Dairy Australia

Submission regarding

Australia – Peru Free Trade Agreement

October 2017

Contact:

Robert Pettit - Manager Trade Policy, Trade & Industry Strategy 03 9694 3715**I**
rpettit@dairyaustralia.com.au Level 3, HWT Tower, 40 City Road, Southbank Victoria 3006

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 5,800 farms producing 9.015 billion litres of milk in 2016-17.

The dairy industry is one of the leading rural industries in terms of value adding, contributing $13.5 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.

Contents

Key points: 5

Introduction: 6

Trade and investment: 7

Peruvian dairy sector: sensitive to trade liberalisation? 7

Draft law on banning use of imported milk powders 8

Dairy trade: 9

Dairy market access: 11

Applied tariffs: 12

Derecho Variable Adicional (DVA): 12

Facilitating the efficient operation of the bilateral supply chain: trade facilitating Rules of Origin (ROOs) and SPS and TBT measures: 13

SPS: 13

Systems recognition: 14

TBTs: 15

ROOs: 15

Non-tariff measures (NTMs): 16

Measures to resolve NTBs including regulatory cooperation (RC), Customs clearance and a proposed dairy sectoral initiative 17

Intellectual property protection for common cheese names: 18

Attachment I: imports of dairy products including Australian origin 21

Profile of Australian origin imports: 24

Other regulations pertaining to dairy imports are: 27

Attachment II: Derecho Variable Adicional or Surcharge on imported dairy products 28

Attachment III: overview of Peruvian dairy industry and the degree of sensitivity to trade liberalisation 31

Banning of imported milk powder; what would happen? A processor viewpoint 32

Attachment IV: Peru's dairy tariff concession in FTAs with the United States, European Union and Chile 36

Attachment V: regulatory cooperation 47

Attachment VI: dairy sectoral initiative 50

Attachment VII: Industry advocacy on Geographic Indications.....52

Key points:

- Peru is a modest sized import market, though noting the doubling of volumes in the period 2006 to 2016. This doubling reflects their long term milk deficit situation

- Australian origin imports accounted for 6.2% of the total volume in the period 2000 to 2016; averaging 2,375 tonnes, though the volume declined noticeably from 2010. SMP was the largest volume (44.8%) followed by butteroil (16.4%) and WMP (16.2%)

- Australia was the fifth largest source of imports after, in order, New Zealand, EU, USA and Chile. With the exception of New Zealand the other 3 nations have preferential access

- Preferential access for Australian origin dairy products should match, from entry into force, the most favourable bilateral arrangement that is Peru - USA or alternatively Peru - Chile

- The Australian dairy industry (Industry) seeks to avoid a 'KAFTA style' outcome where preferential liberalisation of dairy product access is less than that accorded to competitors and thereby locks Australian origin into a competitive disadvantage

- An ambitious and comprehensive FTA, with agriculture at the heart, would set an appropriate benchmark for Australia's negotiations with the Pacific Alliance and contribute to the ambition for a genuinely liberalising Free Trade Area of Asia Pacific

- Dairy liberalisation for Australian origin, in view of the precedence established by bilateral agreements with the USA, Chile and the EU is considered non-sensitive. This matter is elaborated upon in more detail in the body of the text

- Specifically the Industry views an FTA with Peru as providing the opportunity to address three key industry priorities:
    1. Binding all chapter 4 and 35 dairy product tariff rates plus those for food preparations containing dairy ingredients (chapters 19, 21, 22, 23) at zero from entry-into-force (EIF)
        i. Noting the timeline for full liberalisation of US origin imports is 1st January 2025
    2. Excluding Australian origin from application of the price band system
    3. The establishment of a systemic, science and risk based approach to the implementation of non-tariff measures (NTMs) and resolution of non-tariff barriers. From a dairy specific focus the starting point is alignment with CODEX standards and
        ii. Supporting this approach is a regulatory cooperation chapter that involves a binding set of principles and guidelines

- Trade facilitating rules of origin to reflect the development of global value chains and specifically the re-export, from Peru, of value added foods containing dairy ingredients to surrounding Latin American countries

- Insertion of an MFN dairy clause that guarantees equivalence of access for Australian origin dairy products in the event that Peru subsequently negotiates more favourable preferential agreements with third parties

- The agreement is viewed as a "living agreement," meaning it can be updated over time as needed, for example on application of non-tariff measures along whilst creating a mechanism for (business) stakeholder input to reflect consistent monitoring, evaluation, and improvements over time

Dairy industry submission to DFAT: Peruvian FTA negotiations – October 2017

Dairy Australia welcomes the opportunity to submit.

Introduction:

Peru is historically a small market for Australian origin dairy products. A comprehensive FTA, with agriculture at the heart, would lay the groundwork for growing dairy exports and set an ambitious standard for the imminent Pacific Alliance negotiations.

The complementarity of the dairy supply chain involving value adding in Peru of bulk product imported from Australia supports job creation and wealth creation and encourages investment in the dairy supply chain.

A 21st century outcome:
A comprehensive outcome that from EIF:

- Binds all chapter 4 and 35 dairy product tariff rates plus those for food preparations containing dairy ingredients (chapters 19, 21, 22, 23) at zero, noting the country specific quotas (CSQs) in certain dairy products are a transitory measure to free trade
- Removes Australian origin dairy products from the application of the price band[1]
- Establishes mechanisms that enhance the expansion and functioning of the bilateral supply chain, including on regulatory cooperation, resolution of NTBs and trade facilitating ROOs. This reflects the spread of global value chains and
- Specifically establishes a trade in goods committee that meets regularly to address and resolve barriers to trade. The goods committee will facilitate industry participation to provide real time commercial advice

Peru can set the benchmark for a truly liberalising outcome in a Pacific Alliance regional/ free trade agreement noting that, for dairy, Mexico is the "prize" access market in Latin America.

Tactically it is also useful if a Peru – Australia FTA locks in the benefits of the TPP in a range of chapters that, as mentioned above, influence the profitability of trading in dairy products. Peru withdrew its offer of US-Peru 'equivalence' prior to the TPP (Maui) Ministerial in late July 2015, citing the lack of ambition on dairy market access by Canada and Mexico. These regional negotiating parameters, obviously do not apply in bilateral negotiation. The offer needs to be reinstated at the second negotiating round in Canberra, scheduled for late August 2017 along with exclusion of dairy products from the price band system.

Transparency is also essential:
Transparency is of fundamental importance in the negotiations, including regular and ongoing consultations with stakeholders. This includes support from negotiators to arrange meetings, when appropriate, between Australian dairy and agricultural groups and the Peruvian goods negotiators.

Most Favoured Nation (MFN) clause:
In light of the rapid expansion of bilateral and regional trade agreements and the ongoing ambitions of dairy exporting nations to establish preferential access rights, an MFN clause, covering all dairy products and food ingredients containing milk is considered to be an essential component of an Australia – Peru agreement. This would preserve a level playing field on market access for Australian

[1] Since 22nd June 2001 Peru has applied the price band system to four agricultural products: yellow corn, rice, sugar and whole milk powder. The price band was created as a trade policy instrument to stabilize import costs and domestic prices of a group of agricultural products. The system creates a 'buffer zone' with a higher level and a lower one, which corresponds to a roof and a floor where the international prices of the four foods should fluctuate. Otherwise, additional tariffs, the surcharge or DVA, equivalent to an import tax are set if the respective price is below the floor.

origin dairy products; commercially essential for establishing and building a long term trading relationship.

The MFN clause is envisaged as automatically guaranteeing identical access arrangements for Australian origin dairy products upon entry into force of a more favourable third party agreement.

Trade and investment:

Trade and investment go hand-in-hand potentially creating a double gain for the Industry. Consequently investment clauses are sought in an Australia – Peru FTA to encourage a mutually beneficial two-way flow subject to appropriate protections for investors; most specifically that domestic and foreign investment be treated equally in policy making and in the legal system.

Peruvian dairy sector: sensitive to trade liberalisation?

Producers (farmers) blame imports of milk powders for the low farm gate prices for milk in 2014, 2015 and the first half of 2016 noting that a rebound in dairy commodity prices has occurred more recently. Hence the farmer agitation for the ban on imports of milk powders.

Farmers, though, have not been able to increase their supply at the same rate as consumption has increased. Peru's per capita dairy consumption, on a milk equivalent basis of 87 litres, is relatively low compared to other South American countries, especially Argentina and Uruguay. With the FAO recommending a per capita consumption level of 120 litres there is considerable room for growth in demand.

Other factors mitigating the perception that dairy is "sensitive" in other than periodic moments are:

- Milk self-sufficiency is 70%, meaning that imports need to supply 30% of demand
- The surcharge system, whose acronym is DVA has been in place since March 1991. During the 26 years to 2017, though, the milk supply deficit has persisted and as the percentage gap has, in fits and starts, gradually widened
- Exports of fruits and horticulture products have increased at a high rate reflecting Peru's competitive advantage; this has diverted agricultural resources and investment away from dairy
- Most dairy farmers milk cows as a secondary income source
- The quality of local raw milk is variable; hence the processors need the milk solids provided by the imported milk powder
- In a nutshell dairy farmers are yet to fully meet the quality parameters and volume needs of processors and therefore the food manufacturing industry needs to rely on imports to produce foods that meet health standards and satisfy consumer expectations on quality and taste grounds

The volume of dairy products available through Peru – USA country specific quotas is enough to satisfy a substantial portion of Peru´s dairy import needs, noting that compound annual growth rates for the major product groups range between 10% and 12% and free trade occurs from 1st January 2025. This is reflected in the emergence, in 2016, of the United States as the largest source of dairy product imports; refer to Attachment I.

Since 1st July 2013 all dairy imports from Chile are exempt from duties and the DVA surcharge. Chile is also 'next door' to Peru; potentially providing a logistical (in time delivery) and freight advantage.

The EU – Peru FTA improves the quality of access for EU origin over time. Both the USA and EU have considerably larger export availability than Australia. In view of geography, export availability and

export strategy (focus on Asian and Middle East market) Australia will only supply a relatively small portion of Peru's requirements, noting the FTA offers an unprecedented opportunity of enhancing competitiveness.

Australian origin is a price taker in the Peruvian market. Australia is also not a dairy export power house, like New Zealand that has a global footprint; this is an important distinction to make in the negotiations.

Given the above preferential access arrangements it makes sense, from the perspective of the Industry for Peru to obtain equivalence of access benefits to those enjoyed by the United States.

In this vein a 'KAFTA style' outcome is essential to avoid; whereby improved bilateral access is commercially ineffectual as Australian origin only plays catch up to major dairy exporting nations, primarily the EU and USA, ranking two and three globally, over a considerable time period[2].

Bulk dairy imports are value added for both domestic consumption and limited exports, predominantly of condensed milk; refer to table immediately below. They create jobs and wealth in Peru in processing, distribution and retail and food service sectors.

Peru: exports by dairy product group

	2006	2007	2008	2009	2010	2011	2012	2013	2014	2015	2016
Butter	0	0	13	3	6	0	0	1	2		
Butter Blend	0	0									
Butter Oil	1				8					0	
Buttermilk	3		1	441	1,242	1,598	2,266	2,376	3,316	1,088	61
Casein	16	91	79	118	83	27	24	21	23	19	15
Cheese	5	2	23	21	48	18	38	50	12	85	164
Condensed Milk	47,256	48,245	60,989	44,614	57,726	60,300	65,369	69,983	76,549	72,075	79,364
Ice Cream	79	53	35	74	58	108	64	35	8	32	165
Infant Powder	14	5									
Lactose	5	12	5	7	6	1	4	4	17	6	6
Milk	26	297	3,049	1,922	3,850	4,203	5,976	2,861	5,935	1,143	1,227
Milk Products					3	250	225	0	100	25	
SMP	0	0	23	33	14	10	4				0
Whey			34	18	15	68	178	22	11	5	2
Whey Powder				8		11	133	27	0		
WMP	0		7	5	261		0	1	0	1	15
Yogurt	141	106	74	22	190	342	114	43	4	61	72
Totals	**47,548**	**48,812**	**64,332**	**47,287**	**63,511**	**66,935**	**74,395**	**75,424**	**85,977**	**74,541**	**81,091**

Draft law on banning use of imported milk powders

The Peruvian negotiators may be overly careful (in respect of dairy being sensitive) as a result of the draft law, issued by Congress, that prohibits the use of milk powder in the production of any dairy product. It was rejected by the President. The draft law is now back in Congress and they will have a PCE to decide whether to accept the Presidential rejection or enact the law as is or with amendments. If the latter, it will have to be approved by a majority of members of Congress which potentially is challenging.

The economic argument for the draft law is flawed. If competitively priced, imported milk powder is banned then lower income drinkers of dairy beverages will reduce purchases as availability will tighten and prices rise for foods containing a large value portion of dairy ingredients. This in turn will

[2] In terms of market development the most pronounced commercial disadvantage occurs for mozzarella; accounting for almost two-thirds of the substantial growth in RoK cheese imports in the eight year period (2009 to 2016). Whilst competitors cheese CSQs are larger, their out-of-quota tariff rates for mozzarella all zero in 2026 (cf. 10% for Australia) compared to 2031 for Australian origin.

lead to reduced purchases of domestic origin milk creating marketing and income issues for dairy farmers. Imported milk powder is also essential as an ingredient in dairy beverages as its consistent quality can mask the variability in quality of fluid milk sourced domestically.

There is no production of milk powder in Peru. Dairy products requirements from bakery, confectionery, ice cream and other similar food industries can only satisfied through imports of milk powders and other dairy ingredients!

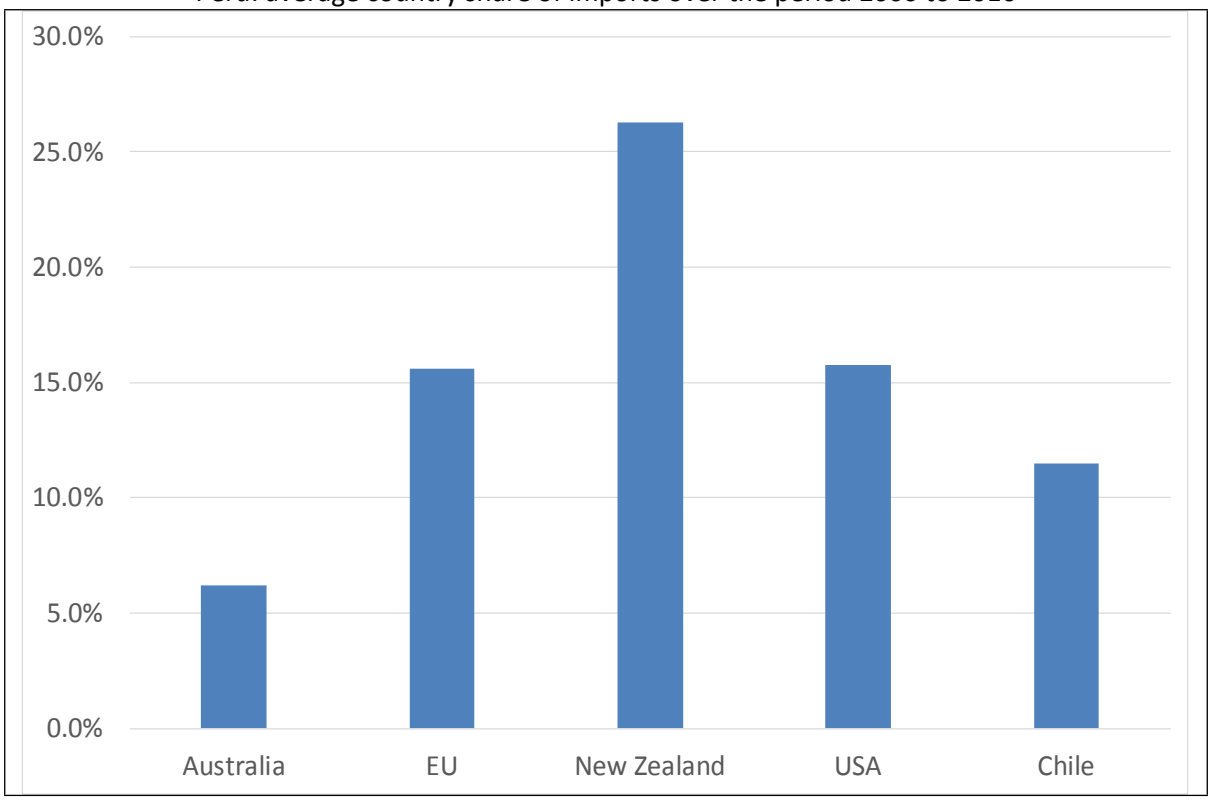
In conclusion the actions of the Peruvian government in recent years; implementing preferential access agreements with the USA, EU and Chile that include dairy products indicates their policy intent is keeping food affordable.

