

**FEDERAL MARITIME
COMMISSION**

**29th
ANNUAL REPORT**

for

Fiscal Year

1990



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

March 14, 1991

To the United States Senate and House of Representatives:

Pursuant to section 103(e) of Reorganization Plan No. 7 of 1961, and section 208 of the Merchant Marine Act, 1936, as amended, I am pleased to submit the twenty-ninth annual report of the activities of the Federal Maritime Commission for fiscal year 1990.

Additionally, section V.K of this report contains an *Update on Remote Access - March 1991*, to comply with the request of Congress to be kept informed on developments of reasonable restrictions on remote access to the Commission's *Automated Tariff Filing and Information System ("ATFI")*.

Sincerely,

A handwritten signature in black ink, appearing to read "Christopher L. Koch".

Christopher L. Koch
Chairman

MEMBERS OF COMMISSION



*James J. Carey**
Acting Chairman
Appointed 1981
Term Expires 1990



Rob Quartel
Commissioner
Appointed 1990
Term Expires 1994



William D. Hathaway
Commissioner
Appointed 1990
Term Expires 1993



Francis J. Ivancle
Commissioner
Appointed 1985
Term Expires 1992



Ming C. Hsu
Commissioner
Appointed 1990
Term Expires 1991

* *Christopher L. Koch assumed the Chairmanship on November 29, 1990, with a term to expire in 1995.*

SENIOR COMMISSION OFFICIALS

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

I

THE COMMISSION

A. HISTORY

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

The *Commission* is now responsible for the regulation of oceanborne transportation in the foreign commerce and in the domestic offshore trade of the United States. The passage of the *Shipping Act of 1984* brought about a major change in the regulatory regime facing shipping companies operating in the foreign commerce of the United States.

B. FUNCTIONS

The principal statutes or statutory provisions administered by the *Commission* are the *Shipping Act of 1984* ("*1984 Act*"), the *Shipping Act, 1916* ("*1916 Act*"), the *Intercoastal Shipping Act, 1933* ("*1933 Act*"), the *Foreign Shipping Practices Act of*

1988 ("FSPA"), and section 19 of the *Merchant Marine Act, 1920* ("1920" Act).

During 1990, the *1984 Act* was amended to provide for the bonding of non-vessel-operating common carriers and section 19 of the *Merchant Marine Act, 1920*, was amended to provide for information gathering and other authorities.

The *Commission's* regulatory responsibilities include:

- **Reviewing and monitoring agreements of common carriers and other persons engaged in the U.S. foreign commerce. These agreements include conference, pooling, joint service and space charter agreements.**
- **Receipt and review of tariff filings (but not the regulation of rate levels) by common carriers engaged in the U.S. foreign commerce.**
- **Protecting shippers and carriers engaged in the foreign commerce of the United States from restrictive or non-market-oriented rules and regulations of foreign governments and/or the practices of foreign-flag carriers that have an adverse effect on the commerce of the United States.**
- **Protecting the rights of U.S.-flag shipping companies to transport cargoes in the U.S. foreign oceanborne and foreign-to-foreign trades.**
- **Regulating rates, charges, classifications, rules, regulations and tariffs of controlled carriers to ensure that such matters are just and reasonable.**
- **Regulating rates, charges, classifications, practices and tariffs of ocean common carriers in the domestic offshore trades of the U.S.**



- **Licensing international ocean freight forwarders.**
- **Bonding of Non-Vessel-Operating Common Carriers ("NVOCC's").**
- **Issuing passenger vessel certificates evidencing financial responsibility of vessel owners or charterers to pay judgments for personal injury or death or to repay fares for the nonperformance of a voyage or cruise.**
- **Investigating discriminatory rates, charges, classifications, and practices of ocean common carriers, terminal operators, and freight forwarders operating in the foreign and/or domestic offshore commerce of the United States.**

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

In addition to monitoring relationships among carriers, the *Commission* is also responsible for ensuring that individual carriers, as well as those permitted by agreement to act in concert, fairly treat shippers and other members of the shipping public. The *1984 Act* prohibits carriers from unduly discriminating among shippers and other members of the shipping public. The *1984 Act* also requires carriers to make their rates, charges and practices publicly available in tariffs that must be on file with the *Commission*. Carriers may only assess the rates and charges that are lawfully on file with the *Commission*. The *Commission* does not, however, have the

authority to approve or disapprove general rate increases or individual commodity rate levels in the U.S. foreign commerce, except with regard to certain foreign government-owned carriers.

The *Commission* is authorized by the *FSPA*, section 19 of the *1920 Act*, and section 13(b)(5) of the *1984 Act*, to take action to ensure that the foreign commerce of the United States is not burdened by non-market barriers to ocean shipping. The *Commission* may take countervailing action to correct unfavorable shipping conditions in U.S. foreign commerce and may impose penalties to address actions by carriers or foreign governments that adversely affect the operation of U.S. carriers in the U.S. foreign oceanborne trades and that impair access of U.S.-flag vessels to ocean trade between foreign ports.

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

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

C. ORGANIZATION

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

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

In fiscal year 1990, the *Commission* was authorized a total of 230 full-time equivalent positions and had a total appropriation of \$15,452,000. The majority of the *Commission's* personnel are located in Washington, D.C., with field offices in New York, San Francisco, Los Angeles, New Orleans, Miami, Houston, and Hato Rey, Puerto Rico.

II

THE YEAR IN REVIEW

The *Commission* had an active and successful year in 1990. *Commission* efforts were focused on enforcement and surveillance, combatting unfair foreign government practices, and the development of the *Automated Tariff Filing and Information System* ("*ATFI*," "*ATFI System*," or "*the System*"). The *Commission's* enforcement activities resulted in record settlements but, more importantly, they helped to create fair and equitable conditions in the U.S. international shipping trades.

The *Commission's* activities in combatting unfavorable practices of foreign governments were also geared towards creating conditions where U.S. carriers and shippers were able to operate in a competitive fashion without undue restrictions imposed by foreign governments.

Agreement filings with potential major impacts were reviewed and analyzed and tariff and service contract filings were reviewed to ensure statutory compliance.

The Annual Report is essentially structured on an office-by-office basis and contains a synopsis of each unit's activities and accomplishments. Special sections are devoted to areas of particular concern. This section of the Report is a brief summary of the *Commission's* major accomplishments during the year.

A. ENFORCEMENT

The *Commission* continued its aggressive enforcement program under the *1984 Act*. As in previous years, important trades were targeted to ensure that the enforcement program

could have the greatest impact possible on the U.S. ocean commerce. Units from various elements of the *Commission* were utilized in a collaborative effort to ensure that all relevant data and information were analyzed before initiating the enforcement program. The *Commission* maintains a monitoring program of the relevant trade after the enforcement initiative is completed.

As a result of the *Commission's* enforcement efforts, approximately \$25,000,000 was collected in fiscal year 1990. This represented the largest sum ever collected by the *Commission* in a single year, and this was the second consecutive year in which this was the case. Settlements were reached with most segments of the industry (e.g., carriers, shippers, forwarders) in the full range of the U.S. foreign trades.

A major source of activity for the *Commission* was Fact Finding No. 18 in the transpacific trades. As a direct consequence of Fact Finding No. 18, settlements were reached in excess of \$20,500,000 with Pacific carriers and cargo interests in fiscal year 1990.

Additional enforcement activities continue in order to ensure statutory compliance and to create equitable trading conditions in U.S. ocean commerce.

B. SURVEILLANCE

The *Commission's* surveillance program is a logical and effective adjunct to its enforcement activities. Regular monitoring of industry trends and concerted carrier activities enables the *Commission* to more readily identify practices contrary to the shipping statutes.

The *Commission* continued to refine its programs for monitoring the behavior of agreement parties in U.S. trades in

1990. These programs integrate a number of surveillance factors, such as operator market share data, shipper identification, review and analysis of agreements and periodic reports of agreement parties.

Among the major projects completed this past year were: an economic analysis of the impact of the *Commission's* Transatlantic Enforcement Initiative; a report on the effect several pooling agreements have had on the U.S./Mediterranean trade; a report on controlled carrier service patterns and vessel utilization in the U.S. trades; a report on vessel movements in the U.S./Ecuador trade relative to unfavorable shipping conditions; an analysis of the flow of Canadian and U.S. cross border traffic through each other's ports; and, an extensive profile of carrier services in the transpacific trades.

C. RESTRICTIVE TRADE PRACTICES

The *Commission* continued its active role in addressing restrictive trade practices and other actions which create conditions unfavorable to U.S. foreign shipping.

The *Commission* issued a Final Rule pursuant to section 19 of the *1920 Act* finding conditions unfavorable to shipping in the U.S./Ecuador trade due to cargo reservation laws and decrees implemented by the Government of Ecuador. The *Commission* assessed a fee of \$50,000 per outbound voyage from the United States to Ecuador on Maritime Transligna, S.A., an Ecuadorian-flag carrier.

The *Commission* continued its investigation under the *FSPA* into alleged "doing business" restrictions and practices of Taiwan authorities which appeared to adversely affect U.S. carriers. Demand orders requesting information were issued requiring certain carriers to report on the status of shipping conditions in the U.S./Taiwan trade.

In addition, the *Commission* is monitoring the impact of the laws, regulations and policies of the Governments of Korea and the People's Republic of China, which may unfairly burden or restrict the operations of certain ocean common carriers, including U.S.-flag carriers operating in the U.S. trades with these countries, and the U.S. importers and exporters which depend on their services. The *Commission* also is monitoring developments relating to a fee assessed by the Japan Harbor Transportation Association on U.S. and other carriers serving ports in Japan.

D. TARIFF AUTOMATION

The *Commission's* efforts to create the *ATFI System* moved closer to fruition during the fiscal year. See Chapter V. This process, which was begun in the early 1980s, is intended to facilitate the filing, retrieval and analysis of the information contained in tariffs required to be filed with the *Commission*.

A contract was awarded for *Phase I, System Concept* and *Phase II, System Design*, to the *Planning Research Corporation*, teaming with *Data Exchange International*. The contract for the five-year system life also contains options for each subsequent *Phase*, i.e., *Development and Testing, Prototype Operation*, and each year of *Full-scale Operation*, which is scheduled to begin in fiscal year 1992.

During fiscal year 1990, the contractor finished *Phases I and II* as well as *Phase III -- Development and Testing*. Also, a contract modification was agreed to which contains several changes which will significantly improve *the System* and contract administration. See Section V. At the end of the fiscal year, the project was in *Phase IV, Operation as a Prototype*. Full operation is scheduled to begin in fiscal year 1992.

E. SECTION 18 STUDY

In September 1989 the *Commission* submitted the *Section 18 Report on the Shipping Act of 1984 ("Report")* to Congress and the *Advisory Commission on Conferences in Ocean Shipping ("Advisory Commission")*. The *Report* presented a detailed evaluation, including supporting data and analyses, of the impact of the *1984 Act* on the international shipping industry. It was the product of a five-year study by the *Commission* mandated by Congress in section 18 of the *1984 Act*, and addressed a set of specific issues that Congress believed would be important in assessing the regulatory reforms embodied in the *1984 Act*.

In FY 1990, the *Commission* continued to gather data to update the information contained in the *Report*. These data may be useful to the *Advisory Commission* as it conducts its study.

The *Advisory Commission* is charged with conducting a comprehensive study of, and making recommendations concerning, conferences in ocean shipping. The study will specifically address whether the Nation would be best served by prohibiting conferences, or by having closed or open conferences. The *Advisory Commission* shall, within one year after its establishment, submit to the President and to Congress a final report containing a statement of findings and conclusions, including recommendations for such administrative, judicial, and legislative actions as it deems advisable.

III

SURVEILLANCE AND ENFORCEMENT

A. SURVEILLANCE

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

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

As in previous years, the *Commission* continued to refine its programs for monitoring the behavior of agreement parties in U.S. trades in fiscal year 1990. These programs integrate a number of surveillance factors, including operator market share data, cargo tonnages of major-moving commodities, shipper identification, relevant tariff rate levels and rate histories, use of service contracts, agreement-document analysis, review of minutes of meetings held by agreement members and other

reports required by the *Commission's* rules, as well as investigation for existence of possible malpractices.

During fiscal year 1990, the Bureau of Trade Monitoring produced a number of monitoring reports and analyses. These included: (1) an economic analysis of the impact of the *Commission's* Transatlantic Enforcement Initiative; (2) the monitoring of the effect several pooling agreements have had on the U.S./Mediterranean trades; (3) a report on the issues surrounding the application of terminal handling charges; (4) a profile of the North Europe trades; (5) an extensive profile of carrier services in the transpacific trades; (6) the monitoring of agreement activity in the Venezuelan trade; (7) an analysis of the flow of Canadian and U.S. cross-border traffic through each other's ports; (8) a report on controlled carrier service patterns and vessel utilization in the U.S. trades; (9) a report on the carryings of a controlled carrier to and from U.S. Gulf ports; (10) a report on U.S.-flag share in the U.S./U.S.S.R. trade; (11) a report on vessel movements in the U.S./Ecuador trade in support of *Commission* enforcement of sanctions resulting from unfavorable shipping conditions found to exist in the trade; (12) a report on Freight All Kinds rates and the potential abuse by controlled carriers; (13) a report updating data in the inbound U.S./Ivory Coast trade in support of the staff's examination of allegations of restrictions by the Government of the Ivory Coast; (14) a report providing background information on a certain carrier's service in the Venezuelan trade; (15) a report containing import and export trade data in support of the staff's analysis of potential implementation of cargo reservation policies by the Government of Venezuela in the U.S. Gulf/Venezuela trade; and, (16) trade information on carriers serving the Middle East.

During fiscal year 1990, the *Commission* implemented an ongoing auditing program of agreements to assess whether agreements on file are in compliance with the various statutory and regulatory requirements. During the year, the focus of the auditing program was on major conference agreements. For the year, the Bureau completed 20 audits. Other projects

completed during fiscal year 1990 include: (1) the preparation of numerous carrier profiles, as well as conference profiles; (2) the preparation of monthly reports on activities of controlled carriers; (3) the assessment of the probable impact the political events in Eastern Europe may have on the *Commission's* controlled carrier program; (4) preparation of a circular letter to the industry regarding regulations pertaining to the publication of through rates; (5) the preparation of a proposed rule concerning payments made by common carriers to foreign freight forwarders and ocean freight brokers; and, (6) the development of comments and recommendations concerning the investigative officer's report in Fact Finding No. 17, *Rates, Charges and Services Provided at Marine Terminal Facilities*.

The *Commission* was working on a number of major projects at the end of fiscal year 1990. These projects included: (1) analysis of the operations of car carriers to determine their status as common carriers and their responsibilities for filing agreements under the *1984 Act*; (2) development of a complementary program to that of other *Commission* components in assessing foreign shipping practices under the *FSPA*; (3) further refinements of the auditing program, with a focus on the 1984 Act's general standard under section 6(g) of that Act; (4) following shipper/conference discussions relative to alleged rate disparities between coastal ports; (5) preparing carrier profiles; (6) analysis of issues surrounding NVOCC household goods rate agreements; (7) preparation of a recommendation regarding shipping restrictions in Taiwan; and, (8) development of an annual report on activities of controlled carriers during calendar year 1990.

B. ENFORCEMENT

Under the *1984 Act*, the *Commission* placed greater regulatory emphasis on enforcement activity than existed under the predecessor statute. The enforcement functions are performed primarily by the *Commission's* Bureau of Hearing Counsel and Bureau of Investigations. (See Chapters VIII, J and K).

The Transpacific Malpractice Program is an example of a long-term program initiated by the *Commission*. The purpose of this program is twofold: (1) to obtain compliance with the *1984 Act*; and (2) to establish an equitable trade environment for carriers, shippers and middlemen participating in the transpacific trades. The transpacific program involves both informal and formal investigations of violations of the *1984 Act*. These investigations already have resulted in individual and comprehensive settlements with shippers, *NVOCC's*, vessel operating common carriers and freight forwarders. Many of these entities provided disclosures of additional *1984 Act* violations. In fiscal year 1990, primarily as a consequence of the *Commission's* investigation and enforcement efforts in the transpacific trades, the *Commission* collected the largest annual amount of civil penalties in its history - a total of nearly \$25 million. It is anticipated that the transpacific enforcement program will continue to have an important impact during the next fiscal year and beyond.

Another long-term program, the transatlantic trade enforcement initiative, which began in 1987, continued through fiscal year 1990. Enhanced neutral-body self-policing, established through the program, was implemented by participating carriers. Members of the *Commission* staff meet regularly with the participating neutral body and annually with the carrier members. The *Commission* is advised that this initiative is having a substantial beneficial impact on the shipping community.

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

A joint support program between the *Commission* and Bureau of Customs has resulted in interagency coordination of effort on matters of mutual concern. This program was continued during fiscal year 1990.

The *Commission's* greater emphasis on enforcement activity continues to increase the number of investigations of major violations conducted, which, in turn, results in greater civil penalties. (See Appendix E). It is anticipated that sustained enforcement activity will have an escalating deterrent effect on malpractices in the shipping industry.

IV

DEVELOPMENTS IN MAJOR U.S. FOREIGN TRADES

A. TRANSATLANTIC

Vessel overcapacity continues to characterize the transatlantic trades. As a result of the empty container slots, competition among carriers is keen, as both conference and non-conference carriers fight to preserve market shares. Consequently, rate levels are soft. Evidence of this are service contracts negotiated by Evergreen Line, a major independent operator, with importers of alcoholic beverages at rates substantially less than the rates paid a year or two ago. Shortly after those deals were struck, the *North Europe-USA Rate Agreement* ("*NEUSA*") (No. 202-011242), the ratemaking conference operating inbound to the U.S. from Europe, entered into a service contract, described as the largest ever in the alcoholic beverage industry, with a large beer, wine and spirits supplier. The supplier used the essential terms of the Evergreen service contracts as a point-of-reference in its negotiations with *NEUSA*.

Further complicating the rate picture in the transatlantic trade, as in all trades, was a volatile oil market, which was a product of the Middle East crisis. Although international bunker prices have been swinging radically, the transatlantic conferences worked out a formula with European shipper groups, based upon the magnitude of the fluctuation in published international bunker prices, for calculating bunker surcharges. The first set of these charges became effective September 15, 1990.

Midway through the year, lines operating on the North Atlantic began seeing more cargo moving outbound to Europe. Some carriers were reporting that, volume-wise, the eastbound leg was the stronger leg. This contrasts with the trend over the last few years when the volume of traffic coming across the Atlantic to the U.S. was stronger than traffic going back. Revenue-wise, however, with a greater proportion of westbound cargo being relatively high-valued cargo, which typically bears a higher freight charge, the eastbound leg was not stronger.

The recent swing in currency rates, specifically, the depreciation of the U.S. dollar relative to the currencies of many European countries, has made U.S.-produced goods relatively less expensive for European buyers and European-made products relatively more expensive for U.S. purchasers, altering that flow. The new freight pattern appears to have emerged for cargoes going from U.S. East Coast, Gulf and Pacific ports to destinations in Europe. Although carriers would prefer to see strong eastbound and westbound trades alike, from an efficiency and profitability standpoint, the improvement is good for balancing the previously much stronger westbound lane.

A much publicized plan designed to boost rates and stabilize the trade through a capacity-reduction agreement among the transatlantic carriers, similar to that which operates in the inbound transpacific trades, failed to materialize. Both conference and independent carriers met in March 1990 to consider various options ranging from an across-the-board cut in each line's operating capacity to a revenue-sharing pool based on a capacity cap. Failure to adopt a scheme was attributed to divergent operating philosophies and a reluctance to relinquish hard-won market shares. Also, in anticipation of a capacity-reduction scheme that would have been set according to existing market share levels, carriers aggressively pursued shippers to secure additional business to obtain a larger market share under the contemplated program. This, too, made it difficult to reach agreement on any of the proposed plans.

An agreement action of particular importance was a decision by A.P. Moller-Maersk ("Maersk"), a Denmark-based carrier, to join *NEUSA*, effective October 1, 1990. Maersk, which quickly became one of the largest carriers in the westbound and eastbound trades after entering the North Atlantic in April 1988, had been operating as an independent in the westbound trade and as a member of the eastbound ratemaking conference, the *USA-North Europe Rate Agreement ("USANE")* (No. 202-011241). The impetus behind Maersk's decision probably relates to its entry into the *Maersk/P&O Containers/Sea-Land Agreement* (No. 203-011299), which authorizes Maersk, P&O Containers Limited ("P&O Containers"), and Sea-Land Service, Inc. ("Sea-Land") to charter space to each other in the trade between the U.S. West Coast and Northern Europe. This agreement might not have been possible with conference carriers P&O Containers and Sea-Land following conference pricing guidelines, and Maersk setting rates as a non-conference operator.

Maersk's move to join *NEUSA* has prompted complaints from European shippers and the Competition Directorate of the European Commission to reconsider its proposal to grant an antitrust exemption to the Eurocorde Agreements, the *Eurocorde I Agreement* (No. 202-010833) and the *Eurocorde Discussion Agreement* (No. 202-010829). The *Eurocorde I Agreement*, whose membership includes the conference parties to *NEUSA* and *USANE*, on the one hand, and independent carriers Polish Ocean Lines, American Transport Lines, Ltd., Mediterranean Shipping Co., and Orient Overseas Container Line, on the other hand, is a discussion agreement with ratemaking authority covering trade between the U.S. Atlantic Coast and Europe. The *Eurocorde Discussion Agreement* provides for non-binding ratemaking discussions in the same trade and among the same parties plus independent operators Evergreen Line, Lykes Bros. Steamship Co., South Atlantic Cargo Shipping, and Independent Container Line Limited. The Competition Directorate returned a preliminary decision in July granting antitrust exemption to the Eurocorde Agreements, partly because Maersk was thought to be a very significant

independent force in the westbound trade. Now, however, the Competition Directorate is concerned that the level of competition may drop with Maersk's membership in *NEUSA*.

With the integration of the 12 European Community ("EC") countries in 1992 drawing near, ocean carriers are taking steps to expand their presence in Europe. As one example, Sea-Land formed a joint venture with Netherlands-based Frans Maas, one of Europe's largest transportation and logistics companies, called FM/Sea-Land Logistics. The new venture will concentrate on intra-European global logistics management and dedicated trucking services within Europe geared towards specific shipper requirements for scheduled inbound cargo movements to manufacturing and assembling facilities and outbound movements from plants to storage bases and distribution outlets. As a second example, Nippon Yusen Kaisha, Japan's largest shipping line, plans to set up a distribution network based on four sites in Europe, either by taking over local forwarding or transport companies or by establishing its own centers. A third example is Nedlloyd Lines, which, citing the European integration as the catalyst, established its Flowmasters subsidiary. Flowmasters serves shippers with an extensive land, air and sea network, including one of the largest trucking operations in Europe.

