



DEPARTMENT OF JUSTICE

Antitrust Division

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February 2, 2006

Evans J. Plowden, Jr.
Watson, Spence, Lowe and Chambless, LLP
329 Residence Avenue
Post Office Box 2008
Albany, Georgia 31702-2008

Dear Mr. Plowden:

This letter responds to your request for the issuance of a business review letter pursuant to the Department of Justice's Business Review Procedure, 28 C.F.R. § 50.6. You have requested a statement of the Antitrust Division's current enforcement intentions with respect to a proposal by your client, the American Peanut Shellers Association ("APSA"), to promulgate revised Farmers Stock Trading Rules; Shelled, Inshell Trading Rules; and Shelled, Inshell Peanut Grade Standards (collectively, "APSA Trading Rules and Grade Standards" or the "Rules").

APSA is a non-profit trade association composed of commercial peanut shellers and crushers located in Alabama, Florida, and Georgia. APSA has nine active members, who represent about 90% of U.S. peanut shellers.¹ APSA members purchase farmers stock peanuts (peanuts in the condition they are picked) from peanut growers in the United States, shell and mill those peanuts, and sell the product to manufacturers in the United States and abroad. APSA historically has promulgated voluntary trading rules for use in the trade and its rules have found use both among its members and others involved in the trade in the United States and overseas. The Department of Justice issued favorable business reviews of trading rules and grade standards proposed by the Southeastern Peanut Association, the APSA predecessor association, in 1989 and 1992. APSA represents that it created this new version of its Trading Rules and Grade Standards to remove obsolete terms and to respond to changes to the federal peanut program legislated in the Farm Security and Rural Investment Act of 2002, Pub. L. No. 107-171, 116 STAT. 134 ("2002 Farm Bill") and the regulations promulgated pursuant to that statute.

¹The APSA active members are Anderson Peanuts, Birdsong Peanuts, Damascus Peanut Company, Doster Warehouse, Inc., Golden Peanut Company, McCleskey Mills, Inc., Reeves Peanut Company, Inc., Tom's Foods, Inc., and Williston Peanuts.

As explained by APSA in the introduction to the Rules, uniform rules and grade standards covering offers, sales, and purchases of peanuts help contracting parties avoid misunderstandings, make more definite the terms of contracts of purchase and sale, avoid the necessity of drafting in each instance a lengthy and cumbersome document, and otherwise increase the efficiency of transactions. APSA expects that its Rules and Grade Standards will be used by the peanut trade not only for domestic purposes but also for export purposes, which APSA claims as an important benefit in light of its representations that peanut exports are a significant part of the peanut industry and that domestic demand currently is not sufficient to fully utilize the U.S. peanut crop.

The Farmers Stock Trading Rules establish standards for various farmer stock peanut grades and establish standard non-price contractual terms and provisions as to weights, delivery, sampling and inspection, and rejections and arbitration. Article I states that the rules apply where the buyer and seller agree in writing that they will apply.

The Shelled, Inshell Trading Rules establish terms for standard non-price contractual terms and provisions as to declaration of shipment, release of goods, weights and claims, shipping instructions and time, samples and inspections, rejections, arbitration, delayed or excused delivery, and circles (repurchases). The Shelled, Inshell Trading Rules state that tolerances in type and grade of peanuts can be agreed upon in writing prior to shipment (Article I, Section 2) and that nothing in the rules prohibits or interferes with the rights of the parties to enter into a special written contract setting forth terms of the agreement (Article II, Section 1).

The APSA Shelled, Inshell Peanut Grade Standards define the grades for each type of peanut sold. For each type of peanut, the grades define size, percentage of other types of peanuts, split peanuts, damage, minor defects, foreign material and moisture allowed for each grade. APSA represents that the grade standards provide a common language for buyers and sellers and facilitate transactions. APSA also represents that domestic buyers of shelled peanuts generally have their own requirements and those requirements are more stringent than the APSA Shelled, Inshell Peanut Grade Standards.

Based on the representations made in your submission and our meeting with two members of APSA, the documents and information submitted in support of APSA's request, and the information obtained during our own investigation, we conclude that the APSA Trading Rules and Grade Standards, as submitted, are not likely to reduce competition. The Trading Rules appear to use general commercial language that should enhance the ability of parties to enter into contracts to buy and sell peanuts. In addition, the grade standards, which have been in effect since at least 1989, appear to be used only as base standards, whereas buyers of shelled peanuts frequently apply their own standards. Finally, because use of the Trading Rules and Grade Standards is voluntary, buyers and sellers of peanuts will remain free to compete by using their own contract terms and standards for peanuts instead of those in the APSA Trading Rules and Grade Standards.

For these reasons, the Department has no present intention to challenge the proposed APSA Trading Rules and Grade Standards. This letter expresses the Department's current enforcement intention solely with respect to the proposed APSA Trading Rules and Grade

Standards and is issued in reliance on the information and representations contained in APSA's submissions. In accordance with its normal practice, the Department reserves the right to bring an enforcement action in the future should the APSA Trading Rules and Grade Standards prove to be anticompetitive in purpose or effect.

This statement is made in accordance with the Department's Business Review Procedure, 28 C.F.R. § 50.6. Pursuant to this procedure, your business review request and this letter will be made publicly available immediately, and any supporting documentation will be made publicly available within 30 days of the date of this letter, except for any part of the materials for which you request and justify confidential treatment in accordance with Paragraph 10(c) of the Business Review Procedure.

Yours sincerely,

A handwritten signature in black ink, appearing to read "Thomas O. Barnett". The signature is fluid and cursive, with a horizontal line extending from the end.

Thomas O. Barnett
Acting Assistant Attorney General