Australian Dairy Industry Council Inc.

Dairy Australia

Australia-India Comprehensive Economic Cooperation Agreement (AI-CECA)

Submission

COMMERCIAL-IN-CONFIDENCE

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Executive Summary

The ADIC and Dairy Australia welcome the opportunity to present this submission to the Department of Foreign Affairs and Trade (DFAT) regarding the Australia-India Comprehensive Economic Cooperation Agreement (AI-CECA).

The dairy industry is the third largest rural industry in Australia and is a key sector of the agricultural economy. Dairy generated $4.7 billion in farmgate value in the 2020-21 financial year with the sectors exports totalling $3.3 billion for the same period. Australia is a significant exporter of dairy products. It ranks fourth in terms of world dairy trade, with a five per cent market share behind New Zealand, the European Union and the United States.

The Australian Dairy Industry Council (ADIC) is the peak national representative body of the Australian Dairy Industry, representing the interests of dairy farmers and processors through its two constituent bodies, Australian Dairy Farmers (ADF) and the Australian Dairy Products Federation (ADPF), to create a more prosperous and sustainable future for the 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.

India is a market with significant future potential for Australian dairy. Under a comprehensive free trade agreement Australian dairy seeks commercially tangible liberalisation of trade in all dairy products (including non-chapter 4), to include:

- A phase out period for tariffs in a commercially feasible time frame;
- Substantive annual compound increases in any quotas until phase out of tariffs;
- Addressing non-technical barriers (NTB's) from a sound science perspective; and
- Transparency that embraces predictability in quota administration during the transition period to free trade.

Due to the staged approach to AI-CECA negotiations and the sensitivities surrounding dairy in India, the Australian Dairy Industry recognises it will be challenging to secure meaningful market access outcomes. Additionally, once an early harvest agreement has been concluded there is also the possibility that a comprehensive garment may not be concluded for some time.

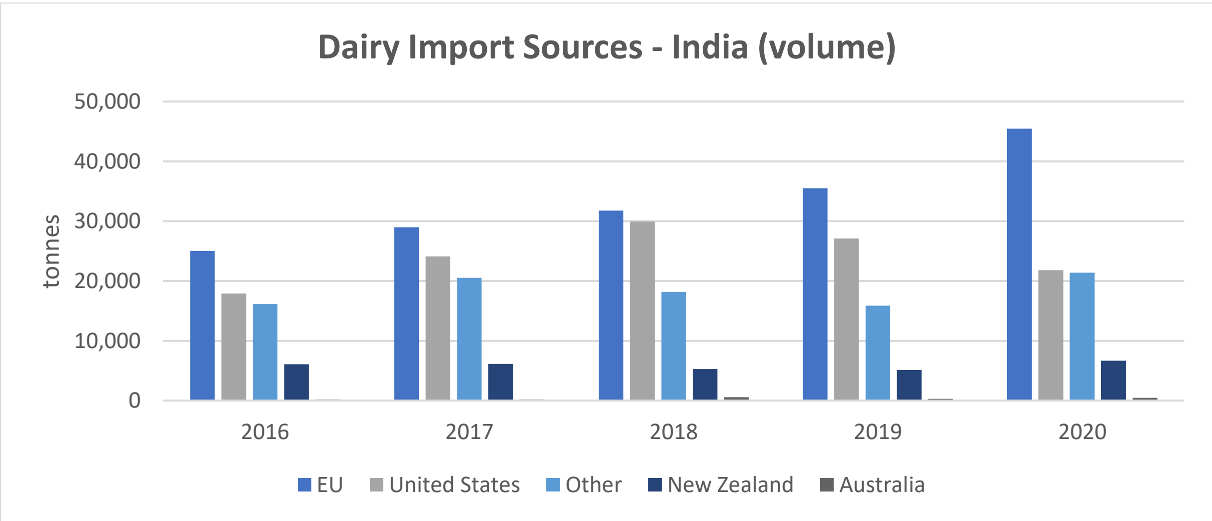
Therefore, under an 'early harvest' or interim agreement, Australian dairy seeks the equivalent access to the Indian market as ASEAN members. In addition to this and to hedge against a comprehensive agreement not being concluded, Australian dairy also seek specific quotas for concentrated milk and cream products (excluding skim milk powder), whey powder, butter and dairy spreads and other cheese (0406.90). These products would be prioritised in recognition of India's sensitivities, but also reflect Australian dairy's key priorities.