As another means of dealing with the extremely competitive nature of the transatlantic trade, more and more carriers are establishing service rationalization arrangements. In a highly competitive and service-oriented industry, the ability of carriers to share space, and thereby increase their service frequencies without a large capital investment or adding capacity, makes rationalization particularly attractive. The following are examples of significant new service rationalization agreements which became effective during fiscal year 1990:

The *CarAmerica/Wallenius Space Charter and Cooperative Working Agreement* (No. 217-011277) authorizes one-way chartering of space to CarAmerica on vehicle carrier vessels owned or operated by Wallenius Lines in the trades from Italy

and North Europe to the United States. The parties may also discuss and agree upon vessel capacity and scheduling of agreement vessels.

The *American Transport Line, Ltd./Lykes Bros. Steamship Co., Inc. Space Charter Agreement* (No. 217-011286) allows for reciprocal space chartering, the interchange of container equipment, and the rationalization of sailings between the agreement parties in the trade between ports in Northern Europe and the United Kingdom and U.S. Atlantic ports.

The *Star/Gearbulk Reciprocal Space Charter Agreement* (No. 217-011295) establishes a cooperative arrangement that permits the parties to charter space on each other's vessels, on a space available basis, for the carriage of forest products or non-containerized cargo in the trade between U.S. Atlantic and Gulf ports and ports in the United Kingdom and Europe.

Two other significant agreements went into effect during the year. They are:

The *Deppe/Lykes Discussion Agreement* (No. 203-011272), which permits the parties to discuss and reach non-binding agreement on rates, rules and conditions of service in the trade between U.S. Atlantic and Gulf ports and North European ports and inland points via all such ports.

The *DSR/Stinnes West Indies Services Agreement* (No. 207-011291), which authorizes Hugo Stinnes Schiffahrt GmbH and Deutsche Seereederei Rostock GmbH to establish a joint service in the trade between ports in North Europe and ports and points in Puerto Rico and U.S. Virgin Islands.

B. MEDITERRANEAN

The United States Atlantic/Mediterranean trade is served by two superconferences which have maintained dominant market positions. The inbound trade is served by the *South Europe-U.S.A. Freight Conference ("SEUSA")* (No. 202-010676), which until recently, had a companion pooling agreement, the *South Europe/U.S.A. Pooling Agreement* (No. 212-010286). The corresponding outbound subtrade is served by the *United States Atlantic and Gulf/Western Mediterranean Rate Agreement ("AGWM")* (No. 202-011102), and it has a companion pooling agreement, the *U.S.A./South Europe Pool Agreement* (No. 212-011234), which authorizes the parties to pool revenue and to cross charter space. The inbound/outbound U.S. Pacific Mediterranean subtrades are served by the *Mediterranean/North Pacific Coast Freight Conference* (No. 202-008090).

During the fiscal year, as with the previous year, the strength of both *SEUSA* and *AGWM* was tested. Although both conferences encompass virtually all the principal carriers in the Mediterranean trade, several non-conference carriers (e.g., *Constellation Line*, *Nordana Line*) offer regular service on these routes. In addition, with the continental European infrastructure expanding to meet shippers' needs, the ongoing competition from North European ports, as a viable alternative to the Mediterranean market, provides competition. Moreover, a number of through-service carriers, such as *Barber Blue Sea*, operate in the Mediterranean subtrades with ancillary calls on their routes to final destinations. As a consequence of such factors, excess vessel capacity continues to characterize the Mediterranean trade.

Of primary significance during the year was the dissolution of the *SEUSA* Pool. The Pool, in practice, had been inactive since the close of the pool period (April 1990), because the Pool's cargo volume had fallen below the stipulated minimum. Pool members had for some time openly expressed their dissatisfaction with the Pool's operations. The

members felt that their pool shares were too restrictive, and did not allow them to be competitive in a volatile marketplace which was subject to increasing competition from outsiders. The Pool's dissolution was precipitated by the withdrawal of Jugolinija Line in late March 1990, followed shortly thereafter by the June 1990 resignations of Costa Container Line, Evergreen Marine Corp. and Italia di Navigazione, SpA (Italian Line). It became increasingly apparent that internal discord could not be resolved and, consequently, the remaining members agreed to terminate the Pool on August 23, 1990.

The *SEUSA* Conference remains in effect and functioning despite considerable internal discord and dissatisfaction that has surfaced because of long term declines in total cargo volumes and rates in most agreement ranges. These declines are partially explained by a weakening of the U.S. dollar that has helped bring about a reduction in the demand for imports of foreign goods by U.S. consumers. *SEUSA* has also experienced a concomitant, substantial market share erosion from a 1988 level of approximately 80 percent to around 63 percent in 1989. *SEUSA* members continue to explore ways of improving the overall situation.

There has been speculation that the parties to the defunct *SEUSA* Pool may be ready to renegotiate another pooling agreement with terms which would be more mutually satisfactory. However, as yet, there has been no official notification of such a step. Inasmuch as the *SEUSA* Pool's dissolution is a recent event, it is not yet apparent how rates and cargo movements in the trades will be affected. *SEUSA* Conference members acknowledge that the only way for the carriers to improve their competitiveness is to continue to upgrade their quality of service and to offer more integrated services to shippers.

In the eastbound U.S./Mediterranean trade, both the conference and its associated pooling agreement operate without problems attendant to those which caused the *SEUSA* Pool break-up. At the close of the year, the conference had a

market share of approximately 67 percent. Meanwhile, the export trade from the U.S. to the Mediterranean has steadily increased over the past two years. However, the cargo moving from the U.S. to the Mediterranean tends to be low-valued cargo, which bears relatively low rates and profit margins.

Agreement membership in the Mediterranean trades was generally static. Compagnie Generale Maritime ("CGM"), which re-entered the Mediterranean trade in July 1989 after a year of absence, became a member of *SEUSA* in September 1989, and a member of *AGWM* in October 1989. CGM does not contribute any vessels to the already overtonnaged trade, but offers its services through the *Evergreen/Italia/CGM Space Charter Agreement* (No. 232-011184) and through the *Mediterranean Space Charter Agreement* (No. 217-010051). Farrell Line resigned from the *AGWM* in August 1990, followed by Costa Line in October 1990. One of the major independents competing with *AGWM* is Maersk. Maersk has declined to join *AGWM*, although it is a member of *SEUSA*.

C. AFRICA

U.S. trade with Africa was maintained at approximately the same level of activity as during the previous fiscal year. U.S. exports, including a substantial proportion of aid-related cargo, continued to face strong competition from Western Europe, which ships several times the volume of cargo to Africa as does the U.S.

Conference agreements serving the trade between the United States and South and East Africa, experienced a major geographic reorganization during the fiscal year. One of the conferences previously in place in the trade covered export movements for both South and East Africa, while the other covered imports for both regions. Under the new arrangement, the *United States/Southern Africa Conference* (No. 202-011259) provides service solely between the U.S. and South Africa, while the *United States/East Africa Conference* (No. 202-011260)

covers the trade between the U.S. and East Africa. Both agreements give the parties authority to perform the normal operational activities of a conference, as well as to charter vessel capacity in the trades.

D. TRANSPACIFIC

The United States' largest waterborne foreign trade route, the transpacific trade, continues to be characterized by excess capacity. Vessel capacity outstrips demand by approximately 27 percent in the eastbound trades and approximately 14 percent in the westbound trades. This chronic excess capacity, along with weakened demand in both directions, has created downward pressure on rates and carrier revenues in the trade. In the eastbound trades, the weaker market reflects a combination of added vessel capacity and reduced U.S. consumer demand, which in turn is a product of a weaker U.S. economy. The westbound trades were growing steadily until the third quarter of the fiscal year, when exports dropped by 5 percent compared with the same quarter of the previous year. This was caused by reduced exports to Japan and Taiwan as a result of slowdowns in the industrial sectors of those countries. Trade with the newly industrialized countries of Southeast Asia has experienced considerable growth.

These conditions affected the ability of the transpacific conferences to implement their previously announced General Rate Increases. In late 1989, *Asia North America Eastbound Rate Agreement ("ANERA")* announced a General Rate Increase of \$300 per 40-foot container effective March 1, 1990, on tariff rates and effective May 1, 1990, on service contract rates. Because of competitive pressures from independents in the trade, *ANERA* was not successful in implementing the full amount of the rate increase.

The *Transpacific Westbound Rate Agreement ("TWRA")* agreed to implement a single General Rate Increase in 1990 effective in April. The action involved a 10 percent increase on

most dry cargo rates, including forest products and wastepaper, and 5 percent on most refrigerated commodities. Beef, pork and poultry rates also rose by 10 percent. In order to accustom shippers to the rate increase, *TWRA* announced the hike approximately six months prior to its effective date. The conference ran into trouble, however, when cargo volume took an unexpected dip immediately following the rate increase, resulting in a large number of rate reductions by individual carriers and little net increase.

The Japanese conferences were somewhat successful in implementing General Rate Increases on cargo moving eastbound from Japan to the U.S. When effective on May 1, 1990, the increases equated to \$140 per TEU, \$200 per FEU, and \$4 per revenue ton, with currency adjustments.

The *Transpacific Stabilization Agreement ("TSA")* began its second year. The *TSA* carriers reduced vessel capacity by an average of 12 percent during the period December through February. During the rest of the fiscal year, the carriers operated under vessel capacity reductions, averaging 10 percent. Even with these reductions, substantial capacity in excess of demand remained in the trade. *TSA*, whose members include the eight *ANERA* carriers and five independent carriers, established the effectuation of the full \$300 GRI in the *ANERA* trades as its main revenue recovery objective. For reasons discussed above, *TSA* did not realize their objective and its net effect was a redistribution of market share among *TSA* carriers.

Both *TWRA* and *ANERA* expanded their agreement scopes and established a separate section covering the Indian subcontinent countries of India, Pakistan, Bangladesh, Sri Lanka and Burma. Westbound trade between the United States and the Indian subcontinent had previously been handled by a ratemaking group known as the *West Coast/Middle East and West Asia Rate Agreement ("WAME")*. Under a reorganization, *WAME* voluntarily handed over responsibility for the Indian subcontinent to *TWRA*, but maintained its Middle East scope. The Indian subcontinent sections contain

voluntary ratemaking authority. Membership in the Indian subcontinent sections are open to all carriers operating in the sub-continent trade, whether or not such carriers are members in the other geographic areas of the agreement.

In Taiwan, the *Commission* continued monitoring restrictions by Taiwan authorities affecting the operations of U.S. carriers in the U.S.-Taiwan oceanborne trade. By order dated December 26, 1989, the *Commission* directed U.S. and Taiwan carriers to provide information about trade conditions pursuant to the *FSPA*. The *Commission* reviewed those responses, and remained concerned about the apparent lack of continued progress toward easing Taiwan restrictions on U.S. carrier operations of off-dock container terminals; truck licensing; chassis registration; repositioning and use of containers; shipping agency operations; the prohibition against the use of tandem trailers; and, Sea-Land Services, Inc.'s problems regarding use of a gantry crane and the attendant management fee. At year's end, the *Commission* was considering its alternatives, among which is requiring more specific information regarding the nature of these conditions, the status of efforts to ease these restrictions, and the existence of any adverse effect on the U.S. carriers occasioned by these restrictions.

This fiscal year saw the Korean carriers begin to prepare for their government's expected deregulation of maritime routes in 1992. A Korean carrier, Cho Yang Shipping Company, announced, without government approval, its plans for a consortium beginning in 1991 with two German carriers, Senator Linie GmbH and Deutsche Seereederei Rostock GmbH. This announcement, along with the strategic reaction of the other Korean carriers, prompted the Korea Maritime and Ports Administration to accelerate the deregulation of routes. Effective January 1, 1991, Korean carriers will be permitted to operate in different routes without government approval.

Hong Kong continues to grow but its pace has slowed, partly because of crowded facilities, but primarily due to uncertainties as to whether the business climate will continue to be open and growth-oriented after reversion of Hong Kong to mainland control in 1997. As a consequence, Singapore appears to have surpassed Hong Kong as the port with the largest container throughput. Businesses establishing new operations in Southeast Asia are now less likely to choose Hong Kong.

In September, nine major carriers serving the transpacific trades were collectively fined \$20.5 million by the *Commission*. The carriers included: EAC Lines, Hanjin Shipping Company, Hyundai Merchant Marine Company, Kawasaki Kisen Kaisha ("K-Line"), Mitsui O.S.K. Lines, Ltd., Neptune Orient Lines, Ltd., Nippon Liner Systems, Nippon Yusen Kaisha, and Senator Linie. Several shippers and other cargo interests were also fined. The fines emanated from the *Commission's* Fact Finding Investigation No. 18, which began over two years ago. In addition to the fines, the *Commission* is urging carriers in the transpacific trades to establish a self-policing program designed to keep competition within the framework of the law.

At the end of the year, a maritime agreement between the United States and the Soviet Union was reached. Among other things, the U.S.-U.S.S.R. Maritime Pact increases by six the number of ports in each nation to which improved access and reduced entry requirements will be provided. All of the six U.S. ports are on the Pacific Coast, with five of the ports in the Pacific Northwest. Several Soviet carriers have expressed interest in establishing services in the transpacific trades.

E. LATIN AMERICA AND THE CARIBBEAN

Several significant events occurred in the Latin American trades during fiscal year 1990. One major event was the exclusion by the U.S. of all Panamanian-flag vessels from U.S. ports. Many foreign and U.S. shipowners, who had registered their vessels under the Panamanian flag, were forced to re-register their vessels. Another significant development was the lifting of economic sanctions against Nicaragua by the United States in March 1990. As a result, the United States is assisting Nicaragua, as well as Panama, to gain eligibility for the Caribbean Basin Initiative ("CBI"). CBI encourages economic development of beneficiary nations by allowing preferential treatment of many non-traditional products from these countries in the U.S. market. Currently, twenty-two Central American and Caribbean countries are beneficiaries under the program.

In December 1989, an informal complaint was filed concerning port handling charges at Chilean ports and the manner in which the *Atlantic & Gulf/West Coast of South America Conference* (No. 202-002744) and various other carriers were charging shippers for services at Chilean ports. The matter is currently being considered by the *Commission's* Office of Informal Inquiries and Complaints.

The trade has experienced significant agreement activity. A new conference agreement, the *United States/Dominican Republic Freight Association Agreement* (No. 202-011287), was filed in the trade between the U.S. Atlantic and Gulf ports and the Dominican Republic, while an interconference agreement (No. 206-011266) between the *United States Atlantic/Venezuela Freight Association* and the *United States Gulf/Venezuela Freight Association* became effective in the trade between U.S. Atlantic & Gulf ports and points and ports and points in Venezuela.

Several space chartering/or sailing agreements were also filed:

Companhia De Navegacao Lloyd Brasileiro and *Empresa Lineas Maritimas Argentinas S.A.* filed a space charter Agreement (No. 217-011250) in the trade between the U.S. Atlantic and Gulf ports and ports in Brazil, Paraguay, Uruguay and Argentina.

Genesis Container Line, Ltd. and *Maritima Colombia Exporta, Ltda. (Marcomex)* filed a space charter agreement (No. 217-011267) in the trade between ports in Colombia, South America, including the Island of San Andres, and South Florida ports of the United States.

Chiquita Brands, Inc., and *Promotora de Navigacion, S.A.* filed a space charter and sailing agreement (No. 232-011258) in the trade between ports and points in the U.S. and ports and points in Costa Rica.

Carriers serving the Latin America/Caribbean trade entered into the following five cooperative working/discussion agreements during the fiscal year:

Crowley Caribbean Transports, Inc., and *Empresa Naviera Santa* filed a cooperative working agreement (No. 203-011271) for the trade between the U.S. Atlantic & Gulf ports and points and ports and points in Peru.

The *Caribbean and Central America Discussion Agreement* (No. 203-011279) was filed by seven parties, all of them conferences and discussion agreements, for their respective trades. The parties are authorized to discuss matters of mutual interest and make non-binding agreements. They are not authorized to collectively establish rates or charges.

The *Norbel Service Agreement* (No. 203-011296), between N.V. CMB S.A. and Norsul Internacional S.A., covers the trade between U.S. West Coast ports and points and ports and points

of Mexico, Guatemala, El Salvador, Honduras, Nicaragua, Costa Rica and Panama.

Barber Blue Sea and *Senator Linie* filed a discussion agreement (No. 203-011297) in the trade between U.S. West Coast ports and points and ports and points in the Republic of Panama.

Flota Mercante Grancolombiana and *Compania Sud Americana de Vapores* filed a cooperative working agreement (No. 203-011298) in the trade between the U.S. West Coast and the West Coast of Central and South America.

Finally, one joint service agreement (No. 207-011293), between *Naviera Consolidada, S.A.* and *United Steamship of America Lines*, was filed in the trade between U.S. Gulf and Florida ports, and U.S. inland points via such ports, and ports and points in Ecuador, Colombia, Panama, Costa Rica and Mexico. The service is operating under the name of *Gran Golfo Express*, which was formally made up of *Naviera Consolidada* and *Transnave*.

F. MIDDLE EAST

During fiscal year 1990 only one new agreement became effective in the Middle East trade, a space charter/discussion agreement between *Sea-Land Service, Inc.* and *United Arab Shipping Company (SAG)*.

Trading patterns throughout the year remained stable until the invasion and occupation of Kuwait by Iraq on August 2, 1990. The international trade embargo of both Iraq and Kuwait which followed the invasion did result in large amounts of cargo being discharged at other ports in the area. The Jordanian port of Aqaba, which had handled a large amount of cargo bound for Iraq, however, experienced a dramatic decline in traffic volume.

The members of rate agreements serving the Red Sea and Persian/Arabian Gulf have imposed Vessel Insurance Additional Premium (War Risk) surcharges on cargo destined to the Middle East. These surcharges were imposed promptly following the Iraqi invasion and have not been increased as of year's end.

G. WORLDWIDE

This year has seen the continuation of trends identified a year ago. Growth continues to be largely absent from trade with the People's Republic of China, while the various entities, including carriers domiciled in Eastern Europe, are still making adjustments to participate more fully in world trade. No great increase in trade has taken place but certain state-owned carriers are on the road to "privatization," and industry, particularly in such relatively advanced countries as Poland and Czechoslovakia, is attempting to become competitive in international markets. The trade to and from the newly-industrialized countries of Southeast Asia continues to expand, to some extent at Japanese expense. In Western Europe, the planned economic integration in 1992 has progressed well but has engendered questions as to the nature and extent of regulatory oversight appropriate on the part of EC authorities. Mutually beneficial consultations between the EC and the FMC have taken place which deal with these subjects.

The carriers continue to develop rationalization strategies, such as cross-chartering (vessel sharing) agreements, allowing full market presence, while limiting the risks associated with excess capacity.

The Iraqi invasion of Kuwait has led to substantially increased bunker fuel prices. The *Commission* has been following these developments in its effort to assure that the bunker fuel surcharges filed in carrier tariffs are reasonable.

V.

AUTOMATED TARIFF FILING AND INFORMATION SYSTEM (ATFI)

A. INTRODUCTION AND BACKGROUND

The *Commission* administers, *inter alia*, the *1916 Act* and the *1984 Act*, which apply to domestic offshore commerce (e.g., between the mainland and Hawaii or Puerto Rico), and to foreign commerce, respectively, for both inbound and outbound waterborne transportation. The statutes require that common carriers by water in these trades file and keep open to public inspection their "tariffs." Also, the *1984 Act* requires that *service contracts* be filed and that their essential terms be made available to the public in tariff format. See 46 U.S.C. app. §§ 817 and 1707.

A freight "tariff" filed at the *Commission* is a publication of a carrier or conference and contains a *schedule* of rates, charges, and rules applicable to its transportation of cargo.¹ A service contract is a special agreement between shipper(s) and carrier(s) that applies in lieu of the freight tariff. Mutual commitments are made in a service contract, with the shipper guaranteeing the carrier a minimum quantity of cargo over a period of time, in consideration for a commitment by the carrier to a certain rate and service level.

The statutes and implementing regulations require the *Commission* to ensure compliance with certain essential

¹ A Customs "tariff" is a publication of the Government containing a *schedule* of Customs duties.

standards before tariff material is accepted for filing. For example, a tariff, or an amendment thereto, must not be unclear or indefinite and must not duplicate or conflict with other tariff provisions already in effect. Moreover, tariffs must contain effective date provisions in compliance with the statutes, e.g., a minimum of 30 days notice for an increase. If a tariff filing is defective in any of these respects, it is rejected and the filer must file again in the proper manner before the rate can go into effect. Similarly, service contracts may be rejected by the *Commission* if they do not meet certain statutory and regulatory requirements. See 46 CFR, Parts 515, 550, 580, and 581.

In order to prevent discrimination among shippers and unfair competition among carriers, there are substantial penalties for not filing or, if properly filed, for not adhering to the provisions of a tariff or the essential terms of a service contract. See, e.g., 46 U.S.C. app. §§ 812, 815, 818, 1708, and 1709.

In addition to enforcing these penalties, the *Commission* uses the filed tariff and service contract data for surveillance and investigatory purposes and, in its proceedings, adjudicates related issues raised by private parties. For *Commission* proceedings, as well as in any court case, the tariff or service contract provision, on file at the *Commission* and in effect, is official evidence of the applicable rate, charge or rule, when so "certified" by the *Commission*. While tariff and service contract information is used for regulatory purposes, the statutory scheme is primarily designed to provide rate information to the shipping public to promote competition and to facilitate the flow of United States exports and imports. All such tariff data is filed with and maintained at the *Commission* in paper format.

While the first U.S. maritime regulatory body was established in 1916, it was not until 1961 that carriers in the U.S. foreign commerce were required to file tariffs containing

all the rates, charges, and rules applicable to their shipments.² The number of tariffs and amendments filed with the *Commission* has steadily grown until, in fiscal year 1990, there were 789,550 tariff pages received and 6,713 service contract filings in the U.S. foreign commerce. At the end of the fiscal year, there were 5,757 foreign tariffs on hand at the *Commission*.

The enormous amount of paper to be processed by a limited number of employees led the *Commission* in the early 1980s to consider modern technology as a means of alleviating the paperwork burdens on both the government and the shipping industry, as well as enhancing the effectiveness of *Commission* regulation. A systematic exploration of this subject area by the *Commission* commenced with a series of studies.

B. EARLY STUDIES ON TARIFFS

In 1981, the *Commission* conducted a study to examine the validity of the premises upon which the tariff filing requirements of the 1961 amendments to the *1916 Act* were based. The study contained three parts.

