Australian Dairy Industry

Represented by the

Australian Dairy Industry Council Inc. and

Dairy Australia

Submission regarding

Regional Comprehensive Economic Partnership (RCEP) Agreement

May 2017

About the Australian Dairy Industry Council

The Australian Dairy Industry Council (ADIC) is the dairy industry's peak policy body. It co-ordinates industry policy and represents all sectors of the industry on national and international issues through its two constituent bodies; Australian Dairy Farmers Ltd (ADF) and the Australian Dairy Products Federation (ADPF). The ADIC aims to foster, promote and protect the interests of the Australian dairy industry by driving a whole of industry approach to dairy policy and its development.

About Dairy Australia

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 can't be done efficiently by individual farmers or companies.

Dairy Industry is a major economic contributor in regional Australia:

The dairy industry is one of Australia's major rural industries. Based on farm gate value of production, dairy is ranked third behind the beef and wheat industries. There are approximately 6,100 farms producing an estimated 9.539 billion litres of milk in 2015-16. The dairy industry is one of the leading rural industries in terms of value adding, contributing $13.7 billion at wholesale to the economy. Approximately 38,000 people are directly employed on farms and in dairy manufacturing. Dairy processing and service industries are largely based in rural areas, generating significant employment and economic activity in regional Australia.

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Key points:

- The RCEP region currently contains two dairy import powerhouses, namely China and ASEAN:
    - India has the potential to become a significant, regular importer
    - South Korea has considerable growth potential and
    - Japan offers opportunities for displacement of domestic origin

- RCEP nations collectively are the most important dairy import region with the largest growth potential

- RCEP nations are collectively milk-deficit. This situation is unlikely to change meaning the growth in demand is expected to be largely supplied by imports

- The Australian dairy industry is well positioned to share in this growth with an established track record of supplying high quality, innovative dairy products to the RCEP countries

- The competitive environment is intensifying for dairy trade, reflected in an increasing focus by US and EU milk processing companies on exporting as a major component of their respective growth strategies

- Profitable growth in trading opportunities is contingent, though, on an RCEP agreement delivering commercially meaningful gains in market access from entry into force (EIF):
    - This will enable Australian origin to gain a competitive advantage over two of its three main rivals (EU and US); New Zealand, the leading exporter, being the exception

- Commercially meaningful gains address the two major influences on the profitability of trade:
    - Removal of all tariffs and quotas to trade within a short period and
    - The establishment of a systemic approach to resolving, in a trade facilitating manner, behind the border (non-tariff) barriers with sound science and international standards as guiding principles

- RCEP if properly constructed has the potential to set the template for an Asia-Pacific agreement (FTAAP)

- A genuinely liberalising outcome for dairy from EIF would provide a strong stimulus to trade, realising an estimated export revenue gain of around $225 million per annum:
    - Once RCEP is fully implemented

The Australian Dairy Industry Council and Dairy Australia welcome the opportunity to submit.

Introduction:

This second submission complements the first submission to DFAT dated 5th April 2013 through adding more detail on Industry policy positions.

The content of the submission supports the goals of economic integration, equitable economic development and strengthening economic cooperation among the participating countries.

The Industry in its submission draws upon the Guiding Principles, especially 2. "… significant improvements over the existing ASEAN+1 FTAs …" and 3. "… include provisions to facilitate trade and investment and to enhance transparency in trade and investment relations between the participating countries, as well as to facilitate the participating countries' engagement in global and regional value chains".

Commercially meaningful liberalisation of dairy trade from EIF benefits consumers.

Dairy Industry policy position:

A genuinely liberalising RCEP agreement involves agriculture and specifically dairy at the heart with zero carve outs for 'sensitive' products.

A plurilateral approach is essential:
The Industry supports a plurilateral approach to the goods negotiations, thereby creating a single tariff schedule that creates a unified, coherent structure for dairy trade within the RCEP region.

Transparency is also essential:
Transparency is of fundamental importance in the negotiations, including consultations with stakeholders. The Industry, noting the substantial commitment of resources and complexity of negotiating an agreement between sixteen countries seeks the conclusion of negotiations encompassing an ambitious goods and services outcome by end 2017.

Regional value chains:
The participation of small and medium sized dairy enterprises in the trade opportunities created by RCEP is an important Industry goal. Mechanisms need to be established in RCEP that enhance the expansion and functioning of regional value chains, including on regulatory cooperation and liberal ROOs: refer to sections below.

MFN clause:
In light of the rapid expansion of bilateral and regional trade agreements and the ambitions of major economic powers to establish preferential access rights, an MFN clause, covering all dairy products and food ingredients is considered to be an essential component of an agreement. This would preserve a level playing field on market access for Australian origin dairy products.

Systemic approach to NTBs:
The plethora of NTBs is a larger burden, than tariffs and quotas, on the profitability of exporting dairy products from Australia and therefore acts as a disincentive to trade.

In light of the parallel tracks that RCEP and IA-CEPA negotiations are on and depending on respective progress, the Industry considers it of the upmost importance that a coordinated policy approach be taken by Australia in both negotiations for the purpose of establishing a systemic approach to resolving NTBs.

A systemic approach is an essential complement to zeroing tariffs and removing quotas.

Sanitary and Phyto-sanitary (SPS):
The AANZFTA agreement is an acceptable template for RCEP including Article 11 non-application of the chapter dealing with 'Consultations and Dispute Settlement', supported by the addition of the following text from the TPP agreement, namely:

- Article 7.12 section 7 promoting the implementation of electronic certification and other technologies to facilitate trade
- Article 7.10: Audits
- Article 7.11: Import Checks and
- Additional measures to those in AANZFTA as outlined in articles 7.13: Transparency and
    - 7.14: Emergency Measures; as amended for the purposes of facilitating bilateral trade

Food security, a major issue for many RCEP nations, is best addressed by removing tariff and non-tariff barriers to trade in the region so as to encourage development of market responsive and efficient food supply chains, including for dairy.

Raising the ability of countries to produce food is best achieved by economic cooperation (capacity building programs) rather than via the disguised protectionism of before and beyond the border measures that are neither science based nor in line with international standards.

Trade negotiation environment:
An ambitious RCEP outcome on goods market access covering all agricultural and industrial sectors; a transparent and sound science based approach on non-tariff measures; regulatory cooperation that creates a mechanism for addressing and resolving NTBs and an over-arching goal of substantive improvement and modernisation of existing bilateral and regional trade agreements is essential to rebuilding trust in trade liberalisation as an integral component for sustainably creating jobs and prosperity.

Additional benefits from trade liberalisation: dairy services and investment

RCEP offers the opportunity to grow dairy services and to tap into the Industry's expertise in research and development to assist in growing the productivity and profitability of indigenous dairy and food supply chains.

Important areas where Australia has expertise include cattle breeding, farm management, milk quality, dairy processing, cold supply chain, sustainability and environment, animal welfare, energy and water conservation, skill development in the farm and factory workforce, innovative dairy ingredient applications for the food service and retail sectors and dairy marketing.

This knowledge can be used to improve the productivity (cow yield, animal husbandry, breeding, feed quality, identification and treatment of diseases and diffusion of technology) and organisation of milk marketing in RCEP nations which in turn creates the conditions for raising the price that farmers receive for their milk.

The Australian Dairy Industry has prospered 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 adoption of progressive management practices.

Trade and investment go hand-in-hand potentially creating a double gain for the Industry. Consequently investment clauses are sought in RCEP 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 deemed necessary by respective governments to protect public morals; to protect human, animal or plant life or health and relating to the conservation of exhaustible natural resources.

Increasingly movement of people is also tied with trade and investment as they deliver technical skills, business acumen and relationships. The Industry supports an agreement that allows for the movement of natural persons into a country in order to supply a defined service.

Why improved market access is important: seizing the opportunities from growth in dairy trade

The trading environment is becoming more competitive as a result of the plethora of preferential access arrangements and the increased focus of both the EU and USA, numbers two and three in share of dairy trade in 2016.

Dairy processors in the EU and USA view trade as a means of creating growth and profitability. In view of their respective large export availability and the ability to respond quickly to trade opportunities, RCEP offers a major opportunity to improve Australia's competitive position.

Dairy product tariff lines advocated for RCEP wide elimination cover the following HTS sub-chapters:

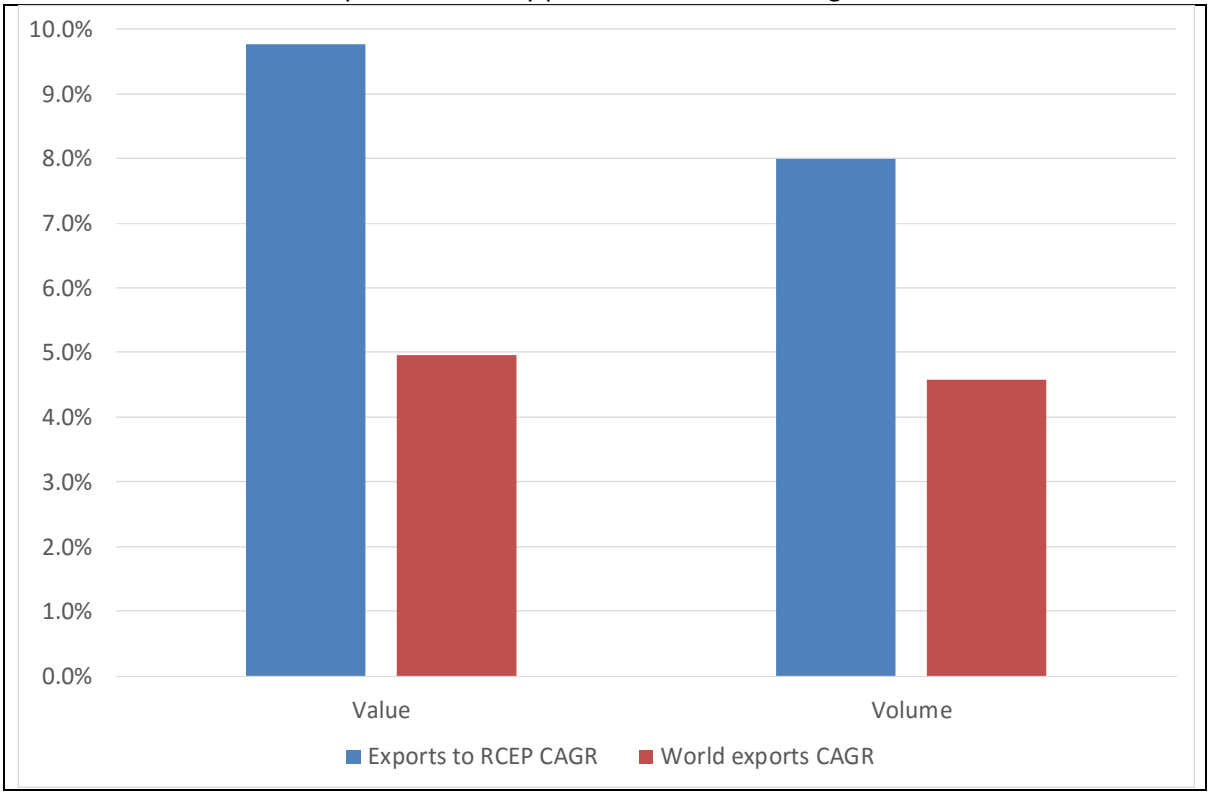
- 0401 to 0406, 1702, 3501 and 3502 and
- Foods containing a substantial to high value component of dairy including infant formula, ice cream and food preparations in sub-chapters 1806, 1901, 2105 and 2106[1]

RCEP nations, in 2016, accounted for 42.5% (6.085 million tonnes) and 49.7% (US$26.1 billion) of global dairy trade. The comparable figures in 2008 were 31.8% (3.046 million tonnes) and 33.2% (US$11.298 billion) respectively, highlighting the regions pivotal and expanding role in dairy trade[2].

From the perspective of compound annual growth rates (CAGRs), exports to the RCEP region grew, in volume terms at 1.74 times the rate of global dairy trade; 8% compared to 4.6%. In value terms the gap was more pronounced; rising at almost double the rate: 9.8% compared to 5%.

[1] Other tariff lines of potential commercial gain to Australian milk processors beverages containing milk of subheading 2202.90 and animal feeds containing over 10% by dry weight of milk solids of subheading 2309.90.
[2] In 2008 dairy commodity prices were near or at historical highs compared to being in a recovery phase in 2016 following the trough of 2014.

