CHAPTER 7

TECHNICAL BARRIERS TO TRADE

Article 7.1
Definitions

For the purposes of this Chapter, the terms and definitions set out in Annex 1 to the TBT Agreement apply.

Article 7.2
Objective

The objective of this Chapter is to facilitate trade, including by eliminating unnecessary technical barriers to trade, enhancing transparency, and promoting greater regulatory cooperation and good regulatory practice.

Article 7.3
Scope

1. Unless otherwise provided in paragraph 4, this Chapter applies to the preparation, adoption, and application of all technical regulations, standards, and conformity assessment procedures of the central level of government that may affect trade in goods between the Parties.

2. Each Party shall take such reasonable measures as may be available to it to ensure compliance with the provisions of this Chapter by regional or local government bodies and non-governmental bodies within its territory which are responsible for the preparation, adoption, and application of technical regulations, standards, and conformity assessment procedures.

3. All references in this Chapter to technical regulations, standards, and conformity assessment procedures shall be construed to include any amendments to them and any addition to the rules or the product coverage of those technical regulations, standards, and procedures.

4. This Chapter does not apply to:

   (a) technical specifications prepared by governmental bodies for the production or consumption requirements of such bodies; or

   (b) sanitary or phytosanitary measures, which are covered by Chapter 6 (Sanitary and Phytosanitary Measures).

5. Nothing in this Chapter shall prevent a Party from adopting or maintaining technical regulations, standards, or conformity assessment procedures in accordance with its rights and obligations under this Agreement, the TBT Agreement, and any other relevant international agreement.

Article 7.4
Affirmation of the TBT Agreement

The Parties affirm their rights and obligations under the TBT Agreement.

Article 7.5
Technical Regulations

1. Each Party shall give positive consideration to accepting technical regulations of the other Party as equivalent to its own, even if these regulations differ from its own, provided that it is satisfied that these regulations adequately fulfil the objectives of its own regulations.

2. Where a Party does not accept a technical regulation of the other Party as equivalent to its own, it shall, on request of the other Party, explain the reasons for its decision.

Article 7.6
International Standards, Guides, and Recommendations

1. The Parties recognise the important role that international standards, guides, and recommendations can play in supporting greater regulatory alignment, good regulatory practice, and reducing unnecessary barriers to trade.

2. Each Party shall, in accordance with Articles 2.4 and 5.4 of the TBT Agreement, use international standards, guides, and recommendations, or the relevant parts thereof, as a basis for its technical regulations and conformity assessment procedures.

3. Where a Party does not use an international standard, guide, or recommendation, or the relevant parts thereof, as a basis for a technical regulation or conformity assessment procedure, it shall, on request of the other Party, in accordance with Articles 2.5 and 5.4 of the TBT Agreement, explain the reasons for its decision.

4. Each Party shall encourage the standards bodies established within its territory to cooperate and exchange views with each other on matters under discussion in relevant international or regional bodies that develop international standards, guides, or recommendations relevant to this Chapter.

5. In determining whether an international standard, guide, or recommendation within the meaning of Articles 2 and 5 and Annex 3 of the TBT Agreement exists, each Party shall apply the *Decisions and Recommendations adopted by the WTO Committee on Technical Barriers to Trade Since 1 January 1995* (G/TBT/1/Rev.12), as may be revised, issued by the WTO Committee on Technical Barriers to Trade.[1]

Article 7.7
Conformity Assessment Procedures

1. The Parties recognise that a broad range of mechanisms exists to facilitate the acceptance in a Party's territory of the results of conformity assessment procedures conducted in the other Party's territory. For example:

   (a) a Party may agree with the other Party to accept the results of conformity assessment procedures that bodies located in the other Party's territory conduct with respect to specific technical regulations;

   (b) a Party may adopt accreditation procedures for qualifying conformity assessment bodies located in the other Party's territory;

   (c) a Party may recognise the results of conformity assessment procedures conducted in the other Party's territory;

   (d) conformity assessment bodies located in the territory of either Party may enter into voluntary arrangements to accept the results of each other's assessment procedures; and

   (e) the importing Party may rely on a supplier's declaration of conformity.

2. The Parties shall exchange information on the range of mechanisms relevant to conformity assessment procedures in their respective territories with a view to facilitating the acceptance of conformity assessment results.

