

UNITED STATES DEPARTMENT OF AGRICULTURE
BEFORE THE SECRETARY OF AGRICULTURE

In re:) P.Q. Docket No. 03-0017
Wal-Mart Stores, Inc., and)
Swift Transportation Company, Inc.,)
Respondents) Consent Decision

This proceeding was instituted under the Plant Protection Act (7 U.S.C. § 7701 et seq.)(the Act), by a complaint filed by the Acting Administrator of the Animal and Plant Health Inspection Service alleging that respondent Swift Transportation Company, Inc. (hereinafter, the respondent) violated the Act and regulations promulgated thereunder (7 C.F.R. §§ 319.37 et seq. and 7 C.F.R. § 330.200). The complainant and the respondent have agreed that this proceeding should be terminated by entry of this Consent Decision.

For the purposes of this Consent Decision only, the respondent specifically admits that the Secretary of the United States Department of Agriculture has jurisdiction in this matter, neither admits nor denies the remaining allegations in the complaint, and admits to the Findings of Fact set forth below.

Respondent waives:

- (a) Any further procedure;
- (b) Any requirement that the final decision in this proceeding contain findings and conclusions with respect to all material issues of fact, law, or discretion, as well as the reasons or bases thereof;
- (c) All rights to seek judicial review and otherwise challenge or contest the validity of this decision; and
- (d) Any action against the United States Department of Agriculture under the Equal Access to Justice Act of 1980 (5 U.S.C. § 504 et seq.) for fees and other expenses incurred by the respondent in connection with this proceeding.

Findings of Fact

1. The respondent is an enterprise incorporated in Arizona and maintaining its corporate headquarters at 2200 South 75th Avenue, Phoenix, Arizona 85043.
2. On or about November 24, 2001, 285 boxes of prohibited Spanish Clementines were moved from Wal-Mart Distribution Center # 6055 in Georgia to Sam's Club # 8120 in Florida.


Conclusions

The respondent has admitted the jurisdictional facts and has agreed to the following Order in disposition of this proceeding; therefore, this Consent Decision will be issued.


Order

The respondent Swift Transportation Company, Inc., is assessed a civil penalty of fifteen thousand dollars (\$15,000.00). The respondent shall send a certified check or money order for fifteen thousand dollars (\$15,000.00), payable to the Treasurer of the United States, to United States Department of Agriculture, APHIS, Accounts Receivable, P.O. Box 3334, Minneapolis, Minnesota 55403, within thirty (30) days from the effective date of this Order. The certified check or money order should include the docket number of this proceeding.

This Order shall become effective when served on the respondent.



David L. Durkin
Counsel for Respondent
Swift Transportation Company, Inc.



Thomas N. Bolick
Attorney for the Complainant

Issued this 8th day of March, 2005
at Washington, D.C.

Administrative Law Judge