

UNITED STATES DEPARTMENT OF AGRICULTURE
BEFORE THE SECRETARY OF AGRICULTURE

In re:)
)
Amazon Services LLC,) PPA/AHPA Docket No. 19-J-0146
)
Respondent.)

**DECISION AND ORDER ON THE RECORD GRANTING
SUMMARY JUDGMENT IN FAVOR OF COMPLAINANT**

Appearances:

John V. Rodriguez, Esq., of the Office of the General Counsel, U.S. Department of Agriculture, Washington, D.C., for the Complainant, the Administrator of the Animal and Plant Health Inspection Service (“APHIS”); and

Lawrence H. Reichman, Esq., and Patrick Rieder, Esq., of Perkins Coie LLP, Portland, OR, for Respondent Amazon Services LLC.

INTRODUCTION

This case was initiated via Complaint filed on September 4, 2019 by Complainant, the Administrator of the Animal and Plant Health Inspection Service (“APHIS”), alleging that Respondent Amazon Services LLC (“Amazon”) violated the Plant Protection Act, as amended and supplemented (7 U.S.C. §§ 7701 *et seq.*) (“PPA”) and the regulations issued thereunder (7 C.F.R. §§ 301.81 *et seq.*) (“Regulations”); and the Animal Health Protection Act (7 U.S.C. §§ 8301 *et seq.*) (“AHPA”) and the regulations issued thereunder (9 C.F.R. Part 79 *et seq.*) (“Regulations”).

On April 8, 2020 Respondent Amazon moved for summary judgment asserting there are no disputed issues of material fact and seeking an order that the Complaint allegations be dismissed as a matter of law.¹ On May 28, 2020 Complainant filed its response in opposition to

¹ See Amazon’s Motion at 1.

that motion as well as a cross-motion for summary judgment, also asserting there are no disputed issues of material fact² and seeking an order that the Complaint allegations be affirmed as a matter of law.

I agree with the parties that there are no disputed issues of material fact and that the issues in dispute between the parties are legal ones, which can and should be decided on these cross motions for summary judgment.

Amazon's Answer to the Complaint filed on October 11, 2019, admitted to the jurisdictional allegations but denied all other allegations in the Complaint. In its Motion for Summary Judgment, Amazon more specifically denies legal responsibility for the alleged violations by asserting that third-party sellers agree to the terms of the Amazon Business Solutions Agreement ("BSA"), which, Amazon contends, unambiguously provides that third-party sellers, not Amazon, are responsible for the importation of their products into the U.S., including meeting the legal requirements for such importation.³ Amazon asserts that it did not "import" any of the products at issue as the term is defined in the Regulations; rather, each importation was carried out solely by third-party sellers and, therefore, under the Amazon BSA, the third-party sellers, not Amazon, are responsible.⁴ I conclude that Amazon's contentions are untenable and inconsistent with the specific language, legislative history, and remedial purposes of the AHPA and PPA.

For the reasons set forth herein, summary judgment is granted in favor of the

² See Complainant's Motion at 11.

³ Liu Decl. ¶ 13, Ex. 1.

⁴ See Amazon's Motion at 1; Liu Decl. Ex. 1 at 33-34.

Complainant on all but one allegation.

PROCEDURAL BACKGROUND

Complainant instituted this administrative enforcement proceeding under the AHPA and PPA by filing a complaint on September 4, 2019, alleging the following:

1. On or about March 24, 2015, Amazon imported and moved approximately 17.930kg of beef tendon and 26.685kg of pork floss from China, a region where APHIS considers Rinderpest or foot-and-mouth disease to exist, in violation of 9 C.F.R. § 94.4, because the cured or cooked meat was not accompanied by the requisite certificate.⁵

2. On or about March 24, 2015, Amazon imported and moved approximately 56.83kg of chicken feet from China, a region where APHIS considers Newcastle disease or highly pathogenic avian influenza to exist, in violation of 9 C.F.R. § 94.6, because the carcasses, meat, parts or products of carcasses, and eggs (other than hatching eggs) of poultry, game birds, or other birds were not accompanied by the requisite certificate.⁶

3. On or about March 24, 2015, Amazon imported and moved approximately 26.685kg of pork floss from China, a region where APHIS considers classical swine fever to exist, in violation of 9 C.F.R. § 94.9, because the pork and pork products were not accompanied by the requisite certificate.⁷

4. On or about March 24, 2015, Amazon imported and moved approximately 26.685kg of pork floss from China, a region where APHIS considers swine vesicular disease to exist, in violation of 9 C.F.R. § 94.12, because the pork and pork products

⁵ Complaint at ¶ 2.1.

⁶ *Id.* at ¶ 2.2.

⁷ *Id.* at ¶ 2.3.

were not accompanied by the requisite certificate.⁸

5. On or about March 26, 2015, Amazon imported and moved 15.55kg of chicken feet from China, a region where APHIS considers Newcastle disease or highly pathogenic avian influenza to exist, in violation of 9 C.F.R. § 94.6, because the carcasses, meat, parts or products of carcasses, and eggs (other than hatching eggs) of poultry, game birds, or other birds were not accompanied by the requisite certificate.⁹

6. On or about March 30, 2015, Amazon imported and moved 4.430kg of beef from China, a region where APHIS considers Rinderpest or foot-and-mouth disease to exist, in violation of 9 C.F.R. § 94.4, because the cured or cooked meat was not accompanied by the requisite certificate.¹⁰

7. On or about March 30, 2015, Amazon imported and moved approximately 19.07kg of chicken feet and 40.131kg of duck from China, a region where APHIS considers Newcastle disease or highly pathogenic avian influenza to exist, in violation of 9 C.F.R. § 94.6, because the carcasses, meat, parts or products of carcasses, and eggs (other than hatching eggs) of poultry, game birds, or other birds were not accompanied by the requisite certificate.¹¹

8. On or about March 31, 2015, Amazon imported and moved approximately 11.16kg of beef from China, a region where APHIS considers Rinderpest or foot-and-mouth disease to exist, in violation of 9 C.F.R. § 94.4, because the cured or cooked meat was

⁸ *Id.* at ¶ 2.4.

⁹ *Id.* at ¶ 2.5.

¹⁰ *Id.* at ¶ 2.6.

¹¹ *Id.* at ¶ 2.7.

not accompanied by the requisite certificate.¹²

9. On or about June 5, 2015, Amazon failed to comply with the Secretary's quarantine hold, in violation of 7 U.S.C. § 8306(c), because twenty-one (21) packages were released into commerce after Amazon was issued three quarantine demands in the form of Emergency Action Notifications ("EANs") on May 26, 2015.¹³

10. On or about June 11, 2015, Amazon imported and moved approximately .5kg of pork floss from China, a region where APHIS considers Rinderpest or foot-and-mouth disease to exist, in violation of 9 C.F.R. § 94.4, because the cured or cooked meat was not accompanied by the requisite certificate.¹⁴

11. On or about June 11, 2015, Amazon imported and moved approximately .5kg of pork floss from China, a region where APHIS considers classical swine fever to exist, in violation of 9 C.F.R. § 94.9, because the pork products were not accompanied by the requisite certificate.¹⁵

12. On or about June 11, 2015, Amazon imported and moved approximately .5kg of pork floss from China, a region where APHIS considers swine vesicular disease to exist, in violation of 9 C.F.R. § 94.12, because the pork products were not accompanied by the requisite certificate.¹⁶

13. On or about June 29, 2015, Amazon imported and moved approximately 2.34kg of

¹² *Id.* at ¶ 2.8.

¹³ *Id.* at ¶ 2.9.

¹⁴ *Id.* at ¶ 2.10.

¹⁵ *Id.* at ¶ 2.11.

¹⁶ *Id.* at ¶ 2.12.

beef tendon, .22kg of beef jerky, 1.75kg of shredded beef jerky, 13.3kg of shredded beef, 8.6kg of pork jerky, 17.1kg of pork skin, and 1.25kg of pig feet from China, a region where APHIS considers Rinderpest or foot-and-mouth disease to exist, in violation of 9 C.F.R. § 94.4, because the cured or cooked meat was not accompanied by the requisite certificate.¹⁷

14. On or about June 29, 2015, Amazon imported and moved approximately 1.3kg of duck wings, 4.78kg of duck necks, .2kg of sweet corn sausage with chicken, .87kg of spicy hot dog sausage with chicken, and 1.22kg of chicken claws from China, a region where APHIS considers Newcastle disease or highly pathogenic avian influenza to exist, in violation of 9 C.F.R. § 94.6, because the carcasses, meat, parts or products of carcasses, and eggs (other than hatching eggs) of poultry, game birds, or other birds were not accompanied by the requisite certificate.¹⁸

15. On or about June 29, 2015, Amazon imported and moved approximately 8.6kg of pork jerky, 17.1kg of pork skin, and 1.25kg of pig feet from China, a region where APHIS considers classical swine fever to exist, in violation of 9 C.F.R. § 94.9, because the pork and pork products were not accompanied by the requisite certificate.¹⁹

16. On or about June 29, 2015, Amazon imported and moved approximately 8.6kg of pork jerky, 17.1kg of pork skin, and 1.25kg of pig feet from China, a region where APHIS considers swine vesicular disease to exist, in violation of 9 C.F.R. § 94.12,

¹⁷ *Id.* at ¶ 2.13.

¹⁸ *Id.* at ¶ 2.14.

¹⁹ *Id.* at ¶ 2.15.

because the pork and pork products were not accompanied by the requisite certificate.²⁰

17. On or about July 9, 2015 Amazon imported and moved approximately 21.5kg of duck wings, 2kg of duck tongues, 26.5kg of duck necks, and 11.6kg of duck gizzards from China, a region where APHIS considers Newcastle disease or highly pathogenic avian influenza to exist, in violation of 9 C.F.R. § 94.6, because the carcasses, meat, parts or products of carcasses, and eggs (other than hatching eggs) of poultry, game birds, or other birds were not accompanied by the requisite certificate.²¹

18. On or about March 18, 2016, Amazon imported kaffir lime leaves, a plant or plant part of the subfamily *Aurantioideae*, in violation of 7 C.F.R. § 319.19(a), because the plant or plant part was not a fruit or seed and was imported for commercial sale rather than one of the excepted purposes listed in 7 C.F.R. § 319.19(b)-(d).²²

19. On or about May 11, 2016, Amazon imported kaffir lime leaves, a plant or plant part of the subfamily *Aurantioideae*, in violation of 7 C.F.R. § 319.19(a), because the plant or plant part was not a fruit or seed and was imported for commercial sale rather than one of the excepted purposes listed in 7 C.F.R. § 319.19(b)-(d).²³

20. On or about May 13, 2016, Amazon imported kaffir lime leaves, a plant or plant part of the subfamily *Aurantioideae*, in violation of 7 C.F.R. § 319.19(a), because the plant or plant part was not a fruit or seed and was imported for commercial sale rather

²⁰ *Id.* at ¶ 2.16.

²¹ *Id.* at ¶ 2.17.

²² *Id.* at ¶ 2.18.

²³ *Id.* at ¶ 2.19.

than one of the excepted purposes listed in 7 C.F.R. § 319.19(b)-(d).²⁴

21. On or about May 16, 2016, Amazon imported kaffir lime leaves, a plant or plant part of the subfamily *Aurantioideae*, in violation of 7 C.F.R. § 319.19(a), because the plant or plant part was not a fruit or seed and was imported for commercial sale rather than one of the excepted purposes listed in 7 C.F.R. § 319.19(b)-(d).²⁵

22. On or about May 19, 2016, Amazon imported kaffir lime leaves, a plant or plant part of the subfamily *Aurantioideae*, in violation of 7 C.F.R. § 319.19(a), because the plant or plant part was not a fruit or seed and was imported for commercial sale rather than one of the excepted purposes listed in 7 C.F.R. § 319.19(b)-(d).²⁶

23. On or about May 31, 2016, Amazon imported kaffir lime leaves, a plant or plant part of the subfamily *Aurantioideae*, in violation of 7 C.F.R. § 319.19(a), because the plant or plant part was not a fruit or seed and was imported for commercial sale rather than one of the excepted purposes listed in 7 C.F.R. § 319.19(b)-(d).²⁷

As noted above, Amazon timely filed an Answer on October 11, 2019, generally denying the allegations in the Complaint. On October 17, 2019, I issued an Order Setting Deadlines for Submissions.

A telephone conference was held on February 12, 2020, during which the parties expressed an interest in filing dispositive motions and agreed that the issues to be resolved are likely regarding legal liability and not material facts, and such resolution could obviate the need

²⁴ *Id.* at ¶ 2.20.

²⁵ *Id.* at ¶ 2.21.

²⁶ *Id.* at ¶ 2.22.

