

**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 *section 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*.

Mr. To Buu, Applicant

- and -

Canadian Food Inspection Agency, Respondent

CHAIRMAN BARTON

Decision

Following a review of the submissions of the parties including the report of the Respondent, the Tribunal, by order, determines the Applicant did not commit the violation and is not liable for payment of the penalty.

REASONS

The Applicant did not request an oral hearing.

The Notice of Violation dated December 20, 2000, alleges that the Applicant, at 17:15 hours on the 20th day of December 2000, at Toronto Airport, committed a violation, namely: “import an animal by-product, to wit: meat, without meeting the prescribed requirements”, contrary to section 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.

In general, *Part IV* of the *Health of Animals Regulations* permits importation into Canada of most of these items, if the country of origin is the United States. If the country of origin is other than the United States, and in this case it is clear the country of origin of the cooked pork powder was Vietnam, importation into Canada is only permitted if the importer meets one of the four prescribed requirements of *Part IV* of the *Health of Animals Regulations*, namely:

1. Under *subsection 41.(1)* 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.
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.

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3. The importer has acquired an import permit pursuant to *subsection 52.(2)*.
4. In addition to meeting any one of the above requirements, the Respondent, itself, could have allowed the Applicant to import the animal by-product if a satisfactory inspection had 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 or use as animal food or as an ingredient in animal food.

The Respondent, on page 3 of its report, states that the Applicant “*did fail to declare; meat products; as prescribed contrary to section 40 of the Health of Animals Regulations.*” Further, on page 6, the Respondent gives evidence of a “*negative declaration on E311 that Mr. Buu did not declare meat products*” and a “*notice of violation# 009229 issued to Mr. Buu for failure to declare meat products contrary to Section 40 of the Health of Animals Regulations*”.

The Respondent is referring to the failure of the Applicant to declare “*meats*” on the Customs Declaration Card, and confuses provisions of the *Customs Act* and *Reporting of Imported Goods Regulations* (both of which are not enforceable by means of monetary penalties under the *Agriculture and Agri-Food Monetary Penalties Act and Regulations*) with the requirements of the *Health of Animals Act and Regulations*. The Tribunal again notes the error made by the Respondent in treating a negative customs declaration as a violation of *section 40* of the *Health of Animals Regulations*.

In the Customs Declaration Card, Form E311, the word “*meats*” is used in the context of other foods such as fruits, vegetables, eggs, and dairy products, and must be defined in this narrow context. The Tribunal agrees with the Applicant that there is considerable confusion as to whether or not this term would include the cooked pork powder, or for that matter, any processed meat product.

On the other hand, for the purposes of *section 40* of the *Health of Animals Regulations*, the term “*animal by-product*” is very broadly defined by a combined reading of the definitions of that term in the *Health of Animals Act* and in the *Health of Animals Regulations*.

Accordingly, although the Customs Declaration Card, form E311, can be used as evidence in assessing whether a violation under the *Health of Animals Regulations* has been committed, a failure to declare, for customs purposes, that a person is bringing “*meats*” into Canada does not necessarily mean that person has committed a violation under *Section 40* of the *Health of Animals Regulations*.

The Applicant acknowledges having in his possession some cooked pork powder made in Vietnam by his family for his son. He thought the word “*meats*” on the Customs Declaration Form only included meat in its raw or natural state. The Applicant further states that at the Customs check-in stand, and before being checked, the Customs officer asked if he had any meat, and the Applicant replied he did have some food made from pork, and explained his confusion as to the words on the declaration form and the difference between “*food*” and “*meat*”.

There is no evidence to rebut these statements.

The *Health of Animals Regulations* were made pursuant to the *Health of Animals Act*. The primary obligation of a person importing an animal by-product into Canada is set out in *subsection 16(1)* which states as follows:

16.(1) *Where a person imports into Canada any animal, animal product, animal byproduct, animal food or veterinary biologic, or any other thing used in respect of animals or contaminated by a disease or toxic substance, the person shall, either, before or at the time of importation, present the animal, animal product, animal by-product, animal food, veterinary biologic or other thing to an inspector, officer or customs officer who may inspect it or detain it until it has been inspected or otherwise dealt with by an inspector or officer.*

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Although the Applicant may have mistakenly filled out the Customs Declaration Card for any number of reasons, including being under pressure, tiredness, or a language barrier, the

Tribunal finds the Applicant did, in fact, re-declare the product by presenting the cooked pork powder in his carry-on luggage to the Customs officer prior to being checked at the Customs desk, in accordance with *subsection 16(1)* of the *Health of Animals Act*.

Having presented the animal by-product to the Customs officer, the Applicant met his primary obligation under the *Health of Animals Act*, which rules out the commission of any violation under *section 40* of the *Health of Animals Regulations*.

Not having established that the Applicant contravened the *Health of Animals Act* or *Regulations*, the Tribunal questions the Respondent's confiscation and disposal of the cooked pork powder without an inspection.

Dated at Ottawa this 14th day of March, 2001.

Thomas S. Barton, Q.C., Chairman