Australian Dairy Industry Council Inc.

SUBMISSION

To Department of Foreign Affairs and Trade (DFAT) on

The potential opportunities and impacts of a Free Trade Agreement with the EU

Submitted by the Australian Dairy Industry Council

Contacts

February 2016

ADIC: David Losberg Senior Policy Manager, Australian Dairy Farmers 03 8621 4200 I dlosberg@australiandairyfarmers.com.au

DA: Iveta Samulis Manager Strategic Trade Policy, Dairy Australia 03 9694 3826 I isamuelis@dairyaustralia.com.au

CONTENTS

1 INTRODUCTION 2

2 ABOUT THE AUSTRALIAN DAIRY INDUSTRY COUNCIL 2

3 KEY POINTS 2

4 THE AUSTRALIAN DAIRY INDUSTRY 3

5 PROFILE OF THE EU DAIRY INDUSTRY AND INFLUENTIAL GROWTH FACTORS 3

5.1 SUPPLY 3

5.2 DEMAND 5

5.3 ANALYSIS 6

6 HISTORY OF THE EU–AUSTRALIA TRADING RELATIONSHIP 7

7 MARKET ACCESS 9

7.1 MARKET ACCESS ARRANGEMENTS 9

7.1.1 Tariffs 9

7.1.2 TRQs 10

7.2 NON-TARIFF MEASURES 11

7.3 PRIORITIES 12

8 GEOGRAPHICAL INDICATIONS 13

9 OTHER ISSUES 14

9.1 COMMON AGRICULTURE POLICY (CAP) AND AGRICULTURAL POLICY REFORM 14

1 INTRODUCTION

The Australian Dairy Industry Council (ADIC) welcomes the opportunity to provide this submission on the potential opportunities and impacts of a Free Trade Agreement with the European Union (EU).

2 ABOUT THE AUSTRALIAN DAIRY INDUSTRY COUNCIL

The ADIC is the national peak policy body for the Australian dairy industry and represents all sectors of industry on issues of national and international importance. Constituent organizations, Australian Dairy Farmers Limited (ADF) and the Australian Dairy Products Federation (ADPF), represent the interests of dairy farmers and manufacturers, processors and traders respectively.

3 KEY POINTS

- The Australian dairy industry operates in a free market that has open borders. The EU has been utilizing this export opportunity as demonstrated by the dramatic increases of imports into Australia of EU product
    - In the decade between 2005 and 2014 the value of EU imports into Australia grew from just on A$128 million to A$355 million.
- The EU exports less than the equivalent of 10% of its milk production, whereas Australia has around a third of its production available for export (approximately 3 billion litres of milk).
    - With a total on-farm production of close to 155 billion litres of milk, the EU produces over 16 times more milk than Australia (with production in 2013/14 at just over 9.3 billion litres).
- However, the EU remains a highly protected and distorted market for dairy with high tariffs, a complex tariff regime and continued existence of Tariff Rate Quotas.
- Even with ongoing Common Agriculture Policy (CAP) reforms, the EU dairy industry continues to benefit from government sponsored market support such as stockpiling (intervention and 'private storage aids') and 'aid packages' – to the value of €500 million (approximately A$760 million).
- Also, EU farmers still derive a significant portion – around 20% - of their income from subsidies (as per OECD calculated Producer Support Estimate for the EU).
- Clearly, the EU–Australia trading relationship does not operate on a level playing field.
- Meaningful market access must address not only tariff barriers, but non-tariff and technical barriers to trade.
- The industry remains deeply concerned with EU efforts to impose its overly restrictive and anti-competitive Geographical Indications (GIs) regime on Australia. The EU's attempts to usurp common food names, unfairly displace Australian products and misuse its market power.
- For the Australian dairy industry to be able to utilise market access opportunities in the EU, there would need to be comprehensive reform of both tariff and non-tariff barriers to trade.

4 THE AUSTRALIAN DAIRY INDUSTRY

Australian dairy is a $13.5 billion farm, manufacturing and export industry. Although Australia is a large country, there is limited arable land and limited water supply. Milk is only produced in a small portion of the country where the water supply is more reliable.

Australian milk production has recovered slightly in recent seasons to an estimated 9.5 billion litres in 2015-16; though this is still 15% below the peak in 2001-02. After many years of dry conditions, especially in the preceding decade the Australian dairy farmers have modified their dairy practices for long term sustainability rather than fast growth.

There has been a gradual shift in the past 10 years away from mostly grass fed production to an increased reliance on off-farm inputs; especially feed and water. This has increased the cost of producing milk in Australia. We now have a more sustainable, higher cost industry than we had 10 years ago.

