



Canada Agricultural
Review Tribunal
Ottawa, Canada
K1A 0B7

Commission de révision
agricole du Canada

Citation: *Liu v Canada Border Services Agency*, 2022 CART 17

Docket: CART-2169

BETWEEN:

BINGLI LIU

APPLICANT

- AND -

CANADA BORDER SERVICES AGENCY

RESPONDENT

BEFORE: Marthanne Robson, Member

WITH: Mr. Kaihua Liu, representing the Applicant, and
Mr. Jonathan Ledoux-Cloutier, representing the Respondent

DECISION DATE: June 9, 2022

WRITTEN SUBMISSIONS ONLY

1. INTRODUCTION/BACKGROUND

[1] On March 12, 2020, the Applicant, Mr. Bingli Liu and a travelling companion, arrived in Toronto by air from China. Mr. Liu declared that he brought no food, plant or animal products into Canada. During inspection of their luggage, Canada Border Services Agency (Agency) officers found several food and animal products. The Agency issued a Notice of Violation (Notice) with a penalty of \$1300 for failing to present for inspection “*cooked pork roast/sausage*” contrary to subsection 16(1) of the [Health of Animals Act](#)¹ (HA Act).

[2] Detector Dog Handler/Border Services Officer (Officer) Paterson conducted the secondary examination of Mr. Liu’s luggage with the assistance of Officer Reid and an Agency Interpreter. The Agency claimed Mr. Liu stated that products in their possession were or contained pork. Mr. Liu claimed he imported vegan sausages containing no pork or meat, and that the Officers conducting the inspection as well as the Interpreter did not listen to this explanation. The Agency argued that Mr. Liu, with the assistance of the Interpreter, did not have difficulty communicating with the Officer and that he should have raised a concern with respect to the quality of interpretation at the time of the interaction with the Officer. Mr. Liu requested that the Canada Agricultural Review Tribunal (Tribunal) review the facts of the violation.

[3] The evidence presented by the Agency was incomplete. The Agency blacked out without explanation portions of several documents it submitted as evidence. Mr. Liu raised the complaint regarding interpretation in his Request for Review to the Tribunal which was the first opportunity to do so during an administrative proceeding. The Tribunal concludes that the Agency did not prove Mr. Liu committed the violation and he does not have to pay the penalty.

¹ [Health of Animals Act, S.C. 1990, c. 21](#) [HA Act].

2. LEGAL FRAMEWORK

[4] The purpose of the [HA Act](#) and the [Health of Animals Regulations](#)² (*HA Regulations*) is to prevent the introduction of animal disease into Canada. One incident can pose a serious risk to plant, animal and human welfare, as well as potential harm to the food supply, the economy and the environment. The [Customs Act](#)³ requires that travellers entering Canada declare all goods they import to an authorized customs officer. The customs declaration must be made at the first opportunity after arriving in Canada.⁴ Those arriving by air may make this declaration at a Primary Inspection Kiosk (PIK) where they scan travel documents and answer questions in English, French or 13 other languages including “*Chinese*”, about the goods in their possession. Upon completion of the PIK process, travellers are issued a receipt, which serves as a record of the declaration made to the Agency.

[5] The Canadian Food Inspection Agency (CFIA) determines what food, plant and animal products cannot be imported into Canada and what can be brought in with the proper documentation. A person may import some food, plant and animal products from certain countries if accompanied by the required documentation under exceptions set out in part IV of the [HA Regulations](#). Details can be found in the Automated Import Reference System (AIRS)⁵ which is available to the public.

[6] A person who fails to declare accurately an animal product or animal by-product may receive a Notice for violating section 16(1) of the [HA Act](#) or section 40 of the [HA Regulations](#).

² [Health of Animals Regulations, CRC, c 296](#) [*HA Regulations*].

³ [Customs Act \(R.S.C., 1985, c. 1 \(2nd Supp.\)\)](#), s 12(1).

⁴ [Canada \(Attorney General\) v Savoie-Forgeot, 2014 FCA 26](#).

⁵ Government of Canada, *Automated Import Reference System* (AIRS) online: Government of Canada https://airs-sari.inspection.gc.ca/airs_external/english/decisions-eng.aspx.

