Federal Maritime Commission

57th Annual Report

for

Fiscal Year 2018

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Letter of Transmittal

FEDERAL MARITIME COMMISSION
800 North Capitol Street, N.W.
Washington, DC 20573-0001

March 29, 2019

To the United States Senate and House of Representatives:

On behalf of my fellow Commissioners, and pursuant to section 103(e) of Reorganization Plan No. 7 of 1961, and section 208 of the Merchant Marine Act, 1936, as amended, at 46 U.S.C. 306(a), I welcome the opportunity to share with you the 57th Annual Report of the Federal Maritime Commission, Fiscal Year 2018.

This report highlights the key accomplishments, initiatives, and relevant events that occurred between October 1, 2017 and September 30, 2018. Included in the following pages are reports about:

- Significant agreements filed at the Commission
- Status of formal investigations, private complaints, and litigation before the Commission
- Investigation of detention, demurrage, and per diem practices of ocean carriers and marine terminal operators
- Trends in licensing of non-vessel operating common carriers and freight forwarders
- Developments in the key trade lanes serving the United States

Containerized ocean freight is an indispensable foundation of the Nation's economy, providing American importers and exporters with a competitive advantage in the global marketplace. It is the mission of the Federal Maritime Commission to assure competition and integrity for America's ocean supply chain and we are proud of the work we do toward that goal.

Sincerely,

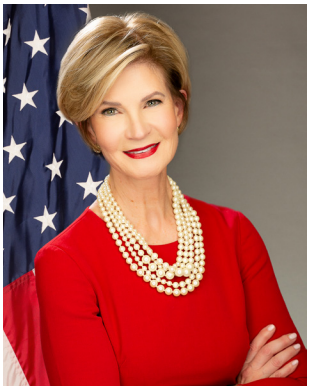
Michael A. Khouri
Chairman

Members of the Commission

Fiscal Year 2018

Michael A. Khouri
Chairman
Appointed 2009
Term Expires 2021

Daniel B. Maffei
Commissioner
Appointed 2016
Term Expired 2017



Rebecca F. Dye
Commissioner
Appointed 2002
Term Expires 2020

William P. Doyle
Commissioner
Appointed 2013
Term Expired 2018

Ensuring Competition and Integrity
for America's Ocean Supply Chain
for more than 100 years

FMC Mission, Strategic Goals, and Functions

The Federal Maritime Commission (FMC or Commission) is an independent agency responsible for the regulation of oceanborne transportation in the foreign commerce of the United States for the benefit of U.S. exporters, importers, and the U.S. consumer.

The FMC's **Mission** is:

- Ensure a competitive and reliable international ocean transportation supply system that supports the U.S. economy and protects the public from unfair and deceptive practices.

The Commission achieves its Mission by ensuring that the fundamental dynamics of a free, open and competitive ocean transportation market drive economic outcomes. To that end, the Commission is committed to faithfully administer the Shipping Act, employing a minimum of government intervention and regulatory costs and by placing a greater reliance on the marketplace.

Competition and Integrity for America's Ocean Supply Chain

Strategic Goal 1

Maintain a competitive and reliable international ocean transportation system.

The FMC ensures competitive and reliable ocean transportation services for the shipping public by:

- Reviewing and monitoring agreements among ocean common carriers and marine terminal operators (MTOs) serving the U.S. foreign oceanborne trades to ensure that any joint or collective activities do not cause substantial increases in transportation costs or decreases in transportation services;
- Maintaining and reviewing confidentially filed service contracts and Non-Vessel-Operating Common Carrier (NVOCC) Service Arrangements to guard against detrimental effects to shipping;
- Providing a forum for exporters, importers, and other members of the shipping public to obtain relief from ocean shipping practices or disputes that impede the flow of commerce;
- Ensuring common carriers' tariff rates and charges are published in private, automated tariff systems and electronically available;
- Monitoring rates, charges, and rules of government-owned or controlled carriers to ensure they are just and reasonable; and

- Taking action to address unfavorable conditions caused by foreign government or business practices in U.S. foreign shipping trades.

Strategic Goal 2

Protect the public from unlawful, unfair and deceptive ocean transportation practices.

The FMC protects the public from financial harm, and contributes to the integrity and security of the U.S. supply chain and transportation system by:

- Investigating and ruling on complaints regarding rates, charges, classifications, and practices of common carriers, MTOs, and Ocean Transportation Intermediaries (OTIs), that violate the Shipping Act;
- Licensing OTIs with appropriate character and adequate financial responsibility;
- Helping resolve disputes involving shipments of cargo, personal or household goods, or disputes between cruise vessel operators and passengers;
- Identifying and holding regulated entities accountable for mislabeling cargo shipped to or from the United States; and
- Ensuring that cruise lines maintain financial responsibility to pay claims for personal injury or death, and to reimburse passengers when their cruise fails to sail.

Statutory Authority

The principal statutes administered by the Commission, now codified in Title 46 of the U.S. Code at sections 40101 through 44106, are:

- The Shipping Act of 1984, as amended by the Ocean Shipping Reform Act of 1998 (Shipping Act)
- The Foreign Shipping Practices Act of 1988 (FSPA)
- Section 19 of the Merchant Marine Act, 1920 (1920 Act)
- Sections 2 and 3 of Pub. L. No. 89-777, 80 Stat. 1350

Year in Review

The container shipping industry returned in FY 2018 to a more settled and familiar state than it has experienced in recent years. As container volumes and carrier capacity grew, the Federal Maritime Commission adjusted its monitoring practices to continue to protect competition in the marketplace. Simultaneously, the Commission looked for ways to eliminate unnecessary or outdated regulatory burdens and to simplify regulatory compliance requirements to help trade move more efficiently.

Unlike the recent past, there were no bankruptcies of carriers and there were limited mergers and acquisition transactions in FY 2018. The two most significant developments related to the make-up of the industry were COSCO Shipping completed its acquisition of Orient Overseas Container Line (OOCL) and the three formerly independent Japan-based container lines (Nippon Yusen Kaisha, Mitsui O.S.K. Lines, and K Line) merged into a single entity, the Ocean Network Express (ONE). For the first time in the past several years, the sector remained constant.

Both worldwide containerized trade volumes and container ship capacity grew last year. Container volumes grew by five percent both globally and in U.S. trade lanes. Asia as a region, and China as a nation, remain the leading trading partners of the United States. Not surprisingly, the majority of the Nation's ocean cargo continues to flow through ports on the U.S. West Coast, and most of that volume transits the Ports of Los Angeles and Long Beach. Nevertheless, ports in the Southeast continue to see cargo volumes grow.

Vessel capacity to carry containerized cargo also grew last year, by six percent. There are now 5,293 vessels deployed globally providing 22.2 million twenty-foot equivalent units (TEUs) of carrying capacity. Critical to note, only two percent of the global fleet is idle.

Shippers continue to benefit from a marketplace that reflects sufficient capacity, managed efficiently, with service providers engaged in intense competition both inside and independent of joint operational agreements or alliances. Space aboard vessels is available and rates to move containerized ocean cargo remain at historically low rates. When adjusted for inflation, Fall 2018 container rates from China to the U.S. West Coast were 29 percent lower than the same trade lane rates in 2008.

Much of the reason shippers benefit from low rates and reliable service is through the operational efficiencies ocean carriers achieve through alliance agreements filed at the Federal Maritime Commission. Oversight of those agreements, and the markets in which the alliance partners operate, remain a priority of the Commission. The Commission imposes alternative reporting requirements on the three major global carrier alliances (the 2M alliance, the OCEAN Alliance, and THE Alliance). This includes having standardized data requirements across all these alliances. Further, the Commission conducts statistical tests to ensure data integrity and identify trends in the data. In particular, the Commission focuses on any significant changes to rates by reviewing trade conditions and alliance meeting minutes for possible explanations.

Last year saw the continuation of marine terminal operators and port authorities filing agreements at the Commission in response to changes in the industry, to increase their operational efficiencies, facilitate trade, and to better serve their customers. As trade volumes continue to grow and port operators need to find ways to make their facilities operate at higher levels of efficiency, it would not be surprising to see even more of these types of agreements filed at the Commission.

The Commission, as part of its monitoring of agreements and analysis of the marketplace, keeps close watch on what is happening day-to-day as containers move from origin to destination. Supply chain efficiency is a leading public policy issue of concern to the Commission and we are keenly interested in what operational circumstances might be influencing market performance. In recent years, our agency has repeatedly turned its attention to the ship-to-shore interchange, the point at which frictions in the network manifest themselves. In response to concerns raised by shippers, in January of 2018, the Commission held a two-day hearing exploring detention, demurrage, and per diem practices of ocean carriers and marine terminal operators. The hearing resulted in the initiation of an investigation led by Commissioner Rebecca F. Dye (Fact Finding 28). Commissioner Dye reported the findings of her investigation shortly after the end of the fiscal year.

Trade flows best when there are fewer barriers to impede its velocity. Such obstacles are not limited to physical impediments. Rules, regulations, and business practices can also make conducting business cumbersome and inefficient. Over the past year, the Commission has continued its efforts to identify outdated, burdensome, or unnecessary rules and regulations and either amend or eliminate them. Significantly, in August 2018 the Commission provided relief specifically requested by Ocean Transportation Intermediaries (OTI) by amending the rules governing Non-Vessel-Operating Common Carrier Rate Agreements and Non-Vessel-Operating Common Carrier Service Agreements, making regulatory compliance much easier to achieve and resulting in a more attractive way for parties to arrange to move ocean freight.

On a related note, the Commission initiated another important rule change by publishing a Notice of Proposed Rulemaking to restore what constitutes a "regular practice" to its traditional and proper definition. Respondents to the request for public comments were unanimously supportive of restoring the scope of 46 USC 41102(c) to be consistent with statutory and legislative history, judicial precedent and Commission case law. The Final Rule will become effective in December 2018.

The ocean supply chain is the foundation of the American economy and provides companies with a competitive advantage. The Federal Maritime Commission is dedicated to protecting competition and the integrity of the marketplace.

Competition and Reliability

Maintaining a competitive and reliable international ocean transportation system and regularly scheduled liner trade by evaluating and monitoring the use of various types of agreement authority for anticompetitive effects is a primary function of the Commission. An efficient and competitive transportation system facilitates commerce, economic growth, and job creation. Competition among participants in U.S. liner trades fosters competitive rates and encourages a variety of service offerings for the benefit of U.S. exporters and importers, and ultimately consumers.

The Shipping Act allows ocean carrier and marine terminal competitors to meet and discuss (and in some cases cooperate on) certain business issues, but first they must file a written agreement with the Commission. The Commission reviews agreements using traditional antitrust law and economic models to evaluate the potential competitive

Commissioner Dye, Chairman Khouri, and Commisioner Maffei at the bench

impact of a proposed agreement before it may go into effect. The initial review and analysis of a proposed agreement and subsequent monitoring of the members' activities under the agreement, should it become effective, are designed to identify and guard against possible anticompetitive abuse of the filed authority, avoid unreasonable increases in transportation costs or decreases in transportation services, and address other activities prohibited by the Shipping Act.

The Shipping Act is a federal competition law applicable to the industry of international liner shipping. It contains provisions similar to those found in the Sherman Act of 1890, the 1914 Clayton Act, and the Robinson-Patman Act of 1936 concerning various prohibitions of discriminatory or unfair business practices and standards regarding business combinations. The Shipping Act creates a regulatory regime separate from Department of Justice antitrust law under which collective carrier or marine terminal operators (MTO) activity is evaluated when an agreement is initially filed and closely monitored thereafter for any adverse impact on competition in the trade.

So long as the regulated entities comply with the statutory and regulatory proscriptions of the Act, then the other federal antitrust statutes generally do not apply. Conversely, if a regulated entity violates the Shipping Act, they would be subject to penalties set forth in the Act, and may under certain circumstances, be subject to investigation and prosecution under the full array of federal antitrust statutes.

Chairman Michael Khouri testifies before Congress on maritime issues

Agreement Filings and Review

Under Sections 4 and 5 of the Shipping Act, 46 U.S.C. §§ 40301–40303, all agreements by or among ocean common carriers to undertake any of the following are required to be filed with the Commission:

- Fix rates or conditions of service,
- Pool cargo 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.

Except for certain exempted categories, agreements among MTOs, and those among one or more MTOs and one or more ocean common carriers, also must be filed with the Commission.

> The Commission may enjoin operation of an agreement if it is likely to substantially reduce competition by creating an unreasonable reduction in transportation service or increase in transportation costs.

The Commission reviews all agreements filed under the Shipping Act, as well as commercial conditions in the U.S. foreign trades, to determine whether cooperation contemplated between or among ports, ocean common carriers, and/or MTOs could reduce competition to the point of unreasonably impacting the market.

