

June 14th, 2023

Honourable Jean-Yves Duclos, P.C., M.P.
Minister of Health
Office of the Minister
Brooke Claxton Building
Tunney's Pasture
Ottawa, Ontario
CANADA
K1A 0K9

Dear Minister,

RE: Proposed "Round Table" Meeting with Cosmetics Alliance Canada

I am writing to thank you and your office for the proposed "round table" meeting with Cosmetics Alliance Canada and several of our member companies. We appreciate your willingness to meet with our industry to better understand our issues as it has been some time since we have been able to meet with a Minister due to the understandable demands and priorities of the pandemic.

We also understand that this proposed meeting is being made in the context of the passage of the cosmetic animal testing ban in Canada and the request of cosmetic manufacturers for a "government issued" GMP certificate to allow for Canadian cosmetic exports to meet China's exemption to its animal testing requirements on imported cosmetics. We would also note that this request is supported by the animal advocacy community with whom we have worked on the cosmetic testing ban.

The Realities of the Animal Testing Ban in Canada & Need for GMP Certificates for China

Cosmetics Alliance Canada has been pleased to be the leading industry partner in bringing together the stakeholder alliance which has supported these amendments to the *Food & Drugs Act* to ban animal testing of cosmetic products in Canada. Our alliance worked closely with your department in the development of the details of the legislation. We would suggest that our collective stakeholder effort made a significant contribution in securing the essentially unanimous political support that exists for this legislation.

It is also important to note that in reality there has been essentially no testing on animals for cosmetics in Canada for some time, nor in most of the world for that matter. However, we believe that it is still important for Canada to add its name to the list of countries legislating such a ban for cosmetics and, with the recent amendments to the Canadian Environmental Protection Act (CEPA) on this issue, to include our country in the overall pursuit of non-animal safety testing across all sectors. We trust that this reality will be reflected in any public remarks which you and your government make on these legislative amendments and do not, even inadvertently, give the wrongful impression that animal testing is a common practice in the cosmetic sector today.

As my colleague from the Humane Society, Mr. Michael Bernard, indicated in our appearance before the House of Commons Committee on the legislation, one of the only countries in the world still using animal testing for cosmetics is China. As Canada is a major exporter of cosmetics to China, there is consequently a **VERY REAL NEED** for the “government issued” GMP certificates Chinese authorities require to exempt imported cosmetics from animal testing. Relying on the temporary certificates currently being issued by the Governments of Quebec and Ontario is not a long-term solution and we would expect that the Government of Canada would want to accommodate this reasonable ask of our manufacturers. It has now been over two years since we first made this ask of Health Canada and we have yet to have any commitment that it will be provided. We look forward to discussing this in greater detail with you at the “round table” meeting.

Other Industry Issues to be Discussed at the “Round Table” Meeting

With Health Canada now refocussing its’ efforts after the demands of the pandemic, there are several other significant issues for our industry which require the attention and action of your department. None are matters of policy, but rather are administrative in nature and are about getting on with what the department has already identified as improving its’ efficiency and effectiveness in regulating consumer and consumer health products. More specifically, they are the byproducts of the delays in completing the Self-Care Framework modernization.

To facilitate our discussion, we wish to provide the following summary of these concerns:

1. Proposed Cost Recovery for Natural Health Products (NHP’s) and the Misalignment with the Self-Care Framework Modernization (Putting the Cart Before the Horse)

Cosmetics Alliance is not opposed to cost recovery, but we are opposed to it being imposed out of step with the implementation of the Self-Care Framework!

We would have expected the Government to have adopted this logical order of implementation as the Framework both creates significant operational efficiencies and savings, but also spreads cost recovery over a much larger product base with the inclusion of cosmetics. We can not understand why Health Canada would build a proposal on an outdated regulatory model, including its identified inefficiencies and unnecessary use of resources, as well as ignore the larger available product base provided by the Self-Care Framework.

