Canada Agricultural Review Tribunal

Commission de révision agricole du Canada

Citation: *Idahosa v. Canada (Canada Border Services Agency)*, 2014 CART 28

Date: 20141010
Docket: CART/CRAC-1751

BETWEEN:

Helen Evbaguehikha Idahosa, Applicant

- and -

Canada Border Services Agency, Respondent

BEFORE: **Chairperson Donald Buckingham**

WITH: **Helen Idahosa, representing herself; and**
Melanie A. Charbonneau, representing the respondent

In the matter of an application made by the applicant, pursuant to paragraph 9(2)(*c*) of the *Agriculture and Agri-Food Administrative Monetary Penalties Act*, for a review of the facts relating to a violation of section 40 of the *Health of Animals Regulations,* alleged by the respondent.

DECISION

Following a hearing and review of all oral and written submissions of the parties, the Canada Agricultural Review Tribunal, by order, determines, on a balance of probabilities, that the applicant committed the violation on December 7, 2013, as described in Notice of Violation #YYZ4974-0757, dated December 7, 2013, and is liable for payment of the penalty in the amount of $800.00 to the respondent within thirty (30) days after the day on which this decision is served.

The hearing was held in Toronto, Ontario,
Tuesday, August 26, 2014.

REASONS

Alleged Incident, Pertinent Legislation and Issues to Determine

[1] At the heart of this dispute are 600 "maggi" chicken cubes stored in packets sold under the trade name of "Knorr Chicken Cubes". The applicant, Helen Evbaguehikha Idahosa (Idahosa) is alleged to have acquired the maggi cubes while she was outside of Canada on a trip to Nigeria. On the basis of discovering the maggi cubes in Idahosa's luggage, the respondent, the Canada Border Services Agency (Agency), submits that, on December 7, 2013, at Lester B. Pearson International Airport (Pearson Airport) in Toronto, Ontario, Idahosa imported meat products into Canada, contrary to section 40 of the *Health of Animals Regulations* from Nigeria, a country from which it is illegal to import meat products without meeting the requirements of Part IV – Importation of Animal By-Products, Animal Pathogens and Other Things - of the *Health of Animals Regulations* (HA Regulations).

[2] The applicable provisions of Part IV of the HA Regulations are reproduced below:

> ***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.*
>
> ***41****. (1) A person may import into Canada an animal by-product, manure or a thing containing an animal by-product or manure, other than one described in section 45, 46, 47 47.1, 49, 50, 51, 51.2 or 53, if*
>
> *(*a*) the country of origin is the United States and the by-product, manure or thing is not derived from an animal of the subfamily Bovinae or Caprinae;*
>
> *(*b*) the country of origin, or the part of that country, is designated under section 7 as being free of, or as posing a negligible risk for, any reportable disease, any disease referred to in Schedule VII and any serious epizootic disease to which the species from which the by-product, manure or thing was derived is susceptible and that can be transmitted by the by-product, manure or thing, and the person produces a certificate of origin signed by an official of the government of that country attesting to that origin; or*
>
> *(*c*) the by-product, manure or thing has been collected, treated, prepared, processed, stored and handled in a manner that would prevent the introduction into Canada of any reportable disease, any disease referred to in Schedule VII and any serious epizootic disease to which the species from which the by-product, manure or thing was derived is susceptible and that can be transmitted by the by-product, manure or thing, and the person produces a certificate signed by an official of the government of the country of origin that*

(i) attests that the by-product, manure or thing has been collected, treated, prepared, processed, stored and handled in that manner, and

(ii) shows the details of how it was collected, treated, prepared, processed, stored and handled.

(2) Subsection (1) does not apply in respect of manure found in or on a vehicle that is entering Canada from the United States if the manure was produced by animals, other than swine, that are being transported by the vehicle.

***41.1** (1) Despite section 41, a person may import into Canada an animal by-product or a thing containing an animal by-product, other than one described in section 45, 46, 47, 47.1, 49, 50, 51, 51.2 or 53, if an inspector has reasonable grounds to believe that the importation of the by-product or thing, by its nature, end use or the manner in which it has been processed, would not, or would not be likely to, result in the introduction into Canada of any reportable disease, any disease referred to in Schedule VII and any serious epizootic disease to which the species from which the by-product was derived is susceptible and that can be transmitted by the by-product, and the by-product or thing is not intended for use as animal food or as an ingredient in animal food.*

(2) No person shall, in respect of any animal by-product or thing containing an animal by-product that has been imported in accordance with subsection (1), use or cause it to be used as animal food or as an ingredient in animal food.

