FEDERAL MARITIME COMMISSION

41st ANNUAL REPORT

for

Fiscal Year

2002

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

March 31, 2003

To the United States Senate and House of Representatives:

Pursuant to section 103(e) of Reorganization Plan No. 7 of 1961, and section 208 of the Merchant Marine Act, 1936, as amended, I am pleased to submit the 41st Annual Report of the activities of the Federal Maritime Commission for fiscal year 2002.

Sincerely,

Steven R. Blust
Chairman

MEMBERS OF COMMISSION*

Sfeven R. Blust
Chairman
Appointed 2002
Term Expires 2006

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

Delmond J.H. Won
Commissioner
Appoinfed 1994
Term Expired 2002

Joseph E. Brennan
Commissioner
Appointed 1999
Term Expires 2003

* *One vacancy as of April 15, 2002*

SENIOR COMMISSION OFFICIALS

Counsel to the Chairman . . . . . Rachel *Dickon-Mafney*

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

Secretary . . . . . *Bryant L. VanBrakle*

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

Director, Office of Equal Employment Opportunity . . *A/ice M. Blackmon*

Inspector General . . . . . *Tony P. Kominofh*

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

Deputy Executive Director . . . . . *Austin L. Schmitt*

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

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

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

I

THE COMMISSION

A. HISTORY

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

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

B. FUNCTIONS

The principal statutes or statutory provisions administered by the Commission are the 1984 Act, the Foreign Shipping Practices Act of 1988 ("FSPA"), section 19 of the Merchant Marine Act, 1920

("1920 Act"), and Pub. L. No. 89-777. Most of these statutes were amended and modified by OSRA, which took effect on May 1, 1999.

The Commission's regulatory responsibilities include:

- **Protecting shippers and carriers engaged in the foreign commerce of the U.S. from restrictive or unfair foreign laws, regulations, or business practices that harm U.S. shipping interests or ocean trade.**

- **Reviewing operational and pricing agreements among ocean common carriers and marine terminal operators ("MTOs") to ensure that they do not have excessively anticompetitive effects.**

- **Reviewing and maintaining a system containing the service contracts between ocean common carriers and shippers, and using this system to guard against anticompetitive practices and other unfair prohibited acts.**

- **Ensuring that common carriers' rates and charges are accessible to the shipping public in private, electronically accessible systems.**

- **Regulating rates, charges, and rules of government-owned or -controlled carriers to ensure that they are just and reasonable and are not unfairly undercutting private competitors.**

- **Issuing passenger vessel certificates evidencing financial responsibility of vessel owners or charterers to pay judgments for personal injury or death or to repay fares for the nonperformance of a voyage or cruise.**

- **Licensing ocean transportation intermediaries ((‘OTIs”) to protect the public from unqualified, insolvent, or dishonest companies.**

- **Ensuring that OTIs maintain sufficient financial responsibility to protect the shipping public from financial loss.**

- **Investigating discriminatory rates, charges, classifications, and practices of common carriers, MTOs, and OTIs operating in the foreign commerce of the U.S.**

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

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

In addition to monitoring relationships among carriers, the Commission is also responsible for ensuring that individual carriers, as well as those permitted by agreement to act in concert, fairly treat shippers and other members of the shipping public, in accordance with the 1984 Act's prohibition against undue discrimination. The 1984 Act also requires all carriers to make their rates, charges and practices available in automated tariff systems that must be available electronically to the public. Non-vessel-operating common carriers ("NVOCCs") may only assess the rates and charges published in their tariffs. Ocean common carriers are permitted to enter into service contracts with their shipper customers. Such contracts are filed electronically with the FMC in our Internet-based system, and are provided confidential treatment by the Commission as required by the Act. The Commission does not have the authority to approve or disapprove general rate increases ("GRIs") or individual commodity rate levels in the U.S. foreign commerce, except with regard to certain foreign government-owned or -controlled carriers.

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

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

C. ORGANIZATION

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

The Commission's organizational units consist of: Office of the Secretary; Office of the General Counsel; Office of the Inspector General; Office of Administrative Law Judges; Office of Equal Employment Opportunity; Office of the Executive Director; Bureau of Consumer Complaints and Licensing; Bureau of Enforcement; and Bureau of Trade Analysis. The Executive Director assists the Chairman in providing executive and administrative direction to the Commission's bureaus. These offices and bureaus are responsible for the Commission's regulatory programs or provide administrative support.

In fiscal year 2002, the Commission was authorized a total of 180 full-time equivalent positions and had a total appropriation of $16,447,000. That appropriation supported the actual employment of 127 full-time equivalent positions during the fiscal year. The majority of the Commission's personnel are located in Washington, D.C., with area representatives in New York, New Orleans, Los Angeles, Miami and Seattle.

II

THE YEAR IN REVIEW

The ocean shipping industry faced significant challenges in this fiscal year, and the Commission continued through its various programs to provide assistance to the shipping public.

The Commission closely monitored significant trade imbalances in major trade lanes, as well as the effects of political and economic factors and labor strife on those imbalances. The Commission continued to gather information on potentially restrictive trade practices, particularly in the Peoples' Republic of China ("PRC") and Japan. In an effort to uncover and address unreasonable or unfair industry practice, the Commission requested additional information on several agreements filed this fiscal year, and continued its enforcement efforts and concurrent drive to encourage voluntary compliance with the 1984 Act. Use of the Commission's alternative dispute resolution and consumer complaint programs continued to grow, and the Commission assisted numerous parties in resolving disputes ranging from passenger or shipper complaints about service to major commercial disputes that would otherwise have resulted in litigation.

This Annual Report is structured on an office-by-office basis and contains a synopsis of each unit's activities and accomplishments during the past fiscal year. Special sections are devoted to areas of particular interest. This section summarizes some of the Commission's major accomplishments this year.

A. TRADE DEVELOPMENTS

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

Overall for fiscal year 2002, import cargo inbound to the U.S. grew and exceeded U.S. export cargo outbound by a substantial degree, creating large imbalances in many U.S. trades. Notably, in the transpacific, import cargo growth was due to a surge by shippers to stock inventories prior to the anticipated labor dispute and port closures on the U.S. West Coast. The U.S. economy, however, remained constrained by uncertainties associated with events that caused political instability and financial volatility on a global scale. While the U.S. housing market thrived, other commercial sectors of the economy experienced declines, which are projected to continue. On average, freight rates for ocean shipping generally fell below fiscal year 2001 levels despite areas of renewed cargo growth, and the overall supply of vessel capacity grew moderately as carriers brought larger container vessels on line. To cope with excess capacity, the trend toward increased service rationalization and coordination through operational agreements continued among carriers, especially in the weaker U.S. outbound direction. For example, a new global alliance arrangement was formed between COSCO Container Lines Co. Ltd. ("COSCO"), Kawasaki Kisen Kaisha, Ltd. ("K Line"), Yangming (U.K.) Ltd. ("Yangming"), Hanjin Shipping Co., Ltd. ("Hanjin"), and Senator Lines GmbH ("Senator Lines"). Due to persistently weak trade conditions, however, Senator Lines plans to discontinue all its U.S. services, with Hanjin, its majority owner, assuming its service obligations in the U.S. trades. In addition, major carriers explored greater commercial innovations in information technology ("IT") by expanding their web-based services over the Internet.

In the transatlantic, the volume of liner imports and exports showed little change or growth from the preceding fiscal year. The persistent weak demand in the U.S. outbound direction caused the trade imbalance to widen in favor of the inbound direction. The fear of a disruption in cargo flow arose as major trade disputes occurred between the U.S. and the European Union ("EU"). The level of freight rates continued to decline despite the tariff GRIs implemented by the *Trans-Atlantic Conference Agreement* ("TACA"). TACA's attempt to reverse the rulings of the European Commission ("EC") was defeated on appeal, as a higher European court upheld the EC's previous findings against the conference carriers for violations of the EU's competition laws. TACA, however, succeeded in gaining the EC's approval of its revised conference agreement, but at the same time, the EC initiated a formal review of the EU's maritime competition legislation. TACA also amended its agreement to reimplement its temporary slot assist chartering program between the months of December 2001 and February 2002. Among non-conference carriers, COSCO, K Line, and Yangming reorganized their coordinated services in the transatlantic, and are planning further service changes in conjunction with Hanjin under their new alliance agreement.

Between the U.S. and the Mediterranean, the robust U.S. housing market sustained cargo growth in the U.S. inbound direction, while the appreciation of the euro against the dollar fostered renewed cargo growth in the outbound direction. There was also a slight expansion in vessel capacity relative to the considerable increase that occurred in the preceding fiscal year. While certain carriers coordinated and consolidated their services through operational agreements, other carriers expanded their operations in the trade by adding new services and port calls, or vessel upgrades. In contrast to many U.S. trades, freight rates in the stronger inbound direction rose moderately as members of the *United States South Europe Conference* initiated several tariff GRIs during the fiscal year.

The ongoing political strife between nations in the Middle East adversely affected cargo growth in this U.S. trade. Cargo volume rose slightly in the U.S. inbound direction, and fell in the outbound direction. With Israel as a major U.S. trading partner in the region, the steep decline in U.S. exports to Israel particularly affected the outbound direction. With continued violence in the Middle East, insurance rates for vessels and cargo in the trade have increased. War risk insurance surcharges remain in place, but at lower levels than applicable immediately after the terrorist attacks in the United States on September 11, 2001.

An improvement in trade between the U.S. and Africa has begun to materialize as a result of promotional trade initiatives. Growth in cargo volume was positive in both the U.S. inbound and outbound directions. Conditions of inadequate equipment and poor infrastructure continued to cause congestion at African ports. In response, the *U.S. Southern Africa Conference* introduced a congestion surcharge. The conference also began a rate recovery program which resulted in a moderate increase in freight rates. Like the trend in other U.S. trades, certain carriers operating between the U.S. and Africa engaged in more operational agreements, while others introduced vessel upgrades and new services.

In South America, a surge in cargo volume occurred in the U.S. inbound direction, especially for goods in the strong U.S. housing market. In the outbound direction, however, political instability and chronic recessionary conditions in such major nations as Brazil, Argentina, and Venezuela squelched the demand for U.S. exports and sent cargo volume downward. The disparity in the flow of cargo produced a substantial trade imbalance in favor of the U.S. inbound direction. Consequently, carriers struggled with considerable excess capacity and lower freight rates in the outbound direction. There was also a noticeable lack of cohesion among carriers participating in the South American discussion agreements. Favorable weather conditions helped revive the national economies in Central America and the Caribbean, especially in the production of

fresh produce. Cargo growth between the U.S. and the region was positive, although incremental, in both trade directions. Freight rates, however, remained relatively low. On related agreement matters, the Commission is reviewing a petition filed by an association of OTIs which alleges that certain collective practices by the *Caribbean Shipowners Association* violated the 1984 Act.

In the transpacific, cargo volume in the inbound direction from the U.S. to Asia grew substantially, while outbound cargo growth was more modest. The surge in U.S. inbound cargo was largely attributed to a rush by shippers to stock inventories in anticipation of a labor dispute and port closures on the U.S. West Coast. The 1 O-day lockout of unionized dockworkers ended by court order on October 9, 2002, resulted in massive port congestion. Many carriers serving U.S. West Coast ports initiated congestion surcharges to defray expenses from the service disruptions and delays caused by the port closures and subsequent congestion. Despite cargo growth, average freight rates remained low in both trade directions. The ability of agreement carriers collectively to implement the rate increases recommended by the inbound *Transpacific Stabilization Agreement* ("TSA") and the outbound *Westbound Transpacific Stabilization Agreement* ("WTSA") appeared to be limitedduring the fiscal year. On related matters, the Commission took action on issues concerning both TSA and WTSA. The Commission instituted an investigation to review the service contracting practices of TSA and its members after a joint petition was filed against the agreement by associations of OTIs. As part of its investigation, the Commission issued a Section 15 Order to obtain relevant information from the TSA members. In addition, WTSA members filed an agreement amendment to implement a cargo and revenue pooling arrangement on their refrigerated cargo moved from the U.S. to Asia. Given the potential magnitude of the proposed arrangement, and the concerns expressed by shippers, the Commission requested additional information on the amendment to more thoroughly assess its probable competitive impact under the 1984 Act. Upon the Commission's

action, WTSA withdrew the amendment prior to the submission of any additional information.

B. RESTRICTIVE TRADE PRACTICES

One of the Commission's primary missions is to identify and address protectionist practices of other countries that unreasonably favor their domestic companies or discriminate against U.S. trade interests in ocean shipping. In this regard, the Commission may issue rules in response to foreign practices that create conditions unfavorable to U.S. shipping in general. It also may institute countermeasures in response to foreign laws or policies that adversely affect U.S. carriers. It also can initiate appropriate action in instances where a U.S.-flag vessel faces unfair barriers in entering a foreign-to-foreign trade.

In fiscal year 2002, the Commission continued its active approach in this area. In particular, the Commission continued to address practices of the PRC and Japan.

In 2002, the Commission continued to gather information on possible unfair shipping practices arising from the laws, regulations and practices of the PRC, and monitor circumstances in light of the first anniversary of the PRC's accession to the World Trade Organization. Should the Commission determine that formal proposals for remedial action are warranted, these proposals will be noticed for public comment prior to their effectiveness.

The Commission also continued to monitor regulations and port practices of the Government of Japan. In fiscal year 2001, the Commission revised its semiannual reporting requirement for U.S. and Japanese carriers. The Commission also ordered other carriers serving the U.S./Japan trade to report on the effects of Japanese port practices and changes to Japanese law and regulations which had gone into effect in November 2000.

Finally, a permanent International Task Force, established in 2000 and chaired by the General Counsel and made up of key personnel in that office, the Bureaus of Enforcement, Trade Analysis, and Consumer Complaints and Licensing, was regularly convened in 2002. The Task Force identities, evaluates and attempts to anticipate foreign practices which might have adverse impacts on U.S. shipping interests.

C. TRADE OVERSIGHT

The Commission maintains systematic oversight of market conditions and prevalent practices in U.S. ocean shipping. These efforts help to uncover unreasonable or unfair industry behavior, and identify potentially unfavorable trade practices by foreign governments.

During the fiscal year, the Commission requested additional information on an agreement amendment filed by WTSA to implement a cargo and revenue pooling arrangement on refrigerated cargo moved by WTSA members from the U.S. to Asia. To evaluate the amendment's potential competitive impact and address the concerns of shippers, the Commission's request sought further clarification on the pooling arrangement's terms and procedures, along with relevant data on the members' refrigerated cargo movements in the agreement trade. Upon the Commission's action, WTSA withdrew the amendment prior to the submission of any additional information. The Commission also requested additional information on a newly filed marine terminal discussion agreement among public ports in the State of Florida. To evaluate the proposed agreement properly, relevant information was requested on the agreement's authority along with specific market data relating to the services of the MTOs. Upon review of its response, the marine terminal discussion agreement was allowed to take effect. Other requests for additional information were issued by the Commission concerning the carrier status of parties to newly filed agreements. In addition, after an extensive analysis of controlled carrier rates and

service contracts, the Commission addressed various recommended approaches for overseeing and reviewing the pricing behavior of controlled carriers under section 9 of the 1984 Act.

Other specific monitoring and research projects undertaken in fiscal year 2002 included: economic testimony and analyses in various formal proceedings; research and analyses on regulatory modifications to enhance carrier agreement oversight with respect to minutes of meetings, and information form and monitoring report requirements; review of reports prepared by international organizations concerning the antitrust immunity of carriers in liner shipping; responses to Congressional inquiries; and responses to informal complaints and requests from shippers on rates, service matters, and agreement issues.

D. ALTERNATIVE DISPUTE RESOLUTION

During fiscal year 2002 the Commission continued its implementation of an enhanced, comprehensive Alternative Dispute Resolution program. Final rules implementing this program became effective August 20, 2001, and provide for the availability of a variety of means of dispute resolution at the Commission. Under this program, parties to a dispute are encouraged to avail themselves of services provided by the Commission to resolve disputes through conciliation, facilitation, mediation, fact finding, minitrials, arbitration, or the use of *ombuds* services. The Commission makes trained neutrals available to facilitate the resolution of shipping disputes at all stages. Mediation is the most frequently chosen method of dispute resolution for matters being litigated in formal Commission adjudicatory proceedings. Significant cases in which settlement was facilitated by Commission mediators during fiscal year 2002 included Docket *No. 00-02, Crowley Liner Services, Inc. and Trailer Bridge, Inc. v Puerto Rico Port Authority,* and Docket *No. 00-03, Inlet Fish Producers, Inc. v. Sea-land Service, Inc.*

The Commission also provided significant *ombuds* services to the shipping public by assisting consumers and other complaining parties in resolving a number of problems without resorting to litigation. During fiscal year 2002, the Commission received a high volume of complaints, sustaining a trend that had become apparent during the previous two years. Requests for assistance in the aftermaths of multiple cruise line failures continued to account for much of the complaint volume, as affected individuals sought assistance for their efforts to recover cruise fares and deposits. The Commission's services were instrumental in hastening the resolution of many compensation claims involving such situations. In addition, the Commission's informal complaint resolution procedures assisted numerous consumers in resolving service disputes and other problems involving cruise operators.

The Commission continued its efforts to bring its complaint resolution procedures to the attention of the users of shipping services. Information gathered from the Commission's Internet site directed many aggrieved parties to the available services, while state, local and private consumer agencies, as well as various trade organizations, provided contact information to many other complainants. Although many complaints concerned disputes between shipping companies, an increasing number concerned problems encountered by individual and occasional users of shipping services. In many cases, the Commission's efforts enabled affected parties to resolve their problems satisfactorily without recourse to litigation.

During fiscal year 2002, a significant number of complaints concerned the movement of personal effects and household goods. Many such cases involved failure on the part of an OTI, and consequences often arising from the OTI's failure to discharge its financial obligations promptly. Others involved problems arising in foreign ports, and often concerned unanticipated problems with foreign Customs agencies. While the Commission's efforts were often successful in resolving such disputes, the experience derived

from unsuccessful efforts proved to be of great assistance in advising individuals encountering similar problems.

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

E. ENFORCEMENT

The Commission maintains a presence in Los Angeles, Miami, New Orleans, New York and Seattle through Area Representatives. These representatives serve as a liaison between the Commission and various maritime interests in their respective areas and also investigate activity that may violate the 1984 Act.