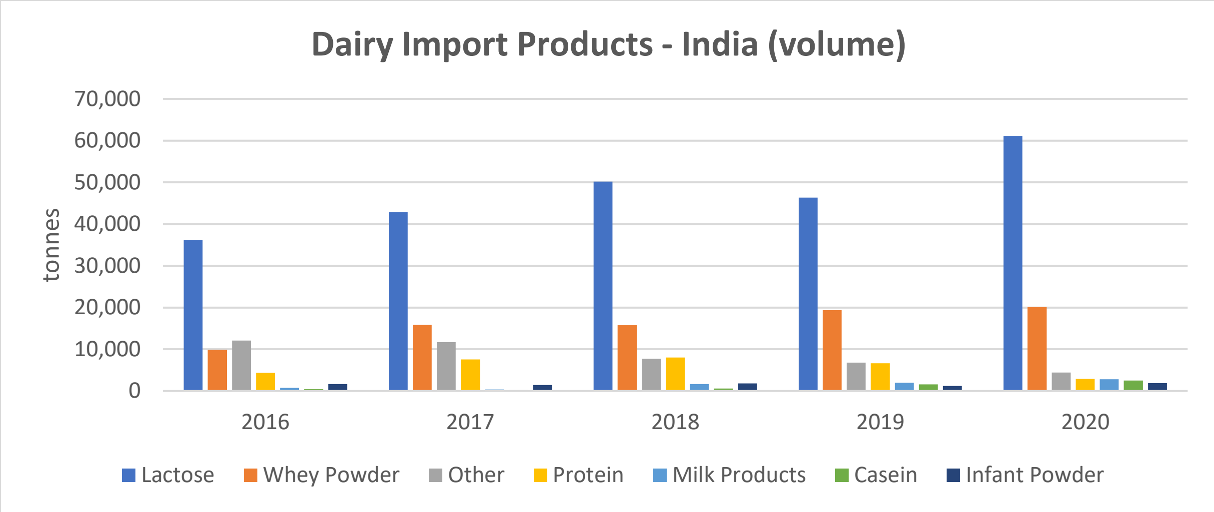
The Indian Dairy Market

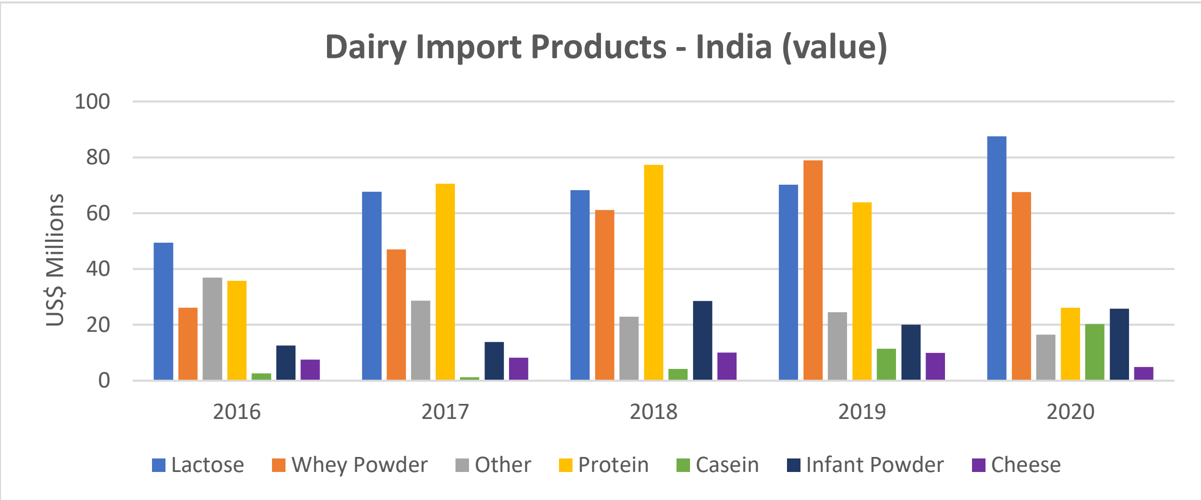
India is the world's largest dairy producer with raw milk production split roughly 50:50 between cow and buffalo milk. India is also a huge dairy consumer with the vast majority of dairy production used internally. Total imports of dairy products into India have grown rapidly in the last few years, reaching 95,000 tonnes in 2020 surpassing the previous peak of 80,000 tonnes in 2011. Total values of dairy products imported into India have fluctuated between US$150 million and US$250 million over the last 10 years. The major suppliers of dairy products into the Indian market are the USA, Germany, France, Netherlands and Turkey. New Zealand ranks 6th as a supplier while Australia does not appear in the top 10.