…

***43**. A person may import into Canada cooked, boneless beef from a country or a part of a country not referenced to in section 41 if*

(a) it was processed in a place and in a manner approved by the Minister;

(b) it is accompanied by a meat inspection certificate of an official veterinarian of the exporting country in a form approved by the Minister; and

(c) on examination, an inspector is satisfied that it is thoroughly cooked.

…

***46**. No person shall import into Canada meat and bone meal, bone meal, blood meal, tankage (meat meal), feather meal, fish meal or any other product of a rendering plant unless, in addition to the requirements of sections 166 to 171,*

(a) the country of origin, or the part of that country, is designated under section 7 as being free of, or as posing a negligible risk for, any reportable disease, any disease referred to in Schedule VII and any serious epizootic disease to which the species from which the product was derived is susceptible and that can be transmitted by the product, and the person produces a certificate of origin signed by an official of the government of that country attesting to that origin; and

(b) an inspector has reasonable grounds to believe that the product has been processed in a manner that would prevent the introduction of any reportable disease, any disease referred to in Schedule VII and any serious epizootic disease to which the species from which the product was derived is susceptible and that can be transmitted by the product.

…

***52**. (1) Despite anything in this Part, a person may import into Canada an animal by-product if the person produces a document that shows the details of the treatment of the by-product and an inspector has reasonable grounds to believe — based on the source of the document, the information contained in the document and any other relevant information available to the inspector and, if necessary, on an inspection of the by-product — that the importation of the by-product 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.*

(2) Notwithstanding anything in this Part, a person may import an animal by-product under and in accordance with a permit issued by the Minister under section 160.

[Emphasis added]

[3] The Canada Agricultural Review Tribunal (Tribunal) must determine whether the Agency has established the elements required to support the impugned Notice of Violation and, if Idahosa did import meat into Canada, whether she met the requirements that would have permitted such an importation.

Procedural History

[4] Notice of Violation #YYZ4974-0757, signed and dated December 7, 2013, alleges that, at Pearson Airport, Idahosa [*verbatim*] "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 is a violation under section 7 of the *Agriculture and Agri-Food Monetary Penalties Act* (AMP Act) and section 2 of the *Agriculture and Agri-Food Monetary Penalties Regulations* (AMP Regulations).

[5] On December 7, 2013, the Agency served Idahosa personally with a Notice of Violation with Penalty. The Notice of Violation indicated to Idahosa that the alleged violation was a "serious violation" under section 4 of the AMP Regulations, for which a penalty in the amount of $800.00 was assessed.

[6] In a letter dated December 8, 2014, and sent by fax on December 11, 2013, Idahosa requested a review by the Tribunal (Request for Review) under paragraph 9(2)(*c*) of the AMP Act. Idahosa informed Tribunal staff that, she wished to proceed by way of an oral hearing conducted in English, in accordance with subsection 15(1) of the AMP Regulations. At the request of the Tribunal, and in order to determine the admissibility of Idahosa's Request for Review, Idahosa sent a letter dated January 26, 2014 (which was faxed to the Tribunal on January 27, 2014), containing additional reasons (Additional Reasons) to support her Request for Review. On the basis of her submissions, the Tribunal found her Request for Review admissible and requested the Agency to file its report regarding the incident.

[7] On February 27, 2014, the Agency sent copies of its report (Agency Report) concerning the Notice of Violation to Idahosa and to the Tribunal, the latter receiving it that same day.

[8] In a letter dated February 28, 2014, the Tribunal invited Idahosa and the Agency to file any further submissions on or before March 31, 2014. Neither Idahosa nor the Agency filed any further submissions prior to the hearing of the matter.

[9] By letter dated June 20, 2014, the Tribunal notified the parties that the hearing of this matter would take place in Toronto, Ontario, on August 26, 2014.

