



Consumer products

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Explanations on the ECJ preliminary ruling concerning about the SVHC calculation method

10 September 2015, European Court of Justice (ECJ) made the judgement concerning about the SVHC calculation in REACH regulation.

JUDGMENT OF THE COURT (Third Chamber)

Preliminary ruling

10 September 2015 (*)

(Reference for a preliminary ruling — Environment and protection of human health — Regulation (EC) No 1907/2006 (REACH Regulation) — Articles 7(2) and 33 — Substances of very high concern present in articles — Duties to notify and provide information — Calculation of threshold of 0.1% weight by weight)

1. Article 7(2) of Regulation (EC) No 1907/2006 of the European Parliament and of the Council of 18 December 2006 concerning the Registration, Evaluation, Authorisation and Restriction of Chemicals (REACH), establishing a European Chemicals Agency, amending Directive 1999/45/EC and repealing Council Regulation (EEC) No 793/93 and Commission Regulation (EC) No 1488/94 as well as Council Directive 76/769/EEC and Commission Directives 91/155/EEC, 93/67/EEC, 93/105/EC and 2000/21/EC, as amended by Commission Regulation (EU) No 366/2011 of 14 April 2011, must be interpreted as meaning that, for the purposes of application of that provision, it is for the producer to determine whether a substance of very high concern identified in accordance with Article 59 (1) of that regulation, as amended, is present in a concentration above 0.1% weight by weight of any article it produces and, for the importer of a product made up of more than one article, to determine for each article whether such a substance is present in a concentration above 0.1% weight by weight of that article.

The preliminary ruling pointed out that the calculation of threshold of 0.1% SVHC should be calculated weight by weight of that article but not the whole product.



What's preliminary ruling

1. A preliminary ruling is a decision of the European Court of Justice (ECJ) on the interpretation of European Union law, the interpretation of the Treaties; and the validity and interpretation of acts of the institutions, bodies, offices or agencies of the Union; made at the request of a court or tribunal of a European Union member state. Preliminary rulings are final determinations of Union law in question by the EU courts. When there is doubt on the executive, there will have application for adjudication and the EU courts will make the final decision that have legal validity.

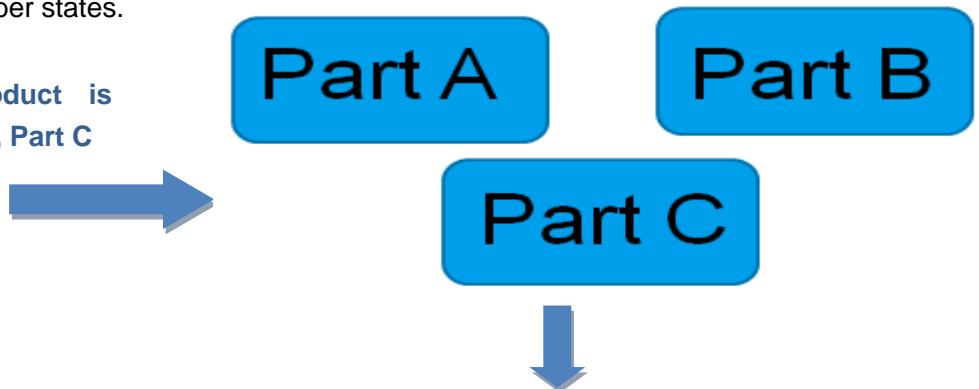
2. A preliminary ruling has the legal effect and res judicata.

Firstly, the specified member state should make a final decision based on the EU COURT's preliminary ruling.

Secondly, since the laws and regulations in EU are the case law, so some other EU countries may make a final decision according to the mentioned preliminary ruling.

Lastly, even the member countries are not using the case law, when the EU law is applicable for that country, they may also apply for adjudication, EU may reject to make a final decision but reply with the final decision that had been made for that member countries to executive to make the unity of the standards in the EU member states.

Presume that a product is made by Part A, Part B, Part C



Product		Weight (kg)	SVHC content	Notification or not		remark
Product P	Part A	40	0.12%	>0.1% (Need notification)	Product P need to notify the A part >0.1%	Calculated according to the new definition of "article"
	Part B	20	0.02%	No need notification		
	Part C	30	0.01%	No need notification		
Product P		90	$(0.12\% \times 40 + 0.02\% \times 20 + 0.01\% \times 30) / 90 = 0.061\%$	Product P SVHC $\leq 0.1\%$, no need notification		Calculated according to the previous definition of "article"



One day after the news was published, on 11 September 2015, Euro Commerce published an oppose news to ask the commission to pend the preliminary ruling on the final decision that SVHC content should be calculated on the new definition of "article"



11 SEPTEMBER 2015

European Court of Justice delivers landmark judgment with major repercussions for the supply chain

Yesterday, the European Court of Justice confirmed that the presence of Substances of Very High Concern (SVHC) in products needs to be calculated at component level. In future, a washing machine will need every component in it – the hoses the drum and the pump - to have a separate calculation for its SVHC content, where before it was the overall content of the washing machine that needed to be calculated, and, where necessary, tested.

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The newest Euro Commerce oppose news

Euro Commerce thinks that this calculation approach upsets sourcing practices that have been developed over decades. At a time when supply chains are increasingly global, this adds to what are already complex rules for importers. Importers will need time for the supply chain to adapt. Euro Commerce also calls for a moratorium pending these documents being available before this interpretation is implemented and enforced by member states until the European Chemicals Agency (ECHA) updated the relevant guidance documents. Also the Euro Commerce asks the Commission to look again in the context of better regulation procedures at the relevant provisions of REACH to see whether the burdens arising from the Court's ruling are proportionate.

HCT advises

ECHA will update the relevant guidance documents to guide the enterprises. For the enterprises that export the products to EU, the above preliminary rule no doubt makes a stricter requirements. Currently, the preliminary ruling has made a final decision on the calculation of threshold of 0.1% weight by weight. Enterprises should pay attention to the update news on ECHA. And we suggest enterprises to control the restricted substance with the new calculation method.

Currently, EU has not yet response the oppose opinions, thus we suggest enterprises to pay continue attention to the update news.

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