Chart 1: CAGRs in exports of all dairy products to the RCEP region from 2008 to 2016



By individual product the CAGRs were largely consistent, ranging between 6% (cheese) and 7.9% (infant formula) with the exception of milk (15.6%) – refer to Table 1.

Table 1: dairy exports by major product group: tonnage CAGRs from 2008 to 2016

	Exports to RCEP	Exports globally	Factor of: RCEP versus global
Butter	7.2%	1.0%	6.85
Butteroil	7.2%	5.0%	1.44
Cheese	6.0%	2.1%	2.83
Infant formula	7.9%	9.0%	0.88
Milk	15.6%	10.5%	1.48
SMP	7.2%	7.1%	1.02
Whey powder	7.6%	5.0%	1.52
WMP	6.7%	1.7%	3.93
All dairy products	8.0%	4.6%	1.74

The substantial percentage rise since 2008 is mainly due to the emergence of China as the largest dairy importing nation, though growth has also occurred to ASEAN destinations. Attachment I provides an overview of dairy trade in the RCEP region.

With the noted exception of India and to a lesser extent China many of the RCEP nations are highly milk insufficient and the gap between demand and indigenous supply is collectively widening over time.

The RCEP region is characterised by robust economic growth, rapid urbanisation, a growing emphasis by consumers on leading a healthy lifestyle, rising consumer and government concern about food safety and food security, an increasing population and expansion of the middle class that is willing and financially able to purchase non-traditional foods.

Milk, with its gold standard protein quality, when processed has a wide range of ingredient applications in existing and new foods especially in the wellness category, supported by dairy's tradition of product innovation. When combined with rising per capita dairy consumption and a widening milk deficit across RCEP the prospects are sound for a sustained growth in imports of dairy products.

RCEP by eliminating dairy tariffs and creating systemic approach to resolving non-tariff barriers will provide a further boost to trade and potentially create a preferential advantage for Australian origin.

Specifically:

- South-East Asia (ASEAN) is a major importer and growth is anticipated to be solid in the next decade
- Whilst China's import demand on a milk equivalent basis has likely stabilised with incremental rather than rapid growth emerging as the new norm the volume is huge
- India, largely a closed market for dairy imports has potential to grow as a regular and significant importer:
    - Demand per annum is projected to increase at a higher pace than India's milk production in the next decade; 6% compared to 4% and
    - RCEP offers the opportunity of working in parallel with CECA to prise open the door for commercially meaningful (CM) access gains
- Japan remains Australia's most valuable market and when implemented RCEP has the potential to open up new market opportunities and
- South Korea has growth potential as their dairy trade barriers are gradually being dismantled as a result of bilateral agreements; RCEP creates the opportunity of, at least, matching the most favourable preferential access offered by KORUS

Within RCEP only Japan and Singapore could be considered mature dairy import markets though both destinations offer growth prospects as a result of liberalisation through:

- More competitive supply of dairy products and in Japan's case, replacement of domestic origin and
- Growing regional affluence and expanding value chains create incentives for product innovation that in turn contain the potential to grow demand, noting:
    - Singapore is a major regional hub for dairy and food formulations

Retail and bulk[3]:

The growing sophistication of dairy trade in the western Pacific Rim has spurred processor value adding activities, including branded products and via website events such as China's 11/11. This is leading to a considerable growth in retail pack sized products.

[3] Retail is defined as less than two kilograms in pack weight.

The Industry considers it important in an RCEP agreement that commercially meaningful liberalisation of trade encompasses both retail and bulk products, with no distinction made between the two in terms of tariff treatment.

Dairy trading relationships are long established and valuable:

Australian processors have a long established track record of partnering with ingredient blenders and food manufacturers in Asian destinations through the supply of high quality, innovative dairy products. Food manufacturers in turn value add; creating jobs and wealth in respective dairy supply chains. RCEP offers the opportunity of taking this partnering to a higher and more commercially profitable level.

The Industry has made a major commitment over an extended period of time to create a preference amongst buyers for Australian origin dairy products. Anchoring this approach is developing relationships on a 'whole of Industry' basis. This has been an important component of Dairy Australia's work program since 1999; commencing with Japan and then spreading to the Republic of Korea, China and more recently to South East Asian nations.

Attachment II provides more insights on the relationship program.

Consideration is also being given to reaching out to the Indian dairy sector to develop a program aimed at building relationships along their dairy supply chain and improving the productivity and profitability of dairying in India.

Industry market access priorities – by region (ASEAN and North Asia) and India:

The following are industry access priorities. Achievement of these priorities would confer either a competitive advantage on Australian origin dairy products or level the playing field compared to the three major trade competitors; New Zealand, EU and USA[4].

ASEAN:

Cambodia:
All tariffs on dairy product or foods containing dairy ingredient are zeroed from EIF of RCEP.

AANZFTA phase's tariffs on most lines phase to zero or 5% though the phase out periods range between 2021 and 2024 and a few lines are excluded from tariff commitments, notably:

- Liquid milk is excluded from tariff commitments
- Cream: 7% tariffs reduced to 5% in 2023
- Milk powder tariff phases to 5% by 2024, except for one line, unsweetened skim milk powder (SMP) which is bound at 15%
- Yogurt: 20% tariffs in 2016 phase to zero in 2024 for 'other' i.e. not containing fruit, nuts, cocoa or flavouring matter in condensed form or to 5% by 2024 for yogurt containing fruit, nuts, cocoa or flavouring matter in liquid form
- Butter: excluded from tariff commitments and
- Cheese: fresh cheese phases to 5% in 2024, though:
    - 'Other' cheese (0406.90) that includes cheddar is excluded from tariff commitments

Indonesia:
RCEP offers the opportunity to eliminate Indonesian dairy tariffs on liquid milk, milk powders (SMP and WMP), edible (human grade), 'Other' whey and grated and powdered cheese (retail and bulk) that under AANZFTA are in place up to 2025 and beyond. The recommended date for elimination is EIF of an RCEP agreement.

The AANZFTA tariffs from 2016 onwards are fixed at 4% for all of the above dairy products.

Indonesia has the potential to emerge both as a larger dairy importer in an ASEAN context (population size and economic growth) and a major dairy importer per se, noting that its GDP comprises approximately 40% of the regional grouping. This opportunity can be overlooked in view of the challenges of entering dairy products.

Of major importance is establishing transparent mechanisms to resolve technical barriers to trade in a manner that facilitates trade. These mechanisms are addressed in the regulatory cooperation section.

The parallel track of CEPA and RCEP negotiations also offer the opportunity of leveraging off each other to achieve the best possible dairy tariff elimination schedule.

Laos:
Elimination of all tariffs on dairy products and foods containing dairy ingredients by EIF of RCEP. The AANZFTA agreement eliminates chapter four dairy product tariffs under two tranches:

- Yogurt, buttermilk, butterfat (butter and butteroil/ AMF) and all cheese varieties by 1st January 2021 and
- Liquid milk, milk powders and whey by 1st January 2024

[4] Brunei, New Zealand and Singapore are excluded as dairy tariffs are uniformly zero.

Malaysia:
Timing is of the essence in terms of market access. To deliver, RCEP must, as a transitory measure, substantially expand the TRQs on liquid milk and concurrently implement a linear elimination of the out-of-quota tariff rates in a commercially reasonable timeframe.

Both AANZFTA and MAFTA agreements perpetuate TRQs on liquid milk into 2020 and beyond. Additionally administration of liquid milk CSQs/ TRQs needs to be simplified in the transitory period so that Australian suppliers avoid having to apply for access under more than one of the trade agreements.

Myanmar:
Elimination of all tariffs on dairy products and foods containing dairy ingredients by EIF of RCEP. The assumption is that RCEP will be implemented prior to 1st January 2021.

The AANZFTA agreement eliminates chapter four dairy product tariffs in two tranches with the exceptions of evaporated milk and whey where the tariffs of 3% and 5% respectively last beyond 2025; namely:

- Liquid milk, yogurt, buttermilk, butter, ghee all varieties of cheese with the exception of 'fresh' by 1st January 2021 and
- Milk powders, whey, butteroil/ AMF and fresh cheese by 1st January 2024

The Philippines:
The country is a major importer of dairy products. Dairy tariffs are historically, low and almost all are being phased out under AANZFTA; this process concluding by 1st January 2019. The remaining two tariff lines (dairy spreads and liquid yogurt) phase to 5%. Elimination of both tariffs from EIF of RCEP is a realistic goal.

Thailand:
Through RCEP Industry is seeking the removal of all dairy special safeguards (SSGs) and elimination of remaining TRQs on SMP and liquid milk from EIF noting that:

- TAFTA eliminates all dairy tariffs by 2020 with the exception of SMP, liquid milk and cream for which the TRQs will be eliminated in 2025

Thailand is a significant market for Australian dairy exports.

Thailand is viewed by Australian exporters as being a challenging market as their policy is directed to protecting domestic production and by implication creating behind the border hurdles to imports. Examples relate to food standards, testing, labelling, quota allocation and even the potential for tariffs to change with little or no notice.

The most onerous are safeguards on butteroil and cheese varietal groups, namely:

- Fresh cheese plus grated or powdered cheese (0406.10/ 20 respectively) and
- Other cheese including cream cheese and cheddar, not processed (0406.90)

Special safeguards (SSGs) also cover butter, WMP, natural milk constituents (MPCs), condensed milk and buttermilk. The butteroil SSG of 299.31 tonnes in 2016 generally fills within in the first half of the quota year. The SSG volumes in 2016 for cheese, fresh, powdered and grated and 'Other' cheese including cream cheese of 85.52 tonnes and 615.72 tonnes respectively were significantly below imported volumes; refer to Table 2.

Table 2: Thai SSG volumes and imports (M's) of Australian origin dairy products: 2009 – 2016

		2009	2010	2011	2012	2013	2014	2015	2016
Butter (0405.10)	M's ex Aust.	23	7	0	18	20	8	0	18
	SG volume	607.75	638.14	670.05	703.55	738.73	775.66	814.45	855.17
	Fill ratio	3.8%	1.2%	0.0%	2.6%	2.6%	1.0%	0.0%	2.1%
Butteroil (anhydrous milk fat or AMF) (0405.90, though, excluding 0405.90.9)	M's ex Aust.	2,641	2,104	2,957	2,638	2,738	1,965	3,036	3,506
	SG volume	212.71	223.35	234.52	246.24	258.55	271.48	285.06	299.31
	Fill ratio	1241.7%	942.0%	1260.7%	1071.2%	1059.1%	723.9%	1065.2%	1171.4%
Buttermilk, curdled milk and cream, kephir and other fermented or acidified milk and cream (0403.90)	M's ex Aust.	1,601	448	428	800	1,103	1,153	1,356	1,490
	SG volume	3,646.52	3,828.84	4,020.29	4,221.30	4,432.37	4,563.98	4,886.68	Safeguard expires at end 2015
	Fill ratio	43.9%	11.7%	10.6%	19.0%	24.9%	25.3%	27.7%	
Cheese - fresh including whey cheese and curd (0406.10) and grated or powdered cheese of all kinds (0406.20)	M's ex Aust.	467	489	460	483	557	521	748	764
	SG volume	60.78	63.81	67.00	70.36	73.87	77.57	81.44	85.52
	Fill ratio	768.3%	766.3%	686.4%	687.1%	754.2%	671.4%	917.9%	893.4%
Processed cheese - not grated or powdered (0406.30)	M's ex Aust.	274	353	395	434	314	231	244	701
	SG volume	668.53	701.95	737.05	773.91	812.60	853.23	895.89	940.69
	Fill ratio	41.0%	50.3%	53.6%	56.1%	38.6%	27.0%	27.2%	74.5%
Other cheese, including cream cheese, cheddar, not processed (0406.90)	M's ex Aust.	1,272	1,200	1,273	1,346	1,573	1,401	1,994	2,325
	SG volume	437.58	459.46	482.43	506.56	531.88	558.48	586.40	615.72
	Fill ratio	290.7%	261.2%	263.9%	265.7%	295.8%	250.9%	340.1%	377.5%
Condensed milk (0402.91) (milk and cream, concentrated, other than in powder granules or other solid forms, not containing addess sugar or other sweetening matter)	M's ex Aust.	25	0	0	0	0	0	0	0
	SG volume	121.55	127.63	134.01	140.71	147.75	155.13	162.89	Safeguard expires at end 2015
	Fill ratio	20.6%	0.0%	0.0%	0.0%	0.0%	0.0%	0.0%	
Products consisting of natural milk constituents, whether or not containing added sugar or other sweetening matter, in liquid, including condensed form (0404.90.1)	M's ex Aust.	0	0	0	0	0	0	0	0
	SG volume	12.16	12.76	13.40	14.07	14.77	15.51	16.29	17.10
	Fill ratio	0.0%	0.0%	0.0%	0.0%	0.0%	0.0%	0.0%	0.0%
Whey and modified whey, whether or not cncentrated or containing added sugar or other sweetening matter, in liquid, including condensed form (0404.10.1)	M's ex Aust.	2,151	2,322	2,361	0	0	0	0	0
	SG volume	12.16	12.76	13.40	14.07	14.77	15.51	16.29	17.10
	Fill ratio	17685%	18197%	17622%	0%	0%	0%	0%	0%
WMP: milk and cream, in powder, granules or other solid forms, of fat content by weight exceeding 1.5%, not containing added sugar or other sweetening matter (0402.21.9); not for infant feeding (0402.29)	M's ex Aust.	2,062	1,860	1,101	1,025	1,329	186	1,042	618
	SG volume	11,547.31	12,124.67	12,730.91	13,367.45	14,035.83	14,737.62	15,474.50	16,248.22
	Fill ratio	17.9%	15.3%	8.6%	7.7%	9.5%	1.3%	6.7%	3.8%

The TAFTA rate snaps back to the MFN rate once the SSG volume is breached; for example the preferential rate for cheese, in 2017, is 6% compared to the MFN rate of 30% with the exception of blue vein cheese. The higher tariff rates resulting from triggering safeguards can exacerbate the cost and risk associated with doing business.

