

**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*.

Te Fu Chung, 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.

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REASONS

The Applicant did not request an oral hearing.

The Notice of Violation dated February 26, 2002, alleges that the Applicant, on or about 18:30 hours on the 26th day of February, 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 Applicant admits importing approximately three pounds of dried beef from India without the required documentation, or without presenting the goods for inspection at the time of importation.

More than half of the contents of the Applicant's luggage contained gifts and packages from friends in India for their relatives in Canada, and the Applicant was unaware of the contents of these packages.

Although this evidence is undisputed, 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 Monetary Penalties Act*, which states as follows:

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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.

Although sympathetic to the position of the Applicant, the Review Tribunal has no authority to waive the violation and fine, its authority being limited to determining whether or not a violation was committed, and whether the penalty was properly established in accordance with the *Regulations*.

Dated at Ottawa this 24th day of April, 2002.

Thomas S. Barton, Q.C., Chairman