Australia's 6,100 dairy farmers do not receive any direct Government subsidies or price support. Nor are they protected from imports. About a quarter of the Australian cheese market is supplied by imports. The price farmers receive is directly linked to the price obtainable on the international market. It is important, therefore, that we receive the highest possible returns from our exports.

Australia's biggest and most valuable market is the Australian market. We export less than 40% of our annual production. That means we have only about 3 billion litres of milk available for export products.

The Australian dairy industry does not export to dispose of surpluses, rather the industry exports to find the highest possible returns for our milk.

- Currently Australia exports to over 100 countries around the world;
- We have enough markets to easily sell all of our product; and
- We need to find long term sustainable markets which can pay the highest prices.

As with most dairy producing countries, our most valuable market is the domestic drinking milk market. Our main focus overseas is to find markets for higher value ingredients and high value consumer products such as cheeses and infant formula.

The Australian dairy industry directly employs 39,000 Australians on farms and in factories, while more than 100,000 Australians are indirectly employed in related service industries.

Australia has a broad diversity of processing companies ranging from tiny to medium-sized on a global scale and this is reflected in the diversity of the range of products produced.

5 PROFILE OF THE EU DAIRY INDUSTRY AND INFLUENTIAL GROWTH FACTORS

5.1 SUPPLY

The EU is the world's largest milk-producing bloc, with an output of around 153 billion litres of bovine milk in 2014 – an increase of 4% on the previous year. Of this amount, 94% (144 billion litres) was delivered to dairies; the rest is consumed on-farm or locally. This increase in production alone represents more than the total amount of milk production exported by Australia in the same period – the equivalent of almost 3 billion litres.

Milk is produced in all EU member states and EU milk production is growing. In terms of value, milk is the EU's biggest agricultural product, accounting for approximately 15% of agricultural output.

The EU is the leading exporter of many dairy products to the world dairy market. The dairy industry comprises over 650,000 specialised dairy farmers with almost 18 million dairy cows and a labour force of 1.2 million people. For more than 30 years, EU supply was managed by a quota system which expired at the end of March 2015. This system,

introduced in 1984, provided a national quota at the member-state level and an individual quota fixed for each producer or purchaser, with a penalty (the 'superlevy') payable for those who exceeded their quota.

Milk quotas were introduced to address the structural over-supply in the EU market during the 1970s and 1980s, when the system of guaranteed prices led to surplus production, with the Commission obliged to buy large volumes of butter and skimmed milk powder (SMP) into intervention. At times, butter and SMP stocks exceeded 1 million tonnes. The removal of quotas is the biggest change for the EU dairy industry since their introduction in 1984.

EU milk production has expanded continuously in recent years. It rose by about 5% in 2014 and milk deliveries in 2015 were estimated to be more than 2.0% higher than in 2014. In Germany, France, the UK, the Netherlands, Poland, Ireland, Austria, Denmark and Belgium, milk production has increased in the last 10 years and the forecasts to 2025 are generally positive (a 0.9% increase in 2016 EU milk deliveries compared to 2015, followed by an average annual increase of 1.0%, an increase of 15 million tonnes over 10 years).

Milk-production factors

	2014	**2015**	**2025**	**Estimated % change p.a.**
Dairy cows (million)	23.3	23.3	21.5	-0.9
Yield (kg/cow)	6,732	6,806	8,001	1.6
Deliveries (million tonnes)	147.7	149.4	164.1	0.9

Milk production has gradually moved towards the most productive parts of north-western Europe. A major challenge for the EU is to maintain production throughout its territory, even where sustainable production is problematic, in particular in the most vulnerable areas, such as mountainous, or less competitive areas.

Milk-production systems in the EU vary according to the member state but most are pasture-based, supplemented by grass or maize silage and feed concentrate. Milk yields reflect the farming systems used; for example, they are very high in some member states and still increasing, especially in the northern countries, but in other member states, particularly the newer ones in Eastern Europe where yields are relatively low, there is potential for growth.

Production of main dairy products ('000 tonnes)

	2014	2015	2025	Projected % change p.a.
Fresh products	46,879	46,634	47,062	0.1
Cheese	9,687	9,941	11,189	1.1
Butter	2,228	2,336	2,609	1.2
SMP	1,400	1,492	1,881	2.3
WMP	770	736	971	3.2

5.2 DEMAND

The EU is considered a mature market for dairy products, but there is still potential for consumption growth in Eastern Europe. Currently, per capita consumption of cheese is 19.8 kg in the EU-15 but only 13.2 kg in the newer member states; per capita consumption of butter is 4.6 kg in the EU-15 but only 3.0 kg in the newer member states. Thus higher-than-average growth (between 2.0% and 3.0% per annum) is expected in the newer member states.