The Industry remains concerned that protectionist impulses in the Thai dairy industry will result in considerable pressure for the SSG volumes to be extended post 2020 or if not politically feasible an alternative behind the border barrier or barriers may be erected.

The respective SSGs also rise tepidly until 2020, for example 363.81 tonnes for butteroil and 103.95 tonnes for fresh plus grated cheese.

The current SSG level for many products could be substantively increased without an adverse commercial impact upon locally sourced product. The reason is that many dairy products are blended therefore a rise in imports covered by SSGs under would likely assist in value adding by local (Thai) processors.

Local processors, though, have some concerns regarding SSG quota removal as they currently don't believe they would be competitive with finished product being imported.

From an Australian processor perspective, though, safeguards are seen as adding complexity and unpredictability to doing business and can discourage the development of market growth plans; consequently it is important in RCEP to eliminate the SSGs.

The Industry and Federal Government have made a number of representations to the Thai Government with a view to speeding up process for quota (and SSG) elimination prior to the planned TAFTA deadline of 2020.

Vietnam:
Similarly to Malaysia, timing is of the essence in terms of market access. As AANZFTA eliminates all dairy tariffs by 1st January 2020, RCEP should aim to complement this process by eliminating all remaining dairy tariffs from EIF.

North Asia:

China:
Industry priority is to abolish all dairy tariffs and the WMP safeguard upon EIF of RCEP.

The ChAFTA dairy tariffs are phased out between four (from 1st January 2018) and eleven years (from 1st January 2025) and the volume safeguard on WMP lapses in year 15 (2029).

Table 3 below contrasts access for major dairy products originating from Australia and New Zealand. They have a major head-start in terms of tariff elimination for the most highly traded products; zeroing ranging from six years for milk (other than skim) and cream, milk powders, butterfat and infant formula to nine years for skim milk and cheese[5].

[5] Australian origin faces only one safeguard rather than the four (milk powders, butterfat and cheese) for New Zealand and their safeguard periods extend beyond the zeroing of tariffs for milk and cream by ten years, milk powders (seven years) cheeses (five years) and butter (three years).

Table 3: China - status of preferential access for Australian and New Zealand origin

	MFN Tariff	Australia: zero tariff	New Zealand: zero tariff	Gap in favour of New Zealand (years)
Skim milk	15.0%	2023	2012	9
Milk (other than skim) & cream	15.0%	2023	2017	6
SMP & WMP	10.0%	2025	2019	6
Butter & butteroil	10.0%	2023	2017	6
Cheese	12.0%	2023	2012	9
Infant formula	15.0%	2018	2012	6

Japan:

RCEP building upon the substantive liberalisation negotiated in the TPP agreement (and the commercially modest outcomes in JAEPA) can strengthen this process via:

- Eliminating the tariff on medium fat cream cheese
- Eliminating the WTO tariff of 29.8% on mozzarella
- Elimination of the tariff of 21.3% on milk constituents, not elsewhere specified (0404.90.20.0)
- Creation of commercially meaningful quotas on SMP and cheese with substantive CAGRs
- Creation of a commercially meaningful quota for WMP with a substantive CAGR
- Inclusion of natural milk constituents not elsewhere specified, namely milk protein concentrate or MPC in the liberalisation schedule

The reasons for this recommended approach is:

- The Australian dairy industry currently holds a competitive advantage in the supply of medium fat cream cheese (MFCC) through a history of product innovation and reliable supply:
    - MFCC is a major ingredient for meeting the milkfat requirements of Japanese food manufacturers who are constrained by the ALIC quota system from importing butter in the desired volume
- TPP, which has the potential for becoming a proxy for a US - Japan bilateral trade agreement, created a tilted playing field for access for 'pizza style' cheeses; phasing out by year sixteen the tariffs on cheese for shredding (a major use is for pizza toppings) and individually quick frozen (IQF) pizza cheese whilst retaining the 29.8% tariff on mozzarella; noting that:
    - Currently Australia processors are principal suppliers of mozzarella has no manufacturing capacity, unlike New Zealand, for IQF
        - Potentially leading to the loss of export income that has reached up to $50 million dollars per annum
    - An alternative to enhance the competitiveness of Japanese cheese makers is to eliminate the tariff on natural milk constituents (MPC):
        - MPC, especially with a protein content of 70% (MPC70) is used as an ingredient in the cheese vat for extending the yield
        - Australian processors have an established export track record in MPC

- Japan has experienced more frequent and larger shortages of SMP and/ or butter, reflecting a gradual, long term decline in their manufacturing milk availability. Whilst the creation of commercially meaningful plurilateral quotas on SMP and butter is an incentive for New Zealand to dominate supply the alternative of country specific quotas is contrary to the Industry's policy position:
    - An initial matching of the TPP agreed SMP and butter quotas of 20,659 tonnes (t) milk equivalent (me) and 39,341t me respectively from EIF along with substantive CAGRs are sought noting:
        - That an internationally acceptable standard needs to be adopted to convert the milk equivalents into tonnage equivalents

South Korea:
Catch up with access provided by KORUS, in terms of volumes, CAGRs and product coverage from EIF of RCEP.

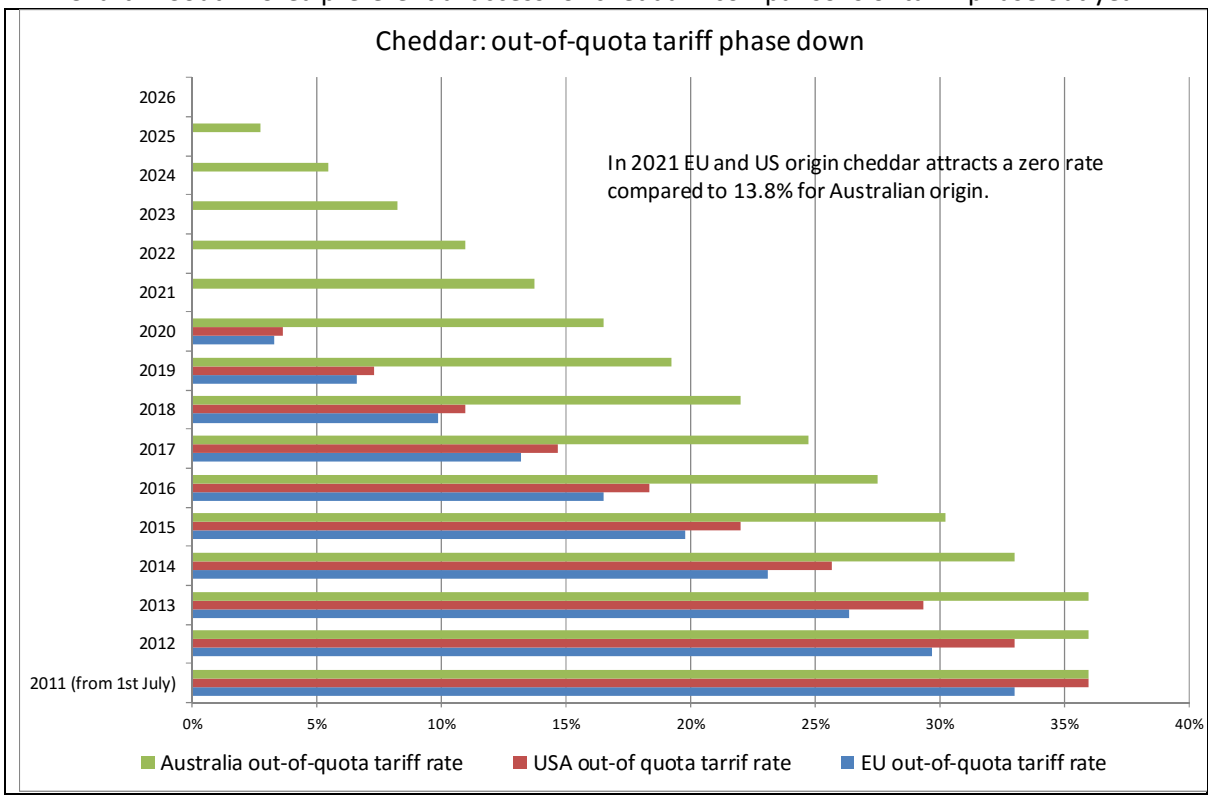
The rationale for this approach is that the two year delay in the signing of KAFTA when added to the three year implementing head-start of the United States left Australian origin access rights a long way behind – in commercial terms five years. This allows US origin product to become entrenched in the South Korean market place with the use of the privately funded (by dairy producers) export subsidy program, Cooperatives Working Together or CWT, supporting their competitiveness.

In addition KORUS is more generous in terms of the initial TRQ volumes and CAGRs and Australia missed out on a milk powder TRQ.

The EU has a slightly longer head-start than the US and whilst their access was less generous than under KORUS it is better than KAFTA. The New Zealand-South Korea FTA also entered year two of implementation on 1st January 2016 and dairy TRQ access is of higher volume and broader coverage of dairy products than that accorded under KAFTA.

The bar chart below provides an example of the US and EU head-starts for the phase out of the cheddar out-of-quota tariff rate. The MFN rate is 36%.

Chart 2: South Korea preferential access for cheddar - comparisons of tariff phase out year



India:

Commercially meaningful access from entry-into-force for a range of dairy products; in essence an ASEAN-India FTA plus outcome.

A constant of India's trade agreements to date is the lack of ambition for a comprehensive outcome compounded by dairy being considered a sensitive sector. Dairy is the single largest rural sector in India accounting for approximately 30% of the 'agricultural GDP'.

The Industry understands that the prevailing view amongst ASEAN governments is that their FTA with India lacked ambition. That agreement liberalised dairy market access for:

- Yogurt, buttermilk powder, milk protein concentrate, whey protein concentrate, casein and caseinates, noting that HTS classification of some of these products is outside of the dairy HTS sub-headings from 0401 to 0406, though it
- Failed to cover liquid milk, milk powders (SMP and WMP), butter, AMF (butteroil) and cheddar cheese;
    - All of these are important export products for Australian processors

For dairy products the average applied tariff is 33.7% whilst the average WTO bound rate is 65%. India's approach in FTAs to date is to use original WTO commitments to protect its domestic market place; in effect retaining the ability to raise tariffs on dairy products to the respective bound rates.

An ambitious RCEP outcome (similarly for CECA) offers the opportunity for Australian based processors to partner with Indian food processing and retail industries to meet demand in their domestic market, particularly as it becomes more sophisticated and to contribute to improving their food security (food availability and affordability). Australia is a reliable supplier of high quality, targeted dairy ingredients that Indian processors can value add to; creating jobs and wealth in their dairy supply chain.