- Generally, an agreement becomes effective 45 days after filing, unless the Commission has requested additional information to evaluate the competitive impact of the agreement. All agreements are reviewed pursuant to the standard set forth in section 6(g) of the Shipping Act, 46 U.S.C. §41307(b)(1).
- Based on its analysis, the Commission may seek to enjoin the operations of an agreement under 46 U.S.C. § 41307(b), where it determines that the agreement is likely, by a reduction in competition, to produce an unreasonable reduction in service or unreasonable increase in transportation costs.
- The Commission has the authority to reject a pending agreement filing if it determines the filing fails to meet the Shipping Act and Commission regulations requiring filed agreements to be clear and definite, or if the filing is outside the Commission's jurisdiction. The Commission may reject an agreement if it would constitute or facilitate the violation of a prohibited act, as prescribed by the Shipping Act of 1984.
- Effective agreements are subject to Shipping Act restrictions and Commission oversight, and are exempt from other US antitrust laws administered by the U.S. Department of Justice.

- When the Commission is unable to determine the likely competitive impact of a proposed agreement within the 45-day statutory review period, the Commission may issue a request for additional information (RFAI) to the agreement parties to obtain additional data and/or clarification on unclear or indefinite proposed agreement authority.

In FY 2018, the Commission received 193 agreement filings, including new agreements and amendments to or terminations of existing agreements – an increase of 49 filings over FY 2017. A significant portion of this fiscal year's increase in filings is attributed to the termination of outdated MTO agreements as a result of a comprehensive internal audit and review of all MTO agreements on file. Overall, 440 agreements of all types are currently filed with the Commission and in effect.

No VOCC conference agreements are currently on file covering general commercial cargo.

As in previous years, the vast majority of vessel-operating common carrier (VOCC) agreements in effect at the end of FY 2018 were either space charter or vessel sharing agreements, which collectively comprised approximately 65 percent of all agreements on file with the Commission. See Appendix D for description of all agreement types.

Space charter agreements authorize an ocean common carrier(s) to sell or exchange vessel space for use by another shipping line. Space charter agreements do not include the authority to discuss the provision of space in a trade, only the chartering of space already deployed.

Vessel sharing agreements authorize two or more shipping lines to discuss and agree on the supply of vessel capacity in a defined U.S. trade through the deployment of a specific service string or strings.

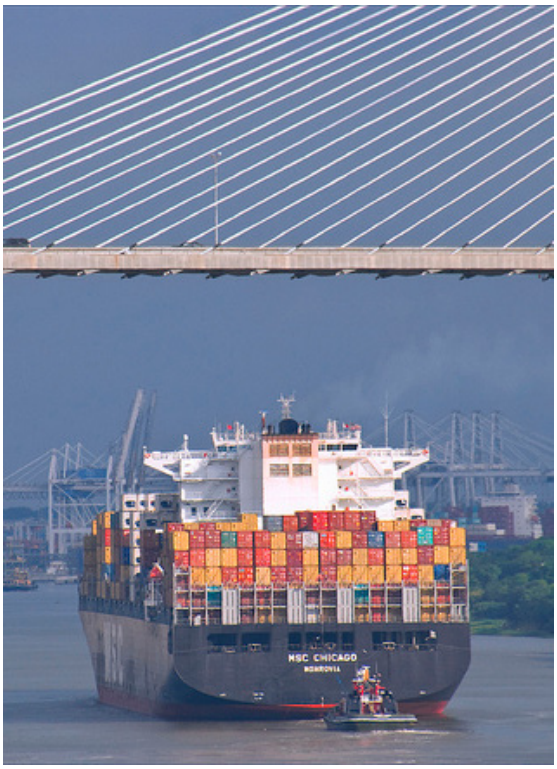
Of note, rate discussion agreements among VOCCs continued to decline in FY 2018. Ten of 15 rate discussion agreements on file with the Commission at the beginning of the fiscal year are still in effect. Among the agreements terminated was the Transpacific Stabilization Agreement, which became effective in 1989 and included the top carriers as members in the transpacific trade. Half of the remaining rate discussion agreements lost members during FY 2018. These developments appear to support the presumption that rate discussion agreements have become a tool of limited use in maintaining stable freight rate levels among ocean carriers.

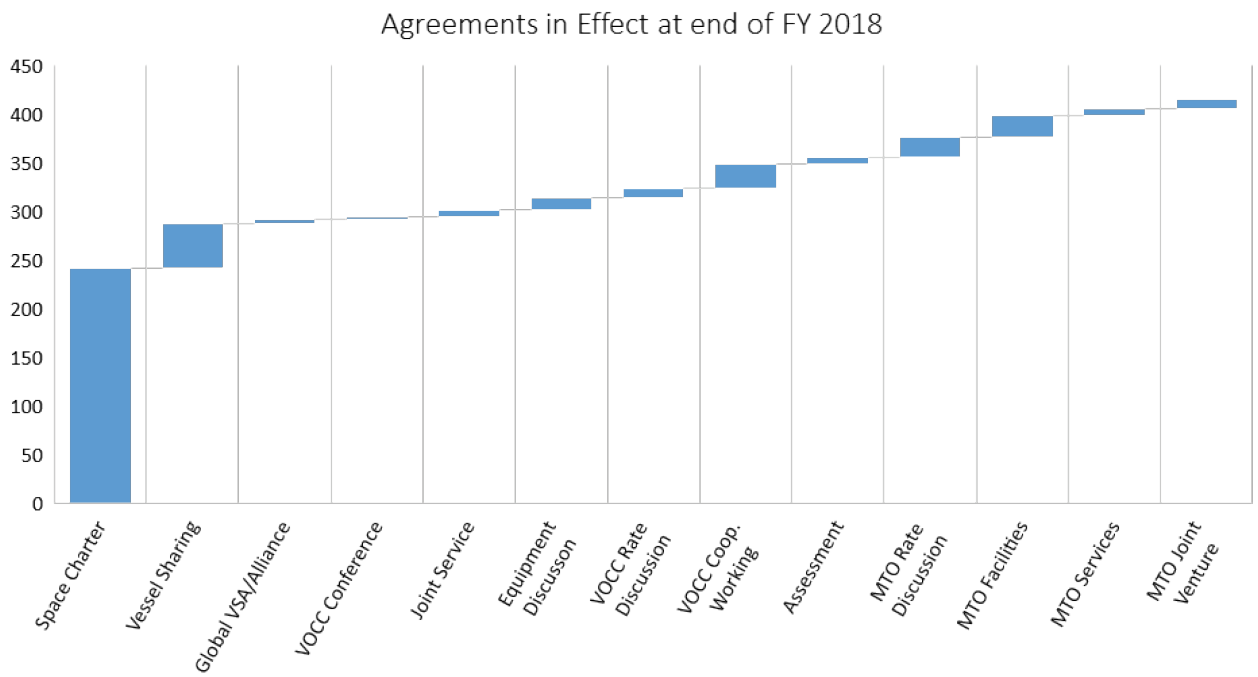
In FY 2018, the Commission completed an audit of all MTO agreements on file, finding over 90 percent of active MTO agreements can now be amended electronically and are available through the eAgreements system. All agreements on file with the Commission will be included in the eAgreements system by the end of FY 2019. The audit also allowed the Commission to secure the termination and removal of more than 50 outdated and expired MTO Agreements.

Vast majority of VOCC agreements were either slot charter or vessel sharing agreements.

These efforts have resulted in a more accurate representation of active agreements on file with the Commission.

Rate discussion agreements continued to decline in FY 2018





The Southern States Chassis Pool Agreement established in 2018 to supply chassis to shippers using Ports in Charleston and Savannah (pictured above)

Competitive Impact and Monitoring

The following are examples of different types of agreements filed with the Commission during the fiscal year, including specific Commission monitoring and actions taken to ensure compliance with the Shipping Act.

West Coast MTO Agreement (WCMTOA):

Under this Agreement, marine terminal operators at the Ports of Los Angeles and Long Beach created an off-peak gate program in 2005 to address cargo-related congestion and pollution in the port area. The PierPass program was developed to incentivize the utilization of night and weekend (off-peak) shifts as a way to alleviate traffic and air pollution caused by idling trucks awaiting access to the terminals. Since 2005, a traffic mitigation fee (TMF) has been charged only to users who enter the terminals during weekday daytime (peak) shifts. The program has succeeded in shifting roughly 50 percent of truck activity to off-peak shifts. However, in recent years, industry stakeholders have expressed dissatisfaction with aspects of PierPass, in particular the loss of terminal productivity near the peak/off-peak shift changeover. The WCMTOA parties decided that an appointment system would be more effective in managing truck flow and terminal workload.

On March 13, 2018, the 12 container terminals in operation at the Ports of Los Angeles

and Long Beach filed an amendment to their agreement which would authorize significant changes to the PierPass program. Under the proposed amendment, a new flat fee TMF replacing the former TMF structure would be applied to all terminal gate users during both day and evening shifts, with the existing categories of cargo continuing to be exempt from the new flat fee. In addition, all terminals would require an appointment for the pickup of U.S. import cargo. In May 2018, the Commission issued a request for additional information from the parties to analyze the impact of the jointly-set flat fee and port-wide appointment requirement. The Commission assessed the likely effect of the amendment on the service provided by the WCMTOA parties during day and evening shifts, and the potential increase in transportation costs imposed on those terminal users not currently paying a fee. The amendment remained pending before the Commission at the end of the fiscal year. In November 2018, the Commission determined not to take further action to prevent the WCMTOA amendment from becoming effective and is reviewing appropriate monitoring requirements.

Southern States Chassis Pool Agreement:

This Agreement, which became effective August 2, 2018, authorized the Georgia Ports Authority (GPA) and the South Carolina Ports Authority (SCPA) to establish a common chassis pool in order to improve the supply and condition of truck chassis available to the ports. With input from industry stakeholders, the GPA and SCPA collaborated on the development of a new chassis pool model that would be owned and operated by a single provider on a not-for-profit basis. At the time the agreement was filed, the ports were served by a cooperative chassis pool owned and operated by the ocean carrier members of the *Ocean Carrier Equipment Management Association Agreement* (OCEMA). The new pool would replace the OCEMA pool. At the end of the fiscal year, the GPA and SCPA, together with their chosen operator for the pool, the North American Chassis Pool Cooperative (NACPC), were working with chassis lessors and ocean carriers on the implementation of the new chassis pool.

MED/USEC Vessel Sharing Agreement:

In August 2018, several members of THE Alliance and OCEAN Alliance, formed a vessel sharing agreement to coordinate their operations in the trade between ports in the western Mediterranean and the U.S. Atlantic Coast. The parties to this agreement planned to launch a weekly loop service with larger vessels that would replace their two separate weekly loop services in current operation. Under the agreement, the parties strive to reorganize their services to optimize cost savings and align the supply of vessel capacity with market demand. The Commission determined to take no action pursuant to the Shipping Act's competition standard, to prevent or delay the Agreement from going into effect as scheduled, subject to appropriate special reporting requirements placed on the Alliances. The new service was launched in November 2018.

Carrier Alliance Agreements

At the end of FY 2018, the three global ocean carrier alliances, namely, THE Alliance, the OCEAN Alliance and the 2M Alliance, controlled 80 percent of vessel capacity in the two largest U.S. trades, the transpacific and the transatlantic. The transpacific trade encompasses cargo moving between Asia and the U.S., while the transatlantic trade includes cargo moving between Europe and the U.S. The three alliances collectively hold market shares of 92 percent of cargo moving in the transpacific trade and 87 percent in the transatlantic at the end of the fiscal year. Given these considerable market shares, the FMC closely monitors alliance activities. As part of the Commission's agreement monitoring program, alliances report individual members' average revenue data and statistical tests are performed using that data for indications of collaborative price setting within alliances, among alliances, and among all alliance carriers. If tests indicate atypical market activity, the Commission will take appropriate action.

A number of factors have converged over the past decade that drove ocean carriers both to reconfigure their alliance arrangements under the Shipping Act and to consolidate their operations through mergers and acquisitions. While cargo volumes have increased in recent years, the rate of increase has not returned to the levels that existed prior to the 2008-2009 global recession. The slower growth in demand for liner shipping services and the ongoing deployment of mega container ships have impacted the financial stability of liner carriers. Vessel capacity utilization continues to be higher in the headhaul trades (trade lanes generating the highest revenues, and generally those with the greater cargo volume) compared to the backhaul trades (the trade lane direction that carries both less cargo volume and generally cargo of lower value).