²⁷ *Id.* at ¶ 2.23.

for hearing.²⁸ Therefore, the Order Setting Deadlines for Submissions was lifted and a scheduling order for filing dispositive motions was set.²⁹

In accordance with the scheduling order, Amazon filed a Motion for Summary Judgment (“Amazon’s Motion”) and Declarations of (b) (6) (“Rieder Decl.”) and (b) (6) (“Liu Decl.”) on April 8, 2020; Complainant filed a Motion for Summary Judgment (“Complainant’s Motion”) on May 28, 2020; Amazon filed a Combined Reply in Support of Motion for Summary Judgment and Response to APHIS’s Motion for Summary Judgment (“Amazon’s Reply”) and Second Declaration of (b) (6) (“Second Liu Decl.”) on August 11, 2020; and Complainant filed a Reply to Amazon Services LLC’s Combined Reply in Support of Motion for Summary Judgment and Response to APHIS’s Motion for Summary Judgment (“Complainant’s Reply”) on September 9, 2020.

JURISDICTION

The AHPA was promulgated to prevent, detect, control, and eradicate diseases and pests of animals in the U.S. 7 U.S.C. § 8301. The PPA was promulgated to help detection, control, eradication, suppression, prevention, or retardation of the spread of plant pests or noxious weeds for the protection of the agriculture, environment, and economy of the United State. 7 U.S.C. § 7701. Congress provided for enforcement of the AHPA and the PPA by the Secretary of Agriculture, USDA. 7 U.S.C. §§ 8301(5)(B), 8313, 7712(a), 7734.³⁰

SUMMARY OF THE RECORD

²⁸ See Summary of February 12, 2020 Telephone Conference; Order Granting Respondent’s Request to Lift Submissions Deadlines; and Scheduling Order at 2.

²⁹ *Id.*

³⁰ See also 7 C.F.R. § 1.131.

The following pleadings were filed to the record and were considered for the purposes of each party's motion for summary judgment and opposition to opposing party's motion, respectively.

- Complaint filed September 4, 2019.
- Answer filed October 11, 2019.
- Amazon's Motion for Summary Judgment filed on April 8, 2020. Amazon submitted the following in support of its Motion for Summary Judgment:
 - Declaration of (b) (6) in Support of Amazon Services LLC's Motion for Summary Judgment ("Rieder Decl."), dated March 31, 2020 (b) (6) with Perkins Coie LLP, legal counsel to Amazon), including forty-five (45) exhibits.³¹

³¹ Rieder Decl. Ex. 1 (Officer Statement, (b) (6), Customs and Border Patrol, dated April 15, 2015); Rieder Decl. Ex. 2 (Department of Homeland Security/Customs and Border Control Agriculture Specialist Statement, (b) (6), dated July 10, 2015); Rieder Decl. Ex. 3 (USDA Report of Violation, dated April 15, 2015); Rieder Decl. Ex. 4 (Photo of seized packages, dated March 24, 2015); Rieder Decl. Ex. 5 (Customs and Border Control Agriculture Specialist Statement, (b) (6), dated April 22, 2015); Rieder Decl. Ex. 6 (Customs and Border Control Agriculture Specialist Statement, (b) (6), dated March 27, 2015); Rieder Decl. Ex. 7 (Photos of shipping labels and bar code on seized package, dated March 26, 2015); Rieder Decl. Ex. 8 (Photos of shipping labels and bar code on seized package, dated March 26, 2015); Rieder Decl. Ex. 9 (Statement of (b) (6), Smuggling Interdiction and Trade Compliance Officer, USDA, not dated); Rieder Decl. Ex. 10 (Photos of seized packages and contents, dated March 26, 2015); Rieder Decl. Ex. 11 (USDA APHIS Officer Statement, (b) (6), dated January 11, 2016); Rieder Decl. Ex. 12 (Email correspondence from (b) (6) (APHIS) to (b) (6) (Amazon), dated January 15, 2016, and from (b) (6) (Amazon) to (b) (6) (APHIS), dated February 5, 2016); Rieder Decl. Ex. 13 (Affidavit of (b) (6), USDA Plant Protection and Quarantine, Smuggling Interdiction and Trade Compliance Officer, dated November 29, 2016); Rieder Decl. Ex. 14 (Email correspondence from (b) (6) (Amazon) to (b) (6) (USDA, OGC), dated August 23, 2016; between (b) (6) (Amazon), (b) (6), (b) (6), and (b) (6) (USDA, OGC), dated September 2, 2016, September 21, 2016, and September 22, 2016; and from (b) (6) (USDA, APHIS) to (b) (6) (USDA, APHIS) dated September 29, 2016); Rieder Decl. Ex. 15 (Commercial Invoices, all dated July 7, 2015); Rieder Decl. Ex. 16 (Request for Subpoena Duces Tecum, on APHIS Letterhead, no author identified, not dated); Rieder Decl. Ex. 17 (Compliance Officer Statement, (b) (6), Customs and Border Protection, dated July 13, 2015); Rieder Decl. Ex. 18 (Letter "Re: Subpoena to Amazon.com, Inc., Dated April 29, 2016" from (b) (6), Perkins Cole); Rieder Decl. Ex. 19 (Agriculture Specialist Statement, (b) (6), Customs and Border

- Declaration of (b) (6) In Support of Amazon Services LLC's Motion for Summary Judgment ("Liu Decl."), dated April 7, year not indicated (b) (6), Senior Corporate Counsel), including twenty-one (21) exhibits.³²

Protection, dated May 18, 2016); Rieder Decl. Ex. 20 (Photo of shipment label, dated March 24, 2016); Rieder Decl. Ex. 21 (Email correspondence between (b) (6) (APHIS) and (b) (6) (Amazon), dated April 20, 2016, May 6, 2016, May 9, 2016, May 10, 2016, and May 11, 2016); Rieder Decl. Ex. 22 (Text of former 7 C.F.R. § 319.19, in effect before 2018); Rieder Decl. Ex. 23 (Text of 9 C.F.R. § 94.4); Rieder Decl. Ex. 24 (Text of 9 C.F.R. § 94.6); Rieder Decl. Ex. 25 (Text of 9 C.F.R. § 94.9); Rieder Decl. Ex. 26 (Text of 9 C.F.R. § 94.12); Rieder Decl. Ex. 27 (Photos of shipping labels and bar codes, dated March 26, 2015); Rieder Decl. Ex. 28 (Photos of shipping labels and bar codes, dated March 26, 2015); Rieder Decl. Ex. 29 (Photos of shipping labels and bar codes, dated March 26, 2015); Rieder Decl. Ex. 30 (Photo of intercepted package, dated March 24, 2015); Rieder Decl. Ex. 31 (Photos of intercepted package shipping labels, dated March 24, 2015); Rieder Decl. Ex. 32 (Photos of shipping labels and bar codes, dated March 26, 2015); Rieder Decl. Ex. 33 (Photo of intercepted package, dated March 26, 2015); Rieder Decl. Ex. 34 (Photos of shipping labels and bar codes, dated March 26, 2015); Rieder Decl. Ex. 35 (Photos of shipping labels and bar codes, dated March 26, 2015); Rieder Decl. Ex. 36 (Photos of shipping labels and bar codes, dated April 2, 2015); Rieder Decl. Ex. 37 (Photos of shipping labels and bar codes, dated April 2, 2015); Rieder Decl. Ex. 38 (Photos of shipping labels and bar codes, dated April 2, 2015); Rieder Decl. Ex. 39 (Photos of shipping labels and bar codes, dated April 2, 2015); Rieder Decl. Ex. 40 (Photos of shipping labels and bar codes, dated April 2, 2015); Rieder Decl. Ex. 41 (Photos of shipping labels and bar codes, dated April 2, 2015); Rieder Decl. Ex. 42 (Photo of shipping label); Rieder Decl. Ex. 43 (Photo of shipping label); Rieder Decl. Ex. 44 (Photos of shipping labels, dated March 24, 2016); Rieder Decl. Ex. 45 (Photos of shipping labels, dated March 24, 2016).

³² Liu Decl. Ex. 1 (Amazon Business Solution Agreement or "BSA", in effect in 2015 and 2016); Liu Decl. Ex. 2 (Document establishing when third-party seller Yummy House Hong Kong agreed to the BSA, dated December 13, 2014); Liu Decl. Ex. 3 (Document establishing when third-party seller DD222 agreed to the BSA, dated June 18, 2013); Liu Decl. Ex. 4 (Document establishing when third-party seller X-Sampa Co. agreed to the BSA, dated July 1, 2012); Liu Decl. Ex. 5 (Copy of the Amazon Seller Central 2016 version of the "Delivering imports to Amazon" web page); Liu Decl. Ex. 6 (Copy of the Amazon Seller Central 2017 version of the "Important Information for International Sellers" web page); Liu Decl. Ex. 7 (Copy of the Amazon Seller Central 2016 version of the "Importing and Exporting Inventory" web page); Liu Decl. Ex. 8 (Copy of the Amazon Seller Central 2016 version of the "Restricted products" web page); Liu Decl. Ex. 9 (Copy of the Amazon Seller Central 2016 version of "Animals & animal-related products" web page); Liu Decl. Ex. 10 (Copy of the Amazon Seller Central 2016 version of "Plant and seed products" web page); Liu Decl. Ex. 11 (Email correspondence between (b) (6) Marker (APHIS) and (b) (6) (Amazon), dated April 20, 2016, May 6, 2016, May 9, 2016, May 10, 2016, and May 11, 2016); Liu Decl. Ex. 12 (Details for trace, Request from SITC Internet Team, dated May 12, 2016); Liu Decl. Ex. 13 (Get Inbound Manifest Details, FBA Console, Prod US Amazon dated March 16, 2015); Liu Decl. Ex. 14 (Get Inbound Manifest Details, FBA Console, Prod US Amazon dated March 17, 2015); Liu Decl. Ex. 15 (Get Inbound Manifest Details, FBA Console, Prod US Amazon dated March 18, 2015); Liu Decl. Ex. 16 (Get

- Complainant’s Motion for Summary Judgement filed May 28, 2020, including ten (10) exhibits (starting at CX 90 and not consecutively numbered).³³
- Amazon’s Combined Reply in Support of Motion for Summary Judgment and Response to APHIS’s Motion for Summary Judgment filed August 11, 2020. In Support of Amazon’s Response, it filed Second Declaration of (b) (6) dated August 10, year not indicated ((b) (6)), Senior Corporate Counsel).
- Complainant’s Reply to Amazon Services LLC’s Combined Reply in Support of Motion for Summary Judgement and Response to APHIS’s Motion for Summary Judgement filed September 9, 2020.

DISCUSSION

For the reasons discussed more fully herein, Amazon’s attempt to insulate itself from the remedial protections the AHPA and the PPA provide to U.S. public and agriculture for

Inbound Manifest Details, FBA Console, Prod US Amazon dated March 18, 2015); Liu Decl. Ex. 17 (Get Inbound Manifest Details, FBA Console, Prod US Amazon dated March 21, 2015); Liu Decl. Ex. 18 (Get Inbound Manifest Details, FBA Console, Prod US Amazon dated March 21, 2015); Liu Decl. Ex. 19(1) (Get Inbound Manifest Details, FBA Console, Prod US Amazon dated March 22, 2015); Liu Decl. Ex. 19(2) (Get Inbound Manifest Details, FBA Console, Prod US Amazon dated March 23, 2015); Liu Decl. Ex. 20 (Get Inbound Manifest Details, FBA Console, Prod US Amazon dated March 24, 2015); Liu Decl. Ex. 21 (Get Inbound Manifest Details, FBA Console, Prod US Amazon dated March 12, 2015)

Note: Liu Decl. contains two Ex. 19. The first, starting at pg. 128 of the PDF document, is designated Ex. 19(1), and the second, starting at pg. 134 of the PDF document, is designated as Ex. 19(2).

³³ CX 90 (Statement of APHIS Officer (b) (6), dated January 11, 2016); CX 91 (Emergency Action Notification to Amazon Fulfillment Center, Breinigsville, PA, dated 5/26/2015); CX 92 (Emergency Action Notification to Amazon Fulfillment Center, Moreno Valley, CA, dated 5/26/2015); CX 93 (Emergency Action Notification to Amazon Fulfillment Center, Moreno Valley, CA, dated 5/26/2015); CX 101 (pictures of front and back of meat product packages); CX 102 (Emergency Action Notifications to General Warehouse, Passaic, NJ, dated 6/29/2015); CX 103 (Emergency Action Notification to Amazon Fulfillment Center, Murfreesboro, TN, dated 6/11/2015); CX 230 (Consent Agreement, Docket No. FIFRA-10-2018-0202, Environmental Protection Agency); CX 231 (Print out of <https://sellercentral.amazon.com>, “Getting started with Fulfillment by Amazon (FBA)”); CX 232 (Print out of <https://sellercentral.amazon.com>, “FBA features, services, and fees”).

