

FEDERAL MARITIME COMMISSION

61ST ANNUAL REPORT

FOR

FISCAL YEAR
2022



TABLE OF CONTENTS

Letter of Transmittal.....	1
Members of the Commission.....	3
List Of Acronyms.....	4
FMC Mission, Strategic Goals, and Functions.....	7
Strategic Goal 1.....	7
Strategic Goal 2.....	8
Year in Review.....	9
Implementation of the Ocean Shipping Reform Act of 2022.....	13
Competition.....	17
Strategic Goal 1.....	17
Agreements Filing, Review, and Monitoring.....	17
Alliance Carrier Market Shares and Activities.....	20
Market Shares of Alliances.....	21
Services, Capacity, and Schedule Changes.....	24
Tariffs/NRAs/NSAs and Service Contracts.....	25
International Cooperation.....	27
Competitive Impact of Ocean Carrier Alliance Joint Purchases of Certain Covered Services.....	28
Protecting the Public.....	31
Strategic Goal 2.....	31
Licensing and Financial Responsibility.....	31
Passenger Vessel Operators.....	33
Consumer Affairs and Dispute Resolution.....	34
Enforcement And Compliance.....	35
Developments in Major U.S. Foreign Trades.....	39
Containerized U.S. Imports and Exports.....	41

Commodities Imported and Exported.....	43
Top Twenty U.S. Liner Cargo Trading Partners.....	47
Foreign Shipping Practices Act.....	49
Controlled Carriers and Identification of Otherwise Concerning Practices by Specific Ocean Common Carriers.....	51
Formal Investigations, Private Complaints, and Litigation.....	53
Formal Proceedings.....	53
Informal (Small Claim) Proceedings.....	59
Rulemakings.....	62
FMC Information Technology.....	65
FMC Systems/Applications.....	65
Case Management.....	65
Website Enhancements.....	65
Glossary.....	67
Appendices.....	71
A. FMC Organizational Chart.....	71
B. FMC Senior Officials.....	72
C. Statement of Appropriations, Statement of Custodial Activity, and Financial Operations.....	73

LETTER OF TRANSMITTAL



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

March 31, 2023

To the United States Senate and House of Representatives:

On behalf of the Commission and pursuant to 46 U.S.C. § 46106(a), I am pleased to share with you the 61st Annual Report of the Federal Maritime Commission, Fiscal Year 2022.

Sincerely,

A handwritten signature in black ink, appearing to read "Dan B. Maffei".

Daniel B. Maffei
Chairman

MEMBERS OF THE COMMISSION

Fiscal Year 2022



Rebecca F. Dye
Commissioner
Appointed 2002
Term Expired 2020



Daniel B. Maffei
Chairman
Appointed 2016
Term Expired 2022



Carl W. Bentzel
Commissioner
Appointed 2019
Term Expires 2024



Louis E. Sola
Commissioner
Appointed 2019
Term Expires 2023



Max M. Vekich
Commissioner
Appointed 2022
Term Expires 2026

LIST OF ACRONYMS

ALJ	Administrative Law Judge
ANPRM	Advance Notice of Proposed Rulemaking
BCL	Bureau of Certification and Licensing
BEIC	Bureau of Enforcement, Investigations, and Compliance
BOE	Bureau of Enforcement
BOL	Bill of Lading
CADRS	Consumer Affairs and Dispute Resolution Services
CBP	U.S. Customs and Border Protection
DOJ	U.S. Department of Justice
FMC	Federal Maritime Commission
EPA	U.S. Environmental Protection Agency
FSPA	Foreign Shipping Practices Act
FTC	U.S. Federal Trade Commission
IT	Information Technology
MOU	Memorandum of Understanding
MTO	Marine Terminal Operators
NESOI	Not Elsewhere Specified or Indicated
NPRM	Notice of Proposed Rulemaking
NRA	Negotiated Rate Arrangement

NSA	NVOCC Service Arrangement
NVOCC	Non-Vessel-Operating Common Carrier
OALJ	Office of the Administrative Law Judges
OE	Office of Enforcement
OFF	Ocean Freight Forwarder
OSRA 2022	The Ocean Shipping Reform Act of 2022
OTI	Ocean Transportation Intermediary
PEN	Pre-Enforcement Notices
PIERS	Port Import Export Reporting Service
PVO	Passenger Vessel Operator
Shipping Act	The Shipping Act of 1984, as amended
SCO	Small Claims Officer
TEU	Twenty-Foot Equivalent Unit
TSA	Terminal Services Agreement
UPR	Unearned Passenger Revenue
U.S.	United States of America
VOCC	Vessel-Operating Common Carrier
VSA	Vessel Sharing Agreement

FMC MISSION, STRATEGIC GOALS, AND FUNCTIONS

The Federal Maritime Commission is an independent agency responsible for regulating the U.S. international ocean transportation system for the benefit of U.S. exporters, importers, and consumers. The FMC has sole jurisdiction over competition, practices, and service in the ocean shipping industry. Its mission is to 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.

Unprecedented shocks to the supply chain during the pandemic challenged the ocean transportation industry as the Commission operated to the maximum of its capabilities. Historically high shipping rates and unpredictable ocean shipping services resulted in high demand for FMC assistance and intervention. The FMC introduced initiatives to meet the needs of the shipping public.

In March 2022, the Commission published its Fiscal Year 2022-2026 Strategic Plan, outlining strategies and performance measures to achieve and track progress in meeting the FMC's mission. The FMC has two main strategic goals.

STRATEGIC GOAL 1

Maintain a competitive and reliable international ocean transportation system.

The FMC carries out the responsibilities of the Shipping Act and the recent amendments under the Ocean Shipping Reform Act of 2022 to ensure competition and reliability for U.S. exporters and importers. The Commission's oversight of the international ocean transportation supply system remains critical with well over \$1 trillion in U.S. exports and imports moving through it annually.

Under the Shipping Act, carriers and other regulated entities can file agreements with the FMC. The FMC ensures that actions taken pursuant to these filed agreements do not result in unreasonable increases in transportation costs and/or unreasonable decreases in transportation services. Competition among participants in the U.S. liner trades fosters competitive rates and encourages innovation and a variety of service offerings for the benefit of U.S. exporters and importers, and ultimately consumers.

To achieve the strategic goal of maintaining a competitive and reliable international ocean transportation supply system, the FMC developed two strategic objectives.

Objective 1.1: Ensure no unreasonable increases in transportation costs or decreases in transportation service are attributed to anticompetitive practices under FMC-filed agreements.

Objective 1.2: Ensure competition is preserved in the purchase of certain covered services (46 U.S.C. § 40102(5)) through 46 U.S.C. § 40307 authorities.

STRATEGIC GOAL 2

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

The FMC has responsibilities related to protecting the shipping public from financial harm that may be caused by the commercial activities of regulated entities. To carry out these responsibilities, the FMC: licenses ocean transportation intermediaries serving the U.S. trades; certifies that passenger vessel operators meet the required financial responsibility levels for death, injury, or nonperformance; assists the public with resolving informal complaints related to the shipment of goods or to passenger vessel cruises; identifies, investigates, and prosecutes unreasonable or unjust practices by VOCCs, OTIs, or MTOs; and adjudicates formal, private-party complaints or FMC-initiated proceedings alleging Shipping Act violations. Further, OSRA 2022 provides new authority to the Commission to promptly investigate and order refunds on noncompliant carrier charges.

To achieve its strategic goal of protecting the public from unlawful, unfair, and deceptive ocean transportation practices, the FMC developed four objectives.

Objective 2.1: Identify and take action to end unlawful, unfair, and deceptive practices.

Objective 2.2: Prevent public harm through licensing and financial responsibility requirements.

Objective 2.3: Enhance public awareness of agency resources, remedies, and regulatory requirements through education and outreach.

Objective 2.4: Impartially and timely resolve international shipping disputes through alternative dispute resolution and adjudication.

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, 46 U.S.C. chs. 401-413;
- The Foreign Shipping Practices Act of 1988, 46 U.S.C. ch. 423;
- Section 19 of the Merchant Marine Act, 1920 (1920 Act), 46 U.S.C. ch. 421;
- Sections 2 and 3 of Pub. L. No. 89-777, 80 Stat. 1350, 46 U.S.C. ch. 441; and
- Section 834 of the Frank LoBiondo Coast Guard Authorization Act of 2018 (LoBiondo Act), codified at 46 U.S.C. § 3503(b)(1)(C).

YEAR IN REVIEW

The two most significant developments in Fiscal Year (FY) 2022 affecting the Federal Maritime Commission and the users of container shipping services were the enactment of the Ocean Shipping Reform Act of 2022 (OSRA 2022) and the continuous fluctuation of conditions causing global supply chain congestion.

In the second half of calendar year 2022, U.S. consumer demand shifted from goods to services, leading to a drop in import volumes. This return to cargo volumes more consistent with pre-pandemic trade patterns provided the supply chain the opportunity needed to begin its recovery. The U.S. domestic transportation and warehousing networks and infrastructure that serve international trade, while still largely at capacity, are no longer overwhelmed at critical levels of containerized freight. It became easier to find chassis, secure rail and trucking transportation, and identify warehouse space to accept shipments. As capacity and velocity throughout the system improved, the cost to ship a container quickly plummeted from historic highs to levels typical of the pre-pandemic norm.

The Federal Maritime Commission continues to address the consequences of when the global supply chain was struggling under the worst of conditions. Investigations have continued into allegations made against carriers. Formal cases brought during the height of the pandemic continue to be adjudicated by the Office of the Administrative Law Judges. The FMC enforcement bureau remains vigilant in addressing questionable fees and surcharges. Identifying ways to assist exporters to reach overseas markets remains a priority, as does

the work to reinvigorate the Commission's enforcement and compliance programs. The marketplace for ocean transportation services might have returned to its pre-pandemic normal, but the Commission is not returning to its pre-pandemic status quo. Rather, the Commission is focusing on what steps must be taken to be best prepared to respond to the next inevitable disruption to the global supply chain.

The root causes of pandemic related supply chain congestion and disruption were many, complex, interconnected, and global in nature. Historic demand for imported items that had to be moved via a system that was disrupted at every step and stop around the world led to higher transportation prices, reduced reliability, and diminished performance. The Ocean Shipping Reform Act of 2022, enacted as Public Law 117-146 on June 16, 2022, was a substantive response to the aggravation and frustration U.S.-based shippers experienced.

Full implementation of OSRA 2022 has been the priority of the Commission. Within days of the law's enactment, the Commission communicated clearly to the public which parts of the law were in immediate effect, the necessity of compliance, and the potential consequences for failing to follow the law. Similarly, the Commission promptly moved forward to identify implementation requirements, the personnel and resources necessary to complete those tasks, and the deadlines for completing mandates. In the last quarter of FY 2022 alone, the Commission added staff authorized by OSRA 2022, moved forward with two rulemakings, issued a Notice

of Inquiry, released its plan for data collection, and established a landing page on the Commission's website dedicated to sharing all OSRA implementation related developments and materials. Continuing successful and timely implementation of OSRA 2022 will be one of the major work efforts of the Commission in FY 2023.

In addition to OSRA 2022 implementation, the Commission focused on its other two key priorities of enforcement and providing assistance to exporters and consumers.

Robust enforcement creates a meaningful deterrent to illicit activity. The Commission received permission from Congress in FY 2022 to realign its enforcement program into the Bureau of Enforcement, Investigations, and Compliance (BEIC). Recruitment has initiated new positions within the Bureau, including a Senior Executive Service BEIC Director. The Commission is committed to building the capabilities of BEIC to conduct investigatory work to ensure that even the largest ocean carriers are complying with the law. Conducting thorough investigations that lead to meaningful enforcement actions is our goal in the coming fiscal year and into the future. Whether the FMC detects potentially illegal activity through its own efforts or receive allegations of misconduct, the Commission will investigate and act appropriately.

The Commission brought three Orders of Investigation against ocean carriers in FY 2022. One of these matters resulted in a \$2 million settlement agreement, while the remaining two investigations remained open at the end of the fiscal year. These are in addition to other formal and small claims (both formal and informal) cases heard by the Office of the Administrative Law Judges who have seen a

marked increase in their caseloads, so much so that a second Administrative Law Judge was hired in FY 2022, and a third will be hired in FY 2023.

Charge complaints is another area that has generated new and voluminous work for the Commission. OSRA 2022 created the ability for parties to contest charges by filing charge complaints at the Federal Maritime Commission. Shippers, truckers, consignees, and third parties who believe they have been erroneously billed by a common carrier (both vessel-operating common carriers and non-vessel-operating common carriers) can challenge the charge. The public has responded favorably to this new process, and the Commission began receiving filed complaints quickly after OSRA 2022 became law. After the Commission released its Industry Advisory on Charge Complaint Interim Procedures, the number of filed complaints increased. Through the Commission's work on charge complaints, hundreds of thousands of dollars in contested charges have been waived or refunded.

The Commission continued to use the Vessel-Operating Common Carrier (VOCC) Audit Program to engage ocean carriers on issues of high priority and to make progress in achieving desired results in compliance with relevant regulatory and statutory requirements. In FY 2021, the Commission established the VOCC Audit Program to facilitate ocean carriers' compliance with the Commission's interpretive rule on demurrage and detention. In FY 2022, the issues of assisting U.S. exporters and ensuring compliance with OSRA 2022 established prohibitions on retaliation were added to the topics addressed with ocean carriers. Participation in the program is voluntary,

and the Commission has seen positive participation from the ocean carriers with notably encouraging results in all matters addressed. The Commission will continue to use the VOCC Audit Program as a forum to have discussions geared toward tangible results in achieving desired outcomes in how ocean carriers operate in the United States.

Another key effort is considering the Final Recommendations presented to the Commission by Commissioner Rebecca F. Dye at the conclusion of her work leading Fact Finding 29. Commissioner Dye made a total of 12 recommendations for steps the Commission can take to improve reliability of the system, relations between all parties involved in moving international commerce, and accountability of regulated entities. The Commission has already moved forward with three of the final recommendations—establishing the International Ocean Shipping Supply Chain Program, reviving the Rapid Response Team, and establishing an Ocean Carrier Compliance Program—and other recommendations are being assessed to determine their suitability for implementation.

Commissioner Carl W. Bentzel continued his work on the Maritime Transportation Data Initiative, a project initiated in December 2021 at the request of Chairman Daniel B. Maffei. The goals of the undertaking are to catalog the status quo in maritime data elements; identify key gaps in data definitions and classifications; and develop recommendations for common data standards and access policies and protocols. Commissioner Bentzel engaged in extensive outreach to representatives of all sectors involved in the end-to-end movement of an ocean container to inform his work, and

he held a Data Summit in June 2022. His Final Report is anticipated in FY 2023.

The demand for Commission services the past two plus years has been both significant and unprecedented. Requests for assistance have ranged from seeking informal assistance with distressed shipments to formal complaints filed before our Administrative Law Judge. We have worked diligently to be responsive to all contacts we have received from the public. This heightened tempo is not abating and will continue. Increases in authorizations and appropriations provided by the Congress will enable us to address issues the public has brought to us.

Consumer assistance has always been an important aspect of the Commission's work. Congress' inclusion of consumer affairs as priority in OSRA 2022 has reinforced the Commission's commitment to the Office of Consumer Affairs and Dispute Resolution Services (CADRS). In FY 2022, CADRS responded to almost 1,500 inquires related to issues with cargo shipments and cruise voyages. When circumstances warrant, the CADRS staff render help that ranges from making a call to have a stalled container released from a terminal to providing actual mediation. CADRS provides an invaluable first stop for frustrated shippers and consumers and renders an important service. The Commission added to CADRS' capabilities in FY 2022 by hiring new staff in this office, including one person who is an export expert and whose assigned priority is assisting U.S. shippers reach overseas markets. We anticipate increasing demand for CADRS' services and the office is well positioned to address that public demand.

The congestion and high shipping costs that appeared at the height of the COVID

pandemic fell faster than expected. Nonetheless, the past two years revealed the vulnerabilities in the domestic freight delivery system that must be addressed. There have been several shocks to the ocean-linked supply chain over the past two decades. Disruptions to the supply chain will likely occur again and, if anything, swings of supply and demand will be more pronounced moving forward. It is critical that we acknowledge that supply chain disruptions are an inherent

risk of global sourcing. Everyone involved in international trade, whether working at a company or for a government agency, must prioritize being better prepared for the next inevitable shock. The Federal Maritime Commission is studying the lessons learned over the past 24 months to determine how we can adapt our regulatory and competition agency to respond with appropriate vigorous and comprehensive action.

IMPLEMENTATION OF THE OCEAN SHIPPING REFORM ACT OF 2022

On June 16, 2022, OSRA 2022 (Public Law 117-146) was enacted and expanded the FMC's authorities while enhancing protections for U.S. shippers. OSRA 2022 is transformative, moving the Commission from an agency that primarily regulated through adjudications to a proactive agency that also engages on active challenges with industry, stakeholders, and the public through promulgating regulations and other means. Executing the requirements of OSRA 2022 involves staff across all Commission offices. It is a top agency priority, and the additional authority provided under OSRA 2022 will greatly assist the agency in meeting its strategic goals.

Several provisions of OSRA 2022 made significant changes in the law that took immediate effect, requiring both the Commission and regulated entities to act quickly to ensure compliance. These provisions included new requirements related to detention and demurrage invoices, as well as prohibitions on issuing invoices or otherwise assessing charges that did not meet the new OSRA 2022 requirements.

Accordingly, the Commission used the VOCC Audit Program to ensure that the largest ocean carriers calling in the U.S. were aware of their obligations under OSRA 2022. In the summer of 2022, the Commission sent letters to executives at the largest 25 carriers highlighting new requirements established by OSRA 2022 and emphasizing the expectation that carriers will move aggressively to come into compliance with all self-executing

provisions, including detention and demurrage billing requirements. Further, the Commission asked all executives to confirm their awareness of the provisions of OSRA 2022 and that the carriers were taking steps to comply with all relevant requirements. All 25 carriers responded in the affirmative.