India is a marginal importer of most dairy products – such as butters, fats, cheese, liquid milk and yoghurt. The major import categories by volume are lactose and whey powder. India is also an occasional importer of milk powder, particularly skim milk powder (SMP) when domestic production fails to meet domestic market demand. This situation typically occurs due to reduced domestic production caused by adverse climatic conditions (e.g., poor monsoonal rainfall). This happened most recently in 2010, 2011 and 2012. Since 2013 India has been a net exporter of SMP.

Imports and exports of milk powders (especially SMP) are tightly managed by the Indian Government to prevent price manipulation. When viewed in terms of value the key import categories are lactose, whey powders, protein concentrates, infant powders and casein/caseinates. Applied Most Favoured Nation (MFN) import tariff for these products entering India range from 20 per cent to 40 per cent. Dairy products in general face significantly high tariffs in the Indian market with the average applied tariff being 33 per cent whilst the average WTO bound rate is 82 per cent.







Australia's Dairy Trade with India

India is a market with significant future potential for Australian dairy. While current trade flows are minimal and India is a highly restrictive market, this will likely change in the years ahead. Demand for dairy is expected to grow due to population growth, combined rising incomes and a relatively high proportion of vegetarian consumers for whom dairy is an important source of protein.

While per capita consumption of fresh dairy products is more than five times the global average, per capita consumption of processed dairy products is a third lower than the global average. Additionally, it is projected that almost half of India's population will be living in urban areas in the next 10 years where demand for processed dairy is also expected to grow. This will present challenges to the local industry to supply, without significant investment in cold chain distribution.

Considering the challenges facing the Indian dairy industry to meet the expected growth in demand, Australian dairy can be viewed as a complementary partner. In terms of capability, product range and industry expertise, Australia is world class and stands well placed to help supply high value inputs and knowledge to India, assisting Indian food processors to move up the value chain, and meet the growing demand for processed dairy food products. India also has potential to become a regional hub for food manufacturing. Australian companies are well positioned and to supplying high specification inputs for products destined for international markets as they have higher requirements in terms of quality.

In 2020, Australia exported $1.5 million worth of dairy products, mainly whey powder, lactose and protein concentrate, to India. Over the last several years these products have formed the majority of Australia's exports to India, though over the longer-term whole milk powder (WMP), skim milk powder (SMP) and processed and semi hard cheese have had periods of relatively high exports, generally as result of supply shortages in the Indian market. In 2010 Australia exported US$40 million of SMP and US$1 million of WMP to India. This was followed in 2011 with US$36 million in SMP exports and US$10.6 million in WMP exports. Since these two exceptions, Australia has exported just over US$100,000 of combined SMP and WMP exports to India. The exports of these two product categories are highly sensitive and market access is very much dependent on the internal circumstances of the Indian market.