The Peruvian government likely views Australia as a stepping stone to extending negotiations with ASEAN beyond Singapore and is aware of the need to demonstrate its free trade credentials.

Dairy trade:

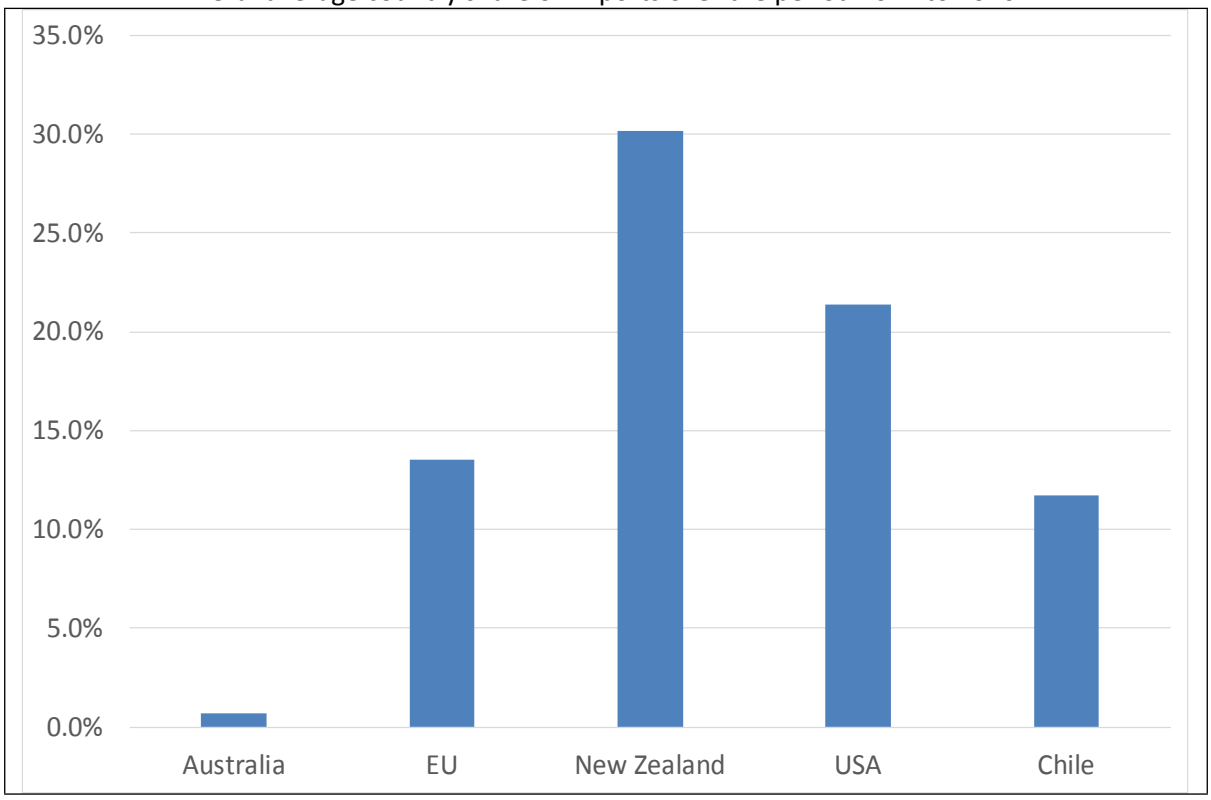
Australia's average share of imports over the period 2000 to 2016 was 6.2% compared to the EU's 15.6%, New Zealand's 26.3%, USA 15.8% and Chile's 11.5%; refer to chart below.

Peru: average country share of imports over the period 2000 to 2016



Australia's average share of imports in the most recent three year period 2014 to 2016, though, recorded a major dip in share, reflecting the stagnation in export availability, attractiveness of traditional markets in Asia heightened by preferential gains from free trade agreements and the competitive access advantage into Peru secured for EU, USA and Chilean origins. Respective shares were Australia 0.7% compared to the EU's 13.4%, New Zealand's 30.1%, USA 21.5% and Chile's 11.7%; refer to chart below. Exemption of Australia origin from application of the price band system would assist in clawing back import market share.

Peru: average country share of imports over the period 2014 to 2016



The three major dairy products exported by Australia over the period 2000 to 2016 were, in order skim milk powder (SMP), butteroil and whole milk powder (WMP); refer to table below. The average volume and value of the 17 year period 2000 to 2016 were 2,375 tonnes and US$4.821 million.

Peru: imports of Australian origin dairy products averaged over the period 2000 to 2016

	Tonnes	US$
Butter & blends	2	3,480
Butteroil	390	1,037,933
Buttermilk	271	491,270
Cheese	6	35,274
Milk products	50	109,767
SMP	1,064	2,116,443
Whey	46	55,011
Whey powder	124	85,207
WMP	383	881,081
Other e.g. casein	39	11,051
Total	**2,375**	**4,821,305**

Attachment I provides elaboration.

Dairy market access:

The Australian dairy industry seeks equivalence of US origin access rights from entry into force of an agreement. The transitional CSQs, to free trade, would attract a zero in-quota duty, be excluded

from the application of the price band and administered by Australia on a first come first served basis (FCFS).

Additionally Australian origin would not be subject to volume safeguards during the transition period to free trade. US and EU volume safeguards apply, for certain product groups such as milk powders when imports are 30% and 10% above the respective CSQ volume; refer to Attachment IV.

The most important dairy product groups are milk powders, cheeses and butterfat, especially butteroil and potentially milk protein concentrate (0404.10.90 - Other).

The bare bones of Peru-USA FTA implemented on 1st February 2009 on dairy are: duty and quota free access upon implementation for whey, lactose and dairy products other than those mentioned. Duty free, in-quota access for an aggregate 10,000 tonnes (t) in year 1 covering the following dairy products with the CSQs attracting a compound annual growth rate of either 10% or 12%:

- Cheese 2,500t
- Milk powders 4,630t
- Processed dairy products (i.e. infant formula, milk proteins) 2,000t
- Butter 500t
- Ice cream 300t and
- Yogurt 70t

Attachment IV outlines the CSQs for dairy products under the US – Peru FTA.

All out-of-quota tariffs on dairy products are scheduled to drop to zero in either year 15 (2023) or year 17 (2025). The reduction in over-quota tariffs on milk powders and cheeses will begin in Year 11 (2019). Subsequent to implementation, though, Peru with the exception of selected dairy products such as evaporated milk and butter milk powder (BMP) reduced their applied MFN tariff to zero. Evaporated milk and BMP remained at 9%; refer to Attachment IV.

The CSQs provide 'comfort' in that the in-quota tariff rate is fixed at zero rather than 'applied' as is the case for all dairy products originating from countries where no preferential arrangements currently exist.

Additionally the 'bound' zeroing of all US origin dairy product tariffs in either 2023 or 2025 provides commercial certainty for their exporters if the situation arises that Peru decides to revert to their bound MFN rates.

A commercially viable alternative to the Peru – USA dairy liberalisation template is the Peru – Chile agreement that fully liberalised access for all dairy products over a 15 year period, commencing on 1st July 1998; refer to Attachment IV.

By way of contrast the Peru – USA phase out period for all restrictions on dairy product imports is 17 years.

The main competitive advantage for US, Chilean and EU origins, though, are exclusion of their CSQ volumes from application of the price band as applied MFN tariff rates are generally set at 0% with the exception of butter milk powder and evaporated milk in 2007.

Derecho Variable Adicional (DVA):

The price band system, in effect an import tax on dairy products, is levied on origins other than the USA, EU and Chile. The DVA or surcharge is the practical application. The DVA is triggered if the FOB price for the reference commodity, whole milk powder (or WMP) falls below a benchmark level; namely US$3,050/t.

The DVA is applied to the tariff lines for bulk and retail packs of milk, SMP, WMP, condensed milk, whey powder, butteroil (AMF), WPC and other dairy products. The DVA is based on an "indicative" New Zealand export price for WMP as reported monthly by Statistics New Zealand. The DVA reference table is reviewed every six months. Attachment II provides background information on the DVA.

The surcharge system, though has been mitigated by a regulation which reduces the additional duty to a maximum of 20% of the value of the CIF import price. For example if the CIF value for WMP is in the range of US$2,450 – US$2,500/t the applicable surcharge or DVA is US$588/t though Customs can only apply a maximum 'import tax' of US$500/t[3].

The DVA introduces considerable uncertainty into exporting to Peru from an Australian dairy processor perspective. Cyclical swings in the dairy commodity prices, including for WMP can be sharp and potentially fluctuate, in a downward cycle, between leaving the warehouse in Melbourne and Customs clearance in Peru. This undermines commercial 'certainty' and discourages Australian processors from committing to the Peruvian market, especially in the knowledge that competitors offering US, EU or Chilean origin are exempt from the price band.

The Industry recommends the following provisions apply to bilateral agricultural including dairy products trade[4]:

- Peru shall not apply any price band system to agricultural goods, including dairy products, imported from Australia
- Australian origin shall automatically benefit from a duty reduction to a third party if a lower tariff than that applying in a Peru – Australia FTA; in essence an MFN clause
- Peru does not apply a duty to an agricultural good imported from Australia higher than that provided for in the FTA schedule and
- Australian origin dairy products will receive identical access treatment to US origin from both entry into force of a bilateral agreement and on 1st January 2025

Facilitating the efficient operation of the bilateral supply chain: trade facilitating Rules of Origin (ROOs) and SPS and TBT measures:

The policy recommendations are made in light of both the bilateral and imminent launch of negotiations with the Pacific Alliance.

The ambition of Pacific Alliance nations to enter trade agreements with ASEAN nations, initially Singapore a food manufacturing, re-exporting hub heralds the importance of trade facilitating ROOs to reflect the growth and spread of regional and global value chains.

[3] For more information refer to link http://www.sunat.gob.pe/orientacionaduanera/pagosgarantias/
[4] Source: General Notes: Tariff Schedule of the Republic of Peru. Annex 2.3, Appendix 1 -Peru Notes-3 (to USA – Peru FTA).

SPS:

The Industry's generic approach on the SPS and technical barriers to trade (TBT) chapters aims at maximising the volume and profitability of exporting Australian origin dairy products to Peru.

Specifically measures that the Industry considers important to be reflected in the Australia – Peru text and reasons why are as follows:

- Adoption of the term "commercially reasonable time-frames" in all decision making and implementation of SPS measures by both countries for the purpose of facilitating trade. Specifically unless agreed otherwise, a meeting shall be held within 30 days of the responding Party's acknowledgement of the request to discuss the identified trade restrictive non-tariff measure (NTM), with the aim of resolving the matter within 180 days of the request. The meeting shall be in person or by electronic means
- Builds upon the WTO SPS chapter with decision making based on scientific evidence when both Parties relevant authorities are adjudicating on risk and conformity assessments, noting that risk management measures must be the least trade restrictive approach that achieves each country's desired level of protection[5]
- Encourages 'confidence' building measures (reflecting technical, regulatory and policy competence) between both countries This can include capacity building measures and outcomes from confidence building measures to be reported in a timely manner to the other Party
- Encourages the development and adoption of international standards, guidelines and recommendations and promote their implementation by both countries
- Enhancing transparency includes prior notification of regulatory changes (electronically) and the ability of both countries 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, 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
- Export certifications are limited to those necessary to protect human, animal or plant life or health and requiring the importing country to limit required attestations to essential information related to their SPS objectives and
- The importance of regulatory authorities in each Party cooperating to address SPS matters systemically rather than reverting to a dispute settlement mechanism. The cooperative approach, if based on sound science, is capable of facilitating trade

In all instances the approach on SPS matters is underpinned by best practice.

Systems recognition:

Chapter 6 (SPS Measures), article 6.3 of the US – Peru FTA sets up a consultative mechanism[6]: the 'Standing Committee on Sanitary and Phytosanitary Matters'.

There are links under this Chapter heading to 'SPS Exchange of letter' where, over the years, Peruvian authorities confirmed they had recognised various elements of the US SPS system. For

[5] Specifically the Industry is adamantly opposed to inclusion of any measure based on the 'precautionary' principle.

[6] Links are: https://ustr.gov/trade-agreements/free-trade-agreements/peru-tpa/final-text and https://ustr.gov/sites/default/files/uploads/agreements/fta/peru/asset_upload_file435_9509.pdf

example in a letter dated 14th March 2016 between Peruvian and United States governments, the earlier recognises, for the purpose of importing beef and beef products the USDA Food Safety and Inspection Service export certificate of wholesomeness[7]. Such certificate shall "… meet all the Government of Peru's sanitary and health requirements".

It is recommended that Australia uses a similar approach drawing upon the content of SPS chapters in Australia's existing FTAs to establish a consultation mechanism. The committee could then engage in work to endorse system recognition, noting, in line with Codex and other SPS guidelines, that a negotiation is likely to happen initially, for example a submission on Australia's export dairy system and a system audit by the Peruvian authority SENASA. This could result in a Memorandum of Understanding recognising Australia's phytosanitary and sanitary measures, food standards and export legislation. Recognition would reduce costs associated with physical food safety inspections and audits of dairy manufacturing plants[8].

For background in 2000, following a review of the Australian export dairy system by officials from SENASA in February, AQIS agreed on a certificate and individual certification declarations.

The SPS (sub) committee is recommended to be part of a broader committee that is mandated to access the commercial impact of new NTMs to ensure that they both address legitimate (sound science based) public health matters in the least trades restrictive manner and to systemically review existing NTMs to ensure that they do not constitute an NTB.

The AANZFTA FJC (Free Trade Agreement Joint Committee) is a potential model with the proviso that regulators need to meet at least annually and more regularly on behind the border barriers within the context of an agreed methodology on systems recognition. This could involve an economic cooperation package for example to enhance customs procedures and enlisting a range of stakeholders and specifically business in the workings of both the umbrella and sub committees.

Another feature that is recommended to be adopted in an Australia – Peru FTA is the provision in article 6.2.2: 'No Party may have recourse to dispute settlement under this Agreement for any matter arising under this Chapter'.

TBTs:

The TPP TBT chapter is a potential template. The other reference point is the WTO Agreement on Technical Barriers to Trade.

The Industry is supportive of developing a 'sectoral' initiative to facilitate bilateral dairy trade. This initiative is outlined in Attachment VI.

ROOs:

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

- Originating materials or bilateral cumulation

[7] https://ustr.gov/sites/default/files/files/agreements/peru/US%20Peru%20Beef%20Letter%20Exchange.pdf

[8] Australia has an ongoing issue with Chile in terms of factory inspections. The Chilean authority, SAG, in spite of reach out over an extended period by DAWR is still holding to its policy of physical inspection of dairy manufacturing plants in Australia for approval to export. Physical (on the ground) inspections are time consuming, can involve considerable financial outlay especially if per diems are paid and can end up acting as an NTB if delays occur in inspection dates as a result of unavailability of SAG personnel. If the latter occurs temporary extensions for export approval are likely to be granted though this excludes a new product line or lines in an approved establishment and inspection/ registration of additional plants.

- A de minimis of 10% of the value of goods within Chapter 4 of the HTS and
- Change of Tariff Classification at the sub-heading (CTSH) that is the HTS six digit level

If ROOs are transparent and trade facilitating this is anticipated to help MSME dairy processors to enter the bilateral supply chain.

Cumulation is defined as inputs originating in one Party being considered as originating in the other Party. Goods from non-Parties can be used, though added "local" materials and processing of dairy products in one Party has to meet the recommended CTSH rule. A CTSH approach to confer origin reflects the substantial transformation that has occurred during manufacture.