Less than 10.0% of EU milk production is exported outside the EU, but exports remain an important element of EU market balance. In this respect the loss of the Russian market, due to Russia's import ban, and the slowdown in Chinese demand for dairy products have been significant factors for the EU.

There have also been consequent impacts on global dairy trade prices as surplus product and lower demand leads to lower prices.

Exports of main dairy products ('000 tonnes)

	2014	2015	2025	% change p.a. As above
Cheese	720	687	1,013	4.7
Butter	134	152	213	4.1
SMP	646	690	902	2.7
WMP	389	373	532	4.3

In the Commission's (annual) 'Prospects for EU agricultural markets and income' of December 2015, the main anticipated global developments for the period to 2025 are:

- A 3.5% annual growth in Chinese imports of milk powder;
- A 1.9% annual growth in world consumption/production of milk products;
- Expansion of milk production in New Zealand but limited by the availability of natural resources; and
- A 2.4% annual increase in world imports of dairy products.

Anticipated EU developments are:

- Milk prices will remain below 2014 levels until they pick up from 2021;
- Increasing industrial use of EU dairy products (e.g. in bakery products and chocolate);
- The EU's share of world exports is expected to grow; and
- 50% of the increase in EU milk production will go into milk powder (mainly SMP for export) and 30% into cheese (most of the extra cheese production will be consumed in the EU).

In the run-up to the removal of milk quotas, and since their disappearance, EU milk production has increased sharply and continues to do so. At a time when Russian and Chinese demand has fallen away, this has caused problems on the EU dairy market with over-supply and falling prices. In response the Commission has introduced the following measures:

- The permanent opening of intervention and private storage aid (PSA) for butter and SMP (usually the schemes are available only for certain periods of the year).
- An 'enhanced' PSA scheme for SMP. Aid rates are higher and storage periods longer than for 'standard' PSA.
- A 'temporary exceptional' PSA scheme for cheese.
- A €500 million aid package for livestock farmers in 2016 (most of which is for the dairy sector).
- The possibility for member states to advance up to 70% of direct aids to farmers.
- A €30 million package for promotion of dairy products and pigmeat in 2016, 70% for export markets.
- The creation of the Agricultural Markets Task Force to look at credit for farmers, financial and risk-hedging instruments such as futures markets, and new financial instruments through the European Investment Bank.
- Extension of the 2012 'Milk Package' and the bringing-forward of the 2018 progress report to 2016.

The Commission continues to analyse competitiveness along the dairy supply chain as major problems such as monopolistic behaviour, delays in payment and fraud are perceived to exist.

5.3 ANALYSIS

Some analysts believe that the Commission's forecast of 1.0% annual growth in EU milk production is conservative. The Commission defends its position on the basis that:

- Significant expansion of the EU dairy industry in 2014 and 2015 means that future growth will be limited.
- Environmental factors (methane, ammonia, nitrates, phosphates) will be a brake on milk production, especially in the Netherlands, Denmark, Ireland, Belgium and parts of France and Spain.
- Milk production will eventually fall into line with demand.

Low milk prices will have a negative effect on EU milk production. The volatility of input costs for EU dairy farmers is also a limiting factor. Thus, a 1.0% annual increase in milk production may be realistic in the coming years.

According to the Commission's analysis, EU exports of dairy products to non-EU markets could increase by 3.0% to 5.0% per annum, the main destinations being the Middle East, North Africa and Asia.

In the event of an EU-Australia free-trade agreement (FTA), Australia is unlikely to be a priority destination for EU exports of dairy products.

The EU will not present a big opportunity for Australian dairy exports. For the Australian dairy industry to be able to utilise market access opportunities in the EU, there would need to be comprehensive reform of both tariff and non-tariff barriers to trade. For example, current Australian exports to the EU under tariff-rate quotas (TRQs) have dwindled in recent years because the narrowing of the gap between EU and world prices has removed the premium which the EU previously represented, and EU prices for dairy products are expected to remain under pressure. Australia has also developed other markets.

The potential for Australian exports of dairy products to the EU would be increased by a reduction in the in-quota tariffs in existing TRQs and the negotiation of new access opportunities.

6 HISTORY OF THE EU–AUSTRALIA TRADING RELATIONSHIP

Australia has had a long history of exporting dairy products to the EU, through the historical and cultural ties between Australia and the UK. As a result, Cheddar cheese historically dominated trade and together with butter were the main exports to the EU.