Summary of Industry dairy access priorities: from EIF of RCEP

Cambodia	All tariffs on dairy product or foods containing dairy ingredient are zeroed.
China	Eliminating all dairy tariffs and abolishing the WMP safeguard.
India	Commercially meaningful access for a range of dairy products, noting the likelihood that substantive market opening is politically 'sensitive'. In essence an ASEAN-India FTA plus outcome.
Indonesia	Eliminating the 4% tariffs, fixed from 2015 on liquid milk, milk powders (SMP and WMP), edible whey ('Other') and grated and powdered cheese (retail and bulk).
Japan	Eliminating the tariffs on medium fat cream cheese, mozzarella, milk constituents not elsewhere specified (0404.90.20.0) and creation of commercially meaningful quotas on SMP and cheese with substantive CAGRs
Laos	Elimination of all tariffs on dairy products and foods containing dairy ingredients.
Malaysia	Elimination of TRQs on liquid milk.
Myanmar	Elimination of all tariffs on dairy products and foods containing dairy ingredients.
Philippines	Elimination of tariffs on dairy spreads and yogurt.
South Korea	Catch up with access provided by KORUS, in terms of volumes, CAGRs and product coverage.
Thailand	The removal of special safeguards on selected dairy products (especially cheese varieties and butteroil/ AMF) and elimination of remaining TRQs on SMP and liquid milk.
Vietnam	Elimination of all remaining dairy tariffs.

Estimated export gains:

The estimated annual export gains if the above outcomes are achieved, once RCEP is fully implemented are forecast as:

- Cambodia, Laos and Myanmar: $1 million
- China: $25 million
- India: $100 million
- Indonesia: $10 million
- Japan: $30 million
- Malaysia: $10 million
- Philippines (nominal)
- South Korea: $25 million
- Thailand: $20 million and
- Vietnam: $1 to 5 million (depending on date of implementation of RCEP)

Collectively an annual gain to dairy export income in the region of $225 million once RCEP if fully implemented. The methodology is based upon the following:

- Seven year period from 2008 to 2014 chosen for averaging purposes as it:
    - Covers the full gamut of the dairy commodity price swing that is high to high with a major trough (2009) interspersed and
    - Exchange rate fluctuation between the US$ and the A$; the earlier is the 'currency' of dairy trade
- Dairy trade volumes, by major product are averaged over this period to the markets listed above:
    - Only major dairy product groups for example butter, butteroil, cheese, SMP and WMP are selected for comparative purposes;
        - Potentially understating the trade gains from commercially meaningful liberalisation given the diversity of products exported from Australia
- Safeguard volumes are not a factor in the calculations
- Static analysis: that is a point in time, namely in May 2017
    - In terms of tariffs this means a comparison between the most favourable rate in May 2017 compared to zeroing

Noting that there are other major influences on product availability and product mix depending on:

- Relative returns per processing line, for example butter/SMP or butter/casein; cheese/ whey; WMP et al
- Contractual commitments in other markets; for example with long-term buyers
- Strategic market considerations, for example opportunity (China) versus mature markets (Japan)
- Downstream, value adding processing that may markedly change the relative returns in different markets that are in turn a function of a number of variables including:
    - Respective tariff and non-tariff barriers, that is ease of business
    - Infrastructure to support sales, for example low cost via traders/ trading houses or more costly via company business units
- Risk management, that is do not rely too heavily on one product for example WMP or one market, for example for growth and
- Countering competitor activity, for example in the Middle East; in essence maintaining a market presence

The two major variables are commodity price and exchange rate (A$ versus US$) fluctuations and they can be volatile; hence the averaging over seven years.

Facilitating the efficient operation of regional value chains: trade facilitating ROOs and SPS measures and TRQ administration:

ROOs:

A trade facilitating (liberal) ROOs is essential to enable the full benefit of dairy tariff elimination to be captured by the supply chain. Core components in RCEP are:

- Full cumulation with zero exclusions to this rule meaning ingredients can be sourced from any party to the agreement; an effective mechanism to build and promote RCEP wide (and efficient) supply chains to capture the full benefit of commercially meaningful trade liberalisation
- A de minimis of 10% of the value of goods within Chapter 4 of the HTS. 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 4 ingredients and
- Change of Tariff Classification (CTC) conferring origin at the sub-heading that is the HTS six digit level. The six digit level reflects the substantial transformation of the original material that has occurred. The Industry also believes that the CTC approach is more objective than the Regional Value Content test as a policy approach

Reasons are that the CTC is a more predictable approach, less difficult to administer and easier for small and medium-sized enterprises (SMEs) to understand, while requiring less record keeping and fewer calculations.

If ROOs are trade facilitating this is anticipated to help small and medium sized enterprises (SMEs) to enter regional value chains.

The ROOs approach on deminimis reflects the commercial reality arising from the growth of regional exporting hubs. 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 only be few global suppliers
- These ingredients can comprise up to 50% of the final product on a volume basis and
- Processors standardise production using imported permeates/additives for example lactose; as mentioned above major supply sources are the EU and USA

Potentially all bulk dairy products of Australian origin are used in subsequent value adding manufacture and may be re-exported from the original importing country. As a rule of thumb bulk dairy ingredients are, at a minimum repacked, often with additional ingredients and processing.

Global manufacturing often operates on a hub basis, an example in ASEAN is either Singapore or Malaysia and then finished product or products are exported to a range of countries especially where trade agreements offer preferential access and/ or cultural factors are important determinants of sourcing.

As an example 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.

TRQ administration:

TRQs are considered by the Industry as a transitional mechanism in the evolution to free trade in dairy products with application of a maximum of nine years leading to unrestricted access in year ten.

To facilitate filling of TRQs the following principles are advocated by Industry:

- Best practice per se
- Access must be commercially meaningful
- Facilitating the participation of SMEs
- TRQs must have strict rules of operation including:
    - Where new country –specific TRQs are provided they should be:
    - In the form of quotas that are controlled and administered by Australia
    - Allocated in commercially useful quantities to Australian companies by the Australian Government under a formula agreed with industry
    - Provide for consistent annual growth in the size of the quota over time until effective "free trade" is eventually achieved (as with the USFTA) They should not be auctioned to local importers
    - On a first come first serve principle with due respect given to traditional trading links
    - Not be quotas with end user or end use restrictions
    - Not be linked to a state trading bodies such as ALIC
    - In addition to existing WTO and bilateral TRQs
    - In all cases the in quota tariff should be zero
- Review period of TRQ administration for the purpose of improving administration; to be completed and implemented five years from date of implementation of RCEP
- Fostering direct commercial links between supplier (dairy processor) and end-user of dairy product is essential and not be subject to additional surcharges levies etc. is essential
- Cost recovery is limited to the costs of quota administration that in turn are governed by best practice
- The use of liquid milk equivalent or LME as a measure of quota 'volumes' is prohibited
- Allocation by lottery is opposed by the Australian industry as it introduces too large a degree of uncertainty in customer relationships and effectively prevents the building of a customer base:
    - Specifically a lottery could lead to variable volume allocations each fiscal year irrespective of quota utilisation
- Prohibition of access to TRQs by producer groups or industry associations; this is a recipe for under fill and
- Adequate timelines needed to ensure unused quota can be taken up in a quota year given that sourcing of product takes time plus
    - Allocative method for unused quota needs to be transparent and efficient

Other matters which the Industry seeks to either reform or prevent in an RCEP agreement include:

- The use of basket quotas
- The inability to identify quota holders in importing country
- Lack of provisions for new entrants
- Unnecessarily specific end use provisions including domestic content requirements
- Meaningless quotas, for example where the dairy component in the total value of the good is too low to encourage utilisation
- Cancellation of quota access, for example import bans
    - This can be related to special and differential treatment that the Industry opposes in an RCEP context
- Quotas not issued prior to commencement of import period

- Requirements for sureties or bonds
- The transferability and therefore secondary trade of quota entitlements and
- Unreasonable (short) time frames in which importing entitlements can be utilised, for example length of time is too short to arrange delivery ex-warehouse to Customs in the importing country

In addition administrative mechanisms such as tenders, levies, mark-ups, surcharges, gate pricing, auctions, duties, SBS (simultaneous buy/ sell) tenders and other border charges can disadvantage Australian exporters and lead to (chronic) under fill of TRQs over an extended period.

Sanitary and phyto-sanitary conditions (SPS):
The TPP agreement is an acceptable template, especially in terms of transparency around proposed SPS measures.

The Industry seeks the adoption of the term "commercially reasonable time-frames" in all decision making and implementation of SPS measures by all Parties.

Important measures contained in the TPP text were:

- Builds upon the WTO SPS chapter with decision making based on scientific evidence when Parties relevant authorities are adjudicating on risk and conformity assessments and undertaking risk management, noting that:
    - Risk management measures must be the least trade restrictive approach that achieves a Party's desired level of protection[6]
- Encourages 'confidence' building measures (reflecting technical, regulatory and policy competence) between Parties:
    - This can include capacity building measures
    - Outcomes from confidence building measures to be reported in a timely manner to all parties
    - The concept is further addressed in the Regulatory Cooperation section
- Encourages the development and adoption of international standards, guidelines and recommendations, and promote their implementation by the Parties
- Enhancing transparency includes prior notification of regulatory changes (electronically) and the ability of impacted Parties to make comments, receive advice (justification for) prior to the proposed change and an opportunity to review; all in a commercially reasonable time-frame
- Promotion of improved regulatory cooperation involving a systemic rather than product specific approach and including applying equivalence to a group of measures or on a systems-wide basis, to the extent feasible and appropriate:
    - Noting audits of competent authorities and designated inspection systems need to be systems based
- Conformity checks need to be carried out in a commercially reasonable time-frame; this is important for perishable products such as dairy and
- Export certifications are limited to those necessary to protect human, animal or plant life or health and
    - Requiring importing Parties to limit required attestations to essential information related to their SPS objectives

The approach on SPS matters is underpinned by best practice.

[6] Specifically the Industry is adamantly opposed to measures based on the 'precautionary' principle.

The Industry emphasises the importance of regulatory authorities in respective Parties cooperating to address SPS matters systemically rather than reverting to a disputes settlement mechanism[7]. The cooperative approach, if based on sound science, is likely to facilitate trade.

Institutional factors impacting upon the quality of market access: export competition, domestic supports, special and differential treatment and safeguards

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. This includes privately funded export subsidy and export credit programs.

Additionally export controls and taxes or other arbitrary imposts on dairy products are prohibited.

Domestic supports:
The Industry seeks assurance in an RCEP negotiations that negotiating parties apply a stand-still (cap) on domestic support measures for agriculture and specifically dairy as they have the potential to indirectly subsidise import competitiveness and distort markets. The cap would be based on a representative period that preceded signing of an agreement. For example China, India and Japan have domestic support measures that involve substantial outlays of government funds.

Measures that need direct attention in RCEP agreement are prohibitions on blue box stacking as the amount of support is effectively unlimited and migrating payments to the green box even if they are trade distorting. Tightening up the criteria for domestic support payments adds transparency to agricultural markets.

The stand still on domestic support measures is, from a policy perspective, important in view of the ambitions on tightening disciplines arising from the WTO Ministerial Conference in Buenos Aires in December 2017.

Special and differential treatment:
The Industry is also opposed to dairy products receiving special or sensitive product treatment as has been proposed in the RCEP Guiding Principles. An approach along these lines could institutionalise protectionism that is both challenging to unwind once put in place and in its application is subject to political whim that can disrupt and arbitrarily undermine established and emerging trading relationships.

Special and differential treatment for example with the goal of sustainably raising agricultural productivity and thereby creating the opportunity to boost farmers income is best achieved through capacity building measures rather than erecting barriers to the trade in goods and specifically dairy.

Further the Industry views with concern the outcomes from the Nairobi WTO Ministerial in December 2015 as the proponents of the following measures are involved in the RCEP negotiations, namely that:

- Developing countries, including possibly China, India and Indonesia and others will be able to use special safeguard measures (SSM), namely:

[7] With the caveat that no Party shall have recourse to dispute settlement in respect of science and risk based analysis or equivalence measures; provided they are based on documented and objective scientific evidence that is rationally related to the measures (based on Article 7.9 section 2 of the TPP SPS Annex).

    - "have the right to have recourse" to a special safeguard mechanism "as envisaged under paragraph 7 of the Hong Kong Ministerial Declaration" based on import quantity and price triggers and
- Public stockholding can continue until a permanent solution is found

SSMs are deleterious to meeting food security goals and can be applied as a protectionist measure.

