



CCFN ALERT Newsletter – Q1 2020

March 2020

Chairman's Column

Keep Up the Good Work!

We've entered 2020 with a number of solid common-name successes under our belt – from the positive first phase of the U.S.-China trade agreement and the newly passed U.S.-Mexico-Canada Agreement, to the historic pact with the Italian mozzarella consortium recognizing “mozzarella” as a globally generic term. Brick by brick, relationship by relationship worldwide, CCFN has built an extremely successful organization for defending your rights to use generic terms.



But remember: These victories come after months – sometimes years – of steady work by CCFN in coordination with member companies. And we continue to face a constant barrage from the European Union, which employs all available means to shut out competition by confiscating generic names. This is not a short battle, and unfortunately it is nowhere near over.

My company, BelGioioso Cheese, has benefited greatly from the work of CCFN. If you market products bearing generic names, then yours has, as well. And BelGioioso is in it for the long haul. More than ever, we need to stand together to continue to defend our ability to compete fairly in the marketplace – for our businesses, and for consumers.

I'm looking forward to working with you this year in support of CCFN, to keep the heat on, and to fight for what is right.

Errico Auricchio
CCFN Chairman
President and Founder, BelGioioso Cheese

CCFN Cheers Common Name Protections in Phase One China Deal

CCFN commended the U.S. Administration in January for its [accomplishments](#) in the first phase of a trade agreement between the United States and China, which creates new safeguards regarding market access for common-name products.



CCFN, together with its members, the U.S. Dairy Export Council and the National Milk Producers Federation, worked extensively with U.S. and Chinese trade officials to create new transparency and due process obligations regarding geographical indications (GIs) to help guard against future restrictions on common food names in China.

“American producers and manufacturers are unduly harmed when foreign nations intentionally misuse geographical indications to restrict fair competition,” said CCFN Executive Director Jaime Castaneda. “We are grateful that the U.S. Trade Representative and his team of negotiators recognized the severity of these trade barriers to U.S. growth in China and took decisive action to improve protections for common food names.”

China’s commitments on GIs in the Phase One deal prohibit future trade agreements from using GIs to undermine market access for U.S. exports of products using common food names, preserve the ability for the U.S. to challenge and pursue cancellation of any GI applications, lay out clearer indicators of generic status, and mandate greater clarity regarding the scope of protection for multi-term GIs. These provisions reflect the types of systemic improvements that CCFN has been pressing for in China over the last several years.

CCFN Urges the U.S. Government to Secure “Firm and Explicit Commitments” from Trading Partners on GIs

As part of its work in pursuing a level playing field for U.S. companies, the U.S. Administration should secure “firm and explicit commitments” with trading partners to assure the future use of specific generic food and beverage names targeted by EU monopolization efforts, and reject the use of GIs as barriers to trade. This was the message CCFN shared in [written](#) and [oral](#) testimony with the Office of the U.S. Trade Representative as the agency prepares its annual review on the status of intellectual property rights protections in its trading relationships around the globe (Special 301 Report).



CCFN expressed appreciation for the Administration’s focus on tearing down trade barriers that hinder U.S. competitiveness, but said that without further commitments that reject illegitimate GIs, U.S. companies are likely to run into further obstacles. That’s because EU governments and stakeholders continue to pursue an agenda to monopolize popular generic names with key trading partners.

“There is a persistent push by the European Union and other European interests to dismantle competition and erect barriers to trade which must be more strongly combatted,” CCFN states in its testimony. “Across all markets, but particularly those with which the U.S. has an FTA [free trade agreement] or is in the process of pursuing an FTA, we urge the Administration to secure explicit commitments from our trading partners that build upon the positive precedent established in the U.S.-Mexico-Canada Agreement (USMCA) whereby market access rights were clearly and definitively affirmed for a non-exhaustive list of common used product terms.”

CCFN said this type of tool “should be carried forward aggressively by the Administration in order to safeguard our World Trade Organization and free trade agreement market access rights in the strongest manner possible.” The USTR is expected to release the 2020 Special 301 Report this spring.

CCFN Continues to Work with Oceania in EU-Australia and EU-New Zealand Trade Negotiations

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Australia and New Zealand are in the thick of free trade agreement (FTA) negotiations with the European Union, with geographical indications (GIs) at the center of the debate in both cases. The EU has proposed 171 GI names for protection in Australia and New Zealand, among them such widely used terms as “feta”, “asiago” and “prosecco”.



CCFN member Dairy Australia has noted that local products with estimated annual aggregate sales of over \$650 million are at some commercial risk if dairy GIs are built into any agreement with the EU.

In January, CCFN met with officials at the Australian Embassy in Washington, D.C. – joined by a CCFN member active in Australia – to highlight the need to safeguard generic terms as part of the trade negotiations. And last month a CCFN representative attended a stakeholder briefing

conducted by the chief negotiators for the EU and Australia. At the briefing, Australian negotiator Alison Burrows repeatedly emphasized that Australia had not agreed to the protection of any GIs or what form (if any) such protection would take, and that the government was taking into account the concerns raised in the more than 400 oppositions filed on the FTA; many of these concerned common name issues. During the question-and-answer period, CCFN made the case for safeguarding common names and the need for a robust due-process opposition process. Among other participants who voiced concerns was Dr. Geoffrey Annison of the Australian Food & Grocery Council, who pointed out the inconsistency in determining what terms qualified for protection even within the EU. He described “mission creep” to related terms, and asked what assurances the negotiators could provide that the FTA would encourage industries to grow in a collaborative and competitive spirit rather than simply tying up the market for EU producers.