3. Where a Party does not accept the results of a conformity assessment procedure conducted in the territory of the other Party, it shall, on request of the other Party, explain the reasons for its decision.

4. The Parties acknowledge the trade facilitation role played by the *Agreement on Mutual Recognition in Relation to Conformity Assessment, Certificates and Markings between the Government of the United Kingdom of Great Britain and Northern Ireland and the Government of Australia* done at London on 18 January 2019, and the importance of cooperating in the field

[1] For greater certainty, the Parties shall also consider relevant interpretations in reports of WTO panels and the Appellate Body adopted by the WTO Dispute Settlement Body.

of mutual recognition in relation to conformity assessment in accordance with that Agreement. The Parties recognise that they may, in accordance with that Agreement, review and amend its provisions, including by extending its coverage, as appropriate.

Article 7.8
Marking and Labelling

1. Each Party shall, in accordance with Article 2 of the TBT Agreement, in respect of technical regulations that include or deal exclusively with mandatory marking or labelling requirements:

   (a) accord treatment no less favourable to products imported from the territory of the other Party than that accorded to its own like products or those originating in any other country; and

   (b) ensure that such technical regulations are not prepared, adopted, or applied with a view to, or with the effect of, creating unnecessary obstacles to international trade. For this purpose, such technical regulations shall not be more trade-restrictive than necessary to fulfil a legitimate objective, taking account of the risks non-fulfilment would create. Such legitimate objectives are, *inter alia*, national security requirements, the prevention of deceptive practices, protection of human health or safety, animal or plant life or health, or the environment. In assessing such risks, relevant elements of consideration are, *inter alia*, available scientific and technical information, related processing technology, or intended end-uses of products.

2. Where a Party requires mandatory marking or labelling of products, the Party may accept, where it considers that legitimate objectives in accordance with the TBT Agreement are not compromised thereby:

   (a) non-permanent or detachable labels; or

   (b) marking or labelling in the accompanying documentation in place of marking or labelling attached to the product.

3. Where an international system of nomenclature, pictograms, symbols, or graphics has been accepted by both Parties, such elements may be used. The simultaneous use of additional languages shall not be prohibited, provided that the information provided in the additional languages does not constitute a contradictory, confusing, misleading, or deceptive statement regarding the product.

Article 7.9
Transparency

1. Each Party shall allow persons of the other Party to participate in the development of its technical regulations, standards, and conformity assessment procedures, subject to its laws and regulations, or administrative arrangements, on terms no less favourable than those accorded to its own persons.

2. As appropriate, each Party shall encourage non-governmental bodies in its territory to observe paragraph 1 in relation to consultation procedures on standards and voluntary conformity assessment procedures which are available to the general public.

3. On request of the other Party, a Party shall provide the other Party with information regarding the objective of, and rationale for, a technical regulation or conformity assessment procedure that the Party has adopted or is proposing to adopt.

Article 7.10
Cooperation and Trade Facilitation

1. The Parties shall work cooperatively in the fields of standards, technical regulations, and conformity assessment procedures with a view to facilitating trade between the Parties. Such cooperation may include:

   (a) exchanging information regarding technical regulations, standards, conformity assessment procedures, and good regulatory practices;

   (b) increasing the harmonisation of their respective technical regulations, standards, and conformity assessment procedures with relevant international standards, guides, or recommendations;

   (c) enhancing cooperation in the development of standards in areas of shared interest in particular as regards new or emerging products or technologies;

   (d) enhancing cooperation and dialogue on mutually agreed regulatory issues;

   (e) increasing coordination, as appropriate, in relevant regional and international bodies relating to the development and application of standards and conformity assessment procedures; and

   (f) other areas as agreed by the Parties.

2. On request of the other Party, a Party shall give positive consideration to a sector-specific proposal that the requesting Party makes for further cooperation under this Chapter.

Article 7.11
Information Exchange

Any information or explanation that a Party provides in response to a request of the other Party in accordance with this Chapter shall be provided in print or electronically within a reasonable period, and where possible within 60 days of the first Party's receipt of the request.

Article 7.12
Committee on Technical Barriers to Trade

1. The Parties hereby establish a Committee on Technical Barriers to Trade (the "TBT Committee"), composed of government representatives of each Party responsible for technical barriers to trade matters. The TBT Committee may also invite relevant persons, with the necessary expertise regarding the issues for discussion, to attend as observers.