The Industry's experience of the deleterious commercial impacts of public stockpiling dates back to the then EEC's 'mountains' (and 'lakes') of surplus agricultural products in the 1980s and the vast domestic and export subsidies utilised to draw them down to politically "acceptable" levels:

- The commodity price dampening impact being exacerbated by their overhang of the commercial market-place that in turn negatively influenced sentiment
    - Creating a double price whammy for market oriented exporters

Safeguards:
The Industry is opposed to either volume or value safeguards that in effect place controls, for example a snap-back to a higher (MFN) tariff, on any perceived surge in dairy (or agricultural per se) product imports. The risk of imposition and the associated higher tariffs resulting from triggering of safeguards can exacerbate the cost and risk associated with trade with attendant impacts upon the viability of value chains and employment.

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 and transparently administered TRQs, 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.

State Trading Enterprises (STEs):
The Industry supports an RCEP agreement that imposes disciplines on STEs to operate in a transparent and fully commercial manner. STEs can absorb margins that in a strictly commercial environment are shared along the dairy supply chain and therefore lead to less than optimal trading outcomes and potentially lead to trade diversion as other more transparent, though nominally less profitable and/ or growth potential markets, are targeted for supply.

The Industry notes that there are political and trading sensitivities surrounding the operation of STEs in the agricultural sphere in a number of RCEP nations including China, Japan, Korea, Malaysia and Vietnam. All these countries are sizeable to major importers of dairy products with the potential to grow respective volumes.

From an Australian dairy industry perspective the diminution of the role of import STEs is linked to reform of existing TRQ administration procedures (refer to section above) and specifically the management of quotas by exporting nations[8]. Reform enables direct, commercially beneficial relationships to be established between Australian dairy processors and food ingredient end-users.

Specific outcomes sought are:

- Import STEs are prohibited from involvement in dairy TRQ trading once the transition (implementation) period is concluded or to a maximum of nine years:

[8] This provision does not preclude parties from applying legitimate fees for service as listed under paragraph 2 of Article II of GATT 1994 and Article VIII of GATT 1994.

    - Whichever is the shorter period
- No new import STEs can be created in lieu of an RCEP agreement nor the roles of existing import STEs be expanded to cover, for example the importation of "additional" agricultural products
- Preferences for sourcing of local dairy product or liquid milk for manufacturing purposes is prohibited that is the GATT Article III 'National Treatment' applies
- Exporters are not required to supply an STE and a no-prejudice clause exists for the holding of future tenders or allocation of quotas
- An independent review mechanism exists to enable scrutiny of the relevant STE activities in the situation where a trading dispute arises and
- Export STEs are required to operate in a fully transparent manner including the prohibition of receiving soft (below market) interest rate loans and other forms of government largesse such as rental space

Non-tariff barriers, regulatory cooperation, Customs clearance and a proposed sectoral initiative for dairy

Markedly improved outcomes, compared to existing trade agreements, are required in an RCEP agreement. To address and establish a pathway for resolving NTBs in a commercially advantageous manner including facilitating exporting by SMEs, requires an:

- RC chapter that involves a binding set of principles and
- A 'liberal' (trade facilitating) ROOs

Collectively along with commercially meaningful improvements in market access, these achievable outcomes will position the Australian dairy industry to maximise the trading opportunities arising from a comprehensive and ambitious RCEP agreement.

A study commissioned by Dairy Australia in July 2014 concluded that the total annual impact for individual TBTs in all dairy markets was estimated at $1.57 billion.

The commercial reality is that NTBs per se, have in a period of generally declining tariffs on dairy products and foods containing dairy ingredients, become major cost imposts for exporters:

- Refer to Attachment III for a summary of the report

NTBs:

The advocated policy approach on NTBs is systemic rather than case specific noting the importance of establishing procedures to seek resolution in commercially acceptable time frames. Four systemic issues that largely apply across the RCEP parties are:

- Market entry age
- Consistency of analytical methods for testing of imported dairy products
- A standardised resolution process and
- Expedited Customs clearance processes

The development of consistent, harmonised and transparent international standards is key to addressing the challenges faced by the dairy industry. Development of standards, though, needs to be consistent with the following principles:

- Not onerous or excessive
- Aligned with good regulatory principles and practice such as being clear, proportionate and non-discriminatory as well as being no more restrictive than required
- Complementary and in recognition of existing Australian food quality and assurance systems and

- Effective and efficient such that they work, and are worthwhile to those who adhere to them

Attachment V provides a brief description of specific and pressing NTB issues.

The work on dairy NTBs is occurring in tandem with a concerted effort by exporters of goods to categorise and quantify behind the border measures[9].

Technical Barriers to Trade (TBTs):
Adherence to the WTOs Agreement on Technical Barriers to Trade. In addition a mechanism be set up to address agricultural technical barriers to trade in the CECA negotiations.

Regulatory Cooperation:
A regulatory cooperation chapter (RC) is recommended; establishing a cooperative approach to resolving, rather than just addressing 'before' and 'behind' the border barriers in a trade facilitating manner.

Industry is supportive of developing an RCEP based approach to regulations and regulatory food and specifically dairy activities rather than adopting EU and/ or US standards that reflect their unique domestic market requirements and trade objectives such as recognition of GIs.

The advocated systemic approach includes the potential for including either a food annex or sectoral initiative in an RCEP agreement.

Underlying a cooperative, rather than prescriptive approach on regulatory cooperation is establishing a set of principles, based upon the APEC Business Advisory Council (ABAC) recommendations:

ABAC's cross-cutting principles for non-tariff measures that would seek to minimize or avoid NTBs are**:**
Information:
- Business needs information about import and other regulations that is clear and readily available, preferably through an online portal

Processes:
- Business needs processes for the development of non-tariff measures that are transparent and timely;
- Business (including small producers and MSMEs), both domestic and foreign, should be consulted in the development of standards;
- The application of non-tariff measures should be timely, predictable and coherent

Measures:
- Measures should be transparent, coherent and non-discriminatory;
- Measures should be based on sound science (in the case of SPS measures), or closely aligned with international norms (for TBT measures) such as Codex, ISO and APEC;
- Measures must not discriminate against imported goods or services;

Underpinning philosophy:
- Measures must be developed consistent with the principle of "least-trade restrictive";
- The emphasis should be on desired or equivalent outcomes rather than prescriptive process or production methods

[9] Refer to the Australian Food and Grocery Council business forum, 'Making Food Exporting Easier', held in Sydney on 1st December 2015: http://www.afgc.org.au/2015/12/baker-mckenzie-asia-pacific-food-law-guide/

RC initiatives that could arise, subsequent to implementation of RCEP, from a chapter emphasising cooperation include:

- Common ground on maximum residue levels or MRLs
- Review of trade restricting dairy NTBs to see if they are based on sound science, for example those outlined in Attachment IV
- An RCEP wide eCert for Customs clearance of goods and
- Capacity building to enable Customs and biosecurity authorities throughout the RCEP region to employ best practice methods that are based on sound science

Other important benefits include providing communication contacts with relevant APEC authorities and increased opportunities for cooperation, collaboration and work sharing.

The Industry also notes that in 2010 APEC committed to a ten per cent reduction in the cost, time and uncertainty of moving goods and services around APEC.

Recommendations are two-fold:

- An RCEP trade in goods committee that is tasked with coordinating government and industry input on NTBs and implementing the systemic approach to addressing and resolving specific issues that are impeding trade and
- Within the context of RCEP the APEC 10 per cent commitment could be revisited from an economic cooperation (capacity building perspective). The initiative is designed to initially educate and address and then subsequently resolve systemic NTBs through hosting workshops and developing guidelines regarding effective implementation of a science and risk-based food safety system. These undertakings would be consistent with obligations under international frameworks such as Codex Alimentarius.

Attachment V provides elaboration on RC related matters.

<u>Customs clearance</u>:
Transparency in Customs clearance procedures are essential if supply chain linkages extending throughout the RCEP region are to operate effectively. The quick transit of goods fosters the participation of small and medium sized enterprises in bilateral and regional value chains.

The following reasons are advanced by the dairy industry for supporting an invoice declaration or self-certification, namely:

- Ownership of the process by the manufacturer/ exporter
- Transparency as the manufacturer/ exporter is directly involved and the related corollary of being less administratively burdensome
- Reduced cost as a fee is not required to generate the documentation if completed in-house and
- If the importing country queries the documentation then the manufacturer/ exporter can be directly involved

Mitigating the impact of the ‘gray’ channel through coordinated Customs clearance initiatives is an important outcome of RCEP to improve the timely flow of goods and services and to maximise export returns for the dairy supply chain.

Implementation of the Trade Facilitation Agreement can assist this process.

<u>Dairy sectoral initiative</u>:

A sectoral initiative for dairy could include recognition of CODEX standards and practical matters such as a contact point to respond, within 24 hours, on imposition of 'spur of the moment' NTBs such as Customs arbitrarily blocking product at port-of-entry.

Industry is supportive of the development of a cooperative regulatory approach, based on agreed principles that would allow economies to balance their regulatory needs with the goal of facilitating trade.

Guiding principles for a dairy sectoral initiative are recommended to include: Industry also notes the provisions of Annex 8-D (Cosmetics) to the TPP agreement, in particular the following have relevance to dairy, namely:

- Regional initiatives, as appropriate, to improve the alignment of respective regulations and regulatory activities (section 7)
- Consider (give due weight) to regionally developed scientific or technical guidance documents that are aligned with international standards (section 8) and a
- Risk based approach to regulation (section 10)

Additionally Annex 8-A 'Wine and Distilled Spirits' in the TPP agreement provides insights including on:

- Aligning labelling requirements; single field of vision for compulsory items (article 8)
- No requirements on the manufacturer to disclose production process (article 18)
- No retrospectivity in application of technical standards (article 24) noting the importance of adhering to international standards such as CODEX Alimentarius

From a dairy sectoral initiative other important factors in ensuring that NTBs are based on international standards and sound science that in turn facilitate trade are:

- Provisions on SPS and TBT equivalence, mutual recognition and harmonisation
- For existing NTBs, a timely and effective process for their consideration and removal
- Adherence to and adoption of international standards should underpin relevant measures in the RCEP region
- Best practice including maintaining consistency with international standards as they evolve
- Outcomes (trade facilitating) focused rather than process driven
- Non-discrimination between domestic and imported goods in accordance with GATT Article II (national treatment)
- The provisions of a sectoral initiative shall be without prejudice to the right of the Parties to take SPS measure necessary for the protection of human health, provided that such measures are consistent with the provisions of the:
    - Application of SPS measures drawn from the WTO, AANZFTA and TPP agreements and similarly for the
    - Agreement on Technical Barriers to Trade (TBT)
- Apply a standstill on all NTM proposals from the date of signing of the agreement until implementation with exceptions only allowed if compliant with the WTO or AANZFTA SPS or TBT chapters
- 'Advanced standing': on the imposition of a measure that arbitrarily disrupts dairy trade, the impacted Party should have advanced standing for meeting officials of the other country, to resolve the matter in a trade facilitating manner noting:
    - The perishable nature of fresh and fluid (other than dried) dairy products and
- New measures: each Party shall provide adequate (prior) notification and comment period for companies whose commercial interests are involved in the proposed application of NTM measures:

- Provided that the measures covering dairy products marketed in its territory are deemed necessary for the protection of human health
  - In other words ensure that a proposed NTM based on sound science does not become, by default, an NTB

Intellectual property protection for common cheese names:

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

Within this policy environment, though, the Industry continues to support the proper protection of Geographical Indications as provided for under the WTOs Agreement on Trade in Intellectual Property (TRIPs).

The Industry, though, 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 export markets.

The Industry opposes:

- Recognition of single names for example Danbo, Havarti, Halloumi and Feta noting that CODEX has standards for a range of cheese varieties
- Evocation: transliterations for example Parmesan from Parmigiano Reggiano do not constitute a protected GI term[10]

Some of the RCEP partners are in the process of developing, or have developed, GIs regimes so there is a real risk of Australian exporters being restricted in their use of common food names:

- Singapore and Vietnam have concluded trade negotiations with the EU which are now awaiting ratification prior to implementation
- Japan along with selective ASEAN members are independently developing their GIs regimes in preparation for FTAs with the EU and the
- EU has been cultivating, over a considerable number of years, China and India to create their own GI registers so as the bolster their claim for appropriation of common food names and related potential for market share and value gain

The RCEP agreement must safeguard market access opportunities that are negotiated in good faith to forestall erosion by onerous GIs regimes being implemented by the EU.