Amazon's goods and products by means of its SBA cannot be sustained.³⁴

The AHPA authorizes the Secretary of Agriculture ("Secretary") to take decisive actions for "the prevention, detection, control, and eradication of diseases and pests of animals,"³⁵ and the PPA empowers the Secretary to prohibit or restrict the importation or movement of any plant or plant product when necessary to prevent introduction into the U.S. of any plant pest or

³⁴ The PPA and AHPA are remedial legislation. *See Sec. & Exch. Comm'n v. C. M. Joiner Leasing Corp.*, 320 U.S. 344, 353 (1943), judgment entered sub nom. *Sec. & Exch. Comm'n v. C M Joiner Leasing Corp.*, 53 F. Supp. 714 (N.D. Tex. 1944) (discussing the difference between strict application of punitive legislation and more liberal application of "civil proceedings of a preventative or remedial nature"). Remedial legislation should be construed liberally. *See Walker*, 2010 WL 148860, at *14 (U.S.D.A. Jan. 13, 2010). "It is the Department's policy to construe remedial legislation broadly so as to effectuate Congressional policy in the regulated area." *Good*, 49 Agric. Dec. 156, 175, fn. 4 (U.S.D.A. 1990) (citing *Farrow*, 42 Agric. Dec. 1397 (1983) [aff'd in part and rev'd in part, 760 F.2d 211 (8th Cir. 1985)]; *Norwich Veal and Beef, Inc.*, 38 Agric. Dec. 214 (1978)). *See also Valkering, U.S.A., Inc. v. U.S. Dep't of Agric.*, 48 F.3d 305, 308 (8th Cir. 1995) ("the Secretary's interpretation of the regulation is consistent with the purpose of the PQA which is to 'prevent the introduction of injurious plant diseases or insect pests and avoid the spread of certain dangerous plant diseases or insect infestations.' H.R.Rep. No. 873, 97th Cong., 2d Sess. 1 (1982), U.S. Code Cong. & Admin. News 1982, p. 3852."); *Moore*, 50 Agric. Dec. 392, 401-02 (U.S.D.A. 1991) ("The definition of 'moved' in s 78.1 was amended in 1986 to include the phrase 'or otherwise aided, induced, or caused to be moved.' When adopting the final rule, the Department expressly rejected comments that the definition was too broad, 'pointing out that the amendment is necessary to extend legal responsibility for violations to persons indirectly responsible for unauthorized movement, i.e., a veterinarian who prepares false documents and a seller who promises to have animals tested, but does not.' 51 Fed. Reg. 32,574, 32,577 (1986). . . . Furthermore, the legislation underlying the brucellosis regulations of s 78 is remedial in nature, and should be liberally construed to achieve the purposes of the regulatory program, which is to eradicate brucellosis. *In re American Fruit Purveyor's, Inc.*, 30 Agric. Dec. 1542 (1971). As testified to in some detail at the Oral Hearing by Dr. James Massman, the cooperation of all persons involved in the movement of restricted animals is paramount and critical to the success of the Brucellosis Eradication Program (Tr. 27-28).") (Emphasis Added); *Calabrese*, 51 Agric. Dec. 131, 132 (U.S.D.A. 1992) ("Remedial legislation should be liberally construed to achieve the Act's purpose."); *Lopez*, 44 Agric. Dec. 2201, 2209 (U.S.D.A. 1985) ("To achieve the remedial purposes of the Act, we must take a hard-nosed approach").

³⁵ 7 U.S.C. § 8301(1).

noxious weed.³⁶ The AHPA is designed to protect, among other things, animal health, the health and welfare of the people of the U.S., and the economic interests of the livestock industry.³⁷ The powers of the Secretary are broad and include the authority to seize, quarantine, treat, destroy, or dispose of animals affected with, or exposed to, livestock diseases.³⁸ Through the APHIS, the Secretary is authorized to promulgate regulations the Secretary determines necessary to carry out the mission of the AHPA.³⁹ In accordance with the AHPA, the Secretary promulgated 9 C.F.R. Part 94, which restricts the importation of specified animals and animal products to prevent the introduction into the U.S. of various animal diseases, including, foot-and-mouth disease (“FMD”), Highly Pathogenic Avian Influenza (“HPAI”), classical swine fever (“CSF”), and swine vesicular disease (“SVD”).

Similarly, under the PPA, the Secretary may issue regulations “to prevent the introduction of plant pests into the U.S. or the dissemination of plant pests within the United States.”⁴⁰ Pursuant to the PPA, the Secretary promulgated the *former* 7 C.F.R. § 319.19⁴¹ which specifically prohibits the importation into the U.S. of any plant or plant product of certain varieties to prevent the introduction of citrus canker disease (*Xanthomonas citri* (Hassk.) Dowson) and other citrus diseases.

The parties, each in submitting a motion for summary judgment, agree there are no

³⁶ 7 U.S.C. § 7712(a).

³⁷ 7 U.S.C. § 8301(1)(A)-(C).

³⁸ 7 U.S.C. § 8306(a).

³⁹ 7 U.S.C. § 8315.

⁴⁰ 7 U.S.C. § 7711(a); https://www.aphis.usda.gov/aphis/ourfocus/animalhealth/emergency-management/ct_fmd.

⁴¹ Effective: June 3, 2013 to April 17, 2018, Removed and Reserved by 83 FR 11855.

genuine issues as to any material facts in the present case and largely concede that no hearing is needed.⁴² The Department has long held that motions for summary judgment are appropriate where there is “no genuine issue as to any material fact” to be decided based on evidence beyond the pleadings, and the movant is entitled to judgment as a matter of law.⁴³

Amazon offers numerous products on its online store at Amazon.com; however, there are millions of other individuals and entities like these subject “third-party sellers” that also offer products in the marketplace in Amazon’s online store through its “Fulfillment by Amazon” (“FBA”) Program.⁴⁴ Complainant states that in the fourth quarter of 2019, it is estimated that fifty-three (53) percent of all units sold on Amazon.com were done so by third-party sellers;⁴⁵ that over 200,000 of these third-party sellers are located in China;⁴⁶ and that in 2018, the FBA Program generated over \$42.75 billion in revenue, accounting for the second largest revenue

⁴² See Amazon’s Motion at 1; 1, fn. 2; 15. See Complainant’s Motion at 10-11. Although Amazon, in its Motion at 1, fn. 2, states that it does not seek summary judgment as to the allegation in ¶ 2.9 of the Complaint “because that allegation involves different legal issues that may require fact-finding,” in its Response to Complainant’s Motion Amazon does not take issue with the facts but only interpretation of the law with regard to the allegation in ¶ 2.9 of the Complaint. I find, as to the allegation in ¶ 2.9 of the Complaint, no issue of material fact exists, and a hearing is not necessary to decide this allegation on the merits.

⁴³ *Agri-Sales, Inc.*, 73 Agric. Dec. 327, 328-30 (U.S.D.A. 2014), *aff’d* by the Judicial Officer and adopted as the final order in the proceeding, 73 Agric. Dec. 612 (U.S.D.A. 2014) (citing *Animals of Montana, Inc.*, 68 Agric. Dec. 92, 104 (U.S.D.A. 2009); *Bauck*, 868 Agric. Dec. 853, 858-59 (U.S.D.A. 2009); *Veg-Mix, Inc. v. U.S. Dep’t of Agric.*, 832 F.2d 601, 607 (D.C. Cir. 1987); *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 255 (1986)).

⁴⁴ See <https://sell.amazon.com/fulfillment-by-amazon.html>, Fulfillment By Amazon Program, How it Works (last visited April 15, 2021).

⁴⁵ See Complainant’s Motion at 3 (citing J. Clement, *Third-party seller share of Amazon platform 2007-2020*, Statista (May 4, 2020)

<https://www.statista.com/statistics/259782/third-party-seller-share-of-amazon-platform/>).

⁴⁶ *Id.* (citing Elizabeth Weise, *Made in China—and straight to your Amazon box*, USA Today (Jan. 26, 2017, 10:02 PM) <https://www.usatoday.com/story/tech/news/2017/01/26/amazon-china-third-party-sellers-increasing-sales-logisticsfulfillment-by-amazon-fba/95164638/>).

segment of the online retail platform.⁴⁷

The products at issue in this matter were imported into the U.S. to be sold and distributed as a part of Amazon's FBA Program.⁴⁸ As Complainant points out, Amazon neither disputes that it was aware of these products and expected them to be delivered to Amazon fulfillment centers in the U.S., where they were to be stored until purchased by customers on Amazon.com;⁴⁹ nor that, once purchased, Amazon was contractually obligated to transport the products to the buyers via interstate commerce if necessary.⁵⁰

Instead, Amazon contends these statutory and regulatory protections for U.S. public and agriculture do not apply to its multi-billion-dollar operation because only its third-party sellers are responsible for "importing" these harmful goods and products through its FBA Program. As noted above, I find that this position is untenable and wholly inconsistent with the specific language, legislative history, and remedial purpose of the AHPA and PPA.

As detailed in Complainant's Motion for Summary Judgement and responsive pleadings, and uncontested by Amazon, the products were clearly prohibited from being imported into the

⁴⁷ *Id.* (citing J. Clement, *Third-party seller share of Amazon platform 2007-2020*, Statista (May 4, 2020), <https://www.statista.com/statistics/259782/third-party-seller-share-of-amazon-platform/>).

⁴⁸ See Amazon's Motion at 3 (stating "This case concerns restricted plant and animal food products that three foreign, third-party sellers brought into the United States with the intent to utilize Amazon's fulfillment services.").

⁴⁹ See Liu Decl. Ex. 13-21. *But see* Amazon's Response at 11 claiming "even if Amazon were 'aware' that the third-party sellers intended to ship meat products from China (which it was not), that still does not show that Amazon was aware the third-party sellers intended to import them unlawfully." This claim that Amazon was not "aware" of the product shipments is not supported by the very evidence Amazon presents.

⁵⁰ See Amazon's Motion at 2 (stating "[under the FBA Program] third-party sellers send their products to an Amazon warehouse before selling the product. Amazon agrees to store the product and, when a customer buys the product from the third-party seller, Amazon ships the product to the customer").

U.S. under the AHPA and PPA.⁵¹

Regarding the allegations in paras. 2.1-2.8, 2.10-2.17, and 2.18-2.23 of the Complaint, the parties raise two legal issues: 1) whether the definition of “import” used in the statute (7 U.S.C. § 8302(a) or 7 U.S.C. § 7702, respectively) or that used in the Regulations (9 C.F.R. § 94.0 or 7 C.F.R. § 319.7, respectively) should be applied; and 2) whether Amazon can be liable for the “import” of the prohibited items as that term is defined. As to the allegation found in para. 2.9 of the Complaint, the parties raise one legal issue: whether Amazon can be liable for violating a quarantine hold if the items to be held were released after an oral commitment by Amazon to hold the items but prior to receipt of the written order to hold.

a. Plant Protection Act and Animal Health Protection Act Background

The Plant Protection Act (“PPA”) was introduced in the Senate in April 1999 “[t]o streamline, modernize, and enhance the authority of the Secretary of Agriculture relating to plant protection and quarantine, and for other purposes.”⁵² The PPA was enacted into law in 2000 after seventeen (17) years of effort to modernize and streamline over ten (10) laws related to the protection of U.S. plants from pests and noxious weeds.⁵³ The definition of “import,” incorporating the definition of “move,” is found verbatim in the original bill text as the enacted

⁵¹ See Complainant’s Motion at 13; Amazon’s Response at 11.

⁵² See H.R. 1504, S. 910, 106th Congress (1999), available at <https://www.congress.gov/bill/106th-congress/house-bill/1504/text?r=57&s=1> (last visited Feb. 2, 2021).

⁵³ See Nat’l Plant Board, U.S. Dep’t of Agric., *Safeguarding American Plant Resources: A Stakeholder Review of the APHIS-PPQ Safeguarding System* at 7 (1999), available at https://nationalplantboard.org/wp-content/uploads/docs/safe_main.pdf (last visited Feb. 4, 2021). See also Western Governors’ Association, PowerPoint Presentation by Andrea Huberty, Director, Plant Health Programs, Plant Protection and Quarantine, APHIS *Plant Protection and Quarantine and the Plant Protection Act* at slide 5 (April 25, 2019) available at https://westgov.org/images/editor/Andie_Huberty.pdf (last visited Feb. 4, 2021).

text. It is clear from the legislative history that the PPA, and Congress’s broad definition of “import,” was designed in consideration of the vast global market and intended to cast a wide net by holding liable not only the person or person’s actively moving or bringing restricted items into the U.S., but also including those who acted to further, or to aid, the movement of prohibited items into the U.S.⁵⁴

Under the Regulations, 7 C.F.R. § 319.7,⁵⁵ the definition of “import,” also incorporating the definition of “move,” is verbatim to the definitions of “import” and “move” found in the statute, 7 U.S.C. § 7702.

The AHPA was introduced in the Senate in October 2001 to “consolidate and revise the authority of the Secretary of Agriculture relating to protection of animal health.” The AHPA includes a broad definition of “import,” similar to that found in the PPA, and incorporates the definition of “move” identical to that found in the PPA. Both definitions of “import” and “move” are found in the introduced text⁵⁶ as well as the final text enacted into law in 2002. Congress was intentional regarding those definitions it chose to include in the statute and those it chose to leave

⁵⁴ See 7 U.S.C. § 7702; 146 Cong. Rec. S4416-01, S4434-35, 2000 WL 679383 (Mr. Graham stating, in support of the legislation, “this legislation includes a streamlined version of the Plant Protection Act. In 1988, I commissioned a study by the U.S. Department of Agriculture and the Animal and Plant Health Inspection Service (APHIS) to evaluate the viability of our nation’s system of safeguarding America’s plant resources from invasive plant pests. *In today’s global marketplace where international travel is commonplace, the importance of APHIS’ role in ensuring that invasive pests and plants do not enter our borders in paramount.* The passage of the Plant Protection Act was the number one recommendation of this report which included almost 300 individual recommended actions. Today, we are taking our first step toward a serious commitment to protecting American agriculture from the ravages of diseases like citrus canker or the Mediterranean fruit fly.”) (Emphasis added).