Industry’s opposition and anger has only been heightened when departmental officials confirmed that their calculation was based on only two factors. Firstly, the costs of running the current inefficient program. And secondly, the cost of investments and improvements (some of which will likely not be needed with the Self-Care Framework). When questioned, they confirmed that there was **NO** provision or reduction in their calculation for savings from the investments or the efficiencies inherent in the Self-Care Framework. Given your background in economics, we are sure that you can appreciate why this would be unacceptable to the payors and why we are suggesting that Health Canada reverse its order of implementation and get on with completing the Self-Care

Framework first (and then assess cost recovery on both the modernized system and larger product base).

If you require, we would be pleased to provide a list of examples of the inefficiencies in the current outdated model which we are sure many of your officials are already aware.

2. Completing the Self-Care Framework Regulatory Modernization

Health Canada has been actively working on this initiative since the establishment of a 5-person dedicated team in 2016 and has conducted thousands of hours of interactive consultations with stakeholders that has led to overwhelming support for this modernization. As already referenced, this support has also included the understanding that ALL self-care products – including natural health products and cosmetics – would eventually be subject to “cost recovery” but that this would be based on the efficiencies and other benefits that would result from the implementation of the Framework.

Despite some progress on interim administrative measures, and the inclusion of several components of the Framework for cosmetics and cosmetics at the NHP/drug interface through the Canada-US-Mexico trade agreement (CUSMA), we as stakeholders have been anxiously and patiently awaiting the completion of this important initiative and the efficiencies and innovation it will bring to our sectors. We also know that many of the criticisms of the Natural and Non-Prescription Drug program recently made by the Auditor-General would have been resolved by the Self-Care Framework and its risk-based approach. Our ask therefore is quite simple, we just want Health Canada to get on with completing this much needed modernization as soon as possible!

3. Need to Consolidate the Administration of “Cosmetics” into the Natural & Non-Prescription Drug Directorate (NNHPD)

As an administrative matter in support of the Self-Care Framework, we are again formally requesting that the administration of the *Cosmetic Regulations* be moved from the Consumer & Hazardous Products Safety Directorate (CHPSD) in the Healthy Environments and Consumer Safety Branch (HECSB) to the Natural & Non-Prescription Drug Directorate (NNHPD) in the Health Products & Food Branch (HECSB). It makes **ABSOLUTELY NO SENSE** for a modernized regulatory framework that includes cosmetics, natural health products, and non-prescription drugs be managed by two different directorates, in two different branches of the same department, and reporting to two different Assistant Deputy Ministers. To illustrate this situation, it means that it currently takes two different parts of Health Canada to oversee common products such as toothpastes, shampoos, face creams, and even lipsticks!

Health Canada has already identified that this makes no sense from a regulatory perspective through its' Self-Care Framework proposals. Our member companies concur as they have experienced the inefficiencies and wasted time and effort from uncoordinated and duplicated consultations and regulatory reform efforts, determining if product claims are “cosmetic” or “drug/NHP” (which become irrelevant under the risk-based Framework), and a host of other duplications that exist only because like products such as toothpastes are regulated by two different directorates. It is long

overdue for the administration of cosmetics to be consolidated into the Natural & Non-Prescription Drug Directorate (NNHPD) as the “go-to” administration for ALL self-care products.

CA has formally made this request to several Deputy Ministers over the years, and we have never had a reply to our letters on this matter. We would hope that you could provide us with some sense as to when this consolidation can be expected to happen.

4. Contravention of the Canada-United States-Mexico Agreement (CUSMA) with Respect to Cosmetics

This is an emerging matter that is raising increasing alarm for our industry and can likely be expected to raise questions from our trading partners. Although it primarily involves Environment & Climate Change Canada, it does affect Health Canada in its role and credibility as a regulator.

