

**AGRICULTURE AND AGRI-FOOD ADMINISTRATIVE
MONETARY PENALTIES ACT**

DECISION

In the matter of an application for a review of the facts of a violation of provision 40 of the *Health of Animals Regulations*, alleged by the Respondent, and requested by the Applicant pursuant to paragraph 9(2)(c) of the *Agriculture and Agri-Food Administrative Monetary Penalties Act*.

Ming Liang Deng, Applicant

-and-

Canada Border Services Agency, Respondent

CHAIRMAN BARTON

Decision

Following an oral hearing and a review of the written submissions of the parties including the report of the Respondent, the Tribunal, by order, determines the Applicant committed the violation and is liable for payment of the penalty in the amount of \$200.00 to the Respondent within 30 days after the day on which this decision is served.

REASONS

The Applicant requested an oral hearing pursuant to subsection 15(1) of the *Agriculture and Agri-Food Administrative Monetary Penalties Regulations*.

The oral hearing was held in Calgary on October 2nd, 2006.

The Respondent was represented by its Senior Technical Advisor, Ms. Joy Hearnden.

Although the Applicant was served on August 1st, 2006 by registered mail with the Notice of Hearing, the Applicant failed to appear at the hearing.

Accordingly, pursuant to Rule 41 of the *Rules of the Review Tribunal (Agriculture and Agri-Food)*, I proceeded with the hearing.

At the outset of the hearing, I reviewed the following key documents in this file:

- Notice of Violation dated July 5th, 2005.
- Request for a review by the Applicant dated August 1st, 2005.
- Report of the Respondent received by the Tribunal on August 17th, 2005.

These documents were then entered on the record as evidence for the purpose of the hearing.

The Respondent relied on the written submissions and had no further representations to make.

The Notice of Violation # 030173 dated July 5, 2005, alleges that the Applicant, on or about 13:00 hours on the 5th day of July, 2005, at Vancouver Int'l Airport, in the province of British Columbia, committed a violation, namely: "Import an animal by-product to wit: meat, without meeting the prescribed requirements " contrary to provision 40 of the *Health of Animals Regulations* which states:

40. No person shall import into Canada an animal by-product, manure or a thing containing an animal by-product or manure except in accordance with this Part.

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In general, *Part IV* of the *Health of Animals Regulations* permits importation into Canada

of most animal by-products, if the country of origin is the United States. If the country of origin is other than the United States, importation into Canada is only permitted (except for certain specified products such as gluestock and bone meal, for which there are other specific requirements) if the importer meets one of the following four prescribed requirements of *Part IV* of the *Health of Animals Regulations*, namely:

1. Under subsection 41(2) if the country of origin has a disease-free designation and the importer produces a certificate signed by an official of the government of the country of origin that shows that the country of origin is the designated country referred to in the disease-free designation.

No such certificate was provided.

2. The importer meets the requirements of subsection 52(1) which provides as follows:

52.(1) Notwithstanding anything in this Part, a person may import an animal by-product if the person produces a document that shows the details of the treatment of the animal by-product and the inspector is satisfied, based on the source of the document, the information contained in the document and any other relevant information available to the inspector and, where necessary, on an inspection of the animal by-product, that the importation of the animal by-product into Canada would not, or would not be likely to, result in the introduction into Canada, or the spread within Canada, of a vector, disease or toxic substance.

No such document was produced.

3. The importer has acquired an import permit pursuant to subsection 52(2) which states:

52.(2) Notwithstanding anything in this part, a person may import an animal by-product under and in accordance with a permit issued by the Minister under section 160.

No such permit was tendered.

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4. The importer has presented the animal by-product for inspection and a satisfactory inspection has been carried out under paragraph 41.1(1)(a) which

states as follows:

41.1(1) Notwithstanding section 41, a person may import into Canada an animal by-product or a thing containing an animal by-product, other than a thing described in section 45, 46, 47, 47.1, 49, 50, 51, 51.2 or 53, if

(a) an inspector is satisfied on reasonable grounds that the animal by-product is processed in a manner which would prevent the introduction into Canada of any reportable disease or any other serious epizootic disease to which the species that produced the animal by-product is susceptible and which can be transmitted by the animal by-product, provided that the animal by-product or the thing containing the animal by-product is not intended for use as animal food or as an ingredient in animal food.

No inspection of this nature took place.

The uncontested evidence of the Respondent is that the Applicant imported from China a quantity of meat products without meeting the prescribed requirements.

In his request for a review, the Applicant admitted carrying cooked and vacuumized sausage in his luggage.

I am satisfied the Respondent has established, on a balance of probabilities, that the Applicant committed the violation.

Lack of knowledge of the import requirements is unfortunately for the Applicant, not a defence to the violation by reason of subsection 18(1) of the *Agriculture and Agri-Food Monetary Penalties Act* which states as follows:

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18.(1) A person named in a notice of violation does not have a defence by reason that the

person

(a) exercised due diligence to prevent the violation; or

(b) reasonably and honestly believed in the existence of facts that, if true, would exonerate the person.

Dated at Ottawa this 30th day of October, 2006.

Thomas S. Barton, Q.C., Chairman