

5/23/2023



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 8

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9:00 AM

Received by
EPA Region VIII
Hearing Clerk

Ref: 8ENF-AT-P

SENT VIA ELECTRONIC MAIL
DELIVERY RECEIPT REQUESTED

From: David Cobb
Supervisor, Toxics and Pesticides Enforcement Section
Enforcement and Compliance Assurance Division

To: U.S. Department of Homeland Security
Bureau of Customs and Border Protection
Salt Lake City, Utah 3303

Subject: Requested action to be taken regarding the Arau.Baby Foam Bottle Wash and Arau.Baby Laundry Soap in the shipment with entry number 101-82460055 FIFRA-08-2023-0047

By this memorandum, the U.S. Environmental Protection Agency, Region 8, is informing the Bureau of Customs and Border Protection of the U.S. Department of Homeland Security that Arau.Baby Foam Bottle Wash and Arau.Baby Laundry Soap in the import shipment described below should be **Denied Entry-Refused Delivery** into the United States pursuant to the authority of section 17(c) of the Federal Insecticide, Fungicide, and Rodenticide Act, 7 U.S.C. § 136o(c), and the implementing regulations at 19 C.F.R. section 12.114. The entry was marked "Hold Intact," "Refused," and "Re-Export" in ACE by the EPA on May 22, 2023.

The following information pertains to the shipment of the **Arau.Baby Foam Bottle Wash** and the **Arau.Baby Laundry Soap**:

- The importer and consignee is Saraya USA Inc., 553 E Timpanogos Circle, Orem, Utah 84097-6225.
- The manufacturer is Saraya Company Limited, 2-2-8 Yuzato Higashisumiyoshi KUOOSAKA, 546-0013 Japan.
- The broker is Kuehne + Nagel Inc., point of contact, Kayce Spencer, Kayce.Spencer@Kuehne-Nagel.com.
- The file date was May 15, 2023.
- The bill number is CMDUTYO0552949.
- The quantity is 15,084 bottles of **Arau.Baby Bottle Wash** and 24,960 bottles of **Arau.Baby Laundry Soap** weighing 88,447 pounds.
- The port of entry is Salt Lake City, Utah 3303.
- The country of origin is Japan.

The shipment that arrived at the border for import was in violation of FIFRA section 12(a)(1)(A), 7 U.S.C. § 136j(a)(1)(A), which states that it is unlawful for any person to distribute or sell any pesticide that is not registered under section 3 of FIFRA, 7 U.S.C. § 136a.

Under FIFRA section 2(u), 7 U.S.C. § 136(u), a pesticide is any substance (or mixture of substances) intended for a pesticidal purpose, i.e., use for the purpose of preventing, destroying, repelling, or mitigating any pest or use as a plant regulator, defoliant, or desiccant. . Additionally, 40 C.F.R. § 152.15 states: “A substance is considered to be intended for a pesticidal purpose, and thus to be a pesticide requiring registration, if... [t]he person who distributes or sells the substance claims, states, or implies (by labelling or otherwise) ... [t]hat the substance... can or should be used as a pesticide.”

Section 2(t) of FIFRA, 7 U.S.C. § 136(t) defines “pest” as “(1) any insect, rodent, nematode, fungus, weed, or (2) any other form of terrestrial or aquatic plant or animal life or virus, bacteria, or other micro-organism (except viruses, bacteria, or other micro-organisms on or in living man or other living animals) which the Administrator declares to be a pest under section 136w(c)(1) of this title.”

Section 2(p) of FIFRA, 7 U.S.C. § 136(p), defines “label” as “the written, printed, or graphic matter on, or attached to, the pesticide or device or any of its containers or wrappers” and defines “labeling” in part, as “all labels and all other written, printed, or graphic matter – (A) accompanying the pesticide or device at any time; or (B) to which reference is made on the label or in literature accompanying the pesticide....”

The label of the **Arau.Baby Foam Bottle Wash** labeling includes the website: araubaby.com. The specific product website under this domain, <https://araubaby.com.my/products/foam-bottle-wash.html>, website contains the following language:

- “Foam Bottle Wash- Arau Baby bottle wash is formulated to make cleaning bottles and toys a breeze.”
- “Efficiently cleaning away germs and grime, all in an additive free formulation to help prevent allergic reactions. Saving you time, while still providing peace of mind!”

The label of the **Arau.Baby Laundry Soap** labeling includes the website: araubaby.com. The specific product website under this domain, <https://araubaby.com.my/products/laundry-soap.html> contains the following language:

- “Additive free laundry soap that leaves your baby’s clothes soft and snugly without using any fabric softeners. “
- “Antibacterial agent”

These claims demonstrate a pesticidal intent pursuant to the definitions above. The **Arau.Baby Foam Bottle Wash** and the **Arau.Baby Laundry Soap** are thus pesticides and subject to FIFRA regulation.

Arau.Baby Foam Bottle Wash and **Arau.Baby Laundry Soap** are not registered pursuant to section 3 of FIFRA, 7 U.S.C. § 136a. Therefore, these products are unregistered pesticides. Importing these products in the shipment referenced above is a violation of FIFRA section 12(a)(1)(A), 7 U.S.C. § 136j(a)(1)(A), as a distribution or sale of unregistered pesticides.

The shipment that arrived at the border for import is also in violation of FIFRA section 12(a)(2)(N), 7

U.S.C. § 136j(a)(2)(N), because a registrant, wholesaler, dealer, retailer, or other distributor failed to correctly file reports required by the Act. As required by 19 C.F.R. § 12.114, a Notice of Arrival of Pesticides and Devices (NOA), EPA form 3540-1, and a copy of one product label must be submitted.

The Agency hereby notifies U.S. Customs and Border Protection that this merchandise has been refused admission and recommends that this merchandise be re-exported or destroyed within 90 calendar days from the date of this Notice.

On May 22, 2023, the Customs and Border Patrol unit chief in Salt Lake City, Utah was informed by the EPA that it would deny entry of this shipment.

Please contact Christine Tokarz, the import enforcement coordinator, by phone at (303) 312-6147 or by email at tokarz.christine@epa.gov if you have any questions concerning this matter.