
Subject: PFOA -Interpretation of Art. 4.2 POP Regulation
Attachments: PFOA Use cases V3.pptx
Importance: High

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Dear [REDACTED]

as briefly explained on the phone today, there is an ongoing discussion in our industry regarding the interpretation of the POP Regulation and here in particular of Art 4.2 in the context of the term "use".

It was realized, that the legal text is making an indirect distinction between imported articles (=used outside of Europe) and those being "in use" in the Union resulting in the situation, that any component which is used outside of the EU after the legal deadline of 04.07.2020 must not be used in Europe anymore. According to our interpretation however, the 6 month period still can be applied also to non-EU uses, because Art 4.2 does not require the use to take place in the union.

Legal Requirement	Relevant Wording	Conclusion
EU POP Regulation Article 4.2	(A) 6 month...: „substance is present in articles produced before ...“	Both applies to production & use of articles <u>inside</u> <u>and outside</u> the EU
	(B) Already in use...: „substance present in articles already in use before...”	
PFOA Amendment to POP Regulation Exemption 8	(A) 6 month...: Not mentioned	Because there is no stricter wording in the amendment, the 6 month are also applicable for non-EU uses / Productions

	(B) Already in use...: „articles already in use <u>in the Union</u> before...”	The use-exemption cannot be applied to articles that were „used“ outside the EU → Import of PFOA containing components or use of such components is not allowed (after 6 month)!
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However, we heard that the German BAuA recently communicated that

- The “use” mentioned in Art 4.2 does only apply to the Union.
- The Art 4.2 exemptions therefore can only be applied to such products that were used/manufactured IN EUROPE before the 4. July 2020!
- Products in use before that date outside of Europe and placed on the market after the 4.7.2020 would be incompliant.
- The 6 month transitional period would also not apply to articles in use outside of Europe.

In fact, this would be in strong contrast to our previous industry understanding of this paragraph, eventually resulting in a potential case of incompliance, which is mainly caused by the fact, that the legal text can be misinterpreted due to unclear wording.

Up to now, we have always assumed that this paragraph could be applied not only for the purpose of selling off EU stocks, but also, as an example, in the event that vehicles were produced in non-European countries before the deadline. In consequence, these are embarked for a long sea voyage to Europe without being considered "incompliant" as soon as they arrive at the EU legal area. In very practical terms, this BAuA definition would mean that thousands of vehicles and vehicle components from different vehicle manufacturers and suppliers, that are currently on the move, would not be allowed to be imported. The resulting economic impact would be immense.

Furthermore, we are wondering, if such an interpretation would be in conflict with WTO rules and may be seen as a barrier to trade, as it results in the case that EU manufactured products could benefit from exemptions whereas the same products produced outside of Europe will not.

For a better understanding of our interpretation, we are attaching a file with different use-cases and are inviting to EC to make use of it, if deemed helpful.

Thank you for any clarification you could provide on this issue.

With kind regards




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