Whether these issues will be resolved in 2020 is unknown. The EU has deferred market access discussions for sensitive agricultural products until the end of the FTA negotiation process.

CCFN Encourages U.S. Ag Secretary to Stress Objections to GIs in European Meetings

While meeting with European officials in Belgium and Italy in January, U.S. Secretary of Agriculture Sonny Perdue reiterated the U.S. position that illegitimate geographical indications (GIs) are unacceptable.

As reported in Agri-Pulse, Perdue cited the “hypocrisy” of some of the EU’s GIs as a hurdle in a U.S.-EU trade deal. Perdue said he discussed the role of European immigrants in the founding of the United States who “used the same language that they used in Europe over these products.”

“Greece is known for its feta cheese, and there’s not really a Feta, Greece,” he added. “There’s certainly not a Feta, France, where France exports feta cheese to the United States, but they cannot export it internally within the EU.”

CCFN Executive Director Jaime Castaneda wrote to Secretary Purdue in advance of his European trip to encourage him to emphasize U.S. objections to the EU’s misuse of GIs.

“I trust this will also provide an excellent opportunity to discuss with your Italian counterpart the impact that Italian GIs are having on U.S. exporters,” Castaneda wrote, “and the need for reforms to address these impediments to trade.”



Also...

CCFN Calls on European Commission to Issue a List of Generic Names - In [comments](#) last month to the European Commission (EC) regarding its quality schemes, CCFN once again called on the EC to draw up a non-exhaustive list of generic names for which exclusive usage cannot be claimed.

“The absence of a list of names that the European Union (EU) considers to be generic and of objective criteria to determine what constitutes a generic name has long been a source of confusion which has negatively impacted the trade rights of international partners,” CCFN stated in the comments.

CCFN joined with the U.S. Dairy Export Council in providing the input during an open comment period the EC held regarding its quality schemes, including geographical indications (GIs). CCFN and USDEC also highlighted the lack of clarity and transparency in current GI schemes.



“When a product is granted GI status, the scope of protection afforded is often unclear, thus magnifying the likelihood of commerce challenges across the EU’s common market as well as with trading partners,” the comments state, concluding that “stricter criteria for the eligibility of GI protection should be provided for in order not to mislead consumers and to avoid unwarranted anti-competitive effects.”

Cheese Importers Concerned about EU Restrictions of Common Food Names - The Cheese Importers Association of America (CIAA) recently expressed concern to the European dairy community that the EU has co-opted many common food names through its extensive protection of geographical indications (GIs) which has resulted in reduced market access around the world for U.S. dairy exports. The CIAA represents firms and individuals responsible for importing the majority of cheeses entering the United States.



The comments came after positive discussions between CCFN and CIAA regarding how the latter could play a more active and vocal role in working to facilitate trade between the EU and the United States. This could happen by expressing concerns regarding the EU’s over-reach on GIs while also affirming the useful role that legitimate GIs can play.

As reported in [Cheese Reporter](#), the CIAA believes that “legitimate GIs” which are based on a specific region where the product is produced, should be protected, even when distributed internationally. “However, common cheese names should not be provided protected GI status. This includes cheese names that have a commonly recognized definition or product description in the tariff schedule or an accepted international standard, such as Codex Alimentarius standards or U.S. Food and Drug Administration standards of identity.”

The CIAA noted that, “There are numerous examples of the EU misappropriating common food names to prevent market access for U.S. and other global competitors. We believe these attempts to monopolize common food names in the public domain are counterproductive to the principals of free and fair trade and present an unnecessary restraint on market access for dairy product exporters worldwide.”

GI News that Caught Our Eye...

Haloumi: Careful What You Wish For – Dairy farmers on Cyprus refer to halloumi cheese as “white gold” – the country’s leading export. Cypriot authorities have spent years seeking a Protected Designation of Origin (PDO) for the cheese, but one ironic hurdle is that [some Cypriot dairy farmers](#) are opposed to gaining the PDO, because it would require halloumi makers to use 51% sheep’s and goats’ milk; today the cheese is made with mostly cows’ milk. Some officials estimate that gaining the PDO – supposedly designed to increase business – would cause cheese exports to drop by at least half because of a current shortage of sheep and goat milk. CCFN opposed a GI for halloumi in 2015 in light of the negative impacts this GI would create.



“Feta”-up with Denmark: The [European Commission](#) has referred Denmark to the European Court of Justice for exporting its feta cheese by that name to non-EU countries. “Feta” is a registered PDO and the name can only be used by the Greeks within the EU. Granting that PDO in 2002 created a good deal of discord, since the cheese was long produced in Germany, France and Denmark; but European courts ultimately sided with the Greeks. At the same time, EU rules didn’t prohibit use of the term outside the EU, and export of “feta” has continued to various non-EU markets. So the bickering continues. Even the Europeans know there’s a high cost to giving up a generic name.

Dressing Down a Balsamic GI: Producers of Italian vinegar from the region of Modena recently lost a challenge at the EU’s highest court to stop German rivals from using parts of their protected name. The court [ruled](#) that protection of Aceto Balsamico di Modena “does not extend to the use of non-geographical individual terms” of that name. This was welcome news to German and other firms that sell vinegar-based products with names such as “aceto”, “aceto balsamico” and “balsamico”. Is this the same Court of Justice that ruled last year that only makers of Spanish Queso Manchego could use images on its label that even remotely evoke Don Quixote (think horses and windmills)? And what about the EU’s protection of terms that are not geographic, for use by a single member state – such as “havarti” (Denmark) and “feta” (Greece)? Such uncertainty will keep intellectual property lawyers in business for years to come.



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