During fiscal year 2002, the Bureau of Enforcement investigated and prosecuted malpractices in many trades lanes, including the transpacific, North Atlantic, Central and South American and Caribbean trades. This included market-distorting activities such as various forms of secret rebates and absorptions, misdescription of commodities and misdeclaration of measurements, illegal equipment substitution, unlawful use of service contracts, as well as carriage of cargo by and for untariffed and unbonded NVOCCs. Most of these malpractice investigations resulted in compromise settlements of civil penalties. However, some investigations required the institution of formal adjudicatory proceedings in order to pursue remedies under the 1984 Act.

In addition to rate malpractice enforcement activity, *several* matters arose with respect to activities pursuant to filed and unfiled agreements between and among ocean common carriers. Further, upon submission of a report to the Commission in Fact Finding Investigation No. 24, the Commission instituted formal investigations to examine the lawfulness of exclusive tug service arrangements in certain Florida ports and at marine terminal facilities on the Lower Mississippi. Further, the Commission, in response to a Petition, initiated Fact Finding Investigation No. 25, to review the activities of TSA members regarding service contract practices during the years 2000 to 2002.

The Commission collected $2,450,971 in civil penalties this past fiscal year. These collections represent a wide range of violations in all of our major trade lanes. Although the Commission continues to undertake enforcement activity, as required by its statutory mandate, its primary objective is to encourage voluntary compliance by the regulated ocean transportation industry.

III

MONITORING AND ENFORCEMENT

A. MONITORING

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

The importance the Commission attaches to its ongoing monitoring activities is a direct consequence of the removal, under the 1984 Act, of the Commission's previous broad discretion to disapprove agreements. The 1984 Act provides that, unless rejected under relevant statutory authority, agreements filed with the Commission shall become effective on the 45th day after filing or the 30th day after notice in the *Federal Register,* whichever is later. Agreements can be rejected for technical reasons or for failure to include statutory provisions in the agreement language. Also, the Commission may extend the original 45-day period when additional information from filing parties is deemed necessary and is requested. Finally, if the Commission determines that an agreement, by virtue of a reduction in competition, is likely to increase transportation costs unreasonably or decrease transportation service, it may seek injunctive relief in the U.S. District Court for the District of

Columbia. As a consequence of the Commission's limited authority to block agreements from taking effect, the need for adequate and timely evaluation of post-implementation agreement activity has increased considerably. The Commission's monitoring program provides such an evaluation through its examination of carrier competition, including market share, concentration, entry conditions, general rate and service conditions, as well as pricing trends, vessel utilization, service contracting activity, and shipper complaints.

In fiscal year 2002, the Bureau of Trade Analysis prepared a variety of economic analyses and reports on the activities and practices of carriers operating in the U.S. international trades. Projects included: (1) an economic analysis and memorandum concerning rate levels of certain controlled carriers, approaches for analyzing controlled carrier pricing behavior, and a revised controlled carrier program; (2) analyses and critiques of a revised draft World Bank paper, and an Organization for Economic Cooperation and Development ("OECD") draft paper calling for an end to carrier antitrust immunity; (3) economic analyses of newly filed major agreements and amendments under the section 6(g) standard of the 1984 Act; (4) analyzing requests by agreements for amending their monitoring report requirements; (5) reviewing quarterly monitoring report data submitted in accordance with the regulations on agreement reporting requirements; (6) preparing quarterly controlled carrier reports; and (7) responding to Congressional and informal requests and inquiries for trade analyses and data.

B. ENFORCEMENT

The 1984 Act establishes an integrated system for the regulation of the shipping and related industries in furtherance of the statutory declaration of policy to ensure a nondiscriminatory, efficient, and economic ocean transportation system for the benefit of international trade of the U.S. The enforcement program represents a major area of Commission activity. A principal goal of the program

is to achieve compliance with the provisions of the 1984 Act. Compliance, in turn, provides the pathway to the statutory objectives of the 1984 Act. Enforcement is a traditional means to achieve compliance through deterrence.

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

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

During fiscal year 2002, the Bureau of Enforcement investigated and prosecuted malpractices in many trades lanes, including the transpacific, North Atlantic, Central and South American and Caribbean trades. These malpractices included market-distorting activities such as various forms of secret rebates and absorptions, misdescription of commodities and misdeclaration of measurements, illegal equipment substitution, unlawful use of service contracts, as well as carriage of cargo by and for untariffed and unbonded NVOCCs. Most of these malpractice investigations resulted in compromise settlements of civil penalties. However, some investigations required the institution of formal adjudicatory proceedings in order to pursue remedies under the 1984 Act.

In addition to rate malpractice enforcement activity, several matters arose with respect to activities pursuant to filed and unfiled

agreements between and among ocean common carriers. Further, upon submission of a report to the Commission in Fact Finding Investigation *No. 24, Exclusive Tug Arrangements in Florida Ports,* the Commission instituted formal investigations to examine the lawfulness of exclusive tug service arrangements in certain Florida ports and at marine terminal facilities on the Lower Mississippi. Also, in response to a Petition, the Commission initiated Fact Finding Investigation No. 25 to review the activities of TSA members regarding service contract practices during the years 2000 to 2002.

During fiscal year 2002, the Commission collected $2,450,971 in civil penalties. Settlements were reached with many different segments of the industry (e.g., carriers, shippers, forwarders, and NVOCCs) operating in the U.S. foreign trades (see Appendix E).

IV

DEVELOPMENTS IN MAJOR U.S. FOREIGN TRADES

A. TRANSATLANTIC

In fiscal year 2002, the volume of liner imports and exports between the U.S. and North Europe showed little change from the preceding fiscal year. Trade growth was affected by sluggish economic conditions and the decline in the value of the dollar against the euro. Huge stock market losses, uncertainties over terrorism, and the Middle East situation generally restrained consumer spending and production both in the U.S. and abroad, although the U.S. housing market continued to expand. In the U.S. inbound trade direction, import cargo from North Europe grew by only .6 percent in fiscal year 2002. Certain products from North Europe posted greater gains, including auto parts, paper, furniture and lumber, while imported beer and ale declined. In the outbound trade direction, U.S. export cargo to North Europe slipped by 1 percent in fiscal year 2002. Declines occurred in the foreign demand for such U.S. products as auto parts, synthetic resins and rubber, paperboard and medical supplies, while edible nuts and sporting goods from the U.S. remained stable.

The trade imbalance between the U.S. and North Europe continued to widen during the fiscal year as import cargo exceeded export cargo by 54 percent, or roughly 5 15,000 TEUs. Carriers struggled with uneven levels of vessel capacity utilization in the opposing trade directions. On average over the fiscal year, vessel capacity utilization in the transatlantic was 87 percent in the stronger inbound direction from North Europe, and 61 percent in the weaker outbound direction from the U.S. To cover the cost of repositioning empty containers, members of the *Tram-Atlantic Conference*

Agreement ("TACA") (No. 202-011375) reinstituted an equipment repositioning charge of $100 per container on inbound cargo from October 2001 to June 2002.

Transatlantic carriers are hopeful that the depreciation of the U.S. dollar against the euro will eventually improve the trade imbalance by boosting the consumption ofU.S. export goods abroad. Improvements in U.S. export growth, however, appear threatened by the eruption of major trade disputes between the U.S. and the EU. In March 2002, the U.S. imposed certain restrictions on steel imports to the U.S. as a measure to protect the U.S. steel industry. In response, the EU placed similar protective restrictions on steel imports to member nations of the EU. Further, pending a final ruling from the World Trade Organization ("WTO"), the EU stands ready to place additional restrictions on numerous U.S. export products if the measures on steel imports to the U.S. are not lifted. In another dispute involving U.S. tax laws, the WTO awarded the EU the right to impose upwards of $4 billion in sanctions on U.S. exports for damages incurred by EU companies. The U.S. tax laws give U.S.-based companies concessions on their foreign income generated from the sale of U.S. goods and services. The WTO views the U.S. tax concessions as export subsidies in violation of its international trade rules. It is feared that these disputes could potentially disrupt the flow of cargo that is already constrained by weak market conditions in the transatlantic trade. The magnitude of these events has pushed negotiations between the U.S. and the EU toward trying to resolve these disputes to avoid trade disruptions.

As a conference, TACA collectively implemented several tariff GRIs in its efforts to bolster sinking freight rates. During the fiscal year, TACA initiated one small tariff GRI in the outbound trade direction and two moderate tariff GRIs in the inbound trade direction. These collective rate initiatives, however, appeared to have little direct impact on the trade as rates continued to fall. Rather, the conference uses its common tariff as a means of providing some direction to its members for their individual service contract

negotiations. As a group, the conference moved only a minimal amount of cargo under its common tariff or service contract rates, while upwards of 85 to 90 percent of its cargo moved under individual service contracts with independently negotiated rates and terms. Additionally, during the fiscal year, TACA continued to face intense competition from independent carriers in the transatlantic, where the conference's market share was 48 percent in either trade direction. Despite efforts to increase rates, industry reports estimated that by September 2002, freight rates had fallen by 15 to 25 percent below the 2001 levels.

Many of TACA's ongoing issues with European regulators were brought to a conclusion. On a number of appealed cases, the European court upheld the decisions of the EC against TACA and its predecessor, the Trans-Atlantic Agreement. The appealed cases centered on the legal interpretation and application of the EU's competition laws and its exemption for conference agreements between ocean common carriers. Previously, among other issues, the EC charged that TACA violated the EU's exemption for conferences with respect to its former capacity management program, general pricing structure, and common pricing for inland European transport services. Further, the EC lifted TACA's immunity from penalties, and levied 273 million euros in fines on the conference carriers. The European court ruled in favor of the EC on all of these issues, except for the actual amount of fines. This issue remains before the court on appeal. Thus far, TACA has chosen not to further litigate these issues by appealing to a higher court. Instead, the conference continued to seek the EC's approval of a revised agreement. In 1998, TACA revised its agreement to comply with OSRA's legislative changes and the EC's directives. The revised agreement became effective under the 1984 Act in December 1998. The agreement remained pending before the EC due to opposition from European shippers. Recently, the EC approved TACA's revised agreement by exempting it from the EU's competition laws. Further, the EC initiated a formal review of the EU's maritime competition legislation that will specifically address whether the exemption provision for ocean liner conferences

is adequately adapted to the existing market conditions. In the review process, the EC will invite comments from governments, industry, and other interested parties.

On other agreement and service matters, TACA amended its agreement to reimplement its temporary slot assist chartering program during the period of slack demand between the months of December 2001 and February 2002. The amendment allowed TACA members temporarily to withdraw vessels from their weekly voyage rotations and to charter space from each other over the program period. The vessels were returned to service starting on the next round-trip rotation from North Europe. TACA has again amended its agreement to continue the same program for the upcoming slack season.

Among other carriers, Cosco Container Lines Company, Limited ("COSCO"), Kawasaki Kisen Kaisha, Ltd. ("K Line"), and Yangming (UK) Ltd. ("Yangming") reorganized their coordinated services between the U.S. and North Europe. The carriers collectively removed one service string of vessels from the trade and redirected another string to its pendulum service to cover ports in Asia, the U.S., and North Europe. To maintain service in the trade, COSCO, K Line, Yangming and Hanjin Shipping Company, Ltd. ("Hanjin") entered into the *Atlantic Space Charter Agreement (No.* 217-011798) to charter vessel space from members of the *Grand Alliance-Americana Atlantic Agreement (No.* 232-011705). While certain carriers removed vessels, other carriers, including Mediterranean Shipping Co., expanded by bringing in larger vessels. Therefore, by fiscal-year end, the overall amount of transatlantic vessel capacity was almost 3 percent greater in either trade direction. Further service changes are anticipated. COSCO, K Line, and Yangming plan to consolidate all of their coordinated U.S. services in an alliance arrangement with Hanjin and Senator Lines GmbH ("Senator Lines") under the *COSCON/KL/YMUK/Hanjin/ Senator Worldwide Slot Allocation and Sailing Agreement (No.* 232-011794). Due to persistently weak trade conditions, however, Senator Lines announced that its U.S. services will be phased out, and that Hanjin

(Senator Lines' majority owner) will assume its service obligations in the U.S. trades. In the transatlantic, the new alliance agreement will supercede the existing agreements between the carriers. Under this new agreement, the alliance partners plan to consolidate their transatlantic services and further remove excess vessel capacity from the trade.

B. MEDITERRANEAN

The U.S./Mediterranean trade continues to show strong growth. Recent industry reports indicate that export and import flows over the last seven years are up 33 percent and 71.5 percent, respectively, and that long-term average annualized growth rates will be in the 5 to 6 percent range. In fiscal year 2002, the volume of import cargo from the Mediterranean grew approximately 10 percent compared to last fiscal year cargo volumes. One factor leading to this growth was the anticipation by shippers of labor strikes at U.S. West Coast ports that triggered early U.S. import shipments during the second calendar quarter of the year. Another factor accounting for the growth in U.S. imports from the Mediterranean was the resilient U.S. housing market and the associated demand for building materials and home furnishings. Despite economic uncertainties and encouraged by low interest rates, U.S. consumers continued their demand for ceramic tiles, marble, alabaster, furniture and other commodities associated with the housing industry.

U.S. export cargo volumes to the Mediterranean continue to fluctuate. During fiscal year 2002, U.S. exports expanded nearly 14 percent over the previous fiscal year, in which U.S. export cargo volumes contracted more than 14 percent over fiscal year 2000 cargo volumes. Modest economic growth during fiscal year 2002 in Mediterranean countries such as Turkey and France, and the rising value of the euro relative to the U.S. dollar, helped foster greater foreign demand for major U.S. exports such as logs, lumber, wood pulp and raw cotton. This is in sharp contrast to fiscal year 2001,

where these major U.S. exports to the Mediterranean regions suffered double-digit percentage losses.

The Mediterranean trade continues to be a logical collection point for in-transit cargo that attracts a number of carriers outside the direct U.S./Mediterranean trade. Managing excess vessel capacity continues to be a major issue for carriers serving the direct trade. However, the nearly two-year-long expansion in vessel capacity that started in fiscal year 2000 finally showed signs of abating during fiscal year 2002. The latest industry reports project that the fiscal year will end with overall increases in vessel capacity of only 2 to 3 percent, well below the increase in capacity of 25 percent that the trade experienced in the previous fiscal year.

To address the excess capacity situation in the U.S./Mediterranean trade, carriers such as China Shipping Container Line, Evergreen Line and Italia Line terminated some of their direct services in the region and elected instead to enter into slot charter arrangements with other carriers presently providing services in the trade. In addition, COSCO, K Line, Hanjin and Yangming restructured or revised their liner services by creating a pendulum service *(i.e.,* U.S./Mediterranean/Far East), and by consolidating their services with other existing services. Lykes Lines Limited, LLC ("Lykes"), A.P. Moller Maersk-Sealand ("Maersk-Sealand"), Contship Container Lines, CMA-CGM, and Turkon Line either expanded their operations in the trade with new services, increased port calls, or vessel upgrades.

With vessel capacity beginning to stabilize and trade conditions improving, rate levels in the stronger inbound direction rose modestly. The members of the *United States South Europe Conference* (No. 202-011587) ("USSEC"), which hold a market share of less than 50 percent, implemented two small-to-moderate tariff GRIs in the trade during the fiscal year; further GRIs are planned for fiscal year 2003. In the U.S. outbound trade, freight rates are still depressed. Despite indications that trade conditions are improving,

the members of the USSEC elected not to implement any GRIs in that trade lane during the fiscal year.

C. MIDDLE EAST

During fiscal year 2002, conditions in the U.S./Middle East trade continued to deteriorate. Uncertainties in the region, particularly the possibility of a U.S. war with Iraq and ongoing violence in the region, had a negative impact on cargo volume growth. U.S. import cargo volumes in the trade remained relatively flat, increasing only 2 percent over fiscal year 2001. However, with the U.S. economy slightly healthier than last fiscal year, U.S. consumers spent more, and import shipments of commodities such as apparel, plastics, fabrics, cotton, and women's and infants' ware from the region increased during fiscal year 2002. Israel led the region with double-digit gains on shipments to the U.S. of plastics and cotton, yams and clothing apparel, followed by Saudi Arabia with glassware, rugs and floor coverings.

Due to regional problems, fiscal year 2002 U.S. export cargo volumes contracted approximately 5 percent compared to fiscal year 2001. Many of the top U.S. exports to the region suffered double-digit losses. Israel, one of the leading U.S. trading partners in the region, experienced more than a 3 1 percent decrease in U.S. exports of wastepaper, wood pulp and industrial resins. Other countries in the region also saw their U.S. export cargo volumes decline. Saudi importers reduced their purchases of U.S. furniture, refrigeration equipment, groceries, wood pulp and air conditioners. Even with a marginal trade growth of 5 percent over last fiscal year, United Arab Emirates' consumers reduced their purchases of U.S. exports of air conditioners, grocery products and fruits. In Kuwait, U.S. exports were down by 14 percent compared to a year ago.

The continued conflict between Israeli and Palestinian factions placed an additional strain on relations between Middle East nations. Because of this, carriers continued to incur higher costs for

premiums imposed by insurance companies. However, through renegotiations with ship insurance firms, many carriers in fiscal year 2002 reduced war risk surcharges that had been implemented the previous year. Toward the end of the fiscal year, many carriers in the trade were contemplating the establishment of congestion surcharges in their tariffs and service contracts in order to offset expenses due to labor disputes at U.S. West Coast ports.

D. AFRICA

The United Nations Economic Commission for Africa has forecasted an average Gross Domestic Product ("GDP") growth rate of 3.4 percent for calendar year 2002. Although GDP growth rates for most African countries are modest, they are expected to exceed the population growth rate of approximately 2.6 percent. Consequently, a modest gain in per capita income is expected for calendar year 2002.

The increase in trade was due to trade expansion initiatives undertaken by the U.S. and African countries. During the fiscal year, the U.S. and African countries continued to promote trade through a number of initiatives, such as several Trade Investment Framework Agreements, the African Growth and Opportunity Act of 2000, and several bilateral trade agreements concluded by the U.S. Trade Representative. These initiatives, particularly the African Growth and Opportunity Act of 2000, were credited with increasing trade between the U.S. and Africa during fiscal year 2002.

