

CHAPTER 18 COSMETICS

OVERVIEW

EuroCham's Cosmetics Sector Committee is an organisation of members engaged in manufacturing and trading cosmetic products. Since its establishment in 2019, members of the Cosmetics Sector Committee have actively worked with relevant authorities to come up with and find solutions to the challenges faced by the cosmetics industry.

We highly appreciate the progressive spirit of the relevant management authorities in receiving and solving the prior problems of cosmetics businesses. We especially acknowledged that the Departments of Industry and Trade (DOIT) nationwide have deployed the online receipt of promotional announcements through the National e-Service Portal.

However, more attention and support are required to develop and improve the competitiveness of the Vietnamese cosmetics market compared to that of the region. We hope to receive the attention and support of the management agencies for the following proposals.

I. ACCELERATE THE AMENDMENT OF REGULATIONS TO REMOVE ADVERTISING PRE-APPROVAL

Relevant authorities: Drug Administration of Vietnam (DAV) – Ministry of Health; Standard Culture Department (SCD) - Ministry of Culture, Sports and Tourism

Issue description

We note that the Prime Minister issued Decision 1661 in 2021, setting out a target to fully abolish the cosmetic advertising pre-approval requirement, to be implemented from 2022 to 2025.¹ From cosmetic management authority, the Drug Administration of Vietnam also had Official Dispatch 21305 dated 19 December 2019 to the Cosmetics Sector Committee, agreeing with the proposal to change the management of cosmetics advertising from pre-approval to post-market surveillance.²

The stance of the Drug Administration of Vietnam was once again reiterated in Official Dispatch 9153/QLD-MP dated 16 September 2022, sent to the Cosmetics Sector Committee. In this letter, DAV affirmed that in the Official Dispatch 1430³ the Ministry of Health has suggested Ministry of Culture, Sports and Tourism to remove the advertising pre-approval requirement for some goods under management of the Ministry of Health, including cosmetic products. DAV said they would collaborate with relevant contact points (i.e. Legal Department under Ministry of Health – who is in charge of Circular 09;⁴ Standard Culture Department under Ministry of Culture, Sports and Tourism – who is in charge of Decree 181⁵) to revise the regulations when DAV receives request from those departments.

Accordingly, the removal of cosmetic advertising pre-approval in Decree 181 and Circular 09 has fully received the support from cosmetic management authority and even the Prime Minister. However, until now it has been over a year since the issuance of Decision 1661/QD-TTg, yet the revision of relevant regulations has not started.

1 Decision 1661/QD-TTg dated 4 October 2021 of the Prime Minister on approving the plan to reduce and simplify regulations related to business activities under the management of the Ministry of Health.

2 Official Dispatch 21305/QLD-MP dated 19 December 2019 of the Drug Administration of Vietnam.

3 Official Letter 1430/BC-BYT dated 18 September 2021 of the Ministry of Health.

4 Circular 09/2015/TT-BYT dated 25 May 2015 of the Ministry of Health stipulating the approval for contents of advertisements for special products, commodities and services under the authority of the Ministry of Health.

5 Decree 181/2013/ND-CP of the Government dated 14 November 2013 on Advertising.

Potential gains/concerns for Vietnam

The business community is concerned that the delay in revising regulations to abolish the cosmetic advertising pre-approval requirement will affect the target set out in Decision 1661.

In the meantime, businesses are still vastly impacted by the cosmetic advertising pre-approval process. This requirement does not bring much benefit for administrative management compared to the post-market surveillance of advertising activities in the market, meanwhile it is posing great obstacles to business operations and the speed of introducing new products to the consumers, especially in this current period of powerful e-commerce development.

Recommendations

- › We kindly request the key contact in charge of Decree 181 and Circular 09 will start revising the regulations in the earliest possible, to fully abolish the cosmetic advertising pre-approval requirement, allow businesses to be responsible for the accuracy and truthfulness of the advertising content, and enable the management authorities to focus on post-market surveillance. We request the SCD under Ministry of Culture, Sports and Tourism to put the revision of Decree 181 into their legislative agenda in 2023; on this basis Ministry of Health will amend the Circular 09.

II. IMPLEMENTATION OF ONLINE PUBLIC SERVICES AT LOCAL HEALTH DEPARTMENTS

Relevant authorities: Departments of Health (DOH), Drug Administration of Vietnam (DAV), People's Committees of provinces and cities.

Issue description

Currently, the whole procedure for notifying imported cosmetics to the DAV could be implemented completely online. However, the procedure for notifying domestically cosmetics at most Departments of Health (DOH) is still conducted using hard copies, except for the Binh Phuoc DOH.

In some provinces such as Ho Chi Minh City, businesses must carry out two procedures in parallel: upload an e-application to the portal and send a hard-copy dossier to DOH. When the results are available, businesses will receive a hard-copy approval letter by post. The time of application receipt is counted from the time the DOH receives the hard-copy documents.