The ROOs approach on deminimis reflects the growth of food exporting hubs. 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. For example Australian based milk 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
- At times the source of inputs 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 and as mentioned above important supply sources are the EU and USA

Potentially all dairy products that are exported from Australia are used in subsequent value adding manufacture and can then 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.

These recommendations maximise the potential for value adding and related access to global value chains.

Supporting a trade facilitating ROOs is exporter certification via a Declaration of Origin. The Industry recommends a Declaration of Origin remaining valid for 12 months from date of issue for dairy products covered under a single import customs declaration.

In tandem with trade facilitating ROOs are measures to promote regulatory cooperation to ensure that all non-tariff measures are based on international standards as supported by sound science.

Non-tariff measures (NTMs):

The advocated policy approach on NTMs is systemic rather than case specific noting the importance of establishing mechanisms to seek resolution in commercially acceptable time frames.

The adverse commercial impacts upon the bilateral dairy supply chain of non-tariff measures that end up either diverting or discourage trading i.e. non-tariff barriers include:

- Australian origin unable to leverage competitive advantages conferred by history of food safety; credible domestic regulatory system and reliable cold storage supply chains
- Countries have their own standards in place that differ from International standards for example CODEX can be less transparent than the science based international guidelines
- Leading to exporter frustration

The end result is the whole of the supply chain being disadvantaged through lower than optimal returns from trading; including dairy farmers and milk processors, ingredient end-users (food manufacturers), the distribution chain and consumers in the importing nation.

Development of standards in an FTA with Peru is recommended 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

This process is facilitated by regulatory cooperation; refer to section immediately below.

Measures to resolve NTBs including regulatory cooperation (RC), Customs clearance and a proposed dairy sectoral initiative

A systemic approach is required in an FTA with Peru to establish a pathway for resolving NTBs in a commercially advantageous manner. This approach is supported by a:

- RC chapter that involves a binding set of principles and guidelines and
- Trade facilitating ROOs

A robust, sound science based and systemic outcome on RC will position the Australian dairy industry to maximise the trading opportunities arising from a comprehensive and ambitious FTA with Peru.

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.

Underlying a trade facilitating approach on RC are a set of principles, recommended as:

- Meeting health and food safety standards that are based on sound science noting that milk production systems differ between nations
- Non-discrimination between domestic and imported goods in accordance with GATT Article II (national treatment)
- Transparency of processes in developing regulations and in implementing regulations
- Achievement of the most efficient trade enhancing and least trade restricting outcome via adoption of guidelines (see below) to regulation
- Focused on outcomes
- Real time consultation with dairy stakeholders to assist in developing solutions to existing regulatory practices and an early warning system for development of regulations
- Adoption of best practice as it evolves and
- Consistency in approach to developing regulations

RC initiatives that could arise, subsequent to implementation, include:

- Common ground on maximum residue levels or MRLs
- Review of dairy NTBs to see if they are based on sound science

- An eCert for Customs clearance of goods and associated capacity building measures to enable Customs and biosecurity authorities to employ best practice methods that are based on sound science

Another useful initiative could be harmonisation of testing mechanisms to ensure that product composition tests in Australia, prior to shipment and by Peruvian food manufacturers, post Customs clearance can aim to achieve the same results and thereby potentially mitigate the possibility for disputes over product quality.

This initiative could potentially be explored through a side letter to an agreement, laying the foundation for broader regulatory cooperation post implementation.

Attachment V provides elaboration on RC matters.

Customs clearance:
Transparency in Customs clearance procedures are essential if supply chain linkages are to operate effectively. The quick transit of goods fosters the participation of small and medium sized enterprises in bilateral and regional supply chains.

The following reasons are advanced by the dairy industry for supporting a processor 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

Dairy sectoral initiative:
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. Attachment VI provides elaboration.

Intellectual property protection for common cheese names:

The Australian industry supports the proper protection of GIs as provided for under the WTOs Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPs).

The EU - Peru FTA protects 115 European food names whilst three Peruvian food names are protected in the EU. In this list are 15 cheese varieties including feta[9]. Parmigiano Reggiano is included though the evocation 'parmesan' is not specifically recognised though there is reference in Article 207 (e)[10] and footnote 67 of the text (refer to footnote 11 in this submission) to evocation:

- The use[11] of geographical indications related to products originating in the territory of a Party shall be reserved exclusively for producers, manufacturers or craftsmen with

[9] Link is: http://trade.ec.europa.eu/doclib/docs/2011/march/tradoc_147725.pdf
[10] Official Journal of the EU: Legislation L354, volume 55 dated 21st December 2012; pages 65 to 67.
[11] For the purposes of this subparagraph, 'use' shall mean the production, and/or processing and/or preparation of the product identified by the geographical indication.

production or manufacturing establishments in the locality or region within the Party identified or evoked by that indication

Other features of the articles (207 to 210) on Geographical Indications are:

- Article 207 (h) 'geographical indications protected in accordance with this Title shall not, for as long as they remain protected in their country of origin, be considered the common or generic designation of the product that they identify'. This appears to imply that feta is not considered a generic name in Peru even though trade sources advise that supply can originate from countries other than Greece
- Article 208.1: objection procedures appear to be limited to the parties to the agreement; initially Peru, Colombia and the EU noting that Ecuador subsequently joined the Andean signatory countries
- Article 209 allows the additions of new geographical indications
- Article 210.1(b) refers to the potential to create "…confusion, including even in cases where the name is accompanied by indications such as style, type, imitation and other similar that creates confusion to the consumer". This is similar in substance to text in CETA and
- Article 211.1 invalidates trademarks if commercial use of such protected geographical indication impinges on Article 210.a: (i) for identical or like products not compliant with the product specification of the geographical indication; or (ii) in so far as such use exploits the reputation of the geographical indication; (b) any other non-authorised use[12]

Drawing from the above contexts an agreement with Peru needs to safeguard market access opportunities that are negotiated in good faith so that they are not compromised now or in the future by extension of the cheese name protections afforded by the original list in the Peru – EU FTA.

The Industry recommends that the provisions of the TPP chapter on intellectual property (chapter 18, section E Geographical Indications) apply. The due process improvements represented a notable accomplishment given the reality that over the duration of the TPP talks the EU initiated or concluded FTA negotiations with over half of the TPP participants and formally entered into plans for trade discussions with virtually all remaining countries.

Specifically in an Australia – Peru agreement the IP chapter must include provisions around GIs such that, if one or both Parties implement regimes, they have:

- Transparent registration and objection procedures that allows for all interested commercial parties to reasonably participate in
- Ensuring that the grant of GI protection does not violate prior rights for example, in cases in which a company has a trademark that includes a place name
- Allow for cancellation particularly if usage and consumer recognition becomes 'common' (customary) or other conditions are met
- A no disadvantage test for existing trademarks holders nor commercial users of common food names
- The scope of protection is limited to the GI as registered; in its full name entirety, denoting both the cheese variety and the location of production i.e. described in two or more words for example Camembert di Normandie with no protection of translations or individual words such as feta. This would uphold both IP safeguards and trade commitments
- 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 food names and

[12] The term 'non authorized use' may cover any misuse, imitation or evocation. This would appear to lay the groundwork for claiming that Parmigiano Reggiano evokes parmesan.

- The ability for common names to co-exist with GIs as per the principle of territoriality[13]

In conclusion problems have arisen from bilateral trade agreements between the EU and various countries, including Canada, where the above processes have been ignored, resulting in limits, for example grandfathering, being placed on the use of common cheese names[14]. Industry also has concerns over creeping geographical indications whether additional and common names are added as the EU PDO and PGI regimes expand[15]. Trade agreements as outlined above can accommodate recognition of GIs utilising a transparent system.

Including this language will commercially protect and potentially benefit Australian origin cheese exports to Peru (and potentially other Pacific Alliance partners) and serve as a precedent for future trade agreements including the proposed FTAAP.

To provide a further level of protection the Industry recommends inclusion of a Cheese Annex in the Goods (market access) chapter. This Annex is designed to protect use of common cheese names[16] in a commercial context. Its value lies in assuring Australian cheese makers of their ability to continue to trade cheese using common terms so as to capture the value of market access liberalisation.

Attachment VII summarises Industry advocacy on geographical indications.

[13] One of the arguments Australia has faced in opposition to establishing a list of common names is that countries have the right to 'territoriality'. What this essentially means is that they have the right to either protect or deem 'common' a name as it relates to their national borders. In view of the widespread and growing consumer and food manufacturer recognition of common names such as cheddar and mozzarella and the extended history of production in numerous countries (Australia being a prime example in both instances) the right to territoriality is viewed by Industry as an imperative.

[14] The EU-Canada FTA (CETA) contains restrictions on the use of several generic terms if those terms were not used in Canada by a company prior to October 18, 2013. For the cheeses asiago, fontina, feta, gorgonzola and muenster only companies selling those products in Canada by October 18, 2013 can continue to label them directly with those generic names. Other users must include a modifier on the labels such as "asiago-style" or "similar to feta" or "fontina-type" and be clearly labelled to indicate from where the product is imported. In addition, images such as flags that could evoke Greek or Italy are disallowed on the products. The use of other generic product names is not restricted. The text of the agreement with the GI provisions starting on page 312 is: http://data.consilium.europa.eu/doc/document/ST-10973-2016-INIT/en/pdf

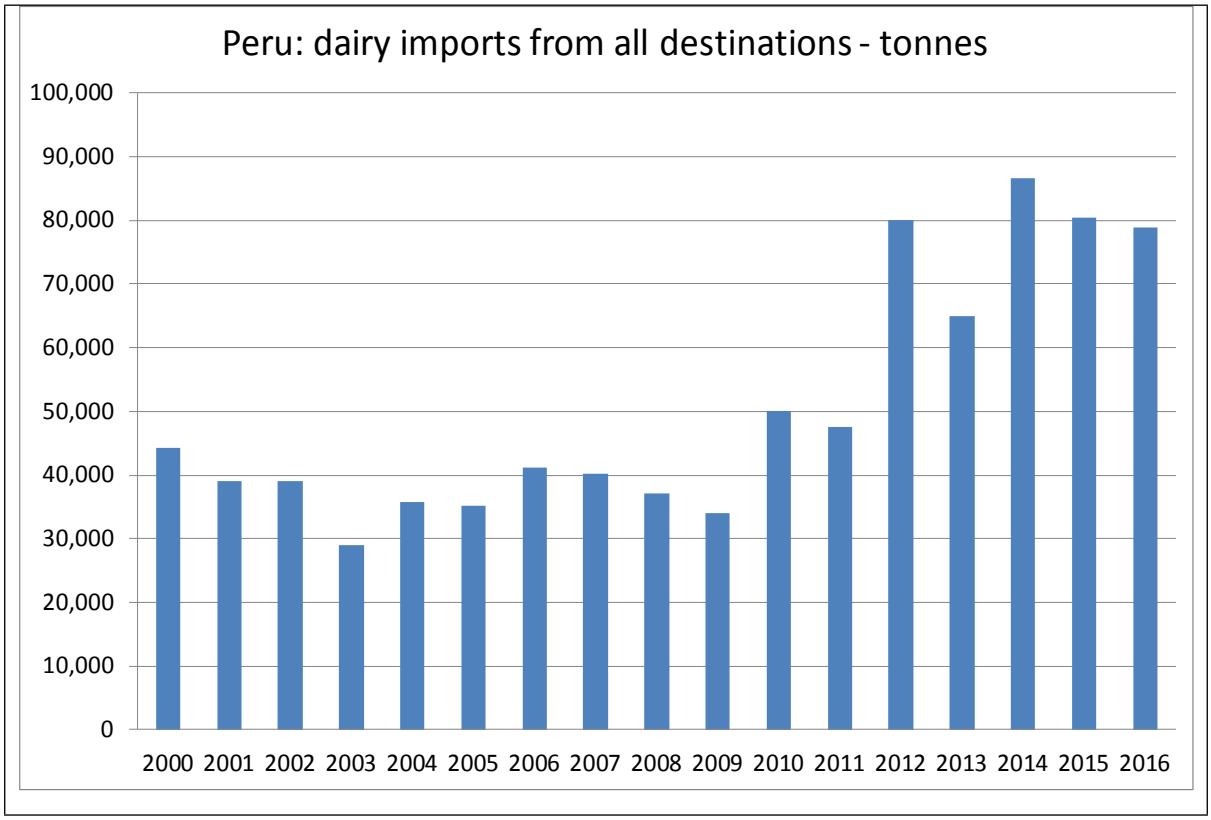
[15] A recent example, in August 2017, are media reports of the Greek government gathering data on Greek yogurt production with a view to applying for EU Protected Designation of Origin (PDO) and Protected Geographical Indication (PGI).

[16] Proposed list is bocconcini, brie, camembert, cheddar, edam, feta, grana, gouda, gruyere, haloumi, havarti, marscapone, mozzarella, parmesan, pecorino, provolone, raclette, ricotta and tilsit.

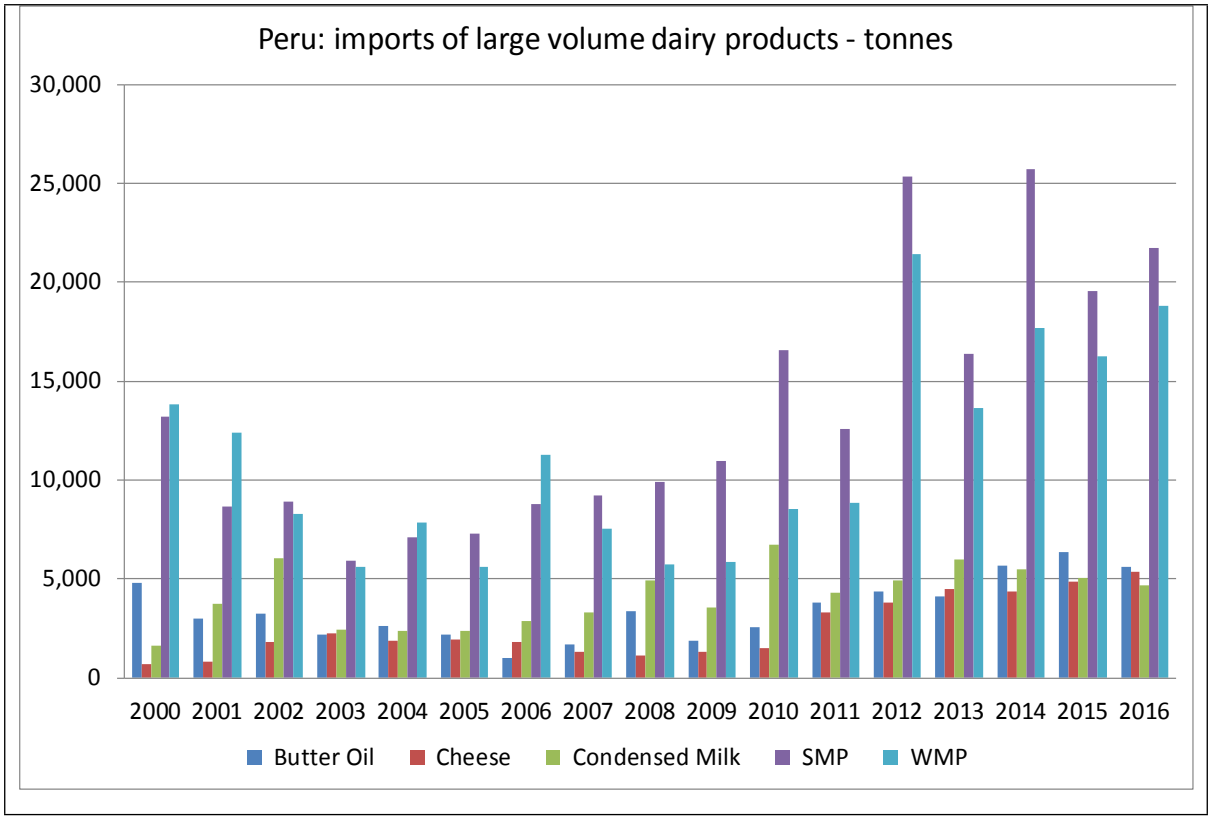
Attachment I: imports of dairy products including Australian origin

Applied dairy tariffs for most dairy products are zero with the major factor influencing competitiveness being the operation of the 'price band's system as reflected in the DVA.

