

**COMMERCIAL IN CONFIDENCE**

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

**Submitter's contact information  
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Name: David Inall  
Chief Executive Officer  
Australian Dairy Farmers

Charles McElhone  
Group Manager, Trade & Industry Strategy  
Dairy Australia

Company represented: **Australian Dairy Industry Council Inc.**  
ABN: 76 673 412 879

and

**Dairy Australia**  
ABN: 60 105 227 987

E-mail address: David Inall: [dinall@australiandairyfarmers.com.au](mailto:dinall@australiandairyfarmers.com.au)

Charles McElhone:  
[Charles.McElhone@dairyaustralia.com.au](mailto:Charles.McElhone@dairyaustralia.com.au)

Mailing address: Level 2, Swann House,  
22 William Street, Melbourne, Victoria, 3000.

Phone number: +61 3 8621 4250

**EU GI name(s) you are objecting to: Product No.**

**Group 1:** Generic Cheese Names Incorporated within Multi-Component EU GI Products

<b>3:</b> Voralberger <b>Bergkase</b>	<b>41:</b> Brie de Meaux
<b>42:</b> <b>Camembert</b> de Normandie	<b>49:</b> <b>Emmental</b> de Savoie
<b>131:</b> <b>Pecorino</b> Romano	<b>132:</b> <b>Pecorino</b> Toscano
<b>137:</b> <b>Provolone</b> Valpadana	<b>140:</b> <b>Edam</b> Holland
<b>141:</b> <b>Gouda</b> Holland	<b>171:</b> West Country Farmhouse <b>Cheddar</b>

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**Group 2:** Cheese Names Identified in EU Customs Tariff and Tariff Rate Import Quotas.

<b>44: Cantal</b>	<b>71: Saint Nectaire</b>
<b>79: Kasseri</b>	<b>80: Kefalograviera</b>
<b>117: Asiago</b>	<b>121: Fontina</b>
<b>122: Gorgonzola</b>	<b>123: Grana Padano</b>

### 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.

#### 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 Australian dairy industry welcomes the opportunity to provide input to the public objections process on the European Union's request list of products that it is seeking to have recognised (and protected) as EU GIs in the Australian market as part of the Australia-EU Free Trade Agreement.

The review has sought comments on the EU's request on a product by product basis. However, the cheese names included in each of the two groupings (set out above) share important, common attributes and points of reference.

For this reason, the industry considers it appropriate to present a joint submission in relation to each of the above groups of cheese names rather than repeat the same points in multiple individual submissions.

**Group 1:** Generic Cheese Names incorporated within Multi-Component EU GI Products

<b>3: Voralberger Bergkase</b>	<b>41: Brie de Meaux</b>
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<b>131: Pecorino</b> Romano	<b>132: Pecorino</b> Toscano
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This group of ten EU GI products all have multi-component names that incorporate at least one generic cheese name within their title. The generic cheese name has been highlighted in bold in the above page text.

The Australian industry does not object to the provision of GI protection to the above multi-component product names. However, it firmly rejects the idea that an FTA should extend any GI protections (and associated evocation rules) to locally produced cheeses (with singular generic names).

Most of these generic cheeses have been widely produced and marketed across Australia for many years. For example Dairy Australia's annual *Dairy In Focus* publications (and their predecessors the Australian Dairy Corporation's annual *Dairy Compendiums* provide records of the continuous domestic production of Cheddar, Brie, Camembert, Edam, Gouda, Emmenthal, Mozzarella and Pecorino cheeses in Australia from the 1980s to the present.<sup>1</sup> Dairy Australia also collects company confidential data on the domestic sale, export and import of these cheeses but tends to only publish such information at an aggregated level.<sup>2</sup>

This widespread local trade is not surprising given that eight of these generic cheese names included in this Group – Brie, Camembert, Cheddar, Edam, Emmenthal, Gouda, Mozzarella, Provolone - are, in fact, recognised as **International Standard cheese names by the FAO Codex Alimentarius**. As we have stated on many previous occasions the dairy industry rejects any notion that the future sales of such Codex Standard cheeses names should be restricted in any way by the GI protection provisions of any future FTA.

