

**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*.

Kurt Schurch, 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.

REASONS

The Applicant did not request an oral hearing.

The Notice of Violation dated December 21, 2001 alleges that the Applicant, at 21:45 hours on the 2^{1st} day of December, 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 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)* 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:

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. 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:

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.

Part IV of the *Regulations* were made pursuant to the *Health of Animals Act*, and must be read in a manner consistent with the provisions of that Act.

The primary obligation of a person importing an animal by-product into Canada is set out in *subsection 16(1)* of the *Health of Animals Act*, which states as follows:

16.(1) Where a person imports into Canada any animal, animal product, animal byproduct, animal food or veterinary biologic, or any other thing used in respect of animals or contaminated by a disease or toxic substance, the person shall, either before or at the time of importation, present the animal, animal product, animal by-product, animal food, veterinary biologic or other thing to an inspector, officer or customs officer who may inspect it or detain it until it has been inspected or otherwise dealt with by an inspector or officer.

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Although there is no dispute that the Applicant did not have a certificate, document or permit

to meet any of the first three prescribed requirements of the *Regulation*, if it is found that the Applicant presented the animal by-product to a customs officer at the time of importation, the Applicant would meet the primary obligation under the *Health of Animals Act*, which would rule out the commission of any violation under *section 40* of the *Health of Animals Regulations*.

There is also no dispute that the Applicant was importing sausages with a country of origin of Switzerland, and accordingly the only issue to be determined is whether or not the Applicant presented the sausages to a customs officer at the time of importation.

The Respondent's report includes a Customs Declaration Card, Form E311, indicating the Applicant was not bringing meats into Canada. As has been noted in previous Tribunal decisions, Form E311 is authorized by the *Reporting of Imported Goods Regulations*, made pursuant to the *Customs Act*. Failure to meet the requirements of that *Act* or those *Regulations* is not a matter that is enforceable under the *Agriculture and Agri-Food Administrative Monetary Penalties Act* or *Regulations*.

Although the Customs Declaration Card, Form E311 can be used as evidence in assessing whether a violation under the *Health of Animals Regulations* has been committed, a failure to declare for customs purposes, that a person is bringing "meats" into Canada does not necessarily mean that the person has committed a violation under *section 40* of the *Health of Animals Regulations*.

The Applicant's evidence is that, when handing over Form E311 to the primary customs officer, he was asked whether he was carrying anything with him, to which he replied he did have salami (as well as cheese and bread).

The Applicant also states he told the secondary customs officer, when asked, and before his luggage was searched, that he was carrying salami.

The Respondent acknowledges the Applicant told the secondary customs officer he had meat in his suitcase. The Respondent further recalls asking the primary customs officer whether meat (sausages) had been declared, and the response was that the Applicant declared cheese and chocolate, but no meats.

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The Tribunal finds the evidence of the Applicant to be more compelling, as the Applicant would have had no reason to make different declarations to different customs officers.

The Tribunal accordingly finds the Applicant made known to both customs officers at the time of importation, that he was carrying an animal by-product, and hence met the primary obligations set out in *subsection 16(1)* of the *Health of Animals Act*, which rules out the commission of a violation under *section 40* of the *Health of Animals Regulations*.

Dated at Ottawa this 20th of March, 2002.

Thomas S. Barton, Q.C., Chairman