The first part concerned the internal use of tariff data in the effectuation of non-tariff programs, such as agreements, formal decisions, enforcement, etc. That analysis, published on October 1, 1981, was based upon an internal staff questionnaire. It concluded that tariffs are of critical importance to many *Commission* statutory functions, and that they could be more effectively used if the data were more accessible.

² A relatively small number of carriers in the domestic offshore commerce have been required to file tariffs since the enactment of the *1933 Act*.

The second part of the study, published on December 9, 1981, evaluated the impact of the tariff filing system on external users -- shippers and freight forwarders -- and was based on interviews with 25 importers and exporters and 9 freight forwarders. It revealed that, at that time, those groups believed that publicly available tariffs were a necessity and should be maintained at the *Commission*. Virtually all interviewees, however, agreed that the tariff system was too complex and could be simplified by implementing per-container rates, a class system of rates, computerized filing, and classification based upon the *US Foreign Trade Schedule B, Statistical Classification of Domestic and Foreign Commodities Exported from the United States ("Schedule B")*.

The third part of the study, published in January 1983, focused upon ten liner operations and five conferences. This segment of the maritime industry opined that tariffs should be publicly available and maintained at the *Commission*. Unlike those interviewed for the earlier part of the study, however, the carriers and conferences stated that the marketplace determines the contents of tariffs. A majority believed that the complexity of tariffs might be a necessary evil. Several interviewees stated that any program to simplify the tariff system should include tariff automation.

The overall conclusion of the three-part study was that retention of the requirement to file tariffs had widespread support in the maritime industry, but that the system was in need of modernization, particularly in the area of computerization.

While conducting this three-part study, the *Commission* also began an internal study of the impact of filing activity upon the *Commission* itself. The internal study revealed that during a six-month period, July-December 1981, a total of 212,458 permanent filings were received at the *Commission*. Thirty out of several hundred filers accounted for 47 percent of the total volume. The internal study also found that, based upon first quarter fiscal year 1982 actual expenses, the

estimated annual cost of examining and maintaining the tariff filings of the 30 major filers was \$158,000.

With the results of these two studies in hand, the *Commission* explored the issue of tariff automation. Of particular interest to the *Commission* was the industry's views on the feasibility of, possible methods for, and implementation of an automated tariff system. In early 1983, the *Commission* interviewed seven carriers, five conferences, two freight forwarders, twelve shippers, and two transportation service firms.

The report of this survey was issued in March 1983, and revealed the overall belief of these parties that not only should the tariff system be automated, but that implementation of an automated system was overdue. Almost all interviewees said that there was a likelihood that they would use an automated system if it were more efficient and proved, over the long run, to be less costly than the existing system.

The various respondents were, themselves, at different stages of automation. A few carriers were highly automated, and a number of conferences and shippers had made substantial commitments to automation. Those respondents that were automated to some degree generally believed that automated tariffs would fit well into their systems.

C. FIRST STEP IN TARIFF AUTOMATION: ISSUES

Recognizing that there was a need and apparent industry support for tariff automation, the *Commission's* next step was to determine if any parties were interested in developing an appropriate system. On November 14, 1983, the *Commission* published in the *Commerce Business Daily* a *Notice of Inquiry*, entitled "*Sources Sought for 'Paperless' Federal Maritime Commission Electronic Filing, Storage and Retrieval Systems for*

Tariffs." Of the 31 replies received, 15 were considered to be responsive or partly responsive to the notice (i.e., indicated interest in being considered to develop the automated tariff system and/or described their qualifications). The comments also raised questions of both a legal and policy nature which needed to be resolved before proceeding with additional phases leading to the eventual adoption of an electronic tariff system. The major questions raised were:

1. Does the filing and storage of tariff information with a private contractor off *Commission* premises comply with the statutory requirement that tariffs be filed with the *Commission*?
2. Can the *Commission* mandate 100 percent industry compliance with electronic filing?
3. What is an appointed vendor's right of ownership to vendor-developed software, external to *Commission's* own data base requirements?
4. What copyrights are involved in tariff data?
5. What will be the "official agency record of tariff-filing," the data electronically stored or the hard copy that is either filed or produced from electronic filing? How long will storage be required? To what extent will hard copy continue to be required?
6. Will the contractor have monopoly control over the use of the tariff information filed in the system?
7. What will be the financial impact of a system on carriers and other firms that already have tariff automation?
8. What is the minimum term of any possible contract with an appointed outside vendor?

9. What is the economic and political viability of *Commission* as a free system user?

10. What will be the number of outside vendors which will be ultimately selected?

11. What will be *Commission's* programming demands on the contractor?

12. To what extent will there be a need to put present tariff data into the electronic system database? How?

13. How will a system provide security for filed tariff data?

14. To what extent would a new system be compatible with other format standardizations?

D. THE SHIPPING ACT OF 1984

On March 20, 1984, the *1984 Act* was enacted. Even though the continued need for various tariff requirements had been questioned by certain government agencies and by the private sector during hearings on the Act, section 8 continued the requirements to file and abide by tariffs. Service contracts were authorized as an alternative to a tariff. While service contracts were required to be filed confidentially with the *Commission*, their essential terms had to be filed with the *Commission* in tariff format for availability to the general public.

E. THE TARIFF AUTOMATION TASK FORCE

In August 1984, *Commission* Chairman Alan Green, Jr., appointed Vice Chairman James J. Carey as head of a special

Tariff Automation Task Force. The Task Force gathered additional information, and in January 1985, sent questionnaires to 17 ocean carriers, 10 NVOCC's, 19 conferences, 52 freight forwarders and 20 shippers. The questionnaires focused on the use of tariff data and suggestions to improve the process. Sixty-three entities responded. Some of the results of these responses are synthesized as follows:

- Tariffs were used by virtually all, usually on a daily basis, and mostly in paper form.
- Most, with the exception of shippers, were satisfied with the current tariff form. Those not satisfied indicated a desire for an automated system.
- Most of the respondents obtained data from commercial tariff services, but many used carrier/conference subscriptions. Carriers were the predominant users of *Commission* files, while a large number of freight forwarders, NVOCCs and shippers went directly to ocean carrier representatives for tariff information. They indicated that these sources met their needs; however, those suggesting improvements generally favored automation which could provide more timely and accurate data.
- A majority of the respondents used publicly available standardized commodity coding systems, e.g., *Schedule A, Tariff Schedules of the United States Annotated, Standard International Trade Classification, Schedule B, and Standard Transportation Commodity Code*. Most respondents did not use standardized geographic coding systems, nor did they see a need for them.
- Freight forwarder and shipper respondents showed the greatest degree of willingness to use more than one type of coding system.

- **Practically all ocean carrier and conference respondents believed that it would be advantageous to file data with the *Commission* in an automated fashion. The NVOCC respondents thought it might be too expensive.**

At about the same time as the 1985 industry surveys, an in-house survey was conducted at the *Commission* to ascertain its needs for tariff automation and perceptions about this concept. The survey results included the following findings:

- **Most respondents in the *Commission's* operating bureaus felt that automated tariffs would increase the quality of their work, as well as their productivity.**
- **Sixty-two percent of the respondents felt that hard copy was unnecessary if tariffs were accessible via machine-readable form. Reasons cited for paper copies were the need for evidence in court, exhibits for enforcement reports, and a backup system in case of computer malfunction.**
- **Forty percent said that a standard commodity classification code would increase both their efficiency and quality of work, while an additional twenty-one percent responded that it would increase only their efficiency but not their quality of work. Responses were similar regarding a standard geographic code.**

In August 1985, the *Task Force* issued a report entitled *Tariff Automation (A Functional Analysis)*. In addition to describing the results of the 1985 industry and in-house surveys, the report described the problems with manual tariff filing and review, and the *Commission's* need for automated filing and retrieval of tariff data. The objectives of an automated system were described to be as follows:

- The automated system will operate in the private sector to the extent possible.
- The system will be financially self-sufficient through the assessment of user charges for access to the information.
- Access by the *Commission* will be without cost.
- The integrity of the system will be insured by the *Commission* through the development and ownership of software which will control entry into the system.
- A means will be constructed to minimize the monopolistic control of a single company operating the system, and effort should be made to preserve existing satellite companies now engaged in dissemination of tariff data.
- Contractual arrangements for electronic filing may not curtail the ability of the public to have access to tariff documents now routinely available in public document rooms or otherwise.

The report recommended the conduct of a feasibility study which would evaluate the technical alternatives available and their costs, including a market analysis of the demand for tariff information and the likelihood that the *Commission's* costs could be recaptured. The *Task Force* report developed two primary options to be evaluated in the feasibility study:

1. Multiple private-sector databases which would require *Commission* control or oversight regarding the acceptance of tariff filing within the database; controls to prevent tampering with the data; and accessibility of the information in the database to the *Commission* and to the public through the *Commission's* public reference facility (Tariff Control Center). This might require some sort of certification process. This option would probably involve the least cost to the *Commission*

and minimum government involvement, but legislative changes would likely be required to implement it.

2. Single database - one contractor designs and operates a single database of tariffs for the *Commission*. After review and acceptance of the data, tariff information would then be made available to users for a fee, a portion of which would offset the cost of the contract to the *Commission*. Rather than grant the contractor a total monopoly over tariff information, however, the report indicated that it would seem more advisable for the contractor to supply only the raw data, perhaps on a subscription basis. The purchasers of the data would save on input costs to their system and obtain quicker access to the information in an electronically-usable form. Each purchaser could purchase electronic data, design its own software for providing the data in usable form, and sell the data to other users. Hard copy and/or microfiche pages could also be made available for sale by the contractor.

The report concluded that, since the *Commission* lacked the technical expertise, the feasibility study should be contracted out.

Because the *Commission* also needed to ensure that all future studies were unbiased, thorough, and accurate, it hired an industry consultant in August 1985 for technical assistance. The contract provided that the consultant must remain independent of the feasibility study contractor and could not become the contractor for the pilot/operating system.

F. ATFI: FEASIBILITY STUDY OF TARIFF AUTOMATION and THE ATFI ADVISORY COMMITTEE

The *Commission* next turned to the General Services Administration ("GSA") for assistance with the feasibility study and entered into an interagency memorandum of understanding with GSA on August 1, 1985. Pursuant to this agreement, funds were transferred to a GSA fund and a Statement of Work for the development of a feasibility study was drafted, resulting in a contract for this task with a GSA-approved contractor.

Early in 1985, the *Commission* determined the need and importance of not only soliciting, but also considering in a public arena, the opinions of all interests that might be affected by the automation of tariff filing. For that purpose and pursuant to the provisions of the Federal Advisory Committee Act, 5 U.S.C. app. I, 1-15, the *Commission's ATFI Industry Advisory Committee* was established.

The *Commission's* first step in the formation of the *Advisory Committee* was to draft a charter and submit it to the GSA Advisory Committee Secretariat with an explanation of the need for the *Committee* and the *Commission's* plan to obtain a balanced membership. Thereafter, candidates for membership on the *Committee* were solicited by *Federal Register* notice of April 12, 1987 (50 Fed. Reg. 14,453). Nominees were required to waive compensation for their services and acknowledge that they were ineligible to bid on any procurement solicitations resulting from the work of the *Committee*.

On November 11, 1985, the *Commission* published in the *Federal Register* (50 Fed. Reg. 47447) its Notice of the Formation of the *ATFI Advisory Committee* and announced the first meeting on December 6, 1985 (50 Fed. Reg. 50,013). FMC Commissioner Edward J. Philbin was designated

Chairman of the *Committee*. The nineteen industry members represented three ocean carriers, three steamship conferences, two NVOCCs, three freight forwarders and the National Customs Brokers and Forwarders Association, three ports and the California Association of Port Authorities, two exporters and importers and the American Association of Exporters and Importers, two information service firms, and the Information Industry Association.

FMC Chairman Edward V. Hickey, Jr., opened the first Advisory Committee meeting on January 23, 1986, by asking for guidance on the following policy questions about any proposed automated system:

- Is it desirable that it operate in the private sector?
- Can it be structured so as to be financially self-sufficient through the assessment of user charges for access to the information?
- Is it possible to achieve cost-free access to the system for the *Commission*?
- Can the integrity of *the System* be ensured by the *Commission* through the development and ownership of software which will control entry into *the System*?
- What means can be devised to minimize the possibility of monopolistic control by any single company that might operate *the System*, and to minimize interference with the operations of commercial companies currently engaged in the dissemination of tariff data?
- Can *the System* operation be structured to maintain public access to tariff information now routinely made available in public document rooms or otherwise?

- **Can *System* operation be structured to complement public access under the Freedom of Information Act?**
- **Can a system be structured so that the burden imposed upon tariff filers to comply with the technical requirements of filing tariffs in an automated system will be minimized?**

Chairman Hickey explained that four items were necessary to assure the integrity of the *Commission's* statutory mandates:

- **The *Commission* is to retain final authority to reject filings that do not comply with agency requirements, and is to determine the public availability of information pursuant to the Freedom of Information Act and other statutes.**
- ***The System* must permit the maintenance of historical records that can be retained, retrieved and reproduced for legal evidentiary purposes and to comply with requirements for retention of government records.**
- ***The System* must obviate unauthorized modification or tampering with data, yet allow the identification and authorized correction of errors.**
- **All fees for the use of *the System* (filing, retrieval or data reproduction) are to be reasonable and not prevent, deter or impair full public use.**

The critical objectives of the *Advisory Committee* were established as follows:

- **To allow each segment of the shipping industry to formulate and specify its needs and goals in the process of automating shipping tariffs.**

- To educate each segment of the shipping industry about the needs and goals of the other segments in such a process.
- To investigate the possible applications of existing and foreseeable Automated Data Processing technology to accommodate such needs and goals.
- Then, if feasible, to formulate the necessary compromises of the needs and goals of each industry segment to design a system which is acceptable and beneficial to all industry segments.

The *Commission* directed the *Advisory Committee* to make an in-depth and critical evaluation of the draft sections of the *ATFI Feasibility Study*, and to evaluate and comment on any implementation plan which may be formulated after completion of the *ATFI Feasibility Study*.

The *ATFI Advisory Committee* met in three two-day sessions from January to November 1986, in which it actively provided input to and review of the reports of the *Feasibility Study* Contractor. The final report of the Contractor, entitled *Comprehensive Study of the Feasibility of an Automated Tariff System, Commission, October 28, 1986*, detailed the basic functionality for tariff automation, the necessary assumptions, the concept of a system, alternative concepts of operation, policy assumptions, delivery alternatives, costs and funding. This report was approved in principle by the *Advisory Committee* with a few suggested changes. In summary, the tariff automation requirements identified by the *Feasibility Study* were:

1. Key Tariff Filing Requirements

(a) Electronically create and transmit tariff filings to *Commission*.

(b) Provide fault-tolerant filing (e.g., backup computer).

(c) Provide compatibility with existing systems (to the extent possible).

2. Key *Commission* Tariff Processing Requirements

(a) Accept electronically filed tariffs (e.g., new tariffs; essential terms; amendments).

(b) Provide tickler capability (e.g., reminder to follow up on a letter of criticism).

(c) Perform computer-assisted conformity check of tariff filings (e.g., syntactic, validity, associative edits).

(d) Provide workload tracking functions (e.g., track status of new tariff filings).

(e) Generate *Commission* communications (e.g., letter of rejection).

(f) Route tariff filings.

(g) Collect workload statistics (e.g., number of new tariffs filed in a week).

3. Key Tariff Retrieval Requirements

(a) It is expected that any value-added services built into this *System* will be for *Commission's* internal use, exclusively. Third-part vendors will provide value-added services to the public.

(b) Retrieve current tariff information with different keys (e.g., origin and destination).

(c) Retrieve historical tariff information with different keys (e.g., commodity code).

(d) Link tariff information to other data sources.

(e) Retrieve current tariff information in different formats (e.g., page).

(f) Retrieve historical tariff information in different formats (e.g., entire tariff).

(g) Provide computer-assisted identification of filed data (e.g., subscription service).

(h) Retrieve tariff information to support enforcement (e.g., re-rating).

(i) Retrieve tariffs to support special studies (e.g., rate indices).

4. Key Functionality Requirements

(a) Accuracy (e.g., amendments are properly applied to the database).

(b) Timeliness (e.g., quick turnaround on posting new rates).

- (c) Security (e.g., user identification and passwords).
- (d) Special analyses for *Commission* (e.g., rate indices).

5. Key Policy Assumptions

(a) *Commission* will provide public access to *the System* via terminals in a public terminal room at the *Commission*. *Commission* will make copies of the database available to third-party vendors, who could then resell the data (or value-added services) on a retail basis.

(b) *Commission* would not want *the System* to provide value-added services directly to the public; these services will be provided by third-party services. Any value-added services provided by *the System* would be available only to *Commission* users (e.g., for enforcement purposes).

(c) *Commission* would not want to restrict ownership rights to the database as a creative financing method.

The functions and requirements of tariff automation identified in the study have not changed and have become the backbone of subsequent efforts to procure the *ATFI System*. *The System* concept developed and recommended to the *Commission* by the Contractor had a total estimated cost of \$7.3 million and an estimated implementation time frame of 14 months. The cost estimate was based on a present value calculation for the five-year period, and the implementation time frame consisted of design and implementation phases, including training, data conversion and testing. The cost estimates were considered conservative in the sense that they were the costs for complete development, i.e., "building from scratch." Some of the commercial tariff services may have existing systems which could be adapted to meet a portion of the functional requirements of *ATFI*.

The *Feasibility Study* concluded:

Tariff automation appears to offer significant benefits to the maritime industry and to the *Commission*; tariff automation appears to be politically feasible; and the potential costs of tariff automation appear to be within the reasonable range, when balanced against the benefits that would accrue and the practical limits in the budgetary process.

The *ATFI Advisory Committee*, in approving the *Feasibility Study* in principle, made two further recommendations which the *Commission* adopted:

- First, the *Commission* should proceed with tariff automation as described in the study.
- Second, the *Commission* should conduct a cost/benefit study of tariff automation to ensure that the perceived benefits are not outweighed by the costs of the impact of automation upon the industry.

G. BENEFIT COST ANALYSIS and PROCUREMENT AUTHORITY

In October 1987, a Benefit Cost Analysis was prepared by a commercial contractor and corroborated the economic feasibility of the project. This analysis was submitted to the Office of Management and Budget ("OMB").

In December 1987, a delegation of procurement authority for the project was obtained from GSA.

H. INQUIRY ON THE FUNCTIONALITY OF ATFI and PRESOLICITATION CONFERENCE

In December 1987, the *Commission* began to develop a draft request for proposals ("RFP") which would yield comment from the vendor community on the project. At the same time, the *Commission* sought public comment on the proposed functionality of *the System* in a (first *ATFI*) Notice of Inquiry.

The purpose of this "outreach program" was to ensure that the regulated community and the potential user public were fully aware of the *Commission's* plans for tariff automation. Comments were requested from other than potential bidders on the basic functionality of the proposed *ATFI System*. This functionality, as set forth in the Notice of Inquiry, has remained constant throughout the project:

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

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

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

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

The *ATFI System* will have appropriate security mechanisms to protect the integrity of the database.

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

Once the tariff data are officially on file, the *Commission* will download the entire database in "flat files," formatted onto computer tapes which will be sold to any person at the relatively inexpensive marginal cost of dissemination. This will satisfy the *Commission's* statutory duty of providing copies of tariffs at a reasonable charge. In order to keep up with a substantial number of rapidly changing freight rates in the shipping industry, however, interested persons must obtain these updated database tapes frequently. *Commission* will offer a subscription service to provide this capability.

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

In order to carry out its other statutory function of making tariffs and essential terms of service contracts available for public inspection, the *Commission* will continue to have a public reference room at its headquarters in Washington, D.C. Here, interested persons can access a terminal on which information on a particular tariff will be brought up on the screen and scanned to find the necessary rates and rules. Paper copies of tariff data will still be available upon written request, especially for certification to courts and other tribunals for proceedings involving disputes over historical tariff rates. [*Inquiry on Tariff Automation*, December 22, 1987, 52 Fed. Reg. 48504.]

Explained in the Notice of Inquiry and contained in the draft RFP was remote access to the *Commission* database by modem, almost any time of the day, for retrieval of tariff information by any interested person. This is described in the October 28, 1986 *Feasibility Study Final Report* as follows:

b. Retrieval and Analysis by the Public

. . . *Commission* would also allow remote access whereby a member of the general public could access the automated tariff *System* from remote locations. For example, *the System* would enable a shipper on the West Coast to retrieve data from the automated tariff *System* using a terminal or microcomputer equipped with a device (i.e., a modem) to enable data communications over public telephone lines.

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

Commission has imposed these restrictions based on a careful analysis of applicable federal policies and precedents. *Commission* does not want to compete with third-party services for the provision of sophisticated retrieval and analysis of tariff data for shippers, carriers, and others in the private market. . . . In the absence of tariff automation -- i.e., the status quo -- *Commission* will make available copies of tariffs to members of the public only if they can specify the particular tariff desired. A user fee is assessed for this service. *Commission* would not expand these services after tariff automation is implemented. . . . However, *Commission* would help

ensure that third-party services can provide such services.
[Pages IV-8 and 9.]

While the *Commission* was waiting for public comment on the proposed features and functionality of the proposed *ATFI System*, a draft RFP was issued to the vendor community. Firms and individuals on the bidders list were requested to submit their questions on the proposed competitive acquisition and to attend a presolicitation conference for an opportunity for face-to-face questioning.

In April 1988, the *Commission* issued its *Report on Tariff Automation Inquiry* (53 Fed. Reg. 13,066) and detailed its rationale for the features and functions proposed for *the System*.

I. REMOTE RETRIEVAL

While the *Commission* was in the process of finalizing the RFP, it became aware of concerns raised by both the House Subcommittee on Information, Justice and Agriculture, and by OMB. Their concerns revolved around the functionality of "remote retrieval." As noted earlier, this feature was intended to allow the shipping public to obtain telephone modem access to an individual tariff of a carrier or conference. It would give access to one tariff at a time, and would not provide for sophisticated searches. Questions about this feature were based on an apparent perception that the *Commission* might compete with existing or intended value-added services offered by private sector firms. In June 1988, the *Commission* acknowledged its commitment to tariff automation, but placed the development of *the System* on "hold" to resolve the remote retrieval concerns (53 Fed. Reg. 22,048).

During the period June-December 1988, the *Commission* reassessed the functionality of the *ATFI System*, especially in the area of remote retrieval. This process involved a dialogue

with officials of Congress and the Executive Branch. Technical revisions were made to the RFP to reflect new funding exigencies and legal requirements. In October 1988, the *Commission* issued to some 200 potential offerors a second draft RFP for comment on the technical revisions. However, the *Commission* remained concerned about the questions on remote retrieval and stated in the letter transmitting the second draft RFP:

The remote retrieval issue has not been finally decided. Accordingly, this draft RFP is issued with the remote retrieval question still open. That issue will be decided in the final RFP.

