

CTPA RESPONSE TO THE UK GOVERNMENT REVIEW OF UNITS OF MEASUREMENT

Introduction

Representing all types of companies involved in making, supplying and selling cosmetic and personal care products, the Cosmetic, Toiletry and Perfumery Association Ltd. (CTPA) acts as the voice of the UK industry. CTPA represents, at any given time, around 200 member companies of diverse sizes, from micro and SMEs through to multinationals. Collectively, this represents between 85-90% of a UK market valued at £8.5 million in 2021 (at retail sales price).

Cosmetic products are measured and labelled in accordance with the 'EU Cosmetic Products Regulation (EC No 1223/2009)', hereafter referred to as the EU CPR, and the 'UK Cosmetics Regulation (Schedule 34 The Product Safety and Metrology etc. (Amendment etc.) (EU Exit) Regulations 2019)', hereafter referred to as the UKCR, requiring the net content of the products to be stated. There are limited exceptions for packaging containing less than five grams or five millilitres, free samples, and single-application packs. The legal framework reflects the requirements the UK adopted as part of its membership of the European Union (EU) as set out in 'EU Directive 80/181/EC (as amended)' which concerns units of measurement. The directive was intended to ensure consistency in the use of units of measurement used for all purposes across member states of the EU. Following the departure of the UK from the EU, they still remain the UK's main trading partner with approximately 60-65% of all exports and imports to and from the EU.

The Northern Ireland Protocol to the Withdrawal Agreement requires, at the time of submission of this contribution, that cosmetic products placed on the market in Northern Ireland follow the 'EU Directive 80/181/EC'.

The below feedback outlines CTPA's and the UK cosmetics industry's response to the considerations presented as part of the UK Government's consultation to review how measurements are used in trade and consumer transactions. A summary has been provided, alongside full argumentation of the response.

Response Summary

Currently, the cosmetics sector does not consider a priority to allow a choice for units of measurements. The main areas which the cosmetics sector believes could be impacted are: confusion for consumers and the need for guidance to ensure consistency within companies and the overall industry.

All cosmetics in the UK are labelled with the net content in metric units, apart from specific exemptions. The legislation does not prescribe the use of metric system directly, but it is built on the understanding that this is the content measurement unit to be used as it is the legal measuring system within the EU applicable at the time of its entry into force. Currently there is no ban on the use of imperial units alongside metric units. Many cosmetic companies in the UK also sell in the EU and other international markets, therefore they may choose to display imperial units alongside metric, but the cosmetics sector does not welcome the option to choose imperial alone.

Whilst the cosmetic sector may not necessarily need to be excluded from the choice of measurement units, there must be consideration to the existing regulation and overall implications for company and consumer interpretations. Under the UKCR and EU CPR, applicable in Great Britain and Northern Ireland respectively,

Article 19 specifies the mandatory labelling requirements, currently providing a common approach. The regulatory framework does contemplate exemptions to the net content declaration in certain instances, including products packaged in less than five grams or millilitres. Companies choosing to use imperial measurements would potentially find it harder to comply with the UKCR, as the label measurements of the product would not be directly referenced in the legal text.

Alongside any regulatory measure, there should be clear guidance for industry, including the way in which a company may use this choice and clarity on when there should be a decision, for example whether this would be applicable per product, or across all products.

Consumers may also be confused if they do not know the conversion of metric and imperial units or have immediate access to decide whether the weights of the products are the same or differ. Whilst it would still be possible for a consumer to research this, it creates an added step which complicates shopping and may influence a buying decision. The current information for labelling products within the UKCR and EU CPR exists to help consumers make informed purchase decisions and therefore avoid any form of ambiguity. There would need to be public guidance introduced alongside the legislation to ensure this information is available to educate consumers.

The current system already allows brands to use imperial alongside metric units on packaging which means the option to use one or the other exclusively would bring no additional benefit.

Domestic Production and Trade Implications

The option to use either metric or imperial units of measurement will have direct implications for cosmetic brands selling in the UK. Content marking is required on most cosmetic products under the UKCR and EU CPR, applicable in Great Britain and Northern Ireland respectively. Article 19 of these regulations specify the mandatory labelling requirements, namely in Article 19.1(b) as stated:

"the nominal content at the time of packaging, given by weight or by volume, except in the case of packaging containing less than five grams or five millilitres, free samples and single-application packs; for pre-packages normally sold as a number of items, for which details of weight or volume are not significant, the content need not be given provided the number of items appears on the packaging. This information need not be given if the number of items is easy to see from the outside or if the product is normally only sold individually;"

Whilst the legislation does not prescribe the use of metric system directly, it is built on the understanding that this is the content measurement unit to be used as it is the legal measuring system within the EU applicable at the time of its entry into force. Within the legislation quoted above, there is mention of the exemption to labelling the nominal content based on grams and millilitres. Companies choosing to use imperial measurements would potentially find it harder to comply with the UKCR, as the label measurements of the product would not be directly referenced in the legal text. Introducing the possibility of not using the metric system is likely to cause greater confusion, as companies will have to ensure their conversions are correct and precise in order to ensure they are compliant.

