

**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 *subsection 15(1)* of the *Health of Animals Act*, 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*.

**Po Wah Enterprises Ltd., Applicant**

**-and-**

**Canadian Food Inspection Agency, Respondent**

**CHAIRMAN BARTON**

**Decision**

**Following an oral hearing and 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 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 Vancouver on December 11, 2001.

Mr. Larry Chan acted as agent for the Applicant and Mr. Kwok Wah Wong and Mr. Chun Po Fong, President and Manager of the Po Wah Enterprises Ltd., respectively, gave evidence on behalf of the Applicant.

The Respondent was represented by its solicitor, Ms. Vickie McCaffrey, and evidence on behalf of the Respondent was given by Mr. Ken Lowe and Mr. David H. Y. Chan.

At the commencement of the hearing, and following several submissions, the order of proceedings was agreed upon, and Mr. Larry Chan agreed to act as interpreter for the Applicant's witnesses.

## NOTICE OF VIOLATION

The Notice of Violation dated May 16, 2001, alleges that the Applicant, at 16:00 hours on the 30<sup>th</sup> day of March 2001, at Vancouver, in the province of British Columbia, committed a violation, namely: “*Possess or dispose of an animal or thing known to be imported illegally*” contrary to *subsection 15(1)* of the *Health of Animals Act*.

The item in question, which was not in dispute, was smoked bacon found on the premises of the Applicant's retail store. The Applicant purchased the smoked bacon from a friend of Mr. Fong who told Mr. Fong the smoked bacon was from China.

*Section 15* of the *Health of Animals Act* states as follows:

15(1) *No person shall possess or dispose of an animal or thing that the person knows was imported in contravention of this Act or the regulations.*

15(2) *In any prosecution for an offence under subsection (1), an accused who is found to have been in possession of an animal or thing that was imported in contravention of this Act or the regulations shall be considered, in the absence of evidence to the contrary, to have known that the thing was so imported.*

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The issues to determine are whether the smoked bacon was imported in contravention of the

*Health of Animals Act* or the *Health of Animals Regulations*, and, if so, whether the Applicant knew the smoked bacon was illegally imported.

### **Importation of Animal By-products**

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 41.1(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(1)* which provides as follows:

*52.1(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.*

3. The importer has acquired an import permit pursuant to *subsection 52.2(2)*.

4. If the importer had presented the smoked bacon for inspection and 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*

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*(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.*

The Respondent states, in its report, that meat products being imported from China are required to have a Veterinary Health Certificate under the *Health of Animals Regulations*, to demonstrate that the product was inspected in a facility in the exporting country that is approved by the Respondent. The Respondent gave further evidence at the hearing to the effect that Canada does not recognize China as being disease-free, and that only canned meat would be allowed to be imported from China.

The Tribunal finds that the evidence of the Respondent is not consistent with the above quoted provisions of the *Health of Animals Regulations*. Although unclear, it appears the Respondent's position is that the Applicant has not met either of the first two of the prescribed requirements set out above.

There is no reference in the *Regulations* to canned meat, and the *Regulations* provide for other ways to legally import animal by-products. At the time of importation of the smoked bacon, the importer could have had an import permit pursuant to *subsection 52(2)*, or the smoked bacon could have received a satisfactory inspection under *subsection 41.1(1)*. No evidence was adduced to show the smoked bacon could not have been imported in either of these ways.

The Tribunal finds on the facts that the Respondent has not proved on a balance of probabilities, that the smoked bacon was imported illegally, and accordingly has not established that the Applicant committed the violation.

Even if the Respondent had been able to prove that the smoked bacon had been imported illegally, the Respondent did not provide any evidence to show the Applicant knew the circumstances under which the smoked bacon was imported. The Applicant's evidence on this point was from Mr. Fong at the hearing who testified he did not know if the bacon was imported illegally, and in a statement in the application for review that "*he did not know the product was illegally imported (if it was - as no one had advised that it actually was) and there was no indication from the vendor that it had been illegally imported*".

The presumption in *subsection 15(2)* of the *Health of Animals Act* does not apply to a hearing for a violation, (*section 17* of the *Agriculture and Agri-Food Administrative Monetary Penalties Act* clearly states a violation is not an offence), and consequently the Respondent would not have been able to overcome its burden of proof on this issue.

Dated at Ottawa this 19<sup>th</sup> of December, 2001.

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Thomas S. Barton, Q.C., Chairman