Additionally, OSRA 2022 contains a number of provisions that will result in considerably more protection for U.S. importers and exporters. For example, Section 5 of OSRA 2022 amended 46 U.S.C. § 41102 to expressly prohibit common carriers, MTOs, and OTIs from taking certain retaliatory actions against shippers, agents of shippers, OTIs, or motor carriers. This builds on the pre-OSRA 2022 Policy Statement issued by the Commission in FY 2022 regarding the seriousness of anti-retaliation measures. As noted in the Policy Statement, the Commission will investigate thoroughly all allegations of carrier retaliation. In FY 2023, the Commission will continue implementing these anti-retaliation provisions.

In addition, Section 10 of OSRA 2022 provides an avenue to submit complaints regarding carrier charges to the Commission (charge complaint), and it already has resulted in direct benefits to shippers. Upon passage, the FMC assembled a task force of its staff to develop a process for complaint intake, processing, assessing, investigating, and prosecution. The first charge complaint was received on July 14, 2022. Guidance on this new process and related information on charge complaints is available on the

Commission's OSRA 2022 implementation webpage. As of September 30, 2022, the Commission received 101 charge complaints, and complainants recovered nearly \$700,000 in refunds or cancelled and waived invoices from charges assessed by common carriers.

Since the enactment of OSRA 2022, the Commission also moved expeditiously to fulfill the requirements of various rulemaking mandates included in the legislation. In FY 2022, the Commission worked towards issuing an NPRM in early FY 2023 on *Demurrage and Detention Billing Requirements*, which will set forth requirements for billing/invoices related to fees, as well as the parameters surrounding billing practices. This rulemaking will encompass the FMC's pre-OSRA 2022 demurrage and detention guidance.

Two additional rulemakings required by OSRA 2022 include *Unreasonable Refusal to Deal or Negotiate with Respect to Vessel Space Accommodations Provided by an Ocean Common Carrier* and *Unfair or Unjustly Discriminatory Methods Related to Cargo Space Accommodations*. An NPRM for the former was issued on September 21, 2022, and the Commission received nearly 30 comments from the public. The Commission is currently addressing the substance of those comments and will issue a Supplemental Notice of Proposed Rulemaking in FY 2023 with further opportunity for public comment.

Other longer-term rulemakings that the Commission will continue focusing on through FY 2023 center on registration process for shipping exchange registries and essential terms for service contracts. Working groups have already begun researching and developing the proposed rules on those topics.

In addition, OSRA 2022 required the Commission to engage on short timelines in new data collections, initiating new research regarding chassis pools, and improving its website. Specifically, concerns about lack of timely and accurate data regarding laden and empty containers carried in U.S. international oceanborne trade are addressed by Section 9 of OSRA 2022 and mandate a new data collection by the FMC. In FY 2022, the Commission issued the 60-day required public notice for this data collection. In FY 2023, the Commission will submit supporting materials to the Office of Management and Budget and will update an existing IT system to allow carriers to submit required data and enable efficient processing and publication of the required quarterly report on import and export tonnage and number of laden and empty containers operated by ocean common carriers.

In addition, Section 18 of OSRA 2022 requires the Commission to issue a request for information on whether congestion of the carriage of goods created an emergency situation and whether an emergency order for data sharing between ocean common carriers, marine terminal operators, and stakeholders would alleviate such an emergency. This request for information was published in the Federal Register on August 15, 2022, which was 60 days after enactment of OSRA 2022. The comment period closed on September 14, 2022, and the Commission received 48 comments from the public. The Commission analyzed those comments and determined that circumstances did not warrant emergency relief at this time. The Commission's authority to issue an emergency order under Section 18 of OSRA 2022 extends through the end of FY 2023.

Also, OSRA 2022 mandated that the Commission improve its website to streamline the process for the public to submit comments, complaints, concerns, reports of noncompliance, requests for investigation, and requests for alternative dispute resolution. The Commission has secured IT contracting support for this effort. A new web portal will deploy in FY 2023.

Importantly, the Commission has created a webpage to communicate its OSRA 2022-related activities to the public on its website. Also, it has issued news releases, industry advisories, and provided updates regarding OSRA 2022 implementation at Commission meetings.

COMPETITION

STRATEGIC GOAL 1

A primary function of the Commission is to maintain 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. 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 is a federal competition law applicable to the international liner shipping industry. It allows ocean carrier and marine terminal competitors to meet, discuss, and in some cases, cooperate on certain business issues, but first they must file a written agreement with the Commission. It contains provisions similar to those found in the Sherman Act of 1890, the 1914 Clayton Act, and the Robinson-Patman Act of 1936, which are designed to address a number of discriminatory, predatory, or unfair business practices, as well as anti-competitive conduct resulting from certain business combinations, acquisitions, or mergers. The Shipping Act creates a specialized regulatory regime separate from the U.S. Department of Justice's and the U.S. Federal Trade Commission's enforcement of

the U.S. antitrust laws. Collective carrier or MTO activity is evaluated under the Shipping Act when an agreement is initially filed with the Commission, and closely monitored thereafter, for any adverse impact on competition in the trade.

The Commission reviews agreements using traditional antitrust law principles and economic models to evaluate the potential competitive 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.

As long as an agreement complies with the relevant Shipping Act and regulatory requirements, other federal antitrust statutes generally do not apply. Conversely, if a regulated entity violates the Shipping Act, it would be subject to penalties, and may, under certain circumstances, also be subject to investigation and prosecution under the full array of federal antitrust statutes.

AGREEMENTS FILING, REVIEW, AND MONITORING

Economic analysis is at the heart of maintaining competition and reliability in the global shipping supply chain. The FMC

analyzes collective ocean common carrier and marine terminal operator behavior under filed cooperative agreements against the backdrop

of underlying trade conditions to identify and safeguard against unfair and anticompetitive practices. Bolstered by OSRA 2022, the Commission’s competition-focused work protects the U.S. consumer by improving supply chain efficiency and transparency and ensuring the supply chain remains competitive for U.S. shippers. In FY 2022, the Commission completed a comprehensive review of its existing monitoring requirements for all filed agreements, enhancing the reporting requirements for many MTO and VOCC agreements to ensure the Commission has access to the information required to properly assess potentially anticompetitive effects using contemporary analytics.

The Commission’s statutory authority and regulations require agreements that allow collaboration among ocean common carriers or marine terminal operators to be filed with the Commission. The Commission staff analyzes agreements upon filing for potential anticompetitive effects, and continually thereafter monitors concerted carrier activity under all filed agreements to detect changes in underlying trade conditions or changes in carrier behavior that might result in an unreasonable increase in transportation costs or decrease in transportation services.

Under 46 U.S.C. §§ 40301–40303, all agreements by or among ocean common carriers and/or marine terminal operators that undertake any of the following activities 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.

In FY 2022, the Commission received 66 agreement filings, including new agreements and amendments to, or terminations of, existing agreements. Twenty-two agreements were terminated in FY 2022, including vessel sharing arrangements between the 2M Alliance and independent carriers SM Lines and Zim, an agreement among Port Authorities in the Southeast U.S. to operate a chassis pool, and a rate discussion agreement among terminal operators at the Northwest Seaport Alliance.

There were 353 agreements on file with the Commission as of the end of FY 2022, comprised of VOCC agreements, MTO agreements, and assessment agreements. The vast majority of agreements on file with the Commission are VOCC agreements (263) and are dominated by basic space sharing agreements that are relatively less competitively concerning than other types of agreements, e.g., alliances or global vessel sharing arrangements that discuss and/or coordinate vessel capacity across major trade lanes. Additionally, there are 81 MTO agreements and nine assessment agreements.

As stated above, agreements filed with the FMC that present competitive concerns are monitored regularly for actions that might result in an unreasonable increase in transportation costs or a decrease in transportation service, as well as indicators of prohibited acts under OSRA 2022 and the Shipping Act. There are roughly 50 agreements on file that Commission staff monitor regularly.

The largest ocean common carriers collaborate in “alliances” or global vessel sharing arrangements. There are three alliances with agreements on file with the FMC. These

agreements are among the most closely scrutinized by the Commission. These alliance agreements allow coordination of capacity, but discussion or coordination on rates is categorically prohibited. The limited anti-trust immunity granted under an alliance agreement extends only to activities among agreement parties within the scope of the filed agreement. Conduct inconsistent with the terms of an agreement is illegal and exposes members of agreements to criminal and civil prosecution under existing statutes.

The FMC's monitoring program is unique – indeed, none of our foreign ocean shipping competition counterparts employ a monitoring program like the Commission's. The European Union and competition authorities in various Asian nations do not have access to the same detailed information that the FMC collects from global alliance carriers. During the pandemic, when carrier rates increased sharply, the FMC closely scrutinized all monitoring data to assess whether this was the result of collusion among the carriers, which would violate the terms of their FMC-filed agreements. The Commission also has altered the data it collects from alliance carriers as part of ongoing monitoring twice since the onset of the pandemic, most recently in Spring 2022, to ensure that the staff has all the information needed to fully understand carrier activities and their impacts on the market. As the market shifts from scarcity to excess supply of carrier capacity, the FMC's focus will be on ensuring that alliance carriers do not restrict capacity to artificially increase rates. The new monitoring requirements permit the Commission to rapidly track and anticipate changes in capacity.

Agreement Review Process

- All agreements are reviewed pursuant to the standard set forth in 46 U.S.C. § 41307(b)(1).
- Agreements become effective 45 days after filing unless the Commission has requested additional information to evaluate the competitive impact of the agreement.
- The Commission has the authority to reject a pending agreement filing if it determines that 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 of the Commission's jurisdiction.
- The Commission may seek to prevent the operations of an agreement under 46 U.S.C. § 41307(b) where it determines that the agreement could reduce competition to the point of unreasonably impacting the market, or substantially lessen competition in the purchasing of certain covered services as defined in the Frank LoBiondo Coast Guard Authorization Act of 2018 (Pub. L. No. 115-282).
- Effective agreements are subject to Shipping Act restrictions and Commission oversight.

ALLIANCE CARRIER MARKET SHARES AND ACTIVITIES

FMC collects quantitative and qualitative information from the members of the three global alliances (2M, OCEAN, and THEA) to assist in the agency's monitoring process. This includes:

- meeting minutes;
- blank sailings;
- delayed sailings;
- total capacity operated and volumes moved; and
- measures of revenue.

This information is carefully analyzed to determine trends in the marketplace and to identify potential anticompetitive behavior or prohibited practices. The information

required by the FMC as part of the monitoring program is routinely reviewed and revised to ensure the agency has the information required to analyze carrier behavior, as conditions in the market change. The most recent revision to these requirements occurred in May 2022.

The 2M Alliance consists of Maersk Line (HQ: Denmark) and Mediterranean Shipping Company (MSC; HQ: Switzerland), the largest and second-largest ocean carriers by global capacity, measured by twenty-foot equivalent unit (TEU).

The three ocean carriers that make up the OCEAN Alliance are CMA CGM (including

What Are Alliances? What Are Vessel Sharing Agreements?

FMC statutes and regulations contain no definition of Alliances or VSAs. Generally, however, Alliances refer to carriers participating in VSAs that have a global geographic scope.

VSAs are agreements between two or more ocean common carriers to share space on a service string or trade lane and includes the authority to rationalize capacity. This is in contrast to space charter agreements, where carriers provide space for other carriers on a service but do not contain capacity rationalization authority.

Alliances are large VSAs. Currently, there are three global alliances – 2M, OCEAN, and THEA. Each Alliance filed agreements with the FMC that are available through the Commission's website. Each agreement is slightly different, but discussion of pricing or other operational considerations is not authorized in the Agreement. If Agreement parties engage in those kinds of unauthorized activities, they would be subject to criminal and civil prosecution.

Agreements are not mergers nor joint ventures. Ocean carriers in these agreements compete with one another based on price and service. The FMC monitors these agreements through submitted data, external data on market activities, and through regular conversations with agreement parties.

its affiliate APL; HQ: France), COSCO (including its majority-owned affiliate OOCL; HQ: China), and Evergreen (HQ: Taiwan).

THE Alliance (THEA) is comprised of four members: Hapag-Lloyd (HQ: Germany),

Hyundai Merchant Marine (HMM; HQ: South Korea), Ocean Network Express (ONE; HQ: Japan), and Yang Ming (HQ: Taiwan).

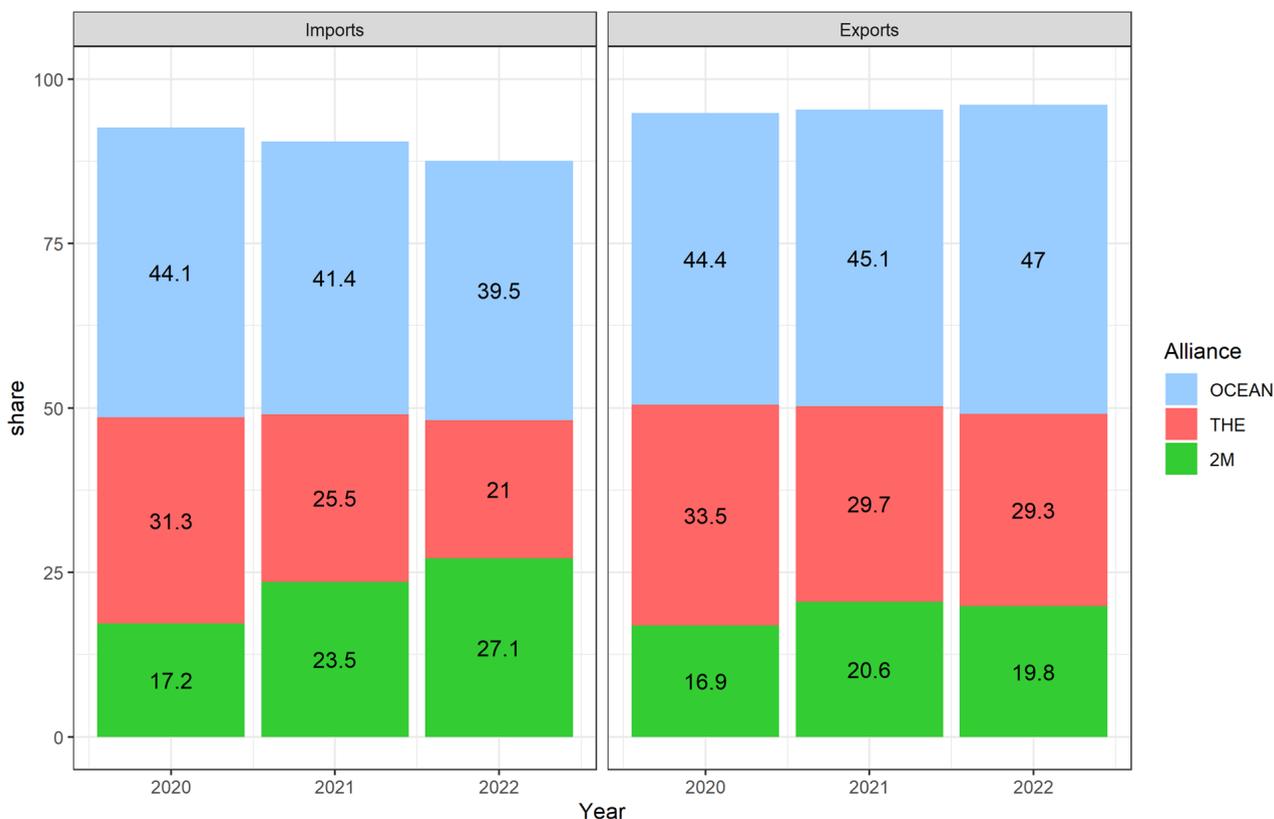
MARKET SHARES OF ALLIANCES

PIERS data is used to calculate the market shares of the carriers within the global alliances. PIERS data is procured from S&P Global and provides a comprehensive source of information on U.S. imports and exports. It is important to note, however, that the market shares below are computed using TEUs transported in the major east-west trade lanes by

the carriers within the alliances. They reflect the totals carried both via alliance services and other services offered by those carriers.

Using PIERS data, as shown in Chart 1 below, the three global alliances captured a combined market share of 87.6 percent in the transpacific import trade and secured approximately 96 percent of transpacific export trade

Chart 1: Transpacific Alliance Market Shares, First Half (Jan-June), 2020-2022



in the first half of 2022. Focusing on the import markets, while the OCEAN alliance continued to have the largest share of transpacific imports, with nearly 40 percent in the first half of 2022, its share has decreased steadily over the past few years. THE Alliance carriers, who had a market share of 31.3 percent of transpacific imports in 2020, experienced a decrease to 21 percent in 2022. The 2M carriers' share increased 10 percentage points from 17 percent in the first half of 2020 to 27 percent in the first half of 2022. And non-alliance carriers increased their share of transpacific market from 7.4 percent in the first half of 2020 to 12.4 percent in the first half of 2022.

On the export side, OCEAN increased its share of the export market to 47 percent in the first half of 2022. 2M had roughly 20 percent of the transpacific export market in both the first halves of 2021 and 2022, and THE Alliance decreased its share slightly between 2020 and 2021 and the share remained stable between 2021 and 2022.