2. The functions of the TBT Committee include:

   (a) monitoring the operation and implementation of this Chapter;

   (b) providing a regular forum for information exchange on matters related to this Chapter;

   (c) providing a forum for seeking to resolve differences that may arise regarding the interpretation or application of this Chapter; and

   (d) considering any other matters referred to it by the Joint Committee.

3. The TBT Committee may establish working groups to undertake specific tasks related to its functions under this Chapter.

4. Where a Party declines to discuss an issue through the TBT Committee under paragraph 2, it shall, on the request of the other Party, explain the reasons for its decision.

5. The TBT Committee shall meet within one year of the date of entry into force of this Agreement, and on an annual basis, unless the Parties agree otherwise.

Article 7.13
Contact Points

Each Party shall designate and notify a contact point to facilitate communications between the Parties on any matter covered by this Chapter.

Article 7.14
Dispute Settlement

Neither Party shall have recourse to dispute settlement under Chapter 30 (Dispute Settlement) for any matter arising under this Chapter.

Article 7.15
Annex

1. The rights and obligations set out in Annex 7A (Cosmetics) apply only with respect to the sector specified in that Annex.

2. The scope of Annex 7A (Cosmetics) is set out in that Annex.

ANNEX 7A

COSMETICS

1. For the purposes of this Annex:

   "marketing authorisation" means the process or processes by which a Party approves or registers a product in order to authorise its marketing, distribution, or sale in the Party's territory. The process or processes may be described in a Party's laws or regulations in various ways, including "marketing authorisation", "authorisation", "approval", "registration", "sanitary authorisation", "sanitary registration", and "sanitary approval" for a product. Marketing authorisation does not include notification procedures; and

   "post-market surveillance" means procedures taken by a Party after a product has been placed on its market to enable the Party to monitor or address compliance with the Party's domestic requirements for products.

2. This Annex applies to the preparation, adoption, and application of technical regulations, standards, conformity assessment procedures, marketing authorisation,[1] and notification procedures of central government bodies that may affect trade in cosmetic products between the Parties. This Annex does not apply to a technical specification prepared by a governmental entity for its production or consumption requirements or a sanitary or phytosanitary measure.

3. Each Party's obligations under this Annex apply to any product that the Party defines as a cosmetic product pursuant to paragraph 4. For the purposes of this Annex, preparation of a technical regulation, standard, conformity assessment procedure, or marketing authorisation includes, as appropriate, the evaluation of the risks involved, the need to adopt a measure to address those risks, the review of relevant scientific or technical information, and the consideration of the characteristics or design of alternative approaches.

4. Each Party shall define the scope of the products subject to its laws and regulations for cosmetic products in its territory and make that information publicly available.

5. Recognising that each Party is required to define the scope of products covered by this Annex pursuant to paragraph 4, for the purposes of this

[1] The application of this Annex to marketing authorisations is without prejudice to whether a marketing authorisation meets the definition of a technical regulation, standard, or conformity assessment procedure.

Annex, a cosmetic product may include a product that is intended to be rubbed, poured, sprinkled, sprayed on, or otherwise applied to the human body including the mucous membrane of the oral cavity and teeth, to cleanse, beautify, protect, promote attractiveness, or alter the appearance.

6. Each Party shall identify the agency or agencies that are authorised to regulate cosmetic products in its territory and make that information publicly available.

7. If more than one agency is authorised to regulate cosmetic products within the territory of a Party, that Party shall examine whether there is overlap or duplication in the scope of those authorities and eliminate unnecessary duplication of any regulatory requirements resulting for cosmetic products.

8. The Parties shall seek to collaborate through relevant international initiatives, such as those aimed at harmonisation, as well as regional initiatives that support those international initiatives, as appropriate, to improve the alignment of their respective regulations and regulatory activities for cosmetic products.

9. When developing or implementing regulations for cosmetic products, each Party shall consider relevant scientific or technical guidance documents developed through international collaborative efforts. Each Party is encouraged to consider regionally-developed scientific or technical guidance documents that are aligned with international efforts.

