREA	43	72,878	1,113,614	2.3%	2.1%
NEDLLOYD	RR/CC	NETHERLANDS	21	20,701	414,966	0.7%	0.8%
H. S. C. S. A.	RR/CC	SAUDI ARABIA	17	30,050	605,328	1.0%	1.2%
H. S. C. P.	SC	PHILIPPINES	24	13,330	470,772	0.4%	0.9%
P. M. & O.	CC	PHILIPPINES	2	860	17,531	0.0%	0.0%
P. O. S. C.	BC	SOUTH KOREA	19	12,800	527,948	0.4%	1.0%
SEABOARD	RR	CANADA	19	22,553	811,787	0.7%	1.6%
STAR SHIPPING	BC	NORWAY	40	47,972	1,604,663	1.5%	3.1%
T. H. M	BC/SC	MEXICO	28	34,436	826,362	1.1%	1.6%
TOKAI	BC	JAPAN	3	2,427	86,592	0.1%	0.2%
WESTWOOD	BC	U. S. A	33	53,009	1,316,597	1.7%	2.5%
YANGHING	CC	TAIWAN	37	68,632	1,170,883	2.2%	2.2%
ZIM	CC	ISRAEL	35	65,943	969,901	2.1%	1.9%
TOTAL INDEPENDENT			553	830,880	16,546,427	26.6%	31.6%
TOTAL ALL SERVICES			1,704	3,122,656	52,295,030	100.0%	100.0%

APPENDIX N

TABLE 1

CAPACITY ANALYSIS: UNITED STATES ATLANTIC, PACIFIC & GULF COASTS
TO THE FAR EAST NORTH PACIFIC

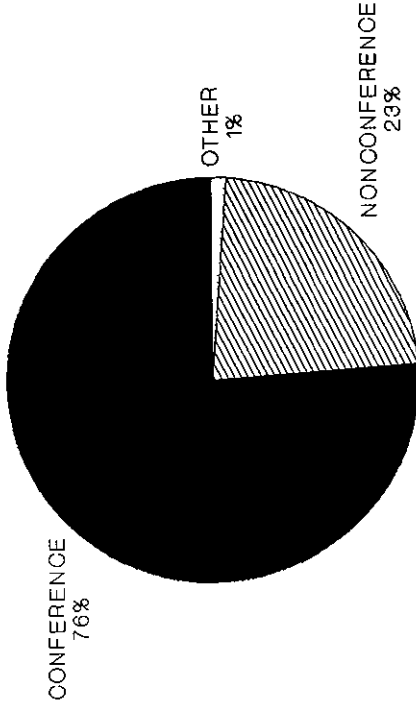
OPERATOR	VESSEL TYPE	NO. OF VOYAGES	AC	AGGREGATE CAPACITY IN TED			AGGREGATE CARRIAGE IN DWT			GC	GC-PC	AC-GC-PC	GC-PC	AC-GC-PC			
				PC	AC-GC	AC-PC	PC	AC-GC	AC-PC								
CONFERENCE SERVICES:																	
A P L	CC/SC	137	0	0	272,008	0	0	0	0	0	4,488,910	0	0	0			
A P HOLLER-HAERSK	CC	110	0	0	70,912	0	154,200	0	0	0	1,389,093	0	2,657,311	0			
EVERGREEN	CC	36	23,614	0	35,194	0	4,538	0	375,273	0	600,481	0	72,250	0			
MANJHI	CC	63	0	0	75,132	0	48,024	0	0	0	75,132	0	741,660	0			
YUNDAI	BC/CC	52	394	0	73,214	286	0	600	286	0	1,392,423	37,227	0	26,610			
JAPAN LINE	CC	31	0	0	42,591	0	4,707	0	0	0	796,288	0	86,415	0			
KAWASAKI	CC/SC	92	2,088	0	166,829	0	12,008	0	35,582	78,740	2,764,327	0	115,588	0			
LYLES	BR/CC	17	0	0	17,903	0	0	0	0	0	300,740	0	0	0			
H.O.L.	CC/PC	86	14,132	0	146,499	0	7,543	0	14,132	0	2,486,382	0	332,895	0			
H.O.L.	CC	75	0	0	105,948	0	39,409	35,469	1,948	0	1,794,450	0	849,382	649,382			
H.Y.K.	CC	65	20,892	0	78,315	1,839	0	0	371,941	0	1,437,024	33,714	0	715,092			
O.O.C.L.	CC	74	0	0	115,713	0	46,763	0	0	0	1,851,131	0	0	0			
SEA-LAND	CC	88	0	0	209,552	0	0	0	0	0	2,535,877	0	0	0			
SHOMA	CC	56	0	0	89,675	0	0	0	0	0	1,654,911	0	0	0			
Y.S.L.	CC	92	13,774	0	48,412	0	208,352	0	276,829	0	6,551,802	0	2,827,031	0			
Y.S.L.	CC	57	10,214	0	79,344	0	7,716	0	161,255	0	1,362,208	0	323,712	0			
			1,151	84,728	1,559	1,627,841	2,145	533,360	40,005	2,124	1,197,264	78,740	25,885,239	10,941	8,122,366	616,052	67,541