Peru is a medium sized importer of dairy products. Imports, though, appear to have plateaued after peaking at 86,649 tonnes in 2014. Total dairy imports, though, in 2016 are approximately double that of 2006; refer to chart immediately below.



Milk powders (WMP and SMP) dominate the import volumes, accounting on average in the three year period 2014 to 2016 for 48.7% of the total. Other substantial volume imports are butteroil, cheese and condensed milk noting respective volumes have remained relatively stable in recent years; refer to the chart and table immediately below.



Peru: imports by major product group

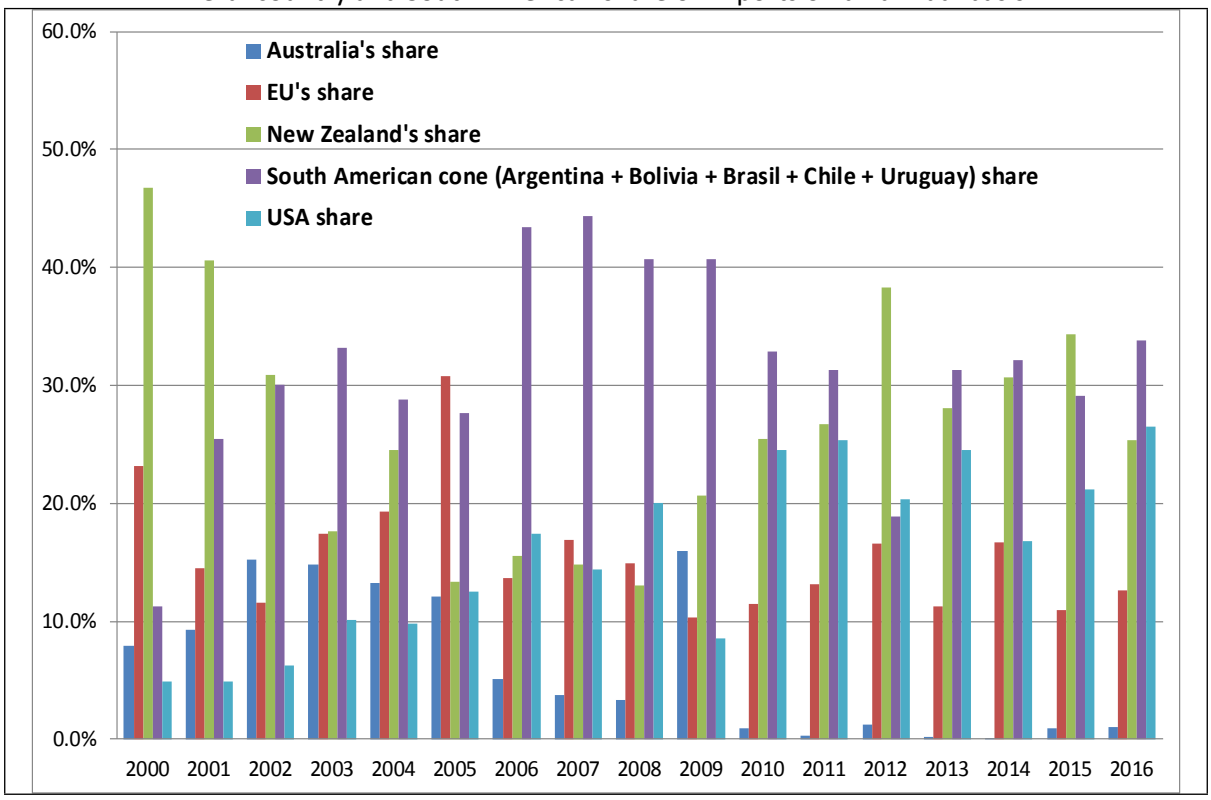
Tonnes	2014	2015	2016	Avg: 14 to 16	% share of total imports (14 to 16)
Butteroil	5,672	6,365	5,643	5,894	7.2%
Cheese	4,394	4,858	5,343	4,865	5.9%
Condensed Milk	5,490	5,084	4,681	5,085	6.2%
SMP	25,724	19,576	21,739	22,347	27.3%
WMP	17,671	16,246	18,816	17,578	21.4%
Sub-total for milk powders	43,395	35,823	40,556	39,924	48.7%

New Zealand was the largest supplier of imports, by volume, in the period 2009 to 2015 though it was overtaken by the USA in 2016. This could reflect the growing competitive advantage that the US enjoys as a result of their bilateral trade agreement; refer to the chart immediately below.

Australia's average share of imports over the period 2000 to 2016 was 6.2% compared to the EU's 15.6%, New Zealand's 26.3%, South America (minus Colombia) 31.5% and the USA 15.8%.

Australia's average share of imports over the three year period 2014 to 2016 was 0.7% compared to the EU's 13.4%, New Zealand's 30.1%, South America (minus Colombia) 31.7% and the USA 21.5%.

Peru: country and South American share of imports on an annual basis



Peru: % share of imports of dairy products by country/ region

	2014	2015	2016	Avg. share 14 to 16
Australia	0.1%	0.9%	1.0%	0.7%
EU	16.7%	11.0%	12.6%	13.4%
New Zealand	30.7%	34.4%	25.3%	30.1%
South American (Argentina + Bolivia + Brasil + Chile + Uruguay)	32.2%	29.1%	33.8%	31.7%
USA	16.8%	21.2%	26.5%	21.5%
Sub-total	96.4%	96.6%	99.3%	97.5%

The table below lists imports by dairy product group for the three most recent calendar years.

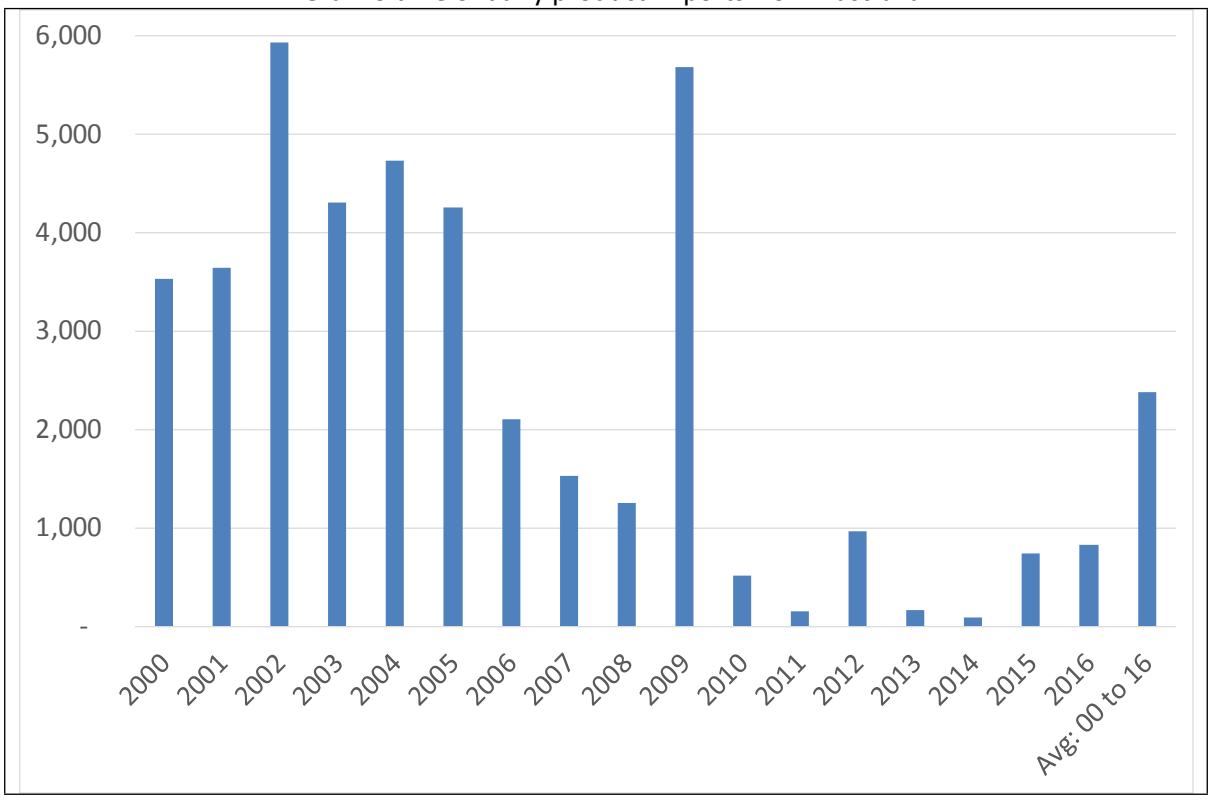
Peru Imports by Dairy Product Group			
Tonnes			
	2014	**2015**	**2016**
Butter	1,174	1,112	685
Butter Blend			1
Butter Oil	5,672	6,365	5,643
Buttermilk	5,487	4,118	4,494
Casein	199	238	241
Cheese	4,394	4,858	5,343
Condensed Milk	5,490	5,084	4,681
Ice Cream	449	413	601
Lactose	1,041	813	806
Milk	10,111	11,033	5,603
Milk Products	830	750	695
Mixtures			
SMP	25,724	19,576	21,739
Whey	6,938	8,015	8,006
Whey Powder	1,452	1,741	1,513
WMP	17,671	16,246	18,816
Yogurt	18	5	14
Annual totals	**86,649**	**80,367**	**78,883**

Profile of Australian origin imports:

The annual volume of imports from Australia fluctuated considerably over the 17 year period 2000 to 2016, from a high of 5,931t in 2002 to a low of 92t in 2014 refer to chart below[17].

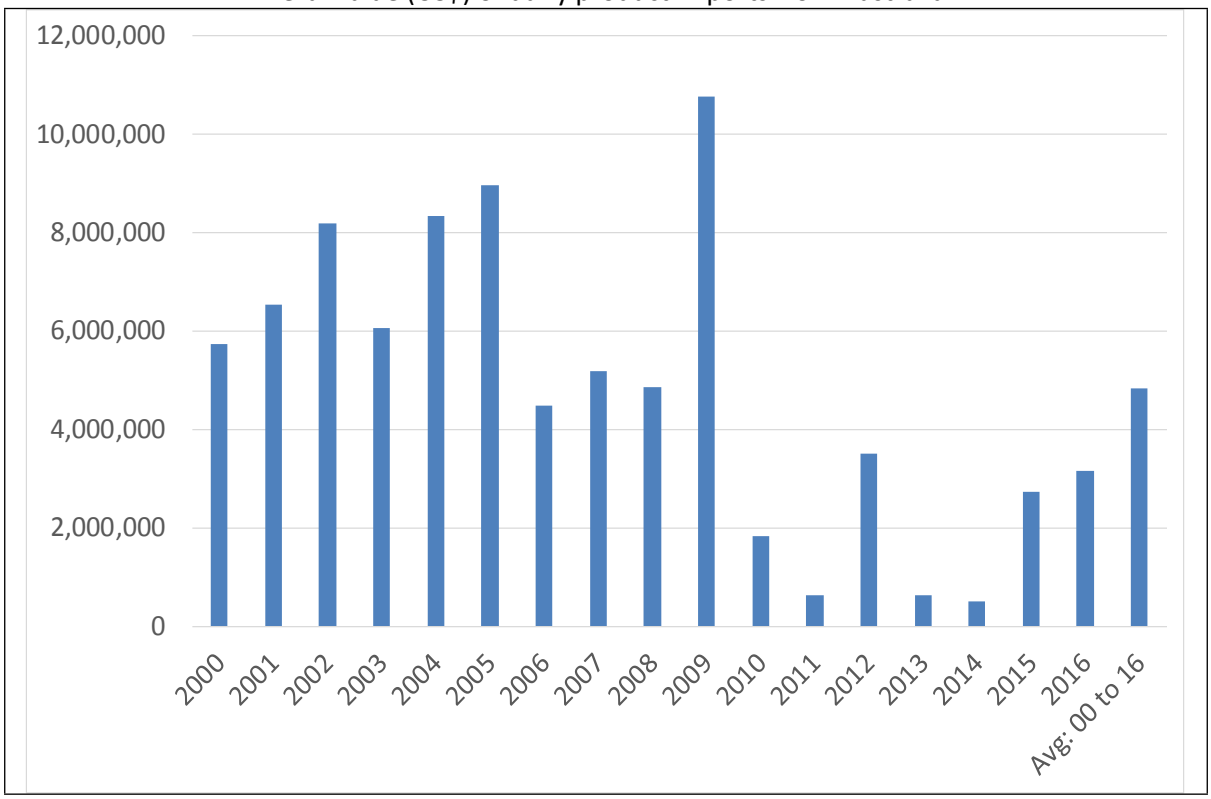
[17] Volume and value annual data for 'highs' and 'lows' over the 17 year period 2000 to 2016 may not match as dairy commodity prices are volatile and/ or some products are more value added.

Peru: volume of dairy product imports from Australia



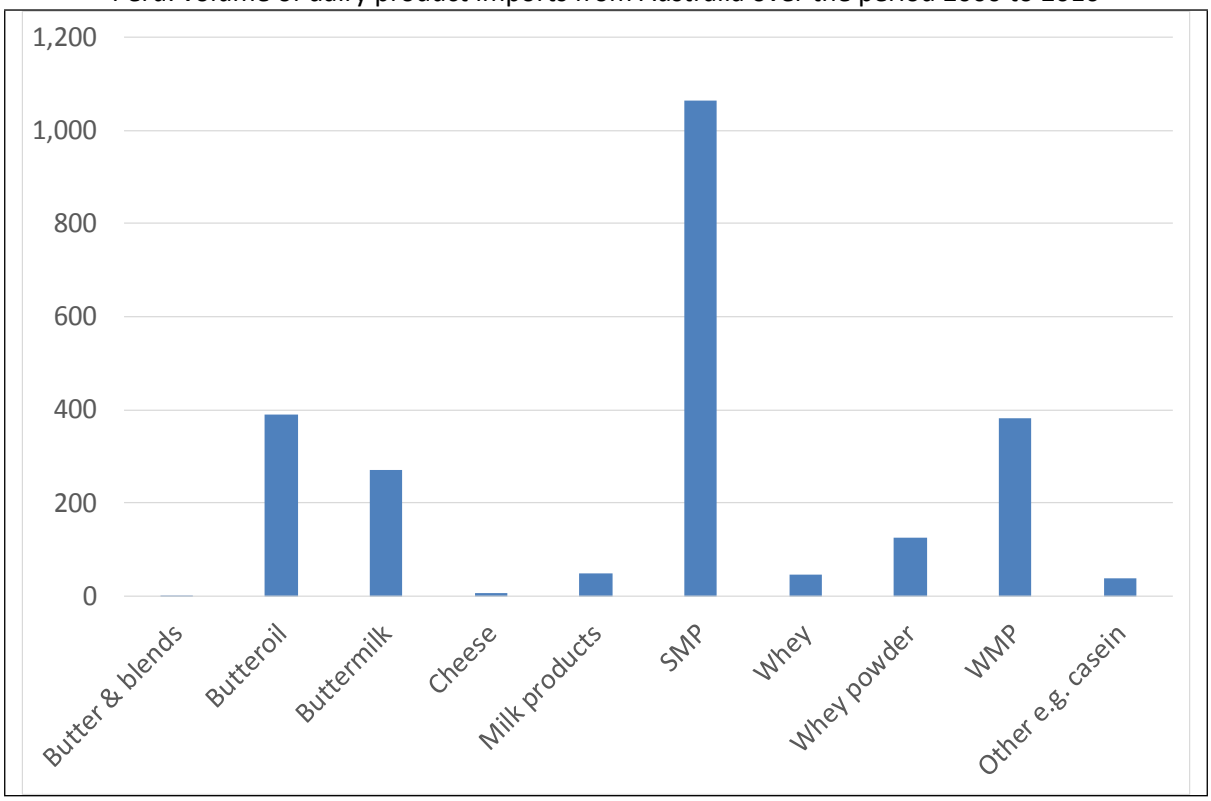
The annual US dollar value of imports from Australia fluctuated considerably over the 17 year period 2000 to 2016, from a high of $10.765 million in 2009 to a low of $0.492 million in 2014; refer to chart below.