[7] The [Agriculture and Agri-Food Administrative Monetary Penalties Act](#)⁶ (AAAMP Act) and [Agriculture and Agri-Food Administrative Monetary Penalties Regulations](#)⁷ (AAAMP Regulations) set out an enforcement process for issuing Notices and penalties. The [AAAMP Act](#) is an absolute liability regime. That means, if the Agency proves that the person committed the prohibited act, in this case, failing to present “cooked pork roast / sausage” for inspection, there are very few defences or legal reasons to relieve that person of responsibility for committing the violation. The [AAAMP Act](#) explicitly excludes the defences of due diligence (I did my best) and mistake of fact (I was mistaken).⁸ The Federal Court of Appeal in the [Doyon](#)⁹ decision described this system of violations and penalties as highly punitive and draconian, meaning excessively harsh and severe.

[8] A person can contest a notice by requesting a review of the facts of the violation by the Tribunal to determine if they committed the prohibited act. If the Agency proves all the essential elements of the violation on a balance of probabilities, the Tribunal considers whether the applicant raised a permissible defence or legal reason to relieve them of responsibility for committing the violation, and whether the penalty imposed follows the process outlined in the [AAAMP Act](#) and [AAAMP Regulations](#).

[9] The essential elements of a violation of subsection 16 (1) of the [HA Act](#) are¹⁰:

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

⁶ [Agriculture and Agri-Food Administrative Monetary Penalties Act, SC 1995, c 40](#) [AAAMP Act].

⁷ [Agriculture and Agri-Food Administrative Monetary Penalties Regulations, SOR/2000-187](#) [AAAMP Regulations].

⁸ AAAMP Act, [supra](#) note 6, s 18(1).

⁹ [Doyon v. Canada \(Attorney General\), 2009 FCA 152](#) at para 21 [Doyon].

¹⁰ [Santos v Minister of Public Safety and Emergency Preparedness, 2021 CART 17](#).

3. ISSUES

[10] There is no dispute that Mr. Bingli Liu is the person identified in the Notice (element 1). He did not have documentation which permitted the importation of animal products or by-products under exceptions in Part IV of the [HA Regulations](#) (element 3).

[11] The core issue in this case is whether the Agency proved on a balance of probabilities that Mr. Liu imported “*cooked pork roast/sausage*” as identified in the Notice (element 2).

[12] Issue 1: Did Mr. Liu declare or present for inspection any food, plant or animal products?

[13] Issue 2: Did the Agency prove that Mr. Liu stated the sausage contained pork?

[14] Issue 3: Did the Agency prove that the sausages contained pork?

[15] Issue 4: Did the Agency prove that the Mr. Liu imported cooked pork roast?

[16] Issue 5: Did Mr. Liu raise his complaint about interpretation at the first opportunity?

4. ANALYSIS

Evidence

[17] The Agency has the burden of proving all the essential elements of the violation on a balance of probabilities, meaning that it is more likely than not that Mr. Liu committed the violation¹¹. The evidence submitted by the Agency was incomplete. The Agency blacked out portions of several documents it submitted as evidence without any explanation. The Federal Court of Appeal in the [Doyon](#)¹² decision reminds the Tribunal that it “*must rely on evidence based on facts and not mere conjecture, let alone speculation, hunches, impressions or hearsay.*”¹³

[18] Mr. Liu and his son, acting as his representative, made submissions to the Tribunal in various letters and email communications including in the Request for Review letter dated March 12, 2020.

[19] The Minister, represented by the Agency, prepared and filed a report (Agency Report) containing information relating to the violation, along with supporting documents:

- a. Officer Notes: photocopies of two pages of handwritten notes in an “Officer Notebook” belonging to Officer Paterson, dated March 12, 2020. Two sections of the notes are blacked out.
- b. Narrative Report (2 pages) dated March 12, 2020, prepared by Officer Paterson, which contains a typed version of the visible portion of the Officer Notes. Significant portions of the two-page report are blacked out. The Narrative Report contains information not visible in the Officer Notes.
- c. AIRS Report “Import Details for Requirement: 28380 Version: 12”.

¹¹ Section 19 of the [AAAMP Act](#)

¹² *Doyon*, [supra](#) note 10 at para 21.

¹³ [Ibid](#) at para 28.

- d. Seizure Report (3 pages) dated March 12, 2020. The section entitled “Subject Information-Associate” is blacked out. The document contains information about Mr. Liu and the products seized.
- e. Affidavit of Officer Paterson sworn on May 12, 2021.
- f. A colour photo of the intercepted items.
- g. A photocopy of Mr. Liu’s Primary Inspection Kiosk (PIK) receipt. The receipt includes Mr. Liu’s passport number and date of birth, and the code “ZHO” indicating it was completed in “Chinese”. A portion of the receipt is blacked out.
- h. Integrated Customs System (ICS) printout dated March 12, 2020, which lists the questions and answers of Mr. Liu’s declaration.