In the transatlantic trades, as shown in Chart 2, the alliances collectively captured 89 percent of imports and 88 percent of exports in the first half of 2022. The share of non-alliance carrier volumes was relatively stable over this period. On the import side, 2M carriers grew their share of the trade from 41 percent in the

Chart 2: Transatlantic Alliance Market Shares, First Half (Jan-June), 2020-2022

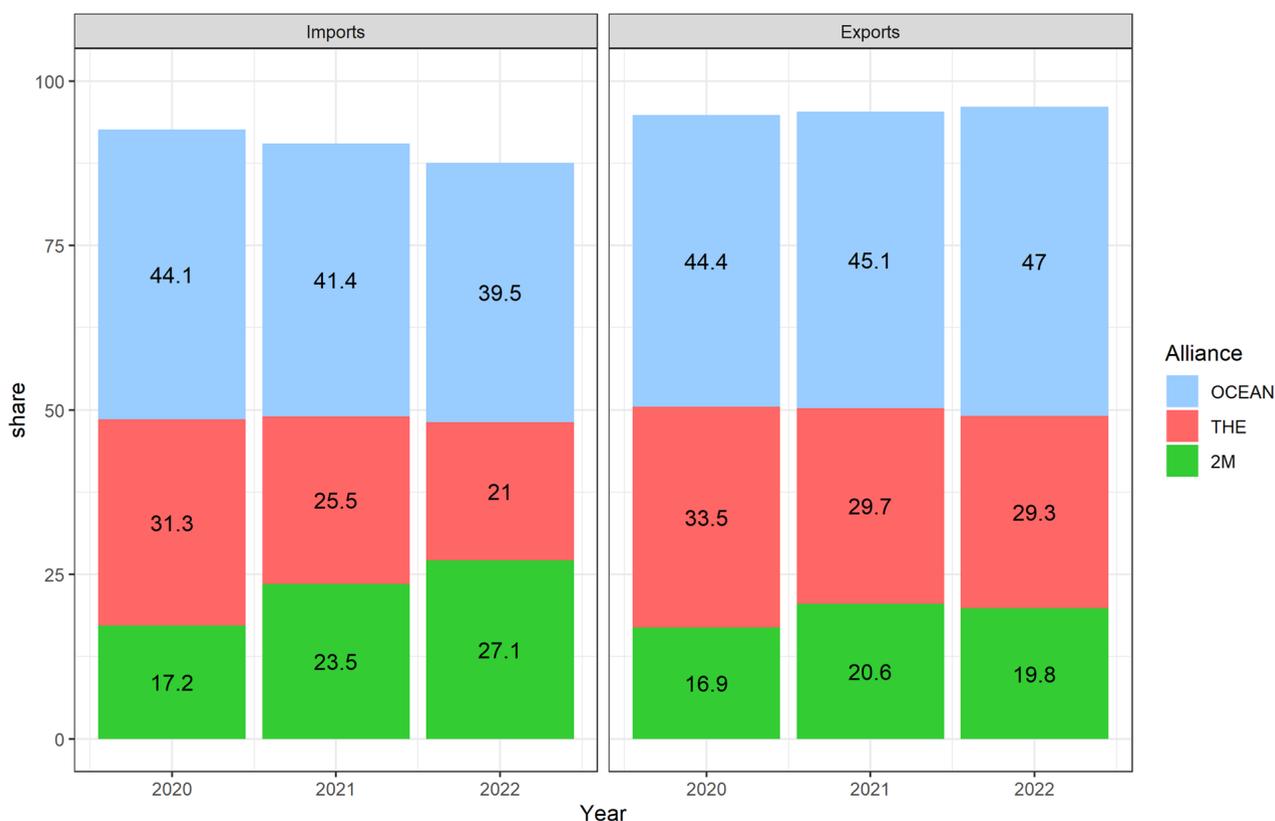
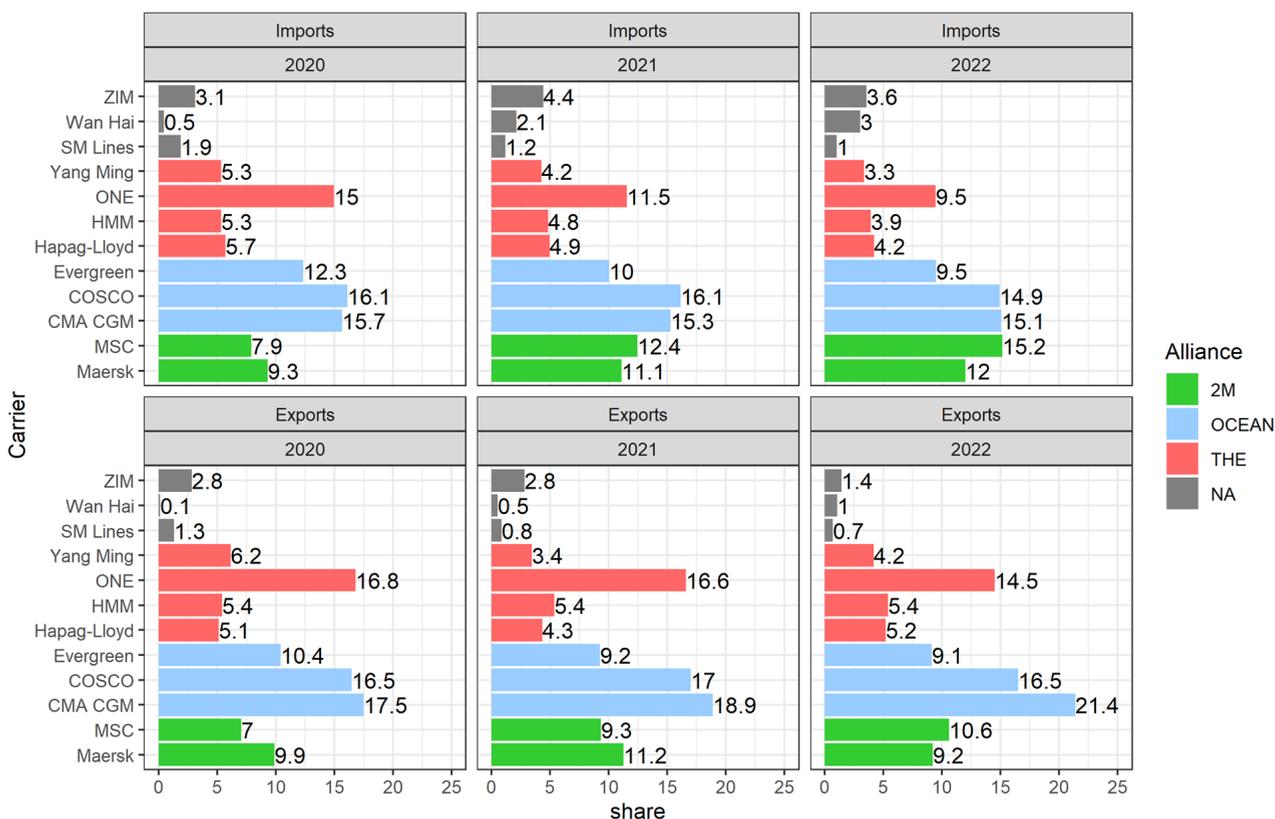


Chart 3: Transpacific Market Shares, First Half (Jan-June), 2020-2022



first half of 2020 to 46 percent in the first half of 2022. Both OCEAN and THE alliances saw their share of import volumes decrease on this trade. On the export side, both OCEAN and THE alliances had larger shares of the market vis-a-vis their imports. While THE alliance carriers' market share remained relatively stable over this period, OCEAN carriers' market share decreased by roughly 3.5 percentage points.

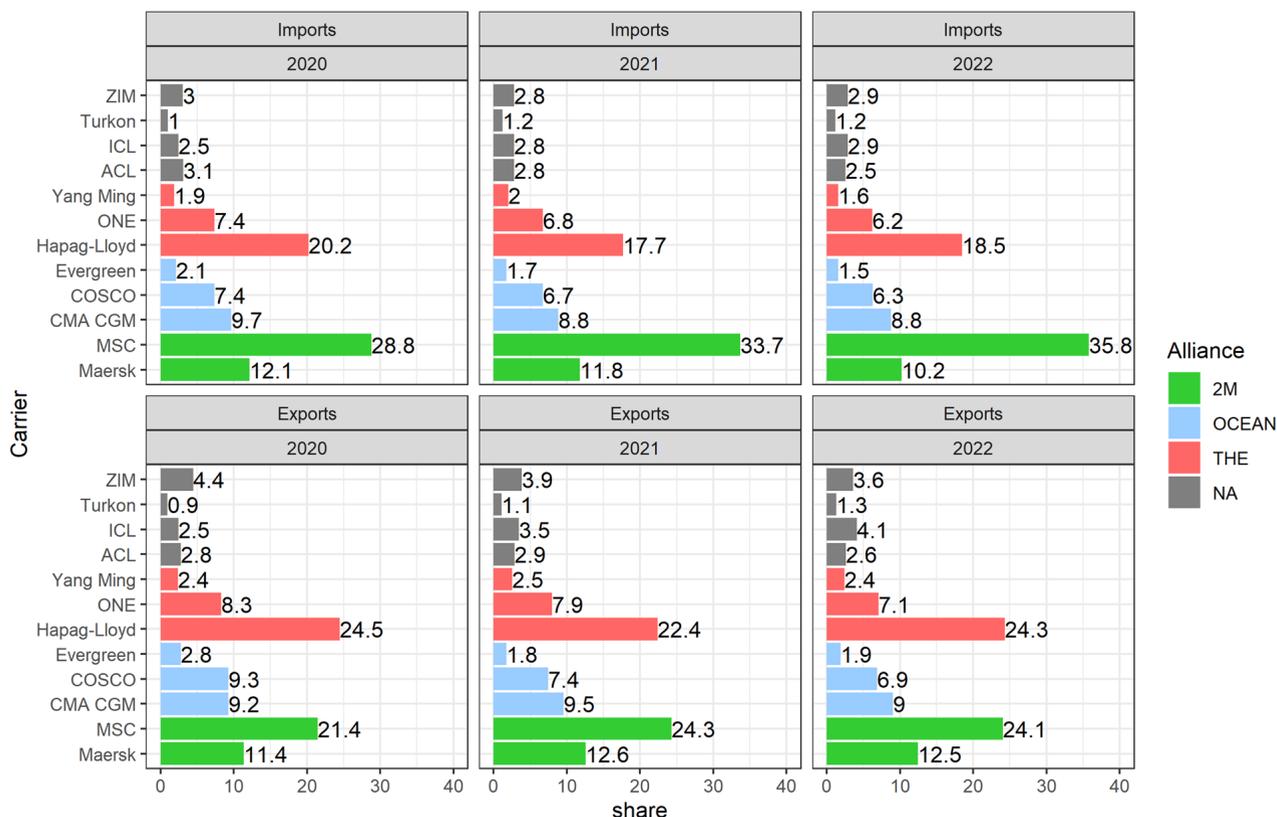
Turning next to the individual carriers, we see in Chart 3, that there were substantial variations in market shares across the trade lanes and by direction of trade (export vs. import).

Not surprisingly, given the increased share of 2M carriers noted above, MSC's market

share of the transpacific trade increased substantially, from roughly eight percent of import volumes in the first half of 2020 to over 15 percent in the first half of 2022. Maersk's share increased as well from nine percent in 2020 to 12 percent in 2022. Over the same period, there were small decreases in market share for Yang Ming, HMM, Hapag-Lloyd, Evergreen, and COSCO.

Turning to transatlantic exports, as shown in Chart 4, MSC and Maersk have substantially lower shares of the market, 10.6 percent, and 9.2 percent respectively. ONE, COSCO, and CMA CGM have export market shares that are appreciably higher than their import market shares.

Chart 4: Transatlantic Carrier Market Shares, First Half (Jan-June), 2020-2022



Regarding imports, MSC leads the transatlantic market with a market share of 35 percent in the first half of 2022, increasing from roughly 29 percent in the first half of 2020. Maersk and Hapag-Lloyd saw their shares of the import market decrease on the order of two percentage points each over

the same period. Most other market shares were stable. MSC has roughly a quarter of the export market, notably smaller than its share of the import market. Hapag-Lloyd also has roughly a quarter of the export market share, appreciably higher than its 19 percent share of the import market.

SERVICES, CAPACITY, AND SCHEDULE CHANGES

For FY 2022, OCEAN Alliance launched three new services to the U.S., two of which serve the U.S. West Coast (PNW11 and PN12) and another the U.S. East Coast (USEC8). These services are part of the Day 6 OCEAN product that began in May. Due to the operational

changes related to congestion, THE Alliance split a pendulum service calling Asia-USWC-Asia-Europe into two separate services, one of which sails between Asia and the U.S. West Coast (PS7) and the other between Asia and Europe. The 2M Alliance announced no major

service changes in FY 2022; however, 2M has proposed and submitted two notices of service changes to be implemented in mid- to late-October 2022 involving one merged service and one discontinued service to the U.S. West Coast.

Each alliance carrier is required to report monthly the number of sailings operated, the volume of loaded containers (in TEUs) carried on the sailings regardless of origin/destination, and capacity provided in each trade lane where that alliance operates (in TEUs). Inbound capacity declined over the six months from January 2022 to June 2022 in both the transpacific trade (4 percent) and the transatlantic trade (11 percent). Some of the decline in trade capacity can be linked to the increase in port congestion at U.S. ports throughout FY 2022. As congestion persisted at U.S. ports, alliance carriers both delayed and canceled sailings due to the difficulty of keeping the vessels' schedules.

The amount of capacity removed due to blank sailings has increased since the beginning of this fiscal year in both the transpacific and the transatlantic trades compared to the same period last year. All three global alliances

have reduced capacity through blank sailings due to the ongoing congestion and delays in the ocean transportation system. These delays substantially impacted schedule reliability and led to vessels not being able to complete their voyage in the scheduled time frame. However, there were a few blanked sailings moving into FY 2023 due to low demand and Golden Week holidays in China that could indicate a future market transition from blankings due to congestion to those due to demand.

The Commission issued new monitoring requirements to the three global alliances in May 2022. As part of these new requirements, alliance carriers now submit delayed sailing information each week, retroactive to January 2022. Delayed sailings include voyages delayed by at least one day before reaching their first port of call in the United States. Delayed sailings on alliance services increased over the first six months of the year, particularly on services between Asia and the U.S. West Coast. Delayed sailings on the transpacific trade ranged between 63 and 99 percent as a share of operated capacity in the first half of 2022.

TARIFFS/NRAS/NSAS AND SERVICE CONTRACTS

Tariffs, NRAs, and NSAs

The FMC maintains a listing of all ocean carrier tariff websites for the public to use in identifying ocean carriers' rules and rates for the transportation of cargo. This includes more than 8,600 common carrier tariff locations posted on the FMC's website—the vast majority of which are Non-Vessel-Operating Common Carrier (NVOCC) tariffs compared

to 150 VOCC tariffs. While publishing tariff locations makes it possible for the public to access the rates and rules of carriers, many common carriers rely upon tariff publishers to publish their tariffs, often requiring payment for access.

An NPRM was published in May 2022 proposing to remove the option for common carriers to charge a fee to access their tariff. 87 Fed. Reg. 27,971 (May 20, 2022). Commission

regulations exempt NVOCCs from rate tariff publication when using a confidential NVOCC Service Arrangement (NSA) and a Negotiated Rate Arrangement (NRA). However, NVOCCs must still publish a rules tariff containing the terms and conditions governing the charges, classifications, rules, regulations, and practices of an NVOCC, regardless of the use of NRAs and NSAs. The Commission has concentrated efforts on ensuring that all NVOCCs maintain a rules tariff that is publicly available.

Increased demand during the pandemic induced multiple new carriers to enter the transpacific market. However, in many cases, these new services were suspended within a short period. Table 1 below tracks the service period for these carriers.

Table 1: Pandemic Carrier Entry and Exit Date

Vessel Operator	Market Entry Date	Market Exit Date
Iris Logistics, Inc.	September 2021	November 2022
Lihua Logistics Company, Limited	August 2021	October 2022
CULines Ocean Limited	November 2021	September 2022
Oriental Lake Shipping Operation Limited	August 2021	July 2022
China SOC Lines Limited	November 2021	March 2022

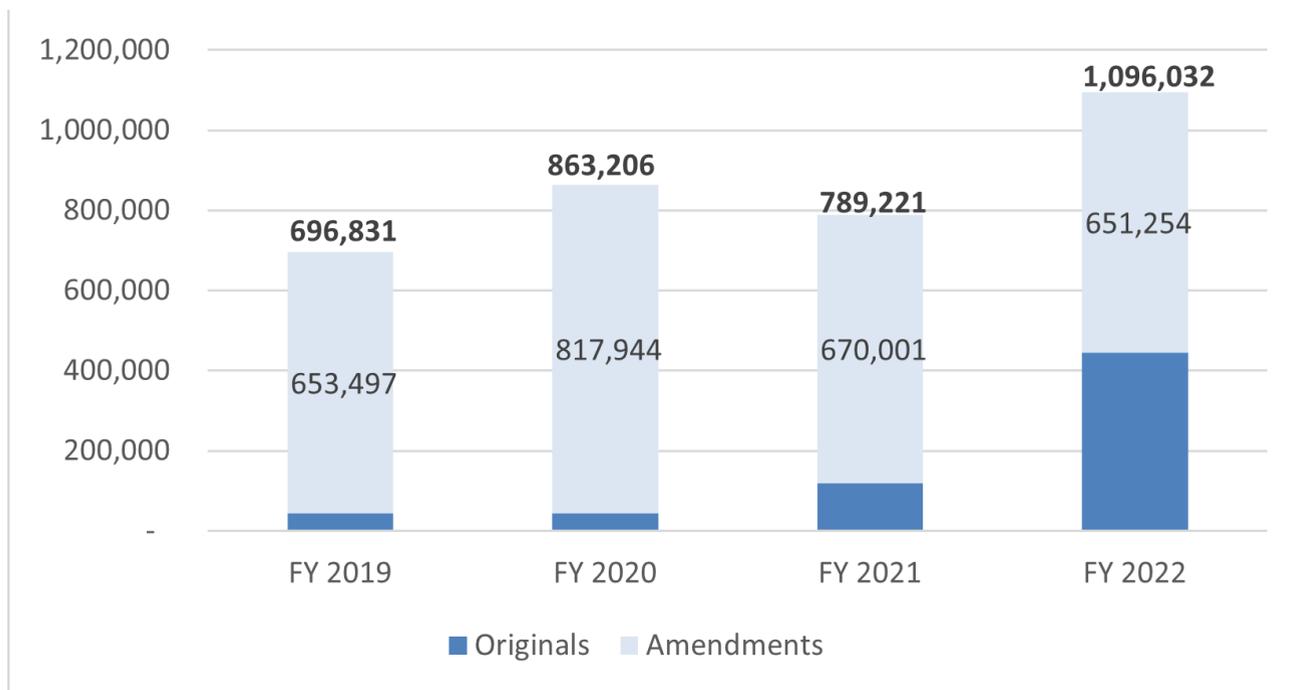
service contracts filed has increased with the rise in spot market or single shipment service contracts of a limited duration. Amendments to service contracts are affected by changes to costs and charges, including fuel costs. Although the FMC is directed by statute to evaluate service contracts, the large volume, the lack of uniform filing requirements, and the lack of key data elements prevent the FMC from properly leveraging the information in service contracts to track developments in the industry and to assess for compliance at a reasonable scale.