[10] The oral hearing requested by Idahosa took place in Toronto, Ontario, on August 26, 2014, with both parties in attendance, with Idahosa representing herself and the Agency represented by Ms. Melanie A. Charbonneau (Charbonneau). After an opening statement, Charbonneau informed the Tribunal that the witness she intended to call was not present. The Tribunal proceeded to hear evidence from Idahosa. When she completed giving her evidence, the Tribunal asked if there were any other witnesses and the parties responded "no". A few minutes later, the Agency's witness, Inspector 14747, arrived in the hearing room and Charbonneau made a motion for the Tribunal to hear this witness. Idahosa objected. The Tribunal heard arguments from both Charbonneau and Idahosa. On the basis of those arguments, the Tribunal ruled Inspector 14747 would not be allowed to testify. The formal time for the presentation of witnesses from the Agency had closed and there was no overwhelming reason to reopen the hearing to hear an Agency witness, particularly in light of the fact that the witness proposed by the Agency had already supplied clear and ample evidence in written form in the Agency Report which already formed part of the record for this case.

[11] During final arguments at the hearing, Charbonneau mentioned and undertook to provide at a later date to Idahosa and to the Tribunal, prior decisions of the Tribunal where the issue of whether maggi cubes contained meat had been considered. On

September 3, 2014, Charbonneau provided three Tribunal decisions—*Acevedo v. Canada (CBSA)*, 2012 CART 15, *Abdul-Aziz v. Canada (Min. AAF)*, 2012 CART 24, and *Martinez v. Canada (CFIA)*, RTA #60077—to the Tribunal and to the Idahosa, but also included additional argument in her letter. As a result, the Tribunal on September 15, 2014, invited Idahosa by September 30, 2014, to respond in writing to the cases and arguments submitted by Charbonneau. No response was received from Idahosa by September 30, 2014.

Evidence

[12] The evidence presented to the Tribunal in this case consists of written submissions from the Agency (the Notice of Violation dated December 7, 2013, and the Agency Report dated February 27, 2014) and from Idahosa (the submissions contained in her Request for Review dated December 8, 2013, and in her Additional Reasons dated January 26, 2014), as well as oral testimony given by Idahosa at the oral hearing. The Agency called no witnesses at the hearing for reasons alluded to above, while Idahosa called one witness, herself, at the oral hearing held on August 26, 2014.

[13] The Agency provided evidence with respect to the following facts in documents in the Agency Report:

- Idahosa landed at Lester B. Pearson Airport on December 7, 2013 (Canada Border Services Agency Declaration Card E311 (Declaration Card) at Tab 1 of the Agency Report).

- Idahosa completed and signed the Declaration Card on December 7, 2013. The Declaration Card was marked "no" beside the following statement: "I am/we are bringing into Canada: Meat/meat products; dairy products; fruits; vegetables; seeds; nuts; plants and animals or their parts/products; cut flowers; soil; wood/wood products; birds; insects" (Declaration Card at Tab 1 of the Agency Report).

- After she had cleared primary inspection, Idahosa was roved and highlighted by an Agency rover for a secondary inspection. Inspector 14747 completed the secondary inspection. His report indicates that he asked Idahosa if she had any food or snacks and that she said she had only biscuits and cakes from the plane. Inspector 14747 indicated that Idahosa was told that she must declare all goods purchased, received or acquired while abroad. However, upon examination of Idahosa's bags, Inspector 14747 uncovered 600 maggi cubes in a total of 12 bags. Idahosa declared to Inspector 14747 that she believed she only had to declare meat if it was for resale. As well, Inspector 14747 noted in his report that Idahosa told him that the cubes were not meat or not food. When asked if she had any permits or certificates for the goods, she said she did not. When informed by Inspector 14747 that she had a responsibility to report all goods

and that there were penalties for non-reporting, Idahosa indicated that she is a single mother with four children and that maggi cubes in Canada are too expensive.

- Having completed his inspection, he found that Idahosa had an undeclared meat product, namely chicken maggi cubes, as shown in the photos taken by Inspector 14747, at Tab 5 of the Agency Report.

- Inspector 14747 recorded in a document entitled "AMP Report Animal By-Product / Plant Product AMP #YYZ4974-0757" that Idahosa had no permits or certificates for the imported products, and that without such documentation, the inspector was unable to satisfy himself on reasonable grounds, that the chicken cubes had been processed in a way that would prevent disease from coming into Canada ("AMP Report Animal By-Product / Plant Product AMP #YYZ4974-0757" completed by Inspector 14747 at Tab 4 of the Agency Report).