Up until the time of deregulation of the dairy industry in 2000, the marketing of Australian cheese into the EU was predominantly done through a 'single desk' arrangement. This assisted with the full utilization of Australia's Country Specific Quota (known as the IMA-1). However, the arrangements became less and less relevant as new market access opportunities were opened as a result of the Uruguay Round. The arrangements came to an end with the Federal Government taking over administration of allocations of the EU dairy quotas, and companies taking on direct marketing of their dairy products.

As mentioned above, Australian exports to the EU have diminished, as seen in the table below provided by Dairy Australia.

Australian Exports to the EU in volume (tonnes) and value ($AUD) terms

	2005		2006		2007		2008		2009		2010		2011		2012		2013		2014	
Product Group	**Volume**	**Value**	**Volume**	**Value**	**Volume**	**Value**	**Volume**	**Value**	**Volume**	**Value**	**Volume**	**Value**	**Volume**	**Value**	**Volume**	**Value**	**Volume**	**Value**	**Volume**	**Value**
Butter	1,411	3,700,429	725	1,667,349	1,668	5,657,928	77	282,120	558	1,413,120					180	543,351	257	874,540	2	7,875
Butter Blend			27	57,615	84	148,504														
Butter Oil	1,864	5,227,858	516	1,003,699	1,058	2,951,486	434	1,010,308	16	17,352							475	2,140,920		
Casein	784	7,481,372	1,686	12,629,305	2,106	21,893,293	809	8,724,940	667	4,978,487	195	1,720,132	79	559,831	136	928,526	38	354,634	51	483,235
Cheese	17,391	65,986,513	13,213	47,830,785	11,428	45,213,009	8,405	49,336,802	5,805	21,946,984	2,993	11,609,364	3,242	12,510,675	1,361	5,872,277	4,694	20,634,860	1,656	8,754,382
Condensed Milk	235	386,705	8	16,887	444	796,119	4	10,571							7	153,625	2	28,742		
Ice Cream			4	7,407			0	48												
Infant Powder			0	836					0	2,000							20	120,960	0	2,294
Lactose	4,445	1,901,964	148	67,817	839	2,302,492			1	2,000			697	932,372	1,057	1,303,655	938	1,214,949		
Milk	734	2,597,947	932	3,076,049	874	2,268,477	59	142,912	55	168,883	25	66,101								
Mixtures	1,220	4,772,529	977	4,350,725	409	1,801,884	742	3,033,933	815	3,983,363	408	2,170,890	1,014	2,850,323	599	2,935,612	693	3,298,318	567	2,511,801
Protein	2,261	16,481,477	2,291	16,209,703	938	6,484,785	211	2,203,446			493	6,344,848	20	260,851	9	111,153				
SMP	297	779,488	901	2,454,292	518	1,722,868	470	4,117,385	197	2,171,581	140	1,318,115	2	22,163	4	48,985	0	4,648	18	98,158
Whey Powder	1,235	4,506,214	1,750	6,300,534	658	2,341,112	20	1,142,812	337	3,173,039	11	1,317,298	341	4,967,793	1,951	10,463,060	1,628	8,304,322	1,375	8,145,660
WMP	147	1,132,466	117	519,217	480	2,539,718	27	92,265	57	295,311	153	1,384,717	155	575,860	1,108	3,109,104				
Yogurt					56	118,768	108	285,837												
Grand Total	**32,024**	**114,954,962**	**23,296**	**96,192,220**	**21,560**	**96,240,443**	**11,365**	**70,383,379**	**8,508**	**38,152,120**	**4,417**	**25,931,465**	**5,549**	**22,679,868**	**6,412**	**25,469,348**	**8,744**	**36,976,893**	**3,670**	**20,003,405**

However, imports into Australia of EU product has continued to increase, particularly with respect to cheese, the tonnage of which has seen an increase of close to 70% between 2005 and 2014. Value of imports in the same period have nearly tripled.