With regard to the two remaining generic cheese names in the above list, Pecorino and Bergkase, the ADIC notes the following important points:

**Pecorino:** According to Dairy Australia data, Australia has consistently produced and exported Pecorino cheese for at least four decades<sup>3</sup>. The same data series show that local firms have separately produced and marketed Romano cheese over this period. The US is also a major producer of cow's milk Pecorino and Romano cheeses (and provides explicit market access for non-EU Romano cheese under its WTO tariff rate quota system).

As the List above indicates, the EU itself gives GI status and protection to multiple cheeses that incorporate the generic component, Pecorino, in their full name. Currently eight different EU GI cheeses (including Romano, Sardo, Toscano, Siciliano and di Filiano) all incorporate the generic name, Pecorino.<sup>4</sup>

**Bergkase:** As with Pecorino, the EU provides GI status and protection for three Cheeses from different member states that include the component name, Bergkase, (essentially mountain cheese) in their full name.

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1. See for example, Dairy Australia, *Australian Dairy in Focus 2018*, Table A6, Page 42 or Australian Dairy Corporation, *Dairy Compendium 1999*, Table 1.11, Page 20.

2. See for example Dairy Australia, *Australian Dairy in Focus 2018*, Table A7, Page 43.

3. See Australian Dairy Corporation, *Dairy Compendium 1999*, Table 1.11

4. See Europa Denomination of Origin Register (Class 1.3 Cheeses)

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These points show that the individual names Pecorino, Romano and Bergkase represent generic cheese varieties rather than regionally specific denominations of origin. As such, it would be totally inappropriate for any FTA to extend GI protection in Australia to domestic cheeses that are produced and sold under these (singular) generic names, Pecorino, Romano or Bergkase.

Also importantly in considering the GI status of individual products, the EU Customs Tariff has established specific and unique Tariff Code descriptors (and import access rights for non-EU product) for nine of the above generic cheeses. These are Bergkase, Brie, Camembert, Cheddar, Edam, Emmenthal, Gouda, Mozzarella and Pecorino.<sup>5</sup>

In its request list the EU has appropriately acknowledged that it is not seeking full GI protection for the above generic cheese names. The request states that the use of these names in Australia should be permitted “as long as they are not used in a way that may deceive or mislead consumers as to the true origin or quality of the product”.

From the dairy industry’s perspective, it is simply impossible to identify any practical market situation in which local consumers would be misled about the origin or quality of Australian-branded Codex Standard cheeses or generic cheese varieties such as Pecorino.

It is also worth noting that two of the above list of cheese names (namely Pecorino Toscano and Pecorino Romano) already have Certification trade mark protection in Australia in relation to their marketing logos.

The local industry did not oppose the registration of these full compound names under IP Australia’s registration processes. However, we note that extending strict evocation protection to these two compound cheese names in the local market would create severe risks for existing Australian-owned trademarks that incorporate the name Pecorino.

It would also place local firms at a competitive market disadvantage since it would remove EU producers from the ongoing costs of trademark protections while their local Australian counterparts would have to continue to operate within a full user-pays system.

Therefore, we fully expect that there will be no additional restraints imposed under any FTA on the future commercial sales of these locally-produced generic cheese varieties (in either the Australian or export markets).

**Similarly, any final FTA text must explicitly recognise that the above generic cheese names are distinct from, do not (and will not) impinge on the protected status and sales of true EU GI cheeses in this country. As such, local sales of these generic cheeses do not in any way evoke any protected GI names, and so they must remain fully independent of any evocation provisions of an FTA.**

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<sup>5</sup> See EU Official Journal L282 (31 October 2017), Pages 81-83

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### Group 2: Individual Chees Names Identified in EU Tariff and Import Quotas

<b>44: Cantal</b>	<b>71: Saint Nectaire</b>
<b>79: Kasseri</b>	<b>80: Kefalograviera</b>
<b>117: Asiago</b>	<b>121: Fontina</b>
<b>122: Gorgonzola</b>	<b>123: Grana Padano</b>

The EU's request for extended GI protection in Australia with respect to the cheese names included in this Group requires very careful consideration. Unlike the cheese names set out in Group 1, the EU is seeking to have an FTA extend full GI status and protection in the Australian market to these eight cheese varieties.