Dairy names and product descriptors that can be lawfully used at time of implementation of the agreement must remain as such and new GIs must not lead to misappropriation of, nor usurp, existing rights of users of common cheese names. In other words a RCEP agreement allows for coexistence of trademarks and approved GI names that is a no disadvantage test applier[11].

The following context underpins the Industry's position on GIs:

[10] Geographical indications registered in the EU in respect of cheeses are, pursuant to Article 13 (1) of Regulation (EU) No 1151/2012, protected notably against "any misuse, imitation or evocation, even if the true origin of the products or services is indicated or if the protected name is translated or accompanied by an expression such as 'style', 'type', 'method', 'as produced in', 'imitation' or similar, including when those products are used as an ingredient". Consequently, since "Feta" is a registered Greek geographical indication within the EU, the use of the term for example "Australian Feta" in respect of cheeses sold on the EU market is not allowed.

[11] In CETA (Canada – EU comprehensive economic trade agreement) coexistence was accommodated by grandfathering the use of a designated GI name (feta, asiago, fontina, muenster and gorgonzola) by Canadian cheese makers who were making these varieties prior to 13 October 2013.

- Australian cheese makers seek certainty of access into RCEP member country markets for cheeses with generic names; this is best achieved by language in the IP and goods market access chapters
- The RCEP region, with the exception of Japan, is still in the early stages of development of a market for cheeses other than processed
    - The outlook, though, is optimistic for growth
- Singapore is probably most representative of the potential for Australian origin exports of cheese in view of the FTA and developed country status. In 2016 Australia exported 5,346 tonnes of cheese to Singapore:
    - Exports of cheese have grown by 38% in the seven years 2009 to 2016, though the volume has plateaued since 2012
    - Growth has occurred in high-value, niche varieties such as organic cheese which are produced by SMEs
- Specialty cheese makers are value adding, skilled artisans of economic importance to regional economies in south-east Australia
- It is becoming increasingly problematic for Australian cheese makers, though, to be certain that they will have continued use of generic or common dairy names:
    - Whereas the Madrid Protocol provides for, in effect, mutual recognition of trademarks, no such vehicle exists for generic terms
    - If a cheese name is considered generic in Australia, exporters are unable to register trademarks internationally using the Madrid Protocol process:
        - As many of the exporters of specialty cheeses are SMEs, registering names in individual countries becomes prohibitive both from time and financial perspectives
    - A practical example arising from KOREU is the banning of the use of the term ‘feta’ by an Australian cheese maker with an established presence in the South Korean market prior to 1 July 2012 implementation of that agreement. The cheese maker was forced to change their description to “white” cheese resulting in the loss of their retail market

Principle of territoriality applies: one of the arguments Australia has faced in opposition to establishing a list of generic names is the right to 'territoriality'. What this essentially means is that countries have the right to either protect or deem generic a name as it relates to their national borders. This principle involves control of how the cheese is marketed and used in commerce (including consumer recognition) domestically and in export destinations, noting the extended history of production in Australia and

- Growing consumer and food manufacturer recognition of common names during a period of rapid evolution of global food supply chains

The intellectual property (IP) chapter must include provisions around GIs such that, if RCEP partners implement regimes, they have:

- Open, transparent registration and reasonable objection procedures that allows for all interested parties to participate
    - No protection of GIs on EIF of FTAs negotiated by RCEP parties with the EU
- Allow for the cancellation particularly if they become generic or other conditions are met
- Do not disadvantage existing trademarks holders nor users of common food names
- The scope of protection is limited to the GI as registered in its entirety
    - No protection of translations or individual components and
- The ability for generic names to co-exist with GIs, as per the principle of territoriality

The Industry recommends that a Cheese Annex be incorporated in the Goods Chapter to provide additional safeguards for use of common food names that have been long established in trading relationships[12]. The Industry advocates a prescriptive versus cooperative approach to a GI register with transparency of processes and outcomes essential, for example information is readily accessible on the Internet.

[12] Common cheese name list is bocconcini, brie, camembert, cheddar, edam, feta, grana, gouda, gruyere, haloumi, Havarti, mascarpone, mozzarella, parmesan, pecorino, provolone, raclette, ricotta and tilsit.

Attachment I: dairy trade in the RCEP region

The growth in exports of dairy products to the RCEP region was impressive over the period 2008 to 2013, though it has tapered off and even reversed in the period 2014 to 2016. In some instances this reflects a decline in dairy imports, especially whole milk powder (WMP), by China, the largest global buyer. The growth, though, needs to be viewed in the context that four mature dairy consuming nations (Australia, Japan, New Zealand and Singapore) are included in the data[13].

For most of the major product groups (butter, butteroil, cheese, milk, whey powder and WMP) RCEPs contribution to growth in dairy trade over the nine year period from 2008 to 2016 has been substantial; the exceptions being SMP and infant formula – refer to Table 4.

The largest percentage increase in RCEPs share of exports by dairy product between 2008 and 2016 was for milk; rising from 34.1% in 2008 to 51.1% in 2016; an almost doubling. Butter, whey powder and WMP recorded solid increases in share of around 13%. RCEP's share of infant formula trade, though, fell by 3% to 35.6% over the nine year period and SMP contributed only 0.5%.

In 2016 RCEPs share of exports by major product group ranged between 22.5% for butter up to 62.4% for whey powder; the latter reflects demand for animal feed especially for hogs.

Table 4: RCEP trade in dairy products - percentage share of world trade

	2008	2009	2010	2011	2012	2013	2014	2015	2016	Avg: 08 to 16	Change in % share of trade: 16 cf. 08	Growth in share of trade: 16 cf. 08
Butter	18.2%	14.8%	15.9%	21.5%	20.3%	22.0%	25.9%	31.5%	31.0%	22.5%	12.8%	70.0%
Butteroil	31.3%	37.3%	41.6%	38.2%	37.8%	34.9%	37.0%	40.5%	37.7%	37.5%	6.4%	20.3%
Cheese	24.9%	24.6%	25.1%	27.3%	27.7%	27.0%	31.3%	34.6%	34.8%	28.7%	9.9%	39.8%
Infant formula	34.8%	37.1%	32.9%	32.7%	33.2%	38.0%	38.8%	40.9%	31.7%	35.6%	-3.0%	-8.7%
Milk	34.1%	32.1%	33.6%	35.8%	36.9%	40.1%	42.0%	50.1%	51.1%	41.6%	17.1%	50.1%
SMP	44.0%	47.2%	46.5%	47.9%	43.3%	50.4%	46.8%	46.8%	44.5%	46.4%	0.5%	1.2%
Whey powder	52.8%	59.8%	58.7%	64.9%	64.2%	64.8%	61.7%	64.9%	65.9%	62.4%	13.1%	24.7%
WMP	24.2%	27.8%	34.9%	32.9%	38.2%	48.2%	46.5%	36.3%	37.2%	36.6%	13.0%	53.8%

The volume increase in exports to RCEP for each product group between 2008 and 2016 has been substantial ranging from 52,857 tonnes for butteroil to 701,360 tonnes for milk. On a percentage basis exports increased for all the major dairy products groups between 79.1% for WMP to 98.9% for infant formula; the exception being milk where the rise was 269.5% - refer to Table 5.

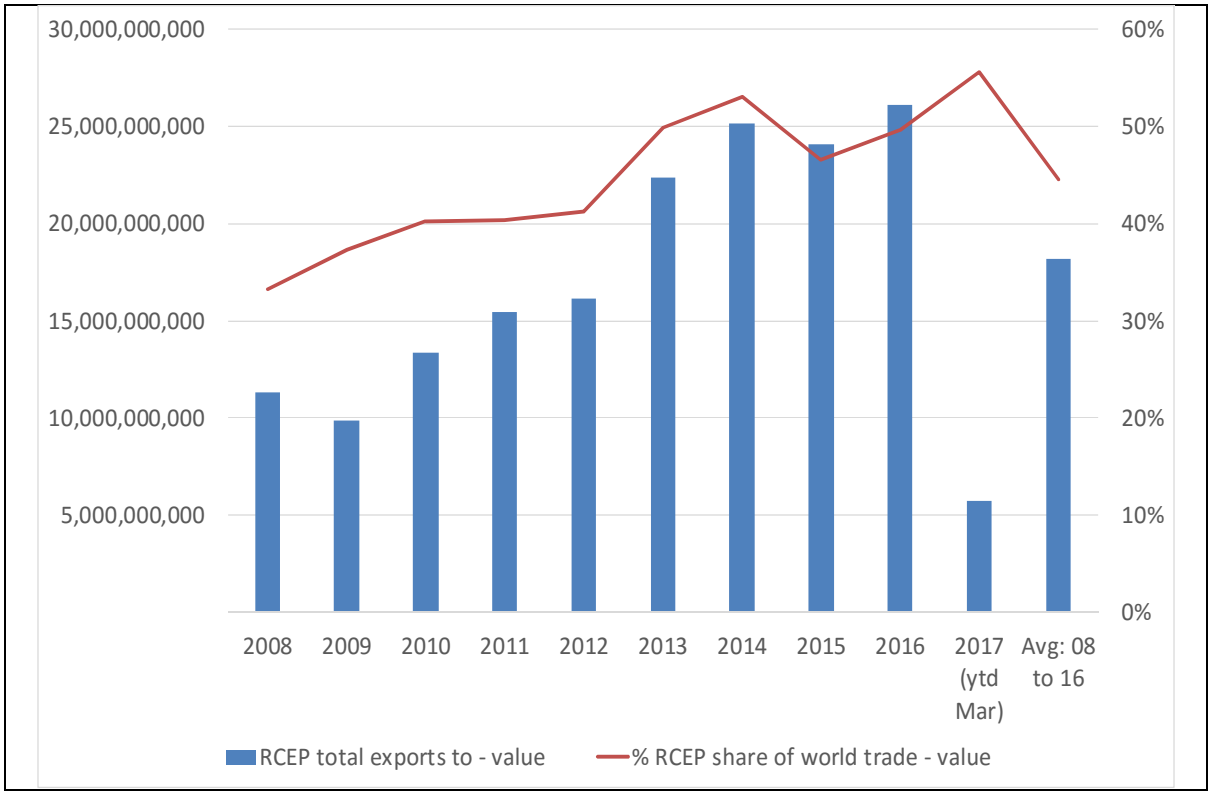
Table 5: RCEP trade in dairy products – tonnes

	2008	2009	2010	2011	2012	2013	2014	2015	2016	Avg: 08 to 16	Volume change: 16 cf. 08	Volume % change: 16 cf. 08
Butter	91,373	75,507	79,378	104,789	107,948	120,768	148,189	164,933	170,635	118,169	79,262	86.7%
Butteroil	60,879	96,940	94,816	89,569	94,671	93,982	105,660	123,469	113,736	97,080	52,857	86.8%
Cheese	375,665	394,809	451,096	507,503	547,113	548,263	617,221	607,669	633,551	520,321	257,886	68.6%
Infant formula	158,945	178,117	157,894	175,067	198,073	261,010	272,214	293,273	316,178	223,419	157,232	98.9%
Milk	260,236	241,667	286,192	343,662	384,313	472,429	614,987	790,753	961,597	483,982	701,360	269.5%
SMP	484,940	559,804	635,219	769,112	745,481	887,410	931,381	966,306	908,526	765,353	423,586	87.3%
Whey powder	510,480	622,654	670,074	804,361	844,742	907,110	862,231	889,087	989,970	788,968	479,490	93.9%
WMP	437,645	504,692	683,631	681,764	769,269	994,053	988,057	786,195	783,670	736,553	346,025	79.1%

Over the period 2008 to 2016, RCEPs share of world dairy exports on a value basis has risen from one-third to almost half (49.7%); from US$11.298 billion to US$26.113 billion – refer to Chart 3.