Australian Imports from the EU in volume (tonnes) and value ($AUD) terms																				
	2005		2006		2007		2008		2009		2010		2011		2012		2013		2014	
Product Group	Volume	Value	Volume	Value	Volume	Value	Volume	Value	Volume	Value	Volume	Value	Volume	Value	Volume	Value	Volume	Value	Volume	Value
Butter	691	2,775,485	493	3,233,180	493	3,216,721	652	5,698,366	604	5,154,922	634	5,289,002	918	6,484,527	738	6,029,461	927	7,828,073	938	8,448,134
Butter Blend	5	22,524			0	1,548	4	43,989	7	72,161	189	1,704,057	18	147,117	10	101,851	17	177,556	28	243,073
Butter Oil							8	60,615			41	155,917			16	109,612	16	110,056	64	450,185
Buttermilk Powder	17	107,757	61	341,346	308	1,432,344	250	1,311,560	247	1,310,578	33	152,325			12	51,503	74	266,666	103	543,796
Casein	94	904,262	60	716,129	75	937,239	175	2,644,094	89	914,079	111	1,122,862	196	1,970,946	176	1,465,979	199	1,923,108	446	5,138,926
Cheese	10,488	83,391,141	11,224	92,430,736	11,479	101,237,854	12,268	125,208,242	11,444	120,713,384	12,519	114,365,938	14,003	131,764,442	15,966	142,027,055	17,297	167,200,132	17,634	192,865,991
Condensed Milk	107	328,914	189	552,167	114	464,309	264	1,266,138	35	292,379	237	592,307	831	1,774,881	1,114	2,425,700	1,299	3,181,460	2,432	6,341,763
Ice Cream	3,634	6,997,428	2,695	9,712,086	2,780	10,863,799	1,830	7,488,028	2,008	7,758,197	5,880	15,143,785	8,628	15,891,490	6,615	11,117,552	8,995	23,483,308	8,091	31,442,208
Infant Powder	2,329	19,182,465	6,322	63,122,167	6,691	79,074,171	7,353	83,951,429	5,290	58,091,518	5,835	62,651,691	3,323	33,185,527	1,920	18,137,187	1,987	18,197,013	2,560	25,768,914
Lactose	94	421,061	978	447,251	300	430,487	563	1,269,307	345	1,522,392	406	1,282,747	3,355	6,322,357	1,628	4,328,117	1,198	2,623,071	3,690	7,687,115
Milk			181	168,579	64	163,222			0	2,525	26	121,011	28	132,043	263	852,280	85	372,773	128	700,151
Mixtures	1,792	10,239,709	2,184	9,547,130	3,361	12,132,244	2,756	12,945,836	4,894	31,340,060	4,336	21,726,160	4,411	22,237,268	4,673	27,805,336	4,810	36,447,843	5,382	47,036,795
SMP	43	196,617	59	301,507	57	378,659	26	185,325	84	384,256	65	381,065	218	816,116	131	734,258	523	2,375,890	756	4,592,239
Whey	163	747,004	448	1,664,321	1,179	3,323,235	4,405	13,114,784	9,062	22,222,078	6,666	15,894,475	6,088	14,506,590	6,438	21,398,268	10,059	38,418,229	4,075	18,433,626
Whey Powder	230	1,654,903	257	1,742,798	335	2,726,708	2,853	11,472,244	634	3,048,103	849	2,910,446	39	296,602	280	3,109,743	112	1,815,861	157	2,310,853
WMP	199	590,142	119	786,029	28	177,502	37	300,962	213	914,048	24	154,288	57	392,418	155	687,145	377	1,933,790	392	2,796,424
Yogurt	0	2,312	0	1,960	5	33,042			1	5,755			6	14,575	10	68,581	23	167,094	15	140,976
Grand Total	**19,886**	**127,561,724**	**25,271**	**184,767,383**	**27,270**	**216,593,082**	**33,445**	**266,960,920**	**34,957**	**253,746,433**	**37,849**	**243,648,075**	**42,119**	**235,936,898**	**40,145**	**240,449,627**	**47,997**	**306,521,921**	**46,890**	**354,941,170**

Both the Australian and EU industries have long standing relationships:

- European dairy companies have a long history of investment and brand development in Australia with Danone, Parmalat, and Lactalis being key examples.
- The respective dairy industry bodies both at national and sub-national levels have historically cooperated on issues of mutual benefit and continue to work together in organisations such as the International Dairy Federation and Global Dairy Platform.
- The industry also collaborates with organisations such as Teagasc in Ireland and DairyCo in the UK on reseach and development projects.

7 MARKET ACCESS

7.1 MARKET ACCESS ARRANGEMENTS

Australia's market access opportunities for dairy in the EU are governed by a complex set of tariffs, tariff rate quotas (TRQs) – both MFN and country specific – and other non-tariff measures such as import licensing requirements.

7.1.1 TARIFFS

The EU Tariff schedule (known as the Combined Nomenclature or CN), is exceedingly complex.

MFN tariffs for dairy are characterised by specific or non-*ad valorem* tariffs. The World Trade Organisation (WTO) Secretariat's 2015 Trade Policy Review report for the EU (WT/TPR/S/317) states that:

> *Agricultural imports continue to faces complex tariff structures… On average, non-ad valorem rates continue to provide higher protection than ad valorem rates. All rates above 100% are AVEs (Ad valorem equivalents) relating to agricultural goods [including] whey and modified whey (635%)… (para 3.41).*

The same report states that 98.7% of dairy tariffs are non- ad valorem, and, that the simple average of dairy tariffs is 36.1%, ranging from 1 – 635.4%.