After much analysis and reconsideration, the *Commission* decided in December 1988, to retain the functionality of the *System* with remote retrieval. In its *Second Report on Tariff Automation Inquiry*, the *Commission* stated:

The controlling question is: In designing the functionality of its *ATFI System*, has the *Commission* properly considered and balanced competing interests, such as (1) the *System's* utility to shippers, carriers and other members of the shipping public, and (2) the future role of private-sector information services? The *Commission* believes it has.

In October, 1986, a year before the *Commission* heard of any complaints about 'remote retrieval,' its private-sector contractor issued 'A Comprehensive Study of the Feasibility of an Automated Tariff System.' This report accurately describes the proposed functionality of the *ATFI System* in terms sufficiently precise for private-sector firms to fully understand for the purpose of submitting proposals. This public report was considered and discussed by the *Commission's* Industry Advisory Committee at the time and there were no objections to 'remote retrieval'

More importantly, with the approval of the *Commission* and the *Advisory Committee*, the Feasibility Study Report suboptimized *ATFI's* public retrieval functions as an accommodation to private-sector information firms.

Commission does not want to compete with third-party services for the provision of sophisticated retrieval and analysis of tariff data for shippers, carriers, and others in the private market. [Page IV-8.]

Accordingly, the self-imposed restrictions would allow the general public to perform only relatively rudimentary retrievals of tariffs, and essentially no analysis of the data.

In consideration of the statutory duties of the *Commission* and the available technology required for it to properly perform these functions, the 1986 accommodation appeared reasonable. It still does.

The shipping public should also benefit from this modern technology by being allowed to obtain basic, raw tariff data on a limited basis. For more sophisticated services, the utilization of third-party vendors, both for filing and retrieval, is continued to be encouraged. An efficient tariff filing and retrieval network will promote fair competition and facilitate trade.

Accordingly and after further analysis, the *Commission* believes that it has sufficiently considered all policies and conflicting interests involved in the proposed *System* and has struck a proper balance in retaining the functionality of *ATFI* as originally devised in the Feasibility Study, and as further refined in the RFP. [December 23, 1988 (53 Fed. Reg. 52,785).]

See also Section K, *Update on Remote Access - March 1991*, below.

J. CONTRACT AWARD and STATUS

After receiving many technical comments on the two draft RFPs, and after resolving the "remote retrieval" issue, the *Commission* issued a final RFP in January 1989 to over 200 potential offerors on the bidders' list. Eight proposals were received in March 1989 and evaluated for technical quality and cost effectiveness.

On August 8, 1989, the *ATFI* contract was awarded for *Phase I, System Concept* (including verification of requirements), and *Phase II, System Design, to Planning Research Corporation ("PRC")* of McLean, Virginia, teaming with *Data Exchange International ("DXI")*, of Pittsburgh, Pennsylvania, which had the best technical, as well as the best cost proposal.

The contract for the five-year system life also contained options for each subsequent *Phase*, i.e., *Development and Testing, Prototype Operation*, and each year of *Full-scale Operation*, the letter of which is scheduled to begin in fiscal year 1992. If all options are exercised, the contract will be worth approximately \$5M.

Work on Phase I began on September 5, 1989, and during fiscal year 1990 the Contractor finished *Phases I and II*, as well as *Phase III - Development and Testing*. Later in the fiscal year, Commissioner Donald R. (Rob) Quartel, Jr., was put in charge of the *Commission's ADP Committee* and the *ATFI* project.

The *System's Prototype Phase (Phase IV)* began in April 1990. As required by Clauses C.3.3 and C.3.3.10 of the prime contract, the Contractor resurveyed existing software being developed by private industry, to see if there was any that could be incorporated into the *ATFI System* in order to improve it. The survey identified only one such software package, one being developed by *DXI*, that met the

functionality requirements of *the System*. Analysis of this software promised that it would be a decided improvement.

At about the same time, as required by Clause C.3.5.4 of the contract, the Contractor and the *Commission* identified some other changes, mostly from new technology, that could improve *the System*. The Contractor submitted a proposed modification containing the desired changes and *Delegation of Procurement Authority* was obtained from *GSA* for the modification.

Since *DXI* contemplated a significant commercial market for its proprietary software, it could not be required to simply donate the software to the *Commission*. However, *DXI* did agree to a "cosponsor" approach under the *Federal Acquisition Regulation* ("*FAR*," at 48 CFR 27.408), in return for funding of its enhancement and relinquishment of ownership by the *Commission*. Thus, the new contractual arrangement had to protect *DXI's* rights in this software through licensing and escrow arrangements. The *Commission*, in turn, will have a one-year warranty after it formally accepts the software, and complete access to the underlying documentation (source code) thereafter.

Under the license agreement, sign-on screens will show the copyright notice, as follows: © 1990. *Data Exchange International, Inc. Unpublished. All rights reserved under the copyright laws of the United States.* See 48 CFR §§ 27.408(b) and 52.227-14. The *Commission* does not in any way endorse this or any other commercial product, and clause H.9.1 of the prime contract requires any commercial tariff services performed by an affiliate of the Contractor to be completely separate from contract performance. Accordingly, the *Cosponsored* approach, allowed and encouraged by the *FAR* § 27.408, and as implemented by *Commission's* contractual arrangements, complies with the language in H. Rep. No. 31, 101st Cong., 1st Sess. 5-6 (1989): "In addition, the *Commission*, in establishing the *ATFI System*, should take all appropriate steps to ensure that the private contractor is precluded from

gaining an unfair advantage over other private companies in the provision of value-added services."

On July 19, 1990, the contract was modified to incorporate these changes.

The proposed refinements and resolution of tariff policy issues contained in the contract modification required revision of the File Transfer Formats and Code Reference Tables ("*Transaction Set*") issued in March 1990. An updated draft of the revised *Transaction Set* is scheduled to be issued in early fiscal year 1991.

On August 1, 1990, the *Commission* issued a second *ATFI* Notice of Inquiry, requesting public comment on some of the basic features being considered for *ATFI* and how they may impact current paper tariff practices. On September 5, 1990, a public demonstration of *the System* was held.

K. UPDATE ON REMOTE ACCESS MARCH 1991

Since the 1986 *Feasibility Study* (See Sections F, H, and I, above), the *Commission's ATFI System* has been designed to accommodate remote filing and retrieval of tariff data through modems to and from the off-site host processor (minicomputer). However, to avoid competition with private-sector tariff services, the design contemplates restrictions on remote retrieval, such as the ability to retrieve only rudimentary information, "one-tariff-at-a-time."

Such a restriction was enacted into law [§ 2(b), Pub. L. 101-92]:

The *Commission* shall impose reasonable controls on *the System* to limit remote access usage by any one person.

Congress explained this provision as follows:

Concern has been expressed over the use and accessibility of the *ATFI System* by all interested parties. In particular, the remote retrieval function will permit the public to dial into *the System* (by modem) and obtain a particular carrier's rates on a requested commodity in a given trade.

* * *

At the present time, no precise definition of "reasonable controls" in the limiting of access can be offered because *the System* has yet to be developed or implemented. However, the following non-exclusive possibilities are reasonable. First, members of the public could be limited to retrieving one tariff at a time in its full format, and the use would have to specify the specific tariff of the particular carrier that is desired. In the alternative, specific limitations on access time could be imposed, and automatic log-off would then occur. Either limitation, or a combination of both, could satisfy the requirement discussed herein . . . [H.R. Rep. No. 31, 101st Cong., 1st Sess.]

* * * * *

. . . While the *ATFI System* has not yet been fully developed, the Committee expects that controls will be built into the design. These controls can be in the form of a limitation on access at any one time and a limit on the total amount of time on *the System* with an automatic

log-off feature . . . [Some form of user identification] will assist in preventing circumvention of the limitation features and prevent a monopolization of *the System* by a single entity. [S. Rep. No. 71, 101st Cong., 1st Sess.]

Both the House Merchant Marine and Senate Commerce Committees also requested to be kept informed on developments on reasonable restrictions. Accordingly, a March 1990 *Update on Remote Access* was included in the *Commission's* 28th Annual Report to Congress, and this section continues that practice.³

In addition to the foregoing, similar language was contained in H.R. Rep. 173 to H.R. 2991, (Pub. L. 101-162), the *Commission's* FY 1990 Appropriations Act:

. . . In implementing this *System*, the Committee expects the Commission to develop procedures that will ensure that *ATFI* will not * compete with private sector providers of information services. As the *Commission's* 1986 Feasibility Study recommended, remote access to *the System* should be only rudimentary with essentially no analysis of the data. In addition, the procedures governing *the System* should provide that the user be able to access *the System* on a limited number of items before automatic log-off.

[* S.Rep. No. 101-144 to H.R. 2991 added the word "unfairly," otherwise the language is identical.]

³ The *Update on Remote Retrieval* was included in the *Commission's* December 1990 *Interim Report* in Docket No. 90-23, *Notice of Inquiry on Ocean Freight Tariffs in Foreign and Domestic Offshore Commerce* (the second *ATFI* Notice of Inquiry), with appended *Batch Filing Guide*. For fiscal year 1991, it is intended to provide opportunity for more public comment, as well as public demonstrations and training during the *Prototype Phase*.

The *ATFI* Contractor, working with the *Commission* staff, has developed reasonable controls and procedures governing remote access to accommodate the intent of Congress, as described above. These, however, will be subject to further changes as development of *the System* progresses and even after experience during prototype and full operation.

It is intended that there be automatic log-off for any kind of modem access after five or ten minutes of inactivity. This is similar to many types of electronic, remote-access services.

For remote retrieval of tariff data, the design calls for specification by the user of a particular tariff desired to be accessed, after consulting a table of contents at log-on. To identify the sought-after Tariff Line Item ("TLI"), there will also be various help functions, such as commodity indexes, before bringing up the item on the screen.

Because tariffs will continue to have separate "Rules" sections governing the applicability of the rate, these sections of the same tariff may also be accessed. Moreover, where the tariff filer has a separate "Rules" or "Bill-of-Lading" tariff, instead of an all-inclusive "section" in the same tariff, these types of governing tariffs may also be accessed during the same session. In order to be able to accurately determine the applicability of a rate, these unique types of tariffs will be the only clarification to the "one-tariff-at-a-time" limitation.

When *the System* first becomes operable, it is intended that the retriever will be automatically logged off a session after 30 minutes. This should allow sufficient exploration of all the applicable rules and, perhaps, another TLI, if there was a mistake in selecting the first TLI. After experience, this time limit can and will be adjusted upward or downward.

Software and instructional materials are being developed to assist in correcting as many problems as possible before tariffs are filed. This should minimize errors and rejections. In order that a carrier can determine that a filing session has been successful, however, it will be allowed access to (only) its own filing in the non-public review file and to consult a special message screen developed for this purpose. The fewer the errors, the easier it is for all concerned.

The *ATFI System* design will also provide for user identification and monitoring of utilization so that action can be taken to prevent access abuses by any individual or group.

If there are any further developments or changes to the controls and procedures governing remote access, the *Commission* will continue to keep Congress promptly apprised.

VI SECTION 18 STUDY

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

In September 1989, the *Commission* submitted the *Section 18 Report on the Shipping Act of 1984 ("Report")* to Congress and the *Advisory Commission on Conferences in Ocean Shipping ("Advisory Commission")*. The *Report* presented a detailed evaluation, including supporting data and analyses, of the impact of the *1984 Act* on the international shipping industry. It was the product of a five-year study by the *FMC* mandated by Congress in section 18 of the *1984 Act*, and addressed a set of specific issues that Congress believed would be important in assessing the regulatory reforms embodied in the *1984 Act*. In particular, the *FMC* was required by section 18(a) of the Act to collect and analyze data on (1) increases or decreases in the level of tariffs; (2) changes in the frequency or type of common carrier services available to specific ports or geographic regions; (3) the number and strength of independent carriers in various trades; and, (4) the length of time, frequency and cost of major types of *FMC* regulatory proceedings.

Congress also identified three specific topics in section 18(c)(3) of the *1984 Act* that the *FMC* should address in its *Report*: (1) the advisability of adopting a system of tariffs based on volume and mass of shipment; (2) the need for antitrust immunity for ports and marine terminals; and, (3) the continuing need for the statutory requirement that tariffs be filed with and enforced by the *FMC*.

The *Report* was also transmitted to the *Department of Justice*, the *Department of Transportation* and *Federal Trade Commission*. The three aforementioned agencies also submitted their own analyses on the impact of the *1984 Act* to Congress and of the *Advisory Commission*.

In FY 1990, the *Commission* continued to gather data to update the information contained in the *Report*. These data may be useful to the *Advisory Commission* as it conducts its study.

The *Advisory Commission* is charged with conducting a comprehensive study of, and making recommendations concerning, conferences in ocean shipping. The study shall specifically address whether the Nation would be best served by prohibiting conferences, or by having closed or open conferences. The *Advisory Commission* shall, within one year after its establishment, submit to the President and to Congress a final report containing a statement of findings and conclusions, including recommendations for such administrative, judicial and legislative actions as it deems advisable.

VII

THE FOREIGN SHIPPING PRACTICES ACT OF 1988

A. THE STATUTE

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

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

B. ACTIONS TAKEN

On July 21, 1989, the *Commission* initiated an investigation under the *FSPA* of certain doing-business restrictions of Taiwan authorities which appeared to adversely affect the intermodal operations of U.S. carriers serving the United States/Taiwan trade. On November 16, 1989, the *Commission* issued a Report and Order which discontinued this proceeding based on commitments which appeared to resolve certain shipping issues, anticipated progress on other issues, and the absence of any request for specific sanctions against foreign carriers.

The *Commission* subsequently issued an information demand order under the *FSPA* on December 26, 1989,

regarding progress in improving these conditions in the U.S.-Taiwan oceanborne trade. Comments were submitted in response to this order and provided the basis for a determination to issue a supplemental order requiring additional information regarding the nature of these conditions, the status of efforts to alleviate them, and the existence of any adverse effect on the U.S. carriers occasioned by the restrictions.

On October 18, 1990, the *Commission* invoked the *FSPA* in issuing an order requiring U.S.-flag and Japanese-flag carriers to provide information concerning shipping conditions in the U.S.-Japan trade. The *Commission's* inquiry was prompted by the Japan Harbor Transportation Association levying a charge known as the Harbor Management Fund, which is assessed against U.S. carriers and appears unrelated to any maritime service provided to those carriers. Responses were filed in compliance with the December 17, 1990, deadline, and *Commission* staff is evaluating the need for further formal action under the *FSPA* or other statutory authority.

On November 29, 1990, the *Commission* instituted an *FSPA* inquiry into shipping conditions in the U.S./Korea trade. U.S. and Korean-flag carriers in that trade were ordered to provide information about the possible evidence and effect of unfavorable or adverse conditions created by doing-business restrictions and practices of the Republic of Korea. Prior commercial and governmental negotiations to address complaints of U.S.-flag carriers appear not to have generated movement toward a resolution. The carriers and other interested parties were given 60 days to submit a report to the *Commission* on topics including trucking rights, branch office functions, rail service access, container terminal ownership and operations, terminal equipment ownership and discriminatory port charges.

In November, 1990, the *Commission* also determined to issue information demand orders pursuant to the *FSPA* on the subject of restrictions imposed by the People's Republic of

China ("PRC") affecting the operations of U.S.-flag carriers in the U.S.-PRC trade. Despite assurances made in the course of discussions between the U.S. and the PRC, the *Commission* is concerned about the apparent lack of progress in easing these restrictions, which include limitations on U.S. carrier branch office activities, non-recognition of U.S. carrier tariffs, restrictions on port service and inland operations, and excessively high or discriminatorily applied charges for various PRC-controlled services.

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

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

The data which the staff used to derive the *Commission's* list of top twenty partners were furnished by the Bureau of the Census ("Census"). The Census data distinguish between liner, tramp, tanker, and dry cargo service. Census defines liner service as that "type of service offered by a regular line operator of vessels on berth. The itineraries and sailing schedules of vessels in liner service are predetermined and fixed." The data supplied to the *Commission* by Census are intended to exclude all non-liner shipments in accordance with this definition.

The export data are compiled primarily from Shipper's Export Declarations; while the import data are compiled from the import entry and warehouse withdrawal forms. Both types of documents are required to be filed with U.S. Customs officials. These data are subsequently forwarded to Census. Both export and import statistics exclude: shipments between

the U.S. possessions, shipments of mail or parcel post, exports and imports of vessels themselves, and other transactions such as military household goods shipments, bunker fuels and other supplies, intransit shipments through the United States, etc.

The most recent year for which Census data were available to the *Commission* is calendar year 1989. The table on the next page indicates the twenty foreign countries which generated the largest volume of oceanborne liner cargo in bilateral trade with the United States in 1989. The figures in the table represent each country's total United States liner imports and exports in thousands of long tons.

Top Twenty U.S. Liner Cargo Trading Partners (1989)

<u>Rank</u>	<u>Country</u>	<u>Tons</u> <u>(000's)</u>
1	Japan	16,006
2	Taiwan	8,352
3	Republic of Korea	5,633
4	Federal Republic of Germany	4,252
5	China (PRC)	3,397
6	United Kingdom (Incl. N. Ireland)	3,240
7	Italy	3,084
8	The Netherlands (Holland)	2,606
9	France	2,422
10	Hong Kong	2,390
11	Brazil	2,197
12	Belgium	2,115
13	Australia	1,794
14	Spain	1,686
15	Thailand	1,559
16	Indonesia	1,494
17	Philippines	1,207
18	India	1,161
19	Singapore	1,152
20	Sweden	873

*Source: U.S. Department of Commerce, Bureau of the Census.
Figures listed above are based on monthly data provided by
Census and are subject to revision.*

The top twenty trading countries were the same in calendar year 1989 as in the previous year; however, their rankings did change slightly. China (PRC) displaced Italy as the fifth ranked country for 1989, and Italy slipped to the seventh position. In 1988, China (PRC) was ranked as the sixth top trading partner with the U.S. in terms of liner cargo. The United Kingdom moved upward to the sixth position in 1989 from the seventh in 1988. The rankings for France and Hong Kong are reversed in 1989 from what they were in the previous calendar year. The rankings of the top 11 through 20 countries changed moderately between the two years.

In 1989, Census separated the import and export data for the countries of Belgium and Luxembourg into two distinct groups under a new system of four digit country codes. Prior to this point, the two countries were combined under the same three digit country code. Total liner cargo moved between the U.S. and Luxembourg amounted to almost 94 thousand long tons in 1989. The exclusion of the Luxembourg data caused Belgium's ranking among the top twenty countries to drop by one position.

VIII

**SIGNIFICANT
OPERATING
ACTIVITIES**

BY

ORGANIZATIONAL UNIT

A. OFFICE OF THE SECRETARY

1. General

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

The Secretary's Office also participates in the development of rules designed to reduce the length and complexity of formal proceedings, and participates in the implementation of legislative changes to the shipping statutes. During fiscal year 1990:

- The Office planned for a more comprehensive automated docket management system to be used in conjunction with the *Commission's* local area

network, which would link offices throughout the *Commission*.

- Refinements were made to the *Commission's* Rules of Practice and Procedure to resolve areas of ambiguity and uncertainty, and *Commission* regulations were formatted for agency-wide use on the local area network.
- The *Commission* heard oral argument in two formal proceedings and issued decisions concluding 17 formal proceedings. Five formal proceedings were discontinued or dismissed without decision, while nine initial decisions of an Administrative Law Judge became administratively final without *Commission* review. The *Commission* also concluded 110 special docket applications, 15 informal dockets which involve claims sought against carriers for less than \$10,000, and 24 applications to correct service contracts. During the same period, the *Commission* issued final rules in ten rulemaking proceedings.
- Four rulemaking proceedings and three formal petitions were pending before the *Commission* at the end of the year. Final decisions in these matters are anticipated in fiscal year 1991.
- Office staff participated in a number of *Commission* projects, including strategic planning, automation involving the local area network and ATFI, and refinement of internal management controls.
- A plan was developed for converting paper records to microfiche.

2. Office of Informal Inquiries and Complaints and Informal Dockets

This Office coordinates the informal complaint handling system throughout the *Commission*. A total of 1,342 complaints and information requests were processed in fiscal year 1990. Recoveries to the general public of overcharges, refunds and other savings attributable to the complaint handling activities amounted to \$176,223, a 29 percent increase over the amount recovered the previous fiscal year. Since 1981, this Office has helped complainants recover over \$2,500,000.

The Office coordinated meetings between maritime industry representatives and *Commission* officials, and supplied copies of procedures, dockets and other information requested by the general public. During fiscal year 1990, this Office responded to 780 such telephone requests and inquiries. The Office maintained liaison with members of the President's Consumer Affairs Council, in which it participated throughout the fiscal year.

In addition, the Office is responsible for the initial adjudication of reparation claims for less than \$10,000 that are filed by shippers against common carriers by water engaged in the foreign and domestic offshore commerce of the United States. These claims must be predicated upon violations of the *1916 Act*, the *1984 Act*, or the *1933 Act*. The vast number of claims received under this program constitute shippers' requests for freight adjustments arising from alleged overcharges by carriers. During fiscal year 1990, 51 claims were filed. During the same period 15 informal docket claims were concluded by the Office, while four others became formal dockets. There were 32 pending cases at the close of the fiscal year.

During fiscal year 1990:

- **The Office transferred data from complaint files covering 1981 through 1990 to a new electronic database. This system permits office staff to identify chronic problems and compile data on resolution techniques.**
- **The Office developed new cooperative networks involving federal, state and local authorities, as well as private sector entities, to locate cargo belonging to both private individuals and business firms. These cargoes were lost due to carrier defaults and, in some cases, fraud.**

B. OFFICE OF ADMINISTRATIVE LAW JUDGES

1. General

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

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

At the beginning of fiscal year 1990, 58 proceedings were pending before Administrative Law Judges. During the year, 120 cases were added, which included one proceeding remanded to Administrative Law Judges for further proceedings. The judges held 10 prehearing conferences, formally settled two proceedings, dismissed or discontinued 12 proceedings, and issued three initial decisions in formal proceedings, and 108 initial decisions in special docket applications.

2. Commission Action

The *Commission* adopted four special docket decisions, partially adopted one special docket decision, and 93 special docket decisions became administratively final.

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

American Star Lines, Inc., National Transatlantic Lines of Greece S.A., and Dimitri Anninos -- Possible Violations of Passenger Vessel Certification Requirements [Docket No. 89-11].

