

UNITED STATES DEPARTMENT OF AGRICULTURE
BEFORE THE SECRETARY OF AGRICULTURE

P.Q. Docket No. 06-0020

In re: JOSE LUIS JIMENEZ,

Respondent

DEFAULT DECISION AND ORDER

On August 14, 2006, the Administrator of the Animal and Plant Health Inspection Service, United States Department of Agriculture, instituted this proceeding by filing an administrative complaint against Respondent Jose Luis Jimenez. The complaint was mailed to Respondent's last known residence by certified mail, return receipt requested, but was returned to the Hearing Clerk's Office marked "Unclaimed" by the U.S. Postal Service on September 12, 2006. Section 1.147(c)(1) of the Rules of Practice (7 C.F.R. § 1.147(c)(1)) states that if a complaint is sent to a person by certified mail to make that person a party respondent in a proceeding and is returned marked by the postal service as unclaimed [or refused], the complaint shall be deemed received by that person on the date that it is re-mailed by regular mail to the same address. The Hearing Clerk's Office re-mailed the complaint to respondent at the same address by regular mail on September 19, 2006. Accordingly, Respondent was properly served with the complaint on September 19, 2006. Respondent was informed in the complaint and the letter accompanying the complaint that an answer should be filed with the Hearing Clerk within twenty (20) days after service of the complaint, and that failure to file an answer within twenty (20) days after service of the complaint would constitute an admission of the allegations in the complaint and a waiver of a hearing. Respondent never filed an answer to the complaint and this matter is before me upon the Complainant's Motion for Adoption of Proposed default Decision and Order.

Section 1.136(c) of the Rules of Practice (7 C.F.R. § 1.136(c)) provides that the failure to file an answer within the time provided under 7 C.F.R. § 1.136(a) or to deny or otherwise respond to an allegation of the complaint shall be deemed an admission of the allegations in the complaint. Respondent's failure to answer is likewise deemed a waiver of hearing. Accordingly, the material allegations in the complaint are adopted and will be set forth in this Default Decision as the Findings of Fact, and this Decision is issued pursuant to section 1.139 of the Rules of Practice applicable to this proceeding (7 C.F.R. § 1.139).

FINDINGS OF FACT

1. Respondent Jose Luis Jimenez is an individual with a mailing address of 314 2 West 68th Street, Los Angeles, California 90003.

2. On or about April 14, 2004, the respondent brought approximately 65 pounds of fresh mangoes into the United States from Mexico in violation of the regulations in 7 C.F.R. pt. 319, as follows:

(a) The mangoes were imported without a permit, as required in 7 C.F.R. § 319.56-3(a).

(b) The mangoes were not offered for entry at the U.S. port of first arrival, as required in 7 C.F.R. § 319.56-6(b).

CONCLUSIONS OF LAW

1. The Secretary has jurisdiction in this matter.
2. For the reasons set forth in the above Findings of Fact, Respondent Jose Luis Jimenez is found to have violated the Plant Protection Act (7 U.S.C. § 7701 *et seq.*).

ORDER

As the requested penalty of Four Thousand Dollars (\$4,000.00) exceeds the amount to be imposed upon a first time offender moving regulated articles not for monetary gain, the amount of the civil penalty to be exacted is reserved at this time, pending submission of additional evidence by the Complainant that either the Respondent had prior violations, or evidence that the importation was for monetary gain.

Done at Washington, D.C.
February 2, 2007

PETER M. DAVENPORT
Administrative Law Judge

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