By way of background, the *Sectoral Annex for Cosmetics* in the *Canada-United States-Mexico Agreement (CUSMA)* contains the following relevant provisions:

Article 12.B.3: Competent Authorities

1. *Each Party shall avoid adopting or maintaining unnecessarily duplicative requirements with respect to cosmetic products, including by periodically examining whether its authorities are engaged in duplicative activities.*

Article 12.B.5: Application of Regulatory Controls

2. *In developing a regulatory requirement for a cosmetic product, each Party shall consider its available resources and technical capacity in order to minimize the likelihood of implementing requirements that could:*

(a) inhibit the efficacy of procedures for ensuring the safety, effectiveness, or quality of cosmetic products; or

(b) lead to substantial delays for cosmetic products becoming available in that Party’s market.

Although our industry is well acquainted with compliance and enforcement structure of Health Canada (which is viewed as highly effective), we have become greatly concerned with the recent initiative of the Enforcement Branch of Environment & Climate Change Canada to establish what amounts to a duplicative regulatory system for finished products such as cosmetics. **This concern is NOT with specific regulatory restrictions or requirements for ingredients – for either human health or environmental safety – but solely with how they are now being administered.**

Manufacturers and importers simply want to know if they can use an ingredient or not, or if there are any restrictions of which they must be aware. It doesn’t matter whether they are for health or environmental reasons, they just **NEED** to know! They want one “go-to” place to find this information, such as Health Canada’s *Cosmetic Ingredient Hot List*, and they want the information communicated in a format they understand such as the *International Nomenclature of Cosmetic Ingredients (INCI)* which Health Canada employs.

Regrettably, ECCC is enforcing regulations without any appreciation for this context or coordinating with Health Canada. They are doing nothing to meaningfully facilitate compliance (no central location of information, use of known ingredient nomenclature, or sharing of the test methods they utilize); they communicate with retailers rather than the responsible party (who are clearly identified to Health Canada), and they continually demonstrate their lack of experience with finished consumer goods or even what role Health Canada plays in the regulation of these products.

To promote industry compliance and efficient regulation, we require the consolidation of the regulation of cosmetics and other self-care products under Health Canada – as the experienced regulator of finished products - and will be pursuing this objective. To continue of the current course, we would suggest, would be a violation of the CUSMA provisions for the unnecessary “duplicative requirements” and “duplicative activities” for the regulation of cosmetics.

Additionally, as Article 12.B.5 provides, departments should consider available resources such that they do not “inhibit the efficacy of procedure for ensuring safety” or “lead to substantial delays for cosmetic products becoming available” in the market. As we are learning from our member companies, this is becoming the practical effect for cosmetics of this duplication of regulations and regulatory administration. We will be looking for Health Canada’s engagement in this very important issue as we pursue it with ECCC, International Trade, and the central authorities within the Federal Government.

Brief Background to Cosmetics Alliance Canada

By way of background, Cosmetics Alliance Canada is the national industry association for the cosmetics and personal care product industry in Canada. Our over 170 member companies include brand owners, manufacturers, distributors, and retailers, as well as suppliers of goods and services to the industry. Our members products include cosmetics, oral care, hair care, skin care, sun protection, and other personal care products that are classified as “cosmetics”, “natural health products”, and “non-prescription drugs”.

Although we have member companies based in many provinces and employ tens of thousands of Canadians across the country, there are significant industry hubs in Ontario and Quebec particularly with manufacturing capacity.

Follow-Up & Coordination for the “Round Table” Meeting

On behalf of Cosmetics Alliance, we wish to thank you for your efforts and interest in our industry and look forward to meeting with you.

Diane Kozak from our office will be the point of contact for coordinating the details. Your office can reach her at dkozak@cosmeticsalliance.ca or 1-416-899-7220 (cell).

Again, we thank you for your interest and we look forward to meeting with you!

With best personal regards,

A handwritten signature in black ink that reads "Darren Praznik". The signature is written in a cursive style with a large, stylized initial "D".

Darren Praznik

President & CEO

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cc. Dr. Stephen Lucas, Deputy Minister