

Dated: May 29, 1998.

**Richard W. Moreland,**

*Acting Assistant Secretary for Import Administration.*

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## DEPARTMENT OF COMMERCE

### International Trade Administration

#### Export Trade Certificate of Review

**ACTION:** Notice of application.

**SUMMARY:** The Office of Export Trading Company Affairs ("OETCA"), International Trade Administration, Department of Commerce, has received an application for an Export Trade Certificate of Review. This notice summarizes the conduct for which certification is sought and requests comments relevant to whether the Certificate should be issued.

**FOR FURTHER INFORMATION CONTACT:** Morton Schnabel, Director, Office of Export Trading Company Affairs, International Trade Administration, (202) 482-5131. This is not a toll-free number.

**SUPPLEMENTARY INFORMATION:** Title III of the Export Trading Company Act of 1982 (15 U.S.C. 4001-21) authorizes the Secretary of Commerce to issue Export Trade Certificates of Review. A Certificate of Review protects the holder and the members identified in the Certificate from state and federal government antitrust actions and from private, treble damage antitrust actions for the export conduct specified in the Certificate and carried out in compliance with its terms and conditions. Section 302(b)(1) of the Act and 15 CFR 325.6(a) require the Secretary to publish a notice in the **Federal Register** identifying the applicant and summarizing its proposed export conduct.

#### Request for Public Comments

Interested parties may submit written comments relevant to the determination whether a Certificate should be issued. If the comments include any privileged or confidential business information, it must be clearly marked and a nonconfidential version of the comments (identified as such) should be included. Any comments not marked privileged or confidential business information will be deemed to be nonconfidential. An original and five copies, plus two copies of the nonconfidential version, should be submitted no later than 20 days after the date of this notice to: Office of Export

Trading Company Affairs, International Trade Administration, Department of Commerce, Room 1800H, Washington, D.C. 20230. Information submitted by any person is exempt from disclosure under the Freedom of Information Act (5 U.S.C. 552). However, nonconfidential versions of the comments will be made available to the applicant if necessary for determining whether or not to issue the Certificate. Comments should refer to this application as "Export Trade Certificate of Review, application number 98-00002." A summary of the application follows.

#### *Summary of the Application:*

*Applicant:* All State Packers, Inc. ("ASP"), 6011 E. Pine Street, Lodi, California 95240.

*Contact:* James C. Christie, Independent Consultant, Telephone: (206) 292-6340.

*Application No.:* 98-00002.

*Date Deemed Submitted:* May 21, 1998.

Members (in addition to applicant): Carter Thomas, LLC, Davis, California. ASP seeks a Certificate to cover the following specific Export Trade, Export Markets, and Export Trade Activities and Methods of Operation.

#### *Export Trade*

##### 1. *Products*

Fresh California Pears.

##### 2. *Services*

Inspection, quality control, marketing and promotional services.

##### 3. *Technology Rights*

Proprietary rights to all technology associated with Products or Services, including, but not limited to: patents, trademarks, service marks, trade names, copyrights, trade secrets, and know-how.

##### 4. *Export Trade Facilitation Services (as They Relate to the Export of Products, Services and Technology Rights)*

All export trade-related facilitation services, including, but not limited to: consulting and trade strategy; sales and marketing; export brokerage; foreign marketing research; foreign market development; overseas advertising and promotion; product research and design based on foreign buyer and consumer preferences; communication and processing of export orders; inspection and quality control; transportation; freight forwarding and trade documentation; insurance; billing of foreign buyers; collection (letters of credit and other financial instruments); provision of overseas sales and distribution facilities and overseas sales

staff; legal, accounting and tax assistance; management information systems development and application; assistance and administration of government export assistance programs, such as the USDA Market Access and Supplier Credit programs.

#### **Export Markets**

The Export Markets include all parts of the world except the United States (the fifty states of the United States, the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, American Samoa, Guam, the Commonwealth of the Northern Mariana Islands and the Trust Territory of the Pacific Islands).

#### **Export Trade Activities and Methods of Operation**

In connection with the promotion and sale of ASP's and Members' Products and Services into the Export Markets, ASP and/or one or more of its Members seeks to:

1. Design and execute foreign marketing strategies for its Export Markets;
2. Prepare joint bids, establish export prices for Products and Services and establish terms of sale in the Export Markets;
3. Grant sales and distribution rights for the Products, whether or not exclusive, into designated Export Markets to foreign agents or importers ("exclusive" meaning that ASP and Member(s) may agree not to sell the Products into the designated Export Markets through any other foreign distributor, and that the foreign distributor may agree to represent only ASP and/or Member(s) in the Export Markets and none of its competitors);
4. Design, develop and market generic corporate labels;
5. Engage in joint promotional activities directly targeted at developing the Export Markets, such as: arranging marketing trips; providing brochures, promotions and other forms of product, service and industry information; conducting international market and product research; procuring international marketing, advertising and promotional services; and sharing the cost of these joint promotional activities among ASP and the Member(s);
6. Conduct product and packaging research and development exclusively for the export of the Products, such as meeting foreign regulatory requirements and foreign buyer specifications and identifying and designing for foreign buyer and consumer preferences;
7. Negotiate and enter into agreements with governments and other foreign persons regarding non-tariff trade

barriers in the Export Markets, such as packaging requirements, and providing specialized packing operations and other quality control procedures to be followed by ASP and its Member(s) in the export of Products into the Export Markets;

