

British Raw Milk Cheese and the UK Free Trade Agreement

Australian requirements with respect to the import of raw milk cheese are highly restrictive compared to its trading partners.

This barrier is consistent with Food Standards Australia New Zealand (FSANZ) policy to limit domestic production of raw milk cheese types, and Australian government trade opposition to EU proposals to protect GI names (as illustrated by the dispute filed by Australia and USA with the WTO in 1999).

The current assessment process by the Department of Agriculture and Water Resources (DAWR) is overly complicated and challenges the WTO 'Principle of Equivalence' established after the GATT Uruguay Round in 1998, and scientific criteria recognized by Codex Alimentarius and the International Commission on Microbiological Specifications for Foods.

At present countries wanting to export raw milk cheese to Australia can apply to DAWR for assessment of whether their country's raw milk cheese production system is equivalent to the system in Australia. A government certification arrangement will be established to facilitate trade if the country meets Australia's biosecurity requirements and can demonstrate equivalence and compliance with applicable standards under Standard 4.2.4. of The Primary Production and Processing Standards for Dairy Products in The Food Standards Code

But if DAWR approves a government certification arrangement, there is a further hurdle. Cause 17 of Standard 4.1.4 of the Food Standards Code provides -

To avoid doubt, unless the contrary intention appears, the requirements imposed by Divisions 1 to 4 of this Standard apply to the production, transport and processing of milk for raw milk cheese **and to raw milk cheese** (emphasis added).

This requires that all raw milk cheese sold in Australia comply with the production requirements set out in the Australian Standard, even if a government certification arrangement through DAWR is in place.

Both the Imported Food Control ("IFC") Act and State/Territory Food Acts adopt the Food Standards Code by reference. Without a special exemption from clause 17 it would be an offence under the IFC Act to import, and an offence under State/Territory Food Acts, to sell any raw milk cheese that was not processed according to Australian standards.

Further, the IFC Act is enforced by DAWR, without a change in the Food Standards Code, DAWR is legally obliged to seize imported raw milk cheese at the border even though the biosecurity area of that very same Department has approved it as safe!

Let's take Roquefort as an example. Roquefort is currently listed by DAWR as the only raw milk cheese that can be imported into Australia subject to a government-to-government agreement. Roquefort was granted a special exemption under the Australian Food Standards Code Std 2.4.2.A in 2007. This followed two years of review by FSANZ and a 171-page report explaining why Roquefort met Australian compositional standards.

When FSANZ removed Std 2.4.2 A and cancelled all special exemptions for imported raw milk cheese from the Food Standards Code in 2014 the special exemption granted to Roquefort no longer applied. Instead, the Food Standards Code processing standards that apply to raw milk cheese in Australia would apply. These were developed by FSANZ in part due to a 2004 application (A 530) made by Will Studd to allow an exemption for English Farmhouse raw milk Cheddar. When the new Australian standards were announced a decade later the regulations effectively prevented the production of soft, high moisture, and blue cheeses from raw milk, purportedly on the grounds of food safety.

The standards include microbiological controls usually applied only to pasteurized milk cheese. The DAWR guidelines, and Division 5 of Std 4.2.4 specify that

The level of pathogenic microorganisms in a raw milk cheese must not exceed the level of pathogenic microorganisms in the milk from which the product was made as at the commencement of the processing of that milk.

A raw milk cheese must not support the growth of pathogenic microorganisms.

DAWR assessment requires government authorities of the exporting country to provide extensive technical information about the production and processing of multiple types of raw milk cheese. cost and time required for DAWR to review this information for individual types of imported raw milk cheese is very high.

The Department of Environment Food and Rural Affairs- UK made an official application for the assessment of twelve territorial raw milk cheeses in 2019, but to date there has been no approval by DAWR.

Meanwhile Roquefort has still not been reassessed under the Primary Production and Processing Standards for Dairy Products by DAWR despite years of 'sensitive' discussions with French government authorities, nor would it, or many other EU or UK raw milk cheeses, likely comply with the very strict Food Standards requirements for Australian production and processing of raw milk cheese.

This raises the confronting question on whether it would be a criminal offence to import and sell any DAWR approved raw milk cheese under the IFC and State and Territory Food Acts.

As noted above, approval of imported raw milk cheeses by DAWR's biosecurity area would not be enough to permit importation and sale under the Food Standards Code. Unless changes are made by FSANZ to clause 17 of the Code to allow a special exemption for importation and sale of raw milk cheese under the DAWR assessment, the whole system is compromised, and risks undermining the UK - FTA negotiations on imported raw milk cheese.

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