Cosmetic Toiletry and Fragrance Association of New Zealand Inc

Submission on Tran-Tasman Mutual Recognition

To

Australian Productivity Commission

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The Cosmetic Toiletry and Fragrance Association is available to clarify any comment offered in this submission document.

Background

The Cosmetic Toiletry and Fragrances Association of New Zealand Inc. (CTFA) is a membership organisation representing companies within the broad description of the association name.

The present membership consists of the majority of Cosmetic, Toiletry and Fragrance manufacturers and/or distributors of such products within New Zealand and by value around 90% of the market.

Membership is voluntary however it is governed by a Code of Ethics governing conduct and a Code of Practice is under development covering such areas as Good Manufacturing Practice, MSDS requirements for Toxic products as well handling and storage GMP.

Currently the membership totals around 50 members and include sub groups such Beauty and Hair Salon Marketers.

Our membership mix is around 50% multi-national and contains around 20% manufacturing. The largest market share held by any one company is 19% however this share fluctuates depending on the product categories from 0% to 42%

The CTFA works in close cooperation with groups such as the Direct Sellers and the Employers and Manufacturers Association.

The CTFA has a particular interest in product access in relation to Trans-Tasman Mutual Recognition and the trade barriers imposed by the Therapeutic Goods Authority (TGA) in Australia and the Environmental Risk Management Authority (ERMA) in New Zealand.

Industry statistics gather should the Cosmetic market in New Zealand to be around $700 million at retail and that manufacturer for domestic or export markets amounts to around $100 million at wholesale values.

Virtually all products imported or manufactured locally are subject to compliance with the HSNO legislation governed by ERMA New Zealand and this is substantially at risk of stagnation if no serious action is taken to address the process of dealing with cosmetic type products.

Likewise the CTFA has members who are active in the Australian market and the primary are of concern is the impact on costs from the TGA and the strict regulatory controls imposed for Sunscreens in particular.

If a Joint Agency for therapeutic products was to be imposed the following table outlines the level products impacted.

Table 1: Industry Statistics of products likely to be affected by a Joint Agency	
Sunscreens (SPF15+)	$4.1 Million wholesale or 1.4% of cosmetic products
Sunscreens & Tanners (SFF15-)	$2.75 Million wholesale or 1.05% of cosmetic products
Facial Cleansers/Moisturisers	$25.8 Million wholesale or 8.9% of the cosmetic market
Anti-pirspirants	$2.65 Million wholesale or .95% of cosmetic products
Anti-wrinkle creams	$2.7 Million wholesale or 1% of cosmetic products
Anti-bacterial Soaps	2.68 Million wholesale or .96% of cosmetic products

All statistics are rounded and are based on the last full year of statistics gathered from participating members of the CTFA and Direct Selling Association

The CTFA has participated with the Ministry in meetings to develop agreement on what may be acceptable under any Joint Agency arrangement.

The CTFA has liased with its sister organisation in Australia on the content of this submission and on the issues faced under the current Australian regime by their members.

BROAD OBJECTIVES

The underlying objectives for the TTMRA are considered by the CTFA New Zealand as desirable as part of the simplification of Trans-Tasman Trade and to allow the integration into a single market of our products.
Many of our members operating multi-national companies view New Zealand and Australia as a single market and expect to find common rules and where there are differences find that it imposes additional costs that should not be necessary.

There are considerable impediments to trade at a product level on both sides of the Tasman that impact directly on our members. These include the Therapeutic Goods Authority in Australia and the Environmental Risk Management Authority in New Zealand (Hazardous Substances and New Organisms Legislation) and a variety of both state and federal regulations relating to issues such as Advertising and transport.

Both regimes impose significant costs to our member's products that are excessive and inhibit new or innovative products entering each market in the respective product areas.

Products directly affected in Australia by the TGA are: Vitamins, complementary health products and sunscreens. The last product type is the single area of greatest concern for the CTFA.