10. Each Party shall observe the obligations set out in Articles 2.1 and 5.1.1 of the TBT Agreement with respect to a marketing authorisation, notification procedure, or elements of either that the Party prepares, adopts, or applies for cosmetic products and that do not fall within the definition of a technical regulation or conformity assessment procedure.

11. Each Party shall ensure that it applies a risk-based approach to the regulation of cosmetic products.

12. In applying a risk-based approach in regulating cosmetic products, each Party shall take into account that cosmetic products are generally expected to pose less potential risk to human health or safety than medical devices or medicines.

13. Neither Party shall conduct separate marketing authorisation processes or sub-processes for cosmetic products that differ only with respect to shade extensions or fragrance variants, unless a Party identifies a significant human health or safety concern.

14. Each Party shall administer any marketing authorisation process that it maintains for cosmetics products in a timely, reasonable, objective, transparent, and impartial manner, and identify and manage any conflicts of interest in order to mitigate any associated risks.

(a) If a Party requires marketing authorisation for a cosmetic product, that Party shall provide an applicant with its determination within a reasonable period of time.

(b) If a Party requires marketing authorisation for a cosmetic product and it determines that a marketing authorisation application for a cosmetic product under review in its jurisdiction has deficiencies that have led or will lead to a decision not to authorise its marketing, that Party shall inform the applicant that requests marketing authorisation and provide reasons why the application is deficient.

(c) If a Party requires a marketing authorisation for a cosmetic product, the Party shall ensure that any marketing authorisation determination is subject to an appeal or review process that may be invoked at the request of the applicant. For greater certainty, the Party may maintain an appeal or review process that is either internal to the regulatory body responsible for the marketing authorisation determination, such as a dispute resolution or review process, or external to the regulatory body.

(d) If a Party has granted marketing authorisation for a cosmetic product in its territory, the Party shall not subject the product to periodic re-assessment procedures as a condition of retaining its marketing authorisation.

15. If a Party maintains a marketing authorisation process for cosmetic products, that Party shall consider replacing this process with other mechanisms such as voluntary or mandatory notification and post-market surveillance.

16. When developing regulatory requirements for cosmetic products, each Party shall consider its available resources and technical capacity in order to minimise the implementation of requirements that could:

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

(b) lead to substantial delays in marketing authorisation regarding cosmetic products for sale on that Party's market.

17. Neither Party shall require the submission of marketing information, including with respect to prices or cost, as a condition for the product receiving marketing authorisation.

18. Neither Party shall require a cosmetic product to be labelled with a marketing authorisation or notification number.

19. Neither Party shall require that a cosmetic product receive marketing authorisation from a regulatory authority in the country of manufacture as a condition for the product receiving marketing authorisation from the Party. For greater certainty, this provision does not prohibit a Party from accepting a prior marketing authorisation issued by another regulatory authority as evidence that a product may meet its own requirements.

20. Neither Party shall require that a cosmetic product be accompanied by a certificate of free sale as a condition of marketing, distribution, or sale in the Party's territory.

21. If a Party requires a manufacturer or supplier of a cosmetic product to indicate information on the product's label, the Party shall permit the manufacturer or supplier to indicate the required information by relabelling the product or by using supplementary labelling of the product in accordance with the Party's domestic requirements after importation but prior to offering the product for sale or supply in the Party's territory.

22. Neither Party shall require that a cosmetic product be tested on animals to determine the safety of that cosmetic product, unless there is no validated alternative method available to assess safety. A Party may, however, consider the results of animal testing to determine the safety of a cosmetic product.

23. If a Party prepares or adopts good manufacturing practice guidelines for cosmetic products, it shall use relevant international standards for cosmetic products, or the relevant parts of them, as a basis for its guidelines unless those international standards or relevant parts would be an ineffective or inappropriate means for the fulfilment of the legitimate objectives pursued.

24. Each Party shall endeavour to share, subject to its laws and regulations, information from post-market surveillance of cosmetic products.

25. Each Party shall endeavour to share information on its findings or the findings of its relevant institutions regarding cosmetic ingredients.

26. Each Party shall endeavour to avoid re-testing or re-evaluating cosmetic products that differ only with respect to shade extensions or

fragrance variants, unless conducted for human health or safety purposes.

27. In accordance with Article 7.10 (Cooperation and Trade Facilitation), each Party may share information on products which fall within its definition of a cosmetic product but which do not fall within that of the other Party.