In the major east-west U.S. import and export trades (Asia-U.S. West Coast and Europe-U.S. East Coast), the higher value cargo headhaul is Asia east-bound to the U.S. and Europe west-bound to the U.S. From a volume perspective, the trades are also imbalanced, with more loaded containers coming into the U.S. from Asia than U.S. export loads going to Asia. A similar imbalance exists in the Trans-Atlantic trade with more loaded containers landing at U.S. East and Gulf ports than U.S. exports going to Europe.

In the last year, two mergers were completed during the fiscal year. The three Japanese carriers, K Line, MOL, and NYK, merged their liner shipping services in April 2018 under the new company Ocean Network Express (ONE). COSCO completed its purchase of a majority stake in OOCL in July 2018. The largest ocean carriers operate in the three global alliances covering the transpacific, transatlantic, and Asia-Europe trades, as discussed below.

Maersk/MSC Vessel Sharing Agreement (2M Alliance):

The 2M Alliance consists of Maersk Line and MSC, globally the largest and second-largest ocean carriers by TEU capacity. The Commission monitors the activities of the parties in the alliance, the parties' average revenues, and their vessel capacity and utilization levels. The parties also provide advance notice

of any planned capacity reductions in the U.S. liner trades. At the end of the fiscal year, the 2M Alliance accounted for approximately 32 percent of global container capacity. During FY 2018, 2M entered into a slot exchange and purchasing agreement with Zim in the liner trade between the U.S. Atlantic Coast and Asia. The 2M carriers also have a slot exchange and purchasing agreement with Hyundai Merchant Marine covering the liner trade between Asia and the U.S Pacific and Atlantic Coasts.

OCEAN Alliance Agreement:

The OCEAN Alliance consists of COSCO, CMA CGM, Evergreen Line, and OOCL. The Commission monitors the activities of the parties in the OCEAN Alliance, the parties' average revenues, and their vessel capacity and utilization levels. The parties also provide advance notice of any planned capacity reductions in the U.S. liner trade. At the end of the fiscal year, the OCEAN Alliance accounted for approximately 29 percent of global container capacity. COSCO completed its acquisition of a majority stake of OOCL in August 2018 and plans to maintain the shipping line as a separate brand. As noted, the members of the OCEAN Alliance (with the exception of Evergreen Line) filed a vessel sharing agreement with the members of THE Alliance in August to combine their services and upgrade their vessels in their Mediterranean-U.S. Atlantic Coast services.

THE Alliance Agreement:

THE Alliance, formed in December 2016, authorizes member parties to share and charter vessel space among each other and to form and operate liner services in the U.S. liner trades. Initially, five ocean carriers were members to the Agreement. In April 2018, three Japanese carriers, K Line, MOL, and NYK, merged to form ONE. THE Alliance now includes the original two members, Hapag-Lloyd and Yang Ming, and the newly consolidated ONE. THE Alliance accounted for approximately 17 percent of the global container capacity in FY 2018. As with the other major alliances, the Commission monitors THE Alliance parties' activities under the Agreement, along with their vessel capacity and utilization, average revenue and planned capacity reductions in the U.S. liner trades.

Tariffs, Service Contracts, NSAs, & MTO Schedules

Tariffs

The Shipping Act requires common carriers and conferences to publish their tariffs containing rates, charges, rules, and practices, electronically in private systems. For ease of public access, the Commission publishes the web addresses of those tariffs on its website. At the close of the FY 2018, 5,695 tariff location addresses were posted. Of that number, 5,532 tariff addresses were for NVOCCs.

The Commission provides regulatory relief, allowing licensed and foreign registered NVOCCs to "opt out" of the requirement to publish rate tariffs when using NVOCC Negotiated Rate Arrangements (NRAs). NVOCCs have indicated that NRAs, which are not

required to be published or filed with the Commission, are a less burdensome commercial pricing option than rate tariffs, which must be published. Consequently, NVOCCs advise that NRAs save them both time and money. At the end of the fiscal year, nearly 1,805 active NVOCCs or approximately 33 percent of all 5,532 NVOCCs, had filed a prominent notice or rule in their respective tariff indicating that they had invoked the NRA exemption as an alternative to rate tariff publication. The majority of NVOCCs which have implemented NRAs continue to use a combination of NRAs and tariff rate publications. In August 2018, the Commission provided further regulatory relief by significantly expanding the commercial flexibilities available to NVOCCs and their shipper customers under NRAs (see Docket No. 17-10).

Service Contracts

Service contracts between carriers and shippers designed to meet the particular needs of the parties are an alternative to transportation of cargo under published tariff standard rates available for cargo transported by VOCCs. Approximately 90 percent of the total cargo transported in the major U.S. liner trades moves under service contracts, rather than tariffs. Service contracts enable the parties to tailor transportation services and rates to their commercial and operational needs and to keep these arrangements confidential. During the fiscal year, the Commission received 47,962 new service contracts, compared to 47,110 in FY 2017; and 772,803 contract amendments, compared to 766,329 in FY 2017.

This was the first full fiscal year to gauge the impact of the Commission's new regulatory flexibilities for service contracts through the Docket No. 16-05 rulemaking which addressed commercial issues raised by contracting parties to facilitate ocean commerce. As part of this regulatory relief, VOCCs were allowed up to 30 days to file service contract amendments after agreement by the VOCC and the shipper, along with expanded timelines for correcting service contracts. While it was anticipated that the number of amendments could be somewhat reduced by consolidation of service contract changes into periodic amendments as a result of this regulatory flexibility, few VOCCs have yet done so. Consequently, there was a slight increase in the number of service contract amendments during FY 2018 compared to the previous fiscal year. Discussions with various VOCCs indicated that they still must process amendments internally in their respective auto-rating systems by the effective date of the change in order for bills of lading to accurately reflect the rates and other terms agreed to with shippers. Therefore, the anticipated potential reduction in the number of service contract amendments for that reason has not occurred. Other factors leading to the increase in service contract amendments include a major carrier's re-design of its IT system which automatically generates an amendment for each rate offering, rather than consolidating the rate changes into a single daily amendment. In addition, some carrier

With nearly 48,000 new filings in FY2018, approximately 90 percent of cargo in major U.S. liner trades moves under service contracts.

consolidations during the fiscal year many times resulted in the filing of new service contracts by the acquiring carrier. But for these carrier consolidations, there may have been a decline in new service contract filing activity during FY 2018.

Near the end of FY 2018, a petition was filed by the World Shipping Council (WSC) requesting exemption from the service contract filing and essential terms publication requirements of the Shipping Act. The petition is pending before the Commission.

NVOCC Service Arrangements (NSAs)

Commission rules allow NVOCCs to offer transportation services pursuant to individually negotiated, confidential service arrangements with customers, rather than under a published tariff. During FY 2018, the Commission received 1,140 NSAs, compared to 969 in FY 2017, and 1,609 NSA amendments, compared to 1,778 in FY 2017. During the fiscal year, a total of 94 NVOCCs (2 percent) took advantage of the ability to use NSAs to conclude their transportation arrangements with shippers. While 1,903 NVOCCs are registered with the Commission to file NSAs, only 295 NVOCCs have ever filed an NSA. The additional regulatory flexibilities introduced in the Commission's rulemaking in Docket No. 16-05 appear to have had an impact, as new NSAs increased year-over-year and the number of NSA amendments were reduced. This regulatory relief allowed NVOCCs up to 30 days to file NSA amendments after agreement by the NVOCC and the shipper, along with expanded timelines for correcting NSAs. The Commission continued its easing of regulatory burdens on NVOCCs through Docket No. 17-10 (effective August 22, 2018), in which the Commission eliminated the NSA filing and essential terms publication requirements to ease the regulatory burden associated with NSAs.

Marine Terminal Operator Schedules

An MTO may voluntarily make available to the public 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. An MTO schedule made available to the public is enforceable by an appropriate court as an implied contract without proof of actual knowledge of its provisions. During FY 2018, 20 new MTOs registered with the Commission increasing the total to 274 MTOs that actively maintain a Form FMC-1. Through Form FMC-1, MTOs report the electronic location of their MTO terminal schedules, with 168 MTOs electing to voluntarily publish their terminal schedules. The internet address of these MTO terminal schedules are posted on the Commission's website.

International Cooperation

Competition Law Challenges in the Shipping Sector in Brussels, Belgium

In March 2018, the General Counsel, Tyler Wood, traveled to Brussels, Belgium, and participated in the 2018 conference on Competition Law Challenges in the Shipping Sector. The conference covered a wide range of topics in the shipping industry, including consolidation, alliances, Brexit, and state aid. Mr. Wood spoke on a panel on global enforcement trends.

Japan-U.S. Maritime Bilateral Meeting

In March 2018, Chairman Khouri and General Counsel Tyler Wood represented the Federal Maritime Commission at the Fourth Japan-U.S. Maritime Bilateral Meeting, hosted by the Japanese Ministry of Land, Infrastructure, Transport, and Tourism in Tokyo, Japan. Discussions centered on consolidation in the ocean common carrier industry, matters relating to the U.S.-flag merchant fleet, vessel and mariner safety, security, and environmental concerns. Chairman Khouri and Mr. Wood also met with the American Chamber of Commerce in Japan and the Japanese Fair Trade Commission.

U.S.-China Transportation Forum & Maritime Consultations

In April 2018, Commissioner Dye and General Counsel Tyler Wood traveled to Beijing, China, to represent the Federal Maritime Commission at the U.S.-China Bilateral Maritime Consultations. Commissioner Dye discussed competition and efficiency within the shipping industry, as well as developments related to ocean carrier alliances and the Fact Finding 28 investigation into detention and demurrage practices. Other topics discussed included safety, security, disaster response, research and development, and port infrastructure.

U.S.-Panama Maritime Bilateral Meeting

In May 2018, representatives from the Office of the General Counsel (OGC) attended the U.S.-Panama Maritime Bilateral Discussions, conducted at the U.S. Department of Transportation's Maritime Administration in Washington, D.C. The discussions touched on the trade effects of the expanded Panama

Canal, port infrastructure development, mariner training, autonomous vessels, and maritime security.

Global Shippers Forum Annual Conference in Melbourne, Australia

In May 2018, Commissioner Dye gave remarks before the Global Shippers Forum Annual Conference in Melbourne, Australia. Commissioner Dye's discussed competition and cooperation in the ocean shipping industry, the Commission's Fact Finding 28 investigation into demurrage and detention practices, and the Supply Chain Innovation Teams.

Global Liner Shipping Conference in Hamburg, Germany

In May 2018, Commissioner Maffei participated in the 2018 Global Liner Shipping Conference in Hamburg, Germany. The Conference covered a number of topics of relevance to the Commission's work, including the operational impact of alliances, digital innovation, and sustainability. Commissioner Maffei then traveled to Copenhagen, Denmark, where he met with local maritime officials and industry representatives.

Chairman Khouri addresses the American Chamber of Commerce in Hong Kong, October 2018

Protecting the Public

The FMC engages in a variety of activities that protect the public from financial harm, including licensing and registering of ocean transportation intermediaries; helping resolve disputes about the shipment of goods or the carriage of passengers; investigating and prosecuting unreasonable or unjust practices, and ruling on private party complaints alleging Shipping Act violations. These activities contribute to competitiveness, integrity, fairness, and efficiency of the nation's import and export supply chains and ocean transportation system. In addition, the FMC ensures that passenger vessel operators maintain proper financial coverage to reimburse cruise passengers in the event their cruise is cancelled or to cover liability in the event of death or injury at sea.

Investigation into Demurrage, Detention, and Per Diem Charges

On March 5, 2018, the Federal Maritime Commission initiated a non-adjudicatory investigation, Fact Finding Investigation No. 28, into the practices of vessel operating common carriers and marine terminal operators relating to U.S. demurrage, detention, and per diem charges. Demurrage is the charge per container for the use of ground space at the marine terminal. Detention is the charge by the ocean carrier for use of the container equipment. Per Diem relates to assessorial charges beyond demurrage and detention. All charges are subject to an agreed number of free days.

The Commission designated Commissioner Rebecca F. Dye the Fact-Finding Officer and directed her to develop a record through public or nonpublic sessions, and issue interim and final reports and recommendations.

The Fact Finding Officer conducted the investigation in two phases, and issued an Interim Report on September 4, 2018 suggesting consideration of the benefits of: (a) standardized language; (b) clear, simplified, and accessible billing and dispute resolution practices; (c) guidance on evidence relevant to dispute resolution; and (d) consistent notice to cargo interests of container availability. The Interim Report also considered organization of Innovation Teams of industry leaders to meet on a limited, short-term basis to refine commercially viable demurrage and detention approaches. On December 3, 2018, the Fact Finding Officer issued a Final Report.

