EUROPEAN CHEMICALS AGENCY
BOARD OF APPEAL

Announcement of appeal[1]

Case	A-001-2017
Appellant	Cardolite Specialty Chemicals Europe NV, Belgium
Appeal received on	20 March 2017
Subject matter	A decision adopted by the European Chemicals Agency (hereinafter the 'Agency') pursuant to Article 40 of the REACH Regulation
Keywords	*Testing proposal – Read-across – Proportionality – Animal welfare – Equal treatment – Errors in procedure*
Contested Decision	Decision TPE-D-2114350287-48-01/F of 20 December 2016 on a testing proposal concerning the substance Cashew (*Anacardium occidentale*) Nutshell Extract, Decarboxylated, Distillation residue (List No. 941-212-1; hereinafter the 'Substance')
Language of the case	English

Background

The Appellant registered separately three different substances derived from Cashew Nutshell Extract. In order to meet the standard information requirements for certain endpoints, the Appellant put forward a series of testing proposals and proposed a read-across of data among the three substances on the basis of a grouping approach.

The Agency found that the Appellant had not justified the proposed read-across to the standard required by Section 1.5 of Annex XI to the REACH Regulation. It accepted, in a modified version, the testing proposals for the Substance and one of the other two substances, but rejected the the read-across of the results to the third.

The Appellant challenged all three decisions before the Board of Appeal. The decision rejecting the read-across of the results to the third substance (appealed in Case A-002-2017) was withdrawn by the Executive Director of the Agency by way of rectification under Article 93(1) of the REACH Regulation, and that case was closed by decision of the Chairman of the Board of Appeal of 22 May 2017.

The decisions accepting the testing proposals, in a modified form, for the other two '*grades*' (Case A-001-2017 and Case A-003-2017) remain pending before the Board of Appeal.

[1] Announcement published in accordance with Article 6(6) of Regulation (EC) No 771/2008 laying down the rules of organisation and procedure of the Board of Appeal of the European Chemicals Agency, as amended by Commission Implementing Regulation (EU) 2016/823.

Remedy sought by the Appellant

The Appellant requests the Board of Appeal to re-examine the testing proposals for the Substance and make an assessment of what it considers to be a proportionate approach.

Pleas in law and main arguments

The Appellant claims, in essence, that the Agency breached the principle of proportionality by not accepting the proposed read-across, in particular by requesting unnecessary tests on animals. The Appellant also argues that the Agency made substantive procedural errors during the decision making process.

Further information

The rules for the appeal procedure and other background information are available on the 'Appeals' section of the Agency's website:

http://echa.europa.eu/web/guest/regulations/appeals