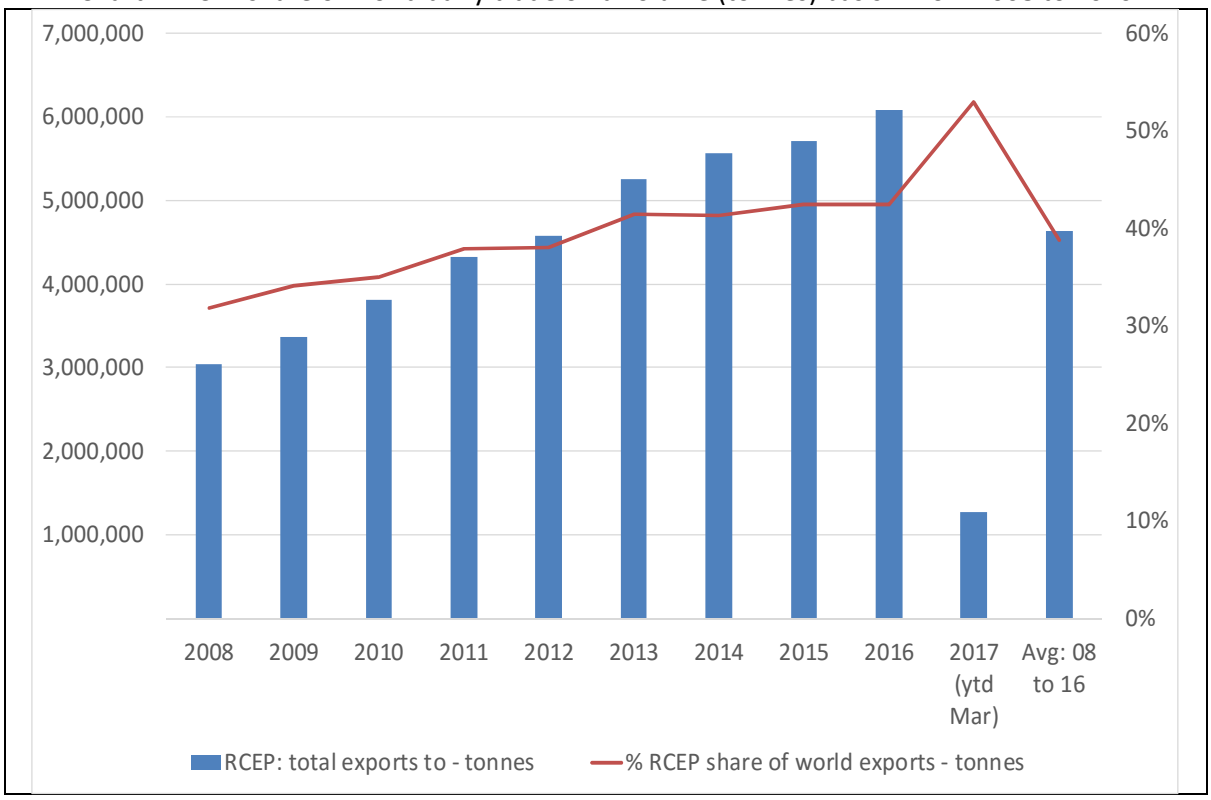
Chart 3: RCEP share of world dairy trade on a value (US$) basis – from 2008 to 2016

[13] Exports to Hong Kong, Australia and New Zealand are included in the RCEP data.



Over the period 2008 to 2016, RCEPs share of world dairy exports on a volume basis has risen from 31.8% (3.046 million tonnes) to 42.5% (6.085 million tonnes).

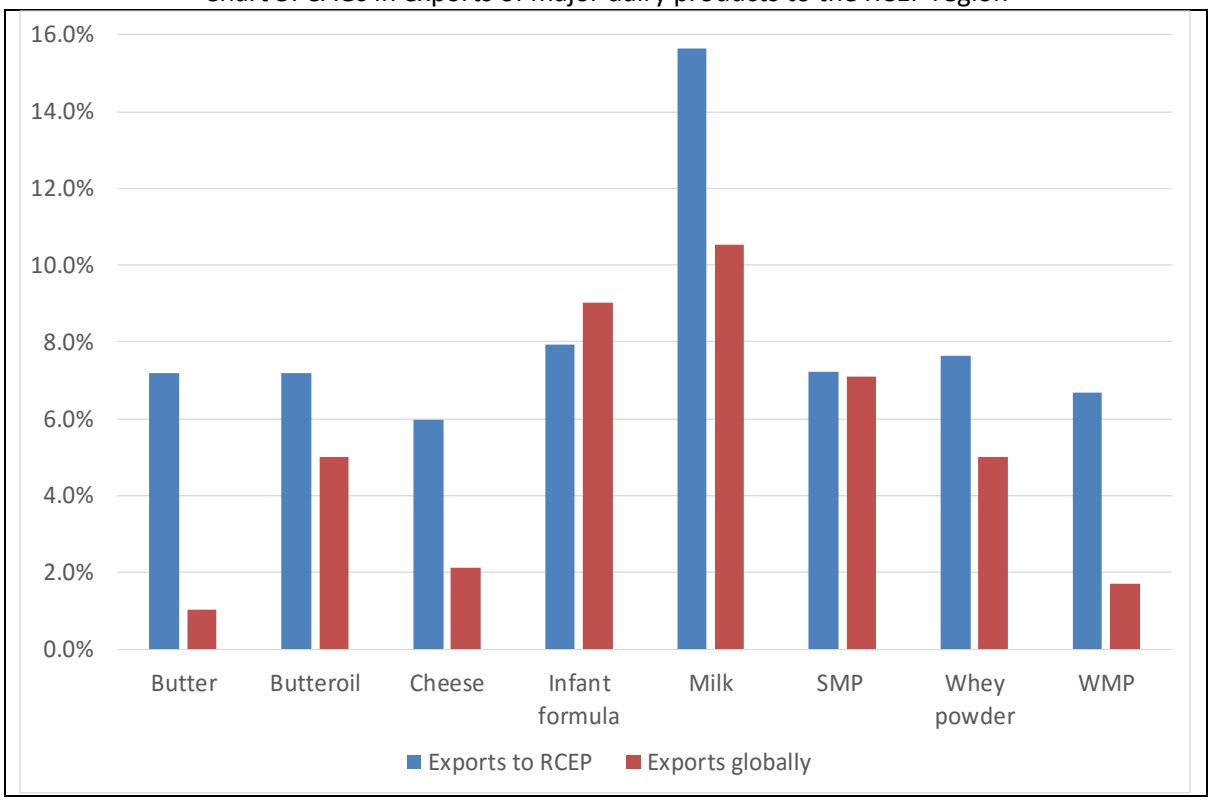
Chart 4: RCEP share of world dairy trade on a volume (tonnes) basis – from 2008 to 2016



From the perspective of CAGRs, the volume of exports to the RCEP region grew substantially quicker than the rate of global dairy trade; 8% compared to 4.6%.

All major dairy product exports to RECP showed strong CAGR growth over the period 2008 to 2016, ranging between 6% for cheese to 15.6% for milk. Compared to global dairy exports the most pronounced discrepancies between RCEP and global growth rates were for butter (a multiple of seven), WMP (a multiple of four) and cheese (almost a multiple of three) – refer to Chart 6.

Chart 5: CAGs in exports of major dairy products to the RCEP region



Attachment II: dairy relationship (scholarship) building in RCEP nations

The scholarship programs are a sign of the Industry's long-term commitment to growing demand for Australian origin dairy products.

The initial, annual scholarships first awarded in 1998 have brought industry professionals to Australia to study the dairy supply chain and over time have created a substantial alumni network. These networks have spread a deeper knowledge and understanding of the Australian industry in those markets and significantly contributed to export success. Features of the scholarship program are as follows.

1. Scholarship training program (in Australia) and alumni (in China): Dairy Australia started the program in 1999 for Mainland China, targeting the key dairy manufacturers. It was subsequently expanded to include Hong Kong and Taiwan markets and key trading companies have also been involved in the program. The Scholarship program is designed to give participants a better understanding of the Australian dairy industry, products and how to utilise these products in food formulations. It covers Australian dairy food safety systems and food standards, liquid milk processing, dairy product tasting, cheese making, functionality and applications. Participants visit various dairy factories and dairy farms and meet with company export contacts.

There are 260 alumni in the three markets (the majority in China) as a result of this annual program, and many participants have moved up their respective career ladder to senior positions in dairy processing and trading companies. Dairy Australia keeps active communication with this group of alumni through an annual event and ad hoc get together with alumni when Dairy Australia staff visit China. The scholarships have generated a number of business relationships over the years.

2. Seminars in China: Dairy Australia typically holds between four and six seminars every calendar year in first tier (i.e. Beijing, Shanghai and Guangzhou) and second tier (provincial capitals) cities, targeting a wide audience range including dairy/food processing, food service, bakery, retail, dairy trading and government people. The seminars focus on the promotion of the Australian dairy industry strict food safety system and the wide variety and applications of dairy products from Australia. The seminars often feature a cooking demonstration, product tasting session and a buffet lunch cooked from dairy recipes developed by Dairy Australia for export markets.

3. Dairy conferences in China: attending and presenting to major dairy conferences in China has been an important part of Dairy Australia efforts to keep the two industries in regular communication. One important dairy conference that Dairy Australia presents at every year is the China Dairy Industry Association (CDIA) Annual Conference. The Australian Ambassador has previously attended and addressed the conference.

4. Dairy talks alternating between Australia and China: Dairy Australia have actively involved and contributed to the Australia-China Dairy Talks between the biennial Department of Agriculture and Water Resources and the Ministry of Agriculture. One of the key purposes of this program is to support the heifer exports from Australia to China; the largest export destination.

5. Japan: the scholarship program since 1998 has trained over 300 industry representatives from the Japanese dairy industry. Dairy Australia keeps regular contact and communication with alumni in Japan through twice yearly visits its representative in Tokyo. Dairy Australia holds two rounds of dairy seminars and industry meetings in Japan to keep the two industries updated about respective developments.

6. South Korea: a scholarship program ran from 1998 to 2011 training over 100 industry representatives. Since 2015, Korean companies started to join the Southeast Asian Scholarship program. Dairy Australia holds dairy seminars annually in South Korea.

7. Since March 2015, in collaboration with the Victorian State Government, Dairy Australia has hosted an annual scholarship program bringing dairy industry specialists from South East Asia to Australia for an intensive program examining food safety programs as they apply to dairy production and manufacturing techniques.

Delegates are or have been taken inside Murray Goulburn, Fonterra, Lion, Burra Foods, Warrnambool Cheese and Butter and Bulla factory's. Participants also visit dairy farms.

Dairy Australia, with the support of the Victorian Government, will host the fourth annual scholarship program for the South East Asian region in February 2018.

The program will run over two weeks, proposed for the period 19 February through to 2 March, 2018. The aim is to promote the high quality and safety of dairy food products and enhance the confidence the markets have in Australian dairy. The program theme is sufficiently broad that it would be equally applicable to participants with interest in dairy ingredients, food service or retail dairy products.

The program will combine theoretical sessions presented by subject matter experts from Dairy Australia, regulators and industry, with practical exposure through visits to dairy farms and manufacturing facilities. The draft program has been designed to follow a logical progression along the value chain, highlighting the relevant food safety issues at each point, and will demonstrate how these are both forwardly and backwardly integrated to deliver a robust system.

Participants from multiple countries will be invited to enrol in the program. For the 2018 program, participants will be sought from Indonesia, Singapore, Malaysia, the Philippines, Thailand, Vietnam, and South Korea. It is expected that up to three participants will be selected to join the program from each country. Additional participation may be drawn from, Myanmar, Brunei, Laos and/or Cambodia.

8. Dairy Australia conducts regular missions and seminars in South-East Asia (Indonesia, Malaysia, The Philippines, Singapore, Thailand and Vietnam) to ensure Australia's dairy industry captures every possible business opportunity. In-market links and knowledge are crucial in the persuading buyers to source from Australia.

The seminar programs are designed to educate dairy users about the functionality and uses of dairy. While the seminars are structured towards promoting the use of Australian origin, Dairy Australia is of the belief that these programs assist to build capacity of food ingredient users in the targeted markets.

9. Dairy Australia holds annual workshops at "hospitality" universities in Indonesia. The aim of the workshops are to give 'hospitality' students better knowledge and understanding of the Australian dairy industry plus a demonstration of the use of dairy products in various culinary applications by an Australian chefs.

