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SUBMISSION TO OBJECT TO TERMS PROPOSED BY THE EUROPEAN UNION FOR PROTECTION AS GEOGRAPHICAL INDICATIONS IN AUSTRALIA

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EU GI name you are objecting to: Product 52: Gruyere Cheese (France)

Ground(s) of objection to the protection of the EU GI name

1. The EU GI name is used in Australia as the common name for the relevant good.
2. The EU GI name is identical to, or likely to cause confusion with a trade mark or geographical indication that is registered or the subject of a pending application in Australia.
3. The EU GI name is identical, or likely to cause confusion with, an unregistered trade mark or geographical indication that has acquired rights through use in Australia.

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Introductory Comments

The Australian Dairy Industry Council (ADIC) is the peak national representative body of the Australian dairy industry. It represents the interests of dairy farmers and processors across the entire dairy value chain to create a more prosperous and sustainable future for local industry and the regional communities that rely on it.

Dairy Australia is the national services body for dairy farmers and the industry. Its role is to help farmers adapt to a changing operating environment, and achieve a profitable, sustainable dairy industry. As the industry's research and development corporation (RDC), it is the 'investment arm' of the industry, investing in projects that cannot be done efficiently by individual farmers or companies.

The dairy industry welcomes the opportunity to provide input to the public objections process on the European Union's request that Gruyere cheese be recognised (and protected) as a EU (French) GI in the Australian market as part of the Australia-EU Free Trade Agreement.

Before directly addressing Objection Criteria 1-3, the dairy industry would like to reaffirm its continued, strong belief that the European Union should not have registered the cheese variety, Gruyere, as a French Geographical Indication in 2013 – a move that was completed in the face of strong international industry opposition. This reflects the fact that:

1. ***The name, Gruyere, does not refer to an identifiable geographical area or country within either France or the EU.***

Many public websites identify Gruyere as being of Swiss, rather than EU, origin.

Cheeses of Switzerland.com: "Gruyere is a cheese from the French speaking region of **Switzerland** having been produced since at least 1115 in the region surrounding the Swiss town of Gruyère. It is still made today in village cheese factories according to the traditional recipe".

Wikipedia: "Named for the town of Gruyères in Switzerland where it was originally made, Gruyère cheese is a firm cheese with a pale yellow color and a rich, creamy, slightly nutty taste. It features a few small holes, or "eyes", characteristic of Swiss cheese.

The Spruce Eats.com: "Gruyère (pronounced "groo-YAIR") is a smooth-melting type of **Swiss** cheese that's made from whole cow's milk and generally cured for six months or longer and one of two main cheeses used in preparing traditional fondue".

Igourmet.com: Gruyere originated in the village of Gruyères, Switzerland, a region filled with lush pastures located in the alpine foothills. Gruyere Cheese has been made in the Alps since ancient times.

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In fact, the Swiss government certified Gruyère as a Swiss Geographical Indication under their AOC / AOP system¹ well before the EU registered the same name (and essentially the same cheese) as an EU GI. Switzerland actually grants local GI status to four types of Gruyere – Standard, Reserve, Bio (which must use milk supplied by farms that meet the guidelines of the Bio Suisse agency) and Alpage (product made from herds from Swiss mountain pastures).

2. France (and subsequently the EU) have accepted that Gruyere is a generic cheese name.

France explicitly agreed that Gruyere was a generic cheese name in 1951 under the Stresa Convention. The Convention acknowledged the widespread production and trade in Gruyere cheese in many different countries up to that time - a trend that has since continued.

After its formation, the EU continued to historically recognise that Gruyere can be manufactured outside its borders. It granted other countries the right to import Gruyere into its domestic market through:

3. the creation of an explicit import tariff line for the Gruyere cheese variety (HTS 04.06.90.15), and
4. the creation, and progressive expansion, of tariff rate quota (TRQ) import access for cheese under this specific name under the GATT and WTO.

In line with this, the EU recognised the name Gruyere as a Swiss GI cheese even while it was creating its own French GI registration in 2013. As a result, the EU allows duty free entry for significant volumes of (identified) Swiss Gruyere for sale in its domestic market – an outcome that causes no apparent confusion or concern for EU consumers of this product.

The EU has not objected to the sale of Swiss Gruyere in other countries with which it has sought an FTA. Notably, the EU did not seek domestic GI protection for the name, Gruyere, in recent FTAs that it signed with Canada, Japan and Vietnam. This highlights the very market-specific nature of its request in any Australian FTA.

3. Gruyere does not appear to meet the basic test for a PGI.

The basic test for a GI product is that its character, quality or reputation essentially stems from the geographical environment in which it is produced.