Despite low rates of economic growth over much of the continent during the fiscal year, the volume of liner cargo transported between the U.S. and Africa continued to grow. During fiscal year 2002, compared to the previous fiscal year, U.S. exports to Africa grew by 2 percent, while U.S. imports from Africa grew by 11.3 percent. The principal U.S. exports were apparel, animal feed, paper and wastepaper, and synthetic resins. The major U.S. imports from Africa were miscellaneous apparel, men's ware and cocoa.

African ports continued to be considered substandard due to inadequate equipment and infrastructure, which resulted in lower efficiency, higher port costs and congestion. Several ports are addressing this problem by investing in comprehensive plans to improve infrastructure. For example, the port of Maputo in Mozambique is being refurbished at a cost of $61 million. Many African ports also are implementing congestion surcharges to alleviate congestion problems by encouraging faster movement of cargo through the port. For example, the port of Durban in the Republic of South Africa initiated a congestion surcharge of $75 per container, while other South African ports increased harbor duties by 25 percent during the fiscal year. In response, members of the U.S. *Southern Africa Conference* introduced a port congestion surcharge for all cargo between the U.S. and Southern Africa.

Following a period of falling rates during calendar year 2001, members of the *U.S. Southern Africa Conference* implemented a rate recovery program. It appears that this program was somewhat effective, as rates increased slightly in the trade during the fiscal year. In an effort to reduce operational costs and also to improve their bottom line, some carriers entered into alliances and cooperative working agreements.

A number of changes were made in the liner services between Africa and the U.S. during fiscal year 2002. Safmarine Line introduced larger ships in its services in response to an increase in U.S. import cargo volumes. TMM Lines Limited, LLC began a new service in conjunction with Lykes between the U.S. East Coast **and** Africa; and Maersk-Sealand acquired Torm West Africa Line, with the hope of improving its breakbulk service between Africa and the U.S.

E. LATIN AMERICA AND THE CARIBBEAN

Overall imports from South America to the U.S. surged 15 percent during fiscal year 2002 compared to last fiscal year. On a regional basis, imports of furniture, logs and lumber, coffee, and tobacco were the biggest gainers from the East Coast of South America. Goods from Brazil dominated this trade lane, accounting for almost 75 percent, and primarily were responsible for the increases in furniture and logs and lumber shipments as the continued strength of the U.S. housing market elevated demand for housing products. U.S. inbound trade also expanded from the West Coast of South America, with imports from Chile leading the way. Chile is the largest U.S. trading partner in the West Coast region and is the leading supplier of wood millwork. U.S. consumers fueled the demand for construction-related commodities from this region. The demand for agricultural products from this area, especially fruits and horticultural products, also expanded during fiscal year 2002 and is expected to continue its upward trend.

While U.S. imports from South America surged in fiscal year 2002, U.S. exports continued to decline following a downward trend over the last two fiscal years. The combined effects of slowing economies in many South American countries and weakened currencies have restrained consumption of U.S. exports. The decline in U.S. exports to the East Coast of South America more than offset the slight increase in U.S. exports to the West Coast of South America. The contraction in demand was the largest in Brazil with a wide variety of commodities affected, most notably trucks, lifts, and parts, along with industrial inputs. A strong U.S. dollar, as well as an economic downturn in this region, contributed to the decline. A Brazilian and Argentine recession is expected to keep the demand for U.S. goods low in the near future. The countries of the West Coast of South America have enjoyed higher economic growth compared to their eastern neighbors, which explains the increase in U.S. exports. Melamine and resins provided a large increase, along with wastepaper. Chile, Ecuador, and Peru all have contributed to the

growth in this region, while Columbia continues to struggle in the manufacturing sector.

Overall, annual real GDP growth in all countries except Peru was lower in calendar year 2002 compared to 200 1. In Argentina and Venezuela, annual real GDP dropped into negative territory. Political instability will continue to plague South American countries, and it is not expected to improve in the near future. Recent elections in Brazil have left markets uncertain and apprehensive, while GDP growth remains sluggish. Brazilian export growth resulting from a devalued peso will continue to boost this economy. Argentina's exports will also continue to help this country, which is in its fourth year of recession. The construction of a crude oil pipeline in Ecuador will give this country a needed economic boost in the form of more jobs and investment, as its GDP is expected to grow 3.7 percent next calendar year. The prospect of market conditions improving in South America in fiscal year 2003 remain bleak. While U.S. imports from South America are expected to remain strong into fiscal year 2003, U.S. exports to this region are expected to continue a downward trend.

Carriers serving the East Coast of South America trade were increasingly challenged during fiscal year 2002 due to trade imbalances. Currency devaluations in both Argentina and Brazil boosted their exports to the U.S. and elsewhere as they tried to export their way out of an economic recession. Carriers introduced larger ships in the trade to accommodate this surge in demand. However, outbound cargo volumes from the U.S. were curtailed by low foreign consumer demand. As a consequence, a large surplus of vessel capacity into the East Coast of South America had developed, with freight rates falling accordingly. This trade imbalance affected the carriers negatively, with declining rates leading to a lack of carrier cohesion particularly amongst the members of the *East Coast of South America Discussion Agreement* (No. 205-011421). Earlier in fiscal year 2002, members of this Agreement failed to sustain a GRI. In the West Coast of South America trade, exports out of this region

rose significantly, attracting new carriers to this trade lane. However, this trade remains small relative to other U.S. trade lanes, which explains why most services to and from this region involve some form of a triangular rotation between the Caribbean and the West Coast of North America. Similarly, the members of the *West Coast of South America Discussion Agreement* (No. 205-011426) had difficulties implementing a GRI due to lack of carrier cohesion and competition from non-discussion agreement carriers.

Industry reports noted that vessel capacity utilization levels through the first three quarters of fiscal year 2002 improved dramatically for U.S. imports originating from South America compared to fiscal year 2001. Capacity utilization levels showed an increasing trend, while averaging 65 and 70 percent for U.S. imports originating from the East and West Coasts of South America, respectively. Although capacity utilization levels improved during the first three quarters of fiscal year 2002 compared to fiscal year 2001, utilization levels for vessels carrying U.S. exports have shown a downward trend at 61 percent and 60 percent for those vessels destined for the East and West Coasts of South America, respectively.

Spared from the devastating effects of droughts and hurricanes experienced during the previous fiscal years, the economies of Central America and the Caribbean showed signs of improvement during fiscal year 2002. Production ofcoffee, bananas, melons, fruits and vegetables, for example, rebounded noticeably during the fiscal year. For the fiscal year, imports from Central America and the Caribbean increased by nearly2 percent, mainly due to increased U.S. demand for agricultural goods and apparel, while U.S. exports to the region increased by 2.1 percent.

U.S. exports to Central America and the Caribbean consisted mainly of cotton and yarn, of which the greater portion was exported to Honduras and Costa Rica. The countries of the Caribbean imported U.S. grocery products, glassware, building material, and automobiles.

Carrier members of agreements serving the Central America and Caribbean trades attempted to raise freight rates during the fiscal year. Excess vessel capacity and the continuing trade imbalance between the U.S. and the region, however, caused rate levels to remain relatively low. Nevertheless, industry representatives are hopeful that expanding free trade initiatives will improve the level of northbound commerce that could lead to a better two-way balance in the movement of containers. This could reduce the number of empty containers moving northbound and possibly improve rate structures.

F. TRANSPACIFIC

During fiscal year 2002, while both U.S. import and export cargo growth increased, the transpacific trade was hit hard by unstable and deteriorating rate levels and a West Coast port shutdown.

The *Transpacific Stabilization Agreement* ("TSA") (No. 205-011223) covers the inbound trade from the Far East to the U.S. and presides over the largest U.S. liner trade. Asian imports surpassed 6 million TEUs for the fourth consecutive fiscal year. TSA consists of 14 carrier members, with a collective market share exceeding 80 percent. Members exchange information, discuss pricing-related issues, such as proposed GRIs and standardized surcharges, and establish voluntary service contract guidelines in the U.S. inbound Far East trade.

In fiscal year2002, the inbound transpacific trade experienced a strong increase in cargo volumes with growth of over 12 percent, compared to the dismal 3 percent growth rate achieved in fiscal year 2001. Despite the increase in cargo volumes, the trade suffered from low rates. Service contracts based on modest 2002 trade growth forecasts resulted in the negotiation of low contract rates for the 2002/ 2003 service contract season. The cohesiveness of TSA and its ability to implement surcharges and rate increases effectively continued to be challenged by previously low contract rates and

terms, as well as continued overcapacity in the trade. While overcapacity was not as severe as it had been in past years, carriers continued to struggle to maintain a cost-effective balance between supply and demand for vessel capacity in the trade.

In the past few years, many carriers saw their rates in the transpacific trade fall to their lowest levels. As a result, TSA announced a 2002 rate restoration program. Among its many aspects, this program recommended that a peak-season surcharge ("PSS") and a GRI clause be included in TSA members' individual service contracts. Despite high cargo volumes, TSA members' ability to achieve GRI and PSS objectives was greatly challenged. While there was a 25 percent increase in cargo volume for the second quarter of 2002, the average freight rate reportedly declined by 5 percent compared to the first quarter of 2002.

Many industry analysts attribute the second quarter cargo volume boom to cargo being shipped earlier than usual due to the anticipated West Coast port shutdowns. September 29, 2002, was the beginning of a 1 O-day lockout of the International Longshoreman and Warehouse Union by the Pacific Maritime Association. The shutdown has been estimated to have cost the U.S. economy between $1 to $2 billion a day. In fiscal year 2002, TSA members moved over 5 million TEUs through U.S. West Coast ports. TSA members incurred sizable costs due to the port shutdown. While TSA collectively declined to implement port congestion surcharges, many carriers on an individual basis announced congestion surcharges in an attempt to recoup some losses.

During the fiscal year, a group of NVOCCs filed Petition No. Pl-02, *Petition of the National Customs Brokers and Forwarders Association of America, Inc. and the International Association of NVOCCs, Inc. for an Investigation of the Contracting Practices of the Transpacific Stabilization Agreement,* with the Commission alleging that the TSA and it members had violated various sections of the 1984 Act, by engaging in a concerted practice of discrimination

against NVOCCs regarding the negotiation of, and rates implemented pursuant to, their service contracts. Specifically, the Petitioners alleged that TSA members had charged significantly higher rates than those assessed against proprietary shippers for the same services, and refused to negotiate service contracts with NVOCCs until TSA members had completed negotiations and signed service contracts with proprietary shippers. Based on staff research and recommendations, the Commission determined to initiate a fact finding investigation into these allegations, Fact Finding Investigation *No. 25, Practices of the Transpacific Stabilization Agreement Members Covering the 2002-2003 Service Contract Season.* As part of its investigation, the Commission issued a Section 15 Order that requested documents, information, and data from TSA and its members. The Commission also held hearings in which NVOCCs provided testimony regarding their allegations that TSA members had targeted NVOCCs. The Commission is in the process of reviewing and analyzing information received from TSA and its members in response to the Section 15 Order, and further investigating the allegations made by Petitioners.

The *Westbound Transpacific Stabilization Agreement* ("WTSA") (No. 205-011325) is the outbound counterpart to TSA. It also operates as a forum for the exchange of information among its members, and authorizes them to discuss and agree on pricing and related matters. In fiscal year 2002, U.S. container exports to Asia modestly increased by 3.3 percent compared to a .4 percent decrease in fiscal year 2001. This cargo growth was comprised mainly of low-valued products such as wastepaper, animal feeds and scrap metals. For calendar year 2002, it is forecasted that China will surpass Japan as the Asian nation that imports the largest volume of U.S. containerized goods.

In February 2002, WTSA tiled an amendment to its agreement to establish a reefer trade management program ("RTMP"). The stated purpose of the amendment was to promote stable and consistent service to shippers requiring refrigerated ("reefer") service.

The RTMP would have allowed member lines to formulate a cargo and revenue pooling arrangement for reefer cargo. At the time the amendment was tiled, WTSA carried over 95 percent of U.S. reefer shipments to the Far East. Given the almost complete market domination of the containerized reefer market by WTSA members, and the anticompetitive nature of the RTMP, the proposed arrangement raised serious concerns with the Commission. In addition, the Commission received letters from several shipper groups raising questions over the legality and possible adverse effects of the proposed pooling arrangement. The Commission requested additional information from WTSA to evaluate thoroughly the commercial and economic consequences of the RTMP. In the face of the Commission's concerns about the program, WTSA withdrew the amendment.

During the fiscal year, WTSA attempted to establish minimum rates and modest rate increases on selected commodities. These attempts do not appear to have been successful. Maersk-Sealand, the largest carrier in the trade, announced in July that it would withdraw from WTSA. The carrier cited the "lack of resolve" by other member lines to adhere to WTSA's rate restoration programs as the reason for terminating its membership in WTSA. Maersk-Sealand, however, continues to serve the trade. Even without Maersk-Sealand, WTSA members carry around 75 percent of all containerized U.S. exports to Asia.

The trade imbalance between the U.S. and the Far East continued during fiscal year 2002 with Asian imports outnumbering U.S. exports by a two-to-one margin. This imbalance resulted in low capacity utilization for outbound vessel sailings and very low freight rates. Morever, combined with the inability to increase inbound freight rates to pre-2001 levels, transpacific carriers expect trade-wide losses to exceed $1.2 billion for fiscal year 2002.

G. WORLDWIDE

Fiscal year 2002 was difficult for ocean common carriers serving the U.S. liner trades, with the threat of a U.S. invasion in Iraq, the continuing war on terrorism, Middle East violence, stock market volatility, and a slow U.S. economic recovery. U.S. imports grew by 10.2 percent during the fiscal year, primarily in the transpacific trade. On a cautionary note, however, this growth rate may not be sustainable. U.S. import growth during the fiscal year was due primarily to shipper efforts to stock holiday goods prior to the anticipatedU.S. West Coast port shutdown, and to rebuild inventories following the recessionary period. U.S. exports, on the other hand, grew by a mere 1 percent during fiscal year 2002. As U.S. imports largely outstripped U.S. exports in terms of volume, the U.S. trade deficit is expected to be the largest in U.S. history during calendar year 2002. Although consumer confidence continued to soften, and job growth in the U.S. was slower than anticipated during fiscal year 2002, consumer spending was still strong in certain sectors, including the U.S. housing market.

While overall trade volumes began to rebound from the low levels of last fiscal year, freight rates generally continued to decline. According to some industry reports, rates in mid-calendar year 2002 were 15 percent below 2001 levels, and most carriers are expected to post losses for calendar year 2002.

The trend in the liner shipping industry has been to build and operate larger container vessels. At the end of calendar year 2001, the average ship size was 1,897 TEUs, compared to 955 TEUs in 1980 -- representing a 98 percent increase in the average container vessel size. Overall, vessel capacity utilization during fiscal year 2002, combining U.S. imports and exports, improved significantly to 7 1.3 percent through the first three quarters of fiscal year 2002, and reached its highest level since 1991. The gains were due primarily to the continued growth in U.S. imports, relative to U.S. exports. Several large ships were introduced in the U.S. trades during the

fiscal year, increasing supply by only 4 percent in the aggregate. While this increase in aggregate vessel capacity was relatively small, excess vessel capacity still remains in most U.S. trades as a result of the record number of vessels deployed during previous fiscal years.

Carriers serving the U.S. liner trades continued to use vessel-sharing arrangements to improve vessel-utilization levels and, ultimately, freight rates. According to industry reports, although vessel-sharing activity is still present in the relatively robust U.S. import trade lanes, it seems to have leveled off. It has continued to increase on the U.S. export trade lanes, however, where it is significantly more difficult for one carrier to independently fill vessels to profitable levels. These operational agreements comprised 62 percent of all effective carrier agreements on file with the Commission during fiscal year 2002. They range in scope and complexity from simple space-sharing arrangements, to the highly integrated multi-carrier, multi-trade lane global strategic alliances. For example, COSCO, K Line, Hanjin, Senator Lines and Yangming filed an agreement with the Commission that involved joint liner services between the U.S., Asia, and Europe.

Major carriers continue to make large capital investments in IT. INTTRA, GT Nexus and Cargo-Smart are ocean-carrier-backed, business-to-business, web-based Internet platforms or "portals" established by third-party service providers designed specifically for the liner shipping industry. Portals were organized to attract a wide customer base -- from large multi-national shippers to small businesses looking to trim costs. Since their inception, portals have developed a stronger position in the market with registered members now including freight forwarders. Portals provide shippers with simplified booking and allow them to manage their global container cargo business. They also offer access to sailing schedules, cargo-booking facilities and track-and-trace capabilities, and provide other value-added services. For example, INTTRA standardizes and supports door-to-door ocean transport for customers booking with more than one carrier, and GT Nexus offers a broad range of cargo

planning **and** transport life-cycle modules. Other products offered by GT Nexus include cargo forecasting systems and rate request and response networks.

According to industry reports, liner carrier members of INTTRA control 42 to 45 percent of worldwide container capacity, GT Nexus members control approximately 35 percent, and CargoSmart members control about 7 percent. Between 1,500 and 2,000 users in 90 countries have registered with the three portals. One industry consultant estimates that 2.2 million TEUs have been handled through INTTRA's portal services since its inception in 2001. Although this is a sizable amount of business, it is still approximately only 12 percent of what the individual group members move collectively. As carriers invest in e-logistic technology, this area of transportation is likely to grow in importance to the shipping community.

V

THE FOREIGN SHIPPING PRACTICES ACT OF 1988

A. GENERAL

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

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

In fiscal year 2002, the Commission monitored potentially unfavorable or discriminatory shipping practices by a number of foreign governments. However, no FSPA action was taken in 2002.

In fiscal year 2002, the Commission's Task Force on Restrictive Foreign Practices continued to meet. The Task Force, chaired by the General Counsel, is a network of representatives from a number of Commission bureaus and offices, and meets to exchange information regarding new or continuing areas of concern relating to restrictive foreign shipping practices possibly necessitating action under one of the Commission's statutory authorities in this area. The regular meetings of the Task Force also aid the Commission in developing efficient methods to address conditions as they arise.

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

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

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

The most recent complete calendar year for which data were available is 2001. The table on the next page lists the twenty foreign countries that generated the largest volume of oceanborne liner cargo in bilateral trade with the U.S. in 2001. The figures in the table represent each country's total U.S. liner imports and exports in thousands of TEUs.

