



Citation: *Usman v Canada Border Services Agency*, 2021 CART 34

**Docket: CART-2021-BNOV-008**

**BETWEEN:**

**AISHA USMAN**

**APPLICANT**

**- AND -**

**CANADA BORDER SERVICES AGENCY**

**RESPONDENT**

**BEFORE:** Patricia L. Farnese, member

**WITH:** Mr. Lovedeep Singh Arora and Mr. Shahrukh Zohaib Abbas ,  
representing the Applicant; and  
Ms. Cassandra Ianni-Lucio and Ms. Gaynor Holden,  
representing the Respondent

**DECISION DATE:** November 19, 2021

**BY WRITTEN SUBMISSIONS**

## **1. INTRODUCTION**

[1] Ms. Usman requests that the Canada Agricultural Review Tribunal (Tribunal) set aside or vary a Notice of Violation (Notice) and the accompanying \$1300 penalty she received for failing to declare beef when she entered Canada on a flight from Dubai, United Arab Emirates. I find that Ms. Usman did fail to declare beef contrary to subsection 16(1) of the [Health of Animals Act](#) (HA Act). The Notice with \$1300 penalty is upheld.

[2] This decision arises from my review of the facts of Notice #4971-21-0250. As required by subsection 14(1)(b) of the [Agriculture and Agri-Food Administrative Monetary Penalties Act](#) (AAAMP Act), I have completed an examination of the facts based on written submissions of the parties to determine if Ms. Usman committed the violation and if the penalty was established in accordance with the [Agriculture and Agri-Food Administrative Monetary Penalties Regulations](#) (AAAMP Regulations).

## **2. LEGAL FRAMEWORK**

[3] Subsection 12(1) of the [Customs Act](#) requires that travellers declare to an authorized customs officer all goods they are bringing into Canada. The customs declaration must be made at the first opportunity after arriving in Canada. For those entering the country by air, this declaration typically occurs on the CBSA E311 Declaration Card or kiosk. The timing of declaration is important because those entering Canada are not permitted to gamble and wait to see if they are sent to secondary screening with a Border Security Officer (Officer) before choosing to declare.<sup>1</sup>

[4] While failing to declare is an offence under the [Customs Act](#), a person who fails to accurately declare animal by-products may receive a Notice for violating the [HA Act](#) or the [Health of Animals Regulations](#) (HA Regulations). The [HA Act](#) and [HA Regulations](#) work together to prevent the introduction of animal diseases into Canada.

[5] The [HA Act](#) and the [HA Regulations](#) are enforced through the uniform enforcement process prescribed by the [AAAMP Act](#) and the [AAAMP Regulations](#). The Canada Border Services Agency (Agency) must prove the essential elements of the violation on a balance of probabilities. The [AAAMP Act](#) creates an absolute liability regime. There are almost no defences or legal reason to excuse someone of liability once the violation has been proven.

[6] The essential elements of subsection 16(1) of the [HA Act](#) that must be proven by the Agency are:<sup>2</sup>

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<sup>1</sup> [Canada \(AG\) v Savoie-Forgeot, 2014 FCA 26](#) at para 25.

<sup>2</sup> [Seyfollah v. Minister of Public Safety and Emergency Preparedness](#), 2021 CART 28.

1. Ms. Usman is the person identified in the Notice;
2. Ms. Usman imported an animal product or by-product into Canada;
3. Ms. Usman failed to declare the animal product or animal by-product at first contact with the Agency's officers and thus did not make it available for inspection; and,
4. none of the exceptions listed in Part IV of the [HA Regulations](#) applied at the time the Notice with penalty was issued.

[7] A person can contest a Notice by requesting a review of the facts of the violation by the Tribunal. Subsection 14(1)(b) of the [AAAMP Act](#) directs the Tribunal to review the evidence to decide if the applicant committed the violation. When the violation is proven, the Tribunal will also consider whether the penalty imposed follows the process outlined in the [AAAMP Act](#) and [AAAMP Regulations](#).

### **3. ISSUES**

[8] The parties chose not to proceed with an *Agreed Statement of Facts*. In order to decide whether the Notice will be upheld, the following issues will be addressed:

Issue #1: Did Ms. Usman commit the violation?

Issue #2: If Ms. Usman committed the violation, did she raise a permissible defence?

Issue #3: If a permissible defence was not raised, was the penalty imposed following the process outlined in the [AAAMP Act](#) and [AAAMP Regulations](#)?

### **4. ANALYSIS**

#### **I. Issue #1: Did Ms. Usman commit the violation?**

[9] After reviewing the evidentiary record, I find that the Agency has proven that Ms. Usman committed the violation. Each of the essential elements of a violation of subsection 16(1) of the [HA Act](#) have been established on a balance of probabilities.

[10] The Agency has provided copies of Ms. Usman's passport which were used by the Officer who issued the Notice to confirm her identity. The written submissions provided on Ms. Usman's behalf also do not dispute that she was the person who received the Notice and that the Notice arose from animal by-products she brought into Canada without the required declaration. The Agency has established first essential element – Ms. Usman is the person identified in the Notice.

[11] Although Ms. Usman only received a Notice for importing beef into Canada without declaring it, she had 42 lbs of undeclared meat and dairy products in her luggage. Her luggage was sent for secondary inspection after it was identified by a detection dog. Photographs taken prior to the products being destroyed clearly show 6 patties that visually appear to be beef. Ms. Usman also did not dispute the Officer's report that he found 6 beef kabobs. The Agency has established the second essential element - Ms. Usman imported an animal product or by-product into Canada.