⁵⁵ See Amazon’s Motion at 18 (citing 7 C.F.R. § 319.7 as applicable to the alleged violations in paras. 2.18-2.23 of the Complaint).

⁵⁶ See S. 1482, 107th Congress (2001), available at <https://www.congress.gov/bills/107/congress/senate-bill/1482/text> (last visited Feb. 2, 2021).

to the discretion of the Department.⁵⁷ Concerning the Regulations, as Complainant points out, “the definition for ‘import’ was added to 9 C.F.R. § 94.0 under a different authorizing statute over thirty-years prior, in 1989.”⁵⁸ That part of the Regulations was subsumed under the authority of the AHPA, but nonetheless the AHPA makes clear Congress’s intent to, here again, cast a wider net in its definition of “import” than the preceding legislation it replaced.⁵⁹

b. Respondent Amazon Violated the AHPA and Regulations as Alleged in Paragraphs 2.1-2.8 and 2.10-2.17 of the Complaint

The allegations in paras. 2.1-2.8 and 2.10-2.17 concern violations under the AHPA and various Regulations (9 C.F.R. §§ 94.4, 94.6, 94.9, 94.12). These parts of the Regulations are similar in that they prohibit importation of certain animal product(s) that originate from areas where a specified disease exists without certification that confirms the product has been prepared

⁵⁷ See H.R. Conf. Rep. 107-424, 664, 2002 U.S.C.C.A.N. 141, 388 (“the managers were concerned that an overly broad definition [of “disease”] could result in litigation forcing the Agency to divert scarce resources to protecting against conditions which have little if anything to do with the scientific understanding of disease. Likewise, the managers were equally concerned that an arbitrarily narrow definition would limit the ability of the Agency to respond to as of yet unknown threats to animal health. The managers have therefore concluded that in order for the Agency to have maximum flexibility to focus it’s [sic] resources and respond to new or emerging disease threats that a regulatory definition of disease should be left to the discretion of the Secretary.”).

⁵⁸ Complainant’s Response at 3 (citing 54 FR 7391-02).

⁵⁹ 9 C.F.R. § 94.0 was originally promulgated October 8, 1987, 52 FR 33800-01, 1987 WL 140986 (F.R.), under the authority of 7 U.S.C. 147a, 150ee, 161, 162, 450 (previously the Plant Quarantine Act); 19 U.S.C. 1306 (previously the Tariff Act of 1930); 21 U.S.C. 111, 114a, 134a, 134b, 134c, and 134f (previously Title 21. Food and Drugs; Chapter 4. Animals, Meats, and Meat and Dairy Products; Subchapter III. Prevention of Introduction and Spread of Contagion); 42 U.S.C. 4331, 4332 (National Environmental Policy); 7 CFR 2.17, 2.51, and 371.2(d). “Import was not included in the Regulations’ definitions and was not added until 1989, 54 FR 7391-02. The previous authorities of 9 C.F.R. § 94.0 did not provide a definition for “import.” However, noting, that the Plant Quarantine Act did provide for “liability of principal for act of agent.” 7 U.S.C. § 153, Repealed. Pub.L. 106-224, Title IV, § 438(a)(1), June 20, 2000, 114 Stat. 454.

prior to importation into the U.S. in a specified way that would prevent the transmission of such as disease through the product.⁶⁰ There is no dispute that restricted animal products subject to the AHPA and Regulations, as alleged in paras. 2.1-2.8, 2.10-2.12, and 2.17 of the Complaint,⁶¹ were imported into the U.S. without the required certificates on the dates alleged in the Complaint and in violation of the Regulations as alleged in the Complaint.⁶² As previously noted, the issue presented is not whether those prohibited items were imported. They were. The issue is whether Amazon is legally responsible for the “import” of those prohibited items as that term is defined in the AHPA and Regulations.

The AHPA defines “import” as “to *move* from a place outside the territorial limits of the United States to a place within the territorial limits of the United States.”⁶³ The AHPA further defines “move” as: (A) to carry, enter, import, mail, ship, or transport; (B) to aid, abet, cause, or induce carrying, entering, importing, mailing, shipping, or transporting; (C) to offer to carry, enter, import, mail, ship, or transport; (D) to receive in order to carry, enter, import, mail, ship, or transport; (E) to release into the environment; or (F) to allow any of the activities described in this paragraph.⁶⁴

Amazon’s first legal contention is that the definition of “import” used in the Regulations (9 C.F.R. § 94.0), as opposed to that definition found in the AHPA statute (7 U.S.C. § 8302(a)),

⁶⁰ See 9 C.F.R. §§ 94.4, 94.6, 94.9, 94.12.

⁶¹ Amazon, in its Motion at 15, contends that there is no evidence to show that the packages found in the New Jersey warehouse, as alleged in ¶¶ 2.13-2.16, were ever imported. I will address these allegations in turn.

⁶² See Amazon’s Motion at 13 (citing Liu Decl. ¶ 29), 14 (citing Rieder Decl. Ex. 3-6), 15 (citing Rieder Decl. Ex. 13-14, 2).

⁶³ 7 U.S.C. § 8302(7) (emphasis added).

⁶⁴ 7 U.S.C. § 8302(12).

is controlling and should be applied without looking to the statutory definition in determining whether Amazon did in fact “import” the alleged restricted products. Amazon is in error. As Complainant pointed out,⁶⁵ the Supreme Court was definitive in its finding: “If the intent of Congress is clear, that is the end of the matter; for the court, as well as the agency, must give effect to the unambiguously expressed intent of Congress.”⁶⁶ Under the AHPA the intent of Congress is unambiguously expressed; Congress clearly defines the term “import,” 7 U.S.C. § 8302(a)(7), incorporating the term “move,” 7 U.S.C. § 8302(a)(12), as both terms should be used “[i]n this chapter” and “this chapter. . . includes any regulation or order issued by the Secretary under the authority of this chapter,” 7 U.S.C. § 8302(a)(16).

Amazon also misstates the operation of the AHPA and the Regulations promulgated

⁶⁵ Complainant’s Motion at 18.

⁶⁶ *Chevron, U.S.A., Inc. v. Nat. Res. Def. Council, Inc.*, 467 U.S. 837 (1984). *See also Time Warner Entm’t Co., L.P. v. F.C.C.*, 56 F.3d 151, 190 (D.C. Cir. 1995) (“Had Congress not provided ‘a precise definition ... for the exact term the Commission now seeks to redefine,’ ACLU, 823 F.2d at 1568, the Commission’s interpretation might well be entitled to deference. In the face of a clear statutory definition, however, there is no occasion for deference.”) (citing *Public Employees Retirement Sys. v. Betts*, 492 U.S. 158, 171 (1989); *Board of Governors of the Fed. Reserve Sys. v. Dimension Fin. Corp.*, 474 U.S. 361, 368, (1986); *Chevron*, 467 U.S. at 842–843).

Amazon’s suggestion of regulatory interpretation, referencing *Kisor v. Wilkie*, ___ U.S. ___, 139 S. Ct. 2400, 2446 (2019), (*see* Amazon’s Motion at 19; Amazon’s Response at 5, 7, 8) is not relevant here and misguided. Contrary to Amazon’s use and understanding of *Kisor*, the Court there did not change the “‘traditional tools’ of construction” that it held must first be applied under *Chevron* (*see Kisor* 139 S. Ct. at 2415 (citing *Chevron* 467 U.S. at 843)), but determined, instead, whether *Auer* deference should apply to an agency’s reasonable reading of genuinely ambiguous regulations. *See Kisor*, 139 S. Ct. at 2408 (citing *Auer v. Robbins*, 519 U.S. 452 (1997); *Bowles v. Seminole Rock & Sand Co.*, 325 U.S. 410 (1945)). First, there is no contention as to whether the Regulations at issue here are ambiguous. Second, Amazon is incorrect in stating, Amazon’s Motion at Response at 7, that “Resort to extraneous terms, including those in the enabling statutes, is neither needed nor allowed.” Applying Congresses intended and unambiguous definition is not “resort[ing] to extraneous terms” but is the correct “traditional tool” of construction under *Chevron*.

thereunder.⁶⁷ While it is true that the AHPA authorized the USDA Secretary to promulgate regulations to effectuate the purpose of the Act (7 U.S.C. § 8303(b)), the AHPA also provides the Congressional purpose of the Act (7 U.S.C. § 8301), provides definitions applicable to the Act and any regulations promulgated thereunder (7 U.S.C. § 8302(a)(16)), and provides both criminal and civil penalties for the violation of the AHPA and Regulations (7 U.S.C. § 8313). The AHPA both creates the legal prohibition and authorizes the Secretary to regulate the legal prohibition within the Congressional purpose of the Act.

Amazon's second legal contention is that, despite whether "one uses the regulatory term 'bring into' or the statutory term 'move,'" the interpretation should be limited to "concrete and predictable actions one takes with respect to a package."⁶⁸ Amazon's contention cannot be applied here because of the specific language Congress used to define "import." Of the various meanings intentionally included in Congress's definition of "import" by way of the term "move," certain actions, such as "to release into the environment," are not necessarily "concrete and predictable actions one takes with respect to a package" as Amazon suggests. Further, while the statutory definition of "import," incorporating the definition of "move," is certainly broader than the regulatory definition found at 9 C.F.R. § 94.0, it is not conflicting and can be simultaneously applied, though there is no need to do so here.

Thus, the controlling definition of "import" applicable here under the AHPA incorporates

⁶⁷ See Amazon's Response, at 3 (contending that the "enabling statute" is not the authority because it "not create regulatory duties" but that "the Agency implemented regulations to create duties, and the regulations exclusively define the scope of those duties."). See also Amazon's Response at 7 (contending that "The enabling statutes do not create any obligations or liability; rather, they authorize, but do not require, the Agency to promulgate regulations.")

⁶⁸ Amazon's Response at 3.

the term “move” as it is defined in the AHPA.

Congress charged the Secretary with protecting the public and agriculture through the restriction of high-risk animal product importation and broadly defined “import” to include actors with various roles in the importation of restricted products.

Whether Amazon imported the products at issue is ultimately determined based on its involvement in the importation of the restricted products. Complainant contends,⁶⁹ and Amazon does not deny,⁷⁰ that

Respondent was aware of these products and expected them to be delivered to Amazon fulfillment centers in the United States, where they were to be stored until purchased by customers on amazon.com. Once purchased, Respondent was contractually obligated to transport the products to the buyers, via interstate commerce if necessary.

Complainant also contends, and I agree, that “Respondent’s active involvement in the importation of prohibited products renders it liable for violating the AHPA.”⁷¹

Contrary to Complainant’s contentions, Amazon did not “offer” or “receive” to “carry, enter, import, mail, ship, or transport imported goods”⁷² As Amazon points out, Complainant fails to consider the rest of the definition of “import” (“from a place outside the territorial limits of the United States to a place within the territorial limits of the United States.”).⁷³ While it is clear from the evidence that Amazon agreed to receive the shipment, and to transport the

⁶⁹ Complainant’s Motion at 10-11.

⁷⁰ See Amazon’s Motion at 2 (explaining that, under the Fulfillment by Amazon program, “third-party sellers send their products to an Amazon warehouse before selling the product. Amazon agrees to store the product and, when a customer buys the product from the third-party seller, Amazon ships the product to the customer.”). See *supra* note 49.

⁷¹ Complainant’s Motion at 13.

⁷² Complainant’s Motion at 24-25 (citing 7 U.S.C. §§ 8302(12)(C)-(D); 7702(9)(C)-(D)),

⁷³ Amazon’s Response at 9-10 (citing 7 U.S.C. § 8302(a)(7)).

imported goods interstate, there is no evidence or allegation that Amazon received the shipment outside U.S. territorial limits. Likewise, there is no evidence or even allegation that Amazon offered to “carry, enter, import, mail ship or transport imported goods” from outside the U.S. to inside the U.S. There is also no evidence showing that Amazon “allow[ed]” the importation; Amazon was not in a position of authority to “allow” importation of the restricted products.⁷⁴ Complainant’s interpretation and application of the term “allow” is overbroad and out of context with respect to the statutory definition.

Of the six (6) possible definitions of “import,” incorporating the term “move,” the second definition is clearly applicable here; Amazon was involved in the importation of the restricted items by “[aid[ing], abet[ing], caus[ing], or induc[ing] [the] carrying, entering, importing, mailing, shipping, or transporting] from a place outside the territorial limits of the United States to a place within the territorial limits of the United States.”

There is no question that Amazon had an ongoing business relationship with the foreign third-party sellers it intended to profit or otherwise benefit from and played a significant role in the sale and distribution of imported animal products: 1) Amazon knew shipments were coming from the foreign third-party seller Yummy House Products (*see* Liu Decl. Ex. 13-21); 2) Amazon was aware the type of products the third-party sellers offer (*see* CX 90 / Rieder Decl. Ex. 11 at 5);⁷⁵ and 3) although not necessary for liability, Amazon was aware of federal regulations

⁷⁴ *See* Complainant’s Motion at 25-26 (contending that Amazon “allowed” by failing to place “significant obstacles in the way of these statutory violations.”).