Shipper Petition P4-16 led to January 2018 hearings and Fact Finding No. 28 investigation conducted by Commissioner Dye

Licensing

There are two types of ocean transportation intermediaries (OTIs) that serve as transportation middlemen for cargo moving in the U.S.-foreign oceanborne trades: NVOCCs and ocean freight forwarders (OFFs). An NVOCC is a common carrier that holds itself out to the public to provide ocean transportation and issues its own house bill of lading or equivalent document, but does not operate the vessel by which ocean transportation is provided. A U.S.-based ocean freight forwarder arranges for transportation of cargo with a common carrier (NVOCC or VOCC) on behalf of shippers and processes documents related to U.S. export shipments but does not hold itself out to the public to provide ocean transportation and does not issue a house bill of lading or equivalent document.

All NVOCCs and OFFs located in the U.S. must be licensed by the Commission and must establish financial responsibility. In FY 2018, licensed NVOCCs and OFFs had financial responsibility in the form of surety bonds on file with the FMC in excess of $443 million. NVOCCs doing business in the U.S.-foreign trades, but located outside the U.S. (foreign NVOCCs), may choose to become FMC-licensed, but are not required to do so. Foreign-based NVOCCs must register with the Commission and establish financial responsibility if not licensed under the FMC's program. Foreign NVOCCs (registered and licensed) had approximately $245 million in surety bonds on file with the FMC in FY 2018.

The Commission's triennial renewal program for FMC-licensed OTIs was instituted to ensure accurate and updated information. It completed its first full year in 2018. Approximately 2,200 of over 4,800 FMC-licensed OTIs completed the renewal process since the program began. The renewal process is an online user-friendly process that prepopulates the OTI's renewal form with information from the FMC's files providing a streamlined experience. In most cases the renewal process takes only five minutes. The online renewal process is already improving the accuracy of OTI records, and timeliness of reporting material changes in ownership and operations, for

Licensing Activity in FY 2018

- New OTI applications accepted: 342
- Amended applications accepted: 359
- New OTI licenses issued: 298
- Amended licenses issued: 111
- Licenses revoked: 327
- New registrations accepted: 176
- Licenses renewed: 1396
- Registrations renewed: 112
- 2,200 of over 4,800 FMC licenses renewed.
  - 79% of OTIs recorded new ownership
  - 8% updated contact information
  - 12% reported a physical address change

the benefit of OTI sureties, carriers and the shipping public. During FY 2018, of the 2,200 OTI license renewals processed, 79 percent reported an ownership change not previously filed with and recorded by the FMC; 18 percent reported a change to their telephone number; and 12 percent reported a change to their physical address.

While many changes do not require prior approval by the Commission, about 13 percent of the licensees reported a change requiring submission of a Form FMC-18 Application. These changes to information on file with the Commission included changes to the Qualifying Individual (8.2 percent); the legal name of the company (2.4 percent); addition or deletion of a trade name (1.4 percent); or a business structure change (1.1 percent). Foreign-registered NVOCCs must also renew their registrations every three years. In FY 2018, 112 foreign-registered NVOCCs successfully completed their renewals with the Commission.

NVOCCs wishing to serve in the U.S. - China trade may file an Optional Rider for Additional NVOCC Financial Responsibility, to meet the Chinese government's financial responsibility requirements. This rider adds additional financial liability to meet the bond aggregate amount of $125,000 and is available to pay fines and penalties for activities in the U.S.-China trades that may be imposed by the Chinese government. This rider is accepted as a convenience to U.S. NVOCCs. At the close of the fiscal year, 425 U.S. NVOCCs held China Bond Riders, with aggregate evidence of financial responsibility totaling $21.2 million.

Passenger Vessel Program

The passenger vessel operator (PVO) program administered by the Commission (46 U.S.C. §§ 44102-44103), requires 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. Certificates of performance cover financial responsibility used to reimburse passengers in the event their cruise is cancelled. Certificates of casualty are required to cover liability that may occur for death or injury to passengers or other persons on voyages to or from U.S. ports.

At the close of FY 2018, 231 vessels owned by 50 passenger vessel operators were certified under the PVO program. The combined evidence of financial responsibility for nonperformance of transportation for all cruise vessels in the program is $631.8 million. Under the Commission's program, there is $721 million in aggregate financial responsibility for casualty coverage. During the fiscal year, 19 new performance certificates and 13 casualty certificates were issued. In April 2018, the Commission implemented its initial 5 year Certificate of performance reissuance program. PVOs holding certificates must provide updated information every five years confirming, among other items, the names of vessels covered and continued effectiveness of the financial responsibility instrument. During FY 2018, 137 vessel certificates were reissued.

Additionally, during FY 2018 the Bureau of Certification and Licensing (BCL) coordinated refunds to passengers with cancelled domestic river cruises on French America Line. Effected passengers received refunds via credit card, travel insurance, or check from the French America Line escrow account. The escrow account was established by French America Line as required by the Commission under the FMC Passenger Vessel Program in order to protect passengers in the event of nonperformance of a scheduled cruise.

The maximum performance financial coverage requirement is currently $30 million per cruise line. The cap is adjusted every two years based on the Consumer Price Index for All Urban Consumers (CPI-U). The cap adjustment based on the CPI-U was completed in 2017. Based on the adjustment formula, the adjusted cap figure of $30.4 million was rounded to the nearest $1 million, and the maximum coverage requirement remained $30 million per cruise line. The next adjustment will occur in 2019.

PVO Financial Coverage

- Aggregate evidence of financial responsibility for nonperformance: $631.8 million
- Aggregate evidence of financial responsibility for casualty: $721 million
- 137 Certificates of performance reissued during 5-year reissuance program

Consumer Affairs and Education

Dispute Resolution

Through its Office of Consumer Affairs and Dispute Resolution Services (CADRS), the Commission provides alternative dispute resolution (ADR) including *ombuds* (informal conflict resolution), mediation, and arbitration services, to assist parties in resolving international ocean shipping and cruise disputes. Such services are available to the shipping public at any stage of a dispute, regardless of whether litigation has been filed at the FMC or another jurisdictional forum. The Commission's ADR services help parties avoid the expense and delay inherent in litigation, and facilitate the flow of U.S. foreign commerce.

In FY 2018, the Commission closed 489 *ombuds* matters: 161 involved household goods; 168 relating to commercial cargo; and 160 involved cruise matters. Seven mediation matters were concluded. Examples of matters handled by CADRS included:

- Per diem, demurrage, detention and other shipping assessorial fee disputes, including facilitation of a negotiated settlement between a trucker, VOCC, and a container management company for a big box shipper where the trucker used non-approved chassis companies asserted during a period where the trucker contends that there was limited chassis availability.
- CADRS assisted numerous consumers recover cargo from currently and formerly FMC-licensed NVOCCs. The Commission issued public notices with respect to formerly-licensed NVOCCs warning the public not to do business with them and to contact the FMC if assistance was needed.
- An OTI alleged that detention charges were improperly assessed on an import of commercial goods during a U.S. Customs Exam. After Commission dispute-resolution assistance, the matter was resolved when the VOCC agreed to waive 50 percent of the assessed charges totaling $7,140.
- An NVOCC alleged that a VOCC diverted cargo by skipping a port of call. The cargo was located at another port in another state and the VOCC assessed additional rail charges of $1150 per container for 31 containers. The parties ultimately agreed to a 30 percent reduction of rail charges or $10,695 reduction with CADRS assistance.
- A beneficial cargo owner (BCO) encountered a dispute with a VOCC regarding the existence of a prior credit agreement. The BCO indicated that it was unable to obtain a response from the VOCC and that it had $500,000 worth of cargo that was being held pending resolution of the matter. CADRS reached out to the VOCC who indicated that a mistake had been made and allowed for the release of the cargo.

Industry Outreach and Education/Awareness

Area Representatives

Area Representatives (ARs) represent the FMC at regional field offices located in Southern California, South Florida, New Orleans, New York/New Jersey, Houston and Seattle/Tacoma. They investigate alleged violations of the shipping statutes, resolve complaints and disputes between parties involved in international oceanborne shipping (often coordinating with CADRS staff), and participate in local maritime industry groups. ARs provide advice and guidance to the shipping public, collect and analyze trade information, and assess industry conditions. The ARs conduct investigations of regulated entities, both VOCC and OTIs, coordinating with Bureau of Enforcement (BOE) staff to protect the shipping public from deceptive and unfair trade practices.

During the fiscal year, ARs conducted outreach to the public, consumer groups, trade associations, and worked with other Federal, state and local government agencies to achieve and enhance regulatory compliance and protect the public from financial harm. They also made presentations to industry groups in their regions, explaining OTI licensing, bonding requirements, and compliance with tariff filing requirements and provisions applicable to NRAs and NSAs.

Commissioner Dye in Baltimore christening ACL's M/V Atlantic Star

Enforcement, Audits, and Penalties

The Commission's Bureau of Enforcement (BOE) staff and ARs in the field offices work to obtain industry compliance with the shipping statutes administered by the Commission to ensure competition and integrity in the foreign oceanborne commerce of the United States.

During the fiscal year, Commission staff investigated and prosecuted potential illegal practices in the Transpacific, North Atlantic, Middle East, South American and Caribbean trades. These included:

- Misdescriptions of cargo commodities,
- Misrepresentation of customer accounts,
- Unlawful use of service contracts by non-contract parties, as well as carriage of cargo by and for untariffed and unbonded NVOCCs, and
- Market-distorting unfiled agreement activities.

As of the beginning of FY 2018: 10 enforcement cases were pending final resolution, BOE was party to one formal proceeding, and there were 11 matters pending which BOE was monitoring or providing internal legal advice. Inclusive of cases opened at headquarters, the ARs referred 28 new investigative matters for enforcement action or informal compromise; 14 matters were compromised and settled, administratively closed, or referred for formal proceedings; and 20 enforcement cases were pending resolution at fiscal year's end. BOE added one case for monitoring, concluded its activities in one matter, and 11 matters remained pending at the end of the fiscal year.

Major investigations undertaken or completed during the fiscal year addressed:

- VOCC operations pursuant to agreements that were not filed with the Commission;
- Deceptive or fraudulent practices of certain OTIs operating primarily in the China-U.S. inbound trades; and
- U.S.-based, licensed OTIs unlawfully facilitating the operations of unlicensed entities acting as OTIs by accepting cargo for ocean transportation from unlicensed companies.

In an Initial Decision issued June 29, 2017, an FMC Administrative Law Judge ordered the revocation of the OTI license of Washington Movers, Inc., an NVOCC, on the basis of the Federal felony conviction of its former owner President and Qualifying Individual (QI). The QI was convicted of attempting to smuggle weapons to a foreign country. The crime was facilitated through the use of the company's NVOCC status. On March 16, 2018, the Commission affirmed the ALJ's decision revoking Washington Movers' OTI license.

The *Formal Investigations* section of this report includes more information on formal proceedings concluded during the fiscal year. Two formal cases were completed during the fiscal year. Cumulatively, the Commission collected over $1.1 million in penalties which were deposited directly into the U.S. Treasury General Fund during FY 2018. Most of these investigations were resolved informally, some with compromise settlements and civil penalties. A list of parties and penalties can be found in Appendix E.

The Commission's compliance audit program reviews the operations of licensed OTIs to assist them in complying with the statutory requirements and the Commission's rules and regulations. The program also reviews entities holding themselves out as VOCCs, where there is no indication of actual vessel operations. During the fiscal year, 146 audits were commenced, 137 audits were completed (including audits carried over from FY 2017), and 15 remained pending at the close of the fiscal year).

Inter-Agency Cooperation

The Commission regularly works with a number of other federal, state, and local transportation and law enforcement agencies, either through established memoranda of understanding (MOU), collaborations or partnerships to address specific transportation related policies, issues or incidents in both the U.S. domestic shipping arena and international liner shipping.

The ARs participated in a number of law enforcement initiatives sponsored by federal agencies: the U.S. Department of Homeland Security (Customs and Border Protection (CBP) and Immigration and Customs Enforcement); the U.S. Coast Guard; the Federal Motor Carrier Safety Administration (FMCSA); the Department of Commerce (Bureau of Industry and Security); the U.S. Department of Justice (including the Bureau of Alcohol, Tobacco,

Commissioner Rebecca Dye and Commandant Paul F. Zukunft

Firearms and Explosives, and the Federal Bureau of Investigation); and interagency Joint Terrorism Task Forces operating regionally in the U.S. The law enforcement activities included criminal and civil investigations of entities licensed or regulated by the FMC, as well as violations of export and import statutes and regulations.