This proceeding was instituted by the *Commission* to determine whether or not any or all of the three respondents had violated section 3(a) of Public Law 89-777, 46 U.S.C. app. 817(e) and/or the *Commission's* regulations (46 C.F.R. 540.3). The specific issues presented were as follows:

1. The statute and regulations present the issue of whether or not the respondents arranged, offered, advertised or provided passage on a vessel accommodating fifty or more passengers at United States ports without establishing their financial responsibility or posting a bond or other security. Under the facts presented in the proceeding, the Initial Decision held that each of the respondents had violated the law and regulations by engaging in the pertinent activity without establishing financial responsibility or posting adequate bond.

2. Where the violation has occurred, the issue is then raised as to the penalties which should be imposed. The facts in the proceeding indicated that the respondents knew of the law's requirements, had been involved in similar violations in previous years and had collected substantial deposits and fares for cruises that were cancelled without making full restitution to customers or their agents. The Initial Decision imposed the maximum penalties allowable (\$26,200) on each of the respondents.

Gulf Container Line (GCL), BV v. Port of Houston Authority [Docket No. 89-18].

This proceeding concerns the complaint of an ocean common carrier against the respondent port authority's practices and tariff provisions regarding its monitoring and plug-in services for refrigerated containers (reefers). The complainant was not satisfied with the respondent's monitoring of the condition (temperature) of complainant's reefers, nor was complainant satisfied with the respondent's plug-in electrical services, where special electrical voltage adapters were required to be connected to complainant's reefers. The Initial Decision found that certain of respondent's practices were not authorized by its tariff provisions; and that the tariff provisions, if construed as respondent wishes, are unreasonable practices and unlawful.

Matson Navigation Company, Inc. -- Proposed General Rate Increase of 3.6 Percent Between United States Pacific Coast Ports and Hawaii Ports [Docket No. 90-09].

This case was the first formal investigation conducted by the *Commission* into a carrier's rates and revenues in five years. It involved a general rate increase of 3.6 percent filed by Matson Navigation Company, the major carrier serving the domestic offshore trade to and from the State of Hawaii. The rate increase was protested by the State and by a shipper and an association of shippers. These parties and the *Commission's* staff raised a number of critical issues relating to Matson's forecasted revenues, such as its investment in new ships, its depreciation methodology, its allocation of expenses to the Hawaiian trade, its efficiencies, and its forecasted rate of return on its investment, as determined by its risks and its debt. In addition, the *Commission's* regulation governing Matson's accounting was challenged. Under the expedited hearing procedure required by law, 16 witnesses tendered multiple

rounds of expert testimony together with numerous financial exhibits within a period of a few months. An initial decision of 196 pages was issued shortly thereafter, in which it was held that Matson's revenue forecasts were reasonable, that Matson had not overinvested in the trade nor operated inefficiently, that the *Commission's* accounting regulation had been properly applied, that Matson was slightly more risky than the average U.S. manufacturing corporation, that Matson should be allowed to seek a return on its investment ranging from 12.68 to 12.93 percent in view of increased competition, and that the 3.6 percent rate increase had been justified.

Judges also issued initial decisions in **Special Docket Nos. 1675, 1695, 1704, 1706, 1708, 1709, 1733, 1734, 1735, 1739, 1740, 1752, 1753, 1756, 1757, 1758, 1759, 1760, 1761, 1762, 1765, 1766, 1767, 1769, 1770, 1771, 1772, 1773, 1774, 1777, 1778, 1779, 1780, 1781, 1782, 1783, 1784, 1785, 1786, 1787, 1788, 1789, 1790, 1791, 1792, 1793, 1794, 1795, 1796, 1797, 1798, 1799, 1800, 1801, 1802, 1803, 1804, 1805, 1806, 1807, 1808, 1809, 1810, 1811, 1812, 1813, 1814, 1815, 1816, 1817, 1818, 1819, 1820, 1821, 1822, 1823, 1824, 1825, 1826, 1827, 1828, 1829, 1830, 1831, 1833, 1834, 1835, 1836, 1838, 1839, 1844, 1845, 1846, 1847, 1848, 1849, 1850, 1852, 1853, 1855, 1857, 1860, 1861, 1862, 1863, 1868, 1869, and 1874** described under "Decisions of the *Commission*."

4. Pending Proceedings

At the close of fiscal year 1990, there were 53 pending proceedings, of which three were investigations initiated by the *Commission*. The remaining proceedings were instituted by the filing of complaints or applications by common carriers by water, shippers, conferences, port authorities or districts, terminal operators, trade associations, and stevedores.

C. Office of the General Counsel

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

1. Decisions and Rulemakings

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

Petition of South Europe/U.S.A. Freight Conference American Trucking Associations and ATA Intermodal Council for Rulemaking to Prescribe Maximum Container Weights [Petition No. P3-89] and *Petition of Transpacific Westbound Rate Agreement, American Trucking Associations and ATA Intermodal Council for Rulemaking to Eliminate Certain "Per Container" Rates Conferring Preferences on Shippers Who Overload Containers*, [Petition No. P4-89], 25 S.R.R. 956 (June 5, 1990).

The *Commission* determined to deny the above-captioned Petitions, which, respectively, requested a rulemaking proceeding to prescribe maximum container weights for various size containers, and to eliminate "per container" rates on

specific commodities which have been identified as being prone to overloading. The *Commission* concluded that the Petitions themselves were flawed, in that the proposals urged might not discourage the very practices sought to be prevented. Also, it was determined that the *Commission* was essentially being petitioned to interfere in a Congressionally created compact between the federal government and the states.

Security for the Protection of the Public, Maximum Required Performance Amount, [Docket No. 90-01], 25 S.R.R. 1017 (August 17, 1990).

The *Commission* amended its passenger vessel financial responsibility regulations (46 C.F.R. Part 540), which had specified a \$10 million maximum surety amount as evidence of financial responsibility for indemnification of passengers for nonperformance of transportation. The *Commission* determined that revenue levels for some larger operators far exceed \$10 million, and accordingly raised the ceiling to \$15 million. The Final Rule also requires every operator to submit a statement of its highest unearned passenger revenue for each month in the six-month reporting period.

Security for the Protection of the Public, [Docket No. 89-25], 25 S.R.R. 658 (January 16, 1990).

The *Commission* amended its passenger vessel financial responsibility regulations (46 C.F.R. Part 540) which require surety bonds and guaranties for financial responsibility for nonperformance and casualty. The amended rules provide that the *Commission* may permit, for good cause, deviations from bond and guaranty language prescribed in the rules' standard forms. The new regulations will afford greater flexibility for the *Commission* to consider surety bonds and guaranties which, because of the particular circumstances of the applicant, may differ from the standard prescribed language.

Service Contracts; Automatic Discount Provisions,
[Docket No. 89-19], 25 S.R.R. 729 (February 7, 1990).

Two carriers filed a petition for declaratory order, or in the alternative, a rulemaking, seeking a determination that service contracts may not contain automatic discount provisions ("ADPs"), a type of most-favored-shipper clause that permits a service contract rate to be changed by a stated percentage below other published rates. The *Commission* denied the petition for a declaratory order because petitioners were alleging violations of the *1984 Act* and seeking a coercive ruling against another carrier's practice. The *Commission* also declined to commence a rulemaking proceeding because ADPs are as certain as most-favored-shipper clauses previously found lawful and would not cause any shipper confusion.

China Ocean Shipping Co. - Petition for Declaratory Order and Exemption and Request to Correct Error in Service Contract, [Service Contract Docket No. 89-16],
25 S.R.R. 558 (October 31, 1989).

China Ocean Shipping Co. ("COSCO") sought relief from its agent's tardy filing of a service contract. The *Commission* held that its declaratory order procedures were not an appropriate form of relief. The *Commission* also found its exemption procedures inappropriate since COSCO was seeking an exemption for conduct that already occurred. Lastly, the *Commission* held that the procedures for correction of clerical or administrative errors in the essential terms of a service contract did not apply to this type of situation.

Actions To Address Adverse Conditions Affecting United States Carriers That Do Not Exist For Foreign Carriers in the United States/Taiwan Trade, [Docket No. 89-16], 25 S.R.R. 599 (November 16, 1989).

The *Commission* issued a Report and Order discontinuing this proceeding on the basis of the satisfactory resolution of certain issues, anticipated progress on other issues, and the absence of any request for specific sanctions against foreign carriers. The *Commission* stated its intention to continue to monitor the trade to determine whether any impediments to shipping were being raised and whether the commitments made were implemented.

Matson Navigation Company, Inc. - Transportation of Cargoes Between Ports and Points Outside Hawaii and Islands Within the State of Hawaii, [Docket No. 89-2], 25 S.R.R. 904 (April 24, 1990).

The *Commission* granted in part and denied in part a petition filed by Matson Navigation Company, Inc., a common carrier serving the interstate trade between the mainland United States and Hawaii. Matson asked for a ruling that certain cargo, that originates on the mainland or in a foreign country, is transported to Honolulu on the island of Oahu, is stored for a period of time in warehouses, and then subsequently is shipped from Oahu to one of the other Hawaiian "neighbor islands," remains in interstate or foreign commerce through its entire movement and can lawfully be handled by Matson on the Oahu neighbor island segment pursuant to Matson's *FMC* tariffs. On the basis of its interpretation of *1984 Act* and Interstate Commerce Act case law, the *Commission* granted Matson's petition with respect to one of the shippers cited. However, it found that there was insufficient evidence of a continuous and persisting intent on the part of two other shippers to ship their cargo from the mainland through Oahu to a neighbor island in an

uninterrupted stream of interstate commerce. Accordingly, the *Commission* denied the petition with respect to those two shippers.

***International Association of NVOCC's v. Atlantic Container Line*, [Docket Nos. 81-5, 88-14, 88-18, 88-27 and 89-12], 25 S.R.R. 734 (February 5, 1990) and 25 S.R.R. 982 (July 13, 1990).**

The *Commission* dismissed for lack of jurisdiction several multi-employer collective bargaining associations that had been named as respondents in reparations proceedings stemming from the outlawed "50 Mile Rules on Containers." The Rules had originated in labor negotiations between the bargaining associations and the International Longshoremen's Association. However, the *Commission* found that the provisions of the *1984 Act* in issue did not apply to the associations, that it could not assert jurisdiction over the associations on the ground that they were "responsible" for the Rules, and that Congress intended to exempt the associations from *FMC* regulation when it enacted the Maritime Labor Agreements Act of 1980, which was carried over into the *1984 Act*.

In the second decision, the *Commission* also denied a motion by the carrier respondents arguing that, because the Rules were the result of collective bargaining agreements with the International Longshoremen's Association, the Maritime Labor Agreements Act of 1980 ("MLAA") requires dismissal of those counts in the complaints alleging unlawful concerted activities. Distinguishing its previous order dismissing the collective bargaining associations, the *Commission* found that the "tariff matter exception" of the MLAA preserves Shipping Act jurisdiction over implementation of the Rules by carriers through their tariffs, whether this was done by individual carriers acting alone or by groups of two or more carriers acting in concert.

Inquiry into Laws, Regulations and Policies of the Government of Ecuador Affecting Shipping in the United States/Ecuador Trade, [Docket No. 89-7], 25 S.R.R. 651 (January 16, 1990).

The *Commission* issued a Final Rule finding that unfavorable conditions exist in the U.S./Ecuador oceanborne trade as a result of certain laws and decrees of the Government of Ecuador. Further, in order to meet or adjust the unfavorable conditions found, the *Commission* assessed a fee of \$50,000 per outbound voyage from the United States to Ecuador on Maritima Transligna, S.A., an Ecuadorian-flag carrier. Subsequently, the *Commission* was advised by Transligna that it had sold the Ecuadorian-flag parcel tanker it had been operating in the trade.

Rule on Effective Date of Tariff Charges, [Docket No. 88-19, 25 S.R.R. 1049 (August 22, 1990).

The *Commission* issued a Final Rule requiring common carriers to publish in their tariffs a rule specifying that the rates, rules and charges applicable to a given shipment must be those published and in effect on the date the cargo is received by the carrier or its agent, including a connecting carrier in the case of an intermodal through movement.

2. Litigation

The General Counsel represents the *Commission* in litigation before courts and other administrative agencies. Although the litigation work largely consists of representing the *Commission* upon petition for review of its orders filed with the U.S. Courts of Appeals, the General Counsel also participates in actions for injunctions, enforcement of *Commission* orders,

actions to collect civil penalties, and other cases where the *Commission's* interest may be affected by litigation.

The following are representative of matters litigated by the Office:

***A/S Ivarans Rederi v. U.S.*, 895 F.2d 1441, 25 S.R.R. 783 (D.C. Cir. February 1990).**

The *Commission* had denied a complaint of a member of a cargo revenue pooling agreement in the Northbound Brazil/U.S. Atlantic Coast trade that an interpretation of the agreement by its other members violated the *1984 Act* by carrying out actions unauthorized by the agreement. The *Commission* found, contrary to complainant's contentions, that the proper interpretation of the agreement was that the failure of a major carrier party to the agreement to make the required number of sailings under the agreement did not result in the agreement's suspension, but only in the reduction of that carrier's pool share. The United States Court of Appeals for the District of Columbia Circuit reversed the *Commission*, holding that the clear language of the agreement required its suspension when a major party failed to make its required sailings.

***American Association of Cruise Passengers, Inc. v. Carnival Cruise Lines, Inc.*, 911 F.2d 786, 25 S.R.R. 1132 (D.C. Cir. August 24, 1990).**

In a private treble damage antitrust action brought by a discount travel club against a number of ocean passenger lines, the United States Court of Appeals for the District of Columbia Circuit held that the plaintiff's allegations of a group boycott constituted charges of *1984 Act* violations within the *Commission's* exclusive jurisdiction, and rejected the plaintiff's argument that carriers providing round-trip ocean "cruises" from U.S. ports are not passenger common carriers within the scope

of the *1984 Act*. The *Commission* had filed an *amicus curiae* brief urging the result reached by the court.

***Chemical Manufacturers Association v. Federal Maritime Commission*, [Docket Nos. 87-26 and 88-1], 900 F.2d 311, 25 S.R.R. 871 (D.C. Cir. April 6, 1990).**

The United States Court of Appeals for the District of Columbia Circuit affirmed the *Commission's* Report and Order in which the *Commission* concluded that the independent action provision of the *1984 Act* does not apply to loyalty contracts.

***Foreign-to-Foreign Agreements -- Exemption*, [Docket No. 87-24], 25 S.R.R. 455 (October 11, 1989).**

The *Commission* denied petitions for reconsideration of an order served on December 9, 1988, 24 S.R.R. 1448, holding that carrier agreements governing the carriage of U.S. exports or imports through Canadian or Mexican ports were not subject to the agreement filing and antitrust immunity provisions of the *1984 Act*. The petitions for reconsideration were filed by "mixed commerce" conferences that serve U.S. as well as Canadian ports. The petitions argued that the entire conference agreement, not just those provisions dealing with U.S. port calls, were required to be filed with the *Commission* pursuant to the *1984 Act*. The *Commission* rejected these arguments, relying on the 1984 Act's definition of a regulated "common carrier" and the legislative history of the definition. The *Commission's* orders are currently under review by the U.S. Court of Appeals for the Ninth Circuit in No. 89-70530, *Transpacific Westbound Rate Agreement v. FMC*. Briefing has been completed and oral argument is pending.

United States Lines (S.A.) Inc. - Petition For Declaratory Order Re: The Brazil Agreements, [Docket No. 87-22], 25 S.R.R. 755 (February 9, 1990).

The *Commission* determined that cargo in "alternate coast port service," carried by water from Brazil, discharged from a vessel at a United States Atlantic Coast port, then transported overland to a United States Gulf port, and moving under a bill of lading showing a Gulf port as the destination port, was not included in either Atlantic or Gulf revenue pooling agreements prior to modification of the Gulf Agreement in April 1986, which specifically placed revenue from such cargo into the Gulf Agreement. The case is now pending review by the United States Court of Appeals for the District of Columbia Circuit in No. 90-1169, *A/S Ivarans Rederi v. U.S.A. & F.M.C.*

Tobias E. Seaman v. Federal Maritime Commission, No. 89-1407 D.C. Cir. March 23, 1990.

The United States Court of Appeals for the District of Columbia Circuit affirmed the *Commission's* Report on Remand in *Matson Navigation Co., Inc. Proposed Overall Rate Increase of 2.5 Percent Between United States Pacific Coast Ports and Hawaii Ports*, No. 85-24, 25 S.R.R. 83 (F.M.C. April 28, 1989), in which the *Commission* further explained (1) why it did not adjust the 11.5 percent benchmark rate of return for Matson's relative risk and current trends in rates of return and the cost of money and (2) its decision not to reopen the record to take further evidence on these issues.

United States of America and Federal Maritime Commission v. Martyn C. Merritt, et al., S.D.N.Y., No. 88 Civ. 6253.

The United States and the *Commission* sought enforcement of a *Commission* order assessing civil penalties

totalling \$335,000 against Martyn C. Merritt and numerous corporations created and controlled by him and ordering Martyn C. Merritt and the named corporate defendants to cease and desist from violating sections 16, Initial paragraph and 18(b)(3) of the 1916 Act. Although the violations occurred and the *Commission's* proceeding was initiated before passage of the 1984 Act, the cease and desist order was entered under the 1984 Act. The Court denied defendants' motion to dismiss the case on April 12, 1990.

3. Significant Ongoing Activity

Status Report on Laws, Rules, Regulations, Policies and Practices of Taiwan Affecting Shipping in the United States/Taiwan Trades, Order, 25 S.R.R. 645 (December 26, 1989).

The *Commission* issued an order pursuant to the *FSPA* requiring certain named carriers to report on the status of shipping conditions in the United States/Taiwan trade. The reports were submitted by the named carriers, reflecting the status of shipping conditions as of June 1, 1990, and are being evaluated by the staff.

4. International Affairs

Several reports, recommendations and rules were prepared by the General Counsel's Office and submitted to the *Commission* on a matter arising under section 19(1)(b) of the *1920 Act*. The *Commission* issued a Final Rule pursuant to section 19 finding conditions unfavorable to shipping in the U.S./Ecuador trade due to cargo reservation laws and decrees implemented by the Government of Ecuador. The *Commission* assessed a fee of \$50,000 per outbound voyage from the United States to Ecuador on Maritime Transligna, S.A., an Ecuadorian-flag carrier. (See Docket No. 89-7, above). In addition, the

Commission continued its investigation under the *FSPA*, 46 U.S.C. app. § 1710a, into alleged "doing business" restrictions and practices of Taiwan authorities which appeared to adversely affect U.S. carriers (See Docket 89-16, above). The proceeding was discontinued based on progress made in the trade. In December 1989, the *Commission* issued an information demand order pursuant to the *FSPA* requiring certain carriers in the U.S./Taiwan trade to report on the status of shipping conditions as of June 1990. (See Ongoing Activities above, *Status Report Laws, Rules, Regulations, Policies and Practices of Taiwan Affecting Shipping in the United States/Taiwan Trade*, Order 25 S.R.R. 645 (December 26, 1989)).

Further, the *Commission* continues to monitor the impact of the laws, regulations and policies of the Governments of Korea and the People's Republic of China, which may unfairly burden or restrict the operations of certain ocean common carriers, including U.S. flag carriers operating in the U.S. trades with these countries, and the U.S. importers and exporters which depend on their services. The *Commission* is monitoring the impact of these nations' laws, regulations and policies to determine whether action under section 19 or the *FSPA* is warranted. Of particular concern to the *Commission* are indications that U.S.-flag and possibly other carriers are prevented from conducting shipping and ancillary activities in these trades. In addition, the *Commission* is monitoring developments relating to a fee levied by the Japan Harbor Transportation Association on U.S. and other carriers serving ports in Japan.

The Office of the General Counsel participated in interagency groups and international maritime discussions, particularly as technical advisors to the Interagency Maritime Policy Group, whose other members include representatives of the U.S. Departments of Transportation, State, Commerce, and Justice, and the Office of the U.S. Trade Representative. In addition, the Office served as liaison on international shipping matters between the *Commission* and other U.S. Government

agencies, as well as private parties. The Office also coordinated and participated in briefings of foreign visitors, including European Commission representatives, to the *Commission*.

Finally, under the *Commission's* controlled carrier program, several common carriers were under consideration during the fiscal year for controlled carrier status.

D. OFFICE OF EQUAL EMPLOYMENT OPPORTUNITY

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

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

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

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

The Director of Equal Employment Opportunity arranges for counseling of employees who raise allegations of discrimination; provides for the investigation, hearing, fact-finding, adjustment, or early resolution of such complaints of

discrimination; accepts or rejects formal complaints of discrimination and prepares proposed dispositions of such formal complaints; and, monitors and evaluates the program's impact and effectiveness.

Significant accomplishments in fiscal year 1990 include the following: (1) conducted EEO briefings for new employees; (2) planned, developed and coordinated extensive internal and external special emphasis programs for employee participation; (3) broadened the nationwide EEO information, training and counseling support network for the *FMC's* District Offices; (4) provided in-depth technical support and training for the *FMC*; (5) in concert with the Office of Personnel, developed and implemented targeted recruitment strategies in selected areas which have resulted in the effective hiring of qualified women, minorities and persons with handicapping conditions; (6) utilized external sources for EEO counselor training at no cost to the *FMC*; (7) increased minority and female representation in the professional and administrative series which has improved minority and female participation in agency decisionmaking; and, (8) improved the *FMC's* image and identity among Federal agencies by developing cooperative programs in the special emphasis areas.

During fiscal years 1991 and 1992, the Office will continue its existing programs and initiate activities designed to increase management and employee understanding of EEO principles and participation in EEO activities.

E. OFFICE OF INSPECTOR GENERAL

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

It is the duty and responsibility of the Office of Inspector General to:

- **Provide policy direction for and to conduct, supervise, and coordinate audits and investigations relating to the *Commission's* programs and operations.**
- **Review existing and proposed legislation and regulations relating to the *Commission's* programs and operations and to make recommendations concerning the impact of such legislation or regulations on the economy and efficiency in, and the prevention and detection of fraud and abuse in, the administration of the *Commission's* programs and operations.**
- **Recommend policies for, and to conduct, supervise, or coordinate other activities carried out or financed by the *Commission* for the purpose of promoting economy and efficiency in the administration of, or preventing and detecting fraud and abuse in, the *Commission's* programs and operations.**
- **Recommend policies for, and to conduct, supervise, or coordinate relationships between the *Commission* and other Federal agencies, state and local governmental agencies, and nongovernmental**

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

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

Significant accomplishments in fiscal year 1990 include the following:

1. Completed three significant audits, including audits of the *Commission's* small purchase activity, the travel program, and a contract to acquire internal ADP hardware - including the establishment of a local area network. Two reports were issued in final and one issued as a draft report. In addition, three operational reviews were conducted. Two investigations were also completed along with two informal investigative inquiries.
2. Continued implementation of the Inspector General Act Amendments of 1988 through formulation of internal policies and procedures for the Office. In this area, the *FMC's* Acting Chairman authorized the establishment of separate budget accounts for OIG travel, training and use of consultants. This helps assure the independence of the OIG with respect to funding for these activities.