Issue 1. Did Mr. Liu declare or present for inspection any food, plant or animal products?

[20] According to the Agency, Mr. Liu completed his customs declaration at an automatic kiosk in “Chinese”. The copy of the PIK receipt submitted by the Agency does not show the answer to any questions asked on the declaration. A portion of the receipt is blacked out without explanation. There is no visible record of Mr. Liu’s declaration. The Agency explained that the answers provided by users of the PIK system are maintained in a database called the Integrated Customs System (ICS). The Agency submitted a printout from the ICS in English with Mr. Liu’s name, date of birth, and passport number recording that he answered “no” to all the questions. One question (traveller declaration) specifically lists raw or cooked meat, eggs, fruits, vegetables or any other animal or plant part or their derivatives. The Agency did not submit a copy of the declaration or ICS printout in “Chinese”. Mr. Liu did not claim that he declared or presented for inspection any of the food, plant or animal products found in his luggage. All food, plant or animal products must be declared, whether or not they are permitted entry into Canada. The Tribunal concludes that Mr. Liu did not declare or present for inspection any food, plant or animal products, including the products alleged in the Notice. This proves element 4.

Issue 2. Did the Agency prove that Mr. Liu stated that the sausage contained pork?

[21] The Agency Report states: *“The pair also stated to [Officer] Paterson that the cooked meat and the sausages in their possession were, or contained, pork.”* In support of this statement, the Agency Report references the Narrative Report. However, that statement is not contained in the Narrative Report. Most of the second page of the two-page Narrative Report is blacked out. The Agency Report repeats the same quoted statement in another paragraph and references the Seizure Synopsis and the ICS declaration printout. Again, neither of those documents contain that statement. The statement is not recorded in the Officer Notes, which also has portions blacked out.

[22] Mr. Liu claimed that no one asked him what the sausages contained. He complained that neither the Officer nor Interpreter listened to his attempted explanations regarding the content of the sausages. In his Request for Review and submissions, he claimed that the sausages were vegan sausages and contained absolutely no pork or meat of any sort.

[23] The Officer Notes and the Narrative Report document the interaction between the Agency and Mr. Liu. A statement that a product is or contained pork is an admission that Mr. Liu committed the violation. An assertion in the Agency Report that Mr. Liu made that statement, without the supporting documentation, is not evidence persuasive enough for the Tribunal to conclude that the Agency proved on a balance of probabilities that Mr. Liu stated that *“the cooked meat and sausages in his possession were or contained pork”*. In coming to this conclusion, the Tribunal exercises its discretion to draw an adverse inference from the Agency’s evidence, discussed below.

[24] This is different than the case of Mr. Varga¹⁴ who also did not declare any agricultural products. Asked what type of meat the salami found in his luggage contained, he replied it was probably pork or beef. The Tribunal concluded that the Agency could rely on that response regarding the contents of the salami. The Tribunal gave greater weight to Mr. Varga's original admission to the officer rather than his later assertion that he was vegetarian and that the salami did not contain animal products.

Issue 3. Did the Agency prove that the sausages contained pork?

[25] The Agency argued that Mr. Liu provided no corroborating evidence to support the position that the sausages were meatless/vegan. It is not up to Mr. Liu to prove the contents of the sausages. The Agency has the burden of proof.

[26] According to Mr. Liu, the Officers did not test or take apart the sausages. The Agency did not submit any test results of the contents of the sausages. The Agency appears to rely on the experience of the Officers as proof that the cooked meat and sausages contained pork. The Agency Report states: *"Both [Officer] Paterson and [Officer] Reid are experienced FPA [food, plant and animal] Dog Handlers, and their experience in handling the items for which the [Notice] was issued is also relied upon as a component of the [Agency's] proof."*

[27] It may be true the Officers are experienced, and that experience could help them identify banned products, but experience is not proof of the content of the products. The Agency does not explain the criteria or observations used to identify the products as containing pork. The Tribunal concludes that the Agency did not prove on a balance of probabilities that the sausages were or contained pork.

¹⁴ [*Varga v. Minister of Public Safety and Emergency Preparedness*, 2018 CART 11.](#)

Issue 4. Did the Agency prove that Mr. Liu imported cooked pork roast or products that were or contained pork?