EU regulations allow French Gruyere to be processed from milk collected from five different types of dairy herds in farms and factories that are located across 12 regional Departments of France. The collection zone covers a significant area of Eastern France (400 Km North-South and over 200 Km East-West) and includes very disparate river valley and mountain terrains. This is a very broad geographic area

¹ For Swiss cheeses the *Appellation d'origine protégée (AOP) certification* system replaced the previous *Appellation d'origine Contrôlée (AOC) system that had been in place since 2001.*

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(much broader than for other GI cheeses)² which makes it extremely difficult to believe that there is any unique and uniform terroir associated with the manufacture of this specific cheese variety.

4. Human Involvement in Cheese Production is Undervalued in GI rulings

GI registration rules often acknowledge the technical skills and processes of the cheese makers involved in producing these products and how these can influence the final nature of finished products. In discussing Gruyere's characteristics, the **Cheeses of Switzerland** website acknowledges that:

“Apart from the quality of raw milk, the know-how of the master cheese-makers and those in charge of the maturing processes help give the final product its special touch”.

However, GI rulings generally then ignore the very transportable nature of these cheese making skills and technology, which has allowed cheesemakers to transport these intrinsic skills to many parts of the world. The role of European migrant cheese makers has been very important in developing Australia's cheese industry and products. This can be seen in the comments of one major local producer of Gruyere cheese – *Heidi Farms Tasmania* – whose website states that:

” our cheeses are crafted with the skill, passion and intuition of our dutiful cheese makers so that each cheese is brought to its full flavor potential. The cheese is then matured to develop the unique flavor of each cheese variety in a carefully controlled environment”

Specific Grounds of Objection

1. The EU GI name is used in Australia as the common name for the relevant good.

The DFAT website notes that an individual cheese name can be regarded as having become a “common name” in the Australian market if it used and understood locally as a generic or descriptive name for a particular type of cheese. This generic status is, in turn, determined by its historical usage in Australia, local consumer perceptions and how cheese with this name is marketed and used by local industry.

In addition to the regulatory anomalies that undermine the EU's ambit claim for GI protection to be extended to Gruyere in the Australian market, there is clear practical evidence that this cheese name meets all the criteria needed to be classed as a common cheese name in Australia.

Gruyere cheese has been produced and sold by Australian firms for many decades.

2. For example, both the designated production area and acceptable milk cow breeds for the French GI Comte (a cheese that is closely related to Gruyere and sometimes referred to as Gruyere de Comte (e.g. Wikipedia) represent an overlapping subset of those approved for French Gruyere. How the same farm environments and milk supply can generate two unique and different terroirs for these cheeses is very unclear.

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Gruyere cheese, which has been sourced from multiple countries of origin, is also regularly bought and sold in the Australian market without local consumers being misled or confused as to the origin or quality of the product being offered for sale.

For many years, Swiss, Australian and French Gruyere cheeses have been regularly offered for concurrent sale at Australian delicatessens and retail supermarket chains. In this period local Australian products, such as Heidi Farm Gruyere, have become well established in local retail and food service markets (and have won multiple awards based on their quality and taste).

The recent expansion of online sales of dairy products has also seen Gruyere cheeses from multiple countries of origin being offered for retail sale to Australian customers via many local and international on-line sales platforms. For example:

Carine Cuisine (Perth) simultaneously offers Australian Heidi Farm Gruyere, Swiss Gruyere and French Comte Gruyere on its web site and in its store;

Delicatessens at the **Prahran Market** (Melbourne) offer Australian, Swiss and French Gruyere for simultaneous sale- with product often displayed side by side without confusion or concern by potential customers.

Retail websites such as **Red Cow.com**, **SmellyCheese.com.au**, **Harris Farm.com.au** and **TheBrunswickWhey.com.au** all publicly advertise themselves as regular suppliers of both Australian and Swiss Gruyere cheese to local consumers.

The major Australian supermarket chains also concurrently offer Gruyere product lines they have sourced from multiple countries of origin (Including Australia) to their customers. An examination of recent on-line offers by these chains shows that they happily provide non-EU product to meet their customer demand for Gruyere (see examples below).

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(From Woolworth's website)



Le Superbe Gruyere Cheese
All natural, made the traditional way from the freshest Swiss milk.

(From Coles Website)



**Coles Deli
Gruyere Suisse Aoc Meule**

On all these product sales, the country of origin of the specific branded product is clearly identified for local consumers. **In turn, local buyers readily understand and accept that there is more than one country of origin for Gruyere cheese.**

2 The EU GI name is identical to, or likely to cause confusion with a trade mark or geographical indication that is registered or the subject of a pending application in Australia.

