

COMMENT ON ANIMAL PROTECTION BILL

Department of Trade, Industry and Competition
(the dtic)

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Department
Trade, Industry and Competition
REPUBLIC OF SOUTH AFRICA

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Department of Trade, Industry and Competition

Acronyms

| | |
|-------------|---|
| 4IR | 4 th Industrial Revolution |
| AGOA | Africa Growth and Opportunity Act |
| EU | European Union |
| ICCR | International Cooperation on Cosmetics Regulation |
| SADC | Southern African Development Community |
| TBT | Technical Barriers to Trade |
| WOAH or OIE | World Organisation for Animal Health |
| WTO | World Trade Organization |

RSA Cosmetics sector overview: Animal Protection Bill

STRENGTH

- Well-structured manufacturing sector with a number of large and smaller manufacturers, including most major Multinationals
- Strong alliances with international partners to supply technology and know-how as well as assist with new product development.
- Well-developed retail sector and related infrastructure to distribute and supply consumer formulated products.
- Well-developed marketing channels, including direct sales to consumers.
- Export markets, particularly into SADC, are well developed
- Well established technical infrastructure for product testing requirements
- Exports of cosmetics products have seen an increase from R7.8 billion to R13 billion in 2022

WEAKNESSES

- Relatively small local market (0.3% of SA's GDP and employment is estimated at around 24,000)
- Old, small high-cost manufacturing facilities compared to international benchmarks.
- Limited availability of local upstream raw materials, which are mostly imported at high costs (about 90% imported).
- Raw materials imported were around R5.8 billion in 2015 to R9.8 billion in 2022

OPPORTUNITIES

- Import replacement (R11.5 billion)
- SADC; EU Trade Agreement; AGOA – duty free access
- 4IR technologies to provide improved manufacturing competitiveness as well as expanded customer services

THREATS

- Low economic growth (SA and SADC)
- Cost of feedstock - Currency fluctuations (inland price import parity)
- Lack of feedstock – only limited feedstock capacity in areas such as surfactants, solvents and others.
- Lack of manufacturing investment to maintain competitiveness.
- Insecure and erratic electricity supply place severe strain on current operations and adds risks for potential expansion/new investment. Future water security potentially has the same risk.

Comment on Animal Protection Bill

- The proposed Bill seeks to amend the Animals Protection Act, 1962, to provide for a new offence related to the testing of a cosmetic, or part of or ingredient of a cosmetic, on an animal in the Republic; and to provide for matters connected therewith.
- The **objective of the proposed Bill**
 - to criminalise the testing of cosmetic on animals
 - to prohibit the sale and manufacturing of cosmetics tested on animals.
- Should these objectives have an **effect on international trade** then the provisions of the World Trade Organisation (WTO) Technical Barriers to Trade (TBT) Agreement are applicable.



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The WTO TBT Agreement encourages the development and adherence to international standards and conformity assessment systems.

World Organisation for Animal Health (WOAH) or (OIE)

- serves to promote global improvements in animal health and welfare, and veterinary public health

International Organisation for Standards

- ISO standard (*ISO 10993-2:2022 (Biological evaluation of medical devices — Part 2: Animal welfare requirements)*) that specifies the minimum requirements to be satisfied to ensure and demonstrate that proper provision has been made for the welfare of animals used in animal tests to assess the biocompatibility of materials used in medical devices.

Ongoing Discussions: future further reductions in the overall number of animals used, refinement of test methods to reduce or eliminate pain or distress in animals

Comment on Animal Protection Bill

- International Cooperation on Cosmetics Regulation (ICCR):
Voluntary international group of cosmetics regulatory authorities [Brazil, Canada, Chinese Taipei, the European Union, Israel, Japan, Republic of Korea, and the United States]
- Meet annually discussions on cosmetics safety and regulation, including alternative methods to animal testing

Please note: this input does not attempt to pronounce on measures that can be taken by members to protect animals, and the impact of such measures.



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The TBT Agreement further recognises that no country should be prevented from adopting or enforcing measures to ensure the quality of its exports, or for the protection of human, animal or plant life or health, of the environment, or for the prevention of deceptive practices, at the levels it considers appropriate...

...subject to the requirement that they are not applied (i) in a manner which would constitute a means of arbitrary or unjustifiable discrimination between countries where the same conditions prevail or (ii) a disguised restriction on international trade.

Consider the object of the Bill:

Does it affect international trade?

Criminalise the testing of cosmetic on animals

Prohibit the sale and manufacturing of cosmetics tested on animals

The pertinent question is whether the measures are more trade restrictive than necessary to fulfill a legitimate objective?

Comment on Animal Protection Bill

Further considerations:

The TBT Agreement grants the right to protect however, there is provision that a member should regulate for the protection of human health or safety, animal or plant life or health, or the environment of a partner country, unless there is a provision in an international agreement to which both countries (SA and the exporting country) are members.

A Member preparing, adopting or applying a technical regulation, which may have a significant effect on trade of other Members, shall, upon the request of another Member, explain the justification for that technical regulation, however, if the regulation or standard is in accordance with **relevant international standard**, it shall be presumed not to create an unnecessary obstacle to international trade.



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- If South Africa imposes a prohibition on cosmetic products tested on animals against the originating country such that trade (e.g. imports of cosmetic ingredients) are affected, the measure (the prohibition) will be evaluated by the WTO members on the basis of the provisions of the Technical Barriers to Trade (TBT) Agreement.
- Processes and procedures for adopting a measure will have to be adhered to including allowing time for WTO members to comment on the measure.

Comment on Animal Protection Bill

- The proposed addition to the Bill (page 4, the Schedule) further states that:

“the provision* shall not apply to an ingredient that may be included in a cosmetic, but which was tested on an animal for a purpose that was not related to the use of that ingredient in a cosmetic.”

(* If clearly understood, meaning the prohibition, which could be considered as a technical regulation or a measure.)

This means a product tested on an animal but not intended as an ingredient for cosmetics will not be subject to the prohibition. This brings uncertainty as to the real objective stated as animal welfare if it only applies to cosmetics. SA should consider carefully the meaning of this addition as it relates to the objective of protection of animals irrespective of the final product. This might raise questions on the real objective of the measure as it relates to “international trade in cosmetics”.

Concluding Remarks

The prohibition on international trade of cosmetics tested on animals has a potential to bring conflict under WTO law, since it is not covered entirely by WTO rules and may be subject to different interpretations.

The overall objective of the WTO is to promote international trade by avoiding unjustified discrimination between trading partners, while the broad objective of the OIE and ISO might be to promote global improvements in animal health and welfare, and veterinary public health.

For example, the OIE sets intergovernmental standards that deal with animal welfare when such animals are traded and works to strengthen the capacities of Members to implement them.



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Concluding Remarks 2

- There is **lack of WTO case law** that would bring light to the applicability and consistency of WTO animal welfare provisions.
- Though OIE and ISO standards are recognised reference for trading countries, the **WTO established disciplines** are upheld in that technical regulations should not result in unjustifiable, arbitrary or unnecessary discrimination and should not constitute a disguised restriction on international trade.
- WTO cases ongoing and have included analysis of the measure [Technical regulation, standard, Conformity assessment procedure], discriminatory effect, trade restrictiveness – considering end use of the product.
- Consultations with other countries that have instituted such a prohibition would be beneficial in order to ascertain the implications on trade and the specific trade concerns.



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Thank you



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