

**DECISION OF THE CHAIRMAN OF THE BOARD OF APPEAL  
OF THE EUROPEAN CHEMICALS AGENCY**

**5 July 2019**

*(Verification of a registrant's declaration of company size – Registration fee –  
Administrative charge – Competence of the Board of Appeal – Inadmissibility)*

<b>Case number</b>	A-008-2019
<b>Language of the case</b>	English
<b>Appellant</b>	Cocotama Germany GmbH, Germany
<b>Representative</b>	David Sanker Rechtsanwälte Sanker, Germany
<b>Contested Acts</b>	Decision SME D (2018)7721-DC, invoice No 10097918 and invoice No 10097919, adopted by the European Chemicals Agency (the 'Agency') on 15 November 2018 under Article 13(4) of Commission Regulation (EC) No 340/2008 on the fees and charges payable to the European Chemicals Agency pursuant to Regulation (EC) No 1907/2006 of the European Parliament and of the Council on the Registration, Evaluation, Authorisation and Restriction of Chemicals (OJ L 107, 17.4.2008, p. 6; the 'Fee Regulation'), as amended, and Article 4 of Management Board Decision MB/D/29/2010 on the classification of services for which charges are levied, as amended by Management Board Decisions MB/21/2012 and MB/14/2015 ('Management Board Decision MB/D/29/2010')

**THE CHAIRMAN OF THE BOARD OF APPEAL**

gives the following

## Decision

### Background to the dispute

1. Universal Imports s.r.o. registered the substance Charcoal, coconut shell (EC No 271-974-4) as only representative of a manufacturer established outside the European Union, namely Cocotama Makmur Abadi, in accordance with Article 8 of Regulation (EC) No 1907/2006 concerning the Registration, Evaluation, Authorisation and Restriction of Chemicals (OJ L 396, 30.12.2006, p. 1; the 'REACH Regulation').
2. During the registration procedure, Universal Imports s.r.o. declared that Cocotama Makmur Abadi was a small-sized enterprise within the meaning of Commission Recommendation 2003/361/EC concerning the definition of micro, small and medium-sized enterprises (OJ 2003 L 124, p. 36).
3. Universal Imports s.r.o. therefore paid a reduced registration fee for small-sized enterprises, as provided for in Articles 6(4) and 74 of the REACH Regulation, in conjunction with Articles 3 and 12 of the Fee Regulation.
4. On 5 January 2018, the Agency requested Universal Imports s.r.o. to provide documentary evidence that Cocotama Makmur Abadi was a small-sized enterprise and therefore entitled to a reduction of the registration fee. Despite several reminders, Universal Imports s.r.o. did not respond to this request.
5. On 15 November 2018, the Agency adopted decision SME D (2018)7721-DC, which finds that Cocotama Makmur Abadi was not entitled to a reduction of the registration fee. The Agency consequently required Universal Imports s.r.o. to pay the difference between the reduced registration fee already paid and the relevant registration fee for large-sized enterprises (invoice No 10097918) as well as an administrative charge (invoice No 10097919).
6. Sometime after 15 November 2018, the Appellant, Cocotama Germany GmbH, succeeded Universal Imports s.r.o. as the only representative of Cocotama Makmur Abadi.
7. On 14 June 2019, Cocotama Germany GmbH filed this appeal, requesting the suspension and annulment of the Contested Acts.

### Reasons

8. Pursuant to Article 93(2) of the REACH Regulation, the Chairman of the Board of Appeal may dismiss an appeal within 30 days of it being filed if he considers it to be inadmissible.
9. The Contested Acts have their legal basis in Article 13(4) of the Fee Regulation and Article 4 of Management Board Decision MB/D/29/2010.
10. Acts adopted on the basis of those provisions do not fall within the competence of the Board of Appeal as set out in Article 91(1) of the REACH Regulation (see, to this effect, judgment of 15 September 2016, *Crosfield Italia v ECHA*, T-587/14, EU:T:2016:475, paragraphs 18 to 23).
11. This appeal must consequently be dismissed as inadmissible.
12. In accordance with Article 10 of the Fee Regulation, the appeal fee will not be refunded.

On those grounds,

THE CHAIRMAN OF THE BOARD OF APPEAL

hereby:

- 1. Dismisses the appeal as inadmissible.**
- 2. Decides that the appeal fee will not be refunded.**

Christoph BARTOS  
Chairman of the Board of Appeal

Alen MOČILNIKAR  
Registrar of the Board of Appeal