Currently there is no ban on the use of imperial units alongside metric units. The new UK Government proposal offers a choice for companies wishing to place their products on the UK market to remove the metric unit declaration from the labelling entirely. Forcing a choice could impact the way in which companies operate to enable them to benefit from this opportunity, meaning they would need to spend money and resources to implement such a change. There would be substantial cost implications to implement this change as artworks would be revised and new packaging would be created. Alternatively, they could choose

to continue to display metric units with additional imperial units declared, and in this case the removal of the ban on imperial measurements would be unnecessary.

Under the new proposal, companies will have the option to use metric or imperial measurement units, giving importance to the consideration of ensuring a consistent approach to the decision. Whichever measuring system they choose; they should ensure that the selection is not confusing for consumers, for example if products within the same ranges are labelled with different weight units to misrepresent the amount of product. Alongside any regulatory measure, there should be clear guidance for industry, including the way in which a company may use this choice and clarity on whether there should be one decision for example per product, or across all products. This guidance would need to come from the UK Government to ensure consistency across the industry which would have require resources and have cost implications. There could be the requirement to create different guidance for different industries as this would not affect cosmetics alone.

The practical application of the choice could indeed be an issue if the option for imperial or metric units were to come into regulation. A consumer could be presented with different units when shopping for one product type. For example, comparing shampoos to purchase and finding that some brands display millilitres whilst others are in ounces. Consumers may not know the conversion or have immediate access to decide whether the weights of the products are the same or differ. Whilst it would still be possible for a consumer to research this, it creates an added step which complicates shopping. The risk of having different units displayed on packaging of the same product types not only causes consumer confusion but can instigate distrust, where it could look like brands are choosing to mislead consumers on the amount of product that is contained to charge different amounts. The current information for labelling products within the UKCR and EU CPR exists to help consumers make informed purchase decisions and therefore avoid any form of ambiguity. There would need to be public guidance introduced alongside the legislation to ensure this information is available to educate consumers. The need to educate consumers could fall into the responsibility of the brands that choose to use the imperial measurement units, which generates substantial cost implications and the need to dedicate resources. There would also need to be control measures in place from UK Government to ensure that the education given to consumers is consistent and correct to negate and distrust caused by the unit changes.

Further consideration in favour of ensuring easier and protected compatibility with the EU and the use of the metric system would be in regard to the NI Protocol. Under the provisions outlined in the Northern Ireland (NI) Protocol, the EU regulations listed in Annex II of the NI Protocol continue to apply to NI, meaning that NI still follows EU rules for the given legislations. The EU CPR and 'EU Directive 80/181/EC' are included in Annex II therefore any action taken from a UK perspective would be limited to the GB market. Companies choosing to change measurement units would be excluding NI as a potential market, and many would not choose to change for that reason alone to maintain supply chains. The NI Protocol Bill is being discussed at the time of this consultation, but as it stands, it would currently cause the introduction of greater divergence within the internal market

Companies Trading in Both EU and UK

Although this consultation aims to review only domestic trade implications, CTPA cannot ignore the implications to those trading the same products in other countries. Companies are likely to find the commonalities and differences in the countries they are trading to try and reduce the number of product versions they have which are compliant with the rules and regulations in different international markets.

As mentioned under domestic production and trade, imperial units may be used alongside metric units. This flexibility may already be used if companies wish to comply with other regulations such as those in the EU and yet remain closer to the UK market with a declaration in imperial units. In 2021, Europe was estimated as the largest cosmetics market in the world, alongside the USA, so it is a key market for many cosmetic brands. As the EU remains the UK's closest trading partner, products destined to be placed in the market in the UK alone may not represent a significant proportion of the market. Therefore, while the appearance of choice may be available, in practice this will not be taken up by cosmetic companies trading in NI and EU.

When looking at the space available to accommodate for this new choice, cosmetic products can be small and already face difficulties with labelling. Special considerations are already given for these products under the UKCR, as not all product information can fit on a smaller or perhaps unusually shaped label, therefore keeping the amount of information needed on the cosmetic to a minimum is of interest to cosmetic brands. Companies would therefore be unlikely to choose to label both imperial and metric units on these products, as this could take up valuable space on the packaging. The need to redesign the packaging to allow for this would also not be worth the cost implications.