Top Twenty U.S. Liner Cargo Trading Partners (2001)

Rank	Country	TEUs (000s)
1	China (PRC)	4,023
2	Japan	1,660
3	Hong Kong'	1,329
4	Taiwan	852
5	South Korea	844
6	Germany	609
7	Italy	572
8	Thailand	472
9	United Kingdom (Incl. N. Ireland)	468
10	Brazil	423
11	Belgium & Luxembourg	406
12	The Netherlands	393
13	Indonesia	377
14	India	304
15	Malaysia	287
16	France	276
17	Philippines	242
18	Dominican Republic	232
19	Spain	223
20	Costa Rica	222

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

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

There were several changes to the Top Twenty list for 2001, in comparison with the list for 2000. Costa Rica replaced Australia in the 20th place (Australia placed 23rd); Guatemala and Honduras occupy the 21st and 22nd positions, respectively; Belgium and Luxembourg rose to 11 th place compared to 13th place in 2000; and India moved up three places to number 14.

In terms ofranking order, China (PRC) continued its lead with an increase in volume of almost 12 percent over 2000's volume; this represented a 37 percent increase over 1999's volume. Japan, Hong Kong and Taiwan registered modest decreases in volumes of 8.24 percent, 3.20 percent, and 11.34 percent, respectively, over their 2000 levels. India was the only country that registered a substantial increase in volume -- 18.29 percent over its 2000 share. Other countries that registered slight growth in volumes were Italy with a 2.51 percent increase, and Belgium and Luxembourg with a 3.57 percent increase. The other top twenty countries all registered decreases in volumes ranging from 3 percent to 10 percent less than 2000 levels.

VI

SIGNIFICANT OPERATING ACTIVITIES

BY

ORGANIZATIONAL UNIT

A. OFFICE OF THE SECRETARY

1. General

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

The Secretary's Office also participates in the development of rules designed to reduce the length and complexity of formal proceedings, and participates in the implementation of legislative changes to the shipping statutes. During fiscal year 2002:

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

final without Commission review. Eight proceedings were dismissed or discontinued, including one rulemaking proceeding. The Commission also concluded 14 special docket applications. During the same period, the Commission issued final rules in two rulemaking proceedings.

Eight rulemaking proceedings and three formal petitions were pending before the Commission at the end of the year. Final decisions in these matters are anticipated in fiscal year 2003.

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

2. Library

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

B. OFFICE OF ADMINISTRATIVE LAW JUDGES

1. General

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

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

At the beginning of fiscal year 2002, 14 formal proceedings were pending before the ALJs. During the year, nine cases were added. The ALJs formally settled four formal proceedings, dismissed or discontinued four formal proceedings, and issued three initial decisions in formal proceedings. The Commission dismissed one formal proceeding which had been pending before the ALJs.

2. Commission Action

The Commission adopted two formal initial decisions, four orders of approval of settlement, and two dismissals of complaints, and dismissed one formal proceeding of the ALJs. One initial decision and two dismissals of complaints of the ALJs

were pending consideration by the Commission at the end of the fiscal year.

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

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

This is a major investigation ordered by the Commission to determine if the then-largest American ocean carrier had violated the aforesaid sections of the 1984 Act in 1996 through1998 by charging shippers inapplicable rates on cargo in 20-foot containers when the cargo moved in 40-foot containers, such cargo not qualifying to move under those lower rates because of excessive weight and volume, and when both the shippers and Sea-Land acted knowingly in violation of law. Moreover, Sea-Land also was charged with paying compensation to ocean forwarders who did not perform their statutorily-mandated duties and to other forwarders who were not entitled to compensation. In a 250-page decision, the presiding judge found that these violations were proven on some 149 shipments, but the question of the amount of civil penalties to be assessed was deferred to a later decision after the parties submit legal briefs on this question.

Green Master Int'l Freight Services Ltd. - Possible Violations of Sections IO(a)(l) and IO(b)(l) of the Shipping Act of 1984 [Docket No. 01-10].

This proceeding was an investigation instituted by the Commission to determine whether Green Master Int'l Freight Services, Ltd., an NVOCC located in Taiwan, had violated sections 10(a)(1) and 10(b)(1) of the 1984 Act on various occasions in 1997

through 1999 by improperly accessing a service contract held by another NVOCC on 48 occasions and by failing to charge the rates specified in its tariff on 20 occasions, respectively. By these violations, it was found that Green Master had knowingly and willfully obtained transportation from vessel-operating carriers at lower rates than those lawfully applicable and had moreover mischarged its own shipper customers. It was found, furthermore, that there were no mitigating factors, but there were some aggravating factors. Green Master was ordered to pay a civil penalty amounting to $1,530,000 and to cease and desist from the aforesaid violations.

Anchor Shipping Co. v. Alianca Navegacao e Logistica Ltda. [Docket No. 02-04].

In this proceeding an NVOCC operating out of Miami, Florida, alleged that Respondent ocean carrier had violated some 16 sections of the 1984 Act by, among other things, breaching a service contract with Anchor, denying bookings, interfering with Anchor's ability to obtain other service contracts, and coercing Anchor to accept unfavorable rates or services. As provided by the service contract, the parties went to arbitration, and Anchor was awarded over $381,000 on its claims. However, Anchor sought additional money damages of some $1,000,000 in the instant complaint case, alleging that the arbitrator had erred and had not been authorized to determine Shipping Act issues. Respondent ocean carrier argued that the complaint should be dismissed because Complainant had already won in arbitration and should not be allowed under law to seek additional relief, thus undermining the strong policy in law favoring arbitration as a means to settle disputes, and also had submitted voluntarily its Shipping Act claims to the arbitrator as its service contract allowed it to do. The complaint was dismissed on the grounds submitted by Respondent.

***Pro Transport, Inc. v. HSAC Logistics, Inc., f/k/a Columbus Line USA, Inc., et* al.[Docket No. 02-13].**

In this case, Pro Transport, Inc., a motor carrier, alleged that Respondents, HSAC Logistics, Inc. and others operating as ocean common carriers, refused to provide certain units known as "gensets" that motor carriers need to affix to refrigerated containers when the motor carriers pick up reefer cargoes at the Port of Miami, Florida. Complainant alleged that such conduct violated section 10(b)(10) of the 1984 Act, which prohibits carriers from unreasonably refusing to deal or negotiate, and asked for a cease and desist order, unspecified money damages, and other things. Respondents contended that Complainant's employees had been stealing fuel from the "gensets" and that Respondents would resume servicing the truckers if they paid for the allegedly stolen fuel and instituted procedures to ensure that the alleged stealing would cease. The parties began discussions to resolve their dispute amicably and, reaching settlement, moved to dismiss the complaint, which dismissal was granted.

4. Pending Proceedings

At the close of fiscal year 2002, there were eleven pending proceedings before the ALJs, of which six were investigations initiated by the Commission. The remaining proceedings were instituted by the filing of complaints by common carriers by water, shippers, conferences, port authorities or districts, terminal operators, trade associations, and stevedores.

C. OFFICE OF THE GENERAL COUNSEL

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

1. Rulemakings and Decisions

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

(a) Rulemakings

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

to seek comments from interested parties regarding possible changes to the Commission's rules governing the content of ocean common ca and MTO agreements that are tiled with the Commission accordance with the 1984 Act. The proceeding was initiate response to comments received in the rulemaking proceedi Docket *No. 98-26, Ocean Common Carrier and Marine Terminal Operator Agreements Subject to the Shipping Act of* 1984, which

amended the Commission's agreement regulations to implement changes made by OSRA. Those comments requested that the Commission's rules on content standards for agreement filing be updated and refined. Interested parties were given 60 days to comment in response to the Notice of Inquiry, which was published in the *Federal Register* on August 3, 1999. Comments were received from carriers, shippers, and other interested parties and are currently under review to determine what further action may be warranted.

(b) Decisions

Canaveral Port Authority -Possible Violations of Section 10(b)(10), Unreasonable Refusal to Deal or Negotiate (Order to Show Cause) [Docket No. 02-02], 29 S.R.R. 484 (February 25, 2002).

On February 25, 2002, the Commission issued an order directing the Canaveral Port Authority ("CPA"), an MTO, to show cause why it should not be found to have violated section 10(b)(10) of the 1984 Act, 46 U.S.C. app. § 1709(b)(10), for unreasonably refusing to deal or negotiate when it refused to consider the application for a tug franchise at Port Canaveral tiled by Tugz International. Tug service providers seeking to operate at Port Canaveral are required to obtain a "franchise" from CPA in order to provide those services, which may be obtained only by filing an application to be considered by CPA at a public hearing to determine its convenience and necessity. Seabulk Towing, Inc., has been granted an exclusive franchise to provide tug services at the port since 1958; however, no other company has ever been awarded a franchise. Tugz International filed an application in June 2000, but CPA has never granted a hearing to consider the application.

CPA filed a petition to have the case consolidated with a companion case, Docket *No. 02-03, Exclusive Tug Arrangements in Port Canaveral, Florida,* an investigation to determine whether CPA

violated sections 10(d)(l) and/or 10(d)(4) of the Shipping Act, 46 U.S.C. app. §§ 1709(d)(l) and 1709(d)(4), by failing to establish, observe and enforce just and reasonable regulations and practices relating to tug and towing services, and/or by giving an undue or unreasonable preference or advantage to Seabulk Towing, Inc.; or imposing undue or unreasonable prejudice or disadvantage with respect to other potential tug providers, including Petchem, Inc., and Tugz International. The Commission denied CPA's request to consolidate, because it would not create efficiencies. In fact, it would cause delay and possibly prejudice the parties involved. The case is currently before the Commission, and the final order is due February 24, 2003.

Exclusive Tug Franchises - Marine Terminal Operators Serving the Lower Mississippi [Docket No. 01-06], 29 S.R.R. 770 (April 12, 2002).

On June 11, 2001, the Commission issued an Order to Show Cause directing 12 MTOs on the lower Mississippi River to show cause why they have not violated sections 10(d)(1) and 1 O(d)(4) of the 1984 Act, 46 U.S.C. app. §§ 1709(d)(l) and (d)(4), by entering into exclusive tug assist service arrangements resulting in unreasonable practices and/or undue or unreasonable preference or advantage or unreasonable prejudice or disadvantage, respectively. Respondents filed petitions requesting, *inter alia*, discovery, a new procedural schedule, and referral of the proceeding in its entirety to the Office of ALJs. The Bureau of Enforcement ("BOE") and River Parishes Co., Inc. (an intervener), filed petitions opposing these requests. The Commission issued an order on October 15, 2001, granting many of Respondents' requests, including establishing a new procedural schedule and referring the case in its entirety to an ALJ. The Commission found that discovery was required before the parties' tiling of memoranda of law and affidavits of fact, because there are various questions of fact rather than just questions of law, that usually comprise show cause proceedings. Therefore, the

Commission set forth a schedule setting dates for petitions for leave to intervene, discovery, and the issuance of the Initial Decision by July 1, 2002.

On January 2, 2002, the ALJ issued rulings concerning discovery and a protective order addressing whether Respondents should receive certain materials that Commission staff used to support the Commission's issuance of the Order to Show Cause. BOE objected to furnishing these materials, asserting various privileges, including: deliberative process, attorney work product, attorney-client and informant's privileges. After reviewing the materials, the ALJ decided that many of the documents should be disclosed, but that a protective order should issue to protect the disclosure ofcertain documents. BOE and Respondents filed appeals. On April 12, 2002, the Commission reversed the ALJ's order to disclose documents that BOE argued were shielded by the deliberative process, attorney work product, and attorney-client privileges, and maintained the protective order for the most part as written by the ALJ, but vacated the portion of the ALJ's ruling limiting the production of responses to BOE's discovery of Respondents to BOE, and further found that each Respondent should receive all responses to the information requests ordered released by the ALJ. The parties currently are proceeding with discovery in accordance with that order.

World Line Shipping, Inc. and Saeid B. Maralan (AKA Sam Bustani) - Order to Show Cause [Docket No. 00-OS], 29 S.R.R. 808 (January 24, 2002).

The Commission initiated this proceeding on April 20, 2000, by issuing an Order to Show Cause against Respondents World Line Shipping, Inc. and Said B. Maralan (AKA Sam Bustani). The Order directed Respondents to show cause why they should not be found to have violated sections 8, 19(a), and 19(b) of the Shipping Act, 46 U.S.C. app. §§ 1707, 1718(a) and 1718(b). Further, it directed

Respondents to show cause why they should not be found to have violated several cease and desist orders issued by the Commission in Docket No. 98-19, *Said B. Maralan (AKA Sam Bustani), World Line Shipping, Inc. et al. - Possible Violations of Sections 8(a)(l), 1 O(a)(I), 19(a) and 23(a) of the Shipping Act of 1984*, 28 S.R.R. 1244 (1999). In addition, the Order directed Respondents to show cause why they should not be instructed to cease and desist from providing or holding themselves out to provide transportation as an OTI within the U.S. foreign commerce. Finally, the Order directed that a determination be made whether civil penalties should be assessed and cease and desist orders issued against Respondents in the event they were found to have committed the violations.

The Commission issued a Report and Order on January 8, 2001, finding that between October 21, 1999, and April 9, 2000, Respondents committed 32 violations of the Shipping Act, including 7 violations of the cease and desist orders issued in Docket No. 98-19. The Commission then directed the Office of ALJs to determine what civil penalties should be assessed for the violations.

On June 19, 2001, the presiding ALJ issued an Initial Decision in which he assessed a civil penalty against each Respondent in the amount of $687,500.

On January 24, 2002, the Commission issued a decision affirming the ALJ's decisions. BOE had filed exceptions asking the Commission to overturn the ALJ's decisions to: (1) include only paragraphs 1, 31, 32, and 33 of an affidavit submitted by BOE; and (2) the ALJ's decision to assess penalties for only 25 of the 32 violations found by the Commission.

***Stallion Cargo, Inc. - Possible Violations of Sections 1 O(a)(l) and 1 O(b)(l) of the Shipping Act of* 1984 [Docket No. 99-18], 29 S.R.R. 665 (October 18, 2001).**

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

On Exceptions, the Commission affirmed those portions of the ALJ's decision finding that Stallion knowingly and willfully violated section 1 O(a)(1) on 15 occasions and section 1 O(b)(1) on 152 occasions. The Commission, however, vacated the ALJ's findings that: Stallion's interpretation of its tariff could be construed as reasonable; Stallion's violations ceased after June 2000, and thus this constituted a mitigating factor in assessing penalties; 33 of the section 10(b)(l) violations were technical in nature and did not warrant a

civil penalty; 10 footwear violations did not cause harm to shippers, thus no civil penalties should be assessed for them; and assessing civil penalties for shell tariffs would run "counter to the Commission's efforts to eliminate 'shell' tariffs." The Commission also vacated the ALJ's assessment of a $50,000 penalty and imposed instead a civil penalty in the amount of $1,340,000. Finally, the Commission revoked Stallion's license to operate as an OTI and issued a cease and desist order barring it from operating in the U.S. as an OTI.

Compania Sud Americana de Vapores S.A. v. Inter-American Freight Conference, et al. [Docket No. 96-14], 29 S.R.R. 442 (December 12, 2001).

This proceeding was initiated by a complaint tiled by Compania Sud Americana de Vapores S.A. ("CSAV") against Respondents Inter-American Freight Conference ("IAFC"), Section C of the IAFC, A.P. Moller Maersk Line, Crowley American Transport, Inc., A/S Ivarans Rederi, Companhia Maritima Nacional, Companhia de Navegacao Lloyd Brasileiro, Empresa Lineas Maritimas Argentinas, S.A., Empresa de Navagacao Alianca S.A., Frota Amazonica S.A., Hamburg-Sudamerikanische Dampfschiffahrts-Gesellschaft Eggert & Amsinck, and Transroll/Sea-Land Joint Service. CSAV alleged that the Respondents violated sections 1 O(a)(2) and 10(a)(3) of the 1984 Act, 46 U.S.C. app. § 1709(a)(2) and (3), by charging CSAV for expenses allegedly not authorized by the IAFC Agreement. CSAV claimed to have been damaged by the IAFC's action in drawing on a CSAV-supplied letter of credit to pay for a portion of the winding-up expenses of a juridical entity known as the Sociedade Brasileira de Administracao de Conferencias de Frete ("Sobracon"). In response to the complaint, Respondents submitted a Motion to Dismiss and/or for Summary Judgment. CSAV then filed a Cross-Motion for Partial Summary Judgment. The presiding ALJ issued a decision in which he granted

the Respondents' Motion for Summary Judgment and dismissed the complaint.

The Complainant had argued that the Respondents violated section 1 O(a)(2) by failing to file with the Commission an agreement to dissolve Sobracon, a Brazilian corporation employed to administer the Respondents' conference activities in Brazil. The ALJ found that, as a matter of law, the Respondents had provided sufficient language in their filed FMC Agreement to satisfy the agency's filing requirements. Disagreeing with this conclusion, the Commission issued an Order in which it determined that the Respondents had not filed the agreement to dissolve the corporation, and that this failure to file constituted a violation of section 10(a)(2) of the Act. After the Commission issued its Order, the Respondents tiled a Petition for Reconsideration, and several outside parties tiled *an amicus curiae* brief in support of the Petition for Reconsideration. On December 12, 2001, the Commission issued an Order denying the petition for reconsideration and denying leave to file *an amicus curiae* brief. The Commission affirmed its original Order finding a violation of section 1 O(a)(2) of the Act. On March 7, 2002, the parties voluntarily entered into a settlement agreement, which the presiding ALJ approved. The Commission determined not to review the settlement agreement on April 10, 2002, and it became administratively final, formally ending the proceeding.

2. Litigation

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

The following are representative of matters litigated by the Office:

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

In this case, the Commission represented itselfbefore the U.S. Supreme Court in a proceeding to review the decision of the U.S. Court of Appeals for the Fourth Circuit in *South Carolina State Ports Authority v. Federal Maritime Commission, 243* F.3d 165 (4th Cir. 2001). In that case, the Fourth Circuit had overturned the Commission's determination in *South Carolina Maritime Services v. South Carolina State Ports Authority,* FMC Docket No. 99-2 1, that the Eleventh Amendment to the United States Constitution does not forbid the Commission from hearing a privately-tiled Shipping Act complaint against a state-run marine terminal. The Fourth Circuit found that the Eleventh Amendment and broader constitutional principles of state sovereign immunity bar such proceedings against state-run terminals.