⁷⁵ CX 90 and Rieder Decl. Ex. 11 are the same document. In this document, at 5, it is stated that fifty-three (53) units of prohibited product were distributed to U.S. customers, showing that the shipments at issue were not the first units Amazon received from the foreign third-party sellers. *See supra* note 49.

concerning restricted animal and plant products (*see* Liu Decl. Ex. 6-10). Amazon is liable under the AHPA through its business dealings with foreign third-party sellers of foreign animal products.

Contrary to Amazon’s contentions, Amazon’s services are not “entirely unrelated to the acts of importation” because these products sold through its website marketplace must be imported for sale to U.S. customers.⁷⁶ Of this Amazon is or should be fully aware and cannot be allowed under the law to circumvent its statutory duties and obligations to the U.S. public though asserted private agreements.

Complainant contends that the services offered to foreign third-party sellers, such as Amazon’s Fulfillment by Amazon (“FBA”) service to “pick, pack, ship, and provide customer service for those products,” encouraging customers to choose those products by providing free shipping, handling customer service and returns—as well as additional benefits such as access to millions of American and global customers, business growth and exposure—show that Amazon “induced” the importation of the restricted foreign animal products.⁷⁷

⁷⁶ Amazon in its Response, at 1-2, contends that “APHIS’s expansive interpretation of ‘import’ has broad and disturbing ramifications” because “[i]t would base ‘import’ on a domestic business’s offer of legitimate services that are entirely unrelated to the acts of importation” and “[s]uch an interpretation is hopelessly overbroad and would impose strict liability for the conduct of third parties.”

⁷⁷ *See* Complainant’s Motion at 19-25 (citing CX 231, 232; *Getting started with Fulfillment by Amazon*, Amazon Seller Central, https://sellercentral.amazon.com/gp/help/external/helppage.html?itemID=53921&language=en_US&ref=efph_53921_bred_201112670 (last visited May 28, 2020); *What is FBA?*, YouTube (Feb. 21, 2017) https://www.youtube.com/watch?v=1AVOHlpA9Mg&feature=emb_logo; *FBA features, services, and fees*, Amazon Seller Central, https://sellercentral.amazon.com/gp/help/help.html?itemID=201074400&language=en_US&ref=efph (last visited May 28, 2020); Liu Decl. Ex. 1 (Amazon Service Business Solutions Agreement (“BSA”)).

Amazon contends that “APHIS cannot square the undisputed facts with its own misinterpretation of the word ‘induce’” and relies *Chicago Lawyers’ Comm. for Civil Rights v. Craigslist, Inc.*, which finds that the popular website Craigslist.com not liable for illegal activity conducted on its website.⁷⁸ I disagree with Amazon that this case is similar to that of *Craigslist*.⁷⁹ The nature and function of Amazon.com is wholly different from Craigslist.com. Amazon’s website sells both its own and third-party products.⁸⁰ Under the FBA program, Amazon also offers to package/repackage (in Amazon boxes) third-party sellers’ products and provides customer and return services.⁸¹ For a customer that enters Amazon.com to purchase a product, receives that product in an Amazon box, and returns to Amazon.com for customer service, ratings of products and sellers, or any other needs related to that purchase, it is safe to say that customers rely on Amazon.com, as a reputable online store, to conduct due diligence to avoid offering unsafe, prohibited or illegal products on its website. In fact, Amazon recognizes that its customers trust Amazon to offer safe and legal products.⁸²

Contrary to Amazon’s contentions that “Amazon was merely the addressee,”⁸³ the record

⁷⁸ See Amazon’s Response at 11 (citing *Chicago Lawyers’ Comm. for Civil Rights v. Craigslist, Inc.*, 519 F.3d 666 (7th Cir. 2009)).

⁷⁹ Craigslist.com is a popular site that functions like a classifieds page in a newspaper – users post items, services and a whole host of other wanted or for sale ads. The function Craigslist.com makes clear to customers that they are dealing directly with third parties who use the platform.

⁸⁰ Amazon’s Motion at 1.

⁸¹ Amazon’s Motion at 2-3; CX 231, 232.

⁸² See Amazon’s Motion at 13 (quoting and citing Liu Decl. Ex. 8: “Customers trust that they can always buy with confidence on Amazon. Products offered for sale on Amazon must comply with all laws and regulations and with Amazon’s policies. The sale of illegal, unsafe, or other restricted products listed on these pages, including products available only by prescription, is strictly prohibited.”).

⁸³ Amazon’s Response at 4.

shows, as previously mentioned, that Amazon played a primary and significant role in the import of prohibited products. Amazon had previous and ongoing business dealings with these foreign third-party sellers.⁸⁴ Amazon previously profited from the sale of similar foreign animal products sold by the third-party sellers through its platform.⁸⁵ Amazon knew or should have known of the types of restricted foreign animal products sold by these sellers and of the incoming shipments.⁸⁶ Yet, Amazon failed to place stop guards that would prevent violations of the AHPA.⁸⁷

Amazon's contentions it did not know that the foreign third-party sellers were not adhering to the AHPA and Regulations illustrates, instead of negates, Amazon's failure to prevent violations of federal regulations intended to protect the public to whom it markets, sells, and delivers potentially harmful products. By choosing to enter into agreements with foreign sellers to market, sell, and distribute foreign animal products subject to the AHPA and Regulations into American homes, Amazon takes a significant primary role in the importation of such products as that term is defined in the AHPA, and renders itself liable thereunder for

⁸⁴ Amazon's Motion at 5 (stating that Yummy House Hong Kong started doing business with Amazon December 13, 2014, and DD222 started doing business with Amazon June 18, 2013); Liu Decl. Ex. 2 (proof of Yummy House' BSA); Liu Decl. Ex. 3 (proof of DD222's BSA); CX 90 / Rieder Decl. Ex. 11 at 5 (stating fifty-three (53) prohibited units were shipped to U.S. customers).

⁸⁵ CX 90 / Rieder Decl. Ex. 11 at 5 (stating fifty-three (53) prohibited units were shipped to U.S. customers).

⁸⁶ Liu Decl. Ex. 13-21 (Get Inbound Manifest Details, FBA Console, Prod US Amazon).

⁸⁷ Aside from its attempts to place all liability on third-party sellers through its BSA, Amazon offers no other evidence of policies or practices it has in place to ensure regulated plant and animal products are legal and safe for the market, sell, and shipment into American homes (such as flagging products that must enter its possession with proper documentation, or requiring third-party sellers to provide the contents of, and documentation for, expected shipments, etc.). Further, it is on no consequence that additional prohibited items were detected because of Amazon's assistance. *See* Amazon's Motion at 13; Liu Decl. at 7, ¶ 40. Amazon was responsible for not participating in the importation and introduction of those products into interstate commerce in the first place.

violations of that statute.

Amazon contends that “APHIS offers no evidence that Amazon knew of any wrongdoing by the third-party sellers who sent the offending packages to the United States.”⁸⁸ Amazon confuses the issues, as “knowledge” is not required to find violation of the AHPA and Regulations. The AHPA differentiates between “knowingly” violating the statute and Regulations with criminal penalties, 7 U.S.C. § 8313(a), but for civil penalties “knowledge” is not a required element for violation, 7 U.S.C. § 8313(b).⁸⁹ While the fact that Amazon knew or should have known that the foreign third-party sellers sold foreign meat products through its FBA program subject to federal regulation supports Amazon’s involvement in the importation of such products, actual knowledge of the third-party sellers’ “wrongdoing” is not necessary to determine a violation.

Further, the Department has liberally interpreted “induce,” “aid,” “abet,” and “cause,” to effectuate Congress’s intent in remedial legislation.⁹⁰ The AHPA and Regulations, and the

⁸⁸ Amazon’s Response at 10.

⁸⁹ See also Complainant’s Motion at 15-16 (citing *Lopez*, 44 Agric. Dec. 2201 (Oct. 7, 1985); *Kaplinsky*, 47 Agric. Dec. 613, 629 (Mar. 30, 1988); *Vallalta*, 45 Agric. Dec. 1421, 1423 (June 17, 1986)).

⁹⁰ See *Machado*, 42 Agric. Dec. 1454 (U.S.D.A. 1983) (where “Respondent Cozzi aided and abetted respondent Machado’s fraud because *he failed to prevent the fraud against Imperial, in light of the information available to him and his sharing of the profits* of the fraud.”) (emphasis added); *Moore*, *supra* note 34, 50 Agric. Dec. at 401 (Finding that the ALJ erred in finding Respondent did not “move” cattle because “compensation or the lack thereof is irrelevant in determining whether respondent Darrell Moore ‘moved’ the animals, as that term is defined in the regulations.” Rather it was the role he played in arranging the transportation of the calves that determined whether he “otherwise aided, induced, or caused [the calves] to be moved.”); *Casey*, 54 Agric. Dec. 91, 1995 WL 369434, *10 (U.S.D.A. 1995) (“Under that broad definition, Respondents’ conduct in sending the 55 cows to a livestock auction market for slaughter, . . . is conduct that ‘otherwise aided, induced’ and ‘caused to be moved’ the two cows interstate, which movement violated the regulations.”) (Quoting and citing *Reed*, *supra*, 52 Agric. Dec. 90, 99 (“In order to ensure that all parties involved in the interstate movement of livestock are responsive to

Department's previous interpretations of similar statutes and regulations,⁹¹ do not require "actual knowledge" of "wrongdoing." The AHPA and Regulations do not require bad intent or any *mens rea* at all. These are not criminal statutes but administrative/regulatory laws. Even if the undersigned adopted a more robust definition of "aid and abet," *see Securities and Exchange Commission v. Apuzzo*,⁹² there is no requirement for knowledge of "wrongdoing," only of the violation which, in this case, is the importation of the prohibited products themselves of which Amazon was aware.⁹³ Only with such interpretation of the statute can the Congressional purpose of the AHPA be achieved.

Lastly, Amazon cannot be absolved of liability by contracting and relying on foreign entities or persons with whom it does business to follow U.S. laws and regulations.⁹⁴ Amazon's

the regulations, it is the policy of USDA to hold all parties involved in any interstate movement of cattle responsible for compliance.")).

⁹¹ *See supra* note 89.

⁹² *Securities and Exchange Commission v. Apuzzo*, 2012 WL 3194303 (adopting Judge Learned Hand's standard for aider and abettor liability: "in addition to proving that the primary violation occurred and that the defendant had knowledge of it (the equivalent of the first two elements of *DiBella*)—must also prove 'that he in some sort associate[d] himself with the venture, that [the defendant] participate[d] in it as in something that he wishe[d] to bring about, [and] that he [sought] by his action to make it succeed.'" (citing *DiBella*, 587 F.3d at 566; *United States v. Peoni*, 100 F.2d 401, 402 (2d Cir.1938); *Nye & Nissen v. United States*, 336 U.S. 613, 619 (1949); *United States v. Irwin*, 149 F.3d 565, 569 (7th Cir.1998)).

⁹³ *See supra* notes 49, 86.

⁹⁴ *See Valkering, U.S.A., Inc. v. U.S. Dep't of Agric.*, 48 F.3d 305, 307 (8th Cir. 1995) (where respondent argued that it "played no role in the actual shipment of the trees, had delegated all responsibility for compliance with state and federal inspection requirements to Unique and Butternut, and was a wholesaler rather than a broker in the transactions" but the Court found that respondent is liable under the broad definition of "move" in the regulation and "[it] is irrelevant whether Valkering's involvement is characterized as that of a wholesaler or broker."); *Culbertson*, 53 Agric. Dec. 1030, 1030 (U.S.D.A. 1994) *rev'd* on different point *Culbertson vs. United States Dep't of Agric.*, 54 Agric. Dec. 860 (U.S.D.A. 1995) ("A person who relies on others, including accredited veterinarians, to comply with the regulatory requirements does so at his or her peril.") ("Mr. Culbertson relied upon the cattle owner and accredited veterinarians to ensure that the cattle met testing requirements [, and he relied upon them at his peril, since the

contractual relationship with its third-party sellers does not insulate it from the statutory and regulatory protections of the AHPA and PPA nor shield it from liability for the products and goods imported into the U.S. and distributed to U.S. consumers under Amazon's FBA program, generating more than \$42.75 billion in revenue, from these transactions. But for the services that Amazon provides, the subject violations of the AHPA and PPA could not have occurred.