- Inspector 14747 noted that the goods posed a threat to Canada's agriculture. He believed that the chicken cubes could harbour Newcastle Disease or Avian Flu. As well, pursuant to his examination of the Automated Import Reference System (AIRS) of the Canadian Food Inspection Agency (CFIA), the meat products (chicken cubes) from Nigeria that he found in Idahosa's possession were to be refused entry into Canada, unless such a product was accompanied by an official export certificate (AIRS report at Tab 3 of the Agency Report, and the "Inspector's Non Compliance Report for Travellers at Points of Entry" at Tab 4 of the Agency Report").

[14] The written evidence, presented by Idahosa in her Request for Review dated December 8, 2013, contained the following [*verbatim*]:

…

...this is the first time I am travelling in fifteen (15) years, and did not know that a spice called (Chicken maggi) as we call it in Nigeria, which I had is not allowed into Canada and that it would be considered as an Animal, I always buy the same brand I had in stores here in Canada for cooking "the exact same thing". I did not buy it for commercial purposes, but for my consumption and that of my kids...I checked "NO" in the form I was given in the flight because I was told when I asked in the flight that it was only referring to beef, and meat but not as a flavor, and if it was also for commercial purposes. What I had was a spice with chicken flavour and for self consumption. Even if it is not allowed into Canada, I thought I should have been warned not getting a penalty (fine) right away the first time.

…

[15] In her Additional Reasons, presented by Idahosa in a letter dated January 26, 2014, she added the following [*verbatim*]:

…

> *…I was with 20 packs of chicken knorr maggi and 3 tubers of yams. The chicken knorr maggi does not contain meat, but has chicken as its flavour, and the tuber of yams does not contain meat also, I don't know why I am receiving a fine for violation, and I don't know how I violated the health and Animals regulations."*

…

[16] In her oral testimony, Idahosa stated that the purpose of her trip was to visit her dying mother. While she was there, she bought the maggi cubes, which had animal flavouring but that she did not realize they might have to be declared when returning to Canada. She explained that she indicated "No" to the question on the Declaration Card about whether she was importing meat or meat products because the advice she got from a fellow passenger was that she didn't need to declare the products she was bringing in. Idahosa told the Tribunal that she did not know that what she was bringing in was not allowed and that she had been crying and was so distraught about her mother that she didn't really know what she was doing. Idahosa testified that she told the inspector at secondary inspection that she was bringing in food and clothes and when asked what kind of food she said "maggi cubes". When the inspector then told her she could not bring the maggi cubes into Canada, she requested permission from him to throw them in the garbage but he would not permit this. Idahosa told the Tribunal that she could not understand this as she buys this same product in Canada, but that they are cheaper in Nigeria and because she has a big family she wanted to save money by buying the maggi cubes in Nigeria and bringing them to Canada.

[17] In cross-examination, Idahosa admitted that she had purchased the maggi cubes in Nigeria and that she had not declared them on her Declaration Card because she had consulted with the airline hostess who said they didn't need to be declared. Idahosa testified that she had mentioned she had food and clothes to the first customs inspector she met who was at a secondary checkpoint but, she clarified that this first inspector was in the secondary inspection area and eventually where a third inspector found the maggi cubes she was carrying.

Analysis and Applicable Law

[18] This Tribunal's mandate is to determine the validity of agriculture and agri-food administrative monetary penalties issued under the authority of the AMP Act. The purpose of the AMP Act is set out in section 3:

> ***3**. The purpose of this Act is to establish, as an alternative to the existing penal system and as a supplement to existing enforcement measures, a fair and*

efficient administrative monetary penalty system for the enforcement of the agri-food Acts.

[19] Section 2 of the AMP Act defines "agri-food Act":

> *"agri-food Act" means the* Canada Agricultural Products Act*, the* Farm Debt Mediation Act*, the* Feeds Act*, the* Fertilizers Act*, the* Health of Animals Act*, the* Meat Inspection Act*, the* Pest Control Products Act*, the* Plant Protection Act *or the* Seeds Act*.*

[20] Pursuant to paragraph 4(1)(*a*) of the AMP Act, the Minister of Agriculture and Agri-Food, or the Minister of Health, depending on the circumstances, may make regulations

> *designating as a violation that may be proceeded with in accordance with this Act*
>
> > *(i) the contravention of any specified provision of an agri-food Act or of a regulation made under an agri-food Act…*