Moreover, dairy products also face mixed tariff lines, where the tariff consists of, either an ad valorem, or specific component plus an extra duty calculated on the components in the product.

For example, for CN 0403.10.31, (which is yogurt) the description is:

> - not flavoured nor containing added fruit, nuts or cocoa,
> -- but containing sugar or other sweetening matter,
> --- of fat content, by weight, not exceeding 3%.

The duty for this tariff line is €0.17/kg plus €21,1 /100 kg net weight. The CN explains that the duty on the 100 kg of product is equal to the sum of the following:

- The amount per kilogram shown, multiplied by the weight of lactic matter contained in 100kg of product, and
- the other amount indicated.

Tariff only access is available to liquid milk and cream, whole milk powder, fermented products and whey products. Other Chapter 4 products may be imported under TRQs (discussed below).

For those products not covered by preferential access, tariffs are excessive and prohibitive. Since the diminishing use of export subsidies and progressive changes in domestic dairy policies in both the EU and the US, there has been broad convergence of domestic EU (as well as US) wholesale prices with world (mostly Australian and NZ) prices. Nevertheless, border measures still provide protection; the OECD in its Agricultural Policy Monitoring and Evaluation 2015 report stated that "…on average, prices received by farmers were 5% higher than those on the world market in 2012-14" (p136), as measured by the producer nominal protection co-efficient (NPC). Any tariff, therefore, will be probative; with the simple average for dairy tariffs being 36.1%, the world price with the EU tariff added, will be in excess of the EU internal wholesale price.

This is further confirmed by import data (as found on the UK Agriculture and Horticulture Development Board website (http://dairy.ahdb.org.uk/resources-library/market-information/processing-trade/eu-dairy-imports/) that shows that imports of Chapter 4 products generally not covered by preferential access arrangements are lower than those for which such arrangements exist. However, even imports under TRQs are declining.

7.1.2 TRQS

Access for Australian dairy products is essentially restricted to WTO (MFN) TRQs as well as Country Specific quotas.

MFN Tariff Rate Quotas represent the tariffication of previous quantity restrictions during the Uruguay Round. As a result of this process, eight TRQs were made available to HS Chapter 4 dairy products.

MFN/Global Ouota

Product	HS Code	Import Access	In Quota Tariff Rate
Butter / butteroil	0405.10.11 0405.10.19 0405.10.30 0405.10.50	11,360 tonnes	€ 948 / tonne (0405.90.10 and 0405.90.90 in butter equivalent 1kg
Cheddar	0406.90.21	15,005 tonnes	€ 210 / tonne
Cheese for processing	0406.90.01	20,007 tonnes	€ 835 / tonne
Emmental	0406.30.10 0406.90.13	18,438 tonnes	Processed Emmentaler = € 719 / tonne
Gruyère	0406.30.10 0406.90.15	5,412 tonnes	Processed Gruyère = € 719 / tonne Gruyère, Sbrinz = € 858 / tonne
Other cheeses	** See list below	19,525 tonnes	Range € 690 to € 1,064 / tonne
Pizza cheese	0406.10.20 0406.10.80	5,360 tonnes	€ 130 / tonne
Skimmed milk powder (SMP)	0402.10.19	68,537 tonnes	€ 475 / tonne

**0406.10.20 0406.10.80 0406.20.90 0406.30.31 0406.30.39 0406.30.90 0406.40.10 0406.40.50 0406.40.90 0406.90.17 0406.90.18 0406.90.23 0406.90.25 0406.90.27 0406.90.29 0406.90.31 0406.90.33 0406.90.35 0406.90.37 0406.90.39 0406.90.50 0406.90.63 0406.90.69 0406.90.73 0406.90.75 0406.90.76 0406.90.78 0406.90.79 0406.90.81 0406.90.82 0406.90.84 0406.90.86 0406.90.87 0406.90.88 0406.90.93 0406.90.99

These MFN TRQs:

- Cover only a very limited number of tariff lines, mainly SMP, butter and some cheese varieties.
    - Other products face either a specific, or combination tariff as mentioned above.
- Are detailed and specified down to, in most cases, 8-digit tariff lines. For example, rather than have a single TRQ for cheese using the HS Code 0406, the EU has six different cheese TRQs which include 44 tariff lines at the 8-digit level.
- Are highly prescriptive with regard to the type of product that qualifies for access. For example, under the 'Pizza cheese' quota, product must be:
    - Frozen, cut into pieces, each weighing not more than 1 gram, in containers of minimum 5 kg, with a moisture content of 52 per cent, and a fat content of minimum 38%
- May also specify end use and place restrictive conditions on access, for example:
    - In the case of 'cheese for processing', the product may not be used for retail product but only as an ingredient or value-adding within the EU.
    - Exporters may only sell bulk product, which is the case for SMP as the TRQ does not allow for packages of less than 2.5kgs.