Given the regular domestic demand for, and sales of, Australian Gruyere cheese a number of Australian dairy firms have registered trademarks covering their sale of Australian-produced and named Gruyere cheese.

As noted above, Heidi Farm Tasmania is a local (award winning) supplier of farm house Gruyere cheese to outlets in most Australian states. The product's local production base and historical provenance is clearly known and understood by Australian consumers.

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Heidi's website and publicity material strongly identifies its Tasmanian heritage. The website and company brand name also highlight the migrant heritage of its founder who came from Switzerland and explains how the firm's reference points for its traditional cheese production reflect this

Swiss heritage rather than any link to the EU.

This non-EU link is also reinforced by other local online consumer sales platforms for Australian cheeses. For example, in advertising Heidi Gruyere for local sale, Smellycheese.com.au notes that:

"Swiss-born cheese maker Frank Marchand, also originally created this Australian Gruyère at Heidi Farm. And again Swiss-born cheese maker, Ueli Berger, currently oversees its production at Burnie in Northern Tasmania."

Other local firms that have established ongoing trademarks for Australian Gruyere cheese include the Beston Global Food Group which has established the *Edwards Crossing* brand to market a range of Cheese varieties (including the award winning *Edwards Crossing Gruyere*). As can be seen below, this local firm strongly emphasises its production links to regional South Australia in its publicity material for local consumers and on its final product packaging.



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These examples demonstrate that granting the EU's request to give GI status and protection to French Gruyere in the Australian market would significantly undermine the value of existing local trademarks and all the commercial efforts that the relevant Australian companies have put into developing and protecting their products and brand names both here in Australia and in export markets across Asia.

3 The EU GI name is identical, or likely to cause confusion with, an unregistered trade mark or geographical indication that has acquired rights through use in Australia.

It is difficult to comment definitively on the potential impact of agreeing to the EU request on unregistered trademarks. However, in this regard it is worth noting that, in 2017, *Interprofession de Gruyere*, a body that jointly represents the interests of farm and factory groups producing Gruyere cheese in Switzerland, sought to secure an Australian Certification Trademark for Gruyere.

This registration request (**1842558**) is not due to be formally ruled on by IP Australia until March 2020. However, the request shows that the Swiss dairy industry (as does its Australian counterpart) holds a quite different view to the EU on the name Gruyere and on the validity of any overriding protection for this name being provided to EU origin product only.

It is noted that the EU has indicated in its FTA submission that it would not oppose a possible application aimed at protecting the homonymous Swiss Geographical Indication for Gruyere in Australia. This public willingness of the EU to recognize the existence of another (earlier) country of origin claim for the name Gruyere fundamentally undermines any case that French Gruyere should receive GI protection under any FTA with Australia. It is simply implausible that Australia should (or would) act to protect the unique status of French Gruyere in Australia while the EU accepts that separate product of the same name can come from Switzerland (thereby defeating the very notion of what a GI is meant to be or convey to consumers).

A separate risk for Australian dairy interests stems from the fact that, as well as a town in Switzerland, Gruyere, is also the name of a dairy producing township in eastern Victoria. Granting domestic GI protection to the EU for this name would certainly inhibit any future opportunities for Australian dairy producers from this area to develop and market new products that are identified with the Gruyere name.

There is also some question as to what the implications of any decision in the EU's favour would be for existing Australian trade marks for wine.

At this point there are at least two Victorian wines that have Gruyere-related trademarks (Parish of Gruyere and Gruyere Hill). As with existing Australian dairy product trademarks, the commercial rights and investments of Australian firms, must be fully protected under any FTA agreement.

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4 Cross Over of EU GI Claims?

Several public information sites indicate that Gruyere-style cheeses are manufactured in different parts of the EU. Both Wikipedia and *IGourmet.com* sites refer to the French GI, Comte, as Gruyere de Comte, with I Gourmet noting that - “Gruyere de Comte is the French version of Gruyere Cheese. Similar to the Swiss variety, the wheel of Gruyere de Comte is a bit less high than that of its Swiss counterpart”.

Wikipedia also notes that – “Gruyère-style cheeses are very popular in [Greece](#), where the locally produced varieties are known as γραβιέρα (*graviéra*)”. Google Translate identifies “Graviera” as the Greek translation of “Gruyere”.

This is relevant to any EU claim for GI status for Gruyere under an FTA. It would seem that the EU allows production of Gruyere style cheeses in other parts of the EU. Even more problematically the EU is seeking to have additional GI protection granted under the FTA for both Comte (Product 42) and Kefalograviera (Product 80) – when both appear to be essentially Gruyere-style cheese variants.