3. Increased agency-wide awareness of the role of the OIG through issuance of circulars and memoranda. One example was the preparation of a handout designed to familiarize new employees with the functions and responsibilities of the Office.
4. Established a hotline procedure which can be used by anyone wishing to make a complaint concerning possible waste, fraud and abuse in *Commission* programs and operations. Included in the system is a procedure for the handling of calls after normal business hours.
5. Signed a Memorandum of Understanding with the Office of Inspector General at *GSA*, which agreement provides for criminal investigative assistance to the *Commission's* Inspector General as the need arises.
6. Participated as an active member of the Coordinating Conference of the President's Council on Integrity and Efficiency ("PCIE"). The Inspector General also serves on a number of committees established by that body.

In the next fiscal year it is anticipated that a number of significant audits will be issued, as well as surveys, and follow-up reviews. Investigations will be conducted as necessary. The *Commission's* Inspector General will continue his participation in the PCIE-Coordinating Conference which provides a forum for the exchange of views for the inspector general community.

F. OFFICE OF THE MANAGING DIRECTOR

The Office of the Managing Director, as a result of various *Commission* Orders, delegations of authority and other authorizations, is responsible to the Chairman for the direct administration and coordination of *Commission* staff activities and programs. This has been established to ensure the timely and proper achievement of *Commission* goals and objectives.

The Office provides direct administrative and technical supervision to the:

- Bureau of Trade Monitoring.
- Bureau of Domestic Regulation.
- Bureau of Economic Analysis.
- Bureau of Hearing Counsel.
- Bureau of Investigations.
- Bureau of Administration.

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

- Office of the Secretary.
- Office of the General Counsel.
- Office of Administrative Law Judges.
- Office of Equal Employment Opportunity.

The Office also provides administrative advice to the:

- Office of the Inspector General.

A significant achievement of the Office during FY 90 was the continued coordination of an enhanced enforcement program involving all operating Bureaus. A highlight of this program was the conclusion of a settlement agreement with a number of carriers in the Transpacific trades. The settlement agreement

included a record monetary payment to the *Commission* of \$20,455,950, disclosure of alleged wrongful or questionable trade practices, and development and participation in a self-policing compliance agreement. Follow-up investigations based on the transpacific trades disclosures are planned for FY 91. The initiation of preliminary investigative plans also was completed for new enforcement programs.

The Office is currently:

1. **Directing, under Commissioner Ivancie's oversight, the development and implementation of the agency's new Strategic Plan;**
2. **Ensuring staff coordination with the Controlled Carrier - Foreign Practices Task Force, under Commissioner Hsu's oversight.**
3. **Directing, under Commissioner Hathaway's oversight, follow-up activities relative to the report required by section 18 of the 1984 Act. The Office will also coordinate any staff assistance provided to the *Advisory Commission on Conferences in Ocean Shipping*;**
4. **Under Commissioner Quartel's oversight, guiding the development of the agency's *ATFI System* and monitoring the development of a *Commission-wide Local Area Network* which will ultimately be utilized for the *ATFI System*.**

The Office of the Managing Director's key objectives for fiscal years 1991 and 1992 are the continued coordination of staff efforts regarding the development of ATFI, the expansion of the enhanced enforcement program, implementation of the *Commission's Strategic Plan*, and coordination of staff assistance to the *Advisory Commission on Conferences in Ocean Shipping*.

G. BUREAU OF TRADE MONITORING

1. General

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

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

2. Surveillance (See Chapter III)

3. Types of Agreements

(a) Conference and Ratemaking Agreements

Conference and ratemaking agreements provide for the collective discussion, agreement and establishment of ocean freight rates and practices by groups of ocean carriers. Such agreements are limited to a geographic area or trade route. The *Commission's* rules currently do not distinguish between conference and rate agreements for purposes of determining applicability of the so-called "mandatory provisions."

During fiscal year 1990, the *Commission* concluded the processing of 111 conference and rate agreements, including amendments to existing agreements, pursuant to the *1984 Act*. There were 65 conference/rate agreements in effect at the end of the fiscal year.

(b) Pooling and Equal Access Agreements

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

Forty-nine pooling and/or equal access agreements and amendments were filed during fiscal year 1990 and 24 such agreements were in effect at the conclusion of the fiscal year. Fifteen agreements of this type have a significant impact on U.S. ocean liner commerce with Argentina, Brazil, Chile, Peru and Colombia.

(c) Space Charter and Sailing Agreements

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

During fiscal year 1990, 27 space charter and sailing agreements and amendments were filed under the *1984 Act*, and 115 were in effect at the conclusion of the fiscal year.

(d) Joint Service/Consortia Agreements

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

Twelve joint service/consortia agreements and amendments were filed during fiscal year 1990 and 37 such agreements were in effect at the conclusion of the fiscal year.

(e) Cooperative Working Arrangements

Cooperative working arrangements run the gamut from discussion agreements, which authorize the participants to discuss competitively-sensitive trade matters, to specialized inter-carrier operational undertakings which do not precisely fit the other categories reported above. Eighty-eight cooperative working agreements, and amendments to effective agreements,

were filed during fiscal year 1990, and 108 such agreements were in effect at the conclusion of the fiscal year.

(f) Other Agreement Activities

The Agreement Profile System, which was developed during fiscal year 1990, contains a wide range of data on each of the nearly 300 currently active agreements. In addition to the name and nine-digit number assigned to each agreement, the database includes expiration dates, memberships, principal authority of each agreement, geographic scope, and names and addresses of each agreement's filing attorney and administrator.

The *Commission* has published *Carrier Agreements in the U.S. Oceanborne Trades*, which provides a compendium of information about all carrier agreements filed with the *Commission* which were in effect as of March 31, 1990.⁴ For each agreement, the publication lists the name, number, type, geographic scope, principal kinds of authority, membership, name and address of filing counsel and, when applicable, administrative official. Agreements are cross referenced by name, type, geographic scope and membership.

4. Future Plans and Proposed Activities

The Bureau will concentrate its efforts in fiscal year 1991 on further developing its present monitoring programs, as well as exploring and developing new monitoring programs as they relate to the *1984 Act* and the *FSPA*. Additional reports generated through this effort will include an in-depth 6(g) audit program designed to evaluate the degree of anticompetitiveness generated by ocean carrier agreements and the development of

⁴ *Carriers Agreements in the U.S. Oceanborne Trades* is available for purchase from the National Technical Information Service (Publication PB90-238684).

profiles on the regulatory environment in selected foreign countries.

The Bureau's overall monitoring program will continue to focus on the systematic oversight of carrier and trade activity in areas relevant to the administration of the standards of the *1984 Act*. To this end, the Bureau plans to continue to refine its framework and methodology for providing in-depth monitoring of key issues and major trades, and analyzing agreement behavior under the standards of sections 5, 6(g) and 10 of the *1984 Act*.

The Bureau's 6(g) audit reports will provide comprehensive analyses of trade information and agreement activities; its trade studies will provide an overview of trade conditions between the United States and selected countries. The Bureau's controlled carrier reports support the *Commission's* activities under section 9 of the *1984 Act*. Specific monitoring of selected carrier agreements will also continue. In aggregate, the Bureau's monitoring reports and studies provide an up-to-date and detailed interpretation of evolving carrier and agreement activity, and changing trade conditions under the *1984 Act's* standards. Although they are informative in their own right, they are not an end in themselves. Rather, the report/study program develops a factual basis that can isolate and identify activity that may contravene the *1984 Act's* standards for appropriate follow-up by the Bureau or the *Commission* itself, as warranted by the circumstances of each case.

The Bureau anticipates continuing pre-effectiveness analysis of newly-filed agreements to determine if an agreement is likely to raise any section 5, 6(g) or 10 issues, or policy questions. The Bureau will also continue preparing recommendations to the *Commission* on more complex agreements or issues, and handle routine agreements under authority delegated by the *Commission*.

In support of its monitoring efforts, the Bureau will continue to maintain the databases used for the Work-in-Process System (WIPS) and the Required Reports Profile System (RRPS), as well as develop new programs for additional functions as needed.

The Bureau has designed and prepared an agreement database used to maintain information on agreements, and has produced the first annual publication of agreements on file with the *Commission*. The Bureau will continue updating this database for the next annual issue and develop appropriate programming to prepare the database for the *Commission's* LAN.

It is anticipated that the Bureau will continue to be involved in projects related to various investigative initiatives. The Bureau also expects to continue to be actively involved in rulemakings refining and/or clarifying the application of the *Commission's* regulations.

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

H. BUREAU OF DOMESTIC REGULATION

1. General

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

The Bureau is also responsible for the licensing of ocean freight forwarders under the provisions of section 19 of the *1984 Act*; and under Public Law 89-777, the certification of owners and operators of passenger vessels in United States trades with respect to the financial responsibility of such owners and operators to satisfy liability incurred by non-performance of voyages or for death or injury to passengers or other persons. Thus, the Bureau of Domestic Regulation is responsible for all tariffs filed by ocean common carriers and terminal operators; marine terminal agreements; service contracts; the licensing of ocean freight forwarders; and the certification of owners and operators of passenger vessel for financial responsibility.

The Bureau develops long-range plans, new or revised policies and standards, and rules and regulations with respect to its program activities. The Bureau also cooperates with other *Commission* components with regard to enforcement of the *Commission's* regulatory requirements.

2. Foreign Commerce, Service Contract and Tariff Activity

(a) Service Contracts

The *1984 Act* permits ocean common carriers and conferences of such carriers to enter into service contracts with shippers and/or shippers' associations. A service contract is defined in the Act as:

[A] contract between a shipper and an ocean common carrier or conference in which the shipper makes a commitment to provide a certain minimum quantity of cargo over a fixed time period, and the ocean common carrier or conference commits to a certain rate or rate schedule as well as a defined service level - such as, assured space, transit time, port rotation, or similar service features; the contract may also specify provisions in the event of nonperformance on the part of either party.

Each contract entered into under section 8(c) of the *1984 Act* must be filed confidentially with the *Commission* and, at the same time, a concise statement of its essential terms must be filed with the *Commission* and made available to the general public in tariff format. The essential terms must be offered to all similarly situated shippers.

The essential terms of a service contract include:

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

- **The commodity involved;**
- **The minimum volume;**
- **The line-haul rate;**
- **The duration;**
- **Service commitments; and**
- **Liquidated damages for nonperformance, if any.**

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

On February 7, 1990, the *Commission* instituted a compliance program to ensure that service contracts filed with it meet the necessary statutory and regulatory requirements. Specifically, the *Commission* announced that it would not accept service contracts which failed to contain mutually binding service and cargo commitments, or which contained meaningless liquidated damages provisions. The *Commission* also announced that its review of service contracts to measure compliance with the commitment and liquidated damages standards set forth in Circular Letter 1-89 disclosed the existence of so-called *force majeure* provisions which allowed the parties to terminate the contract, without appropriate damages, for virtually any reason. The *Commission* concluded that, to the extent that *force majeure* provisions excuse the parties from the contract's commitments for unclear or unspecified reasons, no meaningful commitments exist in the first instance.

During the last half of the fiscal year, the Bureau, with the *Commission's* approval, undertook a program to reject those service contracts which failed to provide meaningful service commitments, or which otherwise did not conform with the *1984 Act* and the *Commission's* implementing regulations. Under this

program, 650 notices of intent to reject were issued. In substantially all cases, the contracts were revised to conform to the *Commission's* requirements. In the few remaining cases, the carrier was advised that the contract was rejected and that any services performed under the contract would have to be rerated in accordance with the otherwise applicable tariff provisions for such services.

During fiscal year 1990, the Bureau received 6,713 service contracts. These contracts were filed by 66 individual ocean common carriers and 26 conferences. The contracts involved approximately 10,479 shippers and the entire scope of the U.S. foreign commerce, both inbound and outbound.

(b) Controlled Carriers

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

The Bureau of Domestic Regulation monitors the tariff filings of controlled carriers to assure that the required notice for rate increases and decreases is given. During fiscal year 1990, controlled carriers filed approximately 8,300 tariff pages. The Bureau also acted on eight special permission applications filed by controlled carriers.

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

Every common carrier by water in the foreign commerce of the United States and ocean freight forwarder is required by section 15(b) of the *1984 Act* (46 U.S.C. app. 1714) and 46 CFR Part 582, to file a sworn Certification of Company Policies and Efforts to Combat Rebating in the Foreign Commerce of the United States. This certification is to be filed with the Secretary of the *Commission* annually on or before December 31 and is to be signed by the Chief Executive Officer of the common carrier or ocean freight forwarder. Section 15(b) and 46 CFR 582.1(b) provide that failure to file the required certification may result in a civil penalty of \$5,000 for each day the violation continues. The information obtained under the anti-rebating program is used to maintain continuous surveillance over common carrier and ocean freight forwarder activities and to provide a deterrent against rebating practices.

An automated program is in place to insure the receipt of certifications from all those required to file. During the year, approximately 2,600 certifications were filed in a timely manner. Nevertheless, the *Commission* has experienced chronic non-compliance with these filing requirements. In conjunction with the Bureau of Hearing Counsel, the Bureau undertook an enforcement program with respect to non-filers of certifications. Enforcement actions were taken against five carriers during fiscal year 1990, resulting in fines totalling \$83,000. Enforcement action against a sixth carrier was pending at year-end.

Pursuant to its decision in Docket No. 90-11, *Anti-Rebate Certification Tariff Cancellation and Rejection and License Suspension and Rejection*, effective September 28, 1990, the *Commission* amended its anti-rebate certification and tariff regulations to provide for the cancellation and rejection of tariffs of common carriers that do not file required anti-rebate certifications. The *Commission* also amended its anti-rebate certification and freight forwarder regulations to provide for the suspension of licenses and the rejection of applications for

an ocean freight license where the applicant has not filed the required anti-rebate certifications.

(d) Tariff Processing

During fiscal year 1990, the Bureau of Domestic Regulation received and reviewed 774 new foreign tariffs, of which 131 were rejected. In addition, approximately 680,000 pages amending existing tariffs and 176 foreign special permission applications were processed. The program of microfiching cancelled tariffs and cancelled pages of active tariffs is continuing. During fiscal year 1990, approximately 750,000 cancelled tariff pages were recorded on microfiche.

3. Domestic Tariff Activity

(a) Authority

Common carriers operating in the U.S. domestic offshore Commerce are required pursuant to section 18(a) of the *1916 Act*, 46 U.S.C. app. 817, and section 2 of the *1933 Act*, 46 U.S.C. app. 844, to file tariffs of rates, charges and rules with the *Commission*. The Bureau of Domestic Regulation must ensure that these tariffs comply with applicable statutory requirements. The *Commission's* regulations also require the filing of annual reports of financial and operating data by vessel operating common carriers in the domestic trades.

(b) Inactive Tariffs

During fiscal year 1990, the Bureau of Domestic Regulation continued its program to identify tariffs of firms which appeared to be inactive or no longer operating as carriers in the domestic offshore waterborne commerce of the United States. This program included an audit of tariffs currently on file with the *Commission* for the purpose of identifying those inactive tariffs which should be made the subject of an order to show cause why the tariff should not be cancelled.

(c) Tariff Processing

During fiscal year 1990, 59 new domestic offshore tariffs were received and reviewed, of which 10 were rejected. In addition, 29 domestic special permission applications were processed. The Bureau also processed approximately 5,000 tariff pages amending existing tariffs.

4. Marine Terminal Activities

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

(a) Agreements

During fiscal year 1990, the Bureau received 348 agreements and agreement modifications relating to port and marine terminal services and facilities. Of these, 330 agreements became effective upon filing under *Commission* rules which exempt certain classes of marine terminal agreements from the waiting period requirements of the *1984 Act* and/or the approval requirements of the *1916 Act*. Agreements not entitled to the *Commission's* exemption provisions were processed under the applicable statutory requirements. Seven agreements were considered not subject to the *Commission's* jurisdiction. Approximately eight hundred terminal agreements were in effect at the end of the fiscal year.

The *Commission* also processes certain maritime industry assessment agreements that provide for the funding of collectively-bargained fringe benefit obligations pursuant to section 5(d) of the *1984 Act*, which carries forward the *Maritime Labor Agreements Act of 1980* (P.L. 96-325, 94 Stat. 1021).

Assessment agreements are deemed effective upon filing with the *Commission* and notice of their filing is published in the *Federal Register*. During fiscal year 1990, four assessment agreements were filed.

During fiscal year 1990, the *Commission* continued its waiver of penalties for failure to file certain marine terminal service agreements and tariff matter. Resumption of potential enforcement activities is pending the *Commission's* disposition of Docket 90-6, *Notice of Inquiry -- Marine Terminal Operator Regulations*.

The Bureau also refined its marine terminal operator agreement and tariff surveillance program.

(b) Terminal Tariffs

The Bureau carried out its responsibilities with respect to marine terminal tariffs by reviewing 4,741 terminal tariff pages filed during fiscal year 1990. At the end of the fiscal year, 465 terminal tariffs were on file with the *Commission*.

5. Freight Forwarders

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

Congressional findings in 1961, focusing on malpractices within the ocean freight forwarding industry, led to the enactment of section 44 of the *1916 Act* (46 U.S.C. 841b) which

vested the *Commission* with authority for the licensing and regulation of independent ocean freight forwarders. At that time, malpractices in the export trades were rampant. Given the importance of maintaining a favorable climate for U.S. businesses, especially small businesses which lacked the expertise to do their own exporting, Congress found that licensing and limited oversight of ocean freight forwarders was necessary to eliminate secret, illegally preferential rebates, and to ensure that unscrupulous, incompetent and financially irresponsible persons were prevented from operating as ocean freight forwarders. Although the number of licensed ocean freight forwarders has increased since 1961, forwarder-initiated malpractices are now more the exception than the rule.

The continued maintenance of fiduciary responsibility, technical qualifications and the financial responsibility of an ocean freight forwarder is currently assured by means of a license issued by the *Commission* and a surety bond which is required to be maintained on file with the *Commission*. Once issued, a license need not be renewed. However, *Commission* approval for a change in the business form of a licensee or a license transfer to another person is required. The amount of the bond depends upon the number of offices through which an ocean freight forwarder provides services. The basic bond amount is \$30,000. It is increased by \$10,000 for each unincorporated branch office of a forwarder. Each separately incorporated office of a forwarder is required to obtain its own license.

With the enactment of the *1984 Act*, the *Commission's* regulatory responsibilities over the forwarding industry are now found in section 19 of that Act. Under this statute, the basic licensing requirements remain essentially in place. However, the prohibition against export shippers receiving a license has been eliminated, i.e., freight forwarders no longer must be "independent." Licensed forwarders are barred from collecting compensation from carriers on shipments in which they have a beneficial interest. Also under the statute, agreements by and among forwarders engaged in the foreign commerce of the

United States are no longer required to be filed with the *Commission* for approval. Hence, such agreements are afforded no antitrust immunity.

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

During fiscal year 1990, the *Commission* received 270 applications for new ocean freight forwarder licenses and for the approval of the transfer of licenses or other organizational changes. This represented an increase in filings of almost 10 percent over the previous year. Eighty-seven applications were pending at the end of fiscal year 1989. Of these, 113 new license applications were approved, seven were withdrawn, and 67 were returned to applicants because of deficiencies which prevented processing. Sixty-eight applications for transfers or other organizational changes were approved, and seven were withdrawn or returned because of deficiencies. Ninety-five applications were pending at the close of fiscal year 1990.

Also during fiscal year 1990, 102 new licenses were issued and 3 licenses were reissued while 92 ocean freight forwarder licenses were revoked, due primarily to the licensees' failure to maintain the required surety bond on file with the *Commission*. At the end of the fiscal year, 1613 licensed forwarders were operating under the *Commission's* jurisdiction, approximately 1% more than the total number of licensees operating at the close of fiscal year 1989.

On-site compliance investigations are conducted as part of the *Commission's* effort to ensure that licensed ocean freight forwarders comply with the provisions of the shipping statutes and the *Commission's* regulations. During the year, 141 investigative reports were received by the Bureau. Eleven reports were pending review at the beginning of the fiscal year. Thirty-nine of these reports resulted in the issuance of warning letters or referral to the Bureau of Hearing Counsel for the

assessment of appropriate civil penalties. Ninety-nine cases were determined to require no formal corrective action. Fourteen reports were pending review at the close of fiscal year 1990.

Other activities during the year included:

- **The processing of 606 surety bond actions pertaining to new bonds, riders to bonds and cancellations of bonds;**
- **The review and processing of two informal complaints concerning the non-payment of freight charges by forwarders to carriers;**
- **The receipt of information on 25 claims, totaling in excess of \$200,000, that were filed against forwarder bonds.**

During fiscal year 1990, the *Commission* upon the Bureau's recommendation, ordered an investigation into the activities of Memphis Forwarding Co., Inc. (MFC) to determine whether MFC had violated section 19(d)(4) of the *1984 Act* and 46 CFR § 510.23(h) by collecting freight forwarder compensation on shipments in which MFC had a beneficial interest and whether, in the event MFC violated section 19 (d)(4), MFC's freight forwarder license should be revoked or suspended. An Order of Investigation (Docket No. 90-13) was served on April 19, 1990.

6. Passenger Vessel Certification

The *Commission* is responsible for administering sections 2 and 3 of Public Law 89-777 (46 U.S.C. 817d and 817e), which have been implemented by the *Commission's* regulations found in 46 CFR 540 - "*Security for the Protection of the Public.*" Owners, charterers, and operators of American and foreign vessels having berth or stateroom accommodations for fifty or

more passengers and embarking passengers at United States ports must establish financial responsibility: (1) to meet any liability incurred for death or injury to passengers or other persons on voyages to or from United States ports; and (2) to indemnify passengers for nonperformance of transportation to which they would be entitled under ticket contracts. Upon the submission of evidence of financial responsibility in accordance with Subpart B of 46 CFR 540, the *Commission* will issue a *Certificate of Financial Responsibility to Meet Liability Incurred for Death or Injury to Passengers or Other Persons on Voyages* [*"Certificate (Casualty)"*]. Upon submission of similar evidence in accordance with Subpart A of 46 CFR 540, the *Commission* will issue a *Certificate of Financial Responsibility for Indemnification of Passengers for Nonperformance of Transportation* [*"Certificate (Performance)"*].