The Commission argued in its petition for certiorari that the scope of sovereign immunity for state-run marine terminals is an important constitutional question with national and international implications, and that the Fourth Circuit's decision would adversely affect the agency's regulatory authority over state-run terminals. The South Carolina State Ports Authority and the Solicitor General of the United States filed briefs opposing the Commission's petition. The Supreme Court granted the petition on October 15, 2001.

The Commission tiled a brief on the merits, and the joint appendix, on November 29, 2001, and the Solicitor General tiled a brief in support of the Commission's position on that same date. The Commission argued that, since the Eleventh Amendment specifically addresses "Judicial power" and "suit[s] in law or equity," the Amendment should have no application to Commission proceedings, which involve the exercise of Executive Branch power and are not

lawsuits as that term has traditionally been understood. *Amicus curiae* briefs were filed in support of the Commission by: Senators Edward Kennedy and Russell Feingold; the American Federation of Labor/Congress of Industrial Organizations; the United States Maritime Alliance and Carriers Container Council; and the National Association of Waterfront Employers. The South Carolina State Ports Authority filed its brief on January 11, 2002, and *amicus curiae* briefs were filed in support of its position by: the Charleston Naval Complex Redevelopment Authority; the National Governors Association, *et al.* ; and the State of Maryland, *et al.* The Commission and the Solicitor General each filed a reply brief on February 11, *2002.*

The Commission presented oral argument to the Supreme Court on February 25, 2002. The Deputy Solicitor General also appeared at the oral argument, in support of the Commission's position.

The Court issued its opinion on May 28, 2002, affirming the Fourth Circuit. In an opinion written by Justice Thomas and joined by Chief Justice Rehnquist and Justices O'Connor, Scalia, and Kennedy, the Court held that "state sovereign immunity bars . . . an adjudicative proceeding" initiated by a private person against a state-run port. While the Commission had argued that the Eleventh Amendment provided a specific, textual limit on the scope of the States' sovereign immunity from suit through its requirement that the "Judicial power of the United States" not be extended to "any suit in law or equity" filed against an unconsenting State, and additionally that the Commission, as an independent Executive Branch agency, does not exercise judicial power, the Court ruled that such a conclusion "does not end [the] inquiry" because "the sovereign immunity enjoyed by the States extends beyond the literal text of the Eleventh Amendment." The Court determined that the Eleventh Amendment "does not define the scope of the States' sovereign immunity; it is but one particular exemplification of that immunity."

The Court thus concluded that the proper inquiry is not whether Commission adjudications are covered by the Eleventh Amendment, but instead whether "the Framers would have thought the States possessed immunity" from regulatory adjudications. The Court first looked to history to discern what the Framers would have believed. However, the Court found that "the relevant history does not provide direct guidance for our inquiry" because of a "relatively barren historical record." Prevented by a lack of evidence from engaging in a historical analysis, the Court looked instead to its own precedent, and noted that it had "applied a presumption" in past cases that the Constitution would not allow proceedings against States that were "anomalous and unheard of when the Constitution was adopted."

To determine whether that presumption was applicable, the Court examined Shipping Act adjudications and concluded that the similarities in procedural rules and processes between such adjudications and civil litigation in Federal district court were "overwhelming." The Court then concluded that because the Framers had understood the States to be immune from suit in Federal district court, they would have understood the States to be immune from administrative proceedings as well. The Court further explained that "[t]he preeminent purpose of state sovereign immunity is to accord States the dignity that is consistent with their status as sovereign entities." Due to the procedural similarities between Commission proceedings and civil litigation, the Court found that it would be an affront to the States' "dignity" to subject them, against their will, to regulatory adjudications.

Justice Breyer wrote the principal dissent from the Court's opinion, joined by Justices Stevens, Souter, and Ginsburg. Justice Breyer first noted that the majority's opinion lacks a basis in the text of the Constitution. He observed that the Court had never before said that the Eleventh Amendment's limit on the "Judicial power of the United States" should be read to include "the executive power of the United States." He also suggested that the terms relied upon by the

majority in reaching its conclusion, including "constitutional design," "system of federalism," and "plan of the convention," are not valid because they "do not actually appear anywhere in the Constitution." He then argued that, in the absence of textual support, the Court's decision must be supported by "considerations of history, of constitutional purpose, or of related consequence." He found all of these lacking.

Justice Stevens also wrote a separate dissenting opinion, in which he argued that the majority's conclusions were "anachronistic."

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

This proceeding sought review of the Commission's decision in Docket No. *94-O* 1, *Ceres Marine Terminals, Inc. v. Maryland Port Administration.* Ceres, an MTO alleging violations of sections 10(b)(1 1), 10(b)(12), 10(d)(l) and 10(d)(3) of the 1984 Act, and sections 16 and 17 of the Shipping Act, 1916, claimed that the Maryland Port Administration ("MPA") engaged in unjust preference and prejudice and unreasonable discrimination by failing to grant it equivalent lease terms and terminal facilities that it provided to an ocean common carrier in its lease with the Port. MPA argued that ocean common carriers and MTOs are not similarly situated, and thus, any disparate treatment was not unjust or unreasonable.

On October 10, 1997, the Commission found that the ALJ had failed to consider or address the evidence or to reflect the applicable standards for his decision. Therefore, the Commission vacated the Initial Decision and decided the case *de novo.* The Commission found that MPA had violated sections 1 O(b)(11) and 1 O(b)(12) of the 1984 Act by relying on a vessel call guarantee to justify granting more favorable lease terms to an ocean common carrier and refusing those same, or substantially similar, terms to an MTO solely because of its status, where the vessel call guarantee did not provide to the Port any more security or assurances than the MTO could have provided, and

further violated section 1 O(d)(1) by imposing on the MTO *rates and* charges that were excessive in relation to the benefit received, particularly where the degree of disparity in the rates so greatly disfavored the party committed to moving substantially more cargo. The Commission also found that Respondent violated sections 1 O(b)(11) and 10(b)(12) by refusing to grant the MTO rates for its barge service that were comparable to those offered to another barge operator unless the MTO dropped its existing state court lawsuit and paid amounts allegedly due, and further violated section 1 O(d)(1) by imposing on the MTO rates for its barge service that were excessive in comparison to the rates provided to the operator of another barge service for the same service and that were not reasonably related to any legitimate goal of the Port.

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

On May 26, 1999, the Commission issued an Order establishing a procedural schedule for disposition of the remanded issues. Opening briefs were filed on June 25, 1999, and reply briefs on July 20, 1999. In its reply, MPA contended that in view of recent Supreme Court decisions, it is immune from Ceres' damages claim

under the Eleventh Amendment to the Constitution. On August 16, 1999, MPA filed a response in which it did not object to Ceres' motion, but also filed a motion for leave to amend its answer and a request for a briefing schedule on the sovereign immunity issues. On September 10, 1999, the parties filed a joint Motion to Approve Stipulation, in which they sought to preserve the sovereign immunity issues for resolution in a future Federal court proceeding. The Commission granted the Motion on September 17, 1999.

The Commission issued an Order on August 15, 2001, addressing the issues remanded by the Court. Initially, the Commission held that the common law doctrines of waiver and estoppel may not be invoked to prohibit a party to an agreement subject to the Commission's jurisdiction from challenging that agreement in a complaint filed with the Commission alleging that one of the parties to the agreement violated a duty imposed on it by the 1984 Act. In addition, the Commission reiterated its view that the proper measure of damages, in a case where a duty imposed by the 1984 Act is absolute and a competitive relationship is not necessary to prove undue or unreasonable preference or prejudice, is the difference between the rate charged and the rate that would have been charged but for the violation of the 1984 Act. The parties also were directed to file supplemental briefs addressing the merits of MPA's sovereign immunity defense, which issue had not previously been presented to the Commission.

On October 1, 2001, both parties filed opening briefs and MPA filed a motion to dismiss on sovereign immunity grounds. On October 15, 2001, MPA filed a Petition for Review in the Fourth Circuit, seeking review of the Commission's August 15, 2001, Order. On October 18, 2001, the Commission issued an order holding the agency proceeding in abeyance, pending the decision by the U.S. Supreme *Court* in *Federal Maritime Commission v. South Carolina State Ports Authority.* Thereafter, the Commission filed a motion to dismiss in the Fourth Circuit, asserting that the August 15, 2001, Order is not a final agency action within the meaning of 28 U.S.C.

§ 2342 and, therefore, is not yet reviewable. Themotion was *granted,* and the case was dismissed on October 30, 2001. Following issuance of the Supreme Court's decision in *FMC v. SCSPA,* the Commission reinstated the briefing schedule on August 23, 2002, and reply briefs were filed on September 22, 2002.

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

On August 15, 2002, New Orleans Stevedoring Co. ("NO,"), a division of James J. Flanagan Shipping Corporation, filed a petition for review in the U.S. Circuit Court of Appeals for the District of Columbia. The Board of Commissioners of the Port of New Orleans filed a Motion for Leave to Intervene on August 21, 2002. NOS is seeking review of the Commission's Order issued on June 28, 2002, dismissing its complaint against the Port alleging that the Board violated sections 10(d)(3) and 10(d)(4) of the Shipping Act by unreasonably refusing to deal or negotiate and providing an unreasonable preference or advantage. The Commission's Order affirmed the ALJ's dismissal of NOS' complaint, finding that NOS had not provided any basis to warrant overturning the ALJ's initial decision. A certified index of the record was filed on September 30, 2002. Petitioner's brief is due on December 30, 2002, and the FMC's brief is due on January 29, 2003.

3. Legislative Activities

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

During fiscal year 2002, 125 bills, proposals and Congressional inquiries were referred to the Office of the General Counsel for comment. The Office also worked closely with Congressional staffs on proposed legislation that affected the Commission. The Office also collaborated with the Office of General Counsel of DOT to prepare a codification of title 46 of the U.S. Code as it relates to shipping. The new sections of the proposed codification pertaining to the Commission include the Shipping Act, 46 U.S.C. app. § 1701, as amended by OSRA, Pub. L. No. 105-258; section 19 of the 1920 Act, 46 U.S.C. app. § 876; the FSPA, 46 U.S.C. app. § 1710a; and *Evidence of Financial Responsibility - Passenger Transportation,* 46 U.S.C. app. §§ 817d and 817e. On October 1, 2002, the Commission submitted comments to OMB on the revised final version of the draft bill to revise, codify and enact certain maritime laws as part of Title *46,* U.S. Code, *Shipping.*

In fiscal year 2003, the Office will continue to take the lead in accomplishing the agency's performance goal related to providing assistance and technical advice to Congress regarding issues for possible legislative consideration.

4. Foreign Shipping Restrictions and International Affairs

The General Counsel is responsible for the administration of the Commission's international affairs program. The General Counsel monitors potentially restrictive foreign shipping laws and practices, and makes recommendations to the Commission for investigating and addressing such practices. The Commission has the authority to address restrictive foreign shipping practices under section 19 of the 1920 Act and FSPA. Section 19 empowers the Commission to make rules and regulations governing shipping in the foreign trade to adjust or meet conditions unfavorable to shipping. The FSPA directs the Commission to address adverse conditions

affecting U.S. carriers in foreign trade, which conditions do not exist for foreign carriers in the U.S.

In fiscal year 2002, the Commission continued to monitor potentially restrictive shipping practices of the governments of PRC and Japan.

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

On August 12, 1998, the Commission initiated Docket No. *98-14, Shipping Restrictions, Requirements and Practices of the People's Republic of China,* with the issuance of Information Demand Orders to vessel-operating carriers of the U.S. and the PRC for information on Chinese policies and practices regarding port access, the licensing of multimodal transport operations, and the establishment of representative and branch offices. The Commission met in January and June 1999 to review information collected in this docket. In a press release dated June 24, 1999, the Commission stated that the responses to the FMC's inquiries indicated that Chinese laws and regulations discriminate against and disadvantage U.S. carriers and other non-Chinese shipping lines with regard to a variety of maritime-related services. For example, U.S. carriers are barred from opening wholly-owned companies or branch offices in the PRC in locations where carriers' vessels do not make monthly calls, thus U.S. carriers must rely on Chinese agents (affiliates of the state-owned Chinese shipping lines) to solicit business, book space, accept goods, and perform other functions in many port cities and inland locales. U.S. carriers also are subject to high minimum capital requirements, and are barred by Chinese law from performing a number of integral vessel agency services for themselves, such as arranging for entry/departure, customs clearance, consignment,

transshipment and multimodal transport. The Commission also expressed concerns about: Chinese restrictions on U.S. carriers' freight forwarding operations; existing requirements that ocean carriers obtain governmental permission before beginning or changing international vessel services; and proposed rules that could require the disclosure of confidential service contract rates or terms, and further restrict non-Chinese carriers' ability to offer multimodal transport services in China. To address these restrictions, the Commission directed its staff to prepare a formal proposal for action under section 19. The Commission may take actions including limitations on sailings, suspension of tariffs, suspension of regulated agreements, fees not to exceed $100,000 per voyage, or any other measure necessary and appropriate to address the unfavorable conditions. Such proposed measures would, upon Commission approval, be noticed to the public for comment by interested parties prior to becoming effective.

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

On March 12, 2002, the Commission issued a new Notice of Inquiry after it learned that the government of the PRC had issued a new Regulation on International Maritime Transport, effective since January 1, 2002. It appeared that while this new Chinese law may have alleviated a few of the concerns the Commission had previously expressed, it also may have created new restrictions on shipping in the U.S.-China trade, especially on the operations of OTIs in that trade. On June 28, 2002, the Commission issued a Further Notice of Inquiry ("FNOI") when it learned that the Chinese Ministry of Communications had released a "Notice Inviting Comments on Implementing Rules for the Regulations of the PRC on International Maritime Transportation." The FNOI specifically requested information about the impact of these Implementing Rules. The comments filed in response to these notices are currently under Commission review.

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

Another responsibility of the Office is the identification and verification of controlled carriers under section 9 of the 1984 Act. Common carriers that are owned or controlled by foreign governments are required to adhere to certain requirements under the 1984 Act, and their rates are subject to Commission review. The Office investigates and makes appropriate recommendations to the Commission regarding the status ofpotential controlled carriers. The

Office, in conjunction with other Commission components, also monitors the activities of controlled carriers.

In fiscal year 2002, the Office reviewed documents and information relating to the controlled carrier status of a number of carriers. The Office determined to add one carrier to the Commission's controlled carrier list. On January 7, 2002, Shanghai Hai Hua Company, Ltd. ("HASCO") was classified as a carrier controlled by the government of the PRC. At fiscal year end, the classifications of several carriers were still under review.

D. OFFICE OF EQUAL EMPLOYMENT OPPORTUNITY

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

The Office is responsible for affirmative program planning, special emphasis programing, and complaints processing and adjudication, with the assistance of collaterally-assigned EEO counselors.

The Office works closely with the Commission's Office of Human Resources, managers and supervisors to:

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

The Director, Office of EEO, arranges for counseling or Alternative Dispute Resolution for employees who raise allegations of discrimination; provides for the investigation, hearing, fact-finding, adjustment, or early resolution of such complaints of discrimination; accepts or rejects formal complaints of discrimination; prepares and issues decisions for resolution of formal complaints; and monitors and evaluates the program's impact and effectiveness.

Significant accomplishments in fiscal year 2002 include the following:

1. **Provided briefings to senior staff.**

2. **Provided workshops on racial and gender diversity and sensitivity.**

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

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

5. **Maintained an effective discrimination complaint process that attempted to resolve issues informally, expeditiously, and at the lowest possible level.**

6. **Provided support and assistance to managers and supervisors in maintaining and effectively managing a diverse workforce.**

7. **Developed information and materials for training senior executives, area representatives, EEO counselors and other staff.**

8. **Planned and developed special emphasis programs for FMC employee participation.**

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

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

During fiscal year 2003, the Office will continue all existing programs and initiate additional activities designed to increase an understanding of EEO concepts and principles.

E. OFFICE OF INSPECTOR GENERAL

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

It is the duty and responsibility of the OIG to:

- **Provide policy direction for and conduct, supervise, and coordinate audits and investigations relating to the Commission's programs and operations.**

- **Review existing and proposed legislation and regulations relating to the Commission's programs and operations and to make recommendations concerning the impact of such legislation or regulations on the economy and efficiency in, and the prevention and detection of fraud and abuse in, the administration of the Commission's programs and operations.**

- **Recommend policies for, and conduct, supervise, or coordinate other activities carried out or financed by the Commission for the purpose of promoting economy and efficiency in the administration of, or preventing and detecting fraud and abuse in, the Commission's programs and operations.**

- **Recommend policies for, and conduct, supervise, or coordinate relationships between the**

Commission and other Federal agencies, state and local governmental agencies, and nongovernmental agencies with respect to all matters relating to: the promotion of economy and efficiency in the administration of, or the prevention and detection of fraud and abuse in, programs and operations administered or financed by the Commission; and the identification and prosecution of participants in any fraud or abuse.

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

During fiscal year 2002, the Office issued the following audits in final:

A01-01	***Review of the Commission's Property Management System (Followup)***
A02-01	***Evaluation of the Agency's Procurement of the Form FMC-1 System***
A02-02	***Assessment of the Office of Information Resources Management***
A02-03	***Review of the SmartPay Program***

A02-04 ***Review of the FMC Compliance with the Government Information Security Reform Act***

During the year, various Hotline complaints were received, and investigations, both informal and formal, were opened and pursued. At the end of the fiscal year, there were no formal investigations pending.

The OIG issued a revised Strategic Plan which outlines the OIG's assessment of its strategic direction through the end of fiscal year 2007. In this plan, the OIG has identified its mission, developed goals to support that mission, set forth expected performance outcomes associated with each goal, outlined strategies for achieving the goals, and provided performance measures to determine our effectiveness in meeting these goals.

In fiscal year 2003, we plan to conduct audits in the IT area, and will continue to perform evaluations of agency programs and operations. Other audits also will be handled as the Office carries out the OIG's statutory mandate to combat waste, fraud, and abuse in agency programs. These audits are tied to both the agency and the OIG strategic plans. The Office also will initiate investigations, both formal and informal, as warranted.

