

***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 42(2) of the *Plant Protection 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*.

Canadian Garlic Distribution Inc., Applicant

- and -

Canadian Food Inspection Agency, Respondent

CHAIRMAN BARTON

Decision

Following an oral hearing and a review of all oral and written submissions, the Tribunal, by order, determines the Applicant committed the violation and is liable for payment of the penalty in the amount of \$2,800.00 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 Penalties Regulations*.

The oral hearing was held in Toronto on December 6, 2007.

The Applicant was represented by its solicitor, Mr. Allan S. Halpert.

Evidence for the Applicant was given by Mr. John Wang.

The Respondent was represented by its solicitor, Ms. Louise Panet-Raymond.

Ms. Renata Ceiger and Ms. Sylvia Miller were present to give evidence on behalf of the Respondent, if necessary.

Having thus confirmed that both parties had copies of the following documentation received by the Tribunal, I entered the documents on the record as evidence for the purpose of the hearing:

- Notice of Violation dated July 6, 2007. (On consent, I amended the Notice of Violation to be issued to “Canadian Garlic Distribution Inc.” instead of “Canada Garlic Distribution Inc.”)
- Letter from the Applicant’s Solicitor dated July 26, 2007, requesting a review, along with attachments.
- Letter from the Respondent dated August 8, 2007, enclosing its report.
- Letter dated September 9, 2007, from the Applicant’s Solicitor, with attachments, including a letter from Mr. Wang.

The Notice of Violation #0708ON200001 dated July 6, 2007, alleges that the Applicant, at 14:00 hours on the 1st day of November, 2006, at Brampton, in the province of Ontario, committed a violation, namely: “Did import a prohibited thing” contrary to provision 42(2) of the *Plant Protection Regulations*, which states:

...

42.(2) No person shall import into Canada a thing that the Minister or an inspector has prohibited from entering Canada in writing, or in a permit where the permit prohibits the importation of that thing.

The undisputed facts are that the Applicant imported a load of ginger from China.

The ginger was not clean and contained soil.

This was contrary to the conditions of an import permit issued to the Applicant on August 9, 2005.

Following a meeting with counsel, the Applicant acknowledged that the facts in the Respondent's report were substantially correct and admitted to the violation.

As a result, the sole issue to be determined was whether the violation was committed through a negligent act for the purpose of calculating the gravity value of the violation.

Counsel for the Respondent argued that prior to November 1st, 2006, the Applicant had failed four previous inspections involving the importing ginger that contained soil, and since receiving this Notice of Violation, has not taken reasonable steps to rectify the problem, and hence was negligent.

Mr. Wang is the General Manager of the Applicant's corporation, which position he has held for ten years. Before that, he had been with another company involved in importing ginger for 15 years.

Prior to June 2006, Mr. Wang indicated he did not think there had been any problems of this nature. As set out in his letter to the Respondent dated August 22, 2006, Mr. Wang indicated he had had several meetings with the shippers in China, indicating they were going to wash the ginger more carefully and thoroughly so as to remove 100% of the soil from the ginger.

He testified at the hearing that he had an office in China and had appointed an inspector to go to the plant to supervise the washing of the ginger to make sure it was clean and of good quality. He further indicated that he gave instructions to wash the ginger twice, sometimes three to four times, if twice was not enough, and to use a brush to clean every single finger of each ginger plant.

Mr. Wang further testified that before a shipment could leave China, a Phytosanitary Certificate was required from the Chinese government certifying that the shipment was free of contamination.

The Applicant took further steps following this incident, but for the purpose of calculating the gravity value, only facts up to November 1st, 2006, are relevant.

After ascertaining soil problems with the loads in the summer of 2006, I am satisfied the Applicant took reasonable and prudent steps to rectify these situations. As it did not have hands-on control of the actions of the suppliers, it engaged its own inspectors to monitor the activities of the supplier, and further it believed it should have been able to place some reliance upon the sanitary certificates issued by the government of China.

In the circumstances, I do not consider the Applicant to have been negligent, and accordingly, the gravity value points are reduced and the penalty set out in the Notice of Violation is reduced by 30% to \$2,800.00.

Dated at Ottawa this 5th day of February, 2008.

Thomas S. Barton, Q.C., Chairman