15 U.S.C. § 16(b)–(h), the United States submits this Competitive Impact Statement relating to the proposed Final Judgment submitted for entry against and with the consent of defendant Lykes Bros. Steamship Co., Inc. ("Lykes") in this civil proceeding.

Nature and Purpose of the Proceeding

On September 26, 1995, the United States filed a civil antitrust Complaint alleging that Lykes Bros. Steamship Co., Inc. ("Lykes") entered into an agreement with a shippers' association that unreasonably restrains competition by restraining discounting of rates for ocean transportation services in violation of Section 1 of the Sherman Act, 15 U.S.C. § 1.

On the same date, the United States and Lykes filed a Stipulation by which they consented to the entry of a proposed Final Judgment designed to undo the challenged agreement and prevent any recurrence of such agreements in the future.

Entry of the proposed Final Judgment will terminate this action, except that the Court will retain jurisdiction over the matter for any further proceedings that may be required to interpret, enforce or modify the Judgment or to punish violations of any of its provisions.

Practices Giving Rise to the Alleged Violation

Defendant Lykes is a Louisiana corporation with its principal place of business in Tampa, Florida. Lykes is an ocean common carrier that provides ocean transportation services for cargo worldwide, including services in the North Atlantic trade between the United States and Northern Europe. In 1994, Lykes' vessel operating revenues totaled approximately \$625 million.

Prices in the ocean shipping industry are not set in a vigorously competitive market. The ocean shipping industry is comprised of both conference and independent ocean common carriers. A conference is a legal cartel of ocean common carriers; its members receive immunity from the antitrust laws (46 U.S.C. App.§ 1701, et seq., "1984 Shipping Act") to agree on prices and engage in other otherwise illegal concerted activity. There are over 15 carriers that serve the North Atlantic trade between the United States and Europe, but the majority of these are members of the Trans-Atlantic Conference Agreement ("TACA"). TACA is a conference that has received antitrust immunity to jointly fix prices

and limit capacity in the North Atlantic trade. Their prices are set forth in tariffs filed with the Federal Maritime Commission ("FMC") and are available to all customers (who are called "shippers"). Defendant Lykes is not a member of TACA. It operates as an independent carrier in the North Atlantic, offering transportation services to all shippers at tariff prices that it sets independently. In trades with a significant conference, such as the North Atlantic trade, independents as well as the conference possess some degree of market power over freight rates because there are relatively few separate sellers.

Under the 1984 Shipping Act, independent carriers or conferences may enter into service contracts with shippers or shippers' associations. A shippers' association is a group of shippers that consolidates or distributes freight for its members on a nonprofit basis in order to secure volume discounts. In a service contract, a shipper or shippers' association commits to provide a certain minimum quantity of cargo over a fixed period, and the ocean carrier or conference commits to a certain price schedule based on that volume. Service contract prices are typically lower than the tariff

Universal Shippers Association ("Universal") is a shippers' association composed of member shippers' associations and large independent distillers that ship their own products. Universal accounts for about half of the wine and spirits carried across the North Atlantic. Universal entered into a service contract with Lykes on or about October 26, 1993 (effective through December 31, 1995), for the ocean transportation of wine and spirits from Northern Europe to the United States. The Lykes/Universal contract contained the following "automatic rate differential clause":

Carrier guarantees that rates and charges in this Contract shall at all times be at least 5% lower than any other tariff, Time Volume or other service contract rates for similar commodities at a lesser volume and essentially similar transportation service. As necessary, Carrier shall reduce rates/charges in this Contract as necessary to honor this guarantee, promptly informing the Association and the FMC.

This clause requires Lykes to charge competing shippers or shippers'

associations that purchase lesser volumes than Universal a rate that is at least 5% higher than Universal's.

Other shippers and shippers' associations compete with Universal and its members for importing wines and spirits into the United States. Universal's competitors seek to minimize their costs by, inter alia, obtaining the lowest possible rates for the ocean transportation of wine and spirits. But the automatic rate differential clause limits Lykes' incentive to offer to Universal's competitors transportation rates as favorable as Lykes could otherwise offer. To comply with the clause, Lykes must either offer these shippers prices that are at least 5% higher than the prices in Universal's service contract, or it must lower Universal's price for all of Universal's service contract shipments in order to maintain the 5% differential. The latter is not an attractive alternative for Lykes, given Universal's volume. And in either case, Universal's competitors pay prices 5% higher than Universal—regardless of Lykes' cost of providing them with transportationwhich adversely affects their ability to compete with Universal.

Where there are few separate sellers, as is the case here, an automatic rate differential clause in effect places a tax on the buyer's competitors. There is a danger that this tax will protect the buyer from competition from firms whose costs may otherwise be lower than its own, thus erecting barriers to competition. It is the raising of these barriers to competition with Universal, which already has a substantial market presence, that constitutes the unreasonable restraint of trade in this case.

III.

Explanation of the Proposed Final Judgment

The Plaintiff and Lykes have stipulated that the Court may enter the proposed Final Judgment after compliance with the Antitrust Procedures and Penalties Act, 15 U.S.C. § 16(b)–(h). The proposed Final Judgment provides that its entry does not constitute any evidence against or admission of any party concerning any issue of fact or law.

Under the provisions of Section 2(e) of the Antitrust Procedures and Penalties Act 15 U.S.C. § 16(e), the proposed Final Judgment may not be entered unless the Court finds that entry is in the public interest. Section IX(C) of the proposed Final Judgment sets forth such a finding.

¹ Independent carriers and conferences may also enter into service contracts with non-vessel operating common carriers ("NVOCCs"). An NVOCC offers transportation services to shippers but does not operate the vessels. NVOCCs typically consolidate the freight of small shippers and then arrange for carriage of the consolidated freight.