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

F. OFFICE OF THE EXECUTIVE DIRECTOR

The Executive Director, as senior staff official, is responsible to the Chairman for the management and coordination of Commission programs managed by the:

- **Bureau of Consumer Complaints and Licensing,**
- **Bureau of Enforcement,** and
- **Bureau of Trade Analysis,**

and thereby implements the regulatory policies of the Commission and the administrative policies and directives of the Chairman.

Also, the Executive Director provides administrative guidance to the:

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

and administrative assistance to the:

- **Office of the Inspector General** and
- **Office of Equal Employment Opportunity.**

The following offices report directly to the Office of the Executive Director:

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

This management structure has been established to ensure the timely and proper achievement of Commission goals and objectives.

In addition, the Executive Director is the Commission's Chief Operating Officer, Chief Financial Officer, and its Senior Procurement Executive. The Executive Director is also the Commission's Audit Follow-up and Management (Internal) Controls Official.

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

A significant achievement of the Office during fiscal year 2002 was overseeing the process to replace the agency's long-time personnel/payroll and accounting cross-servicing provider. During the fiscal year, agreements were finalized with the National Finance Center ("NFC") for personnel/payroll services and with the Bureau of Public Debt ("BPD") for financial and accounting services. All run-up activities with NFC were completed, and that transition took place in May 2002. Transition activities with BPD were completed at fiscal year-end to permit full conversion as of October 1, 2002. Further, the Office refined the Commission's teleworking program after a pilot phase and drafted an internal Commission order which formalized it, and guided staff efforts towards developing a revised program for the effective monitoring of controlled carrier rates and practices.

The Office also oversaw a plan to update the internal Commission issuances that specify procedures for a variety of programs and activities, and guided Commission efforts to comply with the Government Papenvork Elimination Act of 1998 ("GPEA") and the Government Information Security Reform Act ("GISRA").

Additionally, the Office continued to coordinate implementation *of* the agency's five-year Strategic Plan and Annual Performance Plan, as well as preparation of the Annual Program Performance report, as required by the Government Performance and Results Act of 1993 ("GPRA"), oversaw the semiannual review of the user fee schedule for Commission services, and continued its comprehensive internal control review which assesses ongoing compliance with corrective actions initiated in response to past Inspector General audits. Also, the Office served as coordinator in the aftermath of September 11 regarding mail delivery issues and testing for possible anthrax contamination, and reinstituted an agency-wide technology users group for improved IT decisionmaking and better dissemination of IT-related information.

The Office's key objectives for fiscal year 2003 are guiding Commission efforts regarding continued development or redesign of programs to support the Commission's statutory mandates; managing the Commission's conformance with the requirements of GPRA; ensuring a smooth transition with the new cross-servicing providers for accounting and personnel/payroll; determining what changes should be made in the agency's IT program based on recommendations made by the Inspector General through a contractor assessment; and bringing the Commission into compliance with GPEA and GISRA. The Office will continue to take the lead in accomplishing the agency's performance goals related to ensuring an effective agency-wide computer security program and reviewing internal Commission issuances for continued applicability, accuracy and clarity.

1. Office of Budget and Financial Management

(a) General Office Responsibilities

The Office of Budget and Financial Management ("OBFM") administers the Commission's financial management program and is

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

(b) Achievements

During fiscal year 2002, OBFM:

- **Collected and deposited $2,912,842 from user fees, fines and penalty collections, and ocean freight forwarder and OTI application and passenger vessel certification fees.**

- **Coordinated and prepared budget justifications and estimates for the fiscal year 2003 Congressional budget and fiscal year 2004 budget to OMB.**

- **Prepared a variety of external reports, including: the Annual Leave Year Report and the Report on Workyears and Personnel Cost for 2001 (Office of Personnel Management - "OPM"); the Report on International Travel for FY 2001 (OMB); and the Report on First-Class Airline Accommodations for fiscal year 2001 (General Services Administration - "GSA").**

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

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

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

- **Participated on a task force with other FMC staff and Department of the Treasury contractors to identify and select new cross-service providers for payroll/personnel and accounting and financial services support.**

- **Assisted the Office of Human Resources with mid-year conversion and implementation to NFC for payroll/personnel services.**

- **Assumed the primary responsibility for the conversion to BPD for financial services effective October 1, 2002.**

- **Developed alternative ways to fund local travel expenses after eliminating the Commission's Imprest Fund as of September 30, 2001, per the Department of the Treasury's direction.**

- **Continued to manage and distribute employee disbursements for the Commission's Transit Benefit Program.**

(c) Future Plans

Financial management goals in fiscal year 2003 include: (1) ensuring a smooth transition to the new BPD accounting system; (2) developing a fully integrated financial management system; (3) in conjunction with the Offices of Management Services and Information Resources Management, continuing implementation of electronic commerce to automate the processing of purchase orders,

obligations and payments; (4) reviewing procedures and controls for cash management; and (5) ongoing pursuit of initiatives leading to economy and efficiency in budget and financial operations.

2. Office of Human Resources

(a) General Office Responsibilities

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

(b) Achievements

During fiscal year 2002, OHR:

- **Researched, coordinated and successfully implemented conversion of payroll/personnel services to NFC, and developed an appropriate security plan in conjunction with GISRA.**

- **Conducted a comprehensive training program in accordance with the agency's strategic and performance plans, promoted e-learning opportunities, and participated in the Small Agency Council Training Program.**

- **Revised the Senior Executive Service Candidate Development Program plan and worked with the FMC Executive Resources Board to initiate the program to address executive succession.**

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

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

- **Conducted a comprehensive recruitment program, utilizing alternatives for recruitment, such as those under the Presidential Management Intern program, the Veterans Employment Opportunities Act, etc.**

- **Continued to promote preventive health services, including issuing e-mails focusing on monthly preventive health themes and reestablishing the Smoking Cessation Program.**

- **Publicized the Long Term Care Insurance Program and coordinated two open enrollment periods.**

- **Managed and conducted numerous employee benefit and charitable contribution programs and open seasons, such as the Combined Federal Campaign, Thrift Savings Plan and Federal Employee Health Benefits Program, and coordinated and publicized family-friendly initiatives.**

- **Conducted a cyclical position management program review to maintain balanced**

organizational structures and ensure positions remained current and accurately classified.

- **Conducted a pro-active retirement program to provide counseling, annuity and estimates of other benefits, and timely processing of all retirement applications.**

- **Conducted a comprehensive security program, including initiating and adjudicating security investigations for new and reinvestigated employees, and began work to automate security clearance data for the Clearance Verification System pursuant to the E-Clearance project.**

(c) Future Plans

In fiscal year 2003, OHR plans to continue to: (1) advise agency management and staff on all human resources matters and ensure the maintenance of a sound and progressive human resources program; (2) implement pertinent portions of the agency's strategic, training and related performance plans; (3) implement e-Government initiatives of the President's Management Agenda and related human capital objectives; (4) oversee automated payroll/personnel services, processes and activities to ensure a continued smooth operation and good working relationship with NFC; and (5) explore and implement simplification, flexibility, and accountability of human resources management programs.

3. Office of Information Resources Management

(a) General Office Responsibilities

The Office of Information Resources Management ("OIRM") plans, coordinates and directs the oversight of automated information

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

OIRM is responsible for ensuring that the Commission's IRM functions are administered in a manner consistent with applicable rules, regulations and guidelines. These IRM functions include conducting IRM management studies and surveys; managing data telecommunications; developing and managing databases and applications; coordinating records management activities; administering IRM contracts; and developing Paperwork Reduction Act clearances for submission to OMB. The Office also is responsible for managing the computer security and forms programs.

(b) Achievements

During fiscal year 2002, OIRM:

- **Conducted an agency-wide systems security assessment to determine data sensitivity and systems criticality and developed the FMC IT Systems Inventory.**

- **Cooperated in an assessment of the Commission's information security program performed by the OIG and a private contractor, and implemented several contractor-recommended computer and network security enhancements.**

- **Administered a contract for expert assistance with GPEA compliance, and updated the Commission's**

GPEA strategy plan to establish electronic reporting options where practicable.

- **Prepared and updated quarterly FMC's Plan of Action and Milestones in response to GISRA.**

- **Cooperated in the development of refinements to the Commission's mission-critical Internet-based Service Contract Filing System ("SERVCON").**

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

- **Maintained and enhanced the FMC homepage, and provided advice and technical support to all bureaus and offices in developing Internet and database applications.**

- **Provided technical assistance and guidance for cross-servicing of the agency's payroll/personnel system with the NFC.**

- **Provided technical assistance and guidance for the implementation of the Commission's Internet-based Form FMC-1.**

- **Administered the agency's IT technical support and technical assistance contracts.**

- **Furnished agency-wide advice and coordination on records management, OMB clearances and information management issues.**

- **Maintained liaison with the Government Printing Office ("GPO") regarding the agency's Government Information Locator Systems records maintained on the GPO Access System.**

- **Initiated a contract for off-site storage of Commission data in support of Computer Security Contingency Planning initiatives.**

(c) Future Plans

In fiscal year 2003, OIRM will continue to emphasize ongoing support for Commission and externally mandated government-wide programs. Major initiatives include plans to: (1) ensure compliance with GPEA, GISRA, E-Sign, and section 508 of the Rehabilitation Act; (2) assist in the administration and refinement of SERVCON; (3) develop an FMC Enterprise Architecture and Capital Planning and Investment Control process; (4) develop and submit to the National Archives and Records Administration schedules for electronic program and administrative records and other records not currently scheduled or covered by the General Records Schedule; (5) provide continued agency-wide advice and coordination on records management, OMB clearances and information management issues; (6) continue maintenance and the update of the Commission's homepage to provide information to the public; and (7) facilitate the Commission's ability to take advantage of e-commerce.

4. Office of Management Services

(a) General Office Responsibilities

The Office of Management Services ("OMS") directs and administers a variety of management services functions that principally provide administrative support to the regulatory program operations of the Commission. The Director of the Office serves as the Commission's Contracting Officer.

The Office's support programs include telecommunications, procurement of administrative goods and services, property management, space management, printing and copying management, mail and records services, facilities and equipment maintenance, and transportation. The Office's major functions are to secure and furnish all supplies, equipment and services required in support of the Commission's mission, and to formulate regulations, policies, procedures, and methods governing the use and provision of these support services in compliance with the applicable Federal guidelines.

(b) Achievements

During fiscal year 2002, OMS:

- **Coordinated with the U.S. Postal Service and OPM concerning the anthrax crisis, established agency-wide guidelines for the processing and handling of FMC mail, and tested and ensured that agency mail processing areas were clear and received a negative report for anthrax.**

- **Coordinated with GSA and other building tenants concerning the proper level of building security to protect against terrorism.**

- **Completed the implementation of Verizon's Tone Commander telecommunications system throughout the Commission.**

- **Awarded a follow-on contract with the sub-contractor on the Form FMC-1 acquisition for completion of and enhancements to the original web-based form.**

- **Awarded new cross-servicing contracts for the Commission's personnel/payroll services and financial/accounting services support.**

- **Modified the SERVCON contract to provide new system enhancements for better user functionality.**

- **Awarded a contract for the OIG to receive expert assistance in reviewing the Commission's IRM program.**

- **Arranged for specialized network systems support to assist OIRM in resolving concerns with the Commission's e-mail and Local Area Network functionality.**

- **Conducted a procurement survey through the Small Agency Council's procurement community for recommendations and solutions to the Commission's IT concerns.**

(c) Future Plans

In fiscal year 2003, the Office's objectives include the following: (1) review the FMC's Smart Card purchase program and update the manual; (2) resolve outstanding lease renewal issues with

GSA and execute a new long-term occupancy agreement for Headquarters space needs; (3) implement the PRISM automated procurement system through BPD as part of the Commission's cross-servicing contract for accounting services; (4) review the invoice processing program to improve the processing functionality between FMC activities and BPD; and (5) continue to provide advice and assistance to FMC activities regarding innovative support service approaches.

G. BUREAU OF CONSUMER COMPLAINTS AND LICENSING

1. General

The Bureau of Consumer Complaints and Licensing has responsibility for the Commission's OTI licensing program, passenger vessel certification program, alternative dispute resolution ("ADR") program, and consumer assistance program. In administering these programs, the Bureau:

- **Licenses and regulates OTIs, including ocean freight forwarders and NVOCCs.**

- **Issues certificates to owners and operators of passenger vessels that have evidenced financial responsibility to satisfy liability incurred for nonperformance of voyages or for death or injury to passengers and other persons.**

- **Manages programs assuring financial responsibility of OTIs and passenger vessel operators, by developing policies and guidelines, and analyzing financial instruments and financial statements.**

- **Responds to consumer inquiries and complaints, acting as an intermediary to resolve difficulties encountered by consumers with respect to cruises and shipments of cargo.**

- **Develops and maintains an ADR program, arranging for and providing mediation and other dispute resolution services where appropriate.**

- **Develops and maintains information systems that support the Bureau's programs and those of other Commission entities.**

In carrying out these functions, the Bureau provides information and referrals in response to a wide array of informal inquiries, provides guidance with respect to licensing and bonding, and where appropriate, advises about various means available to resolve complaints, both informally and formally. The Bureau also focuses on facilitating conflict resolution through informal and non-binding approaches in an effort to minimize litigation expenses.

The Bureau is organized into three offices. The Office of Consumer Complaints ("OCC") has responsibility for responding to consumer inquiries and complaints, and assists with the development and implementation of an ADR program. The Office of Transportation Intermediaries has responsibility for reviewing applications for OTI licenses, and maintaining and updating records about licensees. The Office of Passenger Vessels and Information Processing has responsibility for reviewing applications for certificates of financial responsibility with respect to passenger vessels, managing all activities with respect to evidence of financial responsibility for OTIs and passenger vessel owner/operators, and for developing and maintaining all Bureau databases and records of OTI applicants and licensees. All offices respond to a number of inquiries and concerns about programs for which they are responsible. During fiscal year 2002, the Bureau responded to more than 9,115 inquiries.

2. Alternative Dispute Resolution

Final rules implementing the Commission's new and expanded ADR program were issued in August 2001. These rules set forth guidelines and procedures for arbitration and provide for mediation and other ADR services to be provided by the Commission. During fiscal year 2002, the Bureau focused on implementation of the program under the new rules. Seven dispute resolution matters were opened as a result of formal proceedings referred by the presiding ALJ, and another case was opened as the parties wished to attempt to resolve an Informal Docket by mediation. Of the eight proceedings, five were complaint proceedings between private parties, while three were investigative proceedings involving enforcement matters. Mediation led to settlements in two of the complaint proceedings, while three were still pending at the end of the fiscal year. In addition, mediation was able to resolve a complaint proceeding opened during fiscal year 2001. Of the three investigative proceedings, mediation was unsuccessful in leading to a resolution in two cases, while discussions were planned to occur in fiscal year 2003 for the third investigative proceeding. Personnel continued to receive training to mediate a broad range of disputes -- from informal disputes to those involving litigation already commenced.

At the same time, the OCC provides *ombuds* services, and has responsibility for the Commission's informal complaint handling activities, serving as an intermediary between parties in an attempt to resolve disputes, such as those involving delay or mishandling of shipments. It receives, records, and tracks complaints received by OCC and other Commission components, assuring timely replies. Through these services, the Bureau helps secure the recovery of funds improperly collected by industry entities, facilitates the international movement of household goods, and communicates to cruise vessel operators the substance of consumer complaints arising from their services, During fiscal year 2002, the OCC processed a total of 2,167 complaints and information requests. Of those, 526 complaints

required resolution of disputes and attempts to resolve difficulties with shipments. Refunds to the general public of overcharges, refunds and other savings attributable to complaint-handling activities amounted to $218,300. Since 1992, the OCC and its predecessor office have helped complainants recover more than $1,600,000.

The Bureau also adjudicates small claims of entities seeking reparations for violations of the shipping statutes. The dollar limitation for claims which may use this small claims procedure was increased in fiscal year 2001 from $10,000 to $50,000. By agreement of the parties, these claims are adjudicated by Settlement Officers, rather than ALJs, saving the expense and encumbrances of more formal administrative proceedings. Although the vast majority of small claims received a few years ago comprised freight overcharge actions against ocean common carriers, the majority of cases now concern claims by individuals against NVOCCs. Those complaints generally involve alleged prohibited acts in connection with the international transportation of household goods. Typical complaints include situations where an NVOCC has received cargo from its customer and taken payment for the transportation of the cargo, but failed to deliver the cargo. Tracking down the whereabouts of a shipment can be difficult, and often additional charges have accrued because of delay or because the NVOCC has not made a necessary payment, thus necessitating payment of additional funds to obtain release of the shipment. During fiscal year 2002, three claims were filed, while three pending cases were carried over from the previous year. There were six pending cases at the close of the fiscal year.

The Bureau also has responsibility for the adjudication of special docket applications. These are applications for permission to apply other than tariff rates and to waive or refund freight charges arising from various errors in tariff publications, an inadvertent failure to publish an intended rate, or a misquotation of a rate. During fiscal year 2002, thirteen special docket applications were processed. None were pending at the close of the fiscal year.

In fiscal year 2003, the Commission intends to expand its ADR program, resulting in more ADR involvement both prior to and after the onset of litigation. The Bureau also plans to continue the expansion of its consumer outreach programs, and to cultivate its relationship with public and private consumer agencies and organizations. And, the Bureau will continue to develop its capacity to utilize available electronic means of outreach.

3. Licensing of Ocean Transportation Intermediaries

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

To be licensed, an OTI must establish that it is qualified in terms of experience and character, as well as establish its financial responsibility by means of a bond, insurance or other instrument. Licensed ocean freight forwarders must establish financial responsibility in the amount of $50,000, and licensed NVOCCs, $75,000. An additional $10,000 coverage is required for each unincorporated branch office of a licensee. In addition, unlicensed foreign NVOCCs must maintain $150,000 in coverage. The financial instrument must be available to pay any order of reparation assessed under the 1984 Act, claims against the OTI arising from its transportation-related activities, and any judgments for damages against an OTI arising from its transportation-related activities under the 1984 Act.