[21] The Minister of Agriculture and Agri-Food has made one such set of regulations, the AMP Regulations, which designate as violations specific provisions of the HA Act and the HA Regulations, as well as the *Plant Protection Act* and the *Plant Protection Regulations*. These violations are listed in Schedule 1 to the AMP Regulations and include a reference to section 40 of the HA Regulations. Moreover, Schedule 1, Part 1, Division 2 of the HA Regulations specifically sets out the classification, or severity, that must be attributed by enforcement agencies and this Tribunal to a violation of section 40 of the HA Regulations as follows:

Section	***Section HAR***	***Short-form description***	***Classification***
79.	*40*	*Import an animal by-product without meeting the prescribed requirements*	*Serious*

[22] The AMP Act's system of administrative monetary penalties, as set out by Parliament, is very strict in its application. In *Doyon v. Attorney General of Canada*, 2009 FCA 152, the Federal Court of Appeal (FCA) describes the system as follows at paragraphs 27 and 28:

> *[27] In short, the Administrative Monetary Penalty System has imported the most punitive elements of penal law while taking care to exclude useful defences and reduce the prosecutor's burden of proof. Absolute liability, arising from an* actus reus *which the prosecutor does not have to prove beyond a reasonable doubt, leaves the person who commits a violation very few means of exculpating him- or herself.*

> *[28] Therefore, the decision-maker must be circumspect in managing and analysing the evidence and in analysing the essential elements of the violation and the causal link. This circumspection must be reflected in the decision-maker's reasons for decision, which must rely on evidence based on facts and not mere conjecture, let alone speculation, hunches, impressions or hearsay.*

[23] In *Doyon*, the FCA also points out that the AMP Act imposes an important burden on the Agency. At paragraph 20, the Court states:

> *[20] Lastly, and this is a key element of any proceeding, the Minister has both the burden of proving a violation and the legal burden of persuasion. The Minister must establish, on a balance of probabilities, that the person named in the notice of violation committed the violation identified in the notice: see section 19 of the Act.*

[24] Section 19 of the AMP Act reads as follows:

> ***19.*** *In every case where the facts of a violation are reviewed by the Minister or by the Tribunal, the Minister must establish, on a balance of probabilities, that the person named in the notice of violation committed the violation identified in the notice.*

[25] Therefore, it is incumbent on the Agency to prove, on a balance of probabilities, all the elements of the violation that form the basis of the Notice of Violation. In the case of a violation of section 40 of the HA Regulations, the Agency must prove the following:

- Idahosa is the person who committed the violation;
- Idahosa imported an animal by-product, in this case Knorr-brand maggi chicken cubes, into Canada.

[26] The Tribunal must consider all of the evidence, both written and oral, in order to determine whether the Agency has proven, on a balance of probabilities, both of the elements of the alleged violation.

[27] With respect to the first element, Idahosa's identity, as the alleged violator, is not in dispute. Throughout the secondary inspection process, the identity of Idahosa, the alleged violator, and her care, control and ownership of the Knorr-brand maggi chicken cubes, have been proven on a balance of probabilities. The Tribunal finds, as fact, that Idahosa was the alleged violator identified by Inspector 14747 at secondary inspection, and that the products in question found in her bags can rightly be attributed as belonging to her.

[28] The only live issue in the case is with respect to proof of the second element. Has the Agency proved, on the balance of probabilities, that Knorr-brand maggi chicken cubes constitute an animal by-product?

[29] In the past, the Tribunal has been faced with several situations where it has had to determine whether a product in question contained meat or constituted an animal by-product (see *Taylor v. Canada (CBSA)*, 2010 CART 32;*Yan v. Canada (CBSA),* 2013 CART 26; *Tao v. Canada (CBSA)*, 2013 CART 16; *Mak v. Canada (CBSA)*, 2013 CART 11).

[30] With respect to a product called "maggi cubes", Charbonneau presented arguments that the Tribunal has already decided the issue and should just apply its past findings. She presented three cases—*Vargas*, *Abdul-Aziz*, and *Martinez* where the alleged violators indeed had amongst the products they had imported, some chicken cubes. However, in each of the three cases, along with chicken cubes, the alleged violators also had conventional meat as part of what they were importing (Vargas had 500 gr of salami, Abdul-Aziz had beef, and Martinez had eight pounds of meat). In none of the cases cited, did the Tribunal make a determination that "maggi cubes" or "chicken cubes" themselves alone constitute an "animal by-product" under the HA Regulations.