[28] The Notice states that Mr. Liu imported “*cooked pork roast*”. Mr. Liu was silent regarding this product. In all his submissions, Mr. Liu neither admitted nor denied importing ‘cooked pork roast’. He claimed “*all they brought was 2 vegan sausages, 5 packets of instant noodles, and apples*”. The documents submitted by the Agency do not consistently list all the agricultural products allegedly imported by Mr. Liu, in particular, “*cooked pork roast*”.

[29] The Agency Report states that Mr. Liu was in possession of “*undeclared FPA [food, plant and animal] products, specifically cooked pork roast, pork sausages, 4 boiled eggs, 38 apples, fresh ginger root, 5 packages of instant noodles and what are believed to have been 3 packages of beef tendon*”. The Agency Report states that the eggs, apples, ginger, instant noodles and the packages of suspected beef tendon “*were not included within the ambit of the Notice issued to the Applicant*”. The Agency Report cites the Notice, the Seizure Synopsis, the Officer Notes, the Narrative Report and a photo as references to the seized products.

[30] The Officer Notes and the Narrative Report identify as “*undeclared FPA items: pork sausages, boiled eggs (4), fresh ginger and apples (38)*”. There is no mention of ‘cooked pork roast’. A photograph submitted by the Agency shows what appears to be 38 apples, 4 eggs, 4 sausage-shaped items, a piece of a brownish-coloured item, pieces of a plant root, 5 packages labelled “*cup noodles*”, and 3 other packages labelled in Chinese script. The photograph is not annotated and there is nothing in the photograph that proves that the piece of a brownish-coloured item is cooked pork roast.

[31] The Agency Report states: “[Officer] Paterson proceeded to verify the admissibility of the meat products, specifically the segment of pork roast and sausages by way of the AIRS and according to the information provided with respect to the goods by the Applicant. The AIRS indicated the products were to be refused entry.” The AIRS Report states it is “*prepared for the*

convenience of reference only and has no official sanction." The AIRS Report is not proof that the seized items were pork, animal products or animal by-products.

[32] In the affidavit, Officer Paterson states: *"I located a quantity of cooked pork, as well as pork sausage, inside the luggage."* This statement is proof that Officer Paterson believed the seized products were or contained pork. The affidavit further states: *"The pork products were selected as the goods for which the [Notice] was issued given the severity of the risk that such products, particularly of Chinese origin, can pose with respect to the introduction of African Swine Fever."* That statement does not prove that the seized products were or contained pork.

[33] The Seizure Synopsis lists under the heading *"AAAMP Act information"*: *"cooked pork roast/sausage, boiled eggs x 4, apples x 38, ginger"*. The Officer Notes and Narrative Report do not list 'cooked pork roast'. These two documents are the source of information for the Seizure Report. Listing a product in the Seizure Report does not prove it is "cooked pork roast".

[34] The Agency chose to issue the Notice specifically for *"cooked pork roast/sausage"*. The other seized items were intentionally *"not included within the ambit of the Notice issued to the Applicant"*. Therefore, to prove that Mr. Liu committed the violation, the Agency must prove, on a balance of probabilities, that Mr. Liu failed to present *"cooked pork roast/sausage"* and not that he failed to present any animal or thing. Otherwise, the Tribunal would have to make a finding with respect to the other items not included in the Notice which might fall within the ambit of Subsection 16 (1) of the [HA Act](#), for example what the Agency described as "packages of suspected beef tendon".

[35] The Tribunal is not bound by any legal or technical rules of evidence¹⁵. However, the Tribunal may draw an adverse inference, which means come to a negative conclusion, because the Agency chose to present an incomplete record to the Tribunal without any explanation. Drawing an adverse inference is optional, at the discretion of the Tribunal.

¹⁵ Section 44 of the [AAAMP Act](#).

[36] The Officer Notes and the Narrative Report are the beginning point of documenting the Agency's evidence. In this case, two essential pieces of evidence are missing from these documents, the recording of "cooked pork roast" and the alleged statement by Mr. Liu. The statements in the affidavit do not remedy the omissions in the other documents submitted as evidence. The Tribunal chooses not to give the Agency the benefit of the doubt that the omission of "cooked pork roast" and of the alleged statement by Mr. Liu in the Officer Notes and the Narrative Report was an oversight or error.

