

Response to

**Intellectual property arrangements –
Issues paper**

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 Issues Paper on Intellectual Property Arrangements.

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.

Over 6000 dairy farmers produce around 9.7 billion litres of milk a year.

The Australian dairy industry directly employs nearly 40,000 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.

Response to issues paper

Dairy Australia recognises that intellectual property arrangements have a range of impacts on the dairy industry, including in the areas of trademarks, plant breeders rights and gene technology.

Innovation across the supply chain will continue to be critical for the Australian dairy industry and we acknowledge the importance of effective international property arrangements in supporting a profitable, sustainable and productive future.

Noting that we may have further comment on these areas when more detail is provided in future consultation rounds, our initial comments are restricted to geographical indications (GIs) as a priority area in which our industry has extensive experience.

Geographical indications

As an export oriented industry trading around 40% of what we produce, access to international markets for high value Australian dairy products is a key concern for the Australian dairy industry. Our experience with GIs in both domestic and international markets, particularly in relation to specialty cheeses, has identified a number of issues related to GIs.

The Australian dairy industry understands that properly constructed GIs can serve as a useful intellectual property tool to protect the rights of truly specialized products that possess a strong tie to a single region.

- The Australian dairy industry therefore continues to support the level of protection afforded by the WTO TRIPs agreement for as it stands for GIs.
- The industry believes that Australia meets its international obligations through existing Australian IP arrangements and provides adequate protection for both domestic and international users of GIs.

However the industry has become increasingly concerned that Australia's trading partners have sought to push the scope of protection for GIs beyond the realm of appropriate protection of product niches in order to try to appropriate for themselves many cheese names that are commonly used around the world, including in international trade.

There is no recognition in this push that food cultures and foods - that may trace their origins to a geographic location - are now enjoyed and made globally as a result of emigration, trade and tourism. Many food names have become generic and are commonly used to describe food products. Further innovations build on these generic products and rely on a common understanding as to what the original product is that is impeded by overly protectionist GIs systems.

This is a problem as Australian dairy exporters have faced barriers to trade in countries that have implemented GIs systems. The effect of this can be that:

- Australian producers are prohibited from marketing products using names that previously had been completely lawful, receiving no compensation.
- Moreover, the popularity of certain foods may not even be attributable to GI rights holders and may have been established by other producers. If exclusive use of terms is granted – essentially retrospectively – it privileges one set of producers, unfairly over another and amounts to expropriation.
- Changes in naming rights have led to confusion in the minds of consumers. Unlike wines or spirits, there are no alternative or appropriate dairy product descriptors that would clearly indicate to the consumer what the product is.
- Exporters may not be able to access markets at all, as use of tariff concessions is only available to GIs rights holders, thereby not upholding the long held WTO principle of MFN.

Accordingly, the industry has not supported the extension of WTO TRIPs Article 23 style of protection to food stuffs or other goods beyond wine and spirits, nor the adoption of a *sui generis* GIs system of protection in Australia.

We are aware that the multilateral negotiating process is being sidelined by bilateral and pluri-lateral trade negotiations regarding GIs.

- Some bilateral arrangements entered into by Australia's trading partners are affecting our exporters as third parties and restricting our export potential.
- Other agreements, for example the TPP, have also provided opportunities to engage with likeminded parties and will be able to provide welcome, if limited, clarity.

Given the barriers which Geographical Indications have placed on Australian exporters, within the international context, the industry will continue to seek:

- Improved rights and guarantees for those parties lawfully using common or generic names including:
 - The establishment of Common names list that is based on clear and consistent definitions of the concept, and, clearly articulates the terms that are generic and can be freely used
 - Reference points for common names, for example. Codex Alimentarius, global production levels, tariff schedules etc.
- Limiting the scope of protection for GIs rights holders such that:

- application of GIs to production from a particular geographical location such as a region or sub region, and not a whole country
- Original language (or transliteration) protection only and not extending the protection to translations
- Protection of a GI only as compound name with a geographical component
- No single term registrations
- The common name portion of GI remains available for wide-spread use.
- Clear objection procedures that are open to any interested party

The dairy industry's experience should inform any further work the Productivity Commission wishes to do on GIs as part of the review of intellectual property arrangements, and Dairy Australia is happy to provide further detailed information as part of the consultation process.