[31] In the opinion of the Tribunal, where maggi cubes are the sole basis for founding a violation under section 40 of the HA Regulations, the Agency is required to prove, on the balance of probabilities, that indeed maggi cubes do constitute an "animal by-product". Past cases of the Tribunal do not provide a definitive answer to this question. So what is the evidence in this case that maggi cubes do or do not constitute animal by-products?

[32] Inspector 14747 reported in documents, prepared by him, at Tab 4 and in photos presented at Tab 5, that the product in question was an animal by-product, namely chicken fat or meat. Idahosa maintains that Knorr-brand maggi chicken cubes are not meat, and by extension, not animal by-products. Charbonneau has argued that the Inspector's assessment of the products in question, and his reference to the AIRS system to determine if they should be permitted entry into Canada, is sufficient to find that the maggi cubes are indeed animal by-products.

[33] The Agency could have completed a much more proficient and diligent job of presenting evidence that the maggi cubes do in fact contain animal fat or meat and therefore constitute an animal by-product. A simple review of the product label, and a listing of those ingredients in the inspector's reports or a photo of the ingredient list would have provided that information. More sophisticated scientific analysis also would have provided definitive proof that the product did animal fat and therefore constituted an animal by-product.

[34] On the other hand, Idahosa also failed to produce even the simplest evidence such as the product label and ingredient list from a like product she purchased in Canada to show that the product did not contain animal fat or meat and so would not constitute an animal by-product. Such evidence would have been solid proof to support her position that the maggi cubes did not contain meat and did not constitute animal by-products.

[35] Given the evidence and opinion of Inspector 14747, the Tribunal finds, on the balance of probabilities, that Knorr-brand maggi chicken cubes do contain animal fat and

do constitute animal by-products. This finding fits with the fact that to hold otherwise would suggest that the large multi-national company that produces this product is mislabelling or falsely advertising a product which clearly identifies chickens as a main ingredient. It would be strange for such a product to be fairly marketed if it contained no chicken meat, chicken fat or other chicken by-product.

Defences Available to Idahosa

[36] There can be no doubt that alleged violators of section 40 of the HA Regulations may defend themselves by adducing evidence proving they met the prescribed requirements permitted under Part IV of the HA Regulations. However, the responsibility and burden for persuading the Agency, or eventually the Tribunal, that a person has met the prescribed requirements of Part IV falls on the alleged violator and he or she must take all of the necessary and reasonable steps to make such a justification known. Normally, this justification will take one of two forms, either by:

- the traveller declaring any animal by-products to the Agency, either in writing on that person's Declaration Card or to an Agency official as soon as possible once that person had deplaned and entered Canada on his way through an airport, such that an Agency inspector could inspect the product and determine if it should be allowed entry into Canada pursuant to paragraph 41(1)(*a*) or subsection 41.1(1) of the HA Regulations; or

- the traveller producing a certificate (paragraph 41(1)(*b*); paragraph 41(1)(*c*); section 43; section 46), document (subsection 52(1)), or permit (subsection 52(2)) such that the meat product would be permitted to be imported into Canada under Part IV of the HA Regulations.

[37] Unfortunately, Idahosa did not provide any justification of her importation in accordance with Part IV of the HA Regulations. While there was some evidence from Idahosa that she tried to declare the animal by-products to the first inspection customs officer she came across, the Tribunal accepts that, based on *dicta* of the FCA in *Canada (Attorney General) v. Savoie-Forgeot*, 2014 FCA 26 *(Forgeot)*, by this time it was too late to avoid liability for the unauthorized importation. The person she declared her Knorr-brand maggi chicken cubes to was either a roving inspector, or Inspector 14747 who completed the secondary inspection of her bags containing the Knorr-brand maggi chicken cubes.

[38] The law as set out in *Forgeot* is now quite clear that a declaration, either by reporting it on the Declaration Card, or orally to an Agency official as soon as possible, is a vital step in avoiding a charge under the AMP Act and AMP Regulations. Where individuals declare and make available for inspection those products which might be subject to seizure because they could endanger human, animal or plant life in Canada, such individuals ought not to be found to have violated section 40 of the HA Regulations. As the Court states in

Forgeot, "Even if upon inspection they are found to have in their possession animal by-products that do not fall within the exceptions enumerated in Part IV of the Regulations, they have not yet completed the process of importing these by-products into Canada." But conversely, where the individual fails to declare and present such products before secondary inspection, unless some other circumstances prevail, they will have contravened section 40 of the HA Regulations.