As Complainant pointed out, "nowhere in the Acts does Congress carve out an exception for corporations to shift culpability to third-parties."⁹⁵ Amazon may require third-party sellers to follow U.S. laws, regulations, and its policies; but ultimately Amazon is itself subject to federal laws and regulations where it does business.⁹⁶ Thus, I find that Amazon "imported" the items as

responsibility under the Act may not be delegated to others, even if they prove to be unreliable.]); *Lloyd Myers Co.*, 51 Agric. Dec. 747, 769, 772 (U.S.D.A. 1992) ("There are many cases that stand for the general principle that the mere form of a business organization is insufficient to shield the practices sought to be prohibited from the reach of a federal regulatory agency.") (citing *Elec. Bond & Share Co. v. SEC*, 303 U.S. 419, 440 (1938); *FTC v. Standard Ed. Soc'y*, 302 U.S. 112, 119-20 (1937); *H.P. Lambert Co. v. Sec'y of Treas.*, 354 F.2d 819, 822 (1st Cir. 1965); *Joseph A. Kaplan & Sons, Inc. v. FTC*, 347 F.2d 785, 787 n.4 (D.C. Cir. 1965); *S.C. Generating Co. v. FPC*, 261 F.2d 915, 920 (4th Cir. 1958); *Corn Products Refining Co. v. Benson*, 232 F.2d 554, 565 (2d Cir. 1956); *Keystone Mining Co. v. Gray*, 120 F.2d 1, 6 (3d Cir. 1941); *Ala. Power Co. v. McNinch*, 94 F.2d 601, 618 (D.C. Cir. 1938); *Tractor Training Serv. v. FTC*, 227 F.2d 420, 425 (9th Cir. 1955); *Goodman v. FTC*, 244 F.2d 584, 593-94 (9th Cir. 1957)).

⁹⁵ Complainant's Motion at 14.

⁹⁶ Amazon, in its Motion at 21-22, contends that "courts across the country have recognized Amazon's limited role in third-party sales" and cites to several products liabilities cases where it was found to have a limited or no liability in connection with unsafe products (citing *Garber v. Amazon.com, Inc.*, 380 F. Supp. 3d 766 (N.D. Ill. 2019); *Eberhart v. Amazon.com, Inc.*, 325 F. Supp. 3d 393 (S.D.N.Y. 2018); *Stiner v. Amazon.com, Inc.*, 2019 Ohio 586, ¶ 33 (Ohio Ct. App. 2019); *Fox v. Amazon.com, Inc.*, M.D.Tenn. No. 3:16-CV-03013, 2018 WL 2431628, *8 (May 30, 2018); *Erie Ins. Co. v. Amazon.com Inc.*, D. Md. No. CV 16-02679-RWT, 2018 WL 3046243, *3 (Jan. 22, 2018); *Milo & Gabby LLC v. Amazon.com, Inc.*, 693 Fed. Appx. 879 (Fed. Cir. 2017); *McDonald v. LG Elecs. USA, Inc.*, 219 F. Supp. 3d 533, 542 (D. Md. 2016); *Allstate New Jersey Ins. Co. v. Amazon.com, Inc.*, D.N.J. No. CV 17-2738 (FLW) (LHG), 2018 WL 3546197, *10 (July 24, 2018)). However, this comparison is irrelevant here. This proceeding is brought pursuant to a federal remedial regulatory statute, not state tort law. Products liability

alleged in the Complaint, paras. 2.1-2.8, 2.10-2.12, and 2.17.

Regarding paras. 2.13-2.16 of the Complaint, Amazon contends that “APHIS has failed to introduce any evidence that the products came from outside the United States.” Amazon, *id.*, states that “[u]nlike the products identified elsewhere in the Complaint, APHIS has not produced any shipping label for any of the products discovered in New Jersey” and contends that Complainant cannot show that the products were imported at all. Complainant asks the undersigned to “to conclude, by a preponderance of the evidence, that fungible items from the same Chinese seller (Yummy House Hong Kong) were transported into the United States in a manner consistent with the thirteen (13) parcels recovered in San Francisco” and to “to infer that the parcels were mis-labeled in a similar fashion, differing from what was on the manifest and creating a red-flag that Amazon should have investigated.”

Amazon’s contentions at once ignore the very record evidence it proffers and seems to require specific evidence (shipping labels) that is not required elsewhere in the AHPA or Regulations. Complainant, on the other hand, asks the undersigned to “infer” too much. Important here are only the facts conceded by both parties with the above interpretation and application of the statutory definition of “import.” Rieder Decl. Exhibit 13 is an affidavit of Mr. (b) (6), an officer with the USDA, Plant Protection & Quarantine, Smuggling

cases, as Complainant points out in its Motion at 26, are subject to state law. Amazon reduces to a footnote or fails to mention other cases where it was held liable as a “seller” under state tort law (*see State Farm Fire and Casualty Co. v. Amazon.com, Inc.*, 390 F. Supp. 3d 694 (W.D. Wis. 2019); *Gartner v. Amazon.com, Inc.*, S.D. Tex., No. 4:18-CV-2242 (S.D. Tex. 2020); *McMillan v. Amazon.com, Inc.*, 433 F. Supp. 3d 1034 (S.D. Tex. 2020). Nevertheless, Amazon, as a business engaging in interstate commerce, is subject to the AHPA and PPA, federal laws, and the regulations promulgated under each Act.

Interdiction and Trade Compliance (“SITC”). In his Affidavit, at 1, (b) (6) states

I went [to General V Warehouse] to perform a site visit for internet Traces #35480, 35481 and 35482. . . . Only 1 package from Trace 35480 was found. . . . However I did find 16 other non- compliant products containing swine, poultry and ruminant. (b) (6) , [sic] YMY Yummy House Hong Kong was the vendor for all of the products.

(b) (6) also states, at 4-5:

It is my understanding that General V Warehouse is not associated with YMY Yummy House Hong Kong or Amazon. It is not an Amazon Fulfillment Center. It was determined that YMY sends products from China to various Amazon Warehouse Distribution Centers in the United States. If there is a labeling issue (i.e. bar code or description) Amazon does not correct these problems. Amazon will return the product to the vendor. In lieu of returning the product to China, companies such as General V Warehouse accepts the products for corrective labeling, by applying the product with labels containing new bar codes and descriptions and then returns the product back to Amazon for order fulfillment, thereby eliminating the cost and time of shipping back to country of origin.

Last, (b) (6) attests that he “examined the shipping labels on the boxes of non-compliant products at General V Warehouse. The products had been sent by commercial courier from at least 4 different Amazon warehouses in 4 different state (KY, MD, CA, PA).”

Not only did Amazon submit (b) (6) Affidavit, Amazon did not deny or contest the attestations contained therein, much less produce evidence to the contrary, evidence that, if it existed, would presumably be within Amazon’s control and ability to produce. That failure is fatal to Amazon on summary judgment. Thus, the record evidence submitted by Amazon is that 1) Yummy House, the third-party seller from whom all products found in General V Warehouse came, is an entity in Hong Kong, therefore its products originated outside the U.S.;⁹⁷ and 2) the prohibited products obtained at General V Warehouse, confirmed to be from Yummy House Hong Kong, were sent from Amazon’s warehouses at the request of Yummy House Hong

⁹⁷ Rieder Decl. Ex. 13 at 1; CX 90/Rieder Decl. Ex. 11 at 3

Kong.⁹⁸ The deceitful labeling, brought up by both parties, is of no significance in finding the current violations; it merely provides circumstantial evidence that the third-party sellers were fully aware of the restrictions and purposely aimed to circumvent such restrictions. Nonetheless, as discussed *supra*, Amazon’s “actual knowledge” of wrongdoing is not required to find a violation of the AHPA and Regulations.

Amazon’s contention that the products from Yummy House Hong Kong cannot be “proven” to be imported is illogical and otherwise unsupported. The evidence, most notably the evidence submitted by Amazon, as to which no contrary evidence has been submitted, shows that the prohibited products found in General V Warehouse are Yummy House Hong Kong products, imported for sell through Amazon, but sent to General V Warehouse due to labeling issues or at the request of the third-party seller.⁹⁹ Thus, by the same reasoning provided above, Amazon “imported” the prohibited products as alleged in the Complaint, paras. 2.13-2.16. Complainant has carried its initial burden of proof on summary judgment by bringing forth sufficient uncontested evidence to prove its case. At that point, the burden shifted to Amazon to bring forth evidence to contravene Complainant’s evidence. Amazon failed to do so. Unsupported contentions that there are material facts at issue are insufficient to support a finding there are material issues of fact. Therefore, here, Complainant prevails.

c. Respondent Amazon Violated the PPA and Regulations as Alleged in Paragraphs 2.18-2.23 of the Complaint

Amazon raises the same contentions as to Complaint paras. 2.18-2.23 without distinction

⁹⁸ Rieder Decl. Ex. 13 at 4-5; CX 90/Rieder Decl. Ex. 11 at 5; Liu Second Decl. at 2, ¶ 5.

⁹⁹ See *supra* notes 97, 98.

between the AHPA and PPA.¹⁰⁰ However, under neither the PPA, nor the Regulations promulgated thereunder, is the term “import” defined as “to bring into the United States.” The regulatory definition of “import,” 7 C.F.R. § 319.7, is identical to the definition of “import” found in the statute, 7 U.S.C. § 7702, both incorporating the definition of “move.”

Congress’ unambiguous definition of “import” under the PPA is controlling.¹⁰¹ Thus, the controlling definitions of “import” under the PPA incorporate the definition of “move.”

See 7 U.S.C. § 7702. Under the PPA, “move” means”

- (A) to carry, enter, import, mail, ship, or transport;
- (B) to aid, abet, cause, or induce the carrying, entering, importing, mailing, shipping, or transporting;
- (C) to offer to carry, enter, import, mail, ship, or transport;
- (D) to receive to carry, enter, import, mail, ship, or transport;
- (E) to release into the environment; or
- (F) to allow any of the activities described in a preceding subparagraph.

Of the six (6) possible definitions of “import,” incorporating the term “move,” here again the second definition “[to aid, abet, cause, or induce the carrying, entering, importing, mailing, shipping, or transporting] into . . . the territorial limits of the United States,” is clearly applicable.¹⁰²

The record shows that Amazon played a significant role in the import of prohibited products. Amazon had previous and ongoing business dealings with this foreign third-party

¹⁰⁰ *See* Amazon’s Motion at 18 (“Under the regulations promulgated by the USDA pursuant to . . . the Plant Protection Act, the term ‘import’ has a clear and unambiguous meaning: to bring into the United States”). As Complainant points out, Complainant’s Response at 6, Amazon later concedes that the PPA has different terms, but fails to explain or correct its argument as to the definition of “import” under the PPA. *See* Amazon’s Response at 2, fn. 1; 7, fn. 3.

¹⁰¹ *See supra* note 66; PPA, 7 U.S.C. § 7702(19).

¹⁰² *See supra* page 24.

seller.¹⁰³ Amazon likely previously profited from the sale of similar foreign plant products sold by the third-party seller through its platform.¹⁰⁴ Amazon knew or should have known of the types of restricted foreign animal products sold by these sellers and of the incoming shipments.¹⁰⁵

As detailed previously, Amazon failed to place stop guards that would prevent violations of the PPA and cannot be absolved of liability by contracting and relying on foreign entities or persons with whom it does business to follow U.S. laws and regulations.¹⁰⁶ Amazon enabled and facilitated these statutory violations and cannot absolve itself of its statutory duties and the consequence of their violations through private agreements with others.¹⁰⁷ Thus, I find that Amazon “imported” the items as alleged in the Complaint, paras. 2.1-2.8, 2.10-2.12, and 2.17.

d. The Record Does Not Prove for Purposes of Summary Judgment That Amazon Violated the AHPA as Alleged in Paragraph 2.9 of the Complaint

The Complaint alleges, at para. 2.9, that

On or about June 5, 2015, Respondents failed to comply with the Secretary’s

¹⁰³ Amazon’s Motion at 5 (X-Sampa Co. began doing business with Amazon on July 1, 2012); Liu Decl. Ex. 4.

¹⁰⁴ See Liu Decl. at 6, ¶ 4 (stating “After APHIS agents notified Amazon that it had intercepted the products identified in Complaint paragraphs 2.18-2.23, Amazon promptly removed X-Sampa Co. Kaffir lime leaf products from Amazon.com, held the products in its warehouses for destruction, and then suspended the third-party seller account.”). It is reasonable to deduce that X-Sampa Co. previously sold Kaffir lime leaf products through Amazon based on the facts that: 1) X-Sampa Co. began doing business with Amazon in July 2012; 2) the alleged violations were committed in March 2016; and 3) Amazon was holding Kaffir lime leaf products in its warehouses for distribution to customers.

¹⁰⁵ Liu Decl. Ex. 13-21 (Get Inbound Manifest Details, FBA Console, Prod US Amazon).

¹⁰⁶ See *supra* notes 87, 94, 95, 96.

¹⁰⁷ See *Allen*, 78 Agric. Dec. 387, 421 (U.S.D.A. 2019) (finding that Petitioner could not “contractually shield himself from PACA liability” as his actions still resulted in PACA violations).

quarantine hold, in violation of 7 U.S.C. § 8306(c), because twenty-one (21) packages were released into commerce after Amazon was issued three quarantine demands in the form of Emergency Action Notifications (EANs) on May 26, 2015.

The AHPA, 7 U.S.C. § 8306(c), states in relevant part: “The Secretary, *in writing*, may order the owner of any . . . article . . . to maintain in quarantine . . . with respect to the . . . article . . . in a manner determined by the Secretary” (emphasis added).