The ARs aided these investigations by providing expert knowledge on ocean carrier and OTI practices, procedures and documentation related to shipping transactions. Several ARs participated with CBP, the Coast Guard and other federal agencies in annual Multi-Agency Strike Force Operations conducted at marine terminals at the ports of New York/New Jersey, Oakland, CA, and Seattle, WA. They also worked closely with state and local law enforcement agencies, including police jurisdictions in New York, New Jersey, South Florida, and Houston, in matters relating to international shipping, such as the export of stolen motor vehicles.

The Office of CADRS, in its efforts to resolve issues and recover valuable cargo for owners, worked collaboratively with the FMCSA, the Federal Bureau of Investigation, the Italian Consulate, and the New Jersey Attorney General's Office.

In 2018, the FMC also continued leadership roles in the Interagency Alternative Dispute Resolution (ADR) Working Group and the Coalition of Federal Ombudsmen. Through the Coalition of Federal Ombudsmen, federal ADR professionals enhance professionalism and effectiveness of Ombuds serving U.S. government agencies by sharing policies, standards, best practices, and innovative approaches.

Developments in Major U.S. Foreign Trades

Worldwide

The world's container trade expanded by five percent in FY 2018, equal to growth in the preceding period. As the fiscal year ended, 177 containerships lay idle, or 2 percent of the total TEU fleet capacity.

Due to mergers and acquisitions among ocean carriers, the container shipping industry worldwide continued to consolidate during the fiscal year. The top three container operators controlled 45 percent of the world's containership capacity; the top five container operators controlled 64 percent; and the top ten controlled 82 percent. Maersk Line (18 percent), MSC (14 percent) and COSCO (12 percent) held the top three positions in terms of vessel capacity deployed.

Container volumes in U.S. liner trades during the fiscal year increased by 5 percent to 35 million TEUs, compared to 33.3 million last year. The U.S. share of the world's container trades was 16 percent, down slightly from FY 2017. U.S. container imports expanded by 2 percent to 23 million TEUs, compared to 21.8 million in 2017. The volume of U.S. container exports during FY 2018 grew slightly from last fiscal year, to 11.8 million TEUs from 11.5 million. Primarily as a result of continued growth in U.S. imports, the U.S. container imbalance worsened; for every 100 loaded containers exported from the U.S., 195 were imported, compared to 190 imported in FY 2017.

The global containership fleet expanded with nominal capacity growing by approximately 6 percent. At the end of the fiscal year, 5,293 containerships, with a total fleet capacity of 22.2 million TEUs, were available to serve the world's container trades. There were orders worldwide for 295 new containerships with an aggregate capacity of 2.1 million TEUs, or 10 percent of the existing fleet capacity. Vessels with nominal capacities exceeding 10,000 TEUs comprised 32 percent of the existing containership fleet's total capacity and 81 percent of the vessel orderbook at year-end, reflecting the increasing size of containerships on order.

Worldwide

For the ninth consecutive year, worldwide container trade grew – expanding by 5%

As the fiscal year ended, 177 containerships lay idle, or 2% of the total TEU fleet capacity, reflecting efficiencies being maintained in the industry

U.S. Liner Trades

Container volumes in the U.S. liner trades (imports and exports combined) grew by 5%

Imported cargo continued to outpace exports, which increased the U.S. container imbalance

Asia

The liner trades between the U.S. and nations in Asia accounted for the largest container cargo volume of over 21 million TEUs in FY 2018 (exports and imports combined), or 62 percent of total U.S. container trade. The U.S. imported substantially more container cargo from the region than it exported. In FY 2018, the U.S. imported 15.7 million TEUs of goods from Asia, a 6 percent increase over the previous fiscal year, while the U.S. exported 6 million TEUs, a very slight decline from the prior year. Northeast Asia (China, Japan, South Korea, Taiwan, and Hong Kong) accounted for 50 percent of total U.S. container cargo, and Southeast Asia (Brunei, Cambodia, Indonesia, Malaysia, the Philippines, Singapore, and Vietnam) accounted for 12 percent.

Just over half of the container imports from Asia moved through the ports of Los Angeles and Long Beach. U.S. Pacific ports handled 62 percent of all Asian imports and exports, and U.S. Atlantic and Gulf ports handled 37 percent.

Asia accounts for 68% of containerized imports to the U.S.; and just over half of containerized exports from the United States

The Transpacific Stabilization Agreement, the major transpacific rate discussion agreement, disbanded in February 2018

The *Transpacific Stabilization Agreement* (TSA), active for several decades, was the major rate discussion agreement between ocean carriers covering the inbound and outbound transpacific trade. Its geographic scope included Asia and the Indian Subcontinent, except India (i.e., Bangladesh, Pakistan and Sri Lanka). In February 2018, the group disbanded. Leading up to its termination, TSA experienced declining membership and had discontinued general rate increases.

Trade conditions prompted each of the three global alliances to discontinue one service between Asia and the Pacific Coast of North America during the fiscal year. In addition, Zim phased out one of its services between Asia and U.S. Atlantic ports after it began sharing vessel space on the service strings of the 2M alliance carriers under the *Maersk/MSC/Zim Cooperative Working Agreement* in September. APL, however, introduced a new express transpacific service (Eagle Express X) in July 2018 that calls in Los Angeles and Alaska and operates outside of the OCEAN Alliance, of which APL is a member. APL also increased the capacity of its transpacific US-flag service, which also operates outside of the OCEAN Alliance.

The independent South Korean carrier, SM Line, also launched a service connecting Asia with the Pacific Northwest during the fiscal year, adding to its existing service to the Pacific Southwest. New legislation would have required ocean carriers that were members of

Hong Kong continues to be a top twenty liner cargo trading partner of the U.S.

TSA and also members of one of the new alliances in the transpacific trade to be subject to a new competition review.

North Europe

The liner trade with North Europe is the second largest U.S. trade by volume, accounting for 3.8 million TEUs, or 11 percent of total U.S. container cargo (exports and imports combined). Compared to the prior period, container cargo volume in FY 2018 grew by 7 percent in each trade direction, resulting in an exchange of 1.5 million TEU exports and 2.3 million TEU imports. The top imported commodities included auto parts, beer and furniture. The cargo volume carried by MSC, Hapag Lloyd, Maersk Line, and CMA CGM accounted for 60 percent of the total trade. In terms of service changes, in August 2018, MSC and Maersk Line added a fourth weekly loop service to the trade as part of their 2M alliance. The new TA4 service deploys five 5,000 TEU containerships between major U.S. Atlantic ports and North Europe. Throughout most of the fiscal year, the supply of vessel capacity

remained constant, with an average vessel utilization rate of 57 percent in the outbound direction and 85 percent in the inbound direction. Reportedly, as of July 2018, spot market freight rates were higher in both trade directions compared to the preceding period at $1,942 per forty-foot equivalent unit (FEU) inbound and $577 per FEU outbound. New tariffs imposed by the U.S. and the EU on certain commodities are not expected to greatly impact container cargo in the trade.

Central America and the Caribbean

The Central America and Caribbean regions collectively accounted for 6 percent of total U.S. import and export container cargo in FY 2018 at 2.1 million TEUs. Of the two regions, trade between the U.S. and Central America was considerably higher in volume at 1.4 million TEUs (4 percent of total trade), while trade between the Caribbean and the U.S. was 681,285 (2 percent of total U.S. trade), imports and exports combined.

In FY 2018, U.S. container exports to Central America fell by 10 percent to 561,229 TEUs, and container imports increased by 4 percent to 864,307 TEUs. Paper products accounted for the largest share of U.S. containerized exports. Other major exports included cotton, grocery products, used automobiles and fabrics. On the import side, fresh fruit made up a majority of container imports from the region. Roughly two-thirds of fresh fruit imports consisted of bananas. The second largest commodity imported from this region was apparel. The major carriers serving the trade participate in the *Central America Discussion Agreement* (CADA); these are Seaboard Marine, Crowley Latin America Services, King Ocean Services, Dole Ocean Cargo Express, and Great White Fleet Liner Service Ltd.

In the liner trade between the U.S. and the Caribbean, U.S. container exports of mainly food, consumer goods, and manufactured products increased by less than 1 percent to 503,138 TEUs. Container imports to the U.S. increased by 9 percent to more than 184,000 TEUs. Container exports exceeded imports by a ratio of about 3 to 1. Carriers in the U.S./ Caribbean trade par-ticipate in two rate discussion agreements covering geographically discrete trades: (1) the *Aruba Bonaire and Curacao Discussion Agreement*, and (2) the *Caribbean Shipowners Association*.

South America

In FY 2018, the liner trades between the U.S. and South America represented 6 percent of total import and export container volume, at 1.9 million TEUs. The volume of containerized cargo between the U.S. and South American nations grew by about 3 percent in FY 2018. While container import growth to the U.S. from South America was flat, U.S. container exports grew by about 5 percent to 883,116 TEUs. The top export commodities to South America included automobile parts and chemical products, while bananas, wood, and coffee were among the top import commodities. Brazil and Chile are the largest U.S. liner

trading nations on the continent, accounting for about 55 percent of the container cargo moving in the trade.

The market share of the *West Coast of South America Discussion Agreement* (WCSADA) was 40 percent outbound and 32 percent inbound. WCSADA members are CMA CGM, Hamburg Sud, Seaboard Marine and King Ocean Services. Carriers offering service independent of WCSADA included Dole Ocean Liner Express and Great White Fleet (a subsidiary of Chiquita Brands Intl. Inc.), which transport a high portion of proprietary cargo, such as fresh fruits and vegetables. Members of WCSADA also faced competition from other major carriers serving the trade through transshipment hubs in Mexico, Panama and the Caribbean. There are no active rate discussion agreements in the trade between the U.S. and the East Coast of South America.

Indian Subcontinent and Middle East

The Indian Subcontinent and Middle East regions combined accounted for 7 percent of total U.S. container trade volume in FY 2018, with the Indian Subcontinent being the larger of the two. The Indian Subcontinent alone (exports and imports combined) grew by 19 percent, totaling over 1.6 million TEUs. The U.S. imported 958,000 TEUs from the Indian Subcontinent, an increase of 11 percent from the prior year. U.S. container export cargo to this region saw strong growth during the year, expanding by 30 percent to 707,000 TEUs, in large part due to Chinese restrictions on waste paper imports which shifted cargo to the region, along with increases in shipments of cotton and beryllium. U.S. imports from the Indian Subcontinent outpaced U.S. exports by a ratio of 1.4 to 1.

In the trade between the U.S. and Middle East, U.S. container export volumes grew by less than 1 percent (558,000 TEUs), while container imports to the U.S. from the region increased by 8 percent. The U.S. exports more goods to the Middle East than it imports, with U.S. container exports exceeding imports by a ratio of 2.2 to 1.

The Transpacific Stabilization Agreement was the rate discussion agreement covering U.S. inbound and outbound container trade with Bangladesh, Pakistan and Sri Lanka. After the group disbanded in February 2018, there were no longer any rate discussion agreements covering the liner trades between the U.S. and the Indian Subcontinent or the Middle East.

The U.S. saw strong growth in its trade with the Indian Subcontinent, as U.S. container exports increased by 30 percent and U.S. container imports increased by 11 percent.

Mediterranean

Container volumes between the U.S. and the Mediterranean accounted for 5 percent of all U.S. import and export cargo in FY 2018, at 1.6 million TEUs. Compared to the prior period, there was positive growth in each trade direction. U.S. exports increased by 7 percent to 465,914 TEUs, and imports from the region rose by 10 percent to 1.2 million TEUs. The trade imbalance continued to expand with import containers exceeding export containers by a ratio of 2.5 to 1. Major imported commodities included wine, ceramic tiles, and furniture, while wood pulp, paper, nuts and cotton were the top U.S. export commodities. A high concentration of the cargo was moved by the top carriers, as MSC, Hapag Lloyd, Maersk Line, CMA CGM, and Zim carried 86 percent of the total cargo in the trade. With respect to service changes, members of OCEAN and THE Alliances formed the *MED/USEC Vessel Sharing Agreement* to combine their two separate weekly loop services into one weekly loop service. The new service was scheduled to commence in December 2018 and will deploy six 8,500 TEU vessels between major U.S. Atlantic ports and ports in Spain, France and Italy. Zim will also take space on the new service under its slot exchange agreement with members of THE Alliance. Over the course of the fiscal year, the supply of vessel space in the trade contracted slightly by three percent.

Africa

FY 2018 imports and exports combined between the U.S. and Africa were 437,000 TEUs, accounting for approximately 1 percent of all U.S. container cargo. Compared to the previous period, U.S. container exports to nations in Africa increased by about 16 percent to 312,000 TEUs, and U.S. container imports from the region increased by about 14 percent to 124,000 TEUs. Consequently, U.S. container exports exceeded imports by a ratio of 2.3 to 1.

