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 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.*

Evelyne Viot, Applicant

-and-

Canada Border Services Agency, Respondent

CHAIRMAN BARTON

Decision

Following a review of all written submissions, 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.

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REASONS

The Applicant did not request an oral hearing.

The Notice of Violation #3961-08-M-0229 dated July 13th, 2008, alleges that the Applicant, on or about 16:00 on the 13th day of July, 2008, at Dorval in the province of Quebec, committed a violation, namely: "Importation d'un sous-produit d'origine animale, à savoir de la viande, sans avoir respecté les exigences prescrites", contrary to provision 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 from the United States of most animal by-products, if the country of origin is the United States.

Importation into Canada from other countries 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(2) 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 provided.

> 2. The importer meets the requirements of subsection 52(1) which provides as follows:
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> 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.

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> 3. The importer has acquired an import permit pursuant to subsection 52(2).

No such permit was tendered.

> 4. The importer has presented the animal by-product for inspection and a satisfactory inspection has been carried out under paragraph 41.1(1)(*a*) which states as follows:
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> > 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 for use as animal food or as an ingredient in animal food.

No inspection of this nature took place.

The undisputed evidence of the Respondent (and admitted by the Applicant) is that the Applicant imported two cans of tripes à la mode de Caen from France without meeting the above-prescribed requirements.

The Respondent has accordingly met its own onus of proof that the violation was committed.

The Applicant raised a number of other issues.

Knowledge of requirements

The Applicant stated she had carefully read the Declaration Card (form E311) and had completed it in good faith as the card did not make any reference to cans.

The violation is not given for failure to declare this item, but for failure to adhere to the prescribed *Regulations* set out above in this decision.

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I have no doubt the Applicant was acting in good faith with no intention of committing the violation, but lack of detailed knowledge of the *Regulations* and acting in good faith cannot be used as defences to a violation by virtue of subsection 18(1) of the *Agriculture and Agri-Food Administrative Monetary Penalties Act* which states as follows:

> 18.(1) A person named in a notice of violation does not have a defence by reason that the person
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> (*a*) exercised due diligence to prevent the violation; or
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> (*b*) reasonably and honestly believed in the existence of facts that, if true, would exonerate the person.

Conduct of officials

The Applicant made a number of allegations regarding the conduct of the officers while undergoing the Customs process.

The Tribunal has no authority over the conduct of the Respondent's officials or how they exercise their legislated authority.

Penalty

The Applicant considered that the penalty handed out was abusive and was an excessive response to the importation of these two small cans of food for personal consumption.

The penalty imposed for this violation is one that is established by the *Agriculture and Agri-Food Administrative Monetary Penalties Regulations,* and as such, the Tribunal is not able to change the amount of the penalty, or to change the penalty to a warning.

Removal of violation

The Tribunal wishes to point out to the Applicant that this is not a crime or an offence, but is a monetary violation, and that she has the right to apply after 5 years to have the notation of this violation removed from the Minister's records in accordance with subsection 23(1) of the *Agriculture and Agri-Food Administrative Monetary Penalties Act,* which states as follows*:*

23. (1) Any notation of a violation shall, on application by the person who committed the violation, be removed from any records that may be kept by the Minister respecting that person after the expiration of five years from

a) where the notice of violation contained a warning, the date the notice was served, or

b) in any other case, the payment of any debt referred to in subsection 15(1),

unless the removal from the record would not in the opinion of the Minister be in the public interest or another notation of a violation has been recorded by the Minister in respect of that person after that date and has not been removed in accordance with this subsection.

Dated at Ottawa this 4th, day of November, 2008.

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Thomas S. Barton, Q.C., Chairperson