Service contract volumes, particularly for amendments, are typically higher in times of market transition. The Commission has received historic high numbers of service contract amendments in the past year (as shown in Chart 5), over 90,000 in September 2022 alone, which is the highest single month on record. Without major revisions to systems and filing requirements, the FMC cannot leverage the information contained in service contracts to determine whether this is driven by changes in fuel prices or major downward revisions in contract rates. In FY 2023, the Commission will engage in a rulemaking to propose adjustments to the required elements and filing format of service contracts and increase staffing and IT support to develop an improved system for receiving, processing, and analyzing service contracts.

Service Contracts

The Shipping Act requires ocean common carriers to file service contracts with the Commission. Over time, the number of original

Chart 5: Service Contract Filings



INTERNATIONAL COOPERATION

The Commissioners and Commission staff attended several meetings with international counterparts during FY 2022.

Chairman Maffei and Commissioner Dye met with Consultative Shipping Group representatives when they attended discussions between the U.S. and the Consultative Shipping Group in September 2022. At this meeting, Chairman Maffei provided an overview of the Commission’s new authorities and implementation of OSRA 2022. Also, Commissioner Dye summarized the findings and recommendations provided in the final report for Fact Finding Investigation 29, *Effects of the COVID-19 Pandemic on the U.S. International*

Ocean Supply Chain: Stakeholder Engagement and Possible Violations of 46 U.S.C. § 41102(c).

In addition, the Commission hosted several bilateral meetings with international counterparts. For example, in December 2021, Chairman Maffei met with Ambassador Lone Dencker Wisborg, the Ambassador of Denmark to the United States, and discussed supply chain challenges, as well as ongoing Commission initiatives and priorities. A similar meeting was held with Andreas Nordseth, the Director General of the Danish Maritime Authority in June 2022. Also, in May 2022, Chairman Maffei and Commissioner Dye met with the co-chairs of the Canadian

Supply Chain Task Force to discuss strengthening transportation supply chains between Canada and the United States.

Additionally, Commissioner Bentzel represented the Commission in attending the U.S.-Republic of Korea Bilateral Maritime Meeting hosted by the U.S. Maritime Administration in August 2022. Representatives from the U.S. and the Korean government discussed topics including maritime strategies, port infrastructure, and decarbonization. During the meeting, the U.S. and Korean delegations identified shared challenges and areas for possible cooperation. Commissioner Bentzel

provided an overview of the Commission, its priorities, OSRA 2022, and Commission's implementation of OSRA 2022. In November 2021, Commissioner Dye attended a meeting of the Consultative Shipping Group (consisting of 18 foreign government representatives) to discuss mutual supply chain challenges.

In addition, Commission staff met on multiple occasions with international counterparts from Canada, Brazil, and the Australian Competition and Consumer Commission. At these meetings, Commission staff discussed the Commission's functions and authority, as well as challenges to the international supply chain.

COMPETITIVE IMPACT OF OCEAN CARRIER ALLIANCE JOINT PURCHASES OF CERTAIN COVERED SERVICES

On December 4, 2018, the Frank LoBiondo Coast Guard Authorization Act of 2018 (LoBiondo Act) was enacted as Public Law No. 115-282 and included in Title VII the Federal Maritime Commission Authorization Act of 2017. Among other changes, the law placed restrictions on cooperation between or among ocean carriers and MTOs, including removing antitrust immunity for certain activities, prohibiting certain joint procurement activities, restricting overlapping agreement participation, and modifying the legal standard for enjoining agreements to jointly procure certain covered services, including:

- the berthing or bunkering of a vessel;
- the loading or unloading of cargo to/from a vessel, or to/from a point on a wharf or terminal;
- the positioning, removal, or replacement of buoys related to the movement of the vessel; or

- towing vessel services provided to a vessel.

The law amended 46 U.S.C § 46106 to require that the Commission annually provide to Congress: (1) an analysis of the competitive impact of ocean carrier alliance joint purchases of the covered services mentioned above; and (2) a summary of actions, including corrective actions, taken by the Commission to promote competition.

Analysis of Joint Purchasing Agreements

A Terminal Services Agreement (TSA) is an agreement between an MTO and a VOCC concerning marine terminal services provided to and paid for by the VOCC. 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. Three agreements on file with the Commission have active, jointly negotiated TSAs in effect. TSAs from two of these agreements were reviewed in past years, posed no competitive concerns, and did not undergo any changes since FY 2021; therefore, they were not reanalyzed in FY 2022. TSAs from THE Alliance agreement (FMC No. 012439) made changes in FY 2022 and, as a result, these TSAs were analyzed for potential anticompetitive impacts.

There are two primary competition concerns with respect to joint purchasing arrangements. First, if the parties have a significant degree of purchasing power in the relevant market, the parties may drive the price of the purchased services below competitive levels. Second, if access to service providers is limited, competing purchasers may be excluded from the market. This is most likely where there are barriers to entry that prevent new service providers from entering the purchasing market or that prevent expansion by existing providers.

The DOJ and the FTC have jointly issued guidance on the key metrics that should be analyzed when market participants engage in joint purchasing, a case of collaboration among competitors. If joint purchases account for less than 35 percent of the total sales (or output) of the purchased services in the relevant upstream market, and the cost of the jointly purchased services account for less than 20 percent of the buying group's sales revenue in each relevant downstream market, the DOJ/FTC generally would consider any such arrangement to fall within the safety zone. These two thresholds are general

boundaries that, if crossed, would likely subject the group to increased antitrust scrutiny.

In the case of joint purchasing agreements between ocean carriers and terminal operators and/or stevedoring companies, the relevant upstream market is the market in which terminal and stevedoring services are sold by providers and purchased by ocean carriers. The relevant downstream market is the ocean transportation services market in which the buying groups compete to sell those services to shippers.

The above referenced terminal and stevedoring services jointly negotiated by THE Alliance were reviewed to ensure conformity with the DOJ/FTC guidelines for joint purchasing arrangements.

Safety zone threshold tests were conducted using data from the first three quarters of FY 2022 (October 2021-June 2022). Data for this analysis includes elements submitted by the parties as part of ongoing Commission monitoring, as well as information from commercially available resources. Staff analyzed the port markets of Los Angeles-Long Beach, CA, New York-New Jersey, Oakland, CA, Seattle-Tacoma, WA, Jacksonville, FL, and Wilmington, NC. In upstream markets, combined purchases of covered services by the members of the agreement were less than 35 percent in each of the relevant markets.

Turning to the second threshold test, members within THE Alliance compete on the basis of price with other agreement members in downstream ocean transportation services in four markets: Asia to/from the U.S. West Coast; Asia to/from the U.S. East and Gulf coasts; North Europe to/from the United States; and the Mediterranean to/from the United States. Elevated rates for container shipping have led

to higher revenues for shipping lines in FY 2022 than pre-pandemic. However, throughput rates for terminal services have remained steady, leading to these port charges reflecting a lower share of total sales revenue than in prior years. Data for this analysis comes solely from information submitted by the parties as part of regular monitoring. In these markets, the value of joint purchases was below the

threshold of 20 percent of the parties' total sales in the relevant markets.

In summary, THE Alliance agreement operates within the safe harbor guidelines for joint purchasing arrangements promulgated by the DOJ and FTC. FMC will continue to monitor and assess joint purchasing of covered services.

PROTECTING THE PUBLIC

STRATEGIC GOAL 2

The FMC engages in a variety of activities that protect the public from unlawful, unfair, and deceptive practices that lead to financial harm. The Commission: issues licenses for U.S. OTIs and registers foreign-based OTIs; ensures financial responsibility of all OTIs through bonding requirements; helps resolve disputes about the shipment of goods or the carriage of passengers; investigates and prosecutes unreasonable or unjust practices; and issues rulings on private party complaints that allege Shipping Act violations. In addition, the FMC ensures that PVOs 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.

LICENSING AND FINANCIAL RESPONSIBILITY

OTI and PVO programs are operated by the Commission to protect the public. These programs focus on three primary areas: (1) OTI licensing and registrations; (2) PVO certifications and monitoring; and (3) entities' financial responsibilities.

Ocean Transportation Intermediaries

The number of OTIs has increased substantially since the onset of the pandemic in early 2020. As of the end of FY 2022, over 9,000 OTIs are regulated by the Commission—collectively just over 5,000 licensed United States-based and more than 4,000 foreign-based NVOCC entities. As the demand for ocean transportation services increased, there was a large influx of foreign-based NVOCCs into the market.

There are two types of OTIs: NVOCCs and OFFs. Both serve as transportation middlemen for cargo moving in the U.S.-foreign oceanborne trades. An NVOCC is a common carrier that holds itself out to the public to

provide ocean transportation and issues its own house BOL or equivalent document but does not operate the vessel by which ocean transportation is provided. A U.S.-based OFF 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. However, an OFF does not hold itself out to the public to provide ocean transportation and does not issue a house bill of lading or equivalent shipping documents.

NVOCCs and OFFs located in the U.S. must be licensed by the Commission. To become FMC-licensed, an OTI must successfully demonstrate the following to the Commission: evidence of a minimum of three-years experience providing OTI services in the U.S.; the necessary character to render OTI services; and proof of financial responsibility. Currently, there are 5,045 licensed NVOCCs and OFFs that maintain financial responsibility in the form of surety bonds on file with the Commission, valued at \$533 million. These funds

are available to pay for damage caused by the licensee’s OTI-related activities.

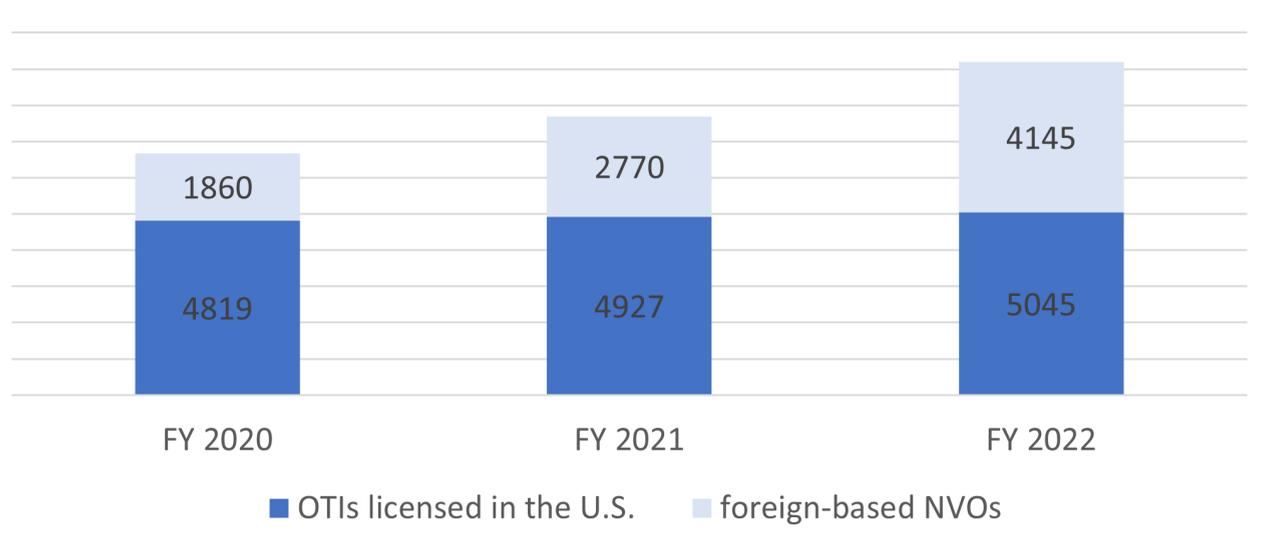
Foreign-based NVOCCs that conduct business in the U.S. foreign trades are required to register with the Commission and to establish financial responsibility in the form of surety bonds. Registrants provide basic corporate contact information for the company. If preferred, a foreign NVOCC may choose to become licensed. As shown in Chart 6 below, in FY 2020, there were roughly 1,900 foreign-based NVOCCs, and in FY 2021 there were roughly 2,800. Currently, there are 4,072 foreign registered NVOCCs and 73 foreign licensed NVOCCs that maintain financial responsibility in the form of surety bonds on file with the Commission, valued at \$616 million.

The Commission’s triennial renewal program for licensed OTIs ensures the accuracy of OTI records and timeliness in reporting

material changes in ownership and operations for the benefit of OTI sureties, carriers, and the shipping public. The online user-friendly renewal process 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. Foreign-registered NVOCCs must also renew their registrations every three years. In FY 2022, approximately 1,500 OTI licenses were renewed, with most reviewed and processed within 48 hours of submission. Given the increased number of OTIs, there is a corresponding increase in workload related to renewal and evaluating these regulated entities for compliance.

At the end of FY 2022, the Commission had 383 Optional Riders on file, with an approximate aggregated value of over \$19 million. The bond is optional and at the discretion of individual NVOCCs.

Chart 6: Trends in OTIs, FY 2020 - FY 2022



In addition, OSRA 2022 mandates the Commission establish guidance and adopt regulations for registration of shipping exchanges within three years of its June 2022 enactment. BCL is responsible for this rule-making and has already begun framing the guidance for implementing and complying with this new requirement.

PASSENGER VESSEL OPERATORS

The FMC oversees a program to ensure financial responsibility for PVOs, (commonly referred to as “cruise lines”), that have berth or stateroom accommodations for 50 or more passengers and embark passengers at U.S. ports and territories. The requirement for Certificates of Performance issued by the FMC ensures financial responsibility for the indemnification of passengers for non-performance of transportation and prevents unscrupulous or financially vulnerable operators from serving U.S. ports. The PVO program currently includes 48 operators and 258 vessels.

As previously presented, Fact Finding 30, *COVID-19 Impact on Cruise Industry*, identified commercial solutions to COVID-19-related issues interfering with the operation of the cruise industry. Under 46 C.F.R. § 540.5 and 46 C.F.R. § 540.9(l), the Commission can consider alternative forms of financial protection using a shorter period to determine the required amount of a PVO’s financial responsibility. In July 2020, the Commission approved a Passenger Vessel Operator Financial Responsibility policy to provide limited and temporary financial relief for small PVOs whose operations and business were disrupted by the response to COVID-19. The FMC determined

OTI Program Activity in FY 2022

- New OTI applications accepted: 429
- Amended applications accepted: 317
- New OTI licenses issued: 285
- Amended licenses issued: 70
- Licenses revoked or surrendered: 225
- New registrations accepted: 1,582
- Licenses renewed: 1,772
- Registrations renewed: 830

it would look favorably upon requests from small PVOs seeking a temporary surety/financial responsibility lower coverage amount based upon 110 percent of the PVO’s previous month’s UPR rather than the prior two fiscal years’ UPR. Operators were required to agree to: 1) provide monthly reports to the FMC that satisfactorily demonstrate the company’s UPR, and 2) comply with the requirements and conditions of the alternative form of evidence of financial responsibility, or they would be subject to the default requirements in the Commission’s regulations.

In February 2022, the Commission amended its regulations governing non-performance by PVOs to establish new requirements for refunding cruise passengers for cancelled or delayed voyages. Pre-COVID-19 pandemic, PVOs’ ticket contract policies and procedures traditionally refunded passengers in the form of future cruise credits in lieu of monetary refunds for non-performance. The pandemic resulted in considerable uncertainty regarding fully operational cruises, yet passengers were still being held to their ticket contracts. The

Commission's new rule mandated that passengers be fully refunded within 180 days all fees, including ancillary fees, paid to the PVO. Optionally, passengers could agree to receive future cruise credits in lieu of the refund.

CONSUMER AFFAIRS AND DISPUTE RESOLUTION

CADRS provides assistance to the maritime industry and the shipping public to resolve regulatory and commercial ocean shipping problems that involve cargo, household goods, and cruises. CADRS provides a variety of dispute resolution services, including ombuds, mediation, facilitation, and arbitration. CADRS staff has years of experience working in the maritime industry and responds to inquiries and guides parties to find mutually agreeable solutions while avoiding the cost and delay of litigation. Participation is voluntary, and all matters are kept confidential unless the parties grant permission to share information. Also, CADRS has a dedicated export expert and a Rapid Response Team that are a resource for exporters experiencing an emergency. Ocean carriers have a designated FMC Compliance Officer that directly and quickly responds to CADRS in urgent time-sensitive matters.

To increase assistance to the ocean shipping public and U.S. exporters, the Commission bolstered the services of CADRS with more resources and staffing. CADRS assists in resolving commercial disputes on an informal basis, as well as through formal mediation. Supply chain strains due to the pandemic resulted in increased disputes between entities, particularly between carriers and shippers. In FY 2022, CADRS responded to 1,496 inquiries

PVO Program Activity in FY 2022

- Aggregate evidence of financial responsibility for nonperformance: \$817 million
- Aggregate evidence of financial responsibility for casualty: \$763 million
- New Performance Certificates issued: 27
- New Casualty Certificates issued: 24

from the public and seven mediations were concluded.

The FMC was contacted by individuals with shipping and cruise-related complaints referred by several federal and state agencies, including the U.S. Surface Transportation Board, National Highway Traffic Safety Administration, U.S. Department of Agriculture, the New Jersey State Attorney General, and the Florida Department of Agriculture and Consumer Services. Where appropriate, Commission staff also referred individuals to the Surface Transportation Board's Rail Customer and Public Assistance Program for concerns related to railway delays and charges. Examples of assistance provided to the shipping public included:

- U.S. exporters obtained refunds of freight charges when ocean carriers incorrectly applied surcharges and containers were held at destination ports until resolved.
- U.S. exporters successfully disputed demurrage and detention charges resulting in mitigation or cancellation of the charges when ocean carriers did

not adhere to the FMC's Interpretive Rule.

- Household goods shippers got their export shipments booked and loaded after lengthy delays due to tight space allocations in certain markets or delayed release/container availability due to port congestion.
- With the help of the U.S. Department of Agriculture, inspectors resumed on-site inspections of agricultural shipments which had been suspended during the pandemic.

- MTOs in the Pacific Northwest region located and released containers that had not been made available for months due to significant port congestion. U.S. importers whose shipments, moving under a through BOL, encountered: significant delays due to congestion faced by rail carriers; disputes over dwell fees that were assessed by MTOs; and motor carriers unable to find empty container appointments and return locations.

ENFORCEMENT AND COMPLIANCE

VOCC Audit Program

The VOCC Audit Program was launched in July 2021. This initiative involves the ongoing collection of qualitative and quantitative information from the largest ocean common carriers, as well as regular meetings with carrier representatives regarding the Commission's key priorities, including detention and demurrage. In FY 2022, the FMC began publishing aggregated information on the levels and trends of detention and demurrage fees charged and collected by carriers. This information is updated quarterly and published on our website.