Looking at other products over the last five years in the chart below, there's been significant growth (off a small base) in Australia's exports of whey powder to India, accompanied by periods of notable exports of cheese, protein, and lactose. All these products face significant tariffs, with lactose facing 25 per cent, cheese 30–40 per cent and whey powder facing a 40 per cent tariff.

Australian Dairy is well placed to support the Indian Dairy Industry to further develop its capabilities across a range of areas

The Australian Dairy Industry already has a history of long-term support for the Indian Dairy Industry through R&D collaboration. This collaboration will only expand with the introduction of meaningful market access and enhanced trading of product between our respective economies. Examples of collaboration between the Australian and Indian Dairy Industries include:

- Indian Delegation Dairy Study Tours 2017 onwards
  - Over 50 dairy professionals representing 18 dairy-producing states in India have visited GoTAFE (Goulburn & Ovens - Wangaratta).
  - Indian Dairy professionals have learned about:
    - Input factors - fertility, genetics, breeding and nutrition
    - Farm management - animal health and welfare
    - Supply chain logistics - infrastructure, shelf life, refrigeration

- Train the Trainers (2018)
  - Partnership facilitated by Austrade between TAFE SA and Parag Milk Foods
  - The program aimed to help Indian dairy companies improve animal productivity and best practices for breeding, feeding, husbandry and management.

- Green Grass Dairy Training - Dairy farmers in Kerala (2018)
  - Green Grass Dairy Training in Tasmania secured a $150,000 Australia-India Council (DFAT) grant dairy farmer training from Kerala.
  - Project aimed at bringing Australian expertise to local dairy farmers in India to increase the profitability of their farms by applying modern practices.

- UQ Genomic Selection Tech Project (2018-2022)
  - With support from the Bill & Melinda Gates Foundation, University of Queensland researchers are assisting smallholder milk producers in India with artificial insemination-based breeding technology.

- Veterinary training program for National Dairy Development Board (2018 – ongoing)
  - The project delivered training on animal welfare and productivity improvement to officials from NDDB.
  - The course aims to improve farm management (especially for smallholder farms), improve animal health, and determines the importance of feed ratio inputs for better nutrition and productivity.

- Mitigation technologies for heat stress in farm animals (2019 – 2020)
  - Series of workshops delivered by the University of Melbourne to share research, technologies and training specifically to mitigate for heat stress in farm animals.

Improved market access could unlock the Indian market for Australian dairy.

Under the AI-CECA, Australian dairy industry is seeking commercially tangible liberalisation of the trade in all dairy products (sub-chapters 0401 to 0406, 1701, and 3501 and 3502) and dairy ingredients included in infant formula, food preparations et al (chapters 18, 19 and 21).

Commercially tangible liberalisation should include:

- A phase out period for tariffs in a commercially feasible time frame.
- Substantive annual compound increases in any quotas until phase out of tariffs.
- Addressing NTB's from a sound science perspective; and
- Transparency that embraces predictability in quota administration during the transition period to free trade.

Recognising the staged approach to negotiations and the heightened sensitivities surrounding dairy, particularly liquid milk, skim milk powder and ghee/butter oil in India, the Australian dairy industry recommends that market access for less sensitive dairy product categories be included in any interim or 'early harvest' agreement, with a view to full liberalisation being achieved in any further comprehensive agreement. Additionally, the dairy industry would expect that any interim agreement that Australia concludes with India would not be overtaken from a market access perspective by a competing trading partner. Therefore, the Australian Government should explore the option to include an MFN clause tied to market access outcomes, ensuring that no subsequent bilateral deal that India concludes with a third country is able to get a more advantageous outcome.