Moreover, as the TRQ quantities were negotiated over 20 years ago, the access volumes are now relatively small, compared to total consumption of product. In most cases, they never met 5% consumption thresholds mandated in the Uruguay Round. For example, using USDA data, the average domestic EU consumption for cheese between 2005

and 2015 was approximately 8,470,000 MT. Yet the total market access available under TRQs was barely 83,740 MT, which is less than 1%. In fact, access should have been closer to 420,000 MT.

Furthermore, the MFN TRQs are characterised by chronic under-fill. The most recent EU notification to the Committee on Agriculture on imports under TRQs for the marketing year 2012/2013 (G/AG/N/EU/24 of 28 May 2015) clearly shows that none of the dairy TRQs were fully utilised. In fact, there were no imports in that year for four of the eight TRQs (0% fill rate); the fresh cheese TRQ recorded a fill rate of 1.9%, butter a fill rate of 23.7%, 'other cheese' was 12.2% and the cheddar TRQ had the highest fill rate of 62.8%.

It should also be noted that under-fill of TRQs is not only a feature of dairy TRQs but applies equally to other agricultural TRQs, as stated by the WTO Secretariat in the EU's Trade Policy Review of 2015 (see WT/TPR/S/317 para. 4.)

This under-fill can essentially be attributed to the fact the in-quota rates are prohibitively high. As explained above, when the Uruguay Round was being negotiated, EU internal prices were significantly higher than they are today. As world prices have converged, even in-quota rates have become a barrier to trade.

The arguments outlined above equally apply to Australia's Country Specific Quotas for dairy. Australia has preferential access for 3711 MT for Cheddar and 500 MT for 'Cheese for processing' (both with an in-quota rate of Euro 170 per tonne).

- The specifications for product under the Cheddar quota are overly descriptive as outlined below:

> *Whole Cheddar cheeses (of the conventional flat cylindrical shape of a net weight of not less than 33 kg but not more than 44 kg and cheeses of the conventional flat cylindrical shape or cheeses in the parallelepiped shape, of a net weight of 10kg or more) of a fat content of 50% or more by weight in the dry matter, matured for at least three months.*

- Our quotas are not being filled. Neither the Cheddar nor Cheese for processing have been filled since 2009 (see http://www.agriculture.gov.au/export/from-australia/quota/dairy#quota-usage).
    - Current market realities are such that EU prices for cheese have been equal and even below those of Australian export prices, making the in-quota rate completely prohibitive.

7.2 NON-TARIFF MEASURES

In addition to prohibitive tariff arrangements, Australian exporters face extensive requirements before they are able to export to the EU.

It is important to note that Australian dairy consignments usually:

- Require a veterinary and/or public health certificate.
- Must come from an EU approved establishment.
- Require veterinary checks on entry into the EU.

The Australian dairy industry recognizes that need to assure consumers that Australian dairy products are safe. However, when health and safety requirements are excessive and onerous, or not based on sound science, they become technical barriers to trade (TBTs).

In 2013/2014 Dairy Australia, on behalf of the dairy industry, commissioned a comparative evaluation of TBTs for the Australian dairy products. The study reviewed the technical requirements of import markets, identified TBTs and calculated the impact of these TBTs on Australian dairy exporters.

The study found that TBTs are not just border entry issues, but come in many forms – including market access restrictions, production costs, shipment costs, compliance levels and administrative red tape. In the case of the EU, the study identified the following TBTs as being of greatest concern:

- Delays in establishment listing approval - Australian establishments are not automatically recognized even if they meet Australian health and safety requirements and may even require inspection by an EU based inspector.
- Imports to be produced, and stored in listed establishments - manufacturers do not have the flexibility to produce like products at different locations.
- Batch level product testing for all consignments - this is costly, time-consuming, and overly risk adverse.

The study points to the fact that EU requirements differ significantly from Australian food safety and quality assurance systems. Where Australian systems are outcomes focused, the EU system is highly cautious and prescriptive. In many cases, there is no justification for the requirements; product testing is a case in point. Products are issued health certificates here in Australia, thereby demonstrating compliance. However, consignments still face testing on entry into the EU.