In FY 2022, the program scope expanded to include a focus on exports. The VOCC Audit Team met with carriers to discuss trends in the numbers of exports carried and issues impacting exports. Carriers and shippers cited problems with cancelled bookings,

particularly for exports. In June 2022, the FMC began collecting information from the carriers on "fall down," the share of confirmed bookings that are cancelled. As additional quarterly data is collected on this metric, it will be published on our website.

The VOCC audit meetings with carriers have proven to be an effective way to communicate Commission priorities, discuss best practices, and gather their questions. Following the enactment of OSRA 2022, these meetings have been used to: identify appropriate points of contact for compliance matters and charge complaints filed with the Commission; reinforce Commission policy statements; and update carriers on upcoming Commission activities. The VOCC Audit Program will continue its work in FY 2023, focusing on continued challenges impacting exports, carrier practices, and preventing anti-retaliatory policies.

Enforcement, Investigations, and Compliance

Protecting the shipping public through the Commission's enforcement program is a top priority. OSRA 2022 expanded the FMC's authorities in this area, and the Commission is focused on increasing enforcement activity involving common carrier practices. Through investigation and prosecution of violations of the law, the Commission achieves industry compliance with the Shipping Act, as amended by OSRA 2022, as well as other shipping statutes administered by the Commission.

In July 2022, the Commission reorganized its investigative and prosecutorial functions, forming the BEIC. This newly established bureau provides a structure better suited to investigate suspected violations and pursue enforcement activity when appropriate, while still encouraging and emphasizing compliance. Attorneys, investigators, and analysts work closely together to prosecute unlawful activities on the ocean transportation supply chain. As part of this reorganization, the positions of Area Representatives were converted to Investigator positions, with new duties that focus exclusively on enforcement activities under the Shipping Act and OSRA 2022's new authorities. To prepare for this transition, the Director, Office of Investigations conducted a program evaluation resulting in organizational structure changes, including new supervisory and advanced technical roles, and created staff development plans to include the National Certified Investigator and Inspector Training to prepare investigators for the new positions.

In FY 2022, U.S. exporters and importers dealt with supply chain challenges, including

congestion, significant demurrage and detention charges, and a lack of appointments, equipment, and vessel space. The FMC's enforcement efforts focused on VOCC and MTO practices that assess unjust or unreasonable charges which impact and exacerbate supply chain problems.

Channeling the Commission's resources to focus on high-impact cases creates a substantial deterrent against similar illegal conduct. Three formal proceedings involving unjust and unreasonable practices in violation of the Shipping Act were initiated. One proceeding resulted in a civil penalty of \$2 million, and two proceedings were ongoing at the end of the fiscal year.

In FY 2022, the Office of Investigations opened more than 100 investigations related to unjust and unreasonable practices with respect to demurrage and detention charges, unfair or unjust discriminatory methods, unlicensed OTI activity and rates, charges, classifications, and other practices of VOCCs, MTOs, and OTIs that may have violated the law.

As of the end of FY 2022, 29 total enforcement cases were pending final resolution. In addition, investigators referred nine new investigative matters to BEIC's Office of Enforcement (OE) for enforcement action or informal compromise, and three matters were the subjects of formal proceedings initiated by the Commission during FY 2022 via Orders of Investigation and Hearing. Moreover, PENs were issued to two regulated entities in FY 2022. Finally, during FY 2022, OE was a party to three formal proceedings under 46 CFR Part 502, Subpart X, of the Commission's regulations involving challenges to OTI license

denial and revocation notices issued by the BCL.

The Commission cooperates with other federal, state, and local transportation and law enforcement agencies through established MOUs which allow the FMC to share information and access confidential trade information for law enforcement purposes and other enforcement activities. The FMC also collaborates and partners with other agencies on specific transportation-related policies, issues, or incidents involving U.S. domestic and international liner shipping.

In FY 2022, joint law enforcement activities involving FMC included criminal and civil investigations of entities licensed or regulated by the FMC, as well as violations of export and import statutes and regulations. Several FMC Investigators participated with the U.S. CBP, the U.S. Coast Guard, and other federal agencies in annual Multi-Agency Strike Force Operations conducted at marine terminals at the ports of New York and New Jersey, Oakland, CA, and Seattle, WA. The Investigators aided these investigations by providing expert knowledge on ocean carrier and OTI practices, procedures, and documentation related to shipping transactions. The Commission and the CBP also exchanged investigative information to enhance and safeguard the global economic competitiveness of the U.S.

The Commission's compliance audit program reviews the operations of NVOCCs and ocean freight forwarders, identifies aspects of their practices that are noncompliant with statutory or regulatory requirements, and provides guidance to bring those regulated entities into compliance. The audit program also reviews companies that hold themselves out as ocean carriers but do not appear to

conduct vessel operations. During the fiscal year, BEIC opened 103 audits and completed 93 (including audits carried over from FY 2021), with 10 audits pending as of September 30, 2022.

Enforcement activities for FY 2022 include the following type of matters:

- Investigations: 191
- Enforcement Activities: 204
- Compliance Matters: 59
- Formal Enforcement Proceedings: 3

Charge Complaints

Section 10 of OSRA 2022 established a new avenue of relief for shippers and other persons called a charge complaint. Upon submission of information concerning complaints about charges assessed by a common carrier, the Commission must promptly investigate the charge regarding compliance with certain provisions of the Shipping Act and, if the charges are found to be noncompliant, the Commission will promptly order the non-compliant charges refunded and may impose a civil penalty. (46 U.S.C. § 41310). In FY 2022, the Commission initiated an interim process for receiving and investigating charge complaints, and investigations are underway. The Commission is devoting significant resources to ensure charge complaints are processed quickly, as contemplated by the law. As stated above in the section of this report regarding implementation of OSRA 2022, as of September 30, the Commission received 101 charge complaints, and complainants recovered nearly \$700,000 in refunds or cancelled and waived invoices from charges assessed by common carriers.

Guidance on this new process and related information on Charge Complaints are available on the Commission's OSRA 2022 implementation webpage.

National Shipper Advisory Committee

Establishing a shipper advisory board was a key recommendation from Fact Finding 28, *Conditions and Practices Relating to Detention, Demurrage, and Free Time in International Oceanborne Commerce*. The National Shipper Advisory Committee (NSAC), comprised of 12 import representatives and 12 export representatives, was chartered in June 2021, and operates under the Federal Advisory Committee Act, 5 U.S.C. App., and 46 U.S.C. Chapter 425. Specifically, the Committee will advise the Commission on policies relating

to the competitiveness, reliability, integrity, and fairness of the international ocean freight delivery system. Commission staff support the activities of this committee, including serving as the Committee Management Officer, the Designated Federal Officer, and two Alternate Designated Federal Officers. Members of the public may find more information about the NSAC (member list, charter, meeting materials, recommendations, and responses) on our website.

The Committee has taken an active role since its establishment, forming subcommittees related to fees/surcharges, data, and equipment. The NSAC issued recommendations at its April 2022 meeting related to dwell fees and intermodal oversight, and at its August 2022 meeting recommendations related to earliest return date and the creation of a second advisory committee were issued.

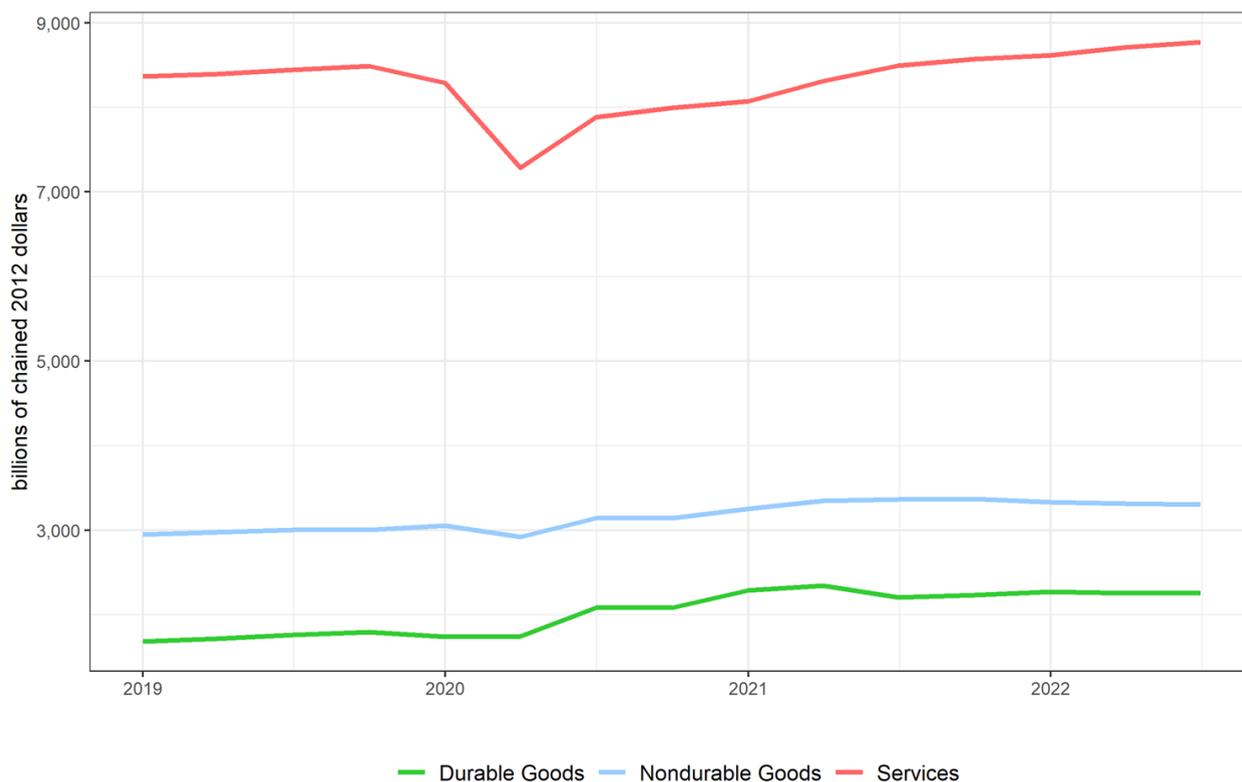
DEVELOPMENTS IN MAJOR U.S. FOREIGN TRADES

After initial declines in production and consumption worldwide at the outset of the COVID-19 pandemic in March 2020, U.S. consumer demand rebounded quickly. As shown in Chart 7 below, consumer spending shifted markedly from service to goods, with real spending on services not returning to their pre-pandemic levels until late 2021. And while real spending on durable and nondurable goods has declined in the third quarter

of 2022, spending on goods is still far in excess of its pre-pandemic levels.

This shift to consumer spending on goods led to increased demands on the supply chain, as items such as apparel, furniture, and other durables rely on international sources and accompanying ocean transportation. The unprecedented demand for imports, coupled with intermittent supply chain disruptions in 2021 due to continued COVID-19 outbreaks

Chart 7: Real Personal Consumption, 2019-2022



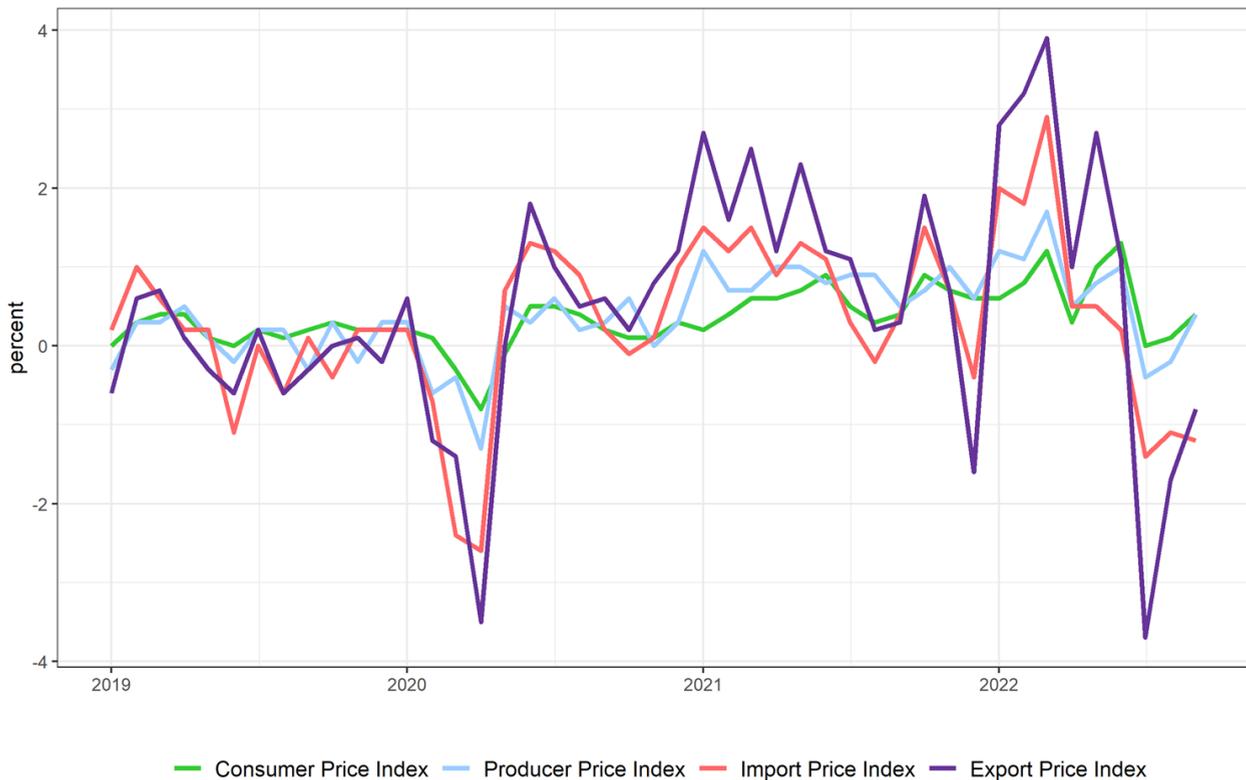
Source: Bureau of Economic Analysis

at the factories and ports in China, Vietnam, and other major trading partners, led to severe port congestion throughout 2021 and into the first quarter of 2022. Congestion was lessened, but still prevalent, at several East Coast and Gulf ports in the latter half of 2022.

Rising prices have been a focus of policymakers, including the Federal Reserve Board, since early in 2021. While international price indices tend to be more volatile than the Consumer Price Index or Producer Price Index, several international price indices hit series highs in 2022, including the February 2022 Import Price Index, which was the highest since 1989.

As shown in Chart 8 below, while the Consumer Price Index and Producer Price Index tend to be more stable, the monthly numbers for these indices were in the one percent range throughout much of the first half of the year and recently decreased as a result of several interest rate increases. Despite this, they are persistently above the federal target rate of inflation. This is not a U.S.-specific phenomenon. There is widespread inflation and economic slowdown globally, which drove substantial reductions in ocean transportation services.

Chart 8: Price Indices, one month change



Source: Bureau of Labor Statistics

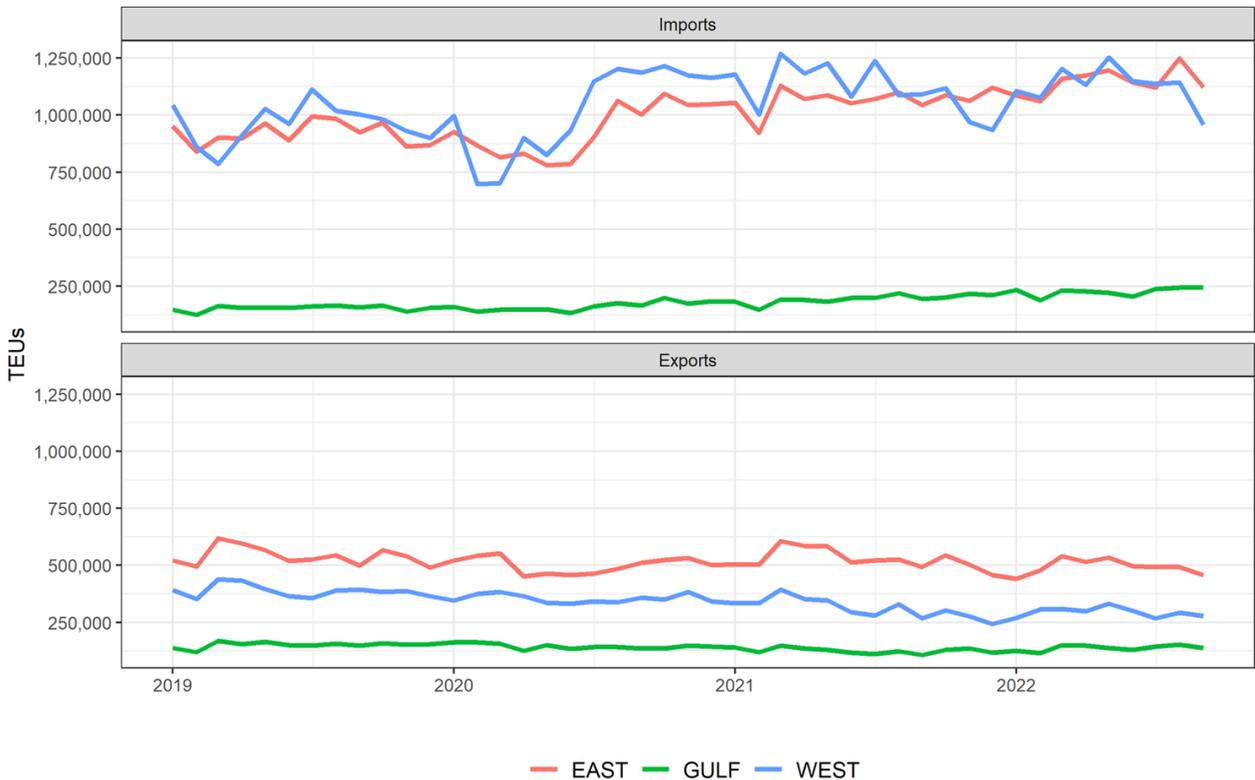
CONTAINERIZED U.S. IMPORTS AND EXPORTS

Chart 9 below depicts monthly containerized cargo entering and exiting the U.S. for the West, East, and Gulf Coasts (note that there is a small amount of trade outside of these three coasts, including the Great Lakes). Monthly import volumes through ports on the Gulf Coast increased steadily throughout 2022 and are roughly twice their 2019 levels. Exports through West and East Coast ports continue to lag their sustained highs from the first half of 2021. While all are reflecting the seasonal downturn that tends to happen with exports in the fall months in terms of their

2022 numbers, it is notable that the Gulf Coast export volumes are relatively on par with their levels from the prior three years.