The facts here are not in dispute.¹⁰⁸ On or about April 2 and 3, 2015, Complainant asked Amazon to “[d]etermine if other shipments of meat product from China from this vendor made it to [Amazon’s] warehouses and, if so, place a *temporary stop sale or hold* on any product that is currently in [Amazon’s] warehouses” (emphasis added).¹⁰⁹ On April 13, 2015, Amazon agreed, during a conference call with Complainant, to place a hold on prohibited products currently in its warehouses.¹¹⁰ On May 7, 2015, during another conference call, Amazon informed Complainant that “there were roughly 21 units on hold between 8 Amazon Fulfillment Centers.”¹¹¹ On May 12, 2015, Complainant requested additional details about the products on hold, including the number of units on hold and warehouse locations of products on hold, to which Amazon replied the next day.¹¹² On May 13, 2015 Amazon released the products on hold at the Request of

¹⁰⁸ See Amazon’s Response at 14-15 (explaining the dates of hold and release of products, and receipt of EANs); Complainant’s Response at 8 (Complainant does not contest the dates provided by Amazon).

¹⁰⁹ CX 90/ Rieder Decl. Ex. 11 at 1 (whether the request was made in writing or orally is not specified). No written request from those dates was provided by either party and Complainant states that the first request to hold was made orally. Complainant’s Response at 8.

¹¹⁰ *Id.* at 2.

¹¹¹ *Id.* at 3.

¹¹² *Id.*

Yummy House Hong Kong after the “temporary hold” “expired.”¹¹³ On May 26, 2015 Complainant issued EANs to Amazon, written orders to hold products from Yummy House Hong Kong.¹¹⁴ On June 5, 2015, Amazon notified Complainant that “the products on hold were erroneously released and that only 1 piece remained in their Murfreesboro, TN location.”¹¹⁵

While it appears that Complainant is correct that Amazon’s actions in releasing the prohibited products was “dangerous,”¹¹⁶ Congress specifically required that hold orders be *written* and here the record does not show that any written hold orders or requests were issued prior to the release of the products.¹¹⁷ As discussed herein, where Congress’s intent is clear, an agency may not go beyond that Congressional intent.¹¹⁸ APHIS knew the products were in Amazon’s possession and the record on summary judgment reveals no reason a written order could not have been issued. Nearly a month and a half passed between APHIS being notified of the products held by Amazon and APHIS issuing the EANs. Amazon did not release prohibited items after receiving a written hold order. Thus, Complainant raises no issue of material fact about this allegation and has failed to prove that Amazon violated 7 U.S.C. § 8306(c).

¹¹³ See Liu Second Decl. at 1-2, ¶¶ 4-5 (stating that Amazon “placed a temporary hold on 21 packages owned by Yummy House Hong Kong on or about April 2, 2015, meaning that the products could not be ‘picked’ to fill customer orders and the seller could not obtain their return. The temporary hold was in place for about 30 days, which is Amazon’s standard practice, and expired on or about May 2, 2015. . . . After the temporary hold had expired, Yummy House Hong Kong submitted a request to Amazon to release all of its products located in Amazon warehouses and send them to a warehouse in New Jersey unaffiliated with Amazon. Amazon released Yummy House Hong Kong’s property, as requested, on May 13, 2015, because there was no hold in place at the time.”).

¹¹⁴ CX 91-93.

¹¹⁵ CX 90/ Rieder Decl. Ex. 11 at 3; Rieder Decl. Ex. 14 at 1.

¹¹⁶ Complainant’s Response at 8.

¹¹⁷ 7 U.S.C. § 8306(c).

¹¹⁸ See *supra* note 66.

I. *Penalty*

Complainant requests that a civil penalty of \$1,000,000 be imposed against Amazon in consideration of “the nature, circumstance, extent, and gravity of the violation(s), as well as the Respondent’s history of prior violations, degree of culpability, and other factors.”¹¹⁹

Complainant asks that the maximum civil penalty allowed under each statute be imposed to deter future violations.¹²⁰ Complainant contends that the violations are severe in that, should an outbreak of disease because by a prohibited product, such outbreak could cause billions of dollars in damage to the U.S. agriculture and economy. Complainant states that the requested penalty “is easily paid [by Amazon] and will not impact its ability to operate.”¹²¹

Amazon contends that “APHIS’s sanctions request is procedurally improper and unsupported and that a hearing must be held on the issue of penalty.”¹²² Amazon contends both Acts, 7 U.S.C. §§ 7734, 8313, require “notice and an opportunity for a hearing on the record” before a penalty can be imposed.¹²³ Amazon also contends there are “plenty of disputed facts that would require a hearing on any penalty . . . [a]t bare minimum, a hearing is necessary to probe the evidence that APHIS apparently considered but did not share about the factors it identified as relevant” and so Amazon could present rebuttal evidence and evidence of

¹¹⁹ Complainant’s Motion at 27 (citing 7 U.S.C. § 8313(b); 7 U.S.C. § 7734(b)).

¹²⁰ *Id.* at 29 (citing *Lopez*, 44 Agric. Dec. 2201, 2205 (U.S.D.A. 1985); *Gillette*, 75 Agric. Dec. 363, 395 (U.S.D.A. 2016); *Corona Distributors, Inc., and Reyna's Supermarket*, 60 Agric. Dec. 274 (U.S.D.A. 2001)).

¹²¹ *Id.* at 32 (citing CX 230 (an Environmental Protection Agency consent agreement in a case against Amazon that resulted in a civil penalty of \$1,215,700)).

¹²² Amazon’s Response at 15-16. (citing and quoting Complainant’s Motion at 27-28, which cites and quotes 7 U.S.C. §§ 7734, 8313).

¹²³ *Id.*

mitigation.¹²⁴

For the same reason a hearing is not needed to determine the violations, no hearing is needed to determine penalties. Amazon was provided with “notice” via Complaint filed on September 4, 2019, and an “opportunity for hearing,” which it agreed was unnecessary by seeking summary judgment and conceding that “[t]here are no issues of material fact.”¹²⁵ Amazon seems to request a subsequent hearing to determine penalties and to present evidence it has had the opportunity to provide.¹²⁶ Further, Amazon misunderstands the statute which directs that “the *Secretary* shall take into account” the factors outlined therein.¹²⁷ The Acts do not require Complainant to “share,” or for Amazon to “probe,” “evidence that APHIS apparently considered” in suggesting a penalty.¹²⁸ It is the undersigned’s task to consider the factors provided in the statute when determining penalty.

The AHPA and PPA both provide for civil penalties for violation of each.¹²⁹ Both statutes, verbatim, also provide the following “Factors for determining civil penalty[::]”

In determining the amount of a civil penalty, the *Secretary shall* take into account the *nature, circumstance, extent, and gravity of the violation or violations* and the *Secretary may* consider, with respect to the violator—

¹²⁴ *Id.* (citing *Lopez*, 44 Agric. Dec. 2201, 2207 (Oct. 7, 1985)).

¹²⁵ See Amazon’s Motion at 1. See also *supra* notes 43 (citing *Agri-Sales, Inc.*, 73 Agric. Dec. at 328-30, which states “an issue of fact is ‘material’ if under the substantive law it is essential to the proper disposition of the claim. [Citation omitted.] The mere existence of some factual dispute will not defeat an otherwise properly supported motion for summary judgment because the factual dispute must be material. [Citation omitted.]”) and 42.

¹²⁶ See Amazon’s Response at 16 (stating that it would like to provide evidence of “mitigating factors” such as Amazon’s actions to “suspended third-party seller accounts and reviewed its millions of product listings to confirm that items like the intercepted products were not offered for sale by other third-party sellers.”). Amazon has already provided evidence on this point.

¹²⁷ 7 U.S.C. §§ 7734, 8313.

¹²⁸ See Amazon’s Response at 16.

¹²⁹ 7 U.S.C. §§ 7734, 8313.

- (A) ability to pay;
- (B) effect on ability to continue to do business;
- (C) any history of prior violations;
- (D) the degree of culpability; and
- (E) any other factors the Secretary considers appropriate.

7 U.S.C. §§ 7734(b)(2), 8313(b)(2) (emphasis added). The intent of remedial legislation, such as the AHPA and PPA, is only effectuated when the penalty serves as an “effective deterrent not only to the respondent but also to potential violators.”¹³⁰

The gravity of each violation is great. As noted throughout this Decision, the health and welfare of the U.S. public and agriculture is at stake. The importance of remedial laws such as the AHPA and PPA, and the Regulations promulgated under each, are in the forefront of safety considerations as to the damage potential outbreak of the very diseases these laws are meant to protect us from could do.¹³¹

Further, Amazon has millions of customers that rely and trust it to provide safe and legal products on its platform.¹³² As a large, reputable, and highly profitable company that not only conducts business in interstate commerce, but delivers products into millions of American homes each day, such violations should be considered severe.

As Complainant points out, the maximum civil penalty allowed under each Act is \$500,000 for “all violations adjudicated in a single proceeding if the violations do not include a

¹³⁰ See Complainant’s Response at 29 (citing *Lopez*, 44 Agric. Dec. 2201, 2205 (U.S.D.A. 1985) (internal quotations omitted)) (also quoting and citing *Gillette*, 75 Agric. Dec. 363, 395 (U.S.D.A. 2016); *Corona Distributors, Inc.*, and *Reyna’s Supermarket*, 60 Agric. Dec. 274 (U.S.D.A. 2001)).

¹³¹ See Complainant’s Response at 30-31 (explaining the potential monetary damages of possible Foot and Mouth Disease, Highly Pathogenic Avian Influenza, Classical Swine Fever, and African Swine Fever outbreaks).

¹³² See *supra* note 82.

willful violation.” As Complainant does not contend that Amazon’s violations were willful, the maximum penalty allowed under the statutes is \$1 million. There is no question that such penalty will not affect Amazon’s ability to continue to do lawful business or that Amazon will be able to pay.¹³³ Knowledge is not a factor in this case.¹³⁴ While it is true that Amazon does not have a history of previous violations under the AHPA and PPA, I find that the gravity of the violations is nonetheless enough to merit the maximum civil penalty.

As discussed, Amazon, through the services it provides, has violated the AHPA and PPA by actively assisting foreign third-parties in the importing, entering, and movement of prohibited products, jeopardizing the health and welfare of the U.S. and hindering the Secretary’s ability to safeguard the health and welfare of the country’s agriculture. In order to ensure that the statutory and regulatory mandates of the AHPA and PPA are met, it is necessary to hold Amazon accountable for all regulatory and statutory violations. Therefore, summary judgment is warranted and a one million dollar (\$1,000,000) civil penalty is appropriate.

FINDINGS OF FACT

1. For products sold on Amazon.com, foreign third-party sellers have two options for delivering products to their customers: 1) they can handle the shipping arrangements themselves or they can contract for Amazon to “fulfill” the orders; or 2) they can send their products to one of Amazon’s many fulfillment centers before selling the product.

¹³³ See Annie Palmer, *Amazon reports first \$100 billion quarter following holiday and pandemic shopping surge*, CNBC (Feb. 2, 2021) available at <https://www.cnbc.com/2021/02/02/amazon-amzn-earnings-q4-2020.html> (last visited Feb. 22, 2021).

¹³⁴ See *supra* pg. 28.

Amazon calls this service “Fulfillment by Amazon”. Amazon’s Motion at 2.

2. Amazon offers a number of services to third-party sellers both before and after shipment of the product, including agreeing to store, label, and market the product presale and transport the product, with free shipping where applicable, interstate once a customer buys the product off the Amazon marketplace. CX 231-232.
3. Between March 24 and March 31, 2015, APHIS agents seized approximately thirteen (13) parcels at an International Mail Facility in San Francisco, California. Rieder Decl. Ex. 3-6. Each box was addressed to “Jim Chen,” and listed the address of an Amazon fulfillment center. Rieder Decl. Ex. 3. On the international shipping label, the sender provided false information about the contents of the boxes, referring to them as “rubber tube” (Rieder Decl. Ex. 7), “personal belongings” (Rieder Decl. Ex. 8), and other generic items. When government agents opened the boxes, they discovered beef, pork, and poultry products that lacked the certificates required for entry. Rieder Decl. Ex. 1; Ex. 9. The packaging on the products indicated they were sold under the Yummy House Hong Kong brand. Rieder Decl. Ex. 10.
4. Shortly after agents intercepted the Yummy House Hong Kong products, an APHIS investigator contacted the Amazon fulfillment center listed as the destination, notified Amazon about the intercepted packages, and asked for information about the seller. Rieder Decl. Ex. 11-12.
5. After investigating internally, Amazon provided information about the seller account, Yummy House Hong Kong, tied to the shipments and information about the seller’s products in Amazon fulfillment centers throughout the U.S. Rieder Decl. Ex. 11-12.
6. On an April 13, 2015 conference call, Amazon agreed to place a hold on Yummy House

Hong Kong products at all its fulfillment centers. During this call, Amazon revealed that fifty-three (53) packages of seller's products had been shipped to U.S. customers from its fulfillment centers over a six-month period. CX 90.

