RTA #60017

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 39* 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.*

Pei-Ming Wu, 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.

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REASONS

The Applicant did not request an oral hearing.

The Notice of Violation dated May 31, 2001, alleges that the Applicant, at 15:15 hours on the 31st day of May 2001, at Vancouver International Airport, in the province of British Columbia, committed a violation, namely: *"fail to declare apple as prescribed"* contrary to *Section 39* of the *Plant Protection Regulations,* which states:

> 39. *Every person shall, at the time of importation into Canada of any thing that is a pest, is or could be infested or constitutes or could constitute a biological obstacle to the control of a pest, declare that thing to an inspector or customs officer at a place of entry set out in subsection 40(1).*

Section 2 of the *Plant Protection Act,* under which the Regulations were passed, states:

> 2. *The purpose of this Act is to protect plant life and the agricultural and forestry sectors of the Canadian economy by preventing the importation, exportation and spread of pests and by controlling or eradicating pests in Canada".*

Section 3 of the *Plant Protection Act* contains the following pertinent definitions:

> *"pest" means anything that is injurious or potentially injurious, whether directly or indirectly, to plants or to products or by-products of plants, and includes any plant prescribed as a pest.*
>
> "*plant" includes a part of a plant.*
>
> *"prescribed" means prescribed by regulation.*
>
> *"thing" includes a plant and a pest.*

The general scheme of the *Plant Protection Act* is to impose obligations on persons who have knowledge of a pest, are suspicious there may be a pest, or reasonable grounds to believe something is a pest.

In this case, the Notice of Violation sets out that the alleged "*pest"* was an apple. However, the Respondent provides no evidence, whatsoever, that the apple is a pest, that it is or could be infested with a pest, or that it could constitute a biological obstacle to the control of a pest.

The only evidence as to the nature or condition of the apple is a picture in Tab 7 of the report of the Respondent, showing two apples, normal in appearance and with no visible imperfections.

Using a broad and literal interpretation of *"pest"* would mean almost anything imported into Canada could be argued to be injurious or potentially injurious, whether directly or indirectly, to plants or to products or by-products of plants. Such a broad interpretation would impose too onerous an obligation on a person importing anything into the country, and would not be consistent with the general scheme of the *Act. Section 39* of the *Regulations* and the definitions quoted earlier must be read in the context of the *Act* as a whole.

Accordingly, without any evidence to show the Applicant knew the apple was a pest, or without evidence of any conditions that would cause the Applicant to suspect the apple was a pest, or without evidence of any reasonable grounds for the Applicant to believe that the apple was a pest, the Tribunal finds there is no obligation on the Applicant to declare the apple to an inspector or customs officer under *section 39* of the *Plant Protection Regulations.*

Although not necessary to decide, the Tribunal questions whether an apple, being a product of a plant, under the definitions, could itself be a "*pest",* as the definitions seem to differentiate between "*products"* of plants, and "*a part"* of a plant.

There being no evidence that the apple was a "*pest"* as defined in the *Plant Protection Act,* the Respondent has not established, on a balance of probabilities, that the Applicant committed the Violation identified in the Notice of Violation.

Dated at Ottawa this 21st day of August, 2001.

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Thomas S. Barton, Q.C., Chairman