In many other provinces and cities such as Dong Nai, Binh Duong, and Long An, dossiers must be submitted in hard-copy form.

Potential gains/concerns for Vietnam

Businesses in many provinces are facing difficulties and have many concerns regarding the reliance on hard-copy dossiers.

During the pandemic, sending hard-copy documents by mail became even more challenging because delivery and receipt depended on post offices. There have also been instances of documents being lost. In addition, sending approvals via post is also time-consuming and risky because documents can get lost. During the peak of the pandemic, many DOHs stopped the receipt of cosmetics applications due to social distancing, which seriously affected the production and activities of enterprises. Moreover, a huge backlog of dossiers continued to put pressure on the healthcare sector when normal operations resumed.

The continued dependency on hard-copy dossiers is still subject to a range of objective risks, such as pandemics and other factors in the future.

The reliance on hard-copy dossiers is not in line with e-Government development. In fact, many DOHs have the capability of developing online submission software but have not utilised resources to do so.

Recommendations

- › With the hope that DOHs can make use of information technology and limit the influence of external factors, we suggest that DOHs urgently finish developing software for conducting public administrative procedures fully online, including the steps of application submission, fee payment, and sending results, all without requiring additional hard-copy dossiers. This will free up a large number of resources, save time for DOHs as well as for businesses, increase transparency, be consistent with e-Government vision, and reduce risks stemming from pandemics and natural disasters. We also hope that the DAV as well as city and provincial People's Committees have a plan with roadmaps of supporting adequate funds so that the DOHs can deploy the online software in a timely manner.
- › At the same time, we also recommend having a roadmap and a budget for the DAV and DOHs to develop an online database which facilitates the easy and convenient management of information on imported- and domestically-produced cosmetics. This is paramount as the management authority moves to post-market surveillance in cosmetic management.

III. SHORTEN REGISTRATION TIME FOR ANTISEPTIC, INSECTICIDAL CHEMICALS AND PREPARATIONS

Relevant authorities: Health Environment Management Agency (VIHEMA)

Issue description

Many antiseptic products used on the skin, such as hand sanitisers, have simple formulation, are widely used in daily life with high safety level. They are even regulated as cosmetic products in some countries in the region and worldwide. For example, most ASEAN countries approve product notification / registration of hand sanitisers in one to three days. These are products that are commonly used to ensure daily hygiene and health for people, and are especially essential during the pandemic period.

Potential gains/concerns for Vietnam

In Vietnam, the procedures for registration and advertising pre-approval of antiseptic products are lengthy and complicated. They require hard-copy applications to be submitted at as well as results to be received at the Health Environment Management Agency (VIHEMA). According to Decree 91⁶, the current marketing authorisation process lasts for four to six months, with some even taking up to 12 months.

Another notable issue is that testing and inspection results in overseas ISO 17025-accredited laboratories have not yet been accepted. However, some test criteria and methods cannot be implemented by laboratories in Vietnam or the lack of materials such as standard substances, biological products, and so on, makes it impossible for businesses to conduct testing to register the preparations in Vietnam, whereas foreign laboratories are well equipped to meet these requirements. In addition, Decree 91 stipulates that businesses may only conduct testing after receiving written consent from the management authority, which is often about six weeks later, while the time limit for testing is usually 30 to 35 days. Consequently, businesses cannot be proactive in the registration process, which makes planning and production difficult.

⁶ Decree 91/2016/ND-CP dated 1 July 2016 of the Government on the management of insecticidal and germicidal chemicals and preparations for household and medical use.

Recommendations

- We would like to request that the MOH develop a separate notification or registration process for antiseptic products used on the skin, such as hand sanitisers, to simplify the procedure and implement fully online (level 4 of online public service) without any hard-copy requirement. This group's safety risk is completely different from that of insecticides, so management requirements should be adjusted to accommodate businesses and consumers' needs.
- We acknowledge that MOH is amending Decree 91. We request the amendments to ease the requirements and speed up the registration process of antiseptic products. Test results of overseas-qualified laboratories should be accepted instead of requiring enterprises to re-conduct the tests in Vietnam. Enterprises should also be allowed to conduct the tests as soon as they submit the registration application.

IV. REMOVAL OF REQUIREMENT FOR A CERTIFICATE OF FREE SALE

Relevant authorities: Ministry of Health (MOH)

Issue description

Circular 06⁷ of the MOH requires Certificate of Free Sale (CFS) as a mandatory document for the notification of imported cosmetics products. In reality, many cosmetics with CFS are not available in the country of issuance and CFS are issued by industry associations rather than management authorities in many countries. We realise that CFS do not contribute to ensuring the quality of cosmetic management but are rather an unnecessary administrative requirement that can be removed.

