

**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*.

Nhu Giang, Applicant

-and-

Canadian Food Inspection Agency, Respondent

CHAIRMAN BARTON

Decision

Following an oral hearing and a review of the written 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 of the penalty in the amount of \$200.00 to the Respondent within 30 days after the day on which this decision is served.

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 Calgary on September 10, 2003.

The Applicant made his own submissions (assisted by a friend, Alan Ma, who acted as interpreter).

The Respondent was represented by its solicitor, Miss Vickie McCaffrey.

The Notice of Violation dated March 12, 2003, alleges that the Applicant, on or about 13:30 hours on the 12th day of March, 2003 at Vancouver Int'l Airport, in the province of B.C., 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

.../3

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 4, 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 is that the Applicant imported six pounds of dehydrated duck gizzard from Hong Kong without presenting the animal by-product for inspection and without meeting the above-mentioned prescribed requirements.

.../4

The Applicant indicated he had difficulty conversing and reading English, and was assisted by the stewardess in completing the customs declaration form. He further

alleges he was treated rudely and harshly because he did not know the name of the animal by-product in English, and a translator was not made available to him.

The conduct of the airport personnel is not a matter over which this Tribunal has any authority. Nor is it a defence that the Applicant was bringing in the goods for another person as a gift. The jurisdiction of the Tribunal is limited to determining whether or not a violation has occurred, and if so, whether the penalty has been calculated in accordance with the *Regulations*.

The Respondent has established the Applicant committed the violation.

Dated at Ottawa this 17th day of September, 2003.

Thomas S. Barton, Q.C., Chairman