

**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*.

Iakob (Jacob) Brener, 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 ss. 15(1) of the *Agriculture and Agri-Food Administrative Monetary Penalties Regulations*. The oral hearing was held in Toronto on November 13, 2003.

The Applicant made his own submissions.

The Respondent was represented by its solicitor, Mr. Robert Jaworski.

The Notice of Violation dated May 17, 2003, alleges that the Applicant, on or about 20:40 hours on the 17th day of May, 2003 at T1, Toronto, in the province of Ontario, committed a violation, namely: “import animal by-product to wit: meat, without meeting the prescribed requirements” contrary to s. 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 ss. 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 ss. 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 ss. 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 uncontradicted evidence is that the Applicant imported 3 packages of vacuum sealed sausages from Germany. Although the Respondent's inspection report lists the country of origin as the Ukraine, the Respondent admitted this was a mistake and the parties concurred that the country of origin of the sausages was Germany.

The sausages were not declared on the Customs Declaration Form E-311 as the Applicant was sure the declaration specified raw, not processed meat. Although a failure to declare the salami on this form is not a violation in itself, the Tribunal is sympathetic to the argument of the Applicant, and agrees the form is somewhat misleading.

The Applicant points out it was a first violation and asks that the penalty be waived and that a warning be given.

As indicated at the hearing, the Tribunal has no authority to amend a Notice of Violation, and is unable to waive the penalty.

Dated at Ottawa this 20th day of November, 2003.

Thomas S. Barton, Q.C., Chairman