During fiscal year 2002, the Commission received 300 new OTI applications and 225 amended applications, issued 455 OTI

licenses, revoked 360 licenses, and reissued approximately 90 licenses. At the end of the fiscal year, 1,295 freight forwarders, 1,305 U.S. NVOCCs, 885 joint NVOCC/ocean freight forwarders, and 40 foreign NVOCCs held active OTI licenses. An additional 665 foreign NVOCCs maintained proof of financial responsibility on tile with the Commission but chose not to be licensed.

During fiscal year 2002, the Bureau updated its *Frequently Asked Questions* on the FMC homepage regarding the licensing and bonding of OTIs. The Bureau also made progress towards publishing a list of licensed and bonded OTIs on the Commission's homepage, which would assist carriers in complying with their statutory mandate to do business only with those licensed by the Commission. In fiscal year 2003, the Bureau plans to publish that list, develop an internal database of OTIs to facilitate compliance and enforcement activities, and revise the OTI license application form.

4. Passenger Vessel Certification

The Commission administers sections 2 and 3 of Pub. L. No. 89-777 (46 U.S.C. app. §§ 817d and 817e), which require evidence of financial responsibility for vessels which have berth or stateroom accommodations for 50 or more passengers and embark passengers at U.S. ports and territories. The program now encompasses 180 vessels and 45 operators, which have evidence of financial responsibility coverage in excess of $300 million for nonperformance and over $600 million for casualty. The certificates issued pursuant to this program are necessary for Customs' clearance' of thousands ofpassenger vessel sailings annually. During fiscal year 2002, the Commission received applications for 50 certificates (casualty and performance), while 25 casualty certificates and 35 performance certificates were approved and issued.

The Bureau offers information and guidance to the cruising public throughout the year on their rights and obligations regarding

monies paid to cruise lines who experience financial difficulties and nonperformance problems. This is in addition to those disputes between cruise lines and the cruising public that are resolved by OCC as part of its ADR responsibilities.

The cruise industry has grown tremendously over the past decade. New cruise lines have entered the business, and existing cruise lines continue to build and/or purchase additional vessels to serve an increasing demand. In addition, applicants continue to develop more sophisticated means of establishing their required financial responsibility. However, certain cruise line financial fundamentals began to show deterioration during fiscal years 2001 and 2002. Following on the heels of the bankruptcy of a major cruise line, Premier Cruise Operations Ltd. (d/b/a Premier Cruises and Premier Cruise Lines) in September 2000, three more cruise lines ceased operations during fiscal year 2001. New Commodore Cruise Lines Ltd. (d/b/a Commodore Cruise Lines and Crown Cruise Lines) and Cape Canaveral Cruise Line, Inc., participated in the Commission's program at the time operations ceased. Renaissance Cruises Inc. did not participate in the Commission's program since it did not embark passengers at U.S. ports, even though its cruises were marketed primarily to passengers in the U.S. At the close of fiscal year 2001, American Classic Voyages Company ("AMCV") filed for bankruptcy.

The AMCV bankruptcy was a special concern to the Commission because AMCV evidenced its financial responsibility by means of self-insurance, which resulted in most of its passengers receiving no reimbursement other than through their credit cards if the cruises were charged.

The Commission acted swiftly to protect passengers should this occur with other self-insured carriers by finalizing a regulatory change in Docket *No. 02-07, Financial Responsibility Requirements for Nonperformance of Transportation - Discontinuance of Self-*

Insurance and the Sliding Scale, and Guarantor Limitations. This rule, which became effective this fiscal year, eliminated self-insurance and guaranties issued by persons other than Protection and Indemnity Clubs as acceptable forms of financial responsibility for passenger vessel operators. It also eliminated the sliding scale option, which permitted carriers holding a certificate (performance) for over five years, and with a satisfactory explanation of all claims, to reduce the amount of coverage required. Bureau staff worked closely with carriers evidencing financial responsibility in this manner to bring them into compliance with the amended rules.

During this fiscal year, Bureau staff began work on a subsequent rulemaking to amend other portions of the rules, including removal of the $15 million cap on performance coverage, a redefinition of unearned passenger revenue to eliminate certain credit card ticket purchases which are covered under the Fair Credit Billing Act, and increasing the frequency of reports of unearned passenger revenue. The Notice of Proposed Rulemaking for Docket No. 02-l 5, *Passenger Vessel Financial Responsibility,* was issued shortly after the end of FY 2002. The purpose of these proposed rules is to protect passenger fares fully and increase the Commission's ability to monitor the adequacy of the coverage provided. Because certain credit card ticket purchases would not be included in the unearned passenger revenue totals, the amount of coverage required by some carriers would be reduced.

5. Automated Database Systems

A significant function of the Bureau is to support all Commission programs by providing information about all regulated entities and those doing business with the Commission. In addition, a database is maintained that provides information about financial coverage for all OTIs, as well as the status of license applications.

During fiscal year 2002, the Bureau made progress toward publishing a list of licensed and bonded OTIs on the Commission's homepage, thus assisting carriers in complying with their statutory mandate to do business only with those licensed by the Commission. This is especially helpful as carriers may incur liability for doing business with an unlicensed OTI. An up-to-date list is a safeguard to the shipping public, and also protects licensees from losing business because of an inaccurate determination by a carrier as to whether the OTI is licensed.

Also in fiscal year 2002, a database of Passenger Vessel Operators was created which will help in monitoring coverage amounts.

H. BUREAU OF ENFORCEMENT

The Bureau of Enforcement is the primary investigatory and prosecutorial arm of the Commission. Attorneys of the Bureau serve as trial attorneys in formal proceedings instituted under section 11 of the 1984 Act, and in investigations instituted under the FSPA. Bureau attorneys serve as legal advisors to the Executive Director and other bureaus, and also may be designated Investigative Officers in nonadjudicatory fact finding proceedings. The Bureau monitors all other formal proceedings in order to identify major regulatory issues and to advise the Executive Director and the other bureaus. The Bureau also participates in the development of Commission rules and regulations. On occasion, under the direction of the General Counsel, attorneys from the Bureau may participate in matters of court or other agency litigation to which the Commission is a party.

Through investigative personnel, and most often as the result of information provided by the industry and other government entities, the Bureau monitors and conducts investigations into the activities of ocean common carriers, OTIs, shippers, ports and terminals, and other persons to ensure compliance with the statutes and regulations administered by the Commission. Monitoring activities include: (1) service contract reviews to determine compliance with applicable statutes and regulations; (2) reviews of OTI operations, including compliance with licensing, tariff, and bonding requirements; (3) audits of passenger vessel operators to ensure the financial protection of cruise passengers; and (4) various studies and analyses to support Commission programs. Investigations are conducted into alleged violations of the full range of statutes and regulations administered by the Commission, including: illegal or unfiled agreements; abuses of antitrust immunity; unlicensed freight forwarding; illegal rebating; misdescriptions or misdeclarations of cargo; untariffed cargo carriage; unbonded OTI and passenger vessel operations; and various types of consumer abuses, such as failure of

carriers or intermediaries to carry out transportation obligations, resulting in cargo delays or financial losses for shippers. The Bureau adheres to the agency's objectives of obtaining statutory compliance and ensuring equitable trading conditions and focusing enforcement efforts on activities which have market-distorting effects.

The Commission maintains a presence in Los Angeles, Miami, New Orleans, New York and Seattle through Area Representatives based in each of those cities. These representatives serve other major port cities and transportation centers within their respective areas. In addition to monitoring and investigative functions, Area Representatives represent the Commission within their jurisdictions, provide liaison between the Commission and the maritime industry and the shipping public, collect and analyze intelligence of regulatory significance, and assess industry conditions. Liaison activities involve cooperation and coordination with other government agencies and departments, providing regulatory information and relaying Commission policy to the shipping industry and the public, and handling informal complaints.

The Bureau prepares and serves notices of violations of the shipping statutes and Commission regulations and may compromise and settle civil penalty demands arising out of those violations. If settlement is not reached, Bureau attorneys act as prosecutors in formal Commission proceedings that may result in settlement or in the assessment of civil penalties. The Bureau also participates, in conjunction with other bureaus, in special enforcement initiatives, fact finding investigations and in rulemaking efforts.

During fiscal year 2002, the Bureau of Enforcement investigated and prosecuted malpractices in many trades lanes, including the transpacific, North Atlantic, Central and South American and Caribbean trades. These malpractices included market-distorting activities such as various forms of secret rebates and absorptions, misdescription of commodities and misdeclaration

of measurements, illegal equipment substitution, unlawful use *of* service contracts, as well as carriage of cargo by and for untariffed and unbonded NVOCCs. Most of these malpractice investigations resulted in compromise settlements of civil penalties. However, some investigations required the institution of formal adjudicatory proceedings in order to pursue remedies under the 1984 Act.

In addition to rate malpractice enforcement activity, several matters arose with respect to activities pursuant to filed and unfiled agreements between and among ocean common carriers. Further, upon submission of a report to the Commission in Fact Finding Investigation *No. 24, Exclusive Tug Arrangements in Florida Ports,* the Commission instituted formal investigations to examine the lawfulness of exclusive tug service arrangements in certain Florida ports and at marine terminal facilities on the Lower Mississippi. Further, the Commission, in response to a Petition, initiated Fact Finding Investigation No. 25, to review the activities of the TSA members regarding service contract practices during the years 2000 to *2002.*

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

In fiscal year 2002, the Bureau continued its OTI audit program. This program is conducted from Headquarters, primarily by mail, and reviews the operations of licensed OTIs to assist them in complying with the statutory requirements and the Commission's rules and regulations, particularly as modified by OSRA. The audit program also includes review of entities holding themselves out as VOCCs with no indication of vessel operations.

At the beginning of fiscal year 2002, 37 enforcement cases were pending final resolution by the Bureau, the Bureau was party to 11 formal proceedings, and there were 79 matters pending which the Bureau was monitoring or for which it was providing legal advice. During the fiscal year, 3 8 new enforcement actions were commenced; 32 were compromised and settled, administratively closed, or referred for formal proceedings; and 43 enforcement cases were pending resolution at fiscal year's end. Also, the Bureau participated in 9 new formal proceedings, 6 proceedings were completed, and 14 formal proceedings were pending at the end of the fiscal year. Additionally, 84 matters involving monitoring or legal advice were received during the fiscal year, 80 such matters were completed, and 83 were pending in the Bureau on September 30, 2002.

In fiscal year 2003, the Bureau will continue to pursue market-distorting, fraudulent and anticompetitive practices and will continue to monitor U.S. trades and the implementation of the changes and regulations resulting from OSRA, to the extent that resources permit. It will pursue initiatives aimed at entities not in compliance with the Commission's definition of VOCC, as well as instances of noncompliance with statutory requirements for service contracting.

I. BUREAU OF TRADE ANALYSIS

1. General

The primary function of the Bureau is to plan, develop, and administer programs related to the oversight of concerted activity of common carriers by water under the standards of the 1984 Act as amended by OSRA. Further, the Bureau is responsible for administering the Commission's agreements and service contract programs, and monitoring the accessibility and accuracy of all tariffs published by common carriers, conferences of such carriers, and MTOs. The Bureau's major program activities include:

- **Administering comprehensive trade monitoring programs to identify and track relevant competitive, commercial, and economic activity in each major U.S. trade, and to advise the Commission and its staff on current trade conditions, emerging trends, and regulatory needs affecting waterborne liner transportation.**

- **Conducting systematic surveillance of carrier activity in areas relevant to the Commission's administration of statutory standards.**

- **Developing economic studies and analyses in support of the Commission's regulatory responsibilities.**

- **Providing expert economic testimony and support in formal proceedings, particularly regarding unfair foreign shipping practices.**

- **Processing and analyzing ocean common carrier and marine terminal agreements.**

- **Reviewing and processing service contracts and service contract amendments filed by ocean common carriers, conferences or agreements of such carriers, including service contract statements of essential terms published by such entities.**

- **Reviewing tariff publications in private automated systems of carriers and conferences and ensuring that tariffs under OSRA are accessible and accurate.**

2. Monitoring

The goal of the Bureau's monitoring activities is to ensure that carriers operating in U.S. ocean trades comply fully with applicable statutory standards and Commission regulations. To that end, the Bureau administers a variety of monitoring programs and other research efforts designed to apprise the Commission of current trade conditions, emerging commercial trends, and carrier pricing and service activities.

For a description of the Bureau's monitoring activities for fiscal year 2002, see Section *III.* A, *Monitoring.*

3. General Economic Analysis

In addition to research and economic analysis pertaining to its monitoring programs, the Bureau provides economic expertise for a variety of Commission initiatives, including rulemaking proceedings. Bureau economists prepare testimony in fact finding investigations and cases of unfair shipping practices under section 19 of the 1920

Act and FSPA. They also contribute to speeches and provide briefings for senior agency officials.

Key projects the Bureau completed in fiscal year 2002 included: (1) economic analyses of newly filed major agreements and amendments under the section 6(g) standard of the 1984 Act; (2) analyses and critiques of a revised draft World Bank paper, and an OECD draft paper calling for an end to carrier antitrust immunity in liner shipping; (3) economic analysis in Docket No. *0 l-06, Exclusive Tug Franchises - Marine Terminal Operators Serving the Lower Mississippi River;* (4) economic testimony in Docket No. 02-03, *Exclusive Tug Arrangements in Port Canaveral Florida; (5)* research and analysis of the record in Docket No. *89-26, The Government of the Territory of Guam, et al. v. Sealand Service, Inc., and American President Lines, Ltd.; (6)* an economic analysis and memorandum concerning rate levels of certain controlled carriers, approaches for analyzing controlled carrier pricing behavior, and a revised controlled carrier program; (7) preparation of two regulatory flexibility analyses for proposed rulemakings to (a) eliminate self-insurance and provide a sliding scale provision for passenger vessel operators, and (b) update the Commission's filing and service fees; (8) an economic analysis of public tariff access charges; (9) reviewing and analyzing service contracts pursuant to Fact Finding Investigation No. 25 - *Practices of Transpacific Stabilization Agreements Covering the 2002-2003 Service Contract Season;* (10) responding to various complaints and requests from shippers on matters including the imposition of rate increases and/or surcharges by certain major agreements; (11) classification of agreements to determine each agreement's monitoring report requirements for calendar year 2002; (12) responding to informal requests and inquiries for industry data or information; (13) responding to Congressional requests for trade analyses and data; and (14) meeting with industry representatives to discuss trends and anticipated commercial developments.

4. Agreement Analysis

Under sections 4 and 5 of the 1984 Act, all agreements by or among ocean common carriers to fix rates or conditions of service, pool cargo or revenue, allot ports or regulate sailings, limit or regulate the volume or character of cargo or passengers to be carried, control or prevent competition, or engage in exclusive or preferential arrangements are required to be tiled with the Commission. Except for certain exempted categories, agreements among MTOs and among one or more MTOs and one or more ocean common carriers also are required to be filed with the Commission.

Generally, an agreement becomes effective 45 days after filing, unless rejected by the Commission, made the subject of a formal Commission request for additional information, or enjoined by a U.S. district court under section 6(h) of the 1984 Act when it can be demonstrated that it will unreasonably increase transportation costs or unreasonably decrease service. An agreement already in effect also can be enjoined on a similar showing by the Commission. The 1984 Act empowers the Commission to investigate and order the disapproval, cancellation, or modification of any effective agreement it finds to be in violation of the Act. In an investigation, the Commission may seek to enjoin, in U.S. district court, conduct that violates the Act. Under the Commission's regulations, certain routine or nonsubstantive agreements are exempt from the 45-day waiting period and are effective on filing with the Commission.

There are two broad categories of agreements filed with the Commission. The first category is pricing agreements, where the main focus is the discussion and fixing of rates. Types of pricing agreements include conferences and rate discussion agreements. The other category is non-pricing agreements, where the focus can range from the sharing of vessel space to the management of an Internet portal. Types of non-pricing agreements include non-rate discussion

agreements, vessel-sharing agreements, and cooperative *working* agreements. Brief descriptions follow of the various agreement types.

(a) Conference Agreements

Conference agreements provide for the collective discussion, agreement, and establishment of ocean freight rates and practices by groups of ocean common carriers. Although conference carriers are allowed to act independently, the expectation is that they will adhere to rates and terms and conditions of service adopted by the group. These agreements publish a common rate tariff in which all the parties participate. The last new conference agreement was filed in March 2000.

The Bureau has received 23 modifications to existing conference agreements this year. These were mostly membership changes. In fiscal year 2002, the Bureau analyzed and processed 22 filings. At the end of the fiscal year, there were 20 conference agreements on file. Activities under two conferences in the inbound transpacific trades remain suspended, however. During the past year, one conference transformed itself into a rate discussion agreement, and another conference agreement was terminated.

(b) Discussion Agreements

Discussion agreements fall under two types: rate and non-rate agreements. Like conferences, rate discussion agreements focus on the fixing of rates, but any consensus reached under these agreements is non-binding on the parties. There is no common rate tariff; each party publishes its own tariff.

Non-rate discussion agreements are not geared to rate matters and generally provide a forum for discussing matters of mutual interest; in some instances, they operate much like a trade association. Examples of this latter description are the cruise association

agreements and the Box Club, a group of containership operators that meet once or twice a year to discuss policy and legislative issues that affect their industry.

During the fiscal year, the Bureau received two new discussion agreements and 46 modifications to currently effective agreements, again mostly membership changes. In fiscal year 2002, the Bureau analyzed and processed 50 filings. At the end of the fiscal year, there were 38 rate discussion agreements and 10 non-rate discussion agreements on file. One rate discussion agreement added conference provisions to its agreement during the fiscal year, thus becoming a conference. Two other rate discussion agreements were terminated.

(c) Vessel-Sharing Agreements

Vessel-sharing agreements ("VSAs") make up the largest group of agreements on file with the Commission. There are several different varieties of these agreements ranging from agreements that involve a high degree of operational cooperation with respect to space and services down to the simple swap of container slots. The high end of these agreements are so-called alliances, while the low end are routine space charters. Most VSAs authorize some level of service rationalization. The objective of these agreements is to provide a high-quality service, while reducing individual operating costs.

During fiscal year 2002, the Bureau received 36 new VSAs, which represented over 90 percent of all new agreement filings during the year, and 53 modifications to the VSAs. The Bureau processed 82 filings during the fiscal year, and 21 VSAs were terminated. At the end of the fiscal year, there were 15 1 vessel-sharing agreements on tile.

