

**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*.

Albert S. Au, 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 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 did not request an oral hearing.

The Notice of Violation dated January 2, 2002, alleges that the Applicant, on or about 14:30 hours on the 2nd day of January, 2002, 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.

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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.

The following facts are not in dispute:

1. A quantity of pork meat and cheese was found in the luggage of the Applicant on his return from China.
2. The country of origin of the products was China.
3. The Applicant did not present these products for inspection at the time of importation.

The Applicant alleges he had a poor memory following a 24 hour non-stop flight, and suggests that someone else, such as his mother, may have put the pork and cheese in his luggage without his knowledge.

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Unfortunately for the Applicant, his lack of knowledge of the contents of his luggage is not a defence to the violation by reason 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

(a) exercised due diligence to prevent the violation; or

(b) reasonably and honestly believed in the existence of the facts that, if true, would exonerate the person.

The Applicant further claims that the designation of this violation as being very serious is arbitrary, there being no clear cut guidelines defining when a violation would be considered as minor, serious or very serious.

The Tribunal wishes to point out that, in fact, all violations under the *Health of Animals Regulations* are designated as either minor, serious or very serious, in Schedule 1, Part 1 Division 2 of the *Agriculture and Agri-food Administrative Monetary Penalties Regulations*.

Accordingly, it is clear from the undisputed evidence that the Applicant committed the violation. It is further clear that the violation was properly designated as “very serious” in accordance with the Regulation.

Dated at Ottawa this 10th day of April, 2002.

Thomas S. Barton, Q.C., Chairman