7.3 PRIORITIES

With price volatility and convergence, as well as general uncertainty, being a feature of international dairy markets, Australian dairy exporters will be looking maximize opportunities going forward. Therefore, meaningful market access must address the issues outlined in the sections above and provide tariff free, quota free access for all Chapter 4 dairy products.

In addition, the Australian dairy industry is seeking the removal of onerous and excessive technical market access requirements. The industry seeks that the EU:

- Adhere to and consistent application of CODEX standards.
- Fully recognize Australian health and food safety standards.
- Improve regulatory co-operation based on the following principles:
    - That health and food safety standards are based on sound science noting that milk production systems differ between nations.
    - Ensure non-discrimination between domestic and imported goods in accordance with GATT Article II (national treatment).
    - There is transparency of processes in developing regulations and in implementing regulations.
    - Achievement of the most efficient trade enhancing and least trade restricting practices.
    - Focused on outcomes.
    - Real time consultation with dairy stakeholders in developing solutions to existing regulatory practices. and an early warning system for development of regulations, and
    - Consistency in approach to developing regulations.

8 GEOGRAPHICAL INDICATIONS

The Australian Dairy Industry is deeply concerned with the ongoing efforts by the EU to increase protection for Geographic Indications (GIs) that would, in effect, privilege one set of food producers – predominantly those in the EU – over others.

Regardless, the Australian industry continues to support the proper protection of GIs as provided for under the WTO's Agreement on Trade in Intellectual Property (TRIPs) agreement.

However, the industry seeks to ensure ongoing use of common food names that are part of the public domain. The industry specifically demands continued use of food – particularly cheese - names that can legitimately be used currently in world markets

It must be recognised that market access rights to the EU were negotiated in good faith and ongoing use of common food names has been assumed.

For example, the EU maintains a TRQ for 'Gruyere', yet the same cheese name is now protected such that only French or Swiss origin cheese is able to utilise the name. Although untested, it would essentially mean that non-EU or Swiss origin cheese cannot enter under this TRQ.

The same would presumably apply to products like feta. The EU's Common Nomenclature published in October 2015 (OJ L 285/72), lists Feta under the CN Code of 0406.90.32. Yet it is likely that, should Australian exporters wish to utilise this access opportunity, their product would be rejected.

Likewise, Australian export opportunities continue to come under threat in countries where the EU has signed FTAs including Korea, Canada, Singapore, Central America and now South Africa.

In addition, the EU has been a strong advocate of the review of the Lisbon Agreement, the Geneva Act of which was finalised in May 2015 which will, in effect, deliver extension of TRIPs Article 23 protection to all food stuffs to signatories of the agreement.

We remain of the view that:

- The Australian level of protection for GIs through our Trademarks system is adequate and allows for open and transparent objection procedures.
- Our existing *sui generis* system of GIs for wines and spirits should not be extended to other goods (food and non-food alike).
- Our consumers receive adequate protection due to relevant labelling regulations that require 'truth in labelling'. They clearly understand the provenance of dairy products sold in Australia and are 'protected' from counterfeits or imitation products.
- Australia should not be bullied into adopting a set of restrictive and anti-completive measures that will deliver no benefit to Australian food producers and manufacturers.
- International agreements such as the Lisbon Agreement now exist which countries, on careful consideration, may wish to join. Including excessive GIs provisions in FTAs is, therefore, unnecessary.

9 OTHER ISSUES

9.1 COMMON AGRICULTURE POLICY (CAP) AND AGRICULTURAL POLICY REFORM

The industry has consistently stated that it welcomes the ongoing reform of the EU Common Agricultural Policy. The most welcomed reform of the most recent set of reforms has been the ending of milk production quotas in 2015.

In addition, the commitment by the EU to eliminate scheduled WTO export subsidies as part of the package agreed at the December 2015 WTO Ministerial meeting is welcome.

Nevertheless, the EU maintains a set of safety-nets, policy instruments and domestic subsidies that the industry continues to monitor due to the possible impact on dairy markets. These include:

- the ability to control production surpluses and perceived market disruptions through the use of public intervention buying for butter and SMP, and also the use of Private Storage Aids.
- The use of both direct aid payments and coupled payments
- Some of the provisions of the 2012 Milk Package particularly contractual arrangements, collective bargaining, recognition of Producer Organisations (POs) and Inter-Branch Organisations (IBOs), and supply management for GI cheeses
- The continued existence of tariff barriers.

With regard to agricultural reform more generally, the CAP only addresses domestic supports, which remain a significant piece of expenditure in the EU's budget. Moreover, market access reforms do not form part of the CAP and have not faced unilateral reform, particularly for dairy.