[12] Ms. Usman did not declare that she was importing beef into Canada. A copy of the E311 Declaration Card Ms. Usman completed was included in the evidentiary record. Next to the question about bringing meat into Canada, Ms. Usman selected "No". In an affidavit, Ms. Usman also admitted that she did not believe she had to declare products she imported for personal consumption. As outlined in the legal framework, Ms. Usman was required to declare the beef at her first opportunity and make the beef available for inspection. By not indicating she was importing meat on the E311 Declaration Card, Ms. Usman did not make the beef available for inspection. The Agency's officers were only made aware of the undeclared product after it was detected by the detector dog. The third essential element has been proven by the Agency - Ms. Usman failed to declare the animal product or animal by-product at first contact with the Agency's officers and did not make it available for inspection.

[13] The Agency has established that no exceptions were applicable to beef that would have permitted Ms. Usman to import beef from the United Arab Emirates. Section 52 of the [HA Regulations](#) allows a person to import an animal by-product in two circumstances. The animal by-product can be imported if the person receives a permit from the Minister authorizing the import. A person is also able to provide documentation to the Officer that explains the details of the by-products' treatment. The Officer has the discretion to permit the by-product's entry if the documentation provides reasonable assurances that the by-product does not pose a risk of introducing or spreading a vector, disease, or toxic substance into Canada. There is no record, either in the Officer's notes or Ms. Usman's affidavit that Ms. Usman produced a permit from the Minister or other documentation about the beef's treatment. Instead, the Officer's notes state that when she was asked if she had a permit to import the animal by-products, Ms. Usman replied "no". The Agency has proven the final essential element of the violation - none of the exceptions listed in Part IV of the [HA Regulations](#) applied at the time the Notice with penalty was issued.

## **II. Issue #2: If Ms. Usman committed the violation, did she raise a permissible defence?**

[14] Ms. Usman did not raise a permissible defence that would excuse her from liability for failing to declare beef. In her submissions to the Tribunal, Ms. Usman explained that she believed she had no obligation to declare food she was importing for personal consumption. Her lawyer, Mr. Arora, argued that this mistake of fact should excuse the violation despite section 18 of the [AAAMP Act](#) explicitly excluding mistake of fact as a defence even where the mistake was reasonably and honestly made. Mr. Arora should be aware that I am unable to ignore the Legislature's express limitation of the available defences.

[15] Mr. Arora further argued that the Notice should not be confirmed because the penalty amounts to a criminal sanction for a regulatory offence. I have found no legal basis on which Mr. Arora can rely on to assert this defence. Section 17 of the [AAAMP Act](#) leaves no doubt Ms. Usman is not facing a criminal charge by expressing stating that a violation is not an offence. A Notice with a \$1300 penalty, while not an insignificant amount, is also not a criminal sanction. There is nothing unlawful about the imposition of a penalty in the amount of \$1300 that would serve as a permissible defence to the Notice.

[16] That the animal by-product would have been permitted into the United States is also not a defence to the Notice. Canada is a separate legal jurisdiction entitled to determine its own tolerance for exposure to foreign animal diseases and the measures it wishes to put in place to mitigate those risks. That the beef was cooked and was a lower risk to other prohibited products is not an acceptable defence for the same reasons.

[17] Ms. Usman also cannot avoid responsibility for the Notice because the Officer intervened and ultimately prevented any risk by destroying the products before they were allowed entry into Canada. The Notice Ms. Usman received was not for introducing a foreign animal disease into Canada. The Notice she received was for failing to make the required declaration. The [HA Act](#) places the onus on importers to declare all animal products to allow Agency officers to inspect products and identify those that poses risks. Any other system would be impractical.

## **III. Issue #3: Was the penalty imposed following the process outlined in the [AAAMP Act](#) and [AAAMP Regulations](#)?**

[18] I find that the \$1300 penalty issued to Ms. Usman was imposed following the process outlined in the [AAAMP Act](#) and [AAAMP Regulations](#). Subsection 5(1) of the [AAAMP Regulations](#) mandates a \$1300 penalty for violations which are categorized by the [AAAMP Regulations](#) as very serious. Violations of subsection 16(1) of the [HA Act](#) are categorized as very serious in Schedule 1 of the [HA Regulations](#).

[19] While the Officer has discretion whether to issue a Notice with a warning rather than a penalty, the evidentiary record demonstrates that his discretion was reasonably exercised. Ms. Usman was carrying 42 lbs of undeclared animal by-products. The Officer's notes also indicated that he followed the directive to refuse beef from Dubai found in the Automated Import Reference System (AIRS)<sup>3</sup> because of the risk of introducing foreign disease.

[20] Having determined that the essential elements of a violation of subsection 16(1) of the [HA Act](#) have been established and that the penalty imposed complied with the process outlined in the [AAAMP Act](#) and [AAAMP Regulations](#), I find that the Notice issued to Ms. Usman with the \$1300 penalty is lawful and justified.

## **5. ORDER**

[21] I confirm that Ms. Aisha Usman committed the violation in the Notice and order that she pay the penalty of \$1300 to the Agency within sixty (60) days after the date this decision is issued.

[22] I wish to inform Ms. Usman that this violation is not a criminal offence. Five years after the date on which the penalty is paid, he is entitled to apply to the Minister of Public Safety and Emergency Preparedness to have the violation removed from their records, in accordance with section 23 of the [AAAMP Act](#).

Dated at Saskatoon, Saskatchewan, on this 19<sup>th</sup> day of November, 2021.

(Original signed)

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Patricia Farnese  
Member  
Canada Agricultural Review Tribunal

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<sup>3</sup> Government of Canada, *Automated Import Reference System* (AIRS) online: Government of Canada [https://airs-sari.inspection.gc.ca/airs\\_external/english/decisions-eng.aspx](https://airs-sari.inspection.gc.ca/airs_external/english/decisions-eng.aspx).