

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 (APHIS) alleging that respondent Wal-Mart Stores, Inc. (hereinafter, the respondent) violated the Act and regulations promulgated thereunder (7 C.F.R. § 319.56-2jj(i)). 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 (USDA) 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.

The 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 Delaware and maintaining its corporate headquarters at 702 S.W. 8th Street, Bentonville, Arkansas 72716-0555. The respondent does business in Georgia, through its subsidiary Wal-Mart Stores, East, L.P., as Wal-Mart Distribution Center # 6055, 655 Unisia Drive, Monroe, Georgia 30655. The respondent also does business in Florida, through its subsidiary Sam's East, Inc. as Sam's Club # 8120, 3221 N. Monroe Street, Tallahassee, Florida 32303.
2. On or about November 24, 2001, 285 boxes of Spanish Clementines were moved from Wal-Mart Distribution Center # 6055 in Georgia to Sam's Club # 8120 in Florida, the shipment of which violated APHIS regulations in effect at that time.

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 Wal-Mart Stores, Inc., is assessed a civil penalty of two hundred and fifty thousand dollars (\$250,000.00). The respondent shall send a certified check or money order for fifty thousand dollars (\$50,000.00), 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. Payment of the remaining two hundred thousand dollars (\$200,000.00) of the civil penalty shall be suspended for so long as the conditions set forth below are met:

1. (a) Within ninety (90) days of the effective date of this Order, the respondent shall develop a set of best practices for the following classes of Respondent's associates:

- a. Merchandise: buyers, assistant buyers, and other associates on buying teams with responsibility for purchasing or routing perishables or other agricultural products
- b. Logistics: distribution center General Managers, Assistant General Managers, and Quality Assurance associates
- c. Operations: Fresh Managers and produce team leaders, or positions with similar responsibilities as denominated by respondent
- d. Compliance: Directors

These best practices shall be designed to thoroughly familiarize such employees with the following:

- (i) the basic legal requirements of the Plant Protection Act (7 U.S.C. § 7701 et seq.) and the general principles of plant quarantine (7 C.F.R. Part 301 et seq.) as they affect products handled by Respondent;
- (ii) the requirements of all Federal regulations which govern the importation of fruits and vegetables into the United States and their distribution therein (7 C.F.R. § 319.56 et seq.), and
- (iii) the requirements of all Federal regulations which govern the importation of nursery stock, plants, roots, bulbs, seeds, and other plant products into the United States and their distribution therein (7 C.F.R. § 319.37 et seq.).

(b) The respondent shall submit said best practices to USDA APHIS for approval prior to implementation, and USDA APHIS shall have the right to review these best practices materials periodically during the term of this Order.

(c) Respondent shall provide these best practices by publication using Respondent's internal web-based communications used for other similar business information and policies that associates are expected to know and execute as part of their ordinary duties to Respondent.

(d) Provision of best practices shall be mandatory for all current employees of the respondent listed in paragraph 1(a) of this Order within thirty (30) days after the date that the best practices materials are approved by USDA APHIS, or within thirty (30) days of the starting date of their employment as one of the employees identified above if after the date of approval by USDA APHIS.

2. Respondent has retained counsel for the purpose of advising it on new Federal regulations issued by USDA APHIS concerning restrictions on the importation of fruits and vegetables and nursery stock into the United States and their distribution therein. In house counsel may, in respondent's discretion, perform the same function. Respondent's retention of and reliance upon counsel for this purpose shall not relieve Respondent of its responsibility to know and comply with those USDA statutes and regulations which apply to Respondent's products and business practices. Respondent will use its best efforts to update its best practices materials and provide updated materials to all employees of the respondent listed in paragraph 1(a) of this Order, alerting them to the existence and requirements of said regulations.

3. (a) Within ninety (90) days of the effective date of this Order, the respondent shall issue a company statement notifying all employees described in paragraphs 1(a) of this Order that the respondent recognizes and takes seriously its responsibility to cooperate in the protection of the health and value of American agriculture and the environment. This statement shall warn said

employees that future violations of USDA regulations may result in the USDA seeking the imposition of harsher penalties against the respondent under the Federal Plant Protection Act ((7 U.S.C. § 7701 et seq.) and the issuance of a press release on said violations and penalties by USDA officials, and that any employee of the respondent who violates Federal regulations relating to the interstate movement of agricultural commodities may be subject to discipline consistent with the respondent's company policies.

(b) The respondent shall submit the statement described in paragraph 3(a) to USDA APHIS for review prior to its release.

4. All reports and/or other documentation required by paragraphs 1 and 3 of this Order shall be submitted to William E. Thomas, Director, Quarantine Policy, Analyses, and Support, USDA APHIS Plant Protection and Quarantine, 4700 River Road, Unit 60, Riverdale, Maryland 20737 (phone number 301-734-5214).

5. If the terms and provisions listed in paragraphs 1 through 4 of this Order are not met, the respondent shall become immediately liable for payment of the two hundred thousand dollar (\$200,000.00) portion of the civil penalty previously held in suspension, following notice of said violation, but without a requirement for hearing.

6. If the respondent complies with the terms and provisions of paragraphs 1 through 4 this Order for three (3) years after the entry of this Consent Decision and Order, the two hundred thousand dollar (\$200,000.00) portion of the civil penalty previously held in suspension shall be canceled. Additionally, the reporting requirements of paragraphs 1 and 3 of this Order shall remain in effect for three (3) years after the entry of this Consent Decision and Order.

7. If any provision of this Order is declared to be invalid, such declaration shall not affect the validity of any other provision herein.

8. This Order shall become effective when served on the respondent.



David L. Durkin
Counsel for Respondent
Wal-Mart Stores, Inc.



Thomas N. Bolick
Attorney for the Complainant

Issued this 15th day of March, 2005

at Washington, D.C.



Administrative Law Judge