Products directly affected in New Zealand by HSNO are: most cosmetic and fragrance products, household detergents, cleaning products, and any product that is above the low environmental thresholds imposed and the application of UN Standards for those products that have not yet been implemented operationally by most countries.

Labour is not an issue for this industry and there are no inhibiting factors in this area with our labour forces able to move freely between both countries.

The CTFA New Zealand does see benefits in getting harmonisation in such areas as Therapeutic Products, Hazardous Substances and in the Fair Trading Laws however our experience to date has indicated that such harmonisation tends to be the Australian way or no way. This attitude from officials tends to be focused on the need for Bureaucratic regulation rather than any form of serious co-regulation or voluntary compliance with the force of law as a back up.

Therapeutic Goods Authority and Proposed Joint Agency
This is covered by a special exemption at present with a proposed Joint Agency for Therapeutic Products being considered by both Governments.

The CTFA New Zealand would like to see the proposed Joint Agency for Therapeutic Products occur however not at the currently proposed additional regulatory costs which in our opinion can not be justified.
The proposed application process and ongoing costs to keep low risk products in the market as currently undertaken by the TGA is not accepted by the New Zealand industry as a whole and is strongly opposed by the CTFA New Zealand.

Our members are concerned with the current cost structure as applied in Australia under the TGA being transported to the proposed joint agency and that no assessment of risk versus cost to business is being made.

Such barriers and costs are a fundamental part of the opposition to the currently proposed structure of the Joint Agency. It those barriers and costs are reduced to those relative to risk then the CTFA New Zealand would fully support the proposal.
Particular cost concerns include:

- The initial cost of registration
- The mandatory GMP Auditing requirement and costs for such low risk products as Sunscreens. This is an exceptional burden not warranted by the risk when an appropriate Joint Standard exists as a mandatory requirement.
- The ongoing registration costs to maintain products on the register
- The Cost of application to add or vary a single ingredient to low risk complimentary health products
- The mandatory labelling requirement for therapeutic claims preventing use of international labels in many cases.
- The pick up of secondary sunscreens as “Therapeutic Products” and treatment the same as a Sunscreen both in costs and approval process when they are primarily a cosmetic product and are treated as such everywhere except Australia.

HSNO and the Environmental Risk Management Authority
This is covered by a special exemption and the Australian NICNAS law is <u>not</u> a directly comparable law covering this area since it has significant exclusions and exemptions.

The New Zealand Hazardous substances law (HSNO) is onerous and exceeds anything that has been done elsewhere in the world and takes no account of mutual recognition either in Australia or in any other jurisdiction. It is excessively costly for companies wanting to sell new products into New Zealand with an application process and control rules that are plainly excessive for the risk.

The Hazardous Substances regulations of this legislation is admitted by ERMA as being difficult to administer and capturing far more than was originally envisaged.
The danger of this legislation will be that every cosmetic, fragrance, hair product, detergent, aerosol, soap or cleaning product will require a different label, packaging and handling process in order to be sold in New Zealand.

The application of UN standards as a feature of the controls applied under this law is argued as international best practice however, while this may be suitable for products such as explosives, it does not necessarily translate when applied to consumer products that contain everyday mixtures. The nature of this law however picks up all such products that exceed the defined thresholds and poses a significant barrier to Trans-Tasman trade from Australia.
The compliance costs for applications both in fees and in indirect costs from Consultants, company time and imposed obligations under the default controls being set for new products are significant. A recent hair removal lotion cost more than $10,000 for the application fees alone and the company cost in time was estimated at around 3 times this value. Such costs are not acceptable.

This law has been opposed by the CTFA and the majority of industry groups both prior and since its introduction. There is nothing that has changed that view and while harmonisation with Australia is an option, the CTFA New Zealand would be seriously concerned that an expansion of the current regime to Australia would add costs to those operating Trans-Tasman not to mention increasing the burden to Australian companies as well.