In Official Dispatch 275⁸ sent to EuroCham, the Import-Export Department under the Ministry of Industry and Trade (MOIT) also confirmed that the CFS requirement for imported cosmetics is not mandatory in Decree 69⁹ on foreign trade management, but subject to the view of the management agency - the MOH.

Potential gains/concerns for Vietnam

According to the commitments in the Comprehensive and Progressive Agreement for Trans-Pacific Partnership (CPTPP), signatories do not request a CFS from the importing country. Vietnam has also signed the ASEAN Harmonised Cosmetic Regulatory Scheme with ASEAN Member States. As a result of these commitments, the MOH has amended, supplemented, and abolished several legal documents to abolish the CFS requirement for cosmetics from CPTPP and ASEAN.

The ASEAN Harmonised Cosmetic Regulatory Scheme was developed under the EU Cosmetics Regulation 1223/2009. Therefore, it is reasonable to remove the CFS requirement for cosmetics imported from the EU, as this requirement has been removed for ASEAN Member States.

Moreover, the European Union–Vietnam Free Trade Agreement (EVFTA) has Most Favoured Nation (MFN) provisions. Due to this, EVFTA products should be treated equally with products from CPTPP signatories.

In the dialogue sessions between the Prime Minister's Advisory Council for Administrative Procedure Reform (ACAPR) and EuroCham, coordinated by Mai Tien Dung, Chairman of the Government Office (OOG), on 12 December 2019 and 30 June 2020, the representative of the Ministry of Health announced that, after removing the requirement for CPTPP countries, the ministry would work with relevant ministries and associations to create favourable conditions for businesses in non-CPTPP countries while maintaining management requirements.. However, so far, Vietnam has not implemented the removal of the CFS requirement for EU countries.

7 Circular 06/2011/TT-BYT dated 25 January 2011 of the Ministry of Health regulating cosmetics management.

8 Official Dispatch 275/XNK-TLH dated 5 May 2021 of the Import-Export Department, Ministry of Industry and Trade.

9 Decree 69/2020/ND-CP dated 15 May 2018 of the Government detailing a number of articles of the Law on Foreign trade management.

Recommendations

- All imported cosmetics should be exempt from the CFS requirement since its removal from CPTPP and ASEAN countries has been smooth and hasn't caused any problems related to consumer safety. When the CFS requirement is abolished, no alternative should be required. When enterprises comply with standards on factory and product safety, imported products can still be safely traded, and cosmetics can be managed in post-market surveillance.
- For cosmetics from the EU, Vietnam has signed the ASEAN Harmonised Cosmetic Regulatory Scheme, which is similar to the European Regulation (EC) 1223/2009 on cosmetic management. Since the CFS requirement has been removed for ASEAN countries, it is reasonable to also remove it for EU-imported cosmetics.

V. STRENGTHENING CONTROL OF COUNTERFEIT AND SMUGGLED COSMETICS ON E-COMMERCE PLATFORMS

Relevant authorities: Government of Vietnam (GOV), Vietnam e-Commerce and Digital Economy Agency (iDEA), Vietnam Competition and Consumer Authority (VCCA)

Issue description

The government has made progress on managing official stores on e-commerce platform in accordance with Decree 52 on e-Commerce.¹⁰ However, unofficial stores, which can freely operate, often do not comply with tax regulations, business licence requirements, or conditional business registration.

Resulting from the blooming of e-Commerce, any individual, including those who are not owner or authorised distributor of a cosmetic product, can sell the product without having to comply with any legal processes such as business registration, product notification, any regulations of the Ministry of Health, as well as not pay any taxes when selling on e-Commerce sites.

Potential gains/concerns for Vietnam

The result has been unfair competition for foreign investors, registered trademark/ brand owners, and authorised distributors. This gives sellers in the cosmetics industry an unfair advantage and results in tax revenue losses. Besides, since e-commerce platforms has an option for sellers to maintain anonymity, customers who purchase poor-quality goods often find it difficult to exchange or return them.

E-commerce platforms should provide a clear notice which indicate the different legitimacy of official stores and unofficial stores. Additionally, advertisement of unofficial stores should not be shown when customers are browsing on the official stores, since it may cause confusion and misleading for consumers when getting information and placing orders.

We know that the MOIT is amending and updating regulations related to e-Commerce management, specifically Decree 52. The business community supports updating current regulations and completing the e-Commerce management legal framework in order to keep pace with current developments in the sector.

¹⁰ Decree 52/2013/ND-CP dated 16 May 2016 of the Government on e-commerce.

Recommendations

- › Enhance management efficiency on e-Commerce platforms to create a fairer and healthier business environment.
- › Update current regulations and develop the legal framework for e-Commerce management to keep up with the current development of the sector.
- › Require e-Commerce platform to publish a notice on legitimacy of official stores and unofficial retailers' stores, to avoid confusing customers.

ACKNOWLEDGEMENT

The EuroCham Cosmetics Sector Committee