INDEPENDENT SERVICES:

A.S.E.	SC	4	0	667	1,334	204	0	0	0	0	21,278	46,556	17,188	0	0	0	
CONIHAR	SC	2	0	310	0	310	0	0	0	0	6,142	0	0	5,502	0	0	
COSCO	CC	42	0	0	18,776	17,762	0	12,724	0	0	364,336	0	342,315	0	0	242,146	
EVERGREEN	CC/SC	121	59,436	0	157,126	0	1,410	0	1,568,668	0	2,519,362	0	28,500	0	0	0	
E.A.C.	CC	13	0	0	20,596	0	0	0	0	0	376,371	0	0	0	0	0	
F.H.G.	CC	4	0	0	1,424	0	0	0	0	0	63,640	0	0	0	0	0	
K.K.I.	BC/CC/SC	46	0	0	52,790	0	0	0	0	0	984,687	0	0	0	0	0	
K.S.-C.	CC	43	0	0	72,878	0	0	0	0	0	1,113,614	0	0	0	0	0	
REDLLOYD	BR/CC	21	6,400	0	10,619	1,330	1,076	113,691	0	252,234	0	0	21,541	13,740	0	0	
N.S.C.S.S	BR/CC	17	3,300	0	26,750	0	0	65,453	0	0	539,875	0	0	0	0	0	
M.S.C.P.	SC	24	0	0	12,330	0	0	0	0	0	470,772	0	0	0	0	0	
P.H.O.	CC	2	0	0	660	0	0	0	0	0	17,531	0	0	0	0	0	
P.O.S.C.	BR	19	0	0	10,420	750	800	830	0	0	421,984	29,127	34,593	42,254	0	0	
SEABOARD	BR	35	0	0	12,553	0	0	0	0	0	811,787	0	0	0	0	0	
STAR SHIPPING	BC/SC	40	1,444	4,940	33,428	2,288	0	1,422	43,700	128,901	1,274,616	215,097	0	0	42,149	0	
T.M.N.	CC	28	0	0	31,436	0	0	0	0	0	828,362	0	0	0	0	0	
YAMATO	CC	3	809	0	53,009	0	1,618	0	28,864	0	1,316,527	0	57,728	0	0	0	
YAMAGUCHI	CC	37	0	0	2,818	0	0	0	0	0	312,728	0	62,414	31,246	1,045,972	0	
YANAGI	CC	37	0	0	1,131	0	1,918	60,954	0	0	0	0	948,801	0	0	0	
ZIM	CC	35	0	0	65,943	0	0	0	0	0	0	0	0	0	0	0	
TOTAL INDEPENDENT			553	111,589	5,137	505,298	52,774	75,449	3,825	76,208	1,640,376	158,328	10,761,910	1,143,602	1,180,969	87,240	1,344,009
TOTAL ALL SERVICES			1,704	336,317	6,896	2,133,139	54,939	508,809	43,834	78,442	3,827,640	237,061	36,277,198	1,234,543	9,305,355	763,282	1,411,950