7. On May 13, 2015, Amazon identified, to Complainant, twenty-one (21) packages associated with Yummy House Hong Kong located in fulfillment centers in California and Pennsylvania. CX 90.
8. On May 13, 2015 Amazon released the products on hold at the Request of Yummy House Hong Kong after the "temporary hold" "expired." Liu Second Decl. at 1-2, ¶¶ 4-5.
9. On May 26, 2015, Emergency Action Notifications ("EANs") were issued to Amazon expressly stating that the twenty-one (21) packages identified by Amazon on May 13, 2015 must not be moved, except as directed by an Agriculture Officer. CX 91-93.
10. On June 5, 2015, Amazon informed governmental personnel that the twenty-one (21) products held under quarantine were erroneously released, with one package being sent to a fulfillment center in Tennessee and the remainder being sent to an independent warehouse in New Jersey. Rieder Decl. Ex. 13-14.9
11. On June 11, 2015, one of the erroneously released packages from the May 26, 2015 quarantine hold (.5kg of pork floss sold by Yummy House Hong Kong) was found and destroyed by APHIS personnel at a fulfillment center in Murfreesboro, Tennessee. CX 103.
12. On June 29, 2015, USDA agents went to the independent warehouse in New Jersey and discovered Yummy House Hong Kong beef, poultry, and pork products described in Complaint paragraphs 2.13 to 2.16. Rieder Decl. Ex. 13. Only one of these products originated from the twenty-one (21) erroneously released products from the May 26,

2015 quarantine hold. CX 101-102.

13. On July 9, 2015, APHIS agents seized three boxes at an International Mail Facility in Los Angeles, California. Rieder Decl. Ex. 2. The sender's name was not legible on the shipping label, but the sender had mailed the packages to the address of an Amazon fulfillment center. Rieder Decl. Ex. 15-16. On the international shipping label, the sender provided false information about the contents of the boxes, misidentifying them as a "gift box" and "plastic strip." Rieder Decl. Ex. 17. When government agents opened the boxes, they discovered poultry products without the requisite certificates. Rieder Decl. Ex. 1. Amazon later identified the seller account associated with the shipment as "Deng Dan," or "DD222." Rieder Decl. Ex. 18 at 2.
14. On March 29, 2016, APHIS agents seized three boxes at an International Mail Facility in San Francisco. Rieder Decl. Ex. 19. The boxes were sent by "Songkran Prommanee" and addressed to "Songkran Prommanee" at an address associated with an Amazon fulfillment center. Rieder Decl. Ex. 20. When government agents opened the boxes, they discovered various food products derived from Kaffir lime leaves, intended for commercial sale. Rieder Decl. Ex. 19; Ex. 21.

CONCLUSIONS OF LAW

1. The Secretary has jurisdiction over this matter.
2. The material facts involved in this matter are not in dispute, and the entry of summary judgment in favor of Complainant on all but one allegation is appropriate.
3. On or about March 24, 2015, Respondent Amazon imported and moved approximately 17.930kg of beef tendon and 26.685kg of pork floss from China, a region where APHIS considers Rinderpest or foot-and-mouth disease to exist, in violation of 9 C.F.R. § 94.4,

because the cured or cooked meat was not accompanied by the requisite certificate.

4. On or about March 24, 2015, Respondent Amazon imported and moved approximately 56.83kg of chicken feet from China, a region where APHIS considers Newcastle disease or highly pathogenic avian influenza to exist, in violation of 9 C.F.R. § 94.6, because the carcasses, meat, parts or products of carcasses, and eggs (other than hatching eggs) of poultry, game birds, or other birds were not accompanied by the requisite certificate.
5. On or about March 24, 2015, Respondent Amazon imported and moved approximately 26.685kg of pork floss from China, a region where APHIS considers classical swine fever to exist, in violation of 9 C.F.R. § 94.9, because the pork and pork products were not accompanied by the requisite certificate.
6. On or about March 24, 2015, Respondent Amazon imported and moved approximately 26.685kg of pork floss from China, a region where APHIS considers swine vesicular disease to exist, in violation of 9 C.F.R. § 94.12, because the pork and pork products were not accompanied by the requisite certificate.
7. On or about March 26, 2015, Respondent Amazon imported and moved 15.55kg of chicken feet from China, a region where APHIS considers Newcastle disease or highly pathogenic avian influenza to exist, in violation of 9 C.F.R. § 94.6, because the carcasses, meat, parts or products of carcasses, and eggs (other than hatching eggs) of poultry, game birds, or other birds were not accompanied by the requisite certificate.
8. On or about March 30, 2015, Respondent Amazon imported and moved 4.430kg of beef from China, a region where APHIS considers Rinderpest or foot-and-mouth disease to exist, in violation of 9 C.F.R. § 94.4, because the cured or cooked meat was not accompanied by the requisite certificate.

9. On or about March 30, 2015, Respondent Amazon imported and moved approximately 19.07kg of chicken feet and 40.131kg of duck from China, a region where APHIS considers Newcastle disease or highly pathogenic avian influenza to exist, in violation of 9 C.F.R. § 94.6, because the carcasses, meat, parts or products of carcasses, and eggs (other than hatching eggs) of poultry, game birds, or other birds were not accompanied by the requisite certificate.
10. On or about March 31, 2015, Respondent Amazon imported and moved approximately 11.16kg of beef from China, a region where APHIS considers Rinderpest or foot-and-mouth disease to exist, in violation of 9 C.F.R. § 94.4, because the cured or cooked meat was not accompanied by the requisite certificate.
11. A violation of 7 U.S.C. § 8306(c) requires failure to comply with a *written* quarantine hold. Therefore, Respondent Amazon's release of the twenty-one (21) identified products as alleged in paragraph 2.9 of the Complaint on May 13, 2015 did not fail to comply with the Secretary's EANs (*written* quarantine holds) dated May 26, 2015.
12. On or about June 11, 2015, Respondent Amazon imported and moved approximately .5kg of pork floss from China, a region where APHIS considers Rinderpest or foot-and-mouth disease to exist, in violation of 9 C.F.R. § 94.4, because the cured or cooked meat was not accompanied by the requisite certificate.
13. On or about June 11, 2015, Respondent Amazon imported and moved approximately .5kg of pork floss from China, a region where APHIS considers classical swine fever to exist, in violation of 9 C.F.R. § 94.9, because the pork products were not accompanied by the requisite certificate.
14. On or about June 11, 2015, Respondent Amazon imported and moved approximately

.5kg of pork floss from China, a region where APHIS considers swine vesicular disease to exist, in violation of 9 C.F.R. § 94.12, because the pork products were not accompanied by the requisite certificate.

15. On or about June 29, 2015, Respondent Amazon imported and moved approximately 2.34kg of beef tendon, .22kg of beef jerky, 1.75kg of shredded beef jerky, 13.3kg of shredded beef, 8.6kg of pork jerky, 17.1kg of pork skin, and 1.25kg of pig feet from China, a region where APHIS considers Rinderpest or foot-and-mouth disease to exist, in violation of 9 C.F.R. § 94.4, because the cured or cooked meat was not accompanied by the requisite certificate.
16. On or about June 29, 2015, Respondent Amazon imported and moved approximately 1.3kg of duck wings, 4.78kg of duck necks, .2kg of sweet corn sausage with chicken, .87kg of spicy hot dog sausage with chicken, and 1.22kg of chicken claws from China, a region where APHIS considers Newcastle disease or highly pathogenic avian influenza to exist, in violation of 9 C.F.R. § 94.6, because the carcasses, meat, parts or products of carcasses, and eggs (other than hatching eggs) of poultry, game birds, or other birds were not accompanied by the requisite certificate.
17. On or about June 29, 2015, Respondent Amazon imported and moved approximately 8.6kg of pork jerky, 17.1kg of pork skin, and 1.25kg of pig feet from China, a region where APHIS considers classical swine fever to exist, in violation of 9 C.F.R. § 94.9, because the pork and pork products were not accompanied by the requisite certificate.
18. On or about June 29, 2015, Respondent Amazon imported and moved approximately 8.6kg of pork jerky, 17.1kg of pork skin, and 1.25kg of pig feet from China, a region where APHIS considers swine vesicular disease to exist, in violation of 9 C.F.R. § 94.12,

because the pork and pork products were not accompanied by the requisite certificate.

19. On or about July 9, 2015 Respondent Amazon imported and moved approximately 21.5kg of duck wings, 2kg of duck tongues, 26.5kg of duck necks, and 11.6kg of duck gizzards from China, a region where APHIS considers Newcastle disease or highly pathogenic avian influenza to exist, in violation of 9 C.F.R. § 94.6, because the carcasses, meat, parts or products of carcasses, and eggs (other than hatching eggs) of poultry, game birds, or other birds were not accompanied by the requisite certificate.
20. On or about March 18, 2016, Respondent Amazon imported kaffir lime leaves, a plant or plant part of the subfamily Aurantioideae, in violation of 7 C.F.R. § 319.19(a), because the plant or plant part was not a fruit or seed and was imported for commercial sale rather than one of the excepted purposes listed in 7 C.F.R. § 319.19(b)-(d).
21. On or about May 11, 2016, Respondent Amazon imported kaffir lime leaves, a plant or plant part of the subfamily Aurantioideae, in violation of 7 C.F.R. § 319.19(a), because the plant or plant part was not a fruit or seed and was imported for commercial sale rather than one of the excepted purposes listed in 7 C.F.R. § 319.19(b)-(d).
22. On or about May 13, 2016, Respondent Amazon imported kaffir lime leaves, a plant or plant part of the subfamily Aurantioideae, in violation of 7 C.F.R. § 319.19(a), because the plant or plant part was not a fruit or seed and was imported for commercial sale rather than one of the excepted purposes listed in 7 C.F.R. § 319.19(b)-(d).
23. On or about May 16, 2016, Respondent Amazon imported kaffir lime leaves, a plant or plant part of the subfamily Aurantioideae, in violation of 7 C.F.R. § 319.19(a), because the plant or plant part was not a fruit or seed and was imported for commercial sale rather than one of the excepted purposes listed in 7 C.F.R. § 319.19(b)-(d).

24. On or about May 19, 2016, Respondent Amazon imported kaffir lime leaves, a plant or plant part of the subfamily Aurantioideae, in violation of 7 C.F.R. § 319.19(a), because the plant or plant part was not a fruit or seed and was imported for commercial sale rather than one of the excepted purposes listed in 7 C.F.R. § 319.19(b)-(d).
25. On or about May 31, 2016, Respondents imported kaffir lime leaves, a plant or plant part of the subfamily Aurantioideae, in violation of 7 C.F.R. § 319.19(a), because the plant or plant part was not a fruit or seed and was imported for commercial sale rather than one of the excepted purposes listed in 7 C.F.R. § 319.19(b)-(d).

ORDER

1. Summary Judgment is hereby **GRANTED** in favor of Complainant on all but one allegation.
2. Respondent's Motion for Summary Judgment, requesting an order dismissing paragraphs 2.1 to 2.8 and paragraphs 2.10 to 2.23 of the Complaint as a matter of law is **DENIED**.
3. Respondent's request for a hearing only as to penalty is **DENIED**.
4. Amazon has violated the Plant Protection Act, as amended and supplemented (7 U.S.C. §§ 7701 *et seq.*) ("PPA") and the regulations issued thereunder (7 C.F.R. § 301.81 *et seq.*) and the Animal Health Protection Act (7 U.S.C. § 8301 *et seq.*) ("AHPA") and the regulations promulgated thereunder (9 C.F.R. § 79 *et seq.*) and is therefore assessed a civil penalty of \$1,000,000 to be paid by¹³⁵ check/cashier's check or money order, which

¹³⁵ Payment may also be made online or by phone. Online payment is made at <https://www.pay.gov> (click on Agency List; click on "A" in Index; click on Agriculture Department; click on Department of Agriculture; click on Animal and Plant Health Inspection Service – APHIS Customers (2nd listing); complete the required information and submit the form; enter payment information and submit your payment; print confirmation screen as your receipt). To make a credit card payment by phone call (612) 336-3264 to speak to a Debt

must include reference to the Docket No. 19-J-0146 and Reference Nos. CA150117-HS, CA150172-HS, and CA160219-HS, made payable to the Treasurer of the United States and remitted either by U.S. Mail addressed to:

USDA – APHIS – GENERAL
CA150117-HS, CA150172-HS, and CA160219-HS
P.O. Box 979043
St. Louis, MO 63197-9000

This Decision and Order shall be final and effective thirty-five (35) days after service of this Decision and Order upon the Respondents, unless there is an appeal to the Judicial Officer under section 1.145 of the Rules of Practice (7 C.F.R. § 1.145) applicable to this proceeding.

Copies of this Decision and Order shall be served by the Hearing Clerk upon all parties.

Issued this 3rd day of May 2021, in Washington, D.C.



Channing D. Strother
Chief Administrative Law Judge

Hearing Clerk's Office
U.S. Department of Agriculture
South Building, Room 1031
1400 Independence Avenue, SW
Washington, D.C. 20250-9203
Tel: 1-202-720-4443
Fax: 1-844-325-6940
SM.OHA.HearingClerks@USDA.GOV

Management Specialist - state your Reference Number CA150117-HS, CA150172-HS, and CA160219-HS; and submit your credit card information.