There are genuine benefits in cost savings to Trans-Tasman companies from having both the HSNO and therapeutic Products law harmonised in labelling, packaging and advertising rules. There are equally a potential of higher costs in applications, registrations and in compliance costs where the Harmonisation is not done correctly.
In either case there will be additional cost to those companies operating solely in a single country market where the current zero cost can only go one way. It is this last point that makes the need to ensure "Cost Best Practice" to be applied.

In both the HSNO and Therapeutic Products law, it is more a question of fundamental change before harmonisation should be pursued and then always with a view to minimum cost to industry, a focus on Voluntary Compliance backed by tough penalties (the whip and the carrot scenario) with both regulators and industry fully involved in the development of the best practice operations.
Best practice should not mean just the tightest regulatory system but the lowest cost option to get the maximum compliance to regulations that are necessary.

IMPLEMENTATION

From a CTFA New Zealand perspective the implementation of TTMRA has been quite limited for most of our member's product types.

The CTFA would like to see the implementation process for those areas not yet harmonised such as product laws, hazardous substances law, consumer laws and privacy laws. We believe that these areas continue to offer the greatest potential benefit to both countries however we caution that if the example of food harmonisation is used, then allowing specific state exemptions or exclusions without justification then that benefit will be seriously eroded.
Such harmonisation should include all states and perhaps at a Federal level with New Zealand under TTMRA.

We would see that finished products such as Cosmetic should not be caught up in regulation of Hazardous Substances or Therapeutic products when they are clearly neither and the core premise for regulation must be looked at in these areas.

EXEMPTIONS AND EXCLUSION TO MUTUAL RECOGNITION

Under TTMRA there have been a number of exemptions either temporary or special applied however the only area affecting our membership are those of Therapeutic Products and Hazardous substances which continue to be particular problems requiring resolution.
Exemptions for MEPS, Gas appliances or Medicines do not generally impact on our members.
We separate Medicines from therapeutic products but do note the dual regime for registering Anti-dandruff Shampoos as a particular benefit of a Joint Agency being implemented for Therapeutics Products where there would be a genuine saving for those small number of companies involved in this product type.

SCOPE OF MUTUAL RECOGNITION

We would see benefits from company and other commerce law alignment.

The CTFA would also see that there is a need to look at the existing laws and structures and to identify what the inhibiting factors are from them before they are considered on any basis as a Trans-Tasman.

Likewise enforcement could and should be considered on a Tran-Tasman basis which may involve some operational functions of the New Zealand Commerce Commission and the ACCC for Trans-Tasman enforcement where necessary. Other regulatory bodies may also need similar consideration.

MUTUAL RECOGNITION AND POLICY FORMULATION

TTMRA should be looking to produce from the respective Governments policy that aligns and compliments when considering regulations.
The CTFA believes that it is necessary to have all such policies tested against the TTMRA on a basis of impact, costs to mutual recognition business and domestic impact.
This does not mean that domestic priorities might not apply such as security, but such issues would be the exception rather than the rule.

We believe that in formulating policy both Governments should be looking to ensure alignment with world standards and that other Mutual Recognition Agreements with the likes of the European Union should also form part of the process to ensure that both New Zealand and Australian products are compatible with normal international expectations.

CONCLUSION

The CTFA New Zealand is in favour of continuing the TTRMA process and expanding its scope to cover a wider range of laws.

We favour internal reviews of those regulatory bodies that pose existing barriers to trade in products with the aim of full harmonisation at the lowest cost model using the voluntary compliance tools such as Codes of Practice and enforced by tough penalties.

We oppose the introduction of Trans-Tasman bodies that mirror the existing regulatory regimes such as the TGA or ERMA as part of the Harmonisation process.

The Regulatory regimes established for both countries should as far as possible align and where possible look to recognise and align with other international mutual recognition agreements or international best practices that are accepted and operationally used.

The CTFA is particularly opposed to unnecessary regulation such as that used to impose significant costs on our Australian CTFA members for Sunscreens.