MARKET SHARE IN US PACIFIC/JAPAN TRADE 1986

Conference: Transpacific Westbound Rate Agreement



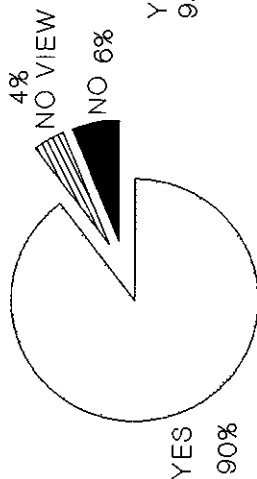
Percent based on tonnage

Source: Census Bureau

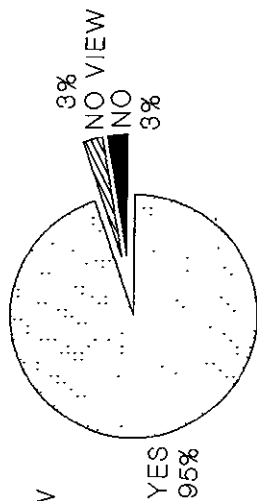
SERVICE CONTRACTS SHOULD CONTRACTS BE FILED WITH FMC?

VIEWS OF THE CARRIERS

1987 SURVEY RESULTS



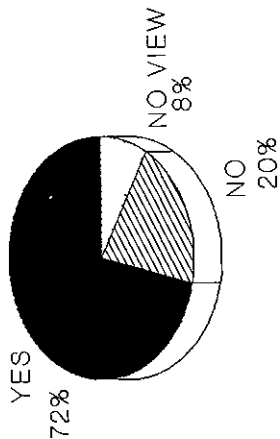
1986 SURVEY RESULTS



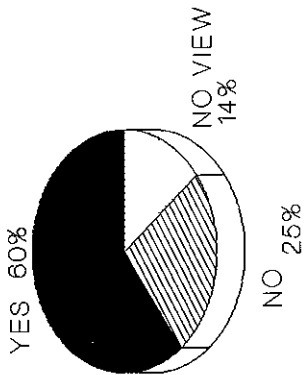
SERVICE CONTRACTS SHOULD CONTRACTS BE FILED WITH FMC?

VIEWS OF SHIPPERS

1987 SURVEY RESULTS



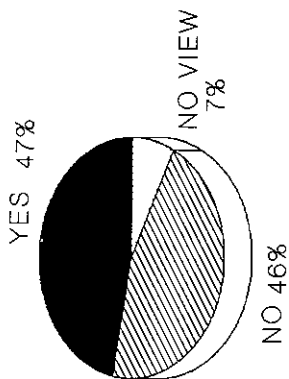
1986 SURVEY RESULTS



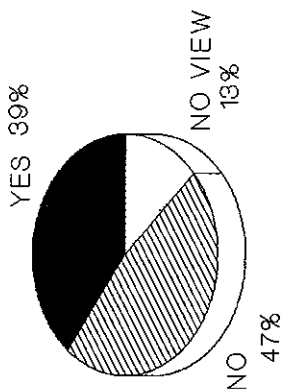
SERVICE CONTRACTS SHOULD ESSENTIAL TERMS BE AVAILABLE?