Dairy's priorities from an 'Early Harvest'/ Interim agreement

India has provided enhanced market access for select FTA partners across a range of dairy product categories, including South Asian Free Trade Area members[1], ASEAN, Korea and Japan. In particular the ASEAN-India free trade agreement, which entered into force in 2010, provides a guide to India's possible, though limited, liberalisation ambition.
The ASEAN-India FTA liberalises market access for: yogurt, some cheeses, butter milk powder, milk protein concentrate, whey protein concentrate, casein and caseinates, noting that HTS classification of some of these products is outside of the dairy 'chapter'. The ASEAN-India FTA highlights where Indian sensitivities on dairy market access lie, though lacks ambition and needs to be viewed in the context of Australian dairy being a complementary partner in the development of the Indian sector rather than a competitive threat. The Australian Dairy Industry proposes that for the interim agreement Australia receives equivalent access to what India has provided ASEAN with the addition of duty-free access across four tariff rate quotas (TRQs) for other cheese (0406.90), butter and dairy spreads (0405.10, 0405.20) though excluding ghee and butter oil (0405.90), whey powder (0404.10) and concentrated milk and cream products (0402) excluding skim milk powder (0402.10.10). These TRQs target product categories of significant importance for Australian exporters but are also cognisant of India's sensitives regarding ghee, butter oil and skim milk powder.

Research commissioned by Dairy Australia indicates that whey powder and lactose, currently India's largest dairy imports, represent a potential entry point for Australian dairy into the Indian market, whilst establishing a commercial pathway for Australian whey stream products.

Products for tariff elimination – effectively the equivalent of ASEAN access

Yoghurt (0403.10), Buttermilk (0403.90), Cheese (0406 excluding other cheese 0406.90), Ice cream (2105)

- Current applied MFN tariff is 30 per cent across these categories.
- ASEAN has duty free access.
- The Australian dairy industry seeks duty free access on EIF.
- If duty free access is not possible on EIF a four-year phase in (as received by ASEAN) should be provided.

Whey protein concentrate and protein blends (0404.90)

- Current applied MFN tariff is 40 per cent.
- ASEAN has duty free access.

[1] Afghanistan, Pakistan, Sri Lanka, Bangladesh, Bhutan, Nepal, Maldives

- The Australian dairy industry seeks duty free access on EIF.
- If duty free access is not possible on EIF a four-year phased tariff reduction (as received by ASEAN) should be provided.

Lactose (1702.11)

- Current applied MFN tariff is 25 per cent.
- ASEAN has duty free access.
- The Australian dairy industry seeks duty free access on EIF.
- If duty free access is not possible on EIF a four-year phased tariff reduction (as received by ASEAN) should be provided.

Chocolate and other preparations in containers exceeding 2 kg (1806.20) and beverages containing milk (2202.90.30)

- Current applied MFN tariff is 30 per cent across these products.
- ASEAN has duty free access.
- The Australian dairy industry seeks duty free access on EIF.
- If duty free access is not possible on EIF an eight-year phased tariff reduction (as received by ASEAN) should be provided.

Food mixtures - Infant formula for retail sale (1901.10)

- Current applied MFN tariff is 50 per cent.
- ASEAN has duty free access.
- The Australian dairy industry seeks duty free access on EIF.
- If duty free access is not possible on EIF a four-year phased tariff reduction (as received by ASEAN) should be provided.

Food mixtures - other (1901.90)

- Current applied MFN tariff is 50 per cent.
- ASEAN has duty free access.
- The Australian dairy industry seeks duty free access on EIF.
- If duty free access is not possible on EIF an eight-year phased tariff reduction (as received by ASEAN) should be provided.

Casein, caseinates and other casein derivatives (3501) and peptones (3504)

- Current applied MFN tariff is 20 per cent.
- ASEAN faces a 5 per cent tariff.
- The Australian dairy industry seeks the equivalent (5 per cent) on EIF.
- If duty free access is not possible on EIF an eight-year phased tariff reduction (as received by ASEAN) should be provided.

Milk albumin (3502)

- Current applied MFN tariff is 20 per cent.
- ASEAN has duty free access.
- The Australian dairy industry seeks duty free access on EIF.
- If duty free access is not possible on EIF a four-year phased tariff reduction (as received by ASEAN) should be provided.

Chapter 4 Product Specific Tariff Rate Quotas (TRQs)

Australian dairy is seeking the following TRQs in addition to the equivalent market access that India provided ASEAN members.