[39] The Tribunal also finds that Idahosa did not produce a certificate, document or permit in accordance with the applicable provisions of Part IV of the HA Regulations for the animal by-product she was carrying on December 7, 2013.

[40] The very strict AMP system established by Parliament, and set out in the AMP Act, protects Canada's agricultural and food systems against contamination and disease. The penalties set out in the AMP Act, as in this case, can nonetheless have important repercussions for Canadians, especially someone like Idahosa. At one level, it seems that Idahosa is asking the Tribunal to waive, for humanitarian reasons, the penalty imposed in this case and to show clemency by setting aside the $800.00 fine. Unfortunately, once the Agency has established all the facts of the alleged violation, on a balance of probabilities, the Tribunal's power is limited to confirming the Notice of Violation and ordering the offender to pay the fine specified in this Notice of Violation.

[41] Agency inspectors are charged with protecting Canadians, the food chain and agricultural production in Canada from the risks posed by biological threats to plants, animals and humans. There is no doubt that these duties must be exercised responsibly. The Tribunal is aware that the Agency has its own procedure for reviewing traveller complaints against inspectors who have conducted themselves improperly towards travellers. The Tribunal's jurisdiction to review Notices of Violation comes from its enabling statutes. According to these laws, the Tribunal has neither the mandate, nor the jurisdiction, to set aside or dismiss a Notice of Violation for humanitarian, medical or financial reasons.

[42] The AMP Act creates a liability regime that permits few tolerances, as it allows no defence of due diligence or mistake of fact. Section 18 of the AMP Act states:

> **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 facts that, if true, would exonerate the person.*
>
> *(2) Every rule and principle of the common law that renders any circumstance a justification or excuse in relation to a charge for an offence under an agri-food Act applies in respect of a violation to the extent that it is not inconsistent with this Act.*

[43] When an administrative monetary penalty has been enacted for a particular violation, as is the case for section 40 of the HA Regulations, Idahosa has little room to mount a defence outside of what is provided in Part IV of the HA Regulations. In the present case, section 18 of the AMP Act excludes practically any excuse that a traveller might raise to justify his or her actions, including the claims made by Idahosa that: (1) she was distraught or otherwise distracted by personal events; (2) she did not know she had to declare the Knorr-brand maggi chicken cubes as she could buy this same brand in Canada; (3) she received bad advice as to how to fill out her Declcaration Card; and, (4) she neither knew that the cubes contained animal by-products, nor that she could not import such cubes. Ultimately, it is the responsibility of every traveller to know the contents of their imports and of their bags and to ensure that the legislative requirements for the importation of all food and related products are respected, primarily through a written response on a Declaration Card and/or through an oral declaration to an Agency's primary inspector. Given Parliament's and the FCA's clear pronouncements on the issue, the Tribunal finds that Idahosa has not raised any permitted defences under section 18 of the AMP Act. However harsh this may appear, such are the legal requirements in place.

Penalty and Removal of All Record of the Penalty After Five Years

[44] The Tribunal finds that the Agency, on a balance of probabilities, has proven each of the necessary elements to establish that Idahosa committed the violation set out in Notice of Violation #YYZ4974-0757, dated December 7, 2013. Given the AMP Act and AMP Regulations and the violation proven in this case, the Tribunal finds that the penalty of $800.00 is the penalty required by the law. The Tribunal, by order, therefore determines that Idahosa committed the violation and orders her to pay the Agency a monetary penalty in the amount of $800.00 within thirty (30) days after the day on which this decision is served.

[45] The Tribunal wishes to inform Ms. Idahosa that this is not a criminal or a federal offence, but a monetary violation, and that she has the right to apply after five (5) years to have the notation of this violation removed from the Minister's records, in accordance with subsection 23(1) of the AMP Act, which states as follows:

> **23.** *(1) Any notation of a violation shall, on application by the person who committed the violation, be removed from any records that may be kept by the Minister respecting that person after the expiration of five years from*
>
> *(*a*) where the notice of violation contained a warning, the date the notice was served, or*
>
> *(*b*) in any other case, the payment of any debt referred to in subsection 15(1),*

unless the removal from the record would not in the opinion of the Minister be in the public interest or another notation of a violation has been recorded by the Minister in respect of that person after that date and has not been removed in accordance with this subsection.

Dated at Ottawa, Ontario, this 10th day of October, 2014.

_____

Dr. Don Buckingham, Chairperson