VIEWS OF SHIPPERS

1987 SURVEY RESULTS



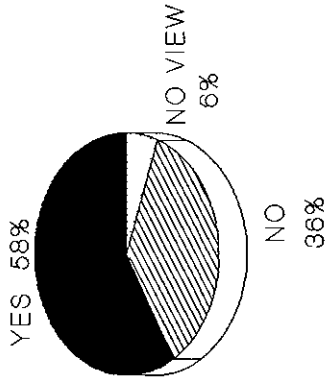
1986 SURVEY RESULTS



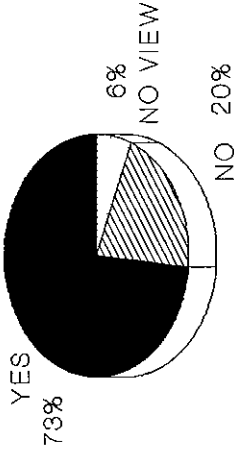
SERVICE CONTRACTS SHOULD ESSENTIAL TERMS BE AVAILABLE?

VIEWS OF CARRIERS

1987 SURVEY RESULTS



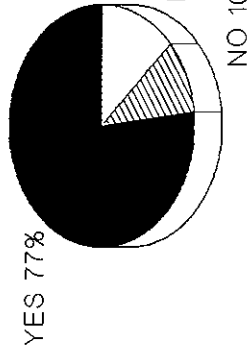
1986 SURVEY RESULTS



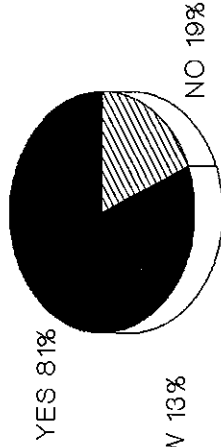
INDEPENDENT ACTION SHOULD IA BE REQUIRED ON CONTRACTS?

VIEWS OF SHIPPERS

1987 SURVEY RESULTS



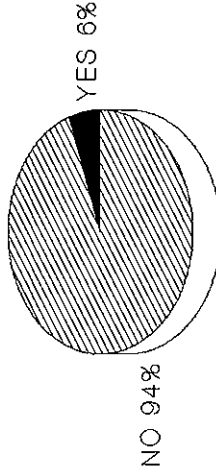
1986 SURVEY RESULTS



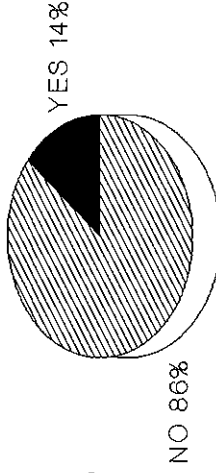
INDEPENDENT ACTION SHOULD IA BE REQUIRED ON CONTRACTS?

VIEWS OF CARRIERS

1987 SURVEY RESULTS



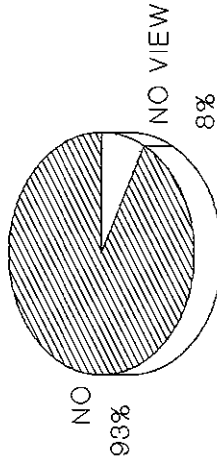
1986 SURVEY RESULTS



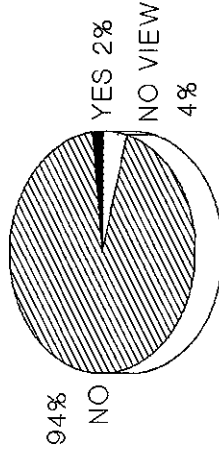
CONFERENCES SHOULD THEY BE PROHIBITED?

VIEWS OF CARRIERS

1987 SURVEY RESULTS



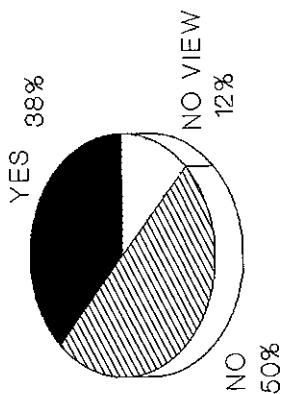
1986 SURVEY RESULTS



CONFERENCES SHOULD THEY BE PROHIBITED?

VIEWS OF SHIPPERS

1987 SURVEY RESULTS



1986 SURVEY RESULTS

