

Canada Agricultural
Review Tribunal



Commission de révision
agricole du Canada

Citation: *Marine Operators Co. Ltd. v Canadian Food Inspection Agency* – 2021 CART 36

Docket: CART-2021-FNOV-039

BETWEEN:

MARINE OPERATORS CO. LTD.

APPLICANT

- AND -

CANADIAN FOOD INSPECTION AGENCY

RESPONDENT

BEFORE: Luc Bélanger, Chairperson

WITH: Marine Operators Co. Ltd. represented by Mr. Igor Kazakov

DECISION DATE: November 29, 2021

1. INTRODUCTION

[1] This matter concerns the request for review of Notice of Violation (Notice) # 2122WA0118 pursuant to subsection 9(2)(c) of the [Agriculture and Agri-Food Administrative Monetary Penalties Act](#) (AAAMP Act). On October 17, 2021, Marine Operators Co. Ltd. (Marine Operators) is deemed to have been served with this Notice. On or around August 25, 2021, Marine Operators is alleged to have imported, admitted or exported a thing contrary to section 7 of the [Plant Protection Act](#) (PP Act). This violation is classified as “Very serious” and was served with a penalty of \$ 10,000, but reducible by 50% if paid within the first 15 days following service.

[2] The issue is to determine the admissibility of this request. I must evaluate whether or not Marine Operators satisfies the admissibility threshold established by the [AAAMP Act](#), the [Agriculture and Agri Food Administrative Monetary Penalties Regulations](#) (AAAMP Regulations) and the [Rules of the Review Tribunal \(Canada Agricultural Review Tribunal\)](#) (Tribunal Rules).

[3] In accordance with paragraph 9(1)(a) of the [AAAMP Act](#), Marine Operators is deemed to have committed the violation notably on the basis that it had already paid the penalty imposed. Paying the penalty results in an absolute bar to the admissibility, as confirmed in the Federal Court of Appeal in [Hershkovitz](#).¹ Therefore, I find Marine Operators’ request for review is inadmissible for the following reasons.

2. BACKGROUND

[4] On October 13, 2021, Marine Operators filed a request for review of the Notice before the Canada Agricultural Review Tribunal (Tribunal) via e-mail.

[5] On October 14, 2021, the Tribunal sent a first acknowledgement letter to both parties requesting them to comply with rules 30 and 31 of the [Tribunal Rules](#) on or before October 29, 2021. Additionally, Marine Operators was urged to comply with section 13 of the [Tribunal Rules](#) by sending the request via registered mail to the Tribunal before November 16, 2021 in order to allow its request for review to be considered for admissibility.

[6] On October 19, 2021, the Canadian Food Inspection Agency (Agency) complied with rule 30 of the [Tribunal Rules](#), by filing a copy of the Notice with the Tribunal via email and confirming that the penalty was already paid.

¹ [Hershkovitz v. Canada \(Attorney General\)](#), 2021 FCA 38.

3. ISSUE

[7] Does Marine Operators meet the admissibility threshold established in the [AAAMP Act](#) and the [AAAMP Regulations](#)? The threshold consists of three requirements:

1. the non-payment of the penalty associated to the Notice, if applicable;
2. filing the request for review in the prescribed time and manner; and
3. providing the required information and motives of the request for review in accordance with the [Tribunal Rules](#).

4. ANALYSIS

[8] The legislative scheme encompassed in the [AAAMP Act](#) provides a review mechanism whereby a Notice can be reviewed either by the Minister or by the Tribunal. In this case, Marine Operators has elected to proceed by way of direct review by the Tribunal.

[9] The [AAAMP Act](#), the [AAAMP Regulations](#) and the [Tribunal Rules](#) require that the Tribunal, before it proceeds to a full hearing of a matter, makes a decision on the admissibility of an applicant's request for the review. Absolute bars to admissibility arise when the applicant has already paid the penalty attached to the Notice, or has failed to file a request for review within the prescribed time and manner as set out in the [AAAMP Act](#) and the [AAAMP Regulations](#).

[10] In this case, Marine Operators has paid the discounted amount of the penalty, which is stated in the Agency's email as being \$5,000, to the Agency's satisfaction. Once Marine Operators paid the penalty accompanying the Notice, paragraph 9(1)(a) of the [AAAMP Act](#) states that they were deemed to have committed the respective violation. The legislative language clearly elaborates that "paying the penalty puts an end to the proceeding and precludes the possibility of review". Thus, the Tribunal no longer holds jurisdiction to hear the matter since doing so is not necessary to accomplish its statutory mandate.²

[11] Given my findings with regards to the first threshold requirement, it is not necessary to consider the other two requirements. Marine Operators is already deemed to have committed the violation in accordance with paragraph 9(1)(a) of the [AAAMP Act](#).

5. ORDER

[12] For the aforementioned reasons, I **ORDER** that the request for review is **inadmissible**.

² [Ibid](#), at paras 8-9.

[13] Finally, I wish to inform Marine Operators that this violation is not a criminal offence. After five years, Marine Operators is entitled to apply to the Minister of Agriculture and Agri-Food to have the Notice removed from the records, in accordance with section 23 of the [AAAMP Act](#).

Dated at Ottawa, Ontario, on this 29th day of November 2021.

(Original Signed)

Luc Bélanger
Chairperson
Canada Agricultural Review Tribunal