

ALERT 1st Quarter 2018

Chairman's Message

Steering Down the Global Road Ahead

Each year brings fresh opportunities and challenges when it comes to safeguarding common names. A glance at global economic trends and developments for 2018 