International Trade Implications

Whilst the consultation aims to capitalise on the benefits of Brexit, the EU is not the only territory using the metric system internationally.

Although the use of non-metric measurement units is widespread, only three countries worldwide use the imperial system as a mandatory requirement: USA, Liberia, and Myanmar. In the USA, the mandatory weight for products to be measured and labelled is the avoirdupois pound and ounce according to the 'Code of Federal Regulations', including the 'Food, Drug and Cosmetic Act' and the 'Fair Packaging and Labeling (FP&L) Act'. This means that UK has British Imperial Units, and US has the US Customary System, which differ in the declaration of volumes. A US Fl. Oz (29.5mL) is different from the UK Fl. Oz (28.4mL). Companies could fall into error and non-compliance if the legislation states imperial measurements must be labelled, but do not have clarification on which version of imperial measurement is to be allowed in the UK. Additionally, if the label states Fl. Oz, the relevant authorities may not be aware that the weight does not match the labelling applicable in their jurisdiction without physically weighing and checking the goods to audit.

Net contents in the USA may additionally be stated also in the metric system, therefore the current system does help to create a distinction between the weights of the product. There would be the potential for too much confusion for authorities and consumers should there be an option to include UK imperial measurements as well, resulting in a label including measurements in metric, UK imperial and US imperial units.

The current system allowing brands to use metric units on packaging in the USA, would mean the option to use UK imperial measurement would bring no additional benefit.

Consultation Questions

1 For All,

- a) **Are there any specific areas of consumer transactions that should be a priority for allowing a choice in units of measurement, and why?**

The cosmetics industry has not identified any areas where the choice of units of measurement would be a priority, and would like to express support to the current requirements to continue to use metric system in the labelling of cosmetic products as part of the consumer decision process.

All cosmetics in the UK are currently labelled with the net content expressed in metric units, apart from specific exemptions to packaging containing less than five grams or five millilitres, free samples, and single-application packs, which do not require a content label. The legislation does not prescribe the use of the metric system directly, but it is built on the understanding that this is the content measurement unit to be used as it is the legal measuring system within the EU applicable at the time of its entry into force.

Currently there is no ban on the use of imperial units alongside metric units, therefore the option remains for companies to be able to declare both. The possible benefit which could be present for small sellers and/or market stalls would likely not outweigh the risk to consumer understanding. A cohesive system such as the net content declaration in metric system would ensure consumers are not misled and help to protect the integrity of the UK market, including Northern Ireland.

Additionally, in promoting UK products abroad, many cosmetic companies in the UK also sell in the EU and other international markets, therefore they may choose to display imperial units alongside metric but the option to choose imperial alone would not be regarded as an advantage.

b) Are there any specific areas that you think should be excluded from a choice in units of measurement, and why?

Whilst the cosmetic sector may not necessarily need to be excluded from the choice of measurement units, there must be consideration to the existing regulation and overall implications for company and consumer interpretations. Under the UKCR and EU CPR applicable in Great Britain and Northern Ireland respectively, Article 19 of these regulations specify the mandatory labelling requirements. Companies choosing to use imperial measurements would potentially find it harder to comply with the UKCR, as the label measurements of the product would not be directly referenced in the legal text.

Alongside any regulatory measure, there should be clear guidance for industry, including the way in which a company may use this choice and clarity on whether there should be one decision for example per product, or across all products.

Consumers may also be confused if they do not know the conversion of metric and imperial units or have immediate access to decide whether the weights of the products are the same or differ. Whilst it would still be possible for a consumer to research this, it creates an added step which complicates shopping. The current information for labelling products within the UKCR and EU CPR exists to help consumers make informed purchase decisions and therefore avoid any form of ambiguity. There would need to be public guidance introduced alongside the legislation to ensure this information is available to educate consumers.

The current system allowing brands to use metric units on packaging would mean the option to use UK imperial measurement would bring no additional benefit.

c) If an item is sold in imperial measures, should there be a requirement for a metric equivalent alongside it?

The cosmetics industry is in favour of maintaining the need to declare the net content in metric system, while maintaining the option to additionally declare the UK Imperial measurements. This is currently the practice

in place for UK brands willing and able to trade in international markets, which would mean there would be no need to change the current practice.

2 For Businesses,

What would be the consequences of your business having the freedom to sell products in imperial measures, if you wished?

As stated above, the implications would mainly be confusion for consumers, and consistency within companies and the overall cosmetics sector. Of course, the financial implications of making the decision to remove metric system declarations on behalf of imperial units would likely render the choice invalid, as there would be substantial costs to relabel or repackage products, with little apparent benefit for the consumer.