

**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*.

Ms. Sara Maritza Nolivos, 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 to the Respondent of the penalty in the amount of \$200.00 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 September 5, 2000, alleges that the Applicant, at 23:00 hours on the 5th day of September, 2000, at Lester B. Pearson in the Province of Ontario, committed a violation, namely: “*to wit import of meat without meeting the prescribed requirement*”, 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.

The Tribunal observes the Respondent has added the words “*Animal By Product*” to the written portion of the Notice of Violation, after the Notice of Violation was issued to the Applicant. Although this was presumably done in an attempt, after the fact, to comply with section 3 of the *Agriculture and Agri-Food Administrative Monetary Penalties Regulations*, such conduct is totally unacceptable. Unfortunately, it does not provide the Tribunal with grounds to set aside the Notice of Violation.

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, the *Regulations* specifically set out several ways such importation may be permitted.

The first method has been set out by the Respondent in it’s report, and that is for the importer to meet the requirements of subsection 41.(2) of the *Regulations* which requires the production of a certificate from the government of the country of origin.

Importation is also permitted pursuant to subsection 52.(1) of the *Regulations* 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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This requires the importer to produce a document that shows details of the treatment of the

animal by-product in question.

In addition to meeting either of those 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) of the *Regulations*, 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.

Although the Respondent is not obliged to carry out an inspection under this paragraph, the Tribunal questions what the result of that inspection might have been if it had been carried out.

The Applicant does not dispute importing pork rinds from Ecuador, and that this product is prohibited entry to Canada without meeting the prescribed requirements.

However, the Applicant did not consider the pork rinds as meat, but as snack food that was acquired in a well known supermarket in Ecuador, and sold in Canada at ethnic stores.

The Applicant offered to provide the packaging of the product to show the ingredients of the product if necessary, but this was not possible as the Respondent seized the pork rinds and disposed of them as international garbage.

It is clear the Applicant did not know what the requirements for import were, did not intend to commit a violation, but has acknowledged importing the animal by-product without meeting the prescribed requirements, and hence has admitted committing the violation.

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Dated at Ottawa this 29th day of November, 2000.

Thomas S. Barton, Q.C., Chairman