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

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

During fiscal year 1990, the *Commission* processed 80 applications for passenger vessel certificates involving 95 separate vessel certifications. Fourteen were new performance certificates; 11 were new casualty certificates; 62 were amendments to existing certificates; and, 8 vessel certification requests were withdrawn. Holders of passenger vessel certificates have on file with the *Commission* evidence of financial responsibility in excess of \$258 million for performance certification and over \$1 billion for casualty certification.

Two rulemakings concerning the Bureau's responsibilities with respect to passenger vessel operations became final during fiscal year 1990. Docket No. 89-25, *Security for the Protection of the Public*, amended the surety bond and guaranty forms. The new regulations will afford greater flexibility for the *Commission* to consider surety bonds and guaranties which, because of the particular circumstances of the applicant, may differ from the standard prescribed language. Docket No. 90-01, *Security for the Protection of the Public, Maximum Required Performance Amount*, increased the maximum amount for insurance, escrow, guaranty or surety bond required for indemnification of passengers for nonperformance of transportation from \$10 million to \$15 million. This increased coverage requirement was scheduled to become effective on February 19, 1991.

7. Automated Database Systems

The Bureau of Domestic Regulation maintains several automated database systems. These are: (1) *The Service Contract System*; (2) *The Regulated Persons Index*; (3) *The Tariff Profile System*; (4) *The Microfiche System*; (5) *The Ocean Freight Forwarder System*; and, (6) *The Marine Terminal Agreement Profile System*. *The Service Contract System* provides certain key service contract data, such as geographics, and shipper names. *The Regulated Persons Index* assigns a discrete number to each person the *Commission* regulates and provides their address, telephone number and trade name. *The Tariff Profile System* lists key data contained in tariffs on file with the *Commission*. *The Microfiche System* provides a means of locating cancelled tariffs which have been microfiched. *The Ocean Freight Forwarder System* provides pertinent data necessary for the tracking of licensees, including surety bond information. During fiscal year 1990, the Bureau proceeded with a prototype of *The Marine Terminal Agreement Profile System*. Enhancement of this system to incorporate a manually maintained marine terminal agreement log-in system is expected during fiscal year 1991.

8. Shippers' Associations

The *1984 Act* recognized shippers' associations for the first time as entities in international ocean transportation. They are defined in the Act as groups of shippers which, on a non-profit basis, consolidate their cargoes to secure volume rates or enter into service contracts. The Act expressly requires that the carriers and conferences negotiate with shippers' associations. It also provides that associations can enter into service contracts on behalf of their members. Shippers' associations have not been granted antitrust immunity under the *1984 Act*. In fiscal year 1990, 37 service contracts were filed involving 20 shippers' associations. Since the *1984 Act* became effective, a total of 41 shippers' associations have entered into a total of 266 service contracts with certain carriers and conferences.

9. Financial Analysis

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

The Bureau continued to monitor the activities of carriers in the domestic offshore commerce of the United States. The effort involved the receipt and review of financial and operating data submitted in compliance with 46 CFR Part 552.

During the year, the Bureau reviewed a general rate increase filed in the Hawaii Trade. Bureau personnel reviewed the proposed GRI and provided expert testimony in the *Commission* proceeding that examined the proposed increase, Docket No. 90-09, *Matson Navigation Company, Inc. Proposed General Rate Increase of 3.6 Percent Between United States Pacific Coast Ports and Hawaii Ports*. The Bureau was also involved in an inquiry concerning an increase in rates in the Puerto Rico Trade. Financial expertise is also provided with respect to the passenger vessel certification program.

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

10. Support Activities

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

Investigative activities require substantial tariff research and supporting documentation which is provided by Bureau staff. Automated databases, such as the *Regulated Persons Index* and the *Service Contract System*, are utilized for initial data identification purposes and actual hard copy of relevant material is retrieved and provided to the Bureau of Investigations and/or the appropriate field office.

The *Commission's* field offices are also provided with general data lists of regulated persons situated in specific field office jurisdictions. Information on the more than 1600 licensed ocean freight forwarders and approximately 50 passenger vessel owner/operators is also provided to the field offices. This data assists not only with investigative efforts, but serves localized public needs for information concerning *Commission* regulated industries.

During fiscal year 1990, the Bureau selected agreements for the Bureau of Investigations' marine terminal audit program.

In support of the *Commission's* bunker fuel surcharge program, the Bureau obtained bunker fuel surcharge data from certain carriers and conferences.

The Bureau has also made significant contributions to those *Commission* components that have primary responsibility for the development and implementation of the *ATFI System*. Bureau personnel have been involved in the "acceptance testing" and reviewing and designing numerous elements of *ATFI*.

11. Rulemaking and Docketed Proceedings

The Bureau initiates or supports formal rulemakings and *Commission* docketed proceedings. During fiscal year 1990, the Bureau was involved with:

Docket No. 89-04, *Tariff Publication of Free Time and Detention Charges Applicable to Carrier Equipment Interchanged with Shippers and Their Agents*, to require the publication of terms and conditions governing the use of carrier provided equipment;

Docket No. 90-11, *Anti-rebating Certification - Tariff Cancellation and Rejections and License Suspension*, provides for the cancellation and rejection of tariffs of common carriers and for the suspension of ocean freight forwarder licenses for failure to file the required anti-rebating certifications;

Docket No. 89-25, *Security for the Protection of the Public*, amended the surety bond and guaranty forms to afford greater flexibility for the *Commission* to consider surety bonds and guaranties which, because of the particular circumstances of the applicant, may differ from the standard prescribed language;

Docket No. 90-01, *Security for the Protection of the Public, Maximum Required Performance Amount*, increased the maximum amount for insurance, escrow, guaranty or surety bond required for indemnification of passengers for nonperformance of transportation from \$10 million to \$15 million; and,

Docket No. 90-09, *Matson Navigation Company, Inc. Proposed General Rate Increase of 3.6 Percent Between United States Pacific Coast Ports and Hawaii Ports*, where Bureau personnel reviewed the proposed GRI and provided expert testimony in the *Commission* proceeding that examined the proposed increase.

I. BUREAU OF ECONOMIC ANALYSIS

1. General

The Bureau of Economic Analysis provides economic, statistical, and financial analysis for the *Commission*. The Bureau assists in the development of long-range plans for the *Commission* and enhances the agency's responsiveness to new developments and trends in U.S. ocean commerce and the liner shipping industry.

Major activities of the Bureau include:

- Serving as the lead bureau in overseeing the *Commission's* involvement in the five-year study required by the *1984 Act* and the subsequent follow-up when the *Advisory Commission on Conferences in Ocean Shipping* conducts its review of the *1984 Act*;
- Organizing the preparation of a strategic plan for the *Commission*. This long-term plan should assist the *Commission* in meeting the challenges of the 1990s;
- Preparing expert witness testimony in domestic offshore rate-of-return cases. This includes preparation of economic and financial statements on expected rates of return, risk, and trends in the cost of money and earnings;
- Developing special reports on economic and financial conditions in liner shipping;
- Responding to *Commission* requests for economic, political, and policy information; and

- **Assisting in the preparation of speeches for the Chairman and Commissioners.**

2. Future Plans and Proposed Activities

The Bureau will concentrate its efforts in fiscal year 1991 on completing a strategic plan for the FMC. The plan will become a framework for the *Commission* to use in the development of its programs and the general process of allocating resources to the various program areas.

The Bureau will continue the *Commission's* data collection effort on a scaled-down level to ensure that the *Advisory Commission on Conferences in Ocean Shipping*, which is mandated by section 18 of the *1984 Act*, has current information on sections 18(a) of the *1984 Act* -- level of rates, service, and competition.

It is expected that the Bureau will continue to be involved in domestic offshore issues, including serving as expert witness when required.

It is also expected that the Bureau will assist other components of the *Commission* in international issues, particularly those involving the *FSPA*.

J. BUREAU OF HEARING COUNSEL

The Bureau of Hearing Counsel participates as trial counsel in formal adjudicatory (docketed) proceedings, non-adjudicatory investigations, rulemaking proceedings when designated by *Commission* order, and other proceedings initiated by the *Commission*. Bureau attorneys serve as trial attorneys, where intervention is permitted and appropriate, in formal complaint proceedings instituted under section 22 of the *1916 Act*, and section 11 of the *1984 Act*. Bureau attorneys also are designated Investigative Officers in non-adjudicatory formal proceedings. In addition to the formal proceedings in which the Bureau participates as a party, the Bureau monitors all other formal proceedings in order to ascertain that major issues affecting the shipping industry and/or the general public, as distinguished from issues deriving from private disputes between the litigating parties, are adequately developed. The Bureau also participates in an advisory capacity in the development of *Commission* rules and regulations. On occasion, the Bureau may participate in court litigation by or against the *Commission*.

On request, the Bureau furnishes legal advice to the staff. Bureau attorneys provide legal advice to the Bureau of Investigations during field investigations and review enforcement reports completed by that Bureau. When appropriate, the Bureau of Hearing Counsel prepares and serves notices of violations of the shipping statutes and/or regulations, and may compromise and settle civil penalty allegations arising out of those violations. If settlement is not reached, the Bureau acts as prosecutor in formal *Commission* proceedings that may result in the assessment of civil penalties. The Bureau also participates, in conjunction with other Bureaus, in special enforcement initiatives such as the *Transatlantic Enforcement Initiative* and the *Transpacific Malpractice Program*.

At the beginning of fiscal year 1990, 27 enforcement reports were pending final resolution by the Bureau. During the fiscal year, 53 new enforcement reports were received from the Bureau of Investigations. Fifty-three such cases were compromised and settled, administratively closed, or referred for formal proceedings. Twenty-seven enforcement reports were pending resolution on September 30, 1990.

At the start of fiscal year 1990, the Bureau was party to twelve formal proceedings. During the fiscal year, the Bureau participated in seven new formal proceedings. Seven proceedings in which the Bureau participated were completed. Accordingly, the Bureau was involved in fourteen formal proceedings at the end of the fiscal year.

At the beginning of fiscal year 1990, there were 49 requests for legal advice pending in the Bureau. Seventy-two requests for legal advice were received during the fiscal year, and 46 legal advice projects were completed. Accordingly, 75 legal advice matters were pending in the Bureau on September 30, 1990.

The *Commission's* increased emphasis on enforcement is resulting in expansion in all areas of Bureau activity. As a result of this effort, the Bureau collected about \$25,000,000 in civil penalties in fiscal year 1990. This represented the largest amount of civil penalties ever collected by the *Commission* in a single year and the second consecutive year in which that was the case. Settlements were reached with most segments of the industry (e.g. carriers, shippers, forwarders) in the full range of the U.S. foreign trades.

In fiscal years 1987 and 1989, the *Commission* instituted two non-adjudicatory proceedings to investigate rebating and other rate malpractices: Fact Finding No. 16 in the North Atlantic trades and Fact Finding No. 18 in the Transpacific trades, respectively. Fact Finding No. 16 was instrumental in bringing about the North Atlantic amnesty agreement in FY 1987 and is continuing to pursue evidence of Shipping Act violations. As a direct consequence of Fact Finding No. 18,

settlements were reached in excess of \$20,500,000 with Pacific cargo interests and NVOCC's in FY 1990. Generally, as a consequence of the increased emphasis on enforcement and, in particular, due to continued Fact Finding No. 18 activity, it is anticipated that this trend in civil penalty collection will continue.

In fiscal years 1991 and 1992, the Bureau will continue to pursue violations of the shipping statutes aggressively, and will continue to offer legal advice and support to the *Commission* staff.

K. BUREAU OF INVESTIGATIONS

The Bureau of Investigations monitors the activities of, and conducts investigations of alleged violations, by ocean common carriers, non-vessel-operating common carriers, freight forwarders, shippers, ports and terminals, and other persons to ensure compliance with the statutes and regulations administered by the *Commission*.

The Bureau maintains a staff of 48 personnel located in the Headquarters Office in Washington, D.C., and District Offices in the major port cities of Houston, Los Angeles, Miami, New Orleans, New York, San Francisco, and Hato Rey, Puerto Rico. In addition to investigative and surveillance functions, each District Office represents the *Commission* within its jurisdiction, provides liaison between the *Commission* and the maritime industry and the shipping public, collects and analyzes intelligence of regulatory significance, and assesses industry-wide conditions for the *Commission*.

The Bureau investigates significant competitive practices pursuant to major *Commission*-approved malpractice programs. In addition, the Bureau investigates a full range of violations on a local level. These activities may also be carried out in conjunction with fact-finding, formal, or court proceedings.

The following practices are subject to ongoing investigations conducted by the Bureau:

- **Illegal rebating by carriers and receipt of illegal rebates by shippers, NVOCC's, and shippers' associations;**
- **Misdescriptions and misdeclarations of cargo or other malpractices of carriers, shippers, consignees, and other persons;**

- **Activities of ocean common carriers who are parties to agreements whenever it appears that such agreements and modifications have been implemented prior to filing with the *Commission* or are being carried out in violation of the Shipping Acts;**
- **Failure by common carriers to file appropriate tariffs covering their rates and charges or to charge rates that are in effect and on file with the *Commission*; and,**
- **Operating as an ocean freight forwarder without a license issued by the *Commission* or contrary to statute or regulation.**

The Bureau's surveillance activities include:

- **Review of service contracts to determine compliance with statute and regulation.**
- **Review of *NVOCC's* .**
- **Post-licensing and routine compliance checks of licensed freight forwarders to determine whether their operations conform with regulatory requirements.**
- **Audits of passenger vessel operators to ensure the financial protection of cruise passengers.**

Bureau liaison activities involve cooperation and coordination with other Government agencies, providing regulatory information and relaying *Commission* policy to the shipping industry and the public, and handling informal complaints within a District.

The Bureau assists the Bureau of Hearing Counsel in formal proceedings before the *Commission*, conducts studies and surveys for use in program development and program revision, reports trade information, and recommends remedial action.

During fiscal year 1990, the Bureau continued to investigate malpractices in the major trade routes with special emphasis on the transpacific and transatlantic trades. The Bureau's intensified efforts in the Transpacific trades resulted in the development of a significant number of investigations into the practices of vessel-operating common carriers, *NVOCC's*, freight forwarders, and cargo interests. The investigative strategies employed in the *Transpacific Malpractice Program* are being applied to the ongoing *Mediterranean Rebate and Malpractice Program* and the *Central American/Caribbean Malpractice Program*, and will be applied to other malpractice programs now in the planning stage for implementation in fiscal years 1991 and 1992. The Bureau continues to monitor and investigate conditions in the North Atlantic trades as part of the *Transatlantic Enforcement Initiative* which began in fiscal year 1987.

The Bureau conducted 157 investigations and special inquiries of which 67 were forwarded to the Bureau of Hearing Counsel for enforcement action. (See Chapter III.) A total of 134 surveillance matters were conducted, including service contract audits, compliance checks, audits of *NVOCC's* and cruise-line audits.

Coordination between the *Commission's* District Offices and U.S. Customs Service's Field Offices continued in fiscal year 1990, as a part of the Memorandum of Understanding between the agencies for the exchange of enforcement information. During fiscal year 1990, the Bureau sought to improve *Commission* investigators' access to information filed by the shipping community in Custom's Automated Commercial System. The exchange of investigative information will increase in fiscal years 1991 and 1992, as both agencies move toward

automation and the electronic filing of information regarding their regulatory activities.

During fiscal year 1990, the Bureau continued to provide its investigators with formal training in fraud detection through participation in the *White Collar Crime Training Program* at the Federal Law Enforcement Training Center ("FLETC") in Glynco, Georgia. In addition, all District Office personnel were provided with training in the use of automated systems in support of Bureau operations. Training activities in fiscal year 1991 will focus on the enhancement of data processing skills for all Bureau personnel, continued participation in FLETC's advanced training programs, and mid-level supervisory and management training for senior investigative personnel.

In fiscal year 1990, the Bureau initiated hiring actions in the Houston, Miami, and San Francisco District Offices. A Special Assistant to the Bureau Director, hired in fiscal year 1989, continued to provide expertise and guidance in the planning, coordination, and evaluation of the Bureau's target malpractice programs. Through the augmentation of investigative personnel in fiscal years 1989 and 1990, the Bureau realized a 22 percent increase in the number of enforcement actions forwarded to the Bureau of Hearing Counsel.

At the beginning of fiscal year 1990, there were 253 field investigations in progress. During the year, 289 new field investigations were initiated, providing 542 cases on hand and scheduled for inquiry. Completed investigations totaled 291, leaving 251 cases pending at the end of the fiscal year. Appendix F summarizes the Bureau of Investigations' activities.

L. ADMINISTRATION PROGRAM

Office of the Director Bureau of Administration

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

- Office of Administrative Services
- Office of Budget and Financial Management
- Office of Information Resources Management
- Office of Personnel

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

The Office of the Director is responsible for coordinating the procurement of the *Commission's ATFI System*. In fiscal year 1990, the following major accomplishments related to the development of the *ATFI System* were achieved:

After award of the major *ATFI* contract to *Planning Research Corporation ("PRC")* of McLean, Virginia, teaming with *Data Exchange International ("DXI")* of Pittsburgh, Pennsylvania, the Contractor finished the following contract phases:

Phase I ATFI System Concept (Including Validation of Requirements)

Phase II System Design

Phase III Development and Testing

As of the end of fiscal year 1990, the project was in *Phase IV - Operation as a Prototype*, and full operation will begin in fiscal year 1992.

The Office of the Director is also responsible for the *Commission* programs of *Audit Follow-up* and *Management (Internal) Controls*, and is coordinating the review and updating of all *Commission* Orders.

The Office of the Director coordinated and edited the *Commission's 28th Annual Report to Congress*.

The Director is Agency Contact for *FEMA* and *Commission* representative, as Principal Management Official, to the *Small Agency Council*. Additionally, the Director was the Executive Secretary and Committee Management Officer of the *Commission's Section 18 Study Industry Advisory Committee*, which expired by operation of law in March 1990.

1. Office of Administrative Services

(a) General Office Responsibilities.

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

The office's support programs include communications, telecommunications, procurement of administrative goods and services, property management, space management, printing and copying management, mail and records services, forms and graphic designs, facilities and equipment maintenance, and transportation. The office's major functions are to secure and furnish all necessary supplies, equipment and services required in support of the *Commission's* mission and to formulate regulations, policies, procedures, and methods governing the use and provision of these support services in compliance with the *Federal Acquisition Regulation (FAR)*, the *Federal Property Management Regulations (FPMR)*, the *Federal Information Resources Management Regulation (FIRMR)*, and other appropriate Federal guidelines.

(b) Office Program Objectives.

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

- **Execute *Commission* contracts and administer these and any other procurement matters which obligate the Government to expenditure of funds;**
- **Control and administer the *Commission's* acquisition, utilization, inventory, maintenance, and disposition of property;**

- **Develop and coordinate a comprehensive telecommunications program for Washington headquarters and at all *Commission* field offices, which includes installation and maintenance of all telecommunications equipment and features;**
- **Administer programs for improvement of the workplace environment and other space utilization operations for headquarters and field locations, which include planning, negotiating, drafting and interpreting architectural drawings and specifications, and assigning space to and providing furnishings for offices;**
- **Manage the receipt, storage, issuance and inventory of all supplies, forms and accessories required in support of *Commission* operations;**
- **Coordinate and control all printing, duplicating, copying and graphic services, whether provided in-house or by outside sources;**
- **Regulate receipt, distribution and dispatching of mail;**
- **Coordinate the use of the building's physical facilities at headquarters with respect to maintenance, security and parking;**
- **Arrange for transportation services for all *Commission* locations;**
- **Conduct safety inspections and coordinate the *Commission's* emergency evacuation program;**
- **Manage the retention, transfer, and disposal of *Commission* records;**

- Direct the *Commission's* participation, development and goal setting under the Small Business Act; and,
- Develop and coordinate a recycling program in conjunction with *GSA* and building owners.

(c) Accomplishments

During fiscal year 1990, the Office of Administrative Services:

- Coordinated the *Commission's* implementation and cut-over to the new FTS2000 (telecommunications) systems;
- Completed revision and reorganization of the *Commission's* procurement program and operations to include updating of procedural actions (S.O.P.s), forms usage, and the *Commission* Order on Procurement for program alignment with current Government-wide changes and policy approaches;
- Arranged for the office space changes to the interior designing required in the Office of the Commissioners to coincide with the arrival of three new Presidential appointees;
- Drafted and developed the initial contract and procurement package required for the implementation of the *Commission's* drug testing program, including an inter-agency agreement with the Department of the Interior;
- Provided recommendations for the design and furnishing of the *FMC's* new computer training facility for the *ATFI* program and arranged for its construction to increase the agency's ADP/IRM literacy, while enhancing the space utilization at the *Commission's* Headquarters location;

- Refined the *FMC's* parking program, increasing program participation and permit issuance by 60% over actual spaces assigned;
- Coordinated the disposition of the *Commission's* obsolete word processing system and equipment from our Headquarters and District locations nationwide through the GSA and accomplished the major acquisitions necessary for replacement of this system;
- Arranged for printing and distribution of the *FMC's* Section 18 Report and Compendium of the *1984 Act* through the General Printing Office (GPO), including a second publishing to accommodate public interest and need for the reports;
- Finalized and coordinated the relocation of the Los Angeles and Houston District offices to more enhanced, better equipped facilities;
- Developed and submitted a new *FMC* Headquarters space requirements package to the GSA, as a result of the expiration of the *FMC's* current building lease and to facilitate the renewal process for a long-term building lease;
- Worked with the GSA to obtain, and concurred with an extension to, the *FMC's* current lease, while long-term lease negotiations are ongoing;
- Increased the specialization of staff in the areas of procurement and contracting, management analysis support, and telecommunications;
- Realigned the *FMC's* copy management program for better equipment and service availability and accessibility; and,

- **Coordinated the initial actions for automating and upgrading of the OAS' current property inventory procedures to increase accuracy of information and ensure appropriate accountability of equipment and furnishings.**

(d) Office Prognosis.

In fiscal year 1991, the Office plans to conclude the initiatives begun in fiscal year 1990, along with finalizing objectives involving the following:

- **Develop and resolicit new contracts for court reporting services, microfiche services, and the initial contract for ADP equipment maintenance support;**
- **Establish a *Commission*-wide microfiche program, for improved records management;**
- **Update *FMC* telecommunications equipment to more state-of-the-art technology for better integration with the WITS and FTS2000 programs;**
- **Analyze and realign OAS programs and functions as necessary (i.e. supply requirements, mail services, etc.) to remain up-to-date with changes in Federal rules and regulations, as well as *FMC* needs;**
- **Relocate certain District offices within budget constraints to enhance and improve their facilities and space utilization; and,**
- **Complete the organization of standardized *Commission* procedures relative to property actions and inventory control processes.**

2. Office of Budget and Financial Management

(a) General

The Office of Budget and Financial Management administers the *Commission's* financial management program and is responsible for optimal utilization of the *Commission's* physical, fiscal, and staffing resources. The Office is charged with interpreting government budgetary and financial policies and programs, and developing annual budget justifications for submission to the *Congress* and the *Office of Management and Budget*. The Office also administers management (internal) controls systems for agency funds, travel and cash management programs, and the *Commission's* imprest fund. The Director of the Office is the *Commission's* Chief Financial Officer.