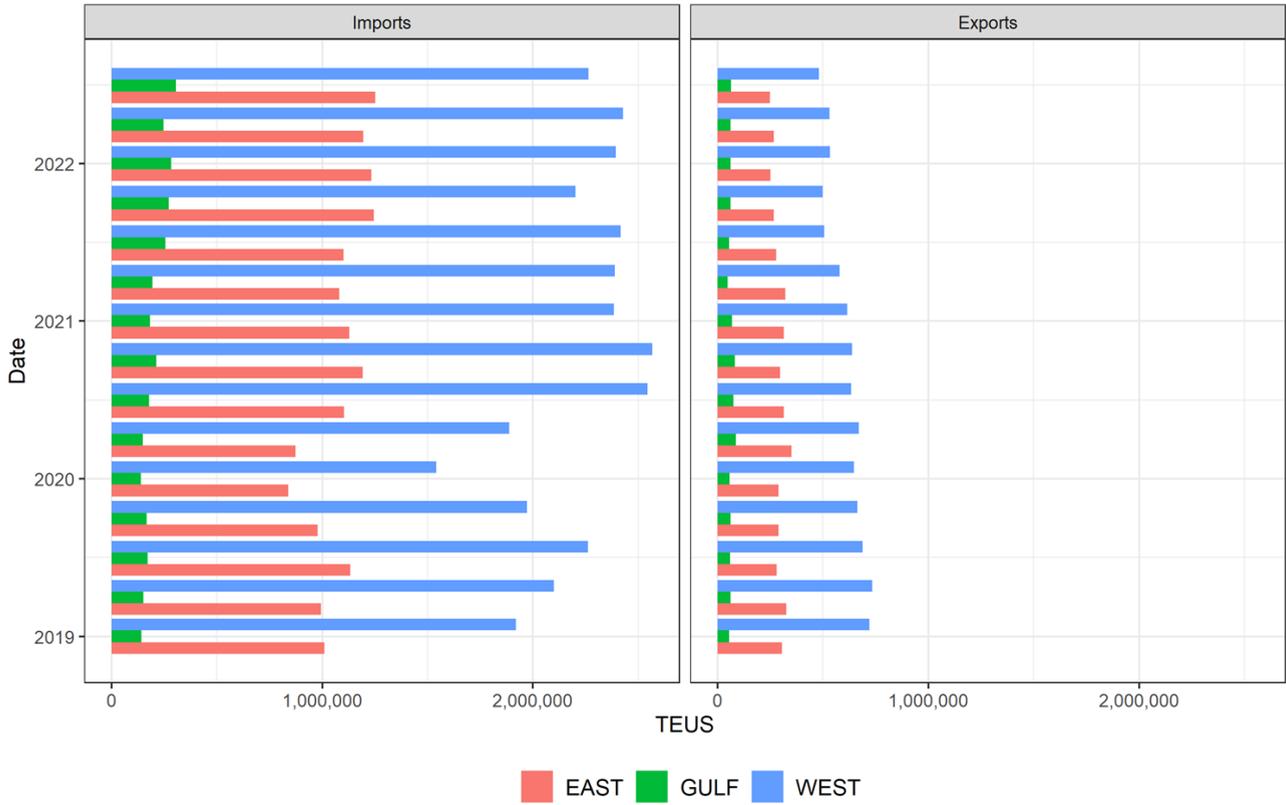
While it seems obvious that transpacific trade is primarily moving through West Coast ports, the volumes of transpacific trade moving through East Coast and Gulf Coast ports were substantially higher in 2022 than in prior years. Also notable from Chart 10 below is that the volume (in TEUs) of transpacific exports have been dropping steadily year-over-year, while the exports moving through East and Gulf Coast ports has remained stable.

Chart 9: Monthly Volumes by U.S. Coast, 2019-2022



Source: PIERS

Chart 10: Transpacific Trade Quarterly Volumes by U.S. Coast, 2019-2022



COMMODITIES IMPORTED AND EXPORTED

Tables 2 through 7 below present the top 10 commodities that the U.S. exported and imported through East Coast and West Coast ports from January through September 2022.

The commodities in the tables represent those imported and exported through all trades, which includes the major North-South trades, featuring agricultural products such as bananas, rather than just the East-West trades with Asia, which are more heavily comprised of manufactured products. Made clear by the types of commodities in the tables,

exports tend to be heavier and lower value than imports. In particular, note that the top exports for the West Coast are commodities such as wastepaper, hay, and scrap metal. The weight and value imbalance creates obstacles to U.S. exporters, particularly those attempting to access the East-West trades. Additionally, the higher weights of exports mean that ships traveling from the U.S. back to Asia have limits on the number of full export containers, as the weight capacity of the ship is exceeded before all TEUs slots are full.

Table 2: West Coast – Top 10 U.S. Import Commodities

Rank	Commodity	TEU
1	furniture NESOI and parts thereof	1,037,184
2	seats (except barber, dental, etc.), and parts	349,014
3	new pneumatic tires, of rubber	306,944
4	parts & access for motor vehicles (head 8701-8705)	300,545
5	toys NESOI; scale models etc; puzzles; parts etc	242,324
6	travel goods, handbags, wallets, jewelry cases etc	228,297
7	refrigerators, freezers etc; heat pumps NESOI, pts	174,393
8	articles of plastics (inc polymers & resins) NESOI	171,062
9	tableware & other household articles etc., plastics	157,471
10	lamps & lighting fittings & parts etc NESOI	141,855

Table 3: West Coast – Top 10 U.S. Exports Commodities

Rank	Commodity	TEU
1	waste and scrap of paper or paperboard	310,327
2	rutabagas, hay, clover & other forage products	247,790
3	soybeans, whether or not broken	131,375
4	cotton, not carded or combed	124,205
5	ferrous waste & scrap; remelt scr iron/steel ingot	108,827
6	residues of starch mfr or sugar mfr or brewing etc.	92,950
7	nuts NESOI, fresh or dried	92,731
8	motor cars & vehicles for transporting persons	58,990
9	preparations used in animal feeding	54,503
10	meat of swine (pork), fresh, chilled or frozen	41,855

Table 4: East Coast – Top 10 U.S. Import Commodities

Rank	Commodity	TEU
1	furniture NESOI and parts thereof	886,343
2	parts & access for motor vehicles (head 8701-8705)	315,862
3	new pneumatic tires, of rubber	272,215
4	seats (except barber, dental, etc.), and parts	240,860
5	bananas and plantains, fresh or dried	188,934
6	toys NESOI; scale models etc; puzzles; parts etc	154,694
7	travel goods, handbags, wallets, jewelry cases etc.	142,864
8	refrigerators, freezers etc.; heat pumps NESOI, pts	138,312
9	floor cover (rolls & tiles) & wall cover, plastics	132,978
10	articles of plastics (inc polymers & resins) NESOI	125,484

Table 5: East Coast – Top 10 U.S. Exports Commodities

Rank	Commodity	TEU
1	waste and scrap of paper or paperboard	244,284
2	chemical woodpulp, soda or sulfate, not dissoly gr	236,628
3	motor cars & vehicles for transporting persons	213,352
4	kraft paper & paperboard, uncoat NESOI, rolls etc	114,040
5	parts & access for motor vehicles (head 8701-8705)	113,257
6	wood in the rough, stripped or not of sapwood etc.	103,842
7	meat & ed offal of poultry, fresh, chill or frozen	102,655
8	furniture NESOI and parts thereof	102,218
9	soybeans, whether or not broken	101,355
10	motorcycles (incl mopeds) & cycles with aux motor	100,697

Table 6: Gulf Coast – Top 10 U.S. Import Commodities

Rank	Commodity	TEU
1	furniture NESOI and parts thereof	167,872
2	bananas and plantains, fresh or dried	104,685
3	parts & access for motor vehicles (head 8701-8705)	57,297
4	toys NESOI; scale models etc; puzzles; parts etc.	47,334
5	new pneumatic tires, of rubber	42,523
6	seats (except barber, dental, etc.), and parts	39,678
7	refrigerators, freezers etc.; heat pumps NESOI, pts	29,932
8	dates, figs, pineapples, avocados etc., fr or dried	29,874
9	motor cars & vehicles for transporting persons	29,870
10	worked monument etc. stone & art NESOI; granule etc	25,003

Table 7: Gulf Coast – Top 10 U.S. Exports Commodities

Rank	Commodity	TEU
1	polymers of ethylene, in primary forms	224,441
2	amino-resins, phenolics & polyurethanes, prim form	56,840
3	polymers of vinyl chloride etc., in primary forms	54,781
4	chemical woodpulp, soda or sulfate, not dissoly gr	48,779
5	cotton, not carded or combed	46,260
6	motor cars & vehicles for transporting persons	36,730
7	travel goods, handbags, wallets, jewelry cases etc	30,990
8	kraft paper & paperboard, uncoat NESOI, rolls etc.	30,296
9	meat & ed offal of poultry, fresh, chill or frozen	27,169
10	oil (not crude) from petrol & bitum mineral etc.	25,129

TOP TWENTY U.S. LINER CARGO TRADING PARTNERS

The FSPA (46 U.S.C. § 46101(b)(1)) 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.”

The Commission derives its list of top-twenty trading partners from the PIERS database. The most recent complete calendar year of available data is 2021. Table 8 below 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 2021 in TEUs. 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 over the past few years. China remained the U.S.’s top trading partner in 2021, accounting for nearly 14 million TEUs of the total volume of trade.

Table 8: Top 20 U.S. Liner Cargo Trading Partners, Calendar Year 2021

Rank	Country	TEUs	Rank	Country	TEUs
1	China (PRC)	13,802,680	11	Malaysia	756,268
2	Vietnam	2,771,036	12	Belgium	754,312
3	South Korea	1,725,459	13	Italy	708,749
4	India	1,566,369	14	Guatemala	553,958
5	Taiwan (ROC)	1,398,772	15	Netherlands	503,002
6	Japan	1,251,087	16	Turkey	464,603
7	Thailand	1,157,819	17	Chile	423,856
8	Germany	1,063,772	18	Spain	417,270
9	Indonesia	775,961	19	United Kingdom	384,343
10	Brazil	762,182	20	Hong Kong	364,934

Source: PIERS

Note: PIERS continues to report data separately for Hong Kong due to its status as a major transshipment center.

As the bilateral trade metrics include both TEUs imported and exported, they do not fully convey the trade flow between the U.S. and its major trading partners. While China is the largest destination for U.S. exports, its share of exports is substantially lower than its share of imports. Tree Map 1 below shows the most current trade data (January-September 2022) between the U.S. and its trading partners by direction of trade.

The size of the box in the tree map denotes its share of total containerized international trade. For example, while a lower share of U.S. containerized exports originate in Japan than Vietnam, the export share of Japan is greater than that of Vietnam. And while Belgium is listed as the 12th largest bilateral trading partner in 2021 in the table above, the tree map shows that this is largely driven by U.S. exports to Belgium, not by imports.

Tree Map 1: Share of Trade by Country, January-September 2022



FOREIGN SHIPPING PRACTICES ACT

The Commission has the authority to address restrictive foreign shipping practices under section 19 of the Merchant Marine Act of 1920 (46 U.S.C. ch. 421) and the FSPA (46 U.S.C. ch. 423). Section 19 empowers the Commission to make rules and regulations to adjust or meet conditions unfavorable to shipping in the foreign trade of the United States. The FSPA directs the Commission to address adverse conditions that affect U.S. carriers in the foreign trade and that do not exist for foreign carriers in the United States.

On March 6, 2020, the Commission received a petition from the Lake Carriers' Association, a trade association made up of owners and operators of vessels on the Great Lakes, alleging that conditions created by Transport Canada, an agency of the government of Canada, are unfavorable to shipping in the United States/Canada trade under Section 19. In particular, the Lake Carriers' Association asserted that Transport Canada's proposed regulations requiring the installation of ballast water management systems on vessels loading or discharging ballast water in Canadian waters would drive U.S.-flag vessels from the cross-lakes U.S. export trade with Canada. On June 16, 2020, the Commission issued a Notice of Investigation and Request for Comments. The comment period closed on July 22, 2020,

and the Commission received 21 comments, mostly in support of the Petition.

On October 26, 2020, the EPA published an NPRM regarding Vessel Incidental Discharge National Standards of Performance. Like the Canadian rule, the EPA's proposed rule intends to reduce the environmental impact of vessel discharges, such as ballast water. Though similar in intent, it is unclear if the EPA's final rule will ultimately match the Canadian rule. The EPA's approach to Great Lakes ballast water contained in their proposed rule did not align with the Canadian approach and will not have an effect on the U.S. Great Lakes fleet. The NPRM required that comments be received on or before November 25, 2020. The EPA is currently reviewing comments, and the final rule is not expected until 2023. On June 4, 2021, Transport Canada issued its final rule. The general approach to the regulation of Great Lakes ballast water did not change. However, while the effective date of the final rule remains 2024, the rule delayed implementation until 2030 for vessels built prior to 2009.

The Commission continues to monitor the situation and remains in contact with other federal agencies as it proceeds with its investigation.

CONTROLLED CARRIERS AND IDENTIFICATION OF OTHERWISE CONCERNING PRACTICES BY SPECIFIC OCEAN COMMON 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 FY 2022, four controlled carriers operated in the U.S. trades. All four controlled carriers are subsidiaries of COSCO SHIPPING Holdings Co., Ltd.:

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

OSRA 2022 revised the Commission's annual reporting provisions to require the Commission to identify any "otherwise concerning practices" by ocean common carriers that are controlled carriers or "owned or controlled by, a subsidiary of, or otherwise related legally or financially, to a corporation based in a country" that is: (1) a non-market economy country, as determined by the U.S. Department of Commerce; (2) a priority foreign country, as determined by the U.S. Trade Representative; or (3) subject to monitoring by the U.S. Trade Representative under section 306 of the Trade Act of 1974, 46 U.S.C. § 46106(b)(7). The Commission did not identify any "otherwise concerning practices" by ocean common carriers.

FORMAL INVESTIGATIONS, PRIVATE COMPLAINTS, AND LITIGATION

Adjudicative proceedings before the Commission commence by the filing of a complaint, or by order of the Commission upon petition, or upon the Commission's 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. ch. 411. Formal complaints are generally assigned to an 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 an SCO 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.

FORMAL PROCEEDINGS

In FY 2022, the number of new cases received by OALJ tripled and the number of cases completed doubled from prior years.

In FY 2021, OALJ received a total of 11 formal and 6 informal proceedings. At the end of FY 2021, nine formal proceedings (14-06, 20-12, 20-14, 20-17, 21-02, 21-04, 21-05, 21-08, and 1971(F)) and three small claims complaints (1968(I), 1972(I), and 1973(I)) were pending before the OALJ.

In FY 2022, OALJ received a total of 28 formal and 11 informal proceedings, including:

- 21 private party complaints;
- three enforcement cases;
- three licensing cases;

- one remanded case; and
- 11 informal (small claims) complaints.

In FY 2022, OALJ completed 16 formal proceedings and 9 small claims proceedings (see list below). At the end of FY 2022, 20 formal proceedings (14-06, 20-14, 21-05, 21-10, 21-11, 21-16, 22-03, 22-07, 22-11, 22-12, 22-13, 22-16, 22-17, 22-18, 22-20, 22-21, 22-22, 22-23, 22-25, 22-26) and five small claims complaints (1980(I), 1981(I), 1982(I), 1983(I), and 1984(I)) were pending before the OALJ.

The following summarizes the results of docketed proceedings completed during FY 2022 by the OALJ:

Nnabugwu Chinedu Andrew, Avers Logistics Ltd., and CJ Deluz Nigeria Ltd. v. Marine Transport Logistics, Inc., Alla Solovyeva, and Raya Bakhirev [Docket 20-12]

Complainants alleged that Respondents violated 46 U.S.C. § 41102(c) by failing in various ways to ensure that Complainants could retrieve 17 vehicles that, according to Complainants, Respondents were supposed to have shipped from their U.S. warehouses to a port in Nigeria. On January 24, 2022, the ALJ issued an Initial Decision and found Complainants failed to prove Respondents' alleged actions were unjust or unreasonable under 46 U.S.C. § 41102(c). On February 15, 2022, Complainants filed a "Brief in Support of Their Exceptions to the Initial Decision." On September 22, 2022, the Commission issued an Order Affirming Initial Decision and determined that Complainants' filing did not qualify as exceptions under the Commission's Rules of Practice and Procedure set forth in 46 C.F.R. § 502.227(a).

Marie Carew d/b/a Holiday Shipping, LLC v. Maersk Line A/S, John Does [Docket 20-17]

Complainant alleged that Respondents violated 46 U.S.C. § 41102(c) and 46 C.F.R. § 545.4(d) regarding the shipment of four containers to Nigeria. Respondents asserted a counterclaim against the Claimant under § 41102(a). On November 2, 2021, the ALJ issued an initial decision and found in Claimant's favor on the § 41102(c) claim and dismissed Respondents counterclaim with prejudice because Respondents failed to prove that Claimant was acting as an ocean freight forwarder for the shipments at issue. The ALJ's

initial decision became administratively final on December 3, 2021, when the Commission issued a notice not to review the decision.

YSN Imports Inc. d/b/a/ Flame King v. Feige "Peggy" Oberlander, U Shippers Group Inc., U Shippers Group Management Co., Inc. [Docket 21-02]

Complainant alleged that Respondents violated the Shipping Act and the Commission's regulations by charging unlawful fees. On March 25, 2022, the parties jointly moved the ALJ to approve a settlement agreement and requested the terms be kept confidential. On April 11, 2022, the ALJ approved the settlement agreement and dismissed the proceeding with prejudice. The ALJ's order became administratively final on May 12, 2022, when the Commission issued a notice not to review the order.