[37] The Tribunal chooses not to draw an adverse inference because Mr. Liu did not present any contradicting evidence regarding the "cooked pork roast". The Agency seized all the food, plant and animal items found in the luggage. Mr. Liu could not test any of the seized items. There was no packaging on the piece of a brownish coloured item shown in the photograph which might list its contents.

[38] If Mr. Liu stated to a customs officer that *"all they brought was 2 vegan sausages, 5 packets of instant noodles, and apples"*, there might be an argument to draw an adverse inference. Travellers must answer truthfully any questions asked by a customs officer¹⁶. The Agency chose to present an incomplete record to both Mr. Liu and the Tribunal and did not record the discovery of *"cooked pork roast"* in the luggage. The Tribunal does not draw an adverse inference from Mr. Liu's silence regarding that item.

[39] The Tribunal concludes that the Agency did not prove on a balance of probabilities that Mr. Liu imported "cooked pork roast". The Agency did not prove on a balance of probabilities that Mr. Liu committed the violation.

¹⁶ Paragraph 13 (a) of the [Customs Act](#).

See also [Santos](#), though there was no discussion of adverse inference in that case.

Issue 5. Did Mr. Liu raise his complaint about interpretation at the first opportunity?

[40] Mr. Liu raised the complaint regarding the quality of interpretation at the first opportunity in an administrative proceeding, in his Request for Review to the Tribunal. Because the Tribunal concludes that the Agency did not prove Mr. Liu committed the violation, it is not necessary to determine whether his complaint regarding the quality of interpretation is founded.

[41] Officer Paterson conducted the secondary examination of Mr. Liu's luggage with the assistance of Officer Reid and an Agency Interpreter. Mr. Liu complained that the interpretation provided by the Agency was not impartial. He claimed that the Interpreter repeatedly said the only option was to pay the penalty for the violation. According to their submissions, the Agency understood that Mr. Liu's complaint was that there was a language barrier present which prevented him from understanding communications with the Officers. Mr. Liu did not claim that there was a difficulty in communicating due to language, but that the Interpreter was not impartial.

[42] The Agency cited the Federal Court of Appeal decision in [Mohammadian](#)¹⁷ as guidance for the proposition that "*parties involved in an administrative process*" [emphasis added] should raise a complaint about interpretation at the first opportunity. The [Mohammadian](#) case deals with a waiver of the right to interpretation when the complaint is not made at the first opportunity within "*administrative proceedings*" [emphasis added] not in an administrative process, based on the right to interpretation under section 14 of the [Charter](#)¹⁸. The interaction between a Border Services Officer and a traveller is not an administrative proceeding, though it might be characterized as an administrative process.

¹⁷ [Mohammadian v Canada \(Minister of Citizenship and Immigration\)](#), 2001 FCA 191.

¹⁸ [Canadian Charter of Rights and Freedoms, s 14, Part I of the Constitution Act, 1982, being Schedule B to the Canada Act 1982 \(UK\), 1982, c 11](#): "A party or witness in any proceedings who does not understand or speak the language in which the proceedings are conducted or who is deaf has the right to the assistance of an interpreter."

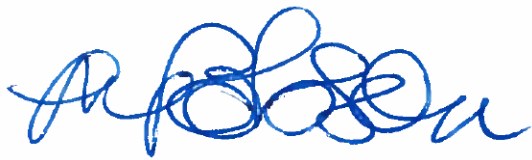
[43] The [Mohammadian](#) case determined that interpretation provided to applicants in an administrative proceeding “*must be continuous, precise, competent, impartial and contemporaneous*”. There is insufficient evidence before the Tribunal to make the same determination regarding the interpretation provided to “*parties involved in an administrative process*”.

[44] The Tribunal previously rejected the Agency’s submission that the [Mohammadian](#) case supports the proposition that the first opportunity when a traveller must make a complaint about the quality of interpretation is during the interaction with Agency officers at primary or secondary inspection¹⁹. Mr. Liu complained about the quality of interpretation in his Request for Review. That was the first opportunity to make a complaint within an administrative proceeding.

¹⁹ *Acheampong v. Canada Border Services Agency*, 2022 CART 06 (March 23, 2022).

5. CONCLUSION

[45] The Agency did not prove on a balance of probabilities that Mr. Bingli Liu committed the violation. The Tribunal sets aside Notice of Violation # 4974-20-0474. Mr. Liu does not have to pay the penalty.



Marthanne Robson
Member
Canada Agricultural Review Tribunal