The top container U.S. exports to Africa were automobiles and parts, poultry and wood pulp, while the top container imports from the region included cocoa beans, citrus fruits, aluminum, and rubber. The Republic of South Africa is the largest U.S. liner trading nation on the continent, accounting for 20 percent of the containerized cargo. The two largest carriers in this trade are MSC and Maersk Line, including its subsidiary, Safmarine, which combined to carry approximately 63 percent of the container cargo in the trade. Under the *Southern Africa Agreement*, MSC and Maersk continue to operate and share vessel space on their America Express (AMEX) service between the U.S. Atlantic Coast and the Republic of South Africa with calls at Cape Town, Port Elizabeth and Durban.

Australia and Oceania

Oceania consists of Australia, New Zealand, and the South Pacific Islands. The liner trades between the U.S. and Oceania comprised just over 1 percent of total U.S. import and export cargo volumes combined in FY 2018, at 402,305 TEUs. The volume of U.S. container exports was 243,839 TEUs, and the top exported commodities included auto parts, general merchandise, and tires. U.S. container import cargo was 158,466 TEUs, and the top imported commodities included wine and fresh or frozen meat products. Compared to the preceding period, growth in U.S. container exports declined slightly, and container imports increased slightly. The major carriers serving the trade, Hapag Lloyd, Maersk Line, MSC, and CMA-CGM and its subsidiary ANL Singapore Pte Ltd., moved 92 percent of the total container cargo.

The three rate discussion agreements among ocean carriers in the trade were the *United States/Australasia Discussion Agreement* (USADA), the *Australia and New Zealand-United States Discussion Agreement* (ANZUSDA), and the *Pacific Islands Discussion Agreement*. In early 2018, these agreements disbanded after a decline in membership and carrier consolidation. Among other changes in the trade, carriers sharing vessels under the *U.S. Pacific-Oceania Agreement* combined their two separate Pacific North- and Southwest services into one service string.

Top Twenty U.S. Liner Cargo Trading Partners

The Foreign Shipping Practices Act requires the FMC to include in its annual report to Congress "a list of the twenty foreign countries which generated the largest volume of oceanborne liner cargo for the most recent calendar year in bilateral trade with the United States," 46 U.S.C. § 306(b)(1).

The Commission derives its list of top twenty trading partners from the Port Import Export Reporting Service (PIERS) database. The most recent complete calendar year of available data is 2017. The table on the next page lists the twenty foreign countries that generated the largest volume of oceanborne liner cargo in the bilateral trade with the United States in calendar year 2017. The figures in the table represent each country's U.S. liner imports and exports combined in thousands of loaded TEUs.

Bilateral trade with the United States' top twenty liner trading partners represented approximately 80 percent of the Nation's total liner trade in 2017. The total volume of trade with our top twenty liner trading partners increased by 4.3 percent year-to-year.

The top twenty list has been comprised of nearly the same trading partners since 2009. Several changes in ranking occurred among the top-twenty countries during 2017. Reflecting the greatest year-to-year liner volume increase of 15 percent, Costa Rica joined the top twenty from its previous rank at 22nd, eliminating Australia from the list. Following Costa Rica with the second largest year-to-year volume increase of 13 percent, Thailand maintained its rank at 8th place. Hong Kong, for the third year in a row slipped in the rankings, falling to 13th place, having experienced a 6 percent decrease in volume this year, the largest percentage decline of any top twenty trading partner.

Top Twenty U.S. Liner Cargo Trading Partners (CY2018)

Rank	Country	TEUs (000)
1	China (PRC)	13,002
2	South Korea	1,388
3	Japan	1,369
4	Vietnam	1,343
5	Taiwan (ROC)	1,084
6	Germany	1,077
7	India	1,036
8	Thailand	737
9	Indonesia	681
10	Belgium & Luxembourg	675
11	Brazil	622
12	Italy	620
13	Hong Kong[1]	569
14	Netherlands	538
15	Guatemala	453
16	United Kingdom	431
17	Malaysia	421
18	Chile	408
19	Honduras	345
20	Costa Rica	341

[1] Hong Kong reverted to Chinese control in July 1997. However, PIERS continues to report data separately for Hong Kong due to its status as a major transshipment center.

Foreign Shipping Practices Act

The Commission informally pursued several matters involving potentially restrictive foreign shipping practices. This included the examination of restrictive foreign port/harbor practices, foreign legislation, and regulations. No formal action by the Commission under the Foreign Shipping Practices Act of 1988 (FSPA) was necessary.

The Commission has the authority to address restrictive foreign shipping practices under section 19 of the Merchant Marine Act of 1920 and the FSPA. Section 19 empowers the Commission to make rules and regulations governing shipping in the foreign trade to adjust or meet conditions unfavorable to shipping. The FSPA directs the Commission to address adverse conditions that affect U.S. carriers in foreign trade and that do not exist for foreign carriers in the United States.

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 foreign government. The Shipping 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. The Commission's staff monitors U.S. and foreign trade press and other information sources to identify controlled carriers and any unjust or unreasonable controlled carrier activity that might require Commission action. As of the end of fiscal year 2018, five controlled carriers operated in the U.S. trades:

1. COSCO SHIPPING Lines Co., Ltd. – People's Republic of China
2. CNAN Nord SPA – People's Democratic Republic of Algeria
3. Orient Overseas Container Line Limited – People's Republic of China
4. Orient Overseas Container Line (Europe) Limited – People's Republic of China
5. COSCO Shipping Lines (Europe) GmbH – People's Republic of China

Formal Investigations, Private Complaints, and Litigation

Adjudicative proceedings before the Commission are commenced by the filing of a complaint, or by order of the Commission upon petition, or upon its own motion. Types of docketed proceedings include:

- **Private complaints:** Any person may file a formal complaint alleging violations of specific sections of the Shipping Act found at 46 U.S.C. Chapter 411. Formal complaints are generally assigned to an Administrative Law Judge (ALJ) who issues an initial decision which is reviewed by the Commission.
- **Small claims complaints:** For claims of $50,000 or less, an informal complaint may be filed. The complaint is handled by a settlement officer for resolution using informal procedures that do not tend to include discovery or motions practice.
- **Investigative proceedings:** The Commission may investigate the activities of ocean common carriers, OTIs, MTOs, and other persons to ensure effective compliance with the statutes and regulations administered by the Commission. Formal orders of investigation and hearing are assigned to an ALJ for an initial decision and may be reviewed by the Commission.

In FY 2018, five new formal private party complaints and two small claims complaints were filed with the Commission. The Office of Administrative Law Judges (OALJ) issued 11 initial decisions in formal proceedings and seven decisions in small claims proceedings. At the end of FY 2018, eight formal proceedings were pending before the OALJ and 10 were pending before the Commission.

The following summarizes the results of formal docketed proceedings concluded during FY 2018 by the ALJs and the Commission:

Formal Investigations

Revocation of Ocean Transportation Intermediary License No. 017843, Washington Movers, Inc. [Docket No. 15-10]

On October 8, 2015, the Commission ordered Washington Movers, Inc., to show cause why the Commission should not revoke its ocean transportation intermediary license due to the felony weapons smuggling convictions of its qualifying individual and various alleged regulatory violations. After receiving briefing, on February 12, 2016, the Commission assigned this matter to the Office of Administrative Law Judges for further proceedings. The ALJ issued an Initial Decision revoking Washington Movers' license on June 29, 2017. Washington Movers filed exceptions to the ALJ's decision, and the Commission's Bureau of Enforcement filed a reply in support of revocation.

On March 16, 2018, the Commission affirmed the revocation of Washington Movers' ocean transportation intermediary license and ordered it to cease and desist all ocean transportation intermediary activities. The Commission found that revocation was warranted because Washington Movers, through its president, violated federal weapons smuggling statutes as well as Commission regulations.

Private Complaints

Ngobros and Company Nigeria Limited v. Oceane Cargo Link, LLC [Docket No. 14-15]

On November 24, 2014, Complainant filed a complaint alleging that Respondents violated the Shipping Act with respect to the transportation of Complainant's three vehicles from Georgia to Nigeria. Complainant moved for default judgment, and, after briefing, the ALJ construed the motion as one for summary decision. On November 10, 2015, the ALJ issued an Initial Decision finding that Respondents had violated 46 U.S.C. § 41102(c) and awarding Complainant reparations. The Commission determined to review the Initial Decision sua sponte, but while review was underway, one of the Respondents filed for bankruptcy. In light of the bankruptcy, the Commission stayed the proceedings. In October 2017, the Commission learned that one of the Respondent received a Chapter 7 bankruptcy discharge and that the automatic bankruptcy stay was lifted. The matter is pending before the Commission.

Baltic Auto Shipping, Inc. v. Hitrinov [Docket No. 14-16]

On November 28, 2014, Complainant filed a complaint alleging that on several thousand shipments between November 2007 and January 2012, Respondent, an NVOCC, violated several sections of the Shipping Act, 46 U.S.C. §§ 41102, 41104, 40501, and 46 C.F.R. Part 515, by charging rates not set forth in a tariff, charging Baltic rates greater than rates charged other shippers, and by failing to provide Baltic with shipping documents. All shipments began and almost all were delivered more than three years before Baltic filed its complaint. Empire moved for a summary decision that Baltic's request for reparations was barred by the statute of limitations. On September 15, 2015, the ALJ held that based on material facts not in dispute, Baltic's claims accrued more than three years before Baltic filed the complaint and were barred. The ALJ also determined that no other relief was warranted and dismissed the complaint.

Complainant filed exceptions and Respondents replied, but on March 3, 2016, Complainant filed a Motion to Withdraw Appeal and Discontinue Action. Respondents, however, declined to agree to a joint stipulation to withdraw the appeal.

On April 21, 2017, the Commission granted the request for withdrawal and dismissal of the action pursuant to 46 C.F.R. § 502.72(a)(3). The Commission denied Complainant's request to extinguish the ability of either party to seek attorney fees, and on July 19, 2017, Respondents petitioned for fees. Complainant opposed the petition. The Commission denied the petition for attorney fees on October 25, 2017.

Crocus Investments, LLC v. Marine Transport Logistics, Inc. [Docket No. 15-04]

A complaint filed on May 27, 2015 alleged that Respondent, a licensed non-vessel-operating common carrier (NVOCC), and an individual, overcharged Complainant and transferred custody of cargo to a storage facility without their consent, in violation of 46 U.S.C. § 41102(c). Complainant also alleged that the individual Respondent violated 46 U.S.C. § 40901(a) by providing ocean freight forwarder (OFF) services without a license from the Commission. The ALJ dismissed Complainants' claims for lack of jurisdiction and on substantive grounds on June 17, 2016. Complainants filed exceptions to that decision and the matter is currently pending before the Commission.

Ovchinnikov vs. Hitrinov [Docket No. 15-11] consolidated with Nurgazinov v. Khitrinov [Docket No. 1953(I)]

Complainants filed a complaint on November 12, 2015, alleging that Respondents violated the Shipping Act and Commission regulations by not releasing or delivering three vehicles shipped from the United States to Finland. Respondents moved for judgment on the Pleadings on June 10, 2016. Subsequently, counsel for both sides moved that opposing counsel be sanctioned. The ALJ denied the sanctions motions, and on March 9, 2017, the ALJ issued an Initial Decision granting Respondents' motion for judgment on the pleadings. Respondents filed exceptions with respect to sanctions. Complainants filed exceptions with respect to the Initial Decision. These exceptions and several outstanding motions are pending before the Commission.

In Re: Vehicle Carrier Services [Docket Nos. 16-01, 16-07, 16-10, 16-11]

Complainants in these four consolidated cases filed in 2015 and 2016 allege that Respondents violated multiple provisions of the Shipping Act for nearly two decades by secretly agreeing and conspiring to fix, raise, and stabilize prices and allocate customers and market share in the roll on/roll off shipping trade. Complainants shipped or purchased new assembled cars and trucks transported on Respondents' roll on/roll off (RoRo) ships and allege that Respondents illegally-inflated charges were passed along to them, either directly as freight charges or indirectly in the purchase prices of vehicles. Complainants sued on their own behalf and on behalf of similarly-situated members of a class.

On May 7, 2018, the ALJ dismissed Complainants' claims as time-barred and for lack of standing and also provisionally ruled that the Commission does not have jurisdiction to adjudicate class actions. Complainants' timely-filed exceptions are pending before the Commission. On August 30, 2018, the Commission granted leave for two law professors to file an amicus brief.

