

**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*.

Ca Huu Huynh, 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 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 did not request an oral hearing.

The Notice of Violation dated March 19, 2001, alleges that the Applicant, at 19:45 hours on the 19th of March 2001, at Toronto in the Province of Ontario, 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 from the evidence the country of origin of the imported sausages 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.

No such certificate was presented.

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)*.

No such permit was tendered.

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.

There is no evidence that an inspection of this nature took place.

The evidence of the Respondent indicates that the sausages were confiscated and disposed of pursuant to *section 17* of the *Health of Animals Act*.

Pursuant to *paragraph 14(1)(b)* of the *Agriculture and Agri-food Administrative Monetary Penalties Act* the jurisdiction of the Tribunal is limited to determining whether or not the person requesting the review committed a violation, and if so, whether the penalty was properly established in accordance with the *Regulations*.

The improper conduct of the Respondent's inspector, as alleged by the Applicant, is not a matter over which the Tribunal has any jurisdiction.

The Applicant states that he was carrying gifts for a friend to another friend, and was not aware of the contents of the packages until opened by the inspector.

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The evidence of the Respondent shows that the Applicant's luggage contained five (5)

pounds of sausages in clear wrapping, and that the Applicant acknowledged packing his own bags.

Based on all the evidence, the Tribunal finds the Applicant knew the sausages were in his luggage, and the Respondent has established, on a balance of probabilities, that the Applicant committed the violation.

Dated at Ottawa this 26th day of June, 2001.

Thomas S. Barton, Q.C., Chairman