Peru: value (US$) of dairy product imports from Australia



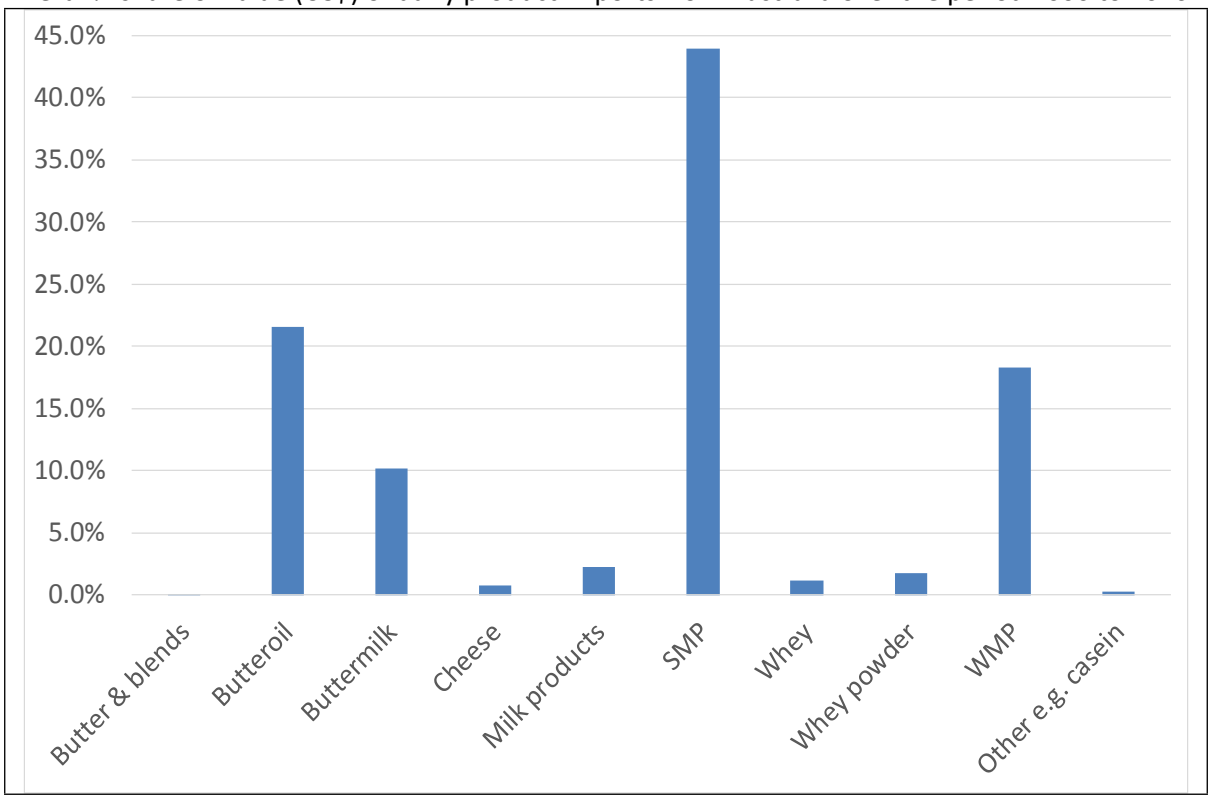
In terms of product share of the volume of imports, ex Australia, SMP was the largest with 44.4%, followed by butteroil's 16.4% and WMP's 16.1%; refer to chart below.

Peru: volume of dairy product imports from Australia over the period 2000 to 2016



In terms of product share of the US dollar value of imports, ex Australia, SMP was the largest with 43.9%, followed by butteroil's 21.5% and WMP's 18.3%; refer to chart below.

Peru: % share of value (US$) of dairy product imports from Australia over the period 2000 to 2016



Other regulations pertaining to dairy imports are:

- All dairy imports before they are shipped they must have a Zoo sanitary Import Permit (PZI) issued by the Peruvian Animal Health Authority (SENASA) with an issue date before the shipment (bill of lading) date. The PZI includes the content/requirements / text that the Sanitary Certificate must include. This is negotiated between both Animal Health authorities in Peru and the export country and with some countries (such as Argentina, Chile, France) the dairy manufacturing plant must be registered with their respective Animal Health authority
- SENASA´s regulations require that all dairy packs must come with the production and expiration date of the product, name of the manufacturer (details), name of product and other detail if stipulated
- Suppliers of a finished product such as butter, cheese or consumer packs of any dairy product must request a Sanitary Registration number (with DIGESA) for it to be sold in Peru. The process is simple and officially it takes seven working days though, usually it take close to 20 working days as additional information is usually requested

Attachment II: Derecho Variable Adicional or Surcharge on imported dairy products

Whole Milk Powder (Leche Entera en Polvo) or WMP is the reference price. The DVA is based on an "indicative" New Zealand export price for WMP as reported monthly by Statistics New Zealand.

For example if the Leche Entera en Polvo reference price is in the range of US$2,650 – US$2,699 CIF the DVA is US$388/ tonne and it applies all dairy products with the exception of US and EU CSQs and all Chilean origin, noting that a subsequent government decree fixed the maximum surcharge equal to 20% of the CIF value. Refer to the third screen shot ('page 36') below of Normas Legalas.

The DVA applies to 26 dairy products in chapter 4 with the major exception of BMP.

The exceptions cum wrinkles in the operation of the DVA are as follows:

- It does not apply to Chilean (do not have quota), EU and US origins. In the case of the EU and the US as long as imports are within quota. In the situation of whey powders and Whey Protein Concentrate it does not apply as there is no quota
- Given that the DVA applied equally to all dairy products including whey powders the Peruvian government issued a regulation that established an upper limit for application of the surcharge equal to 20% of the CIF value
- On page 35 of Normas Legalas (see below) reference is made to MAYOR A = US$3,049/ tonne FOB and MENOR A = US$4,050/ tonne FOB. Within this range the DVA equals US$0.00
- If the WMP reference price is above US$4,050/ tonne FOB then the DVA initially was envisaged as applying a reduction in the specific tariff; for example in the range US$4,050 to US$4,099 by US$33/ tonne. However, since the MFN applied duty on almost all chapter 4 dairy products was reduced to zero per cent a number of years ago this arrangement has been suspended
- The DVA is the only charge (import tax) on dairy imports with the sales tax, IGV (similar to a VAT), is then added on
- The bill of lading date is not used for calculating the DVA and
- The date used for calculating the DVA is the previous period to that in which the product enters the commerce of Peru. This table with the price ranges is published every 6 months whilst the calculation of the reference price is monthly.

Analysis:
The DVA introduces considerable uncertainty into exporting to Peru from an Australian dairy processor perspective. Dairy commodity prices are volatile, for example the WMP quoted on the influential Global Dairy Trading (GDT) Platform auction.

The GDT auction, presumably operated at arm's length from the influence of Fonterra Cooperative Group Limited who supply the dairy products [butteroil/ AMF; butter; BMP; SMP; WMP; cheddar; rennet casein, milk protein concentrate (70%), lactose and sweet whey powder] is held fortnightly.

The GDT is a barometer of the cyclical (and severe) swings in dairy commodity prices. GDT auction results have a major influence on contractual prices, including those quoted by Statistics New Zealand. For example in the two years to the most recent auction on 15th August 2017 the WMP price fluctuated between US$1,590/t (4th August 2015) and US$3,155/t (1st August 2017); a price gap of US$1,565/t or 98%[18].

[18] Links are https://www.globaldairytrade.info/en/product-results/ and https://www.globaldairytrade.info/

If the DVA was applied on these auction prices the respective values are US$1,488/t and US$0.00/t; though subject to the caveat of a maximum surcharge of 20% of the CIF price or in the case of the lower price US$318/t[19].

Screen shots (selective) of Decreto Supremo No 186-2017-EF of 24th July 2017 are shown below:

El Peruano / Sábado 24 de junio de 2017 **NORMAS LEGALES** 29

Aprueban actualización de Tablas Aduaneras aplicables a la importación de productos incluidos en el Sistema de Franja de Precios a que se refiere el D.S. N° 115-2001-EF

DECRETO SUPREMO
N° 186-2017-EF

EL PRESIDENTE DE LA REPÚBLICA

CONSIDERANDO:

Que, mediante Decreto Supremo N° 0016-91-AG y Decreto Supremo N° 115-2001-EF se estableció el Sistema de Franja de Precios;

Que, con Decreto Supremo N° 391-2016-EF se actualizaron las Tablas Aduaneras aplicables a la importación de los productos incluidos en el Sistema de Franjas de Precios y se dispuso que tengan vigencia hasta el 30 de junio de 2017;

Que, corresponde aprobar mediante Decreto Supremo la actualización de las Tablas Aduaneras efectuada por el Banco Central de Reserva del Perú, para el semestre comprendido del 1° de julio al 31 de diciembre de 2017;

De conformidad con lo establecido en el artículo 74 y el inciso 20) del artículo 118 de la Constitución Política del Perú y de conformidad con lo dispuesto por el Decreto Ley N° 25896;

DECRETA:

Artículo 1.- Actualización de las Tablas Aduaneras
Apruébase la actualización de las Tablas Aduaneras aplicables a la importación de los productos incluidos en el Sistema de Franja de Precios de acuerdo al Anexo que forma parte del presente Decreto Supremo.

Artículo 2.- Vigencia de las Tablas Aduaneras
Las Tablas Aduaneras aprobadas en el Artículo 1 tendrán vigencia en el periodo del 1° de julio hasta el 31 de diciembre de 2017.

Artículo 3.- Refrendo
El presente Decreto Supremo es refrendado por el Ministro de Economía y Finanzas y por el Ministro de Agricultura y Riego.

Dado en la Casa de Gobierno, en Lima, a los veintitrés días del mes de junio del año dos mil diecisiete.

PEDRO PABLO KUCZYNSKI GODARD
Presidente de la República

ALFREDO THORNE VETTER
Ministro de Economía y Finanzas

JOSÉ MANUEL HERNÁNDEZ CALDERÓN
Ministro de Agricultura y Riego

[19] Noting that GDT auction prices are FAS (Free along Side) that is prior to loading on the vessel or FOB (Free on Board). As a rule of thumb the CIF price is 2% higher than the FOB.

TABLA ADUANERA DE LACTEOS
(US$/TM)
Partidas Afectas

0401.10.00.00	0402.21.19.00	0402.29.91.00	0405.90.20.00	0406.90.60.00		2106.90.90.00 (3)
0401.20.00.00	0402.21.91.00	0402.29.99.00	0405.90.90.00	0406.90.90.00		
0402.10.10.00	0402.21.99.00	0402.99.10.00	0406.30.00.00	1901.90.20.00	(1)	
0402.10.90.00	0402.29.11.00	0404.10.90.00	0406.90.40.00	1901.90.90.00	(2)	
0402.21.11.00	0402.29.19.00	0405.10.00.00	0406.90.50.00	2106.90.79.00	(3)	

Precios FOB de Referencia Leche Entera en Polvo			Derecho adicional o Rebaja arancelaria LEP, LDP y GAL	Precios FOB de Referencia Leche Entera en Polvo			Derecho adicional o Rebaja arancelaria LEP, LDP y GAL
1000	-	1049	2038	MAYOR	A	3049	0
1050	-	1099	1988	MENOR	A	4050	0
1100	-	1149	1938	4050	-	4099	-33
1150	-	1199	1888	4100	-	4149	-83
1200	-	1249	1838	4150	-	4199	-133
1250	-	1299	1788	4200	-	4249	-183
1300	-	1349	1738	4250	-	4299	-233
1350	-	1399	1688	4300	-	4349	-283
1400	-	1449	1638	4350	-	4399	-333
1450	-	1499	1588	4400	-	4449	-383
1500	-	1549	1538	4450	-	4499	-433
1550	-	1599	1488	4500	-	4549	-483

Precios FOB de Referencia Leche Entera en Polvo			Derecho adicional o Rebaja arancelaria LEP, LDP y GAL	Precios FOB de Referencia Leche Entera en Polvo			Derecho adicional o Rebaja arancelaria LEP, LDP y GAL
1600	-	1649	1438	4550	-	4599	-533
1650	-	1699	1388	4600	-	4649	-583
1700	-	1749	1338	4650	-	4699	-633
1750	-	1799	1288	4700	-	4749	-683
1800	-	1849	1238	4750	-	4799	-733
1850	-	1899	1188	4800	-	4849	-783
1900	-	1949	1138	4850	-	4899	-833
1950	-	1999	1088	4900	-	4949	-883
2000	-	2049	1038	4950	-	4999	-933
2050	-	2099	988	5000	-	5049	-983
2100	-	2149	938	5050	-	5099	-1033
2150	-	2199	888	5100	-	5149	-1083
2200	-	2249	838	5150	-	5199	-1133
2250	-	2299	788	5200	-	5249	-1183
2300	-	2349	738	5250	-	5299	-1233
2350	-	2399	688	5300	-	5349	-1283
2400	-	2449	638	5350	-	5399	-1333
2450	-	2499	588	5400	-	5449	-1383
2500	-	2549	538	5450	-	5499	-1433
2550	-	2599	488	5500	-	5549	-1483
2600	-	2649	438	5550	-	5599	-1533
2650	-	2699	388	5600	-	5649	-1583
2700	-	2749	338	5650	-	5699	-1633
2750	-	2799	288	5700	-	5749	-1683
2800	-	2849	238	5750	-	5799	-1733
2850	-	2899	188	5800	-	5849	-1783
2900	-	2949	138	5850	-	5899	-1833
2950	-	2999	88	5900	-	5949	-1883
3000	-	3049	38	5950	-	5999	-1933

(1) Sólo: Manjarblanco o dulce de leche con un contenido del producto leche superior o igual al 50% en peso.
(2) Sólo: Preparaciones con un contenido del producto leche superior o igual al 50% en peso.
(3) Sólo: Preparaciones a base de soya que sustituyen al producto leche.

1537155-1

Attachment III: overview of Peruvian dairy industry and the degree of sensitivity to trade liberalisation

Peru is historically a milk deficit country.

Peru produced 1.9 billion litres of milk whilst annual consumption per person of 84 litres is regarded as low. The United Nations Organization for Agriculture and Food (FAO) recommends consuming 120 litres per person or approximately 43% higher. Peruvians, though, consume more than twice as much milk as 15 years ago

Demand in 2016 reached 2.7 billion litres on a milk equivalent (ME) basis meaning that Peru had to import 0.9 billion litre ME. Between 2000 and 2017, the proportion of imported milk has remained between 22% and 31% of demand.

The processing of milk in Peru is mainly intended for the production of evaporated and pasteurized milk. Evaporated milk consumption reflects the lack of penetration of the cold chain in the more remote and/ or inaccessible regions of Peru.

Annual statistics on milk production and growth, though indicates that production has trended upwards in the eight years to 2013 with the growth rate ranging between 9% in 2006 and 1.6% in both 2010 and 2013. Cumulatively, total production has risen by a healthy 35% or 475million litres over the eight years to 1.822 billion litres. Domestic production, though, is largely unable to close the gap with domestic consumption on a percentage basis.

Cuadro N° 1

Fuente: Estadística Agraria Mensual - MINAGRI
Elaboración: AGALEP

On World Milk Day, 1st June 2017, the Peruvian Dairy Industry Association (ADIL) affirmed that Peruvian milk is already consumed in 60 countries around the world and domestic consumption is growing in recent years at an annual rate of more than 8.4% compared to 6.7% for production.

Dairy is characterised by small scale production, with around 450 thousand families dedicated to the production of milk, though in many instances milking cows is a secondary part of the farm operation.

The regions Arequipa (southern basin), Lima (centre basin) and Cajamarca (northern basin), together, account for the majority of milk production. These three areas have relatively improved breeding facilities and techniques, with advances in post-milking management and the introduction of collection and cooling equipment; refer to table below.