MAVL Capital Inc. v. Marine Transport Logistics, Inc. [Docket No. 16-16]

On July 31, 2016, Complainants alleged that Respondents violated 46 U.S.C. §§ 41102(c), 41104(3), and 41104(10) in connection with the storage and shipment of five vehicles. In January 2017, the ALJ dismissed certain of the claims for lack of jurisdiction and failure to state a claim. The ALJ stayed the case as to the remaining claims. Complainants filed exceptions to the ALJ's decision,

which Respondents opposed. On March 7, 2017, Complainants petitioned for leave to supplement the record. In December 2017, the Commission denied Complainants' request for issuance of a subpoena, and in June 2018, the Commission granted leave for Respondent Marine Transport Logistics' counsel to withdraw their representation. Complainants' exceptions and petition are pending before the Commission.

Hangzhou Qianwang Dress Co., Ltd. v. RDD Freight International Inc. [Docket No. 17-02]

On February 17, 2017, Complainant filed a complaint alleging that Respondent violated the Shipping Act by releasing goods to a consignee before it had received the original bills of lading and permission to release from Complainant. On August 29, 2018 the ALJ issued an Initial Decision finding that Respondent released cargo without a bill of lading in violation of 46 U.S.C. § 41102(c) and awarding Complainant reparations. After the Commission determined to review the Initial Decision sua sponte, Respondent filed exceptions to the decision. The exceptions are pending before the Commission.

Lima v. Fastway Moving and Storage, Inc. [Docket No. 17-03]

Complainant alleges that in the course of shipping its household goods from the United States to Brazil, Respondent allowed illegal items to be combined with Complainant's shipment, failed to comply with tariff or service contract rates, and knowingly accepted cargo without a tariff, bond, insurance or surety, in violation of 46 U.S.C. §§ 41102(c) and 41104. According to Complainant, as a result, Brazilian authorities seized and held Complainant's goods until he eventually secured their release. On January 16, 2018, the ALJ entered a default judgment in Complainant's favor and awarded Complainant reparations. The Commission determined to review the ALJ's decision sua sponte on January 23, 2018.

Port Elizabeth Terminal & Warehouse Corp. v. Port Authority of New York & New Jersey [Docket No. 17-07]

Complainant alleges that Respondent violated numerous sections of the Shipping Act in connection with certain leasing decisions and negotiations at Port Newark. Specifically, Complainant alleges that Respondent decided to lease property occupied by Complainant to another tenant, while at the same time declining to lease additional property to Complainant. Complainant claims that in so doing, Respondent violated 46 U.S.C. §§ 41102(c), 41106(2), and 41106(3). On January 12, 2018, Respondent moved to partially dismiss the complaint. The ALJ granted the motion and dismissed two of Complainants claims on the merits. The ALJ also found that Complainant was barred from seeking reparations for the surviving claims. Complainants filed exceptions to the ALJ's decision, which are pending before the Commission.

Carlstar Group, LLC v. UTi, United States, LLC [Docket No. 17-08]

Complainant filed a Shipping Act complaint on August 31, 2017, alleging that Respondents violated 46 U.S.C. §§ 41102(c), 41104(2), and 41104(4) by overcharging Carlstar at least $5,155,170.06 for transportation services between 2011 and 2016. Respondents moved to dismiss the complaint for lack of subject matter jurisdiction and failure to state a claim. On May 18, 2018, the ALJ issued an Initial Decision denying in part and granting in part the motion to dismiss. The Commission determined sua sponte to review the Initial Decision. While the matter was under review, the parties petitioned for approval of a settlement agreement. At the end of the fiscal year, the petition was pending before the Commission.

Taylors Resources, Inc. (USA) v. Mitsui O.S.K. Lines Ltd. [Docket No. 1954(F)]

Complainant alleges that after its consignee in China failed to accept delivery of a shipment of plastic scrap, Respondent, the ocean carrier, unreasonably delayed in disposing of the unclaimed cargo, which caused Complainant to incur significant detention and demurrage charges. According to Complainant, by unreasonably delaying, and by suing Complainant to recover excessive charges, Respondent violated the Shipping Act and state law. On August 11, 2017, the ALJ dismissed the complaint. On August 21, 2017, Complainant filed a request to vacate the ALJ's decision. At the end of the fiscal year, that request was pending before the Commission.

Fiat Chrysler Automobiles NV, FCA US LLC, and FCA Italy S.P.A. v. Wallenius Wilhelmsen Logistics AS, Wallenius Wilhelmsen Logistics Americas LLC, Eukor Car Carriers Inc., Nippon Yusen Kabushiki Kaisha, NYK Line (North America) Inc., Mitsui O.S.K. Lines, Ltd., MOL (America) Inc., Kawasaki Kisen Kaisha, Ltd., "K" Line America, Inc., Compañía Sud Americana De Vapores, And Hoëgh Autoliners AS [Docket No. 17-09]

On October 6, 2017, Complainants, three Fiat entities, filed a complaint alleging that Respondents, ocean common carriers that provide ocean transport of new, assembled motor vehicles using specialized roll-on/roll-off cargo ships, violated the Shipping Act from as early as 1997 and alleges that the violations are continuing. Respondents filed a motion to dismiss in this and four related cases. On May 7, 2018, an order was issued finding that the statute of limitations bars reparations, except for violations that Fiat can establish that occurred within the statute of limitations period. The order was not appealed to the Commission. The remaining claims for a cease and desist order and for reparations for violations within three years of filing the complaint are continuing before the OALJ.

Tarik Afif Chaouch v. Demetrios Air Freight Co., Demetrios International Shipping Co., Inc., and Troy Container Line Ltd. [Docket No. 18-02]

On January 18, 2018, a Notice of Filing of Complaint and Assignment was issued indicating that Mr. Chaouch filed a complaint against Demetrios. Mr. Chaouch alleged that Demetrios violated the Shipping Act of 1984

in connection with two vehicles shipped from the United States to Algiers, Algeria, allegedly shipped without requested separate bills of lading. On March 23, 2018, an initial decision approving settlement agreement and dismissing with prejudice was issued. On April 24, 2018, the Commission issued a Notice Not to Review.

JC Horizon Ltd. v. China Shipping Container Lines Co. Ltd. [Docket No. 18-03]

On May 15, 2018, a complaint was filed alleging numerous violations of the Shipping Act of 1984 ("Shipping Act"). On June 25, 2018, China Shipping Container Lines Co. Ltd. filed its answer denying the allegations. On August 3, 2018, Complainant JC Horizon Ltd. and Respondent China Shipping Container Lines Co. Ltd. filed a joint motion for approval of settlement and voluntary dismissal. On August 8, 2018, an Initial Decision Approving Settlement Agreement and Dismissing Proceeding with Prejudice was issued. On September 10, 2018, the Commission issued a Notice Not to Review.

Litigation

The following docket matters were litigated during the fiscal year in the United States Courts of Appeals by the OGC on behalf of the Commission or were before the Commission on remand from the Courts.

Santa Fe Discount Cruise Parking, Inc. v. The Board of Trustees of the Galveston Wharves [Docket No. 14-06], United States Court of Appeals for the District of Columbia Circuit

Respondents operate the cruise terminal at the Port of Galveston. Complainants operate parking facilities near the Port where they provide parking for passengers who embark on cruises from the cruise terminal. As part of their service, Complainants provide transportation to the Port. On June 16, 2014, Complainants filed a complaint alleging that Respondents' tariff imposing charges on Complainants' shuttles transporting passengers to and from the terminal violated three sections of the Shipping Act.

On November 21, 2014, the ALJ granted Respondents' motion to dismiss claims under two sections of the Act, but denied dismissal of claims under 46 U.S.C. § 41106(2), finding that the Complaint stated a claim that Respondents gave an undue or unreasonable preference or advantage or imposed an undue or unreasonable prejudice or disadvantage with respect to Complainants. On December 23, 2014, the Commission issued a Notice Not to Review the partial dismissals and the decision became administratively final.

On December 4, 2015, the ALJ issued an Initial Decision dismissing Complainants' remaining claim regarding § 41106(2). Complainants filed exceptions to the Initial Decision, and on January 13, 2017, the Commission affirmed the dismissal of the complaint.

The Complainants petitioned for review in the D.C. Circuit on March 14, 2017, and the parties filed their briefs. Oral argument was held on March 12, 2018, and on May 11, 2018, the Court vacated the Commission's January 13, 2017 decision and remanded the case to the Commission for further proceedings. The Commission in turn remanded the case to the ALJ to address all remaining issues in light of the Court's decision. The matter is pending before the ALJ.

Rulemakings

The Commission has initiated a number of rulemakings this year to update its regulations and reduce regulatory burdens.

Amendments to Regulations Governing NVOCC Negotiated Rate Arrangements and NVOCC Service Arrangements [Docket 17-10]

On April 16, 2015, the National Customs Brokers and Forwarders Association of America, Inc., (NCBFAA) petitioned the Commission to revise the Commission's regulations in 46 CFR Part 532 governing non-vessel-operating common carrier (NVOCC) Negotiated Rate Arrangements (NRAs) to: (1) allow inclusion of economic terms beyond rates in NRAs, and (2) permit NRAs to be modified at any time upon mutual agreement between the NVOCC and shipper. The Petition further requested that the Commission either revise 46 CFR Part 531 governing NVOCC Service Arrangements (NSAs) to eliminate the filing and essential terms publication requirements for NSAs or eliminate Part 531 in its entirety. The Commission subsequently published a request for comments on April 28, 2015. (80 FR 23549) On August 2, 2016, the Commission issued an order granting NCBFAA's petition.

On November 30, 2017, the Commission published a Notice of Proposed Rulemaking. (82 FR 56781) Thirty-nine sets of comments were received in response to the NPRM. The vast majority of commenters supported the proposed revisions to the NRA and NSA regulations.

The Commission published a final rule on July 23, 2018, which went into effect on August 22, 2018. (83 FR 34780) The final rule removed the NSA filing and publication requirements and made a number of changes to the regulations governing NRAs. Specifically, NRAs may now be amended at any time and may include non-rate economic terms. In addition, NVOCCs may now provide for shipper acceptance of an NRA through booking a shipment thereunder if certain requirements are met. The final rule also clarified the requirements for NRAs related to surcharges and assessorial charges.

Interpretive Rule; Shipping Act of 1984 [Docket No. 18-06]

On September 7, 2018 the Commission issued a Notice of Proposed Rulemaking (NPRM) seeking to clarify the Commission's interpretation of the scope of 46 U.S.C. § 41102(c) (section 10(d)(1) of the Shipping Act of 1984). (83 FR 45367) Section 41102(c) prohibits common carriers, terminal operators, and ocean transportation intermediaries from failing to establish, observe, and enforce just and reasonable regulations and practices

relating to or connected with receiving, handling, storing, or delivering property. The Commission sought to clarify that, in order to violate this provision, a regulated entity must be engaged in a practice or regulation on a normal, customary, and continuous basis and that such practice or regulation is unjust or unreasonable. As of the end of fiscal year 2018, the comment period for the NPRM was open.

Inflation Adjustment of Civil Monetary Penalties [Docket No. 17-01]

The Commission published its annual civil penalty adjustments for inflation on January 11, 2018 (applicable January 15, 2018), pursuant to the Federal Civil Penalties Inflation Adjustment Act Improvements Act of 2015. (82 FR 10719)

Commissioner Maffei at the bench, January 2018

Leveraging Technology

A continuous investment priority is the ongoing development, deployment and security of the agency's information systems infrastructure. Digital transformation, the migration away from paper-based systems to automated computer systems, is ongoing at the Commission. The FMC's automated information technology (IT) systems are used by the shipping public to file license applications, carrier and MTO agreements, and commercially sensitive operational data used by the Commission's economists to conduct mission critical competition analysis. Planned IT investments will further streamline and improve the Commission's internal business processes; expand research and analysis capabilities; and provide better public access to FMC information.

The FMC's Information Technology Strategic Plan for FY 2018-2022 (IT Strategic Plan), finalized in December 2018, guides the FMC's efforts to manage its IT resources. This new 5-year Plan reflects the FMC's progress with prior year initiatives; next steps for improving IT services and solutions; and guides the FMC's IT mission, setting performance goals, objectives and, and timelines. The FMC IT Strategic Plan continues the work of the Information Resources Management (IRM) Strategic Plan for FY 2014-2017 and is aligned with the Commission's agency-wide Strategic Plan for FY 2018-2022 to ensure information management is consistent with and supports the agency's mission goals and objectives.

The FMC has identified four strategic goals in its IT Strategic Plan that target quality, efficiency, cybersecurity, and compliance, with action-oriented objectives supported by key initiatives. The four IT strategic goals are:

IT Strategic Goal 1 – Manage and deliver quality IT systems and services critical for the FMC to fulfill its mission and support related administrative, business, and operational functions.

IT Strategic Goal 2 – Maintain IT policies, procedures, and practices that support efficient and effective FMC business, administrative, and mission processes.