10. Dairy Australia publications designed for international markets, include:

- Australian Dairy Ingredient Reference Manual: a technical manual to promote the applications of Australian dairy ingredients (in English and Chinese)
- Australian food safety system booklet and DVD set: introducing the food safety system in Australia and the practice on farms and in factories (booklet in English and Chinese; DVDs in English, Mandarin and Japanese)
- Australian cheese booklet: a booklet outlining the major types of cheese from Australia (in English and Chinese)
- Dairy recipe booklet: with recipes using Australian dairy products for Asian markets (in English and Chinese)
- Australian dairy industry in focus: an Australian dairy industry year book published in every November (in English only) and
- The DairyAustralian: quarterly e-newsletter for all international markets about what's new in Australian dairy in terms of new technologies, new products and company developments etc. (in English, Chinese simplified and traditional characters, Japanese and Korean)

Dairy Australia usually provide these publications (apart from the e-newsletter) to Scholarship and seminar participants. We have up to 3,000 dairy contacts for the e-newsletter.

11. Other activities include meetings and presenting to inbound visitors from China and other markets and involvement in state government initiatives such as trade missions.

Attachment III: summary of report commissioned by Dairy Australia 'Comparative evaluation of technical barriers to trade for Australian dairy products'[14]

The Australian dairy industry is export reliant and exported dairy products to more than 100 countries at a value of $2.7 billion in 2013-14 (financial year prior to study being released). Market access issues in the form of technical barriers to trade (TBTs) have a negative impact on both the volume and value of dairy products traded.

Although international standards exist to guide market access requirements for most dairy products, many countries have their own standards in place that differ from, and can be more onerous than, the international guidelines that may be used as TBTs.

The impact of these technical, non-tariff trade issues can be very difficult to quantify, particularly in comparison to tariff or quota based barriers, and can accordingly be given less deserving attention by both government and industry.

Dairy Australia identified a gap in both industry and government understanding of these TBTs and sought to develop a tool that would:

- Effectively promote the impact of TBTs to policy influencers at all government levels and inform decision making and
- Highlight the need to adequately resource government work programs that address TBTs

In 2013-14 Dairy Australia commissioned Economic and Agribusiness Consultants David Harris and Associates to undertake a comparative evaluation of technical barriers to trade for the Australian dairy products. They had previously undertaken a similar exercise for the meat industry.

The study reviewed the technical requirements of import markets and identified TBTs. A comparison of these, and an estimate of the impact to industry in value terms was carried out in order to prepare composite rankings of the TBTs to guide reform priorities. The project examined nine separate product categories across eleven categories of technical requirements along the supply chain.

Major findings:

A total of 356 TBTs were identified with 141 of these being deemed to be significant in their impact to trade. These 141 TBTs formed the basis of the study. Of these, 32 were in South East Asian markets and 20 in North Asia, 50 were in the Middle East and 21 in Central Asia, two were in North America and 16 across other markets.

The 141 TBTs were assessed and given an impact rating:

- 48 of these were deemed to be high impact, each being more than $10 million in value. These are concentrated in Indonesia, China, India, Iraq, Sri Lanka and Russia
- 43 TBTs had a medium impact rating and are connected to trade in Thailand, China, Sri Lanka and Middle East markets and
- A further 50 TBTs have a lower impact with a value impact of less than $5 million each

Market impacts can be aggregated to present a regional perspective:

- This shows TBTs have the most impact in South East Asia where 32 issues have a total impact of $426 million. Currently 40% of Australian trade in dairy products takes place with countries in this region

[14] Commissioned work for Dairy Australia by DN Harris and Associates, July 2014.

- In other regions, 50 TBTs have an impact of $398 million in the Middle East, in North Asia they are valued at $302 million, and in Central Asia $ 262 million

Aggregated, the total annual impact for individual TBTs was estimated at $1.57 billion in July 2014.

The report also demonstrates that:

- In many instances addressing these TBTs in key markets could produce gains even more beneficial to our industry than a tariff reduction;
    - Higher production costs, reduced product returns and restricted export demands all combine to lower milk returns for farmers and
- 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

The Australian dairy industry is presently unable to seize major competitive advantages (like strong food safety, credible domestic regulators and reliable cold storage supply chains) because we are forced to comply with lowest common denominator import standards.

There is consistent feedback from Australian dairy exporters about “losing interest” in doing business in foreign markets as a response to TBTs frustration.

In respect of two parties to the RCEP negotiations Indonesia stands out as a key opportunity in terms of the scale of their existing TBTs (dairy impacts worth $304m), especially reducing the need for pre-departure product testing, product registration requirements, non-standard packaging of UHT milk and market entry age of milk powders.

Similarly China presents opportunities to seek preferential treatment and reduce TBTs given the impacts in this growing market (worth $193m)

- Key issues being reducing the need for product registration, pre-departure product testing and port of entry inspection

Attachment IV: NTBs in the RCEP region

NTBs are pervasive.

An ABAC commissioned report by the University of Southern California (Marshall School of Business) titled 'Non-Tariff Barriers in Agriculture and Food Trade in APEC: Business Perspectives on Impacts and Solutions'. The report was delivered in November 2016.

The Marshall School interviewed over 400 business representatives, experts and officials from around the APEC region, to identify the most burdensome food NTBs and to seek to develop practical solutions. The research found that NTMs/ NTBs, were increasing in prominence and complexity in the region and that business perceived the trading environment for food and agriculture products to continue to be highly restrictive.

The interviews revealed that NTBs could undermine the whole food supply chain and were particularly harmful for small businesses. The study concluded that greater transparency, clearer timeframes and better processes for food trade were needed before, at, and behind borders.

The USC report also highlighted the need for a coordinated approach by government and industry to identify, assess and resolve NTBs.

Measures should be designed in the least-trade-restrictive manner possible; there was also potential value in mutual recognition or harmonisation of standards (both technical/labelling and food safety). The report also emphasised the potential for digital channels to facilitate trade flows[15].

The Industry is export driven and customer focussed with the understanding that both customers and importing countries have certain food safety requirements. When these requirements, though, are inconsistent or onerous the Industry bears the burden of market access uncertainty and related cost imposts.

RCEP offer the opportunity of institutionalising effective mechanisms and thereby creating a systemic approach to addressing and resolving NTBs. Economic cooperation including capacity building offers the opportunity of providing a practical, commercially effective response via capacity building. This approach can occur through three channels:

- Government to government
- Private to government and vice versa
- Private to private

The commercial goal (imperative) is to resolve NTBs to enhance the profitability of exporting of Australian origin dairy products and to facilitate the participation of SMEs in trade

The policy goal is to establish the Australian (and New Zealand) approach on food safety regulation as the gold standard in RCEP nations via initially negotiations outlining a pathway to regulatory cooperation that is then backed up by coordinated private and government actions, noting:

- Regulation is an increasingly contested space with both the EU and the United States (and potentially other major economic powers) seeking to influence regulatory structures globally

[15] Link is: http://www2.abaconline.org/assets/2016/4%20Peru/Full%20Report%20-%20ABAC%20USC%20Marshall%20-%20Non-Tariff%20Barriers%20in%20Agriculture%20and%20Food%20Trade.pdf

Generically within RCEP there are three cross-cutting categories where the majority of dairy NTBs fall into:

1. Costs of production:
    a. Factory registration
    b. Product registration
    c. Labelling
    d. Halal certification
2. Administrative (red tape) costs:
    a. Certification including e-cert (health) and self-declaration
    b. Arbitrary changes in regulation
    c. Differences in interpretation
    d. Regulatory environment uncertainty per se
    e. Complex permitting and licensing procedures
3. Market access:
    a. Pre-shipment testing
    b. Customs clearance
    c. Structure of government permitting process
    d. CODEX and other international standards that establish product composition
    e. MRLs including analysis
    f. Sample size and
    g. Commodity group specific, for example geographic indications of origin

Attachment V: regulatory cooperation

Regulatory cooperation is defined as addressing non-tariff barriers (NTBs) in a systemic manner that provides dairy trade beneficial outcomes to importers and exporters. The trading experience of dairy exporters is that while tariffs decline over time, NTBs rise. Regulatory cooperation can address NTBs in such a way that facilitates trade without compromising product safety or quality assurance. This can be done by adopting international standards where they exist or adopting industry best practice where international standards do not exist[16].

Trust and goodwill are the cornerstones of making the regulatory process work for the benefit of the dairy supply chain, governments, dairy ingredient end-users and consumers.

The Industry goal is to make the dairy supply chain more profitable via:

- Reducing the complexity and increasing the transparency of non-tariff measures to facilitate the efficient movement of dairy products, thereby enhancing reliability of supply and management of inventory and
- Capturing the financial benefits accruing from a more efficient dairy supply chain for upstream stakeholders (dairy farmers and manufacturers) so as to enhance the viability of this value adding sector

Regulatory cooperation is important to achieve these goals. Savings through the supply chain will also produce benefits for consumers directly and indirectly through increased supply availability.

Important considerations are:

1. There are many regulatory barriers to trade in RCEP countries. With the expected decline in tariffs and quotas they will become more important as restriction on dairy trade
2. Existing means of resolving regulatory issues are costly and cumbersome as in WTO dispute settlement
3. RCEP provides an excellent opportunity to develop a comprehensive and effective approach towards achieving regulatory cooperation
4. Within RCEP there should be a chapter or statement that sets out principles and guidelines for developing regulatory cooperation
5. These principles and guidelines from a dairy trade perspective should be applied in the TBT and SPS chapters and in other chapters where regulatory cooperation could be an issue
6. The dairy supply chain is closely involved in developing, within the context of RCEP negotiations, the concepts and wording on regulatory cooperation
7. Guidelines and international standards are adopted and utilised respectively as the basis for adopting a coherent and efficient supply chain approach
8. Developing regulatory standards in a RCEP context occurs only in instances where an agreed international standard, such as CODEX, does not already exist and
9. Cooperation in regulation will benefit consumers via standardizing health and safety information and provide protection from misleading or deceptive conduct

Regulatory cooperation principles are based on ABAC recommendations; refer to page 29.

Current situation:

[16] Industry best practice in this context is defined as regulation that achieves the desired product safety or quality outcome while reducing complexity and facilitating the efficient movement of dairy products. This outcome would be determined by consultation with businesses in RCEP countries. The key principles of removing unnecessary regulation and non-discrimination between imports and domestic goods are crucial elements of industry best practice.

As outlined in Attachment IV there is a very wide range of regulatory barriers among RCEP countries. These can often be applied in a way that adds to the complexity and cost of dairy trade.

At present resolving regulatory issues means either a bilateral agreement which can take a long time to negotiate and implement or resorting to WTO dispute settlement. That process is also lengthy and usually expensive as well.

A plurilateral agreement such as RCEP when compared to a bilateral trade agreements confers the potentially considerable commercial benefit of reconciling (and where it is feasible from a sound science perspective harmonizing) regulatory requirements that vary between markets and even between exporting nations. These variations which can be considerable create a compliance cost and potentially impact upon relative competitiveness.

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
- Explicit statement of the principle that regulatory cooperation is intended to reduce complexity of regulations relating to trade and to increase the transparency of non-tariff barriers to trade and
- Binding commitments on prior notification and allowing a sufficient time for commercially impacted parties to comment on proposed regulatory changes along with an appeal process

The Industry notes that Australia's food regulatory regime is in certain aspects CODEX plus. Provided the standards are based on sound science then higher standards than CODEX are supported.

An option is the inclusion of a dispute resolution process within the regulatory cooperation 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 resolution and subsequent implementation on regulatory cooperation matters without recourse to a formal dispute settlement process.

<u>Application to SPS and TBT chapters</u>:
Many of the NTBs encountered by dairy exporters fall within either the SPS or TBT chapters. As a result the recommended 'principles' and 'guidelines' should be applied in both the SPS and TBT chapters.

Mention should be made in the regulatory cooperation chapter or statement that the 'principles' and 'guidelines' also relate to other chapters including Customs, Investment, Competition, Government Procurement, Trade in Services, IP (Geographic Indications of Origin) and ROOs.

<u>Recommendations</u>:

- Representatives from the dairy supply chain be able to participate on specific issues during RCEP negotiating meetings and also to present their views to the negotiating group at private sector events. The Industry has specialised knowledge of existing NTBs and thus is well placed to provide substantial input into developing and implementing regulatory cooperation within an RCEP context. Best practice would be determined by consultation with Industry associations.

- Capacity building can play an important role through up-skilling of regulatory authorities in developing nations; creating appropriate networks and understanding of the dairy supply chain compliance issues and methods:
    - Consequently laying the groundwork for a coherent approach on dairy trade regulatory aspects and
- The recommended 'principles' and 'guidelines' approach on regulatory cooperation is preferred to adopting a prescriptive approach