Greatway Logistics Group, LLC. v. Ocean Network Express PTE LTD [Docket 21-04]

Complainant alleged that Respondents violated 46 U.S.C. § 41102(c), 46 U.S.C. § 41104(a) (4)(E), and 46 C.F.R. § 545.4(d) regarding Respondent's collection of "demurrage and detention charges from nonparties to the bills of lading" and "practice of adjustment and settlement of claims." On November 10, 2021, the parties jointly moved the ALJ to approve a settlement agreement and requested the terms be kept confidential. The ALJ issued an order on November 30, 2021, approving the settlement and dismissing the proceeding with prejudice. The ALJ's order became administratively final on January 5, 2022, when the Commission issued a notice not to review the order.

Eucatex of North America Inc. v. CMA CGM (America) LLC and Fenix Marine Services Ltd. [Docket 21-08]

Complainant alleged that Respondents violated 46 U.S.C. § 41102(c) and 46 C.F.R. §§ 545.4 and 545.5 in handling its cargo. On October 4, 2021, Complainant filed a notice indicating that it was voluntarily dismissing the complaint with prejudice, and the Commission issued a notice of discontinuance.

Ocean Network Express Pte. Ltd. and Ocean Network Express (North America), Inc. - Possible Violations of 46 U.S.C. § 41102(c) [Docket 21-17]

The Commission initiated an enforcement proceeding against Respondents by issuing an Order of Investigation and Hearing for possible violations of 46 U.S.C. § 41102(c). Respondents were alleged to have overbroadly defined and applied the definition of merchant in BOLs to unilaterally impose joint and several liability for freight and/or charges on a party with whom Respondents were not in contractual privity and who had not consented to be bound by the terms of the BOL. On May 4, 2022, Respondent Ocean Network Express (North America), Inc. was dismissed from the proceeding. On June 23, 2022, the remaining Respondent and the Commission's BOE jointly moved the ALJ to approve a proposed settlement agreement and requested that the settlement terms be kept confidential. On June 28, 2022, the ALJ approved the settlement and dismissed the proceeding with prejudice. The ALJ's order became administratively final on July 15, 2022, when the Commission issued a notice indicating it would not review the ALJ's order.

CCMA, LLC v. Maersk A/S and Ports America Chesapeake, LLC [Docket 22-01]

Complainant alleged that Respondents violated 46 U.S.C. § 41102(c) and 46 C.F.R. §§ 545.4 and 545.5 by assessing demurrage charges against shipments that were subject to a governmental hold imposed by U.S. Customs and Border Protection, and therefore, unavailable for pick-up. Complainant was granted leave to amend the complaint to add Maersk A/S as a Respondent and dismiss Safmarine, Inc. from the proceeding. On March 29, 2022, the parties jointly moved the ALJ to approve a settlement agreement and requested that the settlement terms be kept confidential. On April 13, 2022, the ALJ approved the settlement and dismissed the proceeding with prejudice. The ALJ's order became administratively final on May 16, 2022, when the Commission issued a notice not to review the dismissal.

Foreign Tire Sales, Inc. v. Evergreen Shipping Agency (America) Corp.; as agent for Evergreen Line, Evergreen Group d/b/a Evergreen Line [Docket 22-05]

Complainant alleged that Respondents unjustly and unreasonably exploited customers by substantially increasing their profits at the expense of shippers and the U.S. consuming public, which has been forced to absorb higher product prices due to the improperly increased freight costs, in violation of 46 U.S.C §§ 41102(c), 41104(a)(2), and 41104(a)(9)-(10). On April 26, 2022, the parties jointly moved the ALJ to approve a settlement agreement and requested that the settlement terms be kept confidential. On May 3, 2022, the ALJ

approved the settlement and dismissed the proceeding with prejudice. The ALJ's order became administratively final on June 6, 2022, when the Commission issued a notice not to review the dismissal.

Royal White Cement, Inc. v. CMA CGM S.A. and CMA CGM (America) LLC [Docket 22-06]

Complainant alleged that Respondents breached their contract and violated 46 U.S.C. § 41102(c). On April 12, 2022, Complainant filed a notice of voluntary dismissal of the action with prejudice, and the Commission subsequently issued a notice of voluntary dismissal discontinuing the proceeding.

Achim Importing Company Inc. v. Yang Ming Marine Transport Corp. [Docket 22-08]

Complainant alleged that Respondent engaged in unjust and unreasonable practices in 2020 and 2021 in handling Complainant's cargo by failing to honor pricing and minimum quantity commitments in its service contract with Complainant and profiteering during the COVID-19 pandemic, all in violation of 46 U.S.C. §§ 41102(c), 41104(a)(2), 41104(a)(5), and 41104(a)(9)-(10), and 41102(b). On August 4, 2022, the parties jointly moved the ALJ to approve a settlement agreement and requested that the settlement terms be kept confidential. On August 22, 2022, the ALJ approved the settlement and dismissed the proceeding with prejudice. The ALJ's order became administratively final on September 23, 2022, when the Commission issued a notice not to review the dismissal.

Fulter Logistics LLC, Revocation of Ocean Transportation Intermediary License No. 027912NF [Docket 22-09]

The Commission's BCL notified Respondent that the Commission intended to revoke Respondent's OTI license because it had not responded to the Commission's inquiry and lacked the necessary character to provide OTI services under 46 C.F.R. § 515.11(a)(2). Respondent requested a hearing on the proposed revocation, and this proceeding was assigned to the OALJ for adjudication. On the day Respondent's response to the revocation notice was due, Respondent indicated it planned to seek an extension of the response date but did not file the motion for an extension or further participate in the proceeding despite a reminder from the OALJ. The BOE subsequently submitted a reply brief in support of the OTI license revocation. On July 26, 2022, the ALJ issued an order revoking Respondent's OTI license. The ALJ's order became administratively final on August 26, 2022, when the Commission issued a notice not to review the revocation.

C.V. Int'l Services LLC, Intent to Deny an Ocean Transportation Intermediary Application [Docket 22-10]

The Commission's BCL notified Respondent on March 11, 2022, that the Commission intended to deny its application for an OTI license because Respondent lacked the necessary character to provide OTI services as required under 46 C.F.R. § 515.11. Respondent requested a hearing on March 28, 2022, and the BOE subsequently filed a copy of the denial notice and supporting materials. Respondent was informed that it had 30 days to respond to BOE's submission but did not

further participate in the proceeding despite a reminder from the OALJ. The BOE subsequently filed and submitted a reply brief in support of its license denial. The ALJ, affirming the denial of Respondent's OTI license application. The ALJ's order became administratively final on August 26, 2022, when the Commission issued a notice not to review the denial.

MSRF, Inc. v. HMM Company Limited and Yang Ming Marine Transport Corporation [Docket 22-14]

Complainant alleged violations of various sections of the Shipping Act in connection with pricing and service contract practices during the COVID-19 pandemic. The parties jointly stipulated to dismiss the complaint without prejudice so the Complainant could simplify the proceedings by filing separate complaints against each Respondent with fewer allegations. On August 3, 2022, the Commission issued a notice affirming that the proceeding had been discontinued.

Pro Transport Charleston, Inc. v. Allround Midwest Forwarding, Inc. [Docket 22-15]

Complainant alleged that Respondent had violated the Shipping Act. On June 27, 2022, Complainant filed a notice of dismissal and requested that the proceeding be dismissed because the parties had reached an agreement. Complainant was notified that the parties needed to file a copy of the settlement agreement, and the parties complied. The ALJ approved the settlement and dismissed the proceeding with prejudice. The ALJ's order became administratively final on September

23, 2022, when the Commission issued a notice not to review the order.

Mohawk Global Logistics Corp. DBA Mohawk Global Logistics v. MSC Mediterranean Shipping Company (USA) Inc. as agent for Mediterranean Shipping Company, S.A., Geneva [Docket 1971(F)]

Complainant filed an informal complaint alleging that Respondents violated 46 U.S.C. §41102(c) and 46 C.F.R. § 545.5. On September 3, 2021, Respondent did not consent to adjudicating the complaint under the Commission's informal procedures (46 C.F.R. Subpart S), so the complaint was assigned to the ALJ. On November 24, 2021, the parties jointly moved the ALJ to approve a settlement agreement and requested that the settlement terms be kept confidential. On December 9, 2021, the ALJ approved the settlement and dismissed the proceeding with prejudice. On January 12, 2022, the Commission issued a notice not to review the dismissal.

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

Complainants allege that the Respondent, an NVOCC, charged excessive cargo storage fees and negligently failed to provide promised services in violation of 46 U.S.C. § 41102(c). On August 18, 2021, the Commission affirmed the ALJ's dismissal of the §41102(c) claim because Complainants failed to prove that Respondent engaged in unreasonable conduct on a normal, customary, and continuous basis as required by 46 C.F.R. § 545.4 (Interpretative Rule). The Commission concluded that Complainants failed to demonstrate any "manifest

injustice” that warranted a departure from the general rule that new interpretations of the law apply retroactively in agency adjudications. Complainants petitioned the United States Court of Appeals for the District of Columbia Circuit (D.C. Circuit) for review on the grounds that the Commission erred in retroactively applying the Interpretative Rule and in dismissing the § 41102(c) claim for failure to prove Respondents had a normal or customary practice of overcharging for storage. The D.C. Circuit denied the petition for review.

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

Complainants alleged that the Respondent NVOCC sold and shipped overseas two vehicles stored as export/import cargo to cover unpaid charges without prior notice or due process in violation of 46 U.S.C. § 41102(c). Respondent justified the sale as authorized by its house BOL. The ALJ found that Respondent’s BOL established a normal and customary practice and that its sale of the vehicles violated § 41102(c). The ALJ declined to award reparations because Complainant failed to introduce reliable evidence substantiating the amounts sought for loss of the vehicles and related expenses. On June 10, 2022, the Commission affirmed the ALJ’s decision and denied Complainants’ reparations claim for lack of evidence. Complainants’ petition for review by the D.C. Circuit was pending as of September 30, 2022.

CMI Distribution, Inc. v. Service by Air, Inc. [Docket No. 17-05]

Complainant alleged that Respondent Service by Air, Inc. violated several provisions of Chapters 405, 409 and 411 of Title 46 by acting as an unlicensed OTI in arranging ocean transportation from China for Complainant’s shipments and charging rates not contained in a published tariff. The ALJ found in Complainant’s favor on multiple claims and awarded reparations. Both parties filed exceptions to the ALJ’s Initial Decision. Respondent argued that it was not subject to the provisions at issue and that the ALJ erred in calculating reparations. Complainant also challenged the reparations award, asserting that the ALJ should have awarded additional amounts. On July 26, 2021, the Commission affirmed the ALJ’s liability findings but reduced the reparations award. Complainant petitioned for attorney’s fees. On November 24, 2021, the Commission declined to award fees because Respondent’s defenses were not objectively unreasonable or asserted for improper reasons.

Rana v. Michelle Franklin, D.B.A. “The Right Move,” Inc. [Docket No. 19-03]

Complainant retained Respondent’s NVOCC services to move household goods and prepaid the associated charges. Complainant alleged that Respondent failed to pay the ocean freight charges in violation of 46 U.S.C. § 41102(a) and sought reparations for the expenses that he incurred to release the carrier’s hold on his household goods. The ALJ determined that Respondent knowingly and willfully obtained ocean transportation at less than applicable rates using unjust or unfair means in violation of § 41102(a) and

awarded reparations. The ALJ also sanctioned Respondent for discovery violations and inferred that the responses Respondent refused to provide would have been adverse to its position. Relying on inferences drawn from Respondent’s refusal to answer discovery and other evidence, the ALJ found the individual Respondent personally liable. On May 25, 2022, the Commission affirmed the ALJ’s decision and found the Respondent liable for reparations under § 41102(a) in her business and personal capacity.

Hapag-Lloyd, A.G. - Possible Violations of 46 U.S.C. § 41102(c) [Docket No. 21-09]

The Commission issued an Order of Investigation and Hearing initiating an adjudicatory proceeding to determine whether Respondents’ detention charge practices violate 46 U.S.C. § 41102(c) and named the Commission’s BOE as a party. The ALJ found that Respondent Hapag-Lloyd, A.G. knowingly and willfully violated § 41102(c), imposed a civil penalty of \$822,220, and ordered Hapag-Lloyd A.G. and its agents to cease and desist from imposing detention or demurrage (absent extenuating circumstances) when there are insufficient appointments available and from violating the Shipping Act or the Commission’s regulations, including the rule on detention and demurrage charges published at 46 C.F.R. §

545.5. Subsequently, the parties jointly petitioned the Commission to approve a proposed settlement. On June 8, 2022, the Commission approved the settlement based solely on the facts and circumstances of this particular case and subject to the condition that the remedial measures Hapag-Lloyd agreed to implement do not create a “safe harbor” insulating future conduct by Hapag-Lloyd A.G. or any other entity regulated by the Commission from being found unreasonable or unjust or otherwise in violation of the Shipping Act.

Wan Hai Lines, Ltd. - Possible Violations of 46 U.S.C. § 41102(c) [Docket No. 21-16]

The Commission issued an Order of Investigation and Hearing initiating an adjudicatory proceeding to determine whether Respondents’ detention charge practices violate 46 U.S.C. §§ 41102(c), 41302(a) and 41304 and named the Commission’s BOE as a party. The parties jointly petitioned the Commission to approve a proposed settlement. The ALJ denied the motion to approve the proposed settlement on the grounds that it lacked clarity and may not be consistent with § 41102(c) and 46 C.F.R. § 545.5. The parties jointly appealed the ALJ’s decision rejecting the proposed settlement, and the appeal was pending before the Commission as of September 30, 2022.

INFORMAL (SMALL CLAIM) PROCEEDINGS

Service Transfer Inc. v. Sippi Logistics Inc. [Docket 1968(I)]

Claimant filed a small claims complaint alleging that Respondent violated the Shipping Act. Multiple attempts to serve the

complaint on Respondent were not successful, and when the Claimant failed to respond to follow through on its complaint, the complaint was dismissed without prejudice on November 2, 2021. The dismissal became

administratively final on December 3, 2021, when the Commission issued a notice not to review the dismissal.

Tereno SDN BHD v. C.H. Robinson International, Inc. [Docket 1972(I)]

Claimant filed a small claims complaint, alleging that Respondent violated 46 U.S.C. § 41102(c) by charging Claimant for demurrage that accrued due to Respondent's failure to timely respond to a request from U.S. Customs and Border Protection. On January 27, 2022, the SCO issued an Initial Decision, finding that the evidence did not demonstrate that Respondent violated the Shipping Act, and dismissing the complaint with prejudice. On March 22, 2022, the Commission affirmed the Initial Decision.

Pralumex, Inc. v. Maersk Line, Limited, USA & Maersk A/S [Docket 1973(I)]

Claimant filed a small claims complaint alleging that Respondents violated 46 U.S.C. §§ 41104(8) and (10), and 41102(c) by refusing to release Claimant's container to Claimant's designated consignee and refusing to allow Claimant to designate a new consignee. On December 14, 2021, Claimant amended its complaint to add Maersk A/S as a respondent. On February 9, 2022, the SCO issued an Initial Decision, dismissing the complaint with prejudice for lack of jurisdiction because Claimant's shipment was not transported through a U.S. port. The SCO denied Claimant's request for reconsideration. The dismissal became administratively final on March 24, 2022, when the Commission issued a notice not to review the dismissal.

Proteus Commodities Inc. v. Hamburg Sud N.A. a Maersk Company [Docket 1974(I)]

Claimant filed a small claims complaint alleging that Respondent violated 46 U.S.C. § 41104 by imposing new charges against Claimant that were not in accordance with Respondent's tariff rates, charges, classifications, rules, and practices. On August 9, 2022, the SCO issued an Initial Decision, finding that the evidence did not demonstrate that Respondent violated the Shipping Act and dismissing the complaint with prejudice. The dismissal became administratively final on September 9, 2022, when the Commission issued a notice not to review the dismissal.

Future Forwarding Company v. Yang Ming (America) Corporation [Docket 1975(I)]

Claimant filed a small claims complaint alleging that Respondent had refused to move Claimant's cargo to the agreed-upon destination in violation of 46 U.S.C. § 41102(c). Before Respondent answered the complaint, Claimant moved to dismiss its complaint because the parties had reached a settlement. On April 18, 2022, the SCO approved the settlement and dismissed the proceeding with prejudice. The dismissal became administratively final on May 19, 2022, when the Commission issued a notice not to review the dismissal.

Ringo C. Edwards v. Aeromarine USA, Inc. [Docket 1976(I)]

Claimant filed a small claims complaint alleging that Respondent violated 46 U.S.C. § 41102(c) in connection with shipping Claimant's custom air rifle from the United States to Costa Rica. On June 15, 2022, Claimant moved

to dismiss the complaint, stating that there had been no formal settlement between the parties, but that Respondent had paid him the full amount of his claim. On June 30, 2022, the Small Claims Officer issued an order, dismissing the proceeding with prejudice. The dismissal became administratively final on August 2, 2022, when the Commission issued a notice not to review the dismissal.

ICU Production Inc. v. Zim Logistics (China) Co., Ltd. Shenzhen Branch and Zim Integrated Shipping Services Ltd West Coast Branch [Docket 1977(I)]

Claimant filed a small claims complaint alleging that Respondent violated 46 U.S.C. § 41102(c) by wrongfully charging Claimant a detention and chassis fee. Before Respondent answered the complaint, Claimant moved to dismiss the complaint because the parties had reached a settlement. On May 12, 2022, the SCO issued an order approving the settlement and dismissing the proceeding with prejudice. The dismissal became administratively final on June 14, 2022, when the Commission issued a notice not to review the dismissal.

Alan Groner, Sole Proprietor d/b/a AAA Customs Brokers v. Maersk A/S [Docket 1978(I)]

Claimant filed a small claims complaint alleging that Respondent violated 46 U.S.C. § 41102(c) by unlawfully charging Claimant for demurrage. Before Respondent answered the complaint, Claimant moved to dismiss the complaint because the parties had reached a settlement. On June 14, 2022, the SCO approved the settlement and dismissed the proceeding with prejudice. The dismissal became administratively final on July 15, 2022,

when the Commission issued a notice not to review the dismissal.