(b) Objectives

The objectives of the Office are to:

- **Submit annual budget justifications and estimates to *OMB* and the *Congress*;**
- **Execute the budget to ensure appropriated funds are properly expended;**
- **Prepare regular financial reports to aid management decisions;**
- **Administer the management control system over workyears of employment;**
- **Collect all fees and forfeitures due the *Commission*;**
- **Process payments to vendors efficiently and in accordance with the *Prompt Payment Act*;**

- Ensure resources are used properly to avoid fraud, waste, error, and abuse;
- Process travel orders and vouchers within established time limits and in accordance with governing regulations;
- Review internal controls and accounting procedures to ensure that they conform to existing regulations, and develop procedures to correct deficiencies; and
- Administer the *Commission's Imprest Fund* program and manage the *Commission's Cash Management Program*.

(c) Achievements

During fiscal year 1990, the Office of Budget and Financial Management:

- Collected and deposited in the U.S. Treasury \$25,137,399 from user fees, fines, collections, and freight forwarder licensing and vessel certification fees;
- Provided the *Cash Management Division* of the *Department of Treasury* with data on the agency's participation in the electronic funds transfer of employee paychecks and allotments, as well as the agency's participation in the *Diner's Club Credit Card System*;
- Prepared Merit Pay and award calculations;
- Coordinated and prepared budget justifications and estimates for the fiscal year 1991 *Congressional* budget and the fiscal year 1992 budget to *OMB*;

- Participated in *OMB* and *Congressional* budget hearings;
- Managed the *Commission's Travel and Cash Management* programs;
- Provided management with monthly status reports on workyears, funding, travel and receivables;
- Reviewed and updated financial management and accounting control procedures to ensure compliance with *OMB*, *GAO* and *Treasury* guidelines;
- Assisted the *Office of Thrift Supervision*, the *Commission's* contractor on payroll and other financial services, in producing the *Prompt Payment Report* to *OMB* for 1990;
- Participated in the planning strategy for tariff automation;
- Updated office procedures and a management internal control manual;
- Studied the use of a commercial credit card for small purchases;
- Prepared an Impact Statement in response to *OMB's* proposed reduction in FY 90 appropriations;
- Completed a draft of regulations which authorizes the Federal Government to collect debts owed by a Federal employee to the United States through offset;
- Revised the *Commission Order* on travel; and
- Prepared a variety of external reports such as: Report on Financial Management Improvements (JFMIP), Report on President's Private Sector

Survey on Cost Control (OMB), Report on Workyears and Personnel Costs (OPM), and, Report on Cash Management Initiatives (Treasury).

During fiscal years 1991 and 1992, the office will automate voucher preparation, conduct a benefit/cost study on the use of Automated Teller Machines (ATM) to permit Federal travelers on official business to withdraw cash from ATMs by using their Government Diners Club Cards, continue to update financial control procedures, refine the financial management system, improve processing of payments, prepare *OMB* and Congressional budget submissions, and pursue initiatives leading to economy and efficiency in budget and financial operations.

3. Office of Information Resources Management

(a) General Office Responsibilities

Information Resources Management ("IRM") was a function of the Office of Special Studies until March 1990 when it was reorganized into the Office of Information Resources Management ("OIRM"), whose major functions are: IRM planning and contract administration; telecommunications/Local Area Network ("LAN"); database management and application development; and, records management and *OMB* clearances.

OIRM is delegated responsibility to ensure that the *Commission's* IRM program is administered in a manner consistent with the Paperwork Reduction Act of 1980, Public Law 96-511, as amended by the Paperwork Reduction Authorization Act of 1986, Public Law 99-500.

OIRM provides leadership and guidance for the agency's IRM efforts. These efforts support the *Commission* in every phase of its statutory mission including: policy and rulemaking, tariff automation, complaint investigation, litigation and administration. The Office is also responsible for conducting management analysis and control activities.

(b) Major Accomplishments

During fiscal year 1990, the Office:

- Completed prototype testing of the *Commission's* LAN; began configuring and implementing the production LAN; provided office LAN Administrators training to enable *FMC* offices to manage their portions of the LAN; provided LAN end user training for employees in the Bureau of Domestic Regulation ("BDR"); and provided PC-based computer literacy training for senior-level staff.
- Initiated a new procedure for requesting OIRM services using IRM Request for Services Forms. This procedure has improved OIRM's delivery of services significantly.
- Developed and implemented a multi-user correspondence tracking system.
- Designed and distributed technical bulletins to keep *Commission* staff apprised of IRM-related technology, service and status.
- Conducted a *Commission-wide* Training Needs Assessment to identify the types and level of PC-based training required to enable the *Commission* to take full advantage of its technology.
- Coordinated identification of *Commission-wide* requirements for conversion of information stored on NCR diskettes to MS DOS-based formats.
- Provided computer literacy training for the BDR Tariff Control Center staff ("TCC"). This training was specially designed to meet the needs of individuals unfamiliar with microcomputer technology.

- Functioned as staff to the ADP Committee Chairman; acted as Co-Contracting Officer's Technical Representative for ADP Technology ("COTR") on the *ATFI PRC* contract and COTR on the I-NET LAN contract; chaired the LAN Users Group; co-chaired the IRM Planning Group; negotiated a new contract for the Journal of Commerce PIERS service; served as COTR on several other IRM-related contracts; and chaired the IRM Security Committee.
- Provided *Commission*-wide support for all computer hardware, software and telecommunications, and provided database development support.
- Prepared *OMB* clearances for the agency's proposed rulemakings and for clearance renewals. Furnished advice and guidance to agency personnel regarding *OMB* matters.
- Prepared a request for disposition authority for agency records, and forwarded the request to the National Archives and Records Administration ("NARA") for approval.
- Reviewed all agreements and docketed proceedings for the year for compliance with the National Environmental Protection Act.

(c) Ongoing Activities

- Implementing the production LAN.
- Technical support and guidance during development and implementation of *ATFI*, and the Office will continue to monitor tasks and schedules to ensure the smooth and timely interface of *ATFI* to the LAN Gateway.

- Acquisition of IRM-related technologies, hardware and software in response to *FMC* needs.
- Developing requirements for maintenance of the *Commission's* LAN hardware and software, microcomputers and laser printers, communications hardware (modems) and lap-top computers.
- Developing requirements for a contract providing *Commission* personnel with PC-based training requested during the Training Needs Assessment, LAN Administrator training and LAN end user training.
- Developing a proposal to restructure current "Productivity Measurements" being reported to the Department of Labor ("DOL").
- Analyses to identify opportunities for automating labor-intensive manual operations.
- Completing and updating an agency-wide, five-year strategic and tactical IRM plan, and an agency-wide security plan for sensitive computerized information.
- Responding to requests for information about agency IRM audits, assessments and internal reviews, as well as responding to interagency reports to *OMB*, *DOL*, *GSA*, and *NARA*.
- Providing records management and *OMB* clearance support and guidance to agency personnel.

(d) Future Plans or Proposed Activities

During fiscal year 1991 the Office will continue to develop IRM strategies to further the effective, efficient and economical use of information management principles, systems and guidelines specified by the Paperwork Reduction Act; GSA; Federal Information Resources Management Regulations; and OMB Circulars related to computer-based information security.

Major initiatives for fiscal years 1991 and 1992 will include: (1) completing a *Commission* IRM plan; (2) developing requirements for a contract to address *Commission*-wide training needs; (3) implementing a desk top publishing system to improve the *Commission's* ability to develop and publish documents; (4) evaluating optical imaging technology to assess its use in storing and retrieving massive amounts of information such as historical tariffs; (5) conducting a LAN feasibility assessment of each district office; (6) issuing a Records Management Manual, a revised Records Disposition Schedule and a revised Handbook on Collections of Information; (7) providing IRM services to the *Commission* staff; (8) monitoring development and implementation of technical aspects of *ATFI*; (9) monitoring *ATFI* training; and, (10) providing staff services to the *Commission* ADP Committee.

4. Office of Personnel

The Office of Personnel plans and administers a complete personnel management program, including recruitment and placement, training, position classification and pay administration, occupational safety and health, employee counseling services, employee relations, performance appraisal, incentive awards, and retirement. Significant achievements during fiscal year 1990 are outlined below.

(a) Program Development

A revised *Commission Order 95, Executive Resources Board*, was prepared and published to clarify the role of the Executive Resources Board in the management of the *Commission's* SES program. A new commission order describing the agency's Drug-Free Workplace Plan was amended to incorporate the comments and suggestions of the Interagency Coordinating Group. The Drug-Free Workplace Plan was certified by the Secretary of Health and Human Services as meeting all the requirements of section 503 of the Supplemental Appropriations Act of 1987 and of Executive Order 12564. In anticipation of this certification, the Office made arrangements to ride the Interior Department's collection and testing contracts, and contracted for Medical Review Officer services. The Office completed all program work related to possible furlough operations for reasons of sequestration or emergency shutdown for lack of funds. The Office is currently studying initiatives of the *Office of Personnel Management ("OPM")* in the areas of pay reform and health benefits reform.

(b) Recruitment and Placement

The Office worked closely with management officials to maintain staffing at authorized levels. The *Commission* concentrated its recruitment efforts on an expanded investigative program. A major effort was made to attract well qualified minorities and women as candidates. New employees hired during the year included District Directors in Miami and San Francisco and the Director of the *Commission's* IRM office. All schedule C and other personnel matters associated with a change in administration were completed expeditiously.

The Office also participated in the Washington, D.C. OPM job fair in March. During the year, the *Commission* maintained its high standing among all agencies in percentage of employees with targeted disabilities and offered special salary rates to clerical employees in Washington, D.C., New York, Florida, and California.

(c) Employee Relations

The Office provided all employees with personalized benefits statements detailing their specific benefits under the health, life insurance, social security, retirement, Thrift Savings Plan, worker's compensation, and leave programs.

Employee counseling services contracts in Washington, New York, Miami, San Francisco, and Los Angeles were closely monitored during the year and supervisors and employees were advised of the services provided by the contractors. New contracts were let for San Francisco, Los Angeles, and Washington, D.C. and counseling services were extended to employees in the New Orleans and Houston districts.

The Office provided a week-long retirement planning program, conducted a Health Benefits Open Season, sponsored the Annual Employee Health Fair, and made the Check Book Health Benefits guide available to employees at no charge.

The Office worked closely with the Red Cross to promote agency participation in the blood donor program by maintaining a system of program coordinators within each bureau and office. Two on-site blood drives were held.

The Office continued to advise supervisors concerning their responsibilities in the areas of employee conduct and performance, including the granting of within-grade increases and awards and correcting discipline and other problems. In seeking to resolve performance or conduct-related problems, the Office worked closely with *Commission* legal advisors to ensure that employees affected by adverse actions were accorded their due rights. All employee relations cases were successfully resolved during the year.

(d) Training

The Office worked closely with the Executive Resources Board to implement training programs for the *Commission's*

cadre of senior executives, SES candidates, and PMRS managers and supervisors, including Ethics and EEO training. Also, a policy was developed and issued to all employees establishing the amount the *Commission* would pay for "for credit" courses at local colleges.

The *Commission* concluded its SES candidate Development Program by seeking and obtaining certification by an OPM Qualifications Review Board of the qualifications of its two remaining SES candidates.

On-site training programs offered to agency employees included courses on risk assessment, management (internal) controls, and computer training. Approximately 150 instances of off-site training were offered to employees. New procedures were put in place to expedite approval of training requests and follow-up, and, once the training is completed, to obtain and review course evaluations and assure prompt payment.

(e) Performance Appraisal

With the implementation of a new appraisal system for PMS employees, PMRS managers and supervisors received training in performance evaluation and the workings of the new system. In addition, during the rating year, SES, PMRS, and non-PMRS performance appraisal milestones were charted by the Office; supervisors were sent reminder memos and instructions covering mid-year progress reviews, performance appraisals, and performance plans. On-site audits of all mid-year progress reviews were conducted, and all positions in grades 13 through 15 were reviewed to determine whether they should be included in the PMRS system.

(f) Incentive Awards

The Office continued to administer the *Commission's* Incentive Awards Program. During the year, 60 employees were recognized for superior performance and 16 employees were recognized for special acts or service. Employees were

recognized at awards ceremonies held by the Chairman throughout the year. Photographs of employees' receiving their awards were published in the agency newsletter. Each employee also received a photograph of the occasion. Adopted suggestions and the employees who made the suggestions were publicized by means of photographs and articles in the agency newsletter. Posters and other publicity were used to stimulate suggestions. Finally, the Incentive Awards Committee adopted new guidelines to assure consistency in its decisionmaking process.

(g) Position Classification and Pay Administration

The Office conducted a staff grade survey and reinstated a program to conduct an annual review of all position descriptions and a classification review of approximately one-third of all positions.

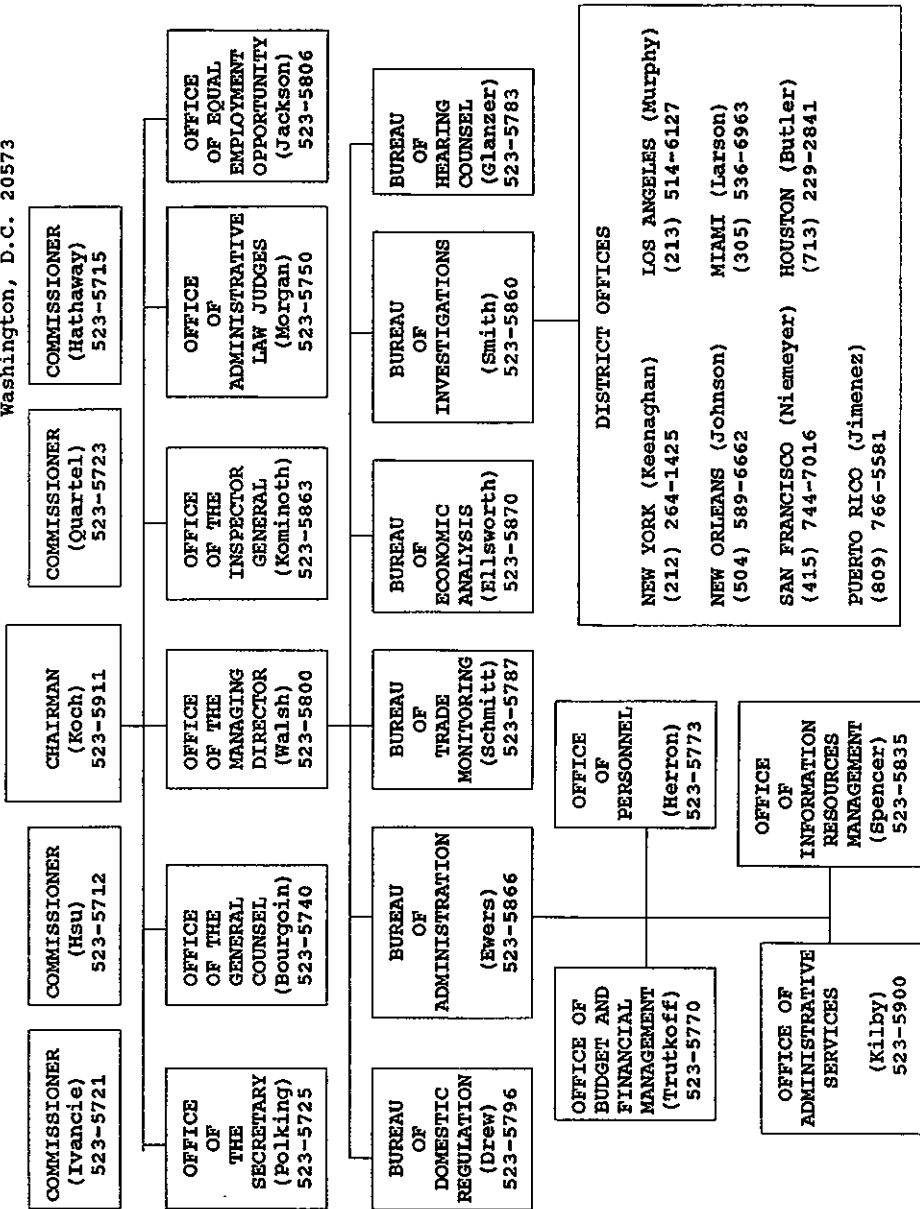
During fiscal years 1991 and 1992, the Office will continue to advise the *Commission* on all personnel matters and ensure the maintenance of a progressive personnel program within the *Commission*.

APPENDIXES



FEDERAL MARITIME COMMISSION

Washington, D.C. 20573



APPENDIX B

COMMISSION PROCEEDINGS Fiscal Year 1990

Formal Proceedings

Decisions	17
Discontinuances & Dismissals	5
Initial Decisions Not Reviewed	9
Rulemakings - Final Rules	10

Total 41

Applications to Correct Service Contracts 24

Special Dockets 110

Informal Dockets 15

Oral Arguments 2

APPENDIX C

CARRIER AGREEMENT FILINGS AND STATUS Fiscal Year 1990

Carrier Agreements Filed in FY 1990 (including modifications)

Foreign and Domestic Commerce 289

Agreements Processing Categories in FY 1990

Forty-Five Day Review 138
Shortened Review 51
Exempt-Effective Upon Filing 94
Rejection of Filing 1
Formal Extension of Review Period 1
Approved Under Shipping Act, 1916 2

287

Carrier Reports Submitted for Commission Review

Shippers' Requests and Complaints 104
Minutes of Meetings 1629
Pooling Statements 5
Index of Documents 219
Consultations 104

2061

Carrier Agreements on File as of September 30, 1990

Conference 65
Interconference 17
Pooling & Equal Access 24
Joint Service 37
Sailing & Charter 115
Cooperative Working, Agency, & Equipment Interchange 108

366

APPENDIX D

TARIFF AND TERMINAL AGREEMENT FILINGS AND STATUS - FISCAL YEAR 1990

Tariff Filings (Pages)

Foreign Filings	776,950
Domestic Filings	7,859
Terminal Filings	<u>4,741</u>
TOTAL	789,550

Tariff Publications

Foreign:	On Hand 10/1/89	4,947
	On Hand 10/1/90	5,721
Domestic:	On Hand 10/1/89	262
	On Hand 10/1/90	321
Terminals:	On Hand 10/1/89	460
	On Hand 10/1/90	465

Special Permission Applications

Total Received - Foreign	172
Granted	137
Denied	23
Withdrawn	12
Total Received - Domestic	31
Granted	23
Denied	7
Withdrawn	5

Domestic Investigation and Suspension Memoranda

Completed	3
Pending	0

Service Contracts Filed 6,713

Terminal Agreements Received (including amendments)

On Hand 10/1/89	750
On Hand 10/1/90	875

APPENDIX E

CIVIL PENALTIES COLLECTED Fiscal Year 1990

Albert E. Price	\$ 30,000.00
Allstate Trading Co.	40,467.95
Amertrans International Corporation	5,000.00
Canadian Forest Navigation	15,000.00
Chi Mei/Calsak Corp.	340,000.00
Dainichi Tsuun Co., Ltd.	55,000.00
Dieterle & Victory	15,000.00
Emery Distribution Systems	75,000.00
Giftwares Company, Inc.	10,000.00
Hankyu Express International Co.	90,000.00
Consolidators (USA) Inc.	
Japan Freight Consolidators	
Hankyu International Transport	
Hapag Lloyd A.G.	75,000.00
Ideal Consolidators Ltd.	15,000.00
J.P. Original Corp.	20,000.00
Kayaba Industry Co., Inc.	120,000.00
Kent International Inc.	195,000.00
Kuehne & Nagel	1,050,000.00
Lasonic Electronic Corp.	90,000.00
L K Overseas Inc.	100,000.00
Nan Ya Plastics Corp. USA	30,000.00
Naviera Consolidated S.A.	45,000.00
Naviera del Pacifico C.A.	120,000.00
Orient Overseas Container Line	800,000.00
OT Africa Line	19,500.00
Pacific Motif	20,233.33
Rapid Air & Ocean, Inc.	10,000.00
Richard Kao	106,750.00
Richard Soong & Co.	20,000.00
Rider Distributors Inc.	15,000.00
Russ Berrie & Co., Inc.	250,000.00
Showa Line, Ltd.	550,000.00
Taipei Bicycle Co., Ltd.	47,500.00
Trans Pacific Carriers Agreement	20,105,950.00
Trans-Senko Corporation	190,000.00
Unipac	75,000.00
Wice Marine Services Ltd.	160,000.00
WLH Group U.S.A. Inc.	17,500.00
Yamaha Motors Corp. U.S.A.	<u>75,000.00</u>
 Total Civil Penalties Collected	 \$ 24,982,901.28

APPENDIX F

FIELD INVESTIGATIONS Fiscal Year 1990

	<u>Surveillance Actions</u>	<u>Other</u>	<u>TOTAL</u>
<i>Pending 10/1/89</i>	93	160	253
<i>Opened FY 1990</i>	133	156	289
<i>Closed FY 1990</i>	134	157	291
<i>Pending 9/30/90</i>	92	159	251

APPENDIX G

STATEMENT OF APPROPRIATIONS, OBLIGATIONS AND RECEIPTS FOR THE FISCAL YEAR ENDED SEPTEMBER 30, 1990

APPROPRIATIONS:

Public Law 101-162, approved November 21, 1989: For necessary expenses of the Federal Maritime Commission as authorized by section 201(d) of the Merchant Marine Act of 1936, as amended (46 App. U.S.C. III), including services as authorized by 5 U.S.C 3109; hire of passenger motor vehicles authorized by 31 U.S.C. 1343 (b); and uniforms or allowances therefor, as authorized by 5 U.S.C. 5901-5902; Provided, that not to exceed \$1,500 shall be available for official reception and representation expenses.

\$15,650,000

Public Law 99-177, Balanced Budget and Emergency Deficit Control Act of 1985, approved December 12, 1985

-198,000

Revised Appropriation

\$15,452,000

OBLIGATIONS AND UNOBLIGATED BALANCE:

Net obligations for salaries and expenses for the fiscal year ended September 30, 1990.

\$15,452,000

STATEMENT OF RECEIPTS: Deposited with the General Fund of the Treasury for the Fiscal Year Ended September 30, 1990:

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

\$154,498

Fines and penalties

\$24,982,901

Total general fund receipts

\$25,137,399