Annual cow's milk production per region (in tonnes)

PRODUCCION DE LECHE FRESCA DE VACA POR AÑO SEGÚN REGION 2013
(Toneladas)

Región	2013	Var% 2013	Acumulado 04-08	Acumulado 05-13	Acumulado 10Y	Peso Relativo Nacional
NACIONAL	1,821,724	1.3%	37.8%	15.5%	53.3%	100%
Tumbes	782	-25%	0.4%	77.1%	77.5%	0.04%
Piura	47,581	1%	2.3%	34.5%	36.8%	2.61%
Lambayeque	50,680	21%	17.2%	61.3%	78.5%	2.78%
La Libertad	118,937	2%	35.3%	18.8%	54.1%	6.53%
Cajamarca	324,060	2%	29.8%	15.9%	45.7%	17.79%
Amazonas	80,358	5%	24.9%	21.9%	46.8%	4.41%
Ancash	16,635	-4%	-0.3%	-6.0%	-6.3%	0.91%
Lima	329,311	3%	36.9%	19.2%	56.1%	18.08%
Ica	43,361	21%	41.9%	64.0%	105.9%	2.38%
Huánuco	39,187	-12%	90.0%	12.6%	102.6%	2.15%
Pasco	24,602	-3%	16.9%	32.2%	49.2%	1.35%
Junín	46,276	9%	26.5%	73.0%	99.5%	2.54%
Huancavelica	22,443	-7%	-4.3%	40.8%	36.4%	1.23%
Arequipa	315,380	-12%	34.7%	-17.4%	17.3%	17.31%
Moquegua	17,539	19%	-3.0%	15.0%	12.1%	0.96%
Tacna	25,138	1%	-7.9%	8.7%	0.8%	1.38%
Ayacucho	50,147	-2%	68.9%	42.7%	111.6%	2.75%
Apurímac	32,122	-3%	161.9%	-28.8%	133.1%	1.76%
Cusco	102,276	32%	307.5%	102.4%	409.9%	5.61%
Puno	91,287	6%	81.1%	30.5%	111.7%	5.01%
San Martín	31,344	-2%	129.4%	33.1%	162.5%	1.72%
Loreto	2,533	-8%	148.6%	18.9%	167.5%	0.14%
Ucayali	4,908	0%	85.9%	6.7%	92.6%	0.27%
M.de Dios	4,839	15%	72.5%	49.1%	121.6%	0.27%
						70.33%

P/ Preliminar.
Fuente: Ministerio de Agricultura -OEEE - Unidad de Estadística.
Elaboración: AGALEP

The dairy industry is integrated vertically from the collection (or sometimes from company farms) of milk and is concentrated in three large companies: Gloria, Nestlé and Laive with plants distributed in the most important milk basins. The industries make the direct purchase from the farmers and transport it from the agricultural units to the processing plants.

Banning of imported milk powder; what would happen? A processor viewpoint

Processor viewpoint:

Milk powder is imported as a result of 30% gap between milk production and demand in the country. Therefore, it is necessary to import milk powder to avoid a rise in prices which harms the final consumer.

There will be a consumer price increase. By reducing the supply of milk available in the country, the ingredient becomes more expensive because the demand remains constant. It also hurts the small farmer (80% of farmers milking cows) because their milk, lacking the sufficient components in solids for processing, was standardised with imported milk powder. Without it, small farmers will not be able to sell their milk to the processors causing reduced factory throughput and potentially job losses for hundreds of Peruvians.

After approval by the Congressional Agrarian Commission of the bill that will limit the importation of milk powder for the manufacture of dairy products, ADIL warned that such a measure, if approved by Congress, will generate an increase in the price of milk at "consumer expense".

"In the absence of sufficient fresh milk production in our country (30% deficit) and the demand for this ban increased, a shortage of the product will immediately be generated, which will have the effect of increasing the price to the industry, which will inevitably have to be transferred to the consumer, "it said in a statement in the media.

Thus, the ADIL remarked that if the measure is approved by Congress "all dairy products will go up in price".

The communiqué also states that the project approved by the Agrarian Commission, to become law, will imply that processors will stop buying milk from the majority of dairy farmers.

"The milk that small farmers sell us, approximately 80% of supply, does not have enough components that the standard requires for evaporated milk. This difference is standardised through blending with imported powdered milk. Unable to use the milk powder, processors will not be able to buy that production anymore, "the guild said.

Before that, he described the bill approved by the Agrarian Commission as "fruit of the lobby and the great disinformation campaign promoted by the big milk producers."

A situation that, in the opinion of ADIL, "will generate a serious damage to the consumer and to the poorest farmers of the country"[20].

"There is discouragement to invest until we do not know the future of regulation." Rolando Piskulich, president of the Dairy Industry Association (ADIL) was so emphatic in reviewing the investment and legal stability landscape in the sector.

He referred to the bills in the Agrarian Commission of Congress that seek to restore the ban on the use of milk powder and anhydrous fat in manufacturing processes for dairy products such as evaporated milk, cheeses and yogurt: Projects: N ° 434/2016 -CR, PL 553/2016 and PL 751-2016.

"We doubt that there has been a deep technical analysis on how the value chain and its entire labour and productive force are sustained. We are facing a measure that is unconstitutional and contravenes the trade agreements that Peru has, "said the head of ADIL.

[20] Source: http://www.perulactea.com/2017/06/15/industriales-lacteos-precio-de-la-leche-subira-si-se-prohibe-importacion-de-la-leche-en-polvo/

"These proposals would have a high cost for the consumer who would pay more for the same product, since it would have to bear the additional and unnecessary cost of the importation, and a high social cost because hundreds of jobs would be lost (about 1,000) Today they are engaged in the production of dairy products, since production lines (30% of current production) will be closed because they do not have the required input, he added. In addition, a high cost for the State, as foreign exchange will be lost, and a lower income tax will be collected. "

For this reason, Piskulich conveyed the concern of the sector and also questioned the coherence of the PPK bench, especially since the Executive himself via the Ministry of Economy has opined unfavourably about the project of its own legislators.

Farmer viewpoint:
Prohibiting the mixing of milk powder with fresh will boost production, say experts from U. San Pablo (Arequipa).

If Congress insists on the publication of a law prohibiting the use of milk powder to produce evaporated milk, farmers would be able to market their main product and derivatives directly and increase their production by between 15% and 20%.

This is what a study carried out by the Universidad Católica San Pablo de Arequipa, the second region after Cajamarca with the highest dairy production in the country.

"Nationwide 2.7 million tonnes of cow's milk are consumed per year and there is a 30% deficit. The immediate effect of this scandal on the final consumer was reflected in the increase in the purchase of pure cow's milk, which will help farmers, especially in the southern basin, to cover that deficit, "explained Marianhella Zúñiga, engineer Industrial house of this house of studies.

According to the specialist, they can be more competitive in a market of less processed products and it is necessary that, through the Ministry of Agriculture and Production, they are provided with business technical support so that they can remain competitive in the market.

"The best way to assist the growth of dairy farms is by applying good livestock practices to obtain pure cow's milk of unsurpassed quality to produce cheese, yogurt, among other products that meet demand," he said.

In this regard, Germán Chavez, rector of the same house of studies, added that although now a great window is opened for Peruvian livestock farmers there is a huge logistical problem that must be solved, since to date Gloria was the company that collected And bottled the milk and now will be the producers themselves who must assume that task, for which they must be prepared[21].

The latest information on milk production is from 2016 with production at 1.9 billion litres.

Milk production (million litres)	**Imports (tonnes)**	**Exports (tonnes)**	**CAGR**
1.899	99.158,00	76.200,00	4%

[21] Source: http://www.perulactea.com/2017/07/20/la-produccion-de-leche-subiria-hasta-en-20-si-se-prohibe-la-leche-en-polvo/

Attachment IV: Peru's dairy tariff concession in FTAs with the United States, European Union and Chile

United States (implemented on 1st February 2009):

Tariff elimination is linear, though, MFN applied rates are in many instances zero for chapter 4 dairy products. The following references, unless explicitly stated, are to bound tariff rates:

- 0401: fresh milk tariffs are zero from EIF
- 0402: milk powder tariffs are zero from EIF
  - The exception is evaporated and condensed milk where the 9% tariffs are eliminated over ten years; that is zero from the beginning of the eleventh year
- 0403: yogurt and buttermilk tariffs of 9% are eliminated on EIF
- 0404: whey tariffs of either 9% (0404.10.90.00) or 17% (other whey product tariff lines are eliminated over ten years; that is zero from the beginning of the eleventh year
- 0405: butterfat:
  - Butter tariff is eliminated on EIF
  - Dairy spreads tariff is eliminated on EIF
  - Butteroil tariff is zero
- 0406: cheeses:
  - Fresh (0406.10.00), grated and powdered tariffs (0406.20.00) and processed (0406.30.00) of 9% are eliminated over five years
  - Other varieties such as blue vein (0406.40.00) and those with a water content of <50% (0406.90.40); 50% to less than 56% (0406.90.50) and 56% to less than 69% (0406.90.60) and 'Other' (0406.90.90) are eliminated on EIF

Safeguards of 130% of the annual CSQ volume apply for milk powders, butter and cheese until tariffs are eliminated in either 2023 or 2025. If imports exceed the safeguard, a tariff will apply to encourage compliance with the in-quota volume.

The table below highlights the initial agreement, noting that in the period since implementation on 1st February 2009 Peru has significantly lowered its MFN tariffs since the 'TPA' was negotiated.

The agreement states that the tariff rate applied to US products is the lower of:

i) The prevailing MFN duty applied to that good or
ii) The preferential duty applied to that good

In relation to Annex 2.3 (listing the access concessions for US origin dairy products) the Spanish language text advises that:

(Staging category D) los aranceles a las mercancías originarias incluidas en las fracciones arancelarias en la categoría de desgravación D en la Lista de una Parte deberán ser eliminados en quince etapas anuales iguales, comenzando en la fecha en que este Acuerdo entre en vigor, y dichas mercancías deberán quedar libres de aranceles a partir del 1 de enero del año 15

That is the base duties must be eliminated in 15 equal parts (years) starting with the year the FTA entry into force and must be free starting January 1 on Year 15 i.e. on 1st January 2023. Staging category D dairy products are yogurt, other dairy products, ice cream and butter.

(Staging category E) los aranceles a las mercancías originarias incluidas en las fracciones arancelarias en la categoría de desgravación E en la Lista de una Parte deberán mantenerse en su tasa base entre los años uno al diez. Comenzando el 1 de enero del año 11, los aranceles deberán ser eliminados en

siete etapas anuales iguales, y dichas mercancías deberán quedar libres de aranceles a partir del 1 de enero del año 17

That is the base duties must be the same (remain unchanged) in the first 10 years. Starting Year 11 duties must be eliminated in 7 equal parts (years) and must be free starting January 1 on Year 17 i.e. on 1st January 2025. Staging category E dairy products are milk powders et al (0402) and cheese.

For base tariff rates, that apply for safeguard purposes, refer to:
https://ustr.gov/sites/default/files/uploads/agreements/fta/peru/asset_upload_file822_9503.pdf

At present dairy product imports from all origins, with the exceptions of evaporated milk and BMP enter duty free. What Peru still imposes is the surcharge (Derecho Variable Adicional – DVA) on an MFN (WTO) basis there are exemption for dairy products arising from bilateral trade agreements and this consequently forms the basis for the competitive advantage that US, EU and Chilean origins enjoy; refer to Attachment II for background information on the surcharge.

Peru: milk powder et al (HTS sub-chapter 0402), yogurt, other fermented and acidified milk and infant formula tariff concessions and above quota duty plus safeguard at the time of implementation of the 'TPA' with the United States

		Year of implementation	1	2	3	4	5	6	7	8	9	10	11	12	13	14	15	16	17
			1st February 2009	2010	2011	2012	2013	2014	2015	2016	2017	2018	2019	2020	2021	2022	2023	2024	2025
		CSQ (duty free)	4,630	5,186	5,808	6,505	7,285	8,160	9,139	10,235	11,464	12,839	14,380	16,106	18,038	20,203	22,627	25,343	unlimited
		Safeguard trigger (130% of CSQ)	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A	18,694	20,938	23,449	26,264	29,415	32,946	N/A
		CAGR		12%	12%	12%	12%	12%	12%	12%	12%	12%	12%	12%	12%	12%	12%	12%	
0402.10.10/90	Fat content <1.5% by wt.	Above quota duty	35%	35%	35%	35%	35%	35%	35%	35%	35%	35%	30%	25%	20%	15%	10%	5%	0%
		Above quota duty + tariff SG	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A	35%	35%	27.5%	25%	22.5%	20%	N/A
0402.21.11/19	Unsweetened, fat content <26% by wt.	Above quota duty	35%	35%	35%	35%	35%	35%	35%	35%	35%	35%	30%	25%	20%	15%	10%	5%	0%
		Above quota duty + tariff SG	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A	35%	35%	27.5%	25%	22.5%	20%	N/A
0402.21.91/99	Unsweetened, fat content >26% by wt.	Above quota duty	35%	35%	35%	35%	35%	35%	35%	35%	35%	35%	30%	25%	20%	15%	10%	5%	0%
		Above quota duty + tariff SG	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A	35%	35%	27.5%	25%	22.5%	20%	N/A
0402.29.11/19	Unsweetened, fat content <26% by wt.	Above quota duty	35%	35%	35%	35%	35%	35%	35%	35%	35%	35%	30%	25%	20%	15%	10%	5%	0%
		Above quota duty + tariff SG	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A	35%	35%	27.5%	25%	22.5%	20%	N/A
0402.29.91/99	Unsweetened, fat content >26% by wt.	Above quota duty	35%	35%	35%	35%	35%	35%	35%	35%	35%	35%	30%	25%	20%	15%	10%	5%	0%
		Above quota duty + tariff SG	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A	35%	35%	27.5%	25%	22.5%	20%	N/A
0402.91.10/90	Unsweetened, other (evaporated is 91.10)	Above quota duty	25%	25%	25%	25%	25%	25%	25%	25%	25%	25%	21.4%	17.9%	14.3%	10.7%	7.1%	3.6%	0%
		Above quota duty + tariff SG	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A	25%	25%	19.6%	17.9%	16.1%	14.3%	N/A
0402.99.10	Condensed milk	Above quota duty	35%	35%	35%	35%	35%	35%	35%	35%	35%	35%	30%	25%	20%	15%	10%	5%	0%
		Above quota duty + tariff SG	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A	35%	35%	27.5%	25%	22.5%	20%	N/A
0402.99.90	Sweetened, other	Above quota duty	25%	25%	25%	25%	25%	25%	25%	25%	25%	25%	21.4%	17.9%	14.3%	10.7%	7.1%	3.6%	0%
		Above quota duty + tariff SG	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A	25%	25%	19.6%	17.9%	16.1%	14.3%	N/A

Peru: cheese (HTS sub-chapter 0406) tariff concessions and above quota duty plus safeguard at the time of implementation of the 'TPA' with the United States