Max Dobrushin v. Shipco Transport Inc. and Seaspace International Forwarders USA Inc. [Docket 1979(I)]

Claimant filed a small claims complaint alleging that Respondents violated 46 U.S.C. §§ 41104 and 41102(c) and 46 C.F.R. § 512.32 by diverting his cargo from California to the Cayman Islands, which led to it being destroyed. Before Respondent answered the complaint, Claimant notified the OALJ that he wished to withdraw his complaint. On August 1, 2022, the parties jointly moved to dismiss the claim because they had reached an agreement. On August 10, 2022, the SCO approved the settlement and dismissed the proceeding with prejudice. The dismissal became administratively final on September 13, 2022, when the Commission issued a notice not to review the dismissal.

TCW, Inc. v. Evergreen Shipping Agency [Docket No. 1966(I)]

Complainant filed a small claims complaint alleging that Respondents violated 46 U.S.C. § 41102(c) by charging Complainant per diem fees on unreturned containers and chassis on a weekend and holiday when the Port of Savannah (the return location) was closed and by invoicing Complainant (a trucking company) instead of the beneficial cargo owner. The SCO found that Respondents' charges were unjust and unreasonable under § 41102(c), but its invoicing practices were not. The SCO awarded Complainant reparations and ordered Respondents to cease and desist from imposing per diem charges when equipment cannot be returned on weekends,

holidays, and port closures. The Commission determined to review the SCO's decision and requested supplemental briefing. As of

September 30, 2022, the matter was pending before the Commission.

RULEMAKINGS

This year, the Commission moved expeditiously to fulfill the requirements of OSRA 2022 and the various rulemaking mandates included in the legislation. As noted above in the section regarding implementation, since the enactment of OSRA 2022 on June 16, 2022, the Commission has issued two proposed rules: (1) a proposed rule on the unreasonable refusal to deal in regard to vessel space; and (2) a proposed rule on demurrage and detention billing practices. Additionally, the Commission issued two requests for public comment on information collections, seeking feedback on the benefits of issuing an emergency order on information sharing, and secondly, the Commission's proposed plan for establishing a data collection initiative related to an ocean carrier's import and export performance in the U.S. trades.

Passenger Vessel Financial Responsibility [Docket No. 20-15]

On March 17, 2022, the Commission published a Final Rule implementing changes to its PVO financial responsibility requirements. The rule defines when nonperformance of transportation has occurred and establishes uniform procedures regarding how and when passengers may make claims for refunds under a PVO's financial responsibility instrument when nonperformance occurs. This rulemaking was initiated as a result of Fact Finding Investigation No. 30: *COVID-19 Impact on Cruise Industry*. On August 25, 2021, the Commission issued an NPRM with the comment period closing on October 25, 2021. The Commission received approximately 70 comments. The Final Rule was published on March 17, 2022.

Inflation Adjustment of Civil Monetary Penalties [Docket No. 21-01]

On January 14, 2022, the Commission published this final rule to adjust for inflation the civil monetary penalties assessed or enforced by the Commission pursuant to the Federal Civil Penalties Inflation Adjustment Act Improvements Act of 2015 (2015 Act). The 2015 Act requires that agencies adjust and publish their civil penalties by January 15 of each year.

Carrier Automated Tariffs [Docket No. 21-03]

The Commission issued an NPRM regarding Part 520, Carrier Automated Tariffs, in May 2022, seeking public comment on revisions to the Commission's regulations on carrier automated tariffs to require access to tariffs to be made free of charge, updating the definition of co-loading to add a separate definition for less-than-containerload co-loading, and other changes to align with statutory requirements. The NPRM also maintained the requirement that each NVOCC BOL issued to a beneficial

cargo owner must be annotated with the name of any other NVOCCs to which the cargo has been tendered for shipment. Commission staff have reviewed public comments received in the NPRM and are working toward a proposed final rule in 2023.

Marine Terminal Operator Schedules [Docket No. 21-06]

On March 17, 2022, the Commission published a final rule regarding Part 525, Marine Terminal Operator Schedules, with an effective date of April 18, 2022. Many of the changes modernized outdated requirements, clarified existing requirements for MTOs, and aligned the definition of an MTO with the statute. The NPRM was issued on September 22, 2021, and the public comment period closed on November 22, 2021. After reviewing the public comments received, the Commission adopted all of the changes in the NPRM.

Demurrage and Detention Billing Requirements [Docket No. 22-04]

On February 4, 2022, the Commission issued an ANPRM seeking comment on whether the Commission should require common carriers and MTOs to include certain minimum information on or with demurrage and detention billings. Also, the Commission stated that it was interested in receiving comments

on whether it should require common carriers and MTOs to adhere to certain practices regarding the timing of demurrage and detention billings. These changes were recommended by the Fact Finding Officer in Commission Fact Finding Investigation 29, *Effects of the COVID-19 Pandemic on the U.S. International Ocean Supply Chain: Stakeholder Engagement and Possible Violations of 46 U.S.C. § 41102(c)*. The Commission received 82 comments in response to the ANPRM.

Definition of Unreasonable Refusal to Deal [Docket No. 22-24]

OSRA 2022 amended § 41104(a)(10) to prohibit a common carrier, either alone or in conjunction with any other person, directly or indirectly, from unreasonably refusing to deal or negotiate, including with respect to vessel space accommodations provided by an ocean common carrier. On September 21, 2022, the Commission issued an NPRM seeking public comments on implementing a requirement in Section 7(d) of OSRA 2022 to define unreasonable refusal to deal or negotiate with respect to vessel space accommodation provided by an ocean common carrier. The Commission received 25 comments, and Commission staff are working on a final rule for Commission consideration.

FMC INFORMATION TECHNOLOGY

Technology remains an integral part of enabling the Federal Maritime Commission to fulfill its mission. IT infrastructure allows streamlined workflow, business functions to enhance productivity, access to data, and provides improved public access to FMC information. The FMC provides automated IT systems for use by the shipping public to file:

- license applications;
- carrier and MTO agreements; and
- commercially sensitive operational data reviewed and used by the Commission to conduct mission-critical functions.

FMC SYSTEMS/APPLICATIONS

During FY 2022, the Commission started an assessment of the progress of IT modernization initiatives to establish a new baseline for future development. Motivated by requirements to protect against cybersecurity threats,

the Commission began conducting a review of each existing system. This analysis, to be completed in FY 2023, will inform the decision to continue with customized applications or adopt other suitable commercial solutions.

CASE MANAGEMENT

To meet the goals of OSRA 2022 and the FMC's mission, research began during FY 2022 on potential upgrades to antiquated internal case management systems as well as the potential to obtain new ones. Staff must use case management systems to track enforcement

cases, investigatory matters, public inquiries, and filings. In addition to expedited response times and efficient tracking, new case management systems will allow the Commission to produce data to fulfill the various public reporting requirements of OSRA 2022.

WEBSITE ENHANCEMENTS

In FY 2022, the Commission began a project to update its website to improve interaction with the public and comply with OSRA 2022 requirements. The project will enhance public interaction with the FMC in a more secure environment, as well as provide new tools for the Commission to manage comments,

complaints, concerns, reports of noncompliance, requests for investigation, and requests for alternative dispute resolution as required by OSRA 2022. When completed, the new website enhancements will allow the public to easily submit these items to the Commission.

GLOSSARY

Agreement means an understanding, arrangement, or association, written or oral (including any modification, cancellation, or appendix) entered into, by or among ocean common carriers and/or MTOs, but does not include a maritime labor agreement.

Bulk cargo means cargo that is loaded and carried in bulk without mark or count in a loose unpackaged form, having homogeneous characteristics.

Common carrier means a person holding itself out to the general public to provide transportation by water of passengers or cargo between the United States and a foreign country for compensation that:

1. Assumes responsibility for the transportation from port or point of receipt to the port or point of destination; and
2. Uses, for all or part of that transportation, a vessel operating on the high seas or the Great Lakes between a port in the United States and a port in a foreign country, but the term does not include a carrier engaged in ocean transportation by ferry boat, ocean tramp, or chemical parcel tanker, or by a vessel when primarily engaged in the carriage of perishable agricultural commodities:
 - i. If the common carrier and the owner of those commodities are wholly owned, directly or indirectly, by a person primarily engaged in the marketing

and distribution of those commodities; and

- ii. Only with respect to the carriage of those commodities.

Consignee means the recipient of cargo from a shipper; the person to whom a transported commodity is to be delivered.

Container means a demountable and reusable freight-carrying unit designed to be transported by different modes of transportation and having construction, fittings, and fastenings able to withstand, without permanent distortion or additional exterior packaging or containment, the normal stresses that apply on continuous all-water and intermodal transportation. The term includes dry cargo, ventilated, insulated, refrigerated, flat rack, vehicle rack, liquid tank, and open-top containers without chassis, but does not include crates, boxes, or pallets.

Controlled carrier means a vessel-operating common carrier that is, or whose operating assets are, directly or indirectly, owned or controlled by a government; ownership or control by a government shall be deemed to exist with respect to such common carrier if:

1. A majority portion of the interest in the common carrier is owned or controlled in any manner by that government, by an agency of that government, or by any public or private person controlled by that government; or
2. That government has the right to appoint or disapprove the appointment of a majority of the directors, the chief operating

officer, or the chief executive officer of the common carrier.

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.

IMO 2020 means an International Maritime Organization rule in effect as of January 1, 2020, that limits Sulphur content in fuel use on board ships.

Intermodal transportation means continuous through transportation involving more than one mode of service (e.g., ship, rail, motor, air) for pickup and/or delivery at a point beyond the area of the port at which the vessel calls. The term intermodal transportation can apply to through transportation (at through rates) or transportation on through routes using combination rates.

Marine Terminal Operator means a person engaged in the United States or a commonwealth, territory, or possession thereof, in the business of furnishing wharfage, dock, warehouse or other terminal facilities in connection with a common carrier, or in connection with a common carrier and a water carrier subject to Subchapter II of Chapter 135 of Title 49, United States Code. This term does not include shippers or consignees who exclusively furnish marine terminal facilities or services in connection with tendering or receiving proprietary cargo from a common carrier or water carrier.

Non-Vessel-Operating Common Carrier means a common carrier that does not operate the vessels by which the ocean transportation is provided and is a shipper in its relationship with an ocean common carrier.

Ocean Carrier Alliance Agreement means two or more shipping lines authorized 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.

Ocean freight forwarder means a person that—

1. In the United States, dispatches shipments from the United States via a common carrier and books or otherwise arranges space for those shipments on behalf of shippers; and
2. Processes the documentation or performs related activities incident to those shipments.

Ocean transportation intermediary means an ocean freight forwarder or a non-vessel-operating common carrier.

Per Diem relates to assessorial charges beyond demurrage and detention.

Port means a place at which a common carrier originates or terminates (and/or transships) its actual ocean carriage of cargo or passengers as to any particular transportation movement.

Service Contract means a written contract, other than a BOL or receipt, between one or more shippers and an individual ocean common carrier or an agreement between or among ocean common carriers in which the shipper makes a commitment to providing a certain minimum quantity or portion of its cargo over a fixed time period, and the ocean common carrier or the agreement commits to

a certain rate or rate schedule and a defined service level, such as assured space, transit time, port rotation, or similar service features.

Shipper means a cargo owner; the person for whose account the ocean transportation is provided; the person to whom delivery is to be made; a shipper's association; or an NVOCC that accepts responsibility for payment of all charges applicable under the tariff or service contract.

Tariff means a publication containing the actual rates, charges, classifications, rules, regulations and practices of a common carrier or a conference of common carriers. The term practices refers to those usages, customs, or modes of operation which in any way affect, determine or change the transportation rates, charges or services provided by a common carrier or conference and, in the case

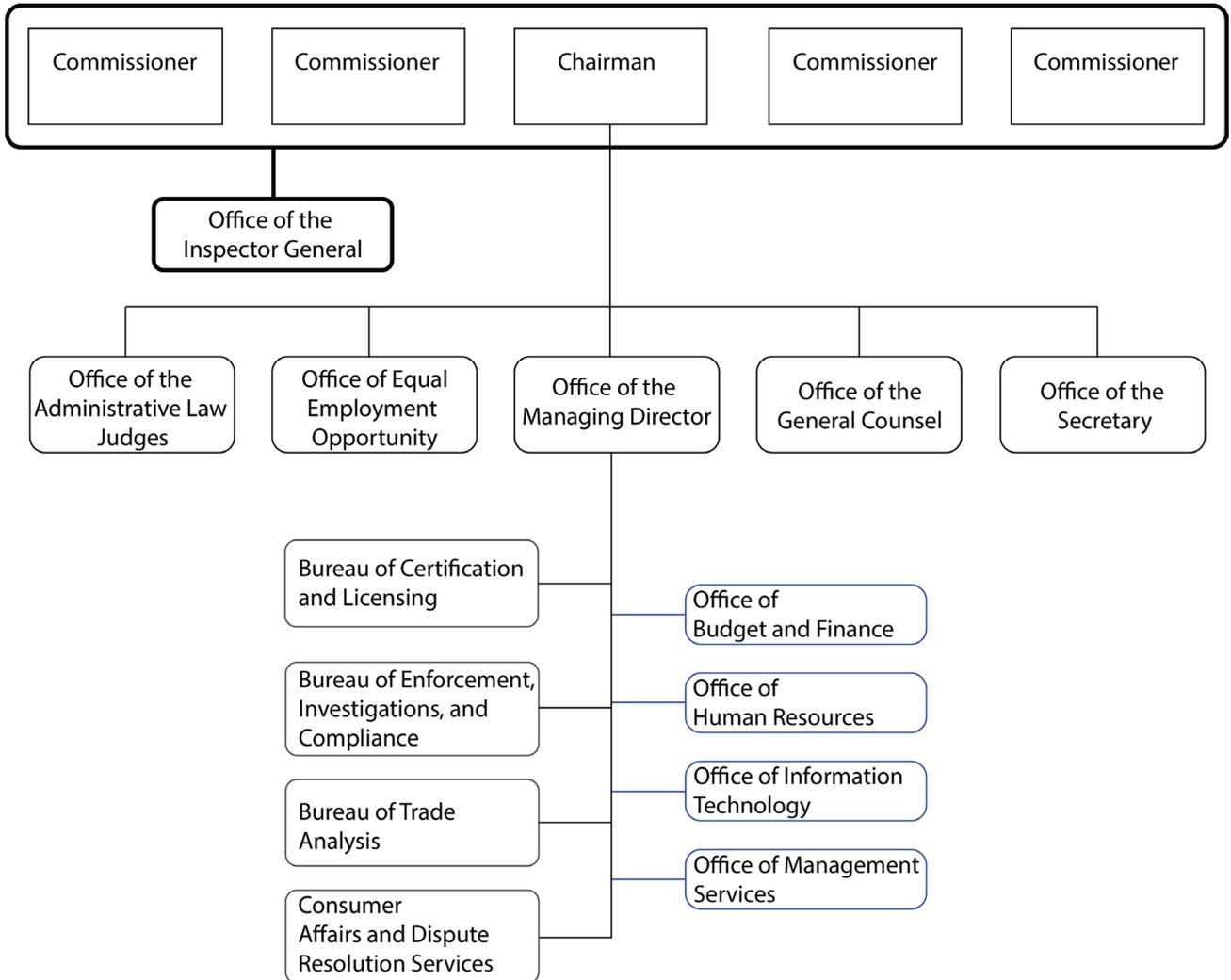
of conferences, must be restricted to activities authorized by the basic conference agreement.

Transshipment means the physical transfer of cargo from a vessel of one carrier to a vessel of another in the course of all-water or through transportation, where at least one of the exchanging carriers is an ocean common carrier subject to the Commission's jurisdiction.

Vessel-operating common carrier/Ocean common carrier means a common carrier that operates, for all or part of its common carrier service, a vessel on the high seas or the Great Lakes between a port in the United States and a port in a foreign country, except that the term does not include a common carrier engaged in ocean transportation by ferry boat, ocean tramp, or chemical parcel-tanker.

APPENDICES

A. FMC ORGANIZATIONAL CHART



B. FMC SENIOR OFFICIALS

Chief of Staff, Mary T. Hoang

Counsel to Chairman Maffei, Katharine Primosch

Counsel to Commissioner Dye, John A. Moran

Counsel to Commissioner Khouri*, John A. Moran

Counsel to Commissioner Sola, Clark Jennings

Counsel to Commissioner Bentzel, John Young

Counsel to Commissioner Vekich, Cory Cinque***

General Counsel, Steven Andersen*; Katia Kroutil**

Secretary, Rachel E. Dickon*; William Cody

Chief Administrative Law Judge, Erin Wirth

Director, Office of Equal Employment Opportunity, Camella M. Woodham

Inspector General, Jon Hatfield

Managing Director, Lucille Marvin

Chief Financial Officer, Director of Enterprise Services, Patrick Moore

Director, Bureau of Trade Analysis, Kristen Monaco

Director, Bureau of Certification and Licensing, Cindy Hennigan

Director, Bureau of Enforcement, Benjamin K. Trogdon*; Julie Berestov**

Director, Office of Consumer Affairs and Dispute Resolution Services, Zoraya de la Cruz

*Departed, **Acting, ***Interim Counsel

C. STATEMENT OF APPROPRIATIONS, STATEMENT OF CUSTODIAL ACTIVITY, AND FINANCIAL OPERATIONS

Statement of Appropriations - Public Law 117-103:

For necessary expenses of the Federal Maritime Commission as authorized by section 201(d) of the Merchant Marine Act, 1936, as amended (46 U.S.C. § 46107), including services as authorized by section 3109 of title 5, United States Code; hire of passenger motor vehicles as authorized by section 1343(b) of title 31, United States Code; and uniforms or allowances therefore, as authorized by sections 5901 and 5902 of title 5, United States Code, \$32,869,000: Provided, That not to exceed \$3,500 shall be for official reception and representation expenses.

Statement of Custodial Activity:

	2022 (\$)	2021 (\$)
Fines, Penalties, and Forfeitures	2,082,000	--
General Fund Proprietary Receipts (User fees)	253,715	216,490
Refunds of Proprietary Receipts (User fees)	(480)	(250)
Total Custodial Collections	2,335,235	216,240

Financial Operations: For a detailed review of the FMC's financial operations, including expenditures, please refer to the FMC's Congressional Budget Reports and its Performance and Accountability Reports on the Commission's website.