8. Advise and cooperate with agencies of the U.S. Government in establishing procedures regulating the export of Member(s)' Products, Services and/or Technology Rights into the Export Markets;

9. Negotiate and enter into purchase agreements with buyers in the Export Markets regarding the export prices, quantities, type and quality of Products, time periods, and the terms and conditions of sale;

10. Broker or take title to the Products;

11. Purchase Products from non-Members whenever necessary to fulfill specific sales obligations;

12. Solicit non-Members to become Members;

13. Communicate and process export orders;

14. Assist each Member in maintaining the quality standards necessary to be successful in the Export Markets;

15. Provide Export Trade Facilitation Services with respect to Products, Services and Technology Rights;

16. Provide, procure, negotiate, contract and administer transportation services for Products in the course of export, including overseas freight transportation, inland freight transportation from the packing house to the U.S. port of embarkment, leasing of transportation equipment and facilities, storage and warehousing, stevedoring, wharfage and handling, insurance, forwarder services, trade documentation and services, customs clearance, financial instruments and foreign exchange;

17. Negotiate freight rate contracts with individual carriers and carrier conferences either directly or indirectly through shippers associations and/or freight forwarders;

18. Arrange financing through bank holding companies, governmental financial assistance programs and other arrangements;

19. Bill and collect from foreign buyers and provide accounting, tax, legal and consulting assistance and services;

20. Enter into exclusive agreements with Non-Members to provide Export Trade Services and Trade Facilitation Services;

21. Open and operate overseas sales and distribution offices and companies

to facilitate the sales and distribution of the Products in the Export Markets;

22. Apply for and utilize applicable export assistance and incentive programs which are available within the governmental and private sectors, such as the USDA Market Access and Supplier Credit programs;

23. Negotiate and enter into agreements with governments and foreign persons to develop countertrade arrangements;

24. Refuse to deal with or provide quotations to other Export Intermediaries for sales of ASP and Member(s)' Products into the Export Markets; and

25. Exchange information with and among ASP and Member(s) as necessary to carry out the Export Trade Facilitation Services and Export Trade Activities and Methods of Operation, including:

a. Information about sales and marketing efforts and strategies in the Export Markets, including pricing; projected demand in the Export Markets for Products; customary terms of sale, prices and availability of Products independently committed by Member(s) for sales in the Export Markets; prices and sales of Products in the Export Markets; and specifications by buyers and consumers in the Export Markets;

b. Information about the price, quality, quantity, source and delivery dates of Products available from the Member(s) for export;

c. Information about terms and conditions of contracts for sales in the Export Markets to be considered and/or bid on by ASP;

d. Information about joint bidding, selling arrangements for the Export Markets and the allocations of export sales resulting from such arrangements among ASP and Member(s), including information regarding the allocation methods used and ASP and each Member's percentage of the total committed volume of ASP and all Member(s);

e. Information about expenses specific to exporting to and within the Export Markets, including transportation, transshipments, intermodal shipments, insurance, inland freight to port, port storage, commissions, export sales, documentation, financing and customs duties or taxes;

f. Information about U.S. and foreign legislation and regulations, including Federal marketing order programs that may affect sales to the Export Markets; and

g. Information about ASP's or its Member(s)' export operations, including sales and distribution networks established by ASP and Member(s) in

the Export Markets, and prior export sales by ASP and Member(s), including export price information.

## Definitions

1. *Export Intermediary* means a person who acts as distributor, sales representative, sales or marketing agent, or broker, or who performs similar functions, including providing, or arranging for the provision of, Export Trade Facilitation Services.

2. *Member* means a person who has membership in the ASP Export Trade Certificate and who has been certified as a "Member" within the meaning of Section 325.2(1) of the Regulations. Carter Thomas, LLC is currently the only member.

Dated: May 29, 1998.

**Morton Schnabel,**

*Director, Office of Export Trading Company Affairs.*

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## DEPARTMENT OF COMMERCE

### National Oceanic and Atmospheric Administration

[I.D. 051298A]

### Magnuson-Stevens Act Provisions; Atlantic Shark Fisheries; Exempted Fishing Permits (EFPs)

**AGENCY:** National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

**ACTION:** Applications for EFPs; request for comments.

**SUMMARY:** NMFS announces the receipt of five applications for EFPs. If granted, these EFPs would authorize, over a period of 1 year, collections for public display of a limited number of sharks from the large coastal and prohibited species groups from Federal waters in the Atlantic Ocean.

**DATES:** Written comments on the applications must be received on or before June 19, 1998.

**ADDRESSES:** Send comments to Rebecca Lent, Chief, Highly Migratory Species Management Division (F/SF1), NMFS, 1315 East-West Highway, Silver Spring, MD 20910. The applications and related documents and copies of the regulations under which exempted fishing permits are subject may also be requested from this address.

**FOR FURTHER INFORMATION CONTACT:** Margo Schulze, 301-713-2347; fax: 301-713-1917.