		Year of implementation	1	2	3	4	5	6	7	8	9	10	11	12	13	14	15	16	17
			1st February 2009	2010	2011	2012	2013	2014	2015	2016	2017	2018	2019	2020	2021	2022	2023	2024	2025
		CSQ (duty free)	2,500	2,800	3,136	3,512	3,934	4,406	4,935	5,527	6,190	6,933	7,765	8,696	9,740	10,909	12,218	13,684	unlimited
		Safeguard trigger (130% of CSQ)	3,250	3,640	4,077	4,566	5,114	5,728	6,416	7,185	8,047	9,013	10,095	11,305	12,662	14,182	15,883	17,789	N/A
		CAGR		12%	12%	12%	12%	12%	12%	12%	12%	12%	12%	12%	12%	12%	12%	12%	unlimited
0406.10.00	Fresh (unripened or uncured) cheese, including whey cheese, and curd	Above quota duty	25%	25%	25%	25%	25%	25%	25%	25%	25%	25%	21.4%	17.9%	14.3%	10.7%	7.1%	3.6%	0%
		Above quota duty + tariff SG	n/a	n/a	n/a	n/a	n/a	n/a	n/a	n/a	n/a	n/a	n/a	n/a	n/a	n/a	n/a	n/a	n/a
0406.20.00	Grated or powdered cheese, of all kinds	Above quota duty	25%	25%	25%	25%	25%	25%	25%	25%	25%	25%	21.4%	17.9%	14.3%	10.7%	7.1%	3.6%	0%
		Above quota duty + tariff SG	n/a	n/a	n/a	n/a	n/a	n/a	n/a	n/a	n/a	n/a	n/a	n/a	n/a	n/a	n/a	n/a	n/a
0406.30.00	Processed cheese, not grated or powdered	Above quota duty	25%	25%	25%	25%	25%	25%	25%	25%	25%	25%	21.4%	17.9%	14.3%	10.7%	7.1%	3.6%	0%
		Above quota duty + tariff SG	n/a	n/a	n/a	n/a	n/a	n/a	n/a	n/a	n/a	n/a	n/a	n/a	n/a	n/a	n/a	n/a	n/a
0406.40.00	Blue paste cheese and other cheeses and other cheese containing veins produced by Penicillium roqueforti	Above quota duty	25%	25%	25%	25%	25%	25%	25%	25%	25%	25%	21.4%	17.9%	14.3%	10.7%	7.1%	3.6%	0%
		Above quota duty + tariff SG	n/a	n/a	n/a	n/a	n/a	n/a	n/a	n/a	n/a	n/a	n/a	n/a	n/a	n/a	n/a	n/a	n/a
0406.90.10	Other cheese	Above quota duty	25%	25%	25%	25%	25%	25%	25%	25%	25%	25%	21.4%	17.9%	14.3%	10.7%	7.1%	3.6%	0%
		Above quota duty + tariff SG	n/a	n/a	n/a	n/a	n/a	n/a	n/a	n/a	n/a	n/a	n/a	n/a	n/a	n/a	n/a	n/a	n/a
0406.90.20	Other cheese	Above quota duty	25%	25%	25%	25%	25%	25%	25%	25%	25%	25%	21.4%	17.9%	14.3%	10.7%	7.1%	3.6%	0%
		Above quota duty + tariff SG	n/a	n/a	n/a	n/a	n/a	n/a	n/a	n/a	n/a	n/a	n/a	n/a	n/a	n/a	n/a	n/a	n/a
0406.90.30	Other cheese	Above quota duty	25%	25%	25%	25%	25%	25%	25%	25%	25%	25%	21.4%	17.9%	14.3%	10.7%	7.1%	3.6%	0%
		Above quota duty + tariff SG	n/a	n/a	n/a	n/a	n/a	n/a	n/a	n/a	n/a	n/a	n/a	n/a	n/a	n/a	n/a	n/a	n/a
0406.90.90	Other	Above quota duty	25%	25%	25%	25%	25%	25%	25%	25%	25%	25%	21.4%	17.9%	14.3%	10.7%	7.1%	3.6%	0%
		Above quota duty + tariff SG	n/a	n/a	n/a	n/a	n/a	n/a	n/a	n/a	n/a	n/a	n/a	n/a	n/a	n/a	n/a	n/a	n/a

Peru: butterfat (HTS sub-chapter 0405) tariff concessions and above quota duty plus safeguard at the time of implementation of the 'TPA' with the United States

		Year of implementation	1	2	3	4	5	6	7	8	9	10	11	12	13	14	15
			1st February 2009	2010	2011	2012	2013	2014	2015	2016	2017	2018	2019	2020	2021	2022	2023
		CSQ (duty free)	500	550	605	666	732	805	886	974	1,072	1,179	1,297	1,427	1,569	1,726	unlimited
		Safeguard trigger (130% of CSQ)	650	715	787	866	952	1,047	1,152	1,266	1,394	1,533	1,686	1,855	2,040	2,244	unlimited
		CAGR		10%	10%	10%	10%	10%	10%	10%	10%	10%	10%	10%	10%	10%	unlimited
0405.10.00	Butter	Above quota duty	23.3%	21.7%	20.0%	18.3%	16.7%	15.0%	13.3%	11.7%	10.0%	8.3%	6.7%	5.0%	3.3%	1.7%	0.0%
		Above quota duty + tariff SG	n/a	n/a	n/a	n/a	n/a	n/a	n/a	n/a	n/a	n/a	n/a	n/a	n/a	n/a	n/a
0405.20.10	Dairy spreads	Above quota duty	23.3%	21.7%	20.0%	18.3%	16.7%	15.0%	13.3%	11.7%	10.0%	8.3%	6.7%	5.0%	3.3%	1.7%	0.0%
		Above quota duty + tariff SG	n/a	n/a	n/a	n/a	n/a	n/a	n/a	n/a	n/a	n/a	n/a	n/a	n/a	n/a	n/a
0405.90.20	Butteroil	Above quota duty	23.3%	21.7%	20.0%	18.3%	16.7%	15.0%	13.3%	11.7%	10.0%	8.3%	6.7%	5.0%	3.3%	1.7%	0.0%
		Above quota duty + tariff SG	n/a	n/a	n/a	n/a	n/a	n/a	n/a	n/a	n/a	n/a	n/a	n/a	n/a	n/a	n/a
0405.90.90	Other	Above quota duty	23.3%	21.7%	20.0%	18.3%	16.7%	15.0%	13.3%	11.7%	10.0%	8.3%	6.7%	5.0%	3.3%	1.7%	0.0%
		Above quota duty + tariff SG	n/a	n/a	n/a	n/a	n/a	n/a	n/a	n/a	n/a	n/a	n/a	n/a	n/a	n/a	n/a

Ice cream (HTS 2105.00.00) CSQ in year 1 is 300t; 10% CAGR under staging category D i.e. unlimited volumes in year 15 commencing on 1st January 2023.

European Union: applied provisionally from 1st March 2013[22]:
EU preferential access rights are less favourable than the United States in terms of the volume allocated in year 1 for most of the CSQs and rather than GAGRs ranging between 10% and 12%, as for US origin, the increments in quota access are fixed volumes.

Like US origin, though, EU CSQs are not covered by the price band or import tax system.

The seventh year, when dairy product tariffs commence their linear reduction to zero, commences on 1st January 2019.

[22] Provisional in the sense that the EU institutions (Council, Commission and Parliament) have ratified the agreement; whilst ratification by the 38 member states and provincial/ regional legislatures such as Wallonia in Belgium are required to finalise.

Table: EU origin preferential access into Peru (price band does not apply on in-quota product)

Dairy tariff	Product description	EU access
0402	Milk powder and condensed milk	Phase down in tariffs to zero commencing in year seven
04029110	Evaporated Milk	Starting quota of 3 thousand tonnes with growth of 300 tonnes pa
0403	Yogurt will have a zero tariff starting year in year seven, then a 30 tonne quota in year eight with subsequent growth of three tonnes per annum	Phase down in tariffs to zero commencing in year seven
0404	Whey powder	Phase down in tariffs to zero commencing in year seven
0405	Butter and dairy fats	Phase down in tariffs to zero commencing in year seven
0406	Cheese	Phase down in tariffs to zero commencing in year seven

In view of the fact that the EU – Peru agreement was implemented four years after the US – Peru agreement the base tariff rates, for zeroing, were substantively reduced from the 25% to 35% range for the latter to between 9% and 17% for the earlier – refer to the table below[23].

The column 'Tariff reductions' refers to the number of equal annual reductions until zero is reached (the first reduction was in March 2013 with subsequent reductions each January 1); under 'TRQ' the '+' refers to the annual increase.

The safeguard is applicable when imports exceed the TRQ volume by 10% compared to the 30% applying for US origin for access under 0402 (milk powder et al), 0405 (butterfat) and 0406 (cheese) HTS sub-headings.

[23] Source of information http://trade.ec.europa.eu/doclib/press/index.cfm?id=691 and specifically for goods http://trade.ec.europa.eu/doclib/docs/2011/march/tradoc_147709.pdf . In respect of the Official Journal of the European Union dairy details begin on page 1668; tariff-elimination schedule begins on page 121.

HTS code	Tariff base rate (%)	Category for liberalisation	Tariff reduction timeline	TRQ (tonnes): initial volume + annual increment	Safeguard
0401	9 (17 if >6% fat)	15	16	No	No
0402	9 (17 evaporated)	MP	None for 10 years, then 7	3,000 + 300	Yes
0403	17	15	16	No	No
0404	9 (whey); 17 (other)	0	Immediate zero tariff	No	Yes (not clear in text: no TRQ)
0405	9 (17 dairy spreads)	BR	None	250 + 25	No
0406	9 (17 fresh, grated, blue)	CE	None for 10 years, then 7	2,500 + 250	Yes
1702	9 (lactose syrup); 0 (other)	SR	None	11,000 + 330	No
1806	17	5	6	No	No
1901	9	FP	None for 8 years, then 7	4,000 + 400	No
2105	9 (non-dairy); 17 (dairy)	IE	16	70 + 7	No
2106	9	3	4	No	No
3501	0	0	Immediate zero tariff	No	No
3502	9	0	Immediate zero tariff	No	No

Staging categories as follows:
(b) customs duties on originating goods corresponding to the tariff lines in category '3' in the Schedule shall be removed in four equal annual stages beginning on the date this Agreement enters into force, and such goods shall be duty-free, effective on 1 January of year four;

(h) customs duties on originating goods corresponding to the tariff lines in category '15' in the Schedule shall be removed in sixteen equal annual stages beginning on the date this Agreement enters into force, and such goods shall be duty-free, effective 1 January of year sixteen;

(j) customs duties on originating goods corresponding to the tariff lines in category 'BF' in the Schedule are exempt from tariff elimination; notwithstanding the above, Peru shall allow duty-free imports for an aggregate quota (1) of 1 075 tonnes on the date this Agreement enters into force, with a yearly increase of 107 tonnes;

(k) customs duties on originating goods corresponding to the tariff lines in category 'BR' in the Schedule are exempt from tariff elimination; notwithstanding the above, Peru shall allow duty-free imports for an aggregate quota of250 tonnes on the date this Agreement enters into force, with a yearly increase of 25 tonnes;

(l) customs duties on originating goods corresponding to the tariff lines in category 'CE' in the Schedule shall remain at the base rates from the date this Agreement enters into force through the end of year 10; beginning on 1 January of year eleven, customs duties shall be reduced in seven equal annual stages, and such goods shall be duty-free, effective on 1 January of year eighteen; notwithstanding the above, Peru shall allow duty-free imports for an aggregate quota of 2 500 tonnes on the date this Agreement enters into force, with a yearly increase of 250 tonnes;

(n) customs duties on originating goods corresponding to the tariff lines in category 'IE' in the Schedule shall be reduced in sixteen equal annual stages beginning on the date this Agreement enters into force, and such goods shall be duty-free, effective on 1 January of year sixteen; notwithstanding the above, Peru shall allow duty-free imports for an aggregate quota of 70 tonnes on the date this Agreement enters into force, with a yearly increase of 7 tonnes;

(o) customs duties on originating goods corresponding to the tariff lines in category 'ME' in the Schedule are exempt from tariff elimination; notwithstanding the above, Peru shall allow duty-free imports for an aggregate quota of 10 000 tonnes on the date this Agreement enters into force, with a yearly increase of 1 000 tonnes;

(q) customs duties on originating goods corresponding to the tariff lines in category 'MP' in the Schedule shall remain at the base rates from the date this Agreement enters into force through the end of year ten; beginning on 1 January of year eleven, customs duties shall be reduced in seven equal annual stages, and such goods shall be duty-free, effective on 1 January of year eighteen; notwithstanding the above, Peru shall allow duty-free imports for an aggregate quota of 3 000 tonnes on the date this Agreement enters into force, with a yearly increase of 300 tonnes;

(r) customs duties on originating goods corresponding to the tariff lines in category 'FP' in the Schedule shall remain at the base rates from the date this Agreement enters into force through the end of year eight; beginning on 1 January of year nine, customs duties shall be reduced in seven equal annual stages, and such goods shall be duty free, effective on 1 January of year sixteen; notwithstanding the above, Peru shall allow duty-free imports for an aggregate quota of 500 tonnes on the date this Agreement enters into force, with a yearly increase of 50 tonnes;

(y) customs duties on originating goods corresponding to the tariff lines in category 'SR' in the Schedule are exempt from tariff elimination; notwithstanding the above, Peru shall allow duty-free imports for an aggregate quota of 11 000 tonnes on the date this Agreement enters into force, with a yearly increase of 330 tonnes

Chile (implemented on 1st July 1998):
The HTS schedule eliminated the remaining (D-15) of the bilateral dairy product tariffs on 1st July 2013: http://www.sice.oas.org/Trade/CHL_PER_FTA/Texto_s.pdf (pp223-224)[24].

Tariff rate quotas (TRQs), unlike the Peru – USA FTA were not part of the agreement; it was centred in tariff reductions. Though Chile exports dairy products it is mostly whey products, condensed milk butterfat (AMF and butter (limited)] and depending in the time of the year some SMP and cheese.

[24] Also refer to http://www.sice.oas.org/Trade/CHL_PER_FTA/Text_s.asp#Cap03

Other features of the bilateral access arrangements for dairy products were:

- Safeguards can be applied, though this did not happen. These are indicated in the agreement
- The price band was not applied during the tariff phase out period i.e. D-5; D-10 and D-15 and
- 0406.90.00 (Los demas quesos) ver Anexo 2, Numeral (10) refers to all other cheeses that do not fit within the other 0406 cheese tariff lines or classifications[25]

Chile is a substantially larger source of Peruvian dairy product imports than Australia as the chart below outlines. Average annual imports for the major dairy product groups over the period 2000 to 2016 reveals that the major difference in import volumes (144.7%) is accounted for by condensed milk; refer to the table below.

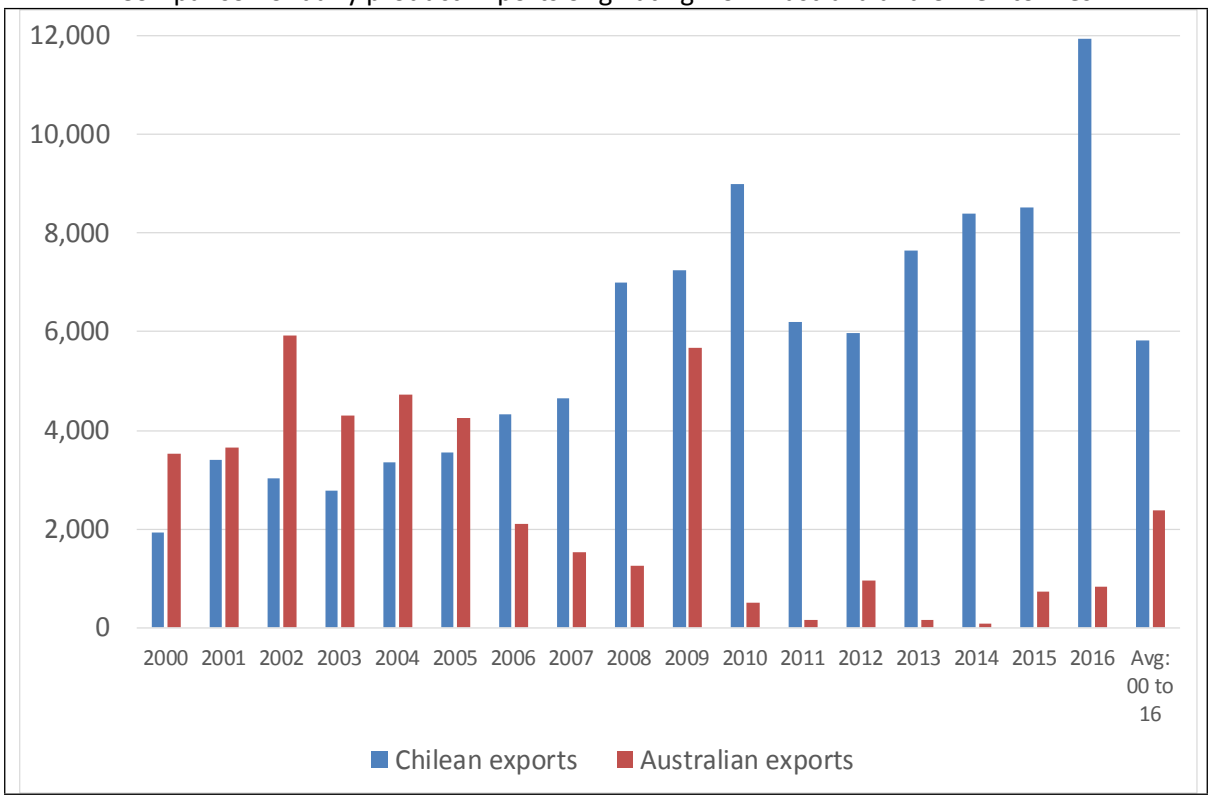
Peru: imports of dairy products (selected groups) from Chile and Australia averaged over the period 2000 to 2016

			Gap: Chi vs Aus	
	Chile	**Australia**	**Tonnes**	**%**
Butteroil	627	390	237	60.7%
Condensed milk	3,002	0	n/a	n/a
Cheese	85	12	72	590.6%
SMP	395	1,725	(1,331)	-77.1%
WMP	279	434	(155)	-35.7%
Milk powder combined	674	2,159	(1,485)	-68.8%
Total	5,813	2,375	3,438	144.7%

From the eleven year perspective of 2016 compared to 2000, i.e. encompassing the period when full liberalisation of Chilean origin occurred on 1st July 2013, the gap in supply, on a volume basis has substantially widened; within the context of Peruvian chapter 4 dairy product imports doubling.