(d) Joint Service Agreements

Parties to joint service agreements operate a joint venture under a single name in a specified trading area. The joint venture issues its own bills of lading, sets its own rates, and acts as an individual ocean common carrier.

One new joint service agreement and no modifications to existing agreements were filed during the fiscal year. The Bureau processed the one filing during the year. Two joint services were terminated last year, leaving only eight joint service agreements on tile at the conclusion of the fiscal year.

(e) Cooperative Working & Other Agreements

Cooperative working agreements ("CWAs") do not fit under any of the foregoing agreement types. Generally, they deal with unique management arrangements between carriers, joint service contracting, and sharing administrative services. Other agreements include agency, transshipment, and equipment interchange agreements.

The Bureau received 14 filings under these categories of agreements in fiscal year 2002. There were 18 CWAs and other agreements on file at the end of fiscal year 2002. One CWA was terminated.

The membership of the two Internet portal agreements, first filed in 2001, has expanded to encompass many of the major carriers operating in the U.S. trades. The agreements authorize the parties to establish a common Internet portal and platform through which they, other transportation service providers, intermediaries, and shippers interact through a common set of transactions pertaining to the tracking of shipments, the booking of cargo, generating shipping documentation, and the like. These portals are evolving and

developing to offer new services to their customers. For example, one portal amended its agreement to allow it to offer a service contract tender function whereby shippers can transmit service contract proposals to one or more carriers through the portal.

(f) Marine Terminal Agreements

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

During fiscal year 2002, the Bureau received 5 1 and analyzed 47 terminal agreements relating to port and marine terminal services and facilities. Some terminal agreements become effective upon filing under Commission rules that exempt certain classes of marine terminal agreements from the waiting period requirements of the 1984 Act. Terminal agreements not entitled to an exemption are processed under applicable statutory requirements. At the end of the fiscal year, 357 terminal agreements were on file with the Commission.

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

5. Overview of Agreement Filings

In fiscal year 2002, the Bureau received 257 agreement filings, a decrease of 21 percent from the previous year. The Bureau processed 25 1 agreement filings during fiscal year 2002. At the end

of fiscal year 2002, there were 245 carrier *agreements and 357* terminal agreements on file. Appendix C contains a breakdown of receipts and processing categories for fiscal year 2002.

6. Tariffs

Since May 1, 1999, section 8 of the 1984 Act requires common carriers and conferences to publish tariffs in private automated systems. These tariffs set forth the rates, charges, rules, and practices of common carriers operating in the U.S. foreign commerce. The Bureau reviews and monitors the accessibility of the private systems, as prescribed under the 1984 Act, and reviews published tariff material for compliance with the Act's requirements. The Bureau acts on applications for special permission to deviate from tariff publishing rules and regulations and recommends Commission action on tariff publishing activities and regulations. The Bureau also collaborates with other components of the Commission to verify OTI/NVOCC financial responsibility as it relates to tariff publication.

Two Circular Letters, *No.* 00-1, *Public Access to Tariffs and Tariff Systems under the Ocean Shipping Reform Act of 1998,* and *No. 00-2, Charges Assessedfor Access to Tariffs and Tariff Systems,* were issued by the Cornmission to address the carriers' automated tariff systems ("CATS"). The circulars were issued because the Commission found that the public's ability to access some tariff systems appeared to be limited. In fiscal year, 2002, the Commission's staff was in regular contact with the carriers, conferences and tariff publishers to assist in the resolution of problems in certain CATS. This matter will continue to be monitored to ensure that appropriate statutory compliance is achieved.

The Bureau is directly involved in processing the Commission's Form FMC-1. The data on this form identifies the location of carrier tariffs or MTO schedules, including carrier and

conference service contract essential terms publications. At the end of fiscal year 2002, a total of 3,423 tariff location addresses were posted on the Commission's homepage.

During fiscal year 2002, the Bureau also received and processed 46 special permission applications to deviate from the statutory provisions of the 1984 Act and/or the Commission's tariff publishing regulations. The total number of special permission applications received during the fiscal year remained relatively high because a number of VOCCs sought to advance the effective date of war risk surcharges for cargoes with origin/destination ports in high-risk trades. Thirty-two of these special permission applications regarding war risk surcharges in the Middle East and Pakistan were received in October 2001, as a result of the September 11, 2001, tragedies at the World Trade Center and the Pentagon.

7. Service Contracts

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

Since OSRA's effective date of May 1, 1999, all contracts are required to be filed electronically. Initially, two systems were available to file service contracts, one which was Internet-based, *i.e.*, SERVCON, and another that used a dial-up approach based on the Commission's former Automated Tariff Filing and Information ("ATFI") system. The dial-up system was discontinued September 1999, and since that time all service contracts have been filed in SERVCON. The Internet-based system is designed for flexibility. It does not require contract terms to be filed in any prescribed order, and it was enhanced in fiscal year 2002 to allow carriers to submit service contracts in nearly 90 different electronic formats, including the previous list of acceptable formats such as WordStar, WordPerfect,

Microsoft Word, ASCII, Excel and HTML. Other enhancements were made to the system during fiscal year 2002 to increase search capabilities and to obtain more efficient search results. The enhancements continued to build upon the improvements made during the past fiscal year that provided the contract filer with the ability to retrieve its individual directory and service contracts at the Commission.

During fiscal year 2002, the Commission received 48,154 new service contracts (compared to 47,629 in fiscal year 2001), and 210,172 amendments (compared to 182,403 in fiscal year 2001).

8. Controlled Carriers

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

By Order on March 27, 1998, the Commission granted one controlled carrier, COSCO, a limited exemption from the 30-day notice period applicable to controlled carriers to reduce rates to meet or exceed the filed rates of competing ocean common carriers. (Petition *No.* P1-98, *Petition of China Ocean Shipping (Group) Company for a Limited Exemption from Section 9(c) of the Shipping Act of* 1984.) The Commission streamlined and updated the procedures for COSCO to comply with this Controlled Carrier Act limited exemption in fiscal year 2001. In fiscal year 2002, COSCO

exercised the authority granted by the Commission's Order in 21 instances. In October 2000, China National Foreign Trade Transportation (Group) Corp. ("Sinotrans") petitioned (No. P2-00) for an exemption similar to that granted COSCO under Pl-98, so that it could lawfully reduce rates to meet or exceed the published rates of competing ocean common carriers on one day's notice. This petition remained pending at the end of fiscal year 2002. Similarly, a COSCO petition (P3-99) seeking to publish rate decreases in the U.S. foreign commerce that would be effective upon publication without regard to whether they are the same as or lower than rates published by competing carriers also remains pending. The most recent list of controlled carriers issued by the Commission was published in the *Federal Register* on September 27, 2000.

9. Non-Vessel-Operating Common Carriers

Ocean freight forwarders and NVOCCs in the U.S. have been combined by OSRA into a new entity known as an ocean transportation intermediary ("OTI"). The Commission's Bureau of Consumer Complaints and Licensing now monitors and reviews compliance with OTI/NVOCC financial responsibilities under OSRA, while the Bureau of Trade Analysis reviews the accessibility requirements of NVOCC tariff publications in private automated systems. At the end of fiscal year 2002, a total of 2,845 tariff location addresses for NVOCCs had been posted on the Commission's homepage.

10. Marine Terminal Activities

Pursuant to OSRA, an MTO may make available to the public, subject to section 10(d) of the 1984 Act, a schedule of rates, regulations, and practices, including limitations of liability for cargo loss or damage, pertaining to receiving, delivering, handling, or storing property at its marine terminal. Any such schedule made available to the public shall be enforceable by an appropriate court as

an implied contract without proof of actual knowledge of its provisions. Pursuant to the Commission's regulations governing MTO schedules, any terminal schedule that is made available to the public must be available during normal business hours and in electronic form. Each MTO must notify the Bureau of the electronic location of its terminal schedule by submitting Form FMC-1 before commencing operations. At the close of fiscal year 2002, a total of 154 operators' electronic location addresses for MTO terminal schedules were posted on the Commission's homepage. An additional 33 MTOs with FMC-1 submissions opted not to make tariff publications publicly available.

11. Automated Database Systems

The Bureau currently maintains and uses the following automated databases and filing systems: (1) Form FMC-1 System; (2) Tariff Profile System; (3) SERVCON, the system for tiling service contracts, and related Form FMC-83 system for registration to file service contracts; (4) Microfiche System; (5) historical ATFI tariff database system; (6) the tariff and service contract portions of the FMC Imaging System; and (7) the Agreement Profile System. During fiscal year 2002, the Form FMC-1 System reflected the tariff location addresses of 373 VOCCs, 2,845 NVOCCs, 18 conferences, and 154 of the 187 MTOs. Also, the FMC-1 System was redeveloped during fiscal year 2002 and now allows the Commission quickly to track the current status of any FMC-1 form submitted. Information in the Tariff Profile System is used to review and analyze carrier tariffs and service contract essential terms publications to ensure compliance with Commission rules and regulations under OSRA, particularly the accessibility of carrier tariffs. During fiscal year 2002, a separate section was added to the Tariff Profile System to review CATS information. SERVCON contains service contract data, most of which is only available to the Commission's staff due to OSRA's confidentiality requirements. Registration to tile service contracts into the system is authorized through the submission of

Form FMC-83. The historical ATFI database contains all tariff and service contract essential term publication data filed electronically with the Commission between February 22, 1993, and April 30, 1999. The Microfiche System provides a means of locating canceled tariffs and amendments that have been microfiched. The FMC Imaging System, among other things, provides for document storage and retrieval of canceled tariffs and service contracts. The Agreement Profile System contains information about the status of carrier and terminal agreements, as well as related monitoring reports. These databases and systems provide support for many of the Commission's programs. Certain information contained in the databases is also available to the public.

12. Future Plans and Proposed Activities

The Bureau's overall monitoring program will: focus on systematic oversight of carrier and trade activity with emphasis on upgrading monitoring systems to support the electronic transmission of data and information provided by carriers pursuant to Docket No. *94-3* 1, *Information Form and Post-Effective Reporting Requirements for Agreements Among Ocean Common Carriers Subject to the Shipping Act of* 1984; assess the impact of key issues facing the industry in order to monitor developments in major trades and analyze agreements in the foreign trades under the standards of the 1984 Act; and continue to refine its section 6(g) monitoring methodology in evaluating the degree of anticompetitiveness generated by agreements within the context of their commercial environments. The Bureau also will continue to review tariffs and service contracts to ensure that they comply with the Shipping Act and the Commission's regulations, including the statutes and regulations related to controlled carriers. Proposed activities include: (1) refining its controlled carrier monitoring program and reviewing the ocean carrier constructive cost requirement contained in section 9 of the Shipping Act; (2) developing and implementing an ongoing program to evaluate the level of adherence of individual service

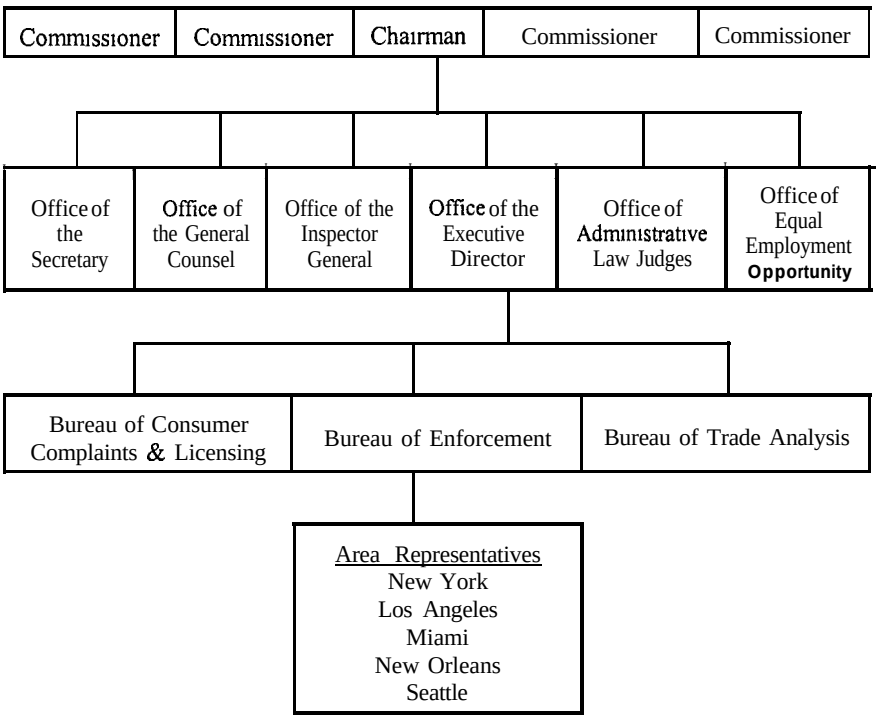
contracts to agreement voluntary guidelines in major trade areas; and (3) developing a streamlined monitoring program, including a rule dealing with data collected from agreement parties and minutes of agreement meetings. Other rulemakings will be recommended addressing certain service contract filing problems, and the possible establishment of criteria for determining whether a vessel time-charter is an acceptable basis for ocean common carrier status under the 1984 Act. Further, a system is being developed to facilitate electronic signatures for various FMC information forms to comply with requirements of GPEA.

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

APPENDIXES

APPENDIX A

FEDERAL MARITIME COMMISSION
ORGANIZATION CHART
Fiscal Year 2002



APPENDIX B

COMMISSION PROCEEDINGS
Fiscal Year 2002

Formal Proceedings

Decisions	3
Discontinuances & Dismissals	8
Initial Decisions Not Reviewed	4
Rulemakings - Final Rules	2
Total	***17***

Special Dockets	***14***
Informal Dockets	***0***

APPENDIX C

AGREEMENT FILINGS AND STATUS
Fiscal Year 2002

Agreements Filed in FY 2002
(including modifications)

Carrier	206
Terminal	51
Total	257

Agreements Processing Categories in FY 2002

Forty-Five Day Review	70
Shortened Review	24
Exempt-Effective Upon Filing	150
Rejection of Filing	0
Formal Extension of Review Period	6
Not Subject	0
Withdrawals	1
Total	251

Carrier Reports Submitted for Commission Review

Minutes of Meetings and Ad Hoc Reports	483
Monitoring Reports	312
Total	795

Agreements on File as of September 30, 2002

Conference	20
Discussion	48
Joint Service	8
Vessel-Sharing	151
Cooperative Working & Other	18
Terminal	357
Total	602

APPENDIX D

FORM FMC-1
TARIFF LOCATION ADDRESSES -ELECTRONIC SERVICE CONTRACT FILINGS AND SPECIAL PERMISSION APPLICATIONS
Fiscal Year 2002

Form FMC-1 Filings

VOCC	*373*
OTI/NVO	*2,845*
MTO	*..18 7*
Conferences	*18*

Electronic Service Con tract Documents

New Service Contracts	*48,154*
Service Contract Amendments	*'210,172*

Special Permission Applications

Granted	*43*
Denied	*1*
Withdrawn	*2*

APPENDIX E

CIVIL PENALTIES COLLECTED
Fiscal Year 2002

Advance Ocean, Inc	**$25,000.00**
Air Sea Transport, Inc, Bondex China, Bondex Air & Sea	60,000.00
Bernuth Lines Ltd	**110,000.00**
De Well Container Shipping	50,000.00
Dole Ocean Cargo Express	**40,000.00**
Eurasia Freight Service	80,000.00
Hanjin Shipping Company Ltd	**280,000.00**
Hecny Shippmg Ltd	250,000.00
King Ocean Central America SA	**40,000.00**
Ledi Corporation	20,000.00
LEO Transport Corporation Ltd	**25,000.00**
Lilly and Associates Int'l Freight Forwarding Inc.	70,000.00
Maritime Credit Alliance	**50,000.00**
Mediterranean Shipping Company	500,000.00
Middle East Shipping Co. Inc.	**30,000.00**
Pacific Champion Express Co.	50,000.00
Scorpion Express Line.	**20,000.00**
Seafreight Agencies	50,000.00
Servitrans Inc	**45,000.00**
Stallion Cargo Inc.	75,000.00
Target Intermodal Inc	**35,000.00**
Top Cargo Inc.	22,000.00
Transglobal Forwarding Co. Ltd.	**50,000.00**
Translink Shipping Inc.	115,000.00
TSC Container Freight	**75,000.00**
Universal Logistics Forwarding	50,000.00
Wallenius Wilhelmsen Lines	**37,500.00**
Water Transport Credit Group Members	105,000.00
West Travel Inc. dba Alaska Sightseeing/Cruise West	**45,000.00**
World Lme Shipping Company	46.471 .OO
Total Civil Penalties Collected	**$2,450,971.00**

APPENDIX F

INVESTIGATIONS
Fiscal Year 2002

Investigations/Special Inquiries Opened:	*89*
Audits/Compliance Checks Opened:	*11*
Total Openings:	***100***
Investigations/Special Inquiries Completed:	*74*
Audits/Compliance Checks Completed:	*14*
Total Completions:	*88*

APPENDIX G

STATEMENT OF APPROPRIATIONS, OBLIGATIONS AND RECEIPTS FOR THE FISCAL YEAR ENDED SEPTEMBER 30, 2002

APPROPRIATIONS:

Public Law 107-77, 107th Congress: For necessary expenses of the Federal Maritime Commission as authorized by section 201 (d) of the Merchant Marine Act of 1936, as amended (46 App. U.S.C. 1111), including services as authorized by 5 U.S.C. 3 109; hire ofpassenger motor vehicles authorized by 31 U.S.C. 1343 (b); and uniforms or allowances therefor, as authorizedby U.S.C. 5901-02; Provided, that not to exceed $2,000 shall be available for official reception and representation expenses.

$16,458,000

Public Law 107-206, 107th Congress
Government-Wide Rescissions, 2002 — 11,000

Revised Appropriation — **$16,447,000**

OBLIGATIONS AND UNOBLIGATED BALANCE:

Net obligations for salaries and expenses for the fiscal year ended September 30, 2002. — **$16,446,643**

STATEMENT OF RECEIPTS: Deposited with the General Fund of the Treasury for the Fiscal Year Ended September 30, 2002:

Publications and reproductions, Fees and Vessel Certification, and Freight Forwarder Applications	$461,871
Fines and penalties	$2,450,971
Total general fund receipts	**$2,912,842**