IT Strategic Goal 3 – Expand on current progress to strengthen cybersecurity of FMC's networks and systems.

IT Strategic Goal 4 – Ensure reliability and accuracy of federal information technology as required by statutes, government-wide requirements, directives, or guidance.

The Commission completed or actively continued several key initiatives in 2018. At the enterprise level, IT capital planning and investment control (CPIC) is informed through engagement with the FMC's Information Technology Advisory Board (ITAB). The ITAB is responsible for reviewing IT planning and the budget appropriate to support IT application development, business continuity and disaster recovery, information assurance and cybersecurity, data management and user support, as well as network and telecommunications systems maintenance.

During FY 2018, the FMC continued significant progress to upgrade its information systems infrastructure and architecture and fortified its security posture by implementing

government-wide email and web security requirements mandated by the U.S. Department of Homeland Security (DHS).

In 2018, the Commission completed an initiative to upgrade the Service Contract Filing System (SERVCON) application and database environment. SERVCON is a web-facing filing system for ocean common carrier confidential service contracts and NVOCC service arrangements. The FMC uses SERVCON to review service contracts and arrangements which provides a critical source of data and information on trends in carrier pricing and information.

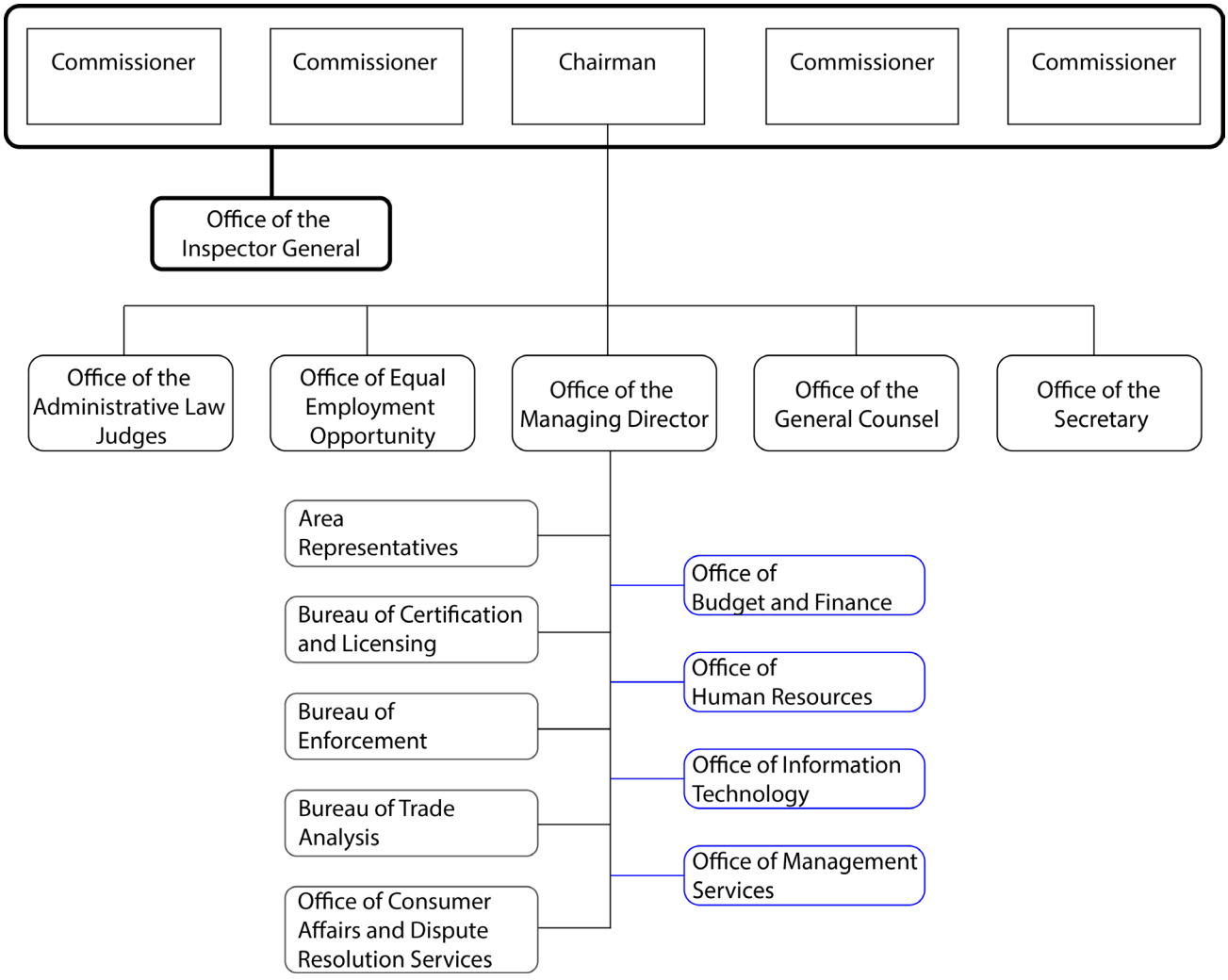
FY 2018 was the second full year since the eAgreements electronic filing system was launched, with over 95 percent of all agreements and amendments filed electronically. The use of eAgreements has streamlined FMC business processes by reducing initial agreement intake time, thereby resulting in faster public access to pending filed agreements and significantly reducing administrative costs for both the industry and the Commission. The migration of MTO agreements to the eAgreements system in FY 2018 also substantially increased the information available to the public, as many historical amendments to these agreements became available online.

The Commission is also continuing its efforts to develop a plan that will improve the design, usability and platform of its online docket library and historical document repository. When completed, the new design and functionality will expand the availability of public documents on the Commission's website, including Sunshine Act meeting materials. Increasing information available to the public will enhance the public's awareness and ability to participate in agency proceedings.

In January 2018, the Commission completed an upgrade of severely outdated audio/visual equipment in its Main Hearing Room. The upgrade included replacing equipment to allow for live streaming and closed captioning of public Commission meetings and events to promote higher quality public access to information on Commission activities and actions.

APPENDICES

A – FMC Organization Chart



B – FMC Senior Officials – FY 2018

Chief of Staff	Mary T. Hoang
Counsel to Chairman Khouri	John A. Moran
Counsel to Commissioner Dye	Robert M. Blair
Counsel to Commissioner Doyle	David J. Tubman, Jr*
Counsel to Commissioner Maffei	Carrol Hand*
General Counsel	Tyler J. Wood
Secretary	Rachel E. Dickon
Chief Administrative Law Judge	Clay G. Guthridge
Director, Office of CADRS	Rebecca A. Fenneman
Director, Office of EEO	Ebony Jarrett
Inspector General	Jon Hatfield
Managing Director	Karen V. Gregory
Deputy Managing Director	Peter King
Director, Bureau of Certification and Licensing	Sandra L. Kusumoto
Director (Deputy), Bureau of Enforcement	Brian L. Troiano*; Benjamin K. Trogdon**
Director, Bureau of Trade Analysis	Florence A. Carr

*Departed position in FY 2018: Tubman, February 2018; Hand, May 2018; Troiano, August 2018

**Assumed position in August, 2018

C – Statement of Appropriations, Obligations, and Receipts

Appropriations

For necessary expenses of the Federal Maritime Commission, as authorized by §201(d) of the Merchant Marine Act, 1936, as amended (46 U.S.C. §307), including services as authorized by 5 U.S.C. §3109; hire of passenger motor vehicles as authorized by 31 U.S.C. §1343(b); and uniforms or allowances therefore, as authorized by 5 U.S.C. §§5901-5902, $27,490,000. Provided, that not to exceed $2,000 shall be available for official reception and representation expenses.

Public Law 115-141	$27,490,000
Total Budgetary Resources	$27,490,000

Obligations and Unobligated Balance:

Net obligations for salaries and expenses for the fiscal year ended September 30, 2018	$27,138,443

Statement of Receipts:

Deposited with the General Fund of the Treasury for the Fiscal Year Ended with September 30, 2018	
Publications and reproductions, fees and vessel certification, and freight forwarder applications	$245,822
Fines and penalties	$1,108,194
Total general fund receipts	$1,354,016

D – Agreement Types

Types of Agreements

First introduced with the current eAgreements system in FY 2016, the Commission categorizes ocean common carrier agreements by the types of agreements currently utilized by the ocean transportation industry, recognizing trends among types of agreement filings, and provided more refined information to users. The current categories are summarized below.

Space charter agreements authorize an ocean common carrier(s) to sell or exchange vessel space for use by another shipping line. Space charter agreements do not include the authority to discuss the provision of space in a trade, only the chartering of space already deployed.

Vessel sharing agreements authorize two or more shipping lines to discuss and agree on the supply of vessel capacity in a defined U.S. trade through the deployment of a specific service string or strings.

Global vessel sharing agreements/alliances authorize two or more shipping lines to discuss and agree on the supply of vessel capacity across multiple trades. Alliance agreements may contain other authorities such as, information exchange, joint procurement of goods or services necessary to operate their services, etc. While there are currently seven global alliance agreements on file with the Commission, only three are jointly/collectively operating container services in the U.S. trades.

Vessel-operating common carrier (VOCC) conference agreements are distinguished from all other types of agreements because they authorize two or more shipping lines to collectively discuss, agree, and fix uniform freight rates, charges, practices, and conditions of service relating to the receipt, carriage, handling and/or delivery of passengers or cargo. There are currently no conference agreements on file that cover the movement of general commercial cargo. The conference agreements currently on file with the Commission only involve the transport of government impelled cargo.

Joint service agreements authorize two or more shipping lines to establish and operate a combined vessel service or joint venture that uses a distinct operating name and generally acts as a single shipping line independent of the shipping lines that are parties to the joint service agreement.

Equipment discussion agreements are agreements between shipping lines that primarily focus on the discussion, exchange, and transportation of containers, chassis, LASH/ SEABEE barges, and related equipment.

VOCC rate discussion agreements focus on any type of rate matter or charges, but unlike conferences, any consensus on rates among the shipping line members is non-binding on the members.

VOCC cooperative working agreements (CWAs) authorize shipping lines to establish exclusive, preferential, or cooperative working relationships that are subject to the Shipping Act, but that do not fall precisely within the parameters of any other specifically defined agreement category.

Assessment agreements, whether part of a collective bargaining agreement or negotiated separately, authorize the parties to collectively bargain for fringe benefit obligations on other than a uniform man-hour basis regardless of the cargo handled or type of vessel or equipment utilized. These agreements can be between common carriers and labor organizations, or marine terminal operators and labor organizations, and are effective upon filing with the Commission.

Marine terminal rate discussion agreements authorize marine terminal operators to discuss rates and/or charges related to marine terminal operations.

Marine terminal facilities agreements generally refer to lease agreements between a marine terminal operator and the owner of the land or warehouse/facility at a port.

Marine terminal services agreements are agreements between a marine terminal operator and a shipping line concerning marine terminal services provided to and paid for by a shipping line. These services include: dockage, free time, handling, heavy lift, loading and unloading, terminal storage, usage, wharfage, wharf demurrage, and checking (the service of counting and checking cargo against the shipping documentation), and including any marine terminal facilities that may be provided incidentally to such marine terminal services.

Marine terminal joint venture agreements are agreements between or among two or more marine terminal operators, or between one or more marine terminal operators and one or more shipping lines, operating as a joint venture whereby a separate marine terminal operator is established.

MTO cooperative working agreements authorize marine terminal operators to establish exclusive, preferential, or cooperative working relationships subject to the Shipping Act, but do not fall precisely within the parameters of any of the above specifically defined agreement categories.

E – Civil Penalties Collected

Bondex Logistics Co. Ltd.	$73,000
DSV Air & Sea Inc. and DSV Ocean Transport A/S	$175,000
Golden Padlock, LLC	$50,000
Jiangsu Feiliks Logistics Inc.	$85,000
Prime Shipping International Inc. dba Prime Agency	$120,000
North-Star World Trade Services	$35,000
NZS Worldwide, Inc.	$50,000
Swat International Inc.	$85,000
Translink Shipping Inc.	$115,000
Trans Orient Express, Inc.	$70,000
Walmay Logistics, Inc.	$75,000
Young-Ko Trans. Co., Ltd.	$75,000
Blue Cargo Group LLC	$75,000
Bayani Commercial, Inc.	$25,000
Total:	$1,108,000

F – Photo Credits

- Page 13 - The Container Ship 'MSC Chicago' Entering Savannh Harbor (GA) July 2012 by Ron Cogswell is licensed under CC by 2.0
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- Page 28 - Courtesy of Atlantic Container Lines
- Page 30 - Courtesy of South Carolina Ports Authority
- Page 42 - Courtesy of South Carolina Ports Authority