[25] All goods were to be liberalized from 1st July 2016; 18 years after subscription of the agreement.

Comparison of dairy product imports originating from Australia and Chile - tonnes



Analysis:
Whilst Chile benefits from their preferential access and geographic proximity to Peru[26], the country is a significantly smaller net exporter of dairy products than Australia and costs of production are generally higher than the major exporters (New Zealand, North-west EU and western and southern regions of the USA) and south –east Australia.

Peru – Chile FTA, though, could be considered a template for a Peru – Australia FTA in terms of dairy product market access. The table below outlines the schedule, noting elimination of tariffs occurred on three dates: 1st July 2003 or 1st July 2008 or 1st July 2013.

[26] Geographic proximity can be overstated as the largest and most competitive milk producing region in Chile is located in the south of the country; around Osorno and it is a long supply chain to Lima involving considerable infrastructure costs.

Table: Chilean preferential access for dairy products into Peru

NALADISA (HTS)	Descripcion	Tariff redn schedule	Tariff eliminated on:
0401.10.00	Leche nata (crema) con un contenido de materias grasas inferior	D-10	1st July 2008
0401.20.00	Leche nata (crema) con un contenido de materias grasas superior	D-15	1st July 2013
0401.30.10	Leche con un contenido de materias grasas superior al 6% en peso	D-10	1st July 2008
0401.30.20	Nata (crema) con un contenido de materias grasas superior al 6%	D-10	1st July 2008
0402.10.00	Leche y nata (crema) en polvo, ganulos o demas formas solidas, c	D-15	1st July 2013
0402.21.10	Leche sin adicion de azucar ni otro edulcorante	D-15	1st July 2013
0402.21.20	Nata (crema) sin adicion de azucar ni otro edulcorante	D-15	1st July 2013
0402.29.10	Las demas leches	D-15	1st July 2013
0402.29.20	Las demas leches (crema)	D-15	1st July 2013
0402.29.10	Leche sin adicion de azucar ni otro edulcorante	D-10	1st July 2008
0402.91.20	Nata (cream) sin adicion de azucar ni otro edulcorante	D-10	1st July 2008
0402.99.10	Las demas leches	D-10	1st July 2008
0402.99.20	Las demaas natas (crema)	D-10	1st July 2008
0403.10.10	Yogure sin aromatizar, sin adicion de frutos no cacao	D-15	1st July 2013
0403.10.90	Los demas yogur	D-15	1st July 2013
0403.90.10	Los demas sin aromatizar, sin adicion de frutos no cacao	D-10	1st July 2008
0403.90.90	Los demas	D-10	1st July 2008
0404.10.10	Lactosuero, sin concentrar, sin adicion de azucar u otro edulcorante	D-5	1st July 2003
0404.10.20	Lactosuero, concentrado o con adicion de azucar u otro edulcorante	D-5	1st July 2003
0404.90.10	Los demas sin concentrar, sin adicion de azucar u otro edulcorante	D-5	1st July 2003
0404.90.20	Los demas concentrados o con adicion de azucar u otro edulcorante	D-5	1st July 2003
0405.00.10	Mantequilla fresca, salada o fundida	D-15	1st July 2013
0405.00.20	Aceite butirico ("butteroil")	D-5	1st July 2003
0405.00.90	Las demas materias grasas de la leche	D-15	1st July 2013
0406.10.10	Requeson	D-5	1st July 2003
0406.10.90	Queso fresco (sin maduar), incluido el del lactosuero	D-5	1st July 2003
0406.20.00	Queso de cualquier tipo, rallado o en polvo	D-15	1st July 2013
0406.30.00	Questo de cualquier, excepto el rallado o en polvo	D-10	1st July 2008
0406.40.00	Queson de past azul	D-15	1st July 2013
0406.90.00	Los demas quesos	D-15	1st July 2013
Observaciones for 0406.90.00: Ver Anexo 2, numeral (10).			

Trade in Goods:

Article 3.1: National Treatment[27]:

Each Party shall accord national treatment to the goods of the other Party in its territory in accordance with Article III of the GATT 1994, including its interpretative notes. In that sense, such goods shall be accorded treatment no less favourable than that applicable to similar domestic goods in respect of taxes, charges or other internal charges, as well as laws, regulations and other rules affecting the sale, purchase, Distribution and use in the domestic market.

Article 3.2: Liberalisation Program[28]:

1. No Party shall maintain or apply new non-tariff restrictions on the importation or exportation of goods from its territory to that of the other Party, whether by means of quotas, licenses or other

[27] For greater certainty, this Chapter is subject to the obligations and rights arising from the provisions of the other Chapters that apply to it. Footnote reference: http://www.sice.oas.org/Trade/CHL_PER_FTA/footnotes_s.asp#Cap03_1

[28] For more certainty, the text of Chapter II of ACE No. 38, its annexes and additional protocols, in matters related to the Commercial Liberation Program, has not been modified, except for formal adjustments. Footnote reference: http://www.sice.oas.org/Trade/CHL_PER_FTA/footnotes_s.asp#Cap03_1

measures, without prejudice to Article 50 of the Montevideo Treaty 1980 and Articles XX and XXI of the GATT 1994.

2. For the purposes of this Agreement, "restrictions" shall mean any measure of an administrative, financial, exchange or other nature, by which one of the Parties prevents or impedes, by a unilateral decision, its imports.

3. The Parties agree to free their reciprocal trade according to the following tariff reduction program:

(A) Elimination of tariffs for reciprocal trade as from 1 July 1998 for goods which are listed under D-0 (entry into force) in NALADISA nomenclature in Annex 3.2-A.

(B) Goods in the NALADISA nomenclature included in Annex 3.2-A, identified with D-5, shall be subject to the following timetable of tariff elimination over 5 years.

Schedule of Peru: period of reduction for goods whose current tariff is

	Reference preference range	Ad-valorem residual tariff			
		12%	**12% + 5%**	**20%**	**20% + 5%**
From 1 July 1998 to 30 June 1999	0%	12%	17.0%	twenty%	25%
From 1 July 1999 to 30 June 2000	twenty%	9.6%	13.6%	16%	twenty%
From 1 July 2000 to 30 June 2001	40%	7.2%	10.2%	12%	fifteen%
From 1 July 2001 to 30 June 2002	60%	4.8%	6.8%	8%	10%
From 1 July 2002 to 30 June 2003	80%	2.4%	3.4%	4%	5%
As of 1 July 2003	100%	0.0%	0.0%	0%	0%

(C) The goods designated in accordance with the NALADISA nomenclature of Annex 3.2-A, identified with D-10, shall be subject to the following tariff elimination schedule over 10 years.

Schedule of Peru: period of reduction for goods whose current tariff is

	Margin preference reference	Ad-valorem residual tariff			
		12%	**12% + 5%**	**20%**	**20% + 5%**
From 1 July 1998 to 30 June 2002	0%	12.0%	17.0%	20.0%	25.0%
From 1 July 2002 to 30 June 2003	14%	10.3%	14.6%	17.2%	21.5%
From 1 July 2003 to 30 June 2004	29%	8.5%	12.1%	14.2%	17.8%
From 1 July 2004 to 30 June 2005	43%	6.8%	9.7%	11.4%	14.3%
From 1 July 2005 to 30 June 2006	57%	5.2%	7.3%	8.6%	10.8%
From 1 July 2006 to 30 June 2007	71%	3.5%	4.9%	5.8%	7.3%
From 1 July 2007 to 30 June 2008	86%	1.7%	2.4%	2.8%	3.5%
As of July 1, 2008	100%	0.0%	0.0%	0.0%	0.0%

(D) The goods designated in accordance with the NALADISA nomenclature, included in Annex 3.2-A, identified with D-15, shall be subject to the following tariff elimination schedule over 15 years.

Schedule of Peru (and Chile): period of reduction for goods whose current tariff is

	Margin of preference
From 1 July 1998 to 30 June 2008	0%
From 1 July 2008 to 30 June 2009	17%
From 1 July 2009 to 30 June 2010	33%
From 1 July 2010 to 30 June 2011	fifty%
From 1 July 2011 to 30 June 2012	67%
From 1 July 2012 to 30 June 2013	83%
From 1 July 2013	100%

Attachment V: regulatory cooperation

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

- Reducing the complexity and increasing the transparency of non-tariff measures facilitates 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 largely regionally based, value adding sector

Regulatory barriers, though, can be applied in a way that adds to the complexity and cost of trade in dairy products and reduces the profitability of exporting Australian origin dairy products.

At present resolving regulatory issues can take a long time, is ad-hoc for example addressing only one NTB at a time and resorting to WTO dispute settlement is a lengthy and usually expensive process.

Regulatory cooperation is defined as addressing NTBs in a systemic manner that provides commercially beneficial outcomes to whole supply chain. 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.

Principles of best practice regulatory behaviour are:

- Ensuring health and food safety standards are based on sound science and international standards, thereby reducing complexity, noting that agricultural production systems differ between nations
- Non-discrimination between domestic and imported goods in accordance with GATT Article II (national treatment)
- Transparency of processes in developing regulations and in implementing regulations
- Achievement of the most efficient trade enhancing outcome via adoption of guidelines (see below) to regulation
- Focused on outcomes rather than processes
- Real time consultation with stakeholders (business and regulators) in developing solutions to existing regulatory practices and an early warning system for development of regulations
- Facilitating the efficient movement of dairy products and
- Consistency in approach to developing regulations

An example of adopting industry best practice is provided by the APEC Business Advisory Council (ABAC)[29].

Savings through the supply chain will also produce benefits for consumers directly and indirectly through increased supply availability as ease of access can be an influential consideration for exporters of Australian origin dairy products.

An FTA with Peru provides an excellent opportunity to develop a comprehensive and effective approach towards achieving regulatory cooperation and set a benchmark for the Pacific Alliance negotiations.

Important factors in designing an effective regulatory approach are:

1. A chapter or statement that sets out principles and guidelines for developing regulatory cooperation
2. 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
3. The dairy supply chain is closely involved in developing the concepts and wording on regulatory cooperation
4. Guidelines and international standards are adopted and utilised respectively as the basis for adopting a coherent and efficient supply chain approach
5. Developing regulatory standards occurs only in instances where an agreed international standard, such as CODEX, does not already exist and
6. Cooperation in regulation will benefit consumers via standardizing health and safety information and provide protection from misleading or deceptive conduct

<u>Current situation</u>:
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

[29] ABAC cross-cutting principles for non-tariff measures seek to minimize or avoid NTBs via:
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 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" and
- The emphasis should be on desired or equivalent outcomes rather than prescriptive process or production methods.

- 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.

The Industry believes that the most effective approach to reach agreement on regulatory matters is through cooperation between government agencies and involvement of business interests rather than recourse to a formal dispute settlement process.

Application to SPS and TBT chapters:
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.

Private sector consultation:
The Industry has in-depth knowledge of the commercial harm of existing NTBs and thus is well placed to provide substantial input into developing and implementing regulatory cooperation within the context of FTA negotiations with Peru. Best practice would be determined by consultation with Industry associations.

Recommendations:
- Mechanism be established in the Australia – Peru FTA to encourage business participation on NTB matters of commercial importance
- Capacity building can play an important role through up-skilling of regulatory agencies in Peru, creating appropriate networks and understanding of the dairy supply chain compliance issues and methods. This lays the groundwork for a coherent approach on dairy trade regulatory aspects and
- The recommended regulatory cooperation 'principles' and 'guidelines' outlined are preferred to adopting a prescriptive approach

Attachment VI: dairy sectoral initiative

Industry is supportive of the development of a cooperative regulatory approach, based on agreed principles that would allow both nations to balance their regulatory needs with the goal of facilitating trade. The TPP agreement provides guidance as selectively outlined below.

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 NTMs 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 analysis and removal
- Adherence to and adoption of international standards should underpin relevant measures
- 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 and as updated by the TPP agreements and similarly for the
    - Agreement on Technical Barriers to Trade
- 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 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

Attachment VII: Industry advocacy on Geographic Indications

The ongoing ability of Australian processors to use common cheese names in long established export markets is an important form of intellectual property protection. The Industry is deeply concerned with the ongoing efforts by the EU to increase protection for GIs that would privilege one set of food producers, predominantly those in the EU, over others.

From the outset the Industry has sought:

- Common names list that clearly articulates the terms we believe are generic and can be freely used
- Reference points for common names, for example CODEX Alimentarius, global production levels, tariff schedules etc.
- Limiting the application of GIs to production from a particular geographical location such as a region or sub-region. This does not include a whole country (for example Greece and feta)
- Original language (or transliteration) protection only with no evocations for example parmesan
- Protection of GI only as compound name with geographical component i.e. no single terms for example feta, havarti, halloumi, danbo and
- Clarity that common name portion of GI remains available for wide-spread use, for example use of 'cheddar' in Orkney Scottish Island Cheddar

It is becoming increasingly problematic, though, for Australian cheese makers to be certain that they will have continued use of 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 processes. Additionally as many of the exporters of specialty cheeses are SMEs, registering names in individual countries becomes prohibitive.

Actions taken by the Industry, many in concert with the Washington DC based Consortium of Common Food Names (CCFN) include:

- Since 2010 working with the US and New Zealand industries to ensure ongoing use of common food names. This was in response to the KOREU agreement, which banned the use by third countries of certain food names. Australian origin feta was particularly affected[30]
- In May 2011, the industry associations jointly wrote to governments seeking inclusion of provisions in the TPP agreement that safeguarded ongoing use of common food names. Dairy Australia worked successfully with CCFN partners to ensure the TPP agreement included relevant provisions on objections to registration of GIs whilst CCFN partners continue to advocate for ongoing use of common food names
- Three outstanding applications that potentially could impact upon the commercial operations of Australian cheese makers are Danbo, Havarti and Halloumi. GI applications for the first two are now over three years under consideration by the EU Commission and both demonstrate an interesting point: no matter how transparent the EU claims it GI system is, in practice it is not working, being opaque to non-EU countries. This can create both policy

[30] Parmalat Australia (please protect) had an established presence in the South Korean market for feta sold through retail channels prior to 1 July 2012 implementation of KOREU. As a result of pressure from the Greek Embassy in Seoul on their importer, Parmalat Australia was forced to change their description to "white" cheese, resulting in the loss of their retail market!

and commercial uncertainty. Additionally it is difficult to find information about progress of GI registrations[31]

- In August 2017 the Industry objected to the AQSIQ on the inclusion of feta in the EU – China GI registry
- Will object in October 2017 to inclusion of feta and evocation of parmesan in the EU – Japan GI registry
- Likely to object to inclusion of certain cheese varieties in the GI registry when EU – Singapore FTA is implemented. This could also occur for EU – Vietnam and eventually other ASEAN members who are independently developing their GIs regimes in preparation for FTAs with the EU

[31] Denmark's application for protection for Danbo was published on February 2, 2012 and Dairy Australia objected on July 24, 2012 noting there used to be a six-month limit under the old legislation, which has since been shortened. Denmark's application for protection for Havarti was published on January 23, 2014 and Dairy Australia sent a letter of objection on April 10, 2014. No developments (decisions by the Commission) to report by mid-August 2017.