- necessary to process such orders; (e) Information about joint bidding opportunities;
- (f) Information about methods by which exports sales are to be allocated among Members;
- (g) Information about expenses specific to exporting to and within Export Markets, including transportation, transshipments, intermodal shipments, insurance, inland freight to port, port storage, commissions, export sales, documentation, financing and customs duties or taxes;
- (h) Information about U.S. and foreign legislation and regulations, including Federal marketing order programs that may affect sales to Export Markets; and
- (i) Information about FCE's or Members' export operations, including sales and distribution networks established by FCE or Members in Export Markets, and prior export sales by Members, including export price information.

Members (Within the Meaning of § 325.2(1) of the Regulations)

Florida Fresh Citrus Sales, Inc., Wabasso, Florida; Golden River Fruit Co., Vero Beach, Florida; Leroy E. Smith's Sons, Inc., Vero Beach, Florida; Ocean Spray Cranberries, Inc., Vero Beach, Florida; Seald-Sweet Growers, Inc., Vero Beach, Florida.

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 FCE and who has been certified as a "Member" within the meaning of § 325.2(1) of the Regulations, set out in Attachment A and incorporated by reference.

Terms and Conditions of Certificate

1. Except as provided in paragraphs 29(b) and 29(g) of the Export Trade Activities and Methods of Operation, neither FCE nor any Member shall intentionally disclose, directly or indirectly, to any other Member any information about its or any other Member's costs, production, capacity, inventories, domestic prices, domestic sales, terms of domestic marketing or sale, or U.S. business plans, strategies, or methods, unless (1) such information is already generally available to the trade or public; or (2) the information disclosed is a necessary term or

- condition (e.g., price, time required to fill an order, etc.) of an actual or potential bona fide sale and the disclosure is limited to the prospective purchasing Member.
- 2. Each Member shall determine independently of other members the quantity of Products the Member will make available for export or sell through FCE. FCE may not solicit from any member specific quantities for export or require any member to export any minimum quantity of products.
- 3. Any agreements, discussions, or exchanges of information under this Certificate relating to quantities of Products available for Export Markets, product specifications or standards, export prices, product quality or other terms and conditions of export sales (other than export financing) shall be in connection only with actual or potential bona fide export transactions or opportunities and shall include only those Members participating or having a genuine interest in participating in such transactions or opportunities; provided that FCE and/or the Members may discuss standardization of Products and Services for purposes of making bona fide recommendations to foreign governmental or private standard-setting organizations.
- 4. Meetings at which FCE allocates export sales among Members and establishes export prices shall not be open to the public.
- 5. Participation by a Member in any Export Trade Activity or Method of Operation under this Certificate shall be entirely voluntary as to that Member, subject to the honoring of contractual commitments for sales of Products, Services or Technology Rights in specific export transactions. A Member may withdraw from coverage under this Certificate at any time by giving written notice to FCE, a copy of which FCE shall promptly transmit to the Secretary of Commerce and the Attorney General.
- 6. FCE and the Members will comply with requests made by the Secretary of Commerce on behalf of the Secretary or the Attorney General for information or documents relevant to conduct under the Certificate. The Secretary of Commerce will request such information or documents when either the Attorney General or the Secretary believes that the information or documents are required to determine that the Export Trade, Export Trade Activities and Methods of Operation of a person protected by this Certificate of Review continue to comply with the standards of section 303(a) of the Act.

Protection Provided by Certificate

The Certificate protects FCE and its directors, officers, and employees acting on its behalf, as well as its Members, and their directors, officers, and employees acting on their behalf, from private treble damage actions and governmental criminal and civil suits under U.S. federal and state antitrust laws for the export conduct specified in the Certificate and carried out during its effective period in compliance with its terms and conditions.

Effective Period of Certificate

The Certificate continues in effect from the effective date indicated below until it is relinquished, modified or revoked as provided in the Act and the Regulations.

Other Conduct

Nothing in the Certificate prohibits FCE and its Members from engaging in conduct not specified in this Certificate, but such conduct is subject to the normal application of the antitrust laws.

Disclaimer

The issuance of the Certificate of Review to FCE by the Secretary of Commerce with the concurrence of the Attorney General under the provisions of the Act does not constitute, explicitly or implicitly, an endorsement or opinion by the Secretary of Commerce or the Attorney General concerning either (a) the viability or quality of the business plans of FCE or its Members or (b) the legality of such business plans of FCE or its Members under the laws of the United States (other than as provided in the Act) or under the laws of any foreign country.

The application of the Certificate to conduct in Export Trade where the United States Government is the buyer or where the United States Government bears more than half the cost of the transaction is subject to the limitations set forth in Section V.(D.) of the "Guidelines for the Issuance of Export Trade Certificates of Review (Second Edition)," 50 FR 1786 (January 11, 1985) ("Guidelines").

Dated: February 23, 1995.

W. Dawn Busby,

Director, Office of Export Trading Company Affairs.

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