There has been limited production of these cheeses in Australia in recent decades (although Dairy Australia has included production data for Fontina and Grana Padano cheese in more its aggregated published estimates of local cheese production and domestic sales).<sup>6</sup> Informal discussions with industry indicate that there may be additional, small volumes of other varieties - such as Asiago and Kasseri – being produced by local artisanal manufacturers (but these numbers are not included in published industry aggregates).

However, as is the case with the more widely-known generic cheese names from Group 1, the EU currently recognises that all eight cheese varieties included in this group can be produced outside the EU (and are allowed to enter its market).

It does so as the EU Customs Tariff identifies each of the cheese varieties included in this Group as a specific and unique Tariff Code Descriptor in its Tariff Schedule and provides WTO import access rights for non-EU product under these tariff headings.<sup>7</sup>

Therefore, the EU's GI request seeks to have the intellectual property elements of any FTA override its existing WTO trade obligations. As with the cheese names in Group 1, agreeing to the EU's GI request with regard to the Group 2 cheese names would both preclude the ongoing production of these cheeses in Australia and clearly nullify and impair Australia's (and other dairy industries') historical access rights to sell product to the EU market.

It should be noted in this context, that the USA is a major producer of Asiago cheese. The US, among a number of countries, currently has the right to export this cheese to Australia under our pre-existing FTAs. This means that agreeing to the EU's request could have ramifications for Australia as it would create the potential for US firms and importers to make claims for compensation for the impairment of their existing and future access rights into our dairy market.

In the case of Grana Padano and Gorgonzola cheeses it should also be recognised that EU producers already have their sales in Australia protected under prevailing

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6. Dairy Australia, *Australian Dairy in Focus 2018*, Table A6, Page 42 or Australian Dairy Corporation, *Dairy Compendium 1999*, Table 1.11, Page 2

7. See EU *Official Journal L282* (31 October 2017), Pages 81-83

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Certification Trademark rights. The GI protection request therefore, adds little or nothing to their existing market position.

In the case of three of the above names, Asiago, Grana Padano and Gorgonzola it must also be recognised that EU producers already have their sales in Australia protected through prevailing Certification Trademark rights for their marketing logos and/or names. Expanding GI protection request therefore, adds little or nothing to their existing market position (but does shift the future cost of maintaining this protection away from the current EU rights holders to Australia).

In recent FTA agreements (e.g. JAEPA with Japan) the EU has agreed not to seek protection for the generic (Grana) component of the name Grana Padano. It has not done so in the Australian request list. But given the trademark support the EU has already secured for domestic sales, its agreement to such as outcome would seem commercially and politically appropriate.

For Asiago cheese, the USA is a major producer of this product. Indeed, a US firm (Sartori) registered an Australian trademark for its branded Asiago in 2015. Despite EU opposition, this registration was successfully completed in 2018 (and will run until 2025). Granting the EU request would not only have adverse implications for this US rights holder, but would also run completely counter to IP Australia's findings in relation to this name back in 2018.

GI extension for Asiago would have broader commercial and policy implications beyond Sartori Cheese. This reflects the fact that, the broader US dairy industry, among a number of countries, currently has the right to export Asiago cheese to Australia under our pre-existing FTAs. Therefore, agreeing to the EU's request in respect of this (and other<sup>8</sup>) cheese name would have important ramifications for Australia as it would create the potential for US firms and importers to make claims for compensation for the impairment of their existing and future access rights into our dairy market.

Finally, in the case of Fontina cheese, the EU is seeking protection for this name as an Italian GI. However, there is clear evidence of the continued EU production and export of Fontina cheese outside Italy. For example, Danish Fontina cheese is readily available in Australian supermarkets and delicatessens. Review of the website of F Mayer Imports (the local importer agent of Denmark's Arla Foods) shows the following marked offering for local sale.

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8. Including Fetta and Parmesan cheeses which are expressly named importable cheese varieties in the Australian Customs Tariff

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**Denmark's Finest Danish Fontina 1x5Kg**

Similarly, cut portions of Danish Fontina are regularly on sale at local delicatessens (as shown below).



The EU's continued failure to enforce its own GI regulations (and its own industry's apparent belief that names such as Fontina and Fetta are generic) fundamentally undermines its case that Australia should agree to extend and enforce these rules in the local market.