

Announcement of appeal¹

Case	A-002-2017
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	<i>Testing proposal – Read-across – Proportionality – Animal welfare – Equal treatment – Errors in procedure</i>
Contested Decision	Decision TPE-D-2114350342-60-01/F of 20 December 2016 on a testing proposal concerning the substance Cashew (<i>Anacardium occidentale</i>) Nutshell Extract, Decarboxylated (List No. 941-216-3; hereinafter the 'Substance')
Language of the case	English

Remedy sought by the Appellant

The Appellant requested 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 proposed to perform some of the tests required for the registration of the Substance on another substance, namely Cashew (*Anacardium occidentale*) Nutshell Extract, Decarboxylated, Distilled (List No. 700-991-6; hereinafter the 'other Substance'). The Appellant's testing proposals were based on a read-across between a group of three 'grades' of cashew nutshell extract. Two of these 'grades' are the Substance and the other Substance.

The Agency considered 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 consequently rejected the proposed read-across and required the tests at issue to be performed on the Substance.

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.

The Appellant challenged the Contested Decision before the Board of Appeal on the ground that, in essence, the Agency breached the principle of proportionality by not accepting the read-across and requested unnecessary tests on animals. The Appellant also argued that the Agency made substantive procedural errors during the decision-making process.

Other information

Pursuant to Article 93(1) of the REACH Regulation, the Executive Director of the Agency rectified the Contested Decision by withdrawing it in its entirety. The appeal was subsequently withdrawn by the Appellant and the case was closed by the Chairman of the Board of Appeal on 22 May 2017.

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>