

Response to

Intellectual Property Arrangements – Draft Report

Productivity Commission

Prepared by Dairy Australia

Contact

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The Australian Dairy Industry

Dairy Australia welcomes the chance to present this submission in response to the Productivity Commission's *Intellectual Property Arrangements – Draft Report*.

Dairy Australia is the dairy industry-owned service company, limited by guarantee, whose members are farmers and industry bodies, including the Australian Dairy Farmers, and the Australian Dairy Products Federation

Australian dairy is a \$13 billion farm, manufacturing and export industry.

Australia's 6100 dairy farmers produce around 9.7 billion litres of milk a year.

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.

Our industry has the potential to grow substantially over the next decade to meet growing domestic and international demand.

Realising this growth potential and expanding the industry's economic, social and environment benefits depends on a positive national and international operating environment.

Our interest in Intellectual Property

The dairy industry supports the need for a national Intellectual Property (IP) system that balances the rights of IP holders and users. IP arrangements should incentivise investment in innovation that would not otherwise occur, while allowing for follow-on innovation, competition and access to goods and services.

IP arrangements in Australia provide a range of benefits to the Australian dairy industry.

Patents facilitate the development of new veterinary medicines, agricultural chemicals, investment in relevant animal and plant biotechnologies and new dairy food processing and development technologies.

Plant Breeders Rights facilitate the development of new improved pasture and crop varieties.

Trademarks enable dairy businesses to distinguish particular goods and services from others.

Geographical Indications (GIs) are a form of trademark that identify the origin or source of a good or service. GIs can serve as a useful IP tool to protect the rights of truly specialised products that possess a strong tie to a single geographical region.

However the dairy industry is concerned that where major trading partners grant excessive rights for GIs, Australian dairy products are disadvantaged in global markets.

Trade impacts of Geographical Indications (GIs)

- The dairy industry is concerned about constraints on trade arising from the IP provisions in some international agreements. Going beyond the obligations of the WTO TRIPS agreement, IP provisions can run counter to the best interests of Australian dairy—in particular, where excessive rights for GIs on dairy products have been granted or extended, inhibiting competition and causing confusion for consumers.
- While the Australian dairy industry supports the level of GI protection afforded by the WTO TRIPS agreement, the EU is aggressively pursuing a stronger-form GI agenda both domestically and internationally. For example, trade of Australian cheese runs the risk of being seriously disadvantaged by the European practice of granting excessive GI rights to common cheeses and then negotiating trade agreements that limit the trade of that cheese from any other geography.
- The Productivity Commission example of EU-granted GI rights on ‘feta’ cheese and its impact on Australia’s ability to export to Korea is well made (p. 352). While EU-granted GI rights apply to the EU market in the first instance, this precedence for restriction to third party trading rights is concerning.
- Dairy Australia would welcome further analysis by the Productivity Commission of the impacts of dairy product-related GIs on Australian dairy. We can provide further examples of EU GIs effecting trade restrictions as required, along with our formal statements of opposition to proposed registration of GIs within the EU (our most recent being against the GI proposed for ‘Haloumi’ by Cyprus, which would impact all Australian ‘Haloumi’ cheese entering the EU).
- The Productivity Commission consideration of a ‘panel of experts’ appointed to maintain a watching brief on emerging IP issues (p. 447) could additionally be tasked with examining global GI impacts on all sectors of Australian businesses further.
- Dairy Australia suggests that Australia’s policy around GI rights be further clarified to ensure access for our dairy products in key export markets is assured.
- Accordingly, Dairy Australia supports the Productivity Commission’s argument for a more strategic and coherent approach to the negotiation of IP provisions in international treaties and trade agreements, to ensure they are in the best interests of Australia’s export-focused dairy sector.
- Dairy Australia supports draft finding 16.1, that model IP agreements would make transparent to all stakeholders Australia’s ideal outcomes from an international treaty. In relation to 16.3, the features of any model would have to ensure that GI protection avoids going beyond the arrangements set out in TRIPS and meets domestic competition policy principles.
- Dairy Australia also supports draft recommendation 17.1; that promoting truly global cooperation on intellectual property policy—preventing a select few countries dominating the landscape—would best serve Australian businesses and consumers.
- **While the Australian wine industry may have come to terms with GIs directed by Europe, GIs present the dairy sector with formidable barriers together with wide global trade ramifications.**