Universal's for any lesser volume of cargo. This clause required maintenance of a 5% differential in favor of Universal at all times, thereby placing shippers who compete with Universal at a competitive disadvantage.

The proposed Final Judgment enjoins the defendant from maintaining, agreeing to, or enforcing an automatic rate differential clause in any of its individual contracts, and also requires the defendant to establish an antitrust compliance program.

Public comment on the proposed Final Judgment is invited within the statutory 60-day comment period. Such comments and responses thereto will be published in the Federal Register and filed with the Court. Comments should be directed to Roger W. Fones, Chief, Transportation, Energy and Agriculture Section, Room 9104, U.S. Department of Justice, Antitrust Division, 555 Fourth Street, NW., Washington, DC 20001 (telephone: 202/307–6351).

Rebecca P. Dick,

Deputy Director, Office of Operations, Antitrust Division.

[Civil Action No.: 1:CV01839] Judge Gladys Kessler

United States of America, Plaintiff, v. Lykes Bros. Steamship Co., Inc., Defendant.

Stipulation

It is stipulated by and between the undersigned parties, by their respective attorneys that:

1. The Court has jurisdiction over the subject matter of this action and over each of the parties thereto, and venue of this action is proper in the District of Columbia;

2. The parties consent that a Final Judgment in the form hereto attached may be filed and entered by the Court, upon the motion of any party or upon the Court's own motion, at any time after compliance with the requirements of the Antitrust Procedures and Penalties Act (15 U.S.C. 16), and without further notice to any party or other proceedings, provided that Plaintiff has not withdrawn its consent, which it may do at any time before the entry of the proposed Final Judgment by serving notice thereof on Defendants and by filing that notice with the Court;

3. In the event Plaintiff withdraws its consent or if the proposed Final Judgment is not entered pursuant to this Stipulation, this Stipulation shall be of no effect whatsoever, and the making of this Stipulation shall be without prejudice to any party in this or in any other proceeding.

This _____ day of September, 1995.

For the Plaintiff, United States of America: Roger W. Fones, *Chief, Transportation, Energy and Agriculture*

Section.

Donna N. Kooperstein,

Assistant Chief, Transportation, Energy and Agriculture Section.

Michele B. Felasco,

Attorney, Transportation, Energy and

Agriculture Section. For the Defendant, Lykes Bros. Steamship Co., Inc.:

Andrew K. Macfarlane, Esquire,

Macfarlane Ausley Ferguson & McMullen.

Final Judgment

Plaintiff, United States of America, filed its Complaint on September 26, 1995 United States of America and Lykes Bros. Steamship Co., Inc., by their respective attorneys, have consented to the entry of this final Judgment without trial or adjudication of any issue of fact or law. This Final Judgment shall not be evidence against nor an admission by any party with respect to any issue of fact or law. Therefore, before the taking of any testimony and without trial or adjudication of any issue of fact or law herein, and upon consent of the parties, it is hereby

Ordered, Adjudged, and Decreed, as follows:

I.

Jurisdiction

This Court has jurisdiction over the subject matter of this action and over each of the parties consenting hereto. The Complaint states a claim upon which relief may be granted against the defendant under Section 1 of the Sherman Act, 15 U.S.C. 1.

II.

Definitions

As used herein, the term: (A) "automatic rate differential clause" means any provision in a contract that requires the defendant, as an ocean common carrier, to maintain a differential in rates, whether expressed as a percentage or as a specific amount, between rates charged by defendant to the shipper under the contract and rates charged by defendant to any other similarly situated shippers of the same commodities for lesser volumes.

(B) "contract" means any contract for the provision of ocean liner transportation services, including a service contract. "Contract" does not include any contract for charter services or for ocean common carriage provided at a tariff rate filed pursuant to 46 U.S.C. App. § 1707.

(Ĉ) "conference" means an association of ocean common carriers

permitted, pursuant to an approved or effective agreement, to engage in concerted activity and to utilize a common tariff in accordance with 46 U.S.C. App. § 1701, et seq.

(D) "conference contract" means a contract between a conference and a shipper.
(E) "defendant" means Lykes Brothers

(E) "defendant" means Lykes Brothers Steamship Co., Inc., each of its predecessors, successors, divisions, and subsidiaries, each other person directly or indirectly, wholly or in part, owned or controlled by it, and each partnership or joint venture to which any of them is a party, and all present and former employees, directors, officers, agents, consultants or other persons acting for or on behalf of any of them.

(F) "individual contract" means a contract between a shipper and defendant in its capacity as an individual ocean common carrier and not in its capacity as a conference member.

(G) "service contract" means any 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.

(H) "shipper" means the owner of cargo transported or the person for whose account the ocean transportation of cargo is provided or the person to whom delivery of cargo is made; "shipper" also means any group of shippers, including a shippers' association.

(I) "shippers' association" means a group of shippers that consolidates or distributes freight on a nonprofit basis for the members of the group in order to secure carload, truckload, or other volumes rates or service contracts.

III.

Applicability

(A) This Final Judgment applies to the defendant and to each of its subsidiaries, successors, assigns, officers, directors, employees, and agents.

(B) Nothing contained herein shall suggest that any portion of this Final Judgment is or has been created for the benefit of any third party and nothing herein shall be construed to provide any rights to any third party.

IV.

Prohibited Conduct

Defendant is restrained and enjoined from maintaining, adopting, agreeing to,