1. **Concentrated Milk and Cream Products (0402) excluding skim milk powder (0402.10.10)**
    - Quota volume of 10,000 tonnes on EIF with an annual Compound Growth Rate (CAGR) of 5 per cent over 10 years, resulting in a lasting duty-free quota of 16,290 tonnes.
    - Alternatively, if duty free within quota is not possible an in-quota tariff of 30 per cent from EIF, with in quota tariff reduction to 0 per cent staged over a 5-year period.
    - Current applied MFN tariff is 60 per cent.
    - Note that the Australian Dairy Industry recognises India's acute sensitives regarding skim milk powder and therefore is not seeking improved market access for that product at this stage.

2. **Other cheese (0406.90)**
    - Quota volume of 15,000 tonnes on EIF with an annual Compound Growth Rate (CAGR) of 5 per cent over 10 years, resulting in a lasting duty-free quota of 24,160 tonnes.
    - Alternatively, if duty free within quota is not possible an in-quota tariff of 15 per cent from EIF, with in quota tariff reduction to 0 per cent staged over a 5-year period.
    - Current applied MFN tariff is 30 per cent.
    - Note under the ASEAN -India FTA, India provided ASEAN with liberalised access for cheese except for other cheese (0406.90). The category other cheese (0406.90) includes hard and semi-hard cheeses such as cheddar and gouda, which are important export products for the Australian dairy industry.

3. **Whey powder (0404.10)**
    - Quota volume of 2,000 tonnes on EIF with an annual CAGR of 5 per cent over 10 years, resulting in a lasting duty-free quota of 3,260 tonnes.
    - Alternatively, if duty free within quota is not possible an in-quota tariff of 20 per cent from EIF, with in-quota tariff reduction to 0 per cent staged over a 5-year period.
    - Current applied MFN tariff is 40 per cent.

4. **Butter and dairy spreads (0405.10, 0405.20)**
    - Quota volume of 2,000 tonnes on EIF with an annual CAGR of 5 per cent over 10 years, resulting in a lasting duty-free quota of 3,260 tonnes.
    - Alternatively, if duty free within quota is not possible an in-quota tariff of 15 per cent from EIF, with in-quota tariff reduction to 0 per cent staged over a 5-year period.
    - Current applied MFN tariff is 30 per cent.
    - Ghee and butter oil are explicitly excluded from this request highlighting India's sensitives regarding these products.
    - Note that Australian butter (from grass fed cows) will exhibit a different appearance, taste and texture to Indian domestic butter (from cow and buffalo milk). It would therefore not compete directly with locally produced product.

Measures supporting commercially meaningful market access from EIF

Safeguards

The industry is opposed to either volume or value safeguards in CECA that are designed to place controls, for example higher tariffs, on any perceived surge in dairy product (or agricultural per se) imports. The risk of imposition and the associated higher tariffs resulting from triggering of safeguards can exacerbate the cost and risk associated with doing business. The impact can also be apparent in the medium-term as the possibility of imposition of safeguards can discourage the development of marketing plans by dairy processors and ingredient end-users.

Commercially meaningful TRQ's, with zero in quota tariff in the transition period to the elimination of tariffs, provide both a confidence level for domestic dairy interests and a certainty on import volumes for exporters and importers.

Regulatory Cooperation and Coherence

Dairy food safety and animal health and welfare are major issues for consumers, regulators and the dairy sector in India and therefore contain the potential to spill over into the trade space with the imposition of non-tariff trade barriers, if not addressed in a transparent and from a sound science-based approach. Measures to promote regulatory cooperation (and coherence), including cooperation between 'standards' agencies in Australia and India to address behind the border measures in a consistent and sound science-based manner.

Regulatory cooperation principles are suggested as:

- Meeting health and food safety standards that are based on sound science noting that milk production systems differ between nations.
- Non-discrimination between domestic and imported goods in accordance with GATT Article II (national treatment).
- Transparency of processes in developing regulations and in implementing regulations.
- Achievement of the most efficient trade enhancing and least trade restricting outcome via TPP wide adoption of guidelines (see below) to regulation.
- 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.

To achieve the principles the following guidelines are recommended:

- Consistent application of internationally agreed standards, where they exist.
- Consistent application of Codex standards along the dairy supply chain, where they exist.
- Accountability to Codex or other relevant international standards.
- Timely implementation, that is avoiding unnecessary delays that can impede dairy trade and be administratively burdensome; and
- Explicit statement of the principle that regulatory coherence is intended to reduce complexity of regulations relating to trade and to increase the transparency of NTB's to trade.

An option is the inclusion of a dispute resolution process within the regulatory coherence chapter as a quicker and more efficient version of the usual dispute settlement process. The industry believes, though, that the most effective approach is to reach agreement including on timely implementation of regulatory coherence issues without any formal dispute settlement process.

Rules of Origin (ROO)

ROOs are also restrictive in India's free trade agreements including change in tariff classification (CTC) and regional value content (RVC).

The industry favours a liberal (trade facilitating) approach to ROO's, namely:

- A de minimis of ten per cent of the value of goods within chapter four of the HTS and those food preparations containing a substantial volume and/ or value of dairy ingredients. In the absence of de minimis for dairy, tariff preferences either in transition or at zero duty would not apply as many dairy products could include non-originating chapter four ingredients (see comment below); and
- Change of Tariff Classification (CTC) to reflect the substantial transformation, conferring origin that has occurred at the HTS six-digit level.

The ROO's approach on de minimis reflects the commercial reality arising from the growth of regional exporting hubs. India could become the (dairy) food processing hub of South Asia if dairy trade liberalisation is commercially meaningful and that in turn facilitates access to evolving global supply chain sources.

For example, Australian based processors:

- Source lactose, whey powder and whey protein concentrate (WPC) from the EU and USA.
- Use specialty ingredients such as vitamin mixes or oils sourced from outside the Pacific Rim (both are important in the manufacture of infant formula).
- Sometimes the source is specified by the customer or there may be few global suppliers.
- These ingredients can comprise up to 50 per cent of the final product on a volume basis; and
- Processors standardise production using imported permeates/additives for example lactose and as mentioned above important supply sources are the EU and USA.

Sanitary and Phytosanitary (SPS)

Adherence to the WTO's Agreement on the Application of Sanitary and Phytosanitary Measures.

Export competition

Export subsidies and export credits are prohibited in both direct trade and through third countries, for example blending of ingredients for food preparations in Singapore.

Technical Barriers to Trade (TBTs)

Adherence to the WTO's Agreement on Technical Barriers to Trade. In addition, a mechanism be set up to address agricultural technical barriers to trade in the CECA negotiations.

Tariff Rate Quota administration

If dairy product quotas are a transitional outcome of CECA negotiations the industry's preferred option is for administration by the Australian Government.

Customs clearance

Improving supply chain competitiveness through adopting Custom's procedures that contribute to the quick transit of goods and thereby fostering the participation of small and medium sized enterprises in bilateral trade.

A self-declaration of origin approach (DOO) is preferred over the certificate of origin approach. This allows processors and exporters to deal directly with Customs and end-users and not through a third party that comes with additional costs, enabling the DOO to accompany the commercial documents (invoices).

Investment protocols

The Australian Dairy Industry has benefited from overseas investment for well over one hundred years. Direct foreign investment has enhanced supply chain competitiveness by delivering sophisticated (state of the art) equipment, enhanced technical skills that improve product quality and innovation and progressive management practices.

Trade and investment go hand-in-hand. Consequently, investment clauses are sought in CECA to encourage a mutually beneficial two-way flow noting that the general exemptions of GATT Article XX should apply including preventing the adoption or enforcement by any contracting party of measures necessary to protect public morals; to protect human, animal or plant life or health and relating to the conservation of exhaustible natural resources.

Conclusion

ADIC and Dairy Australia would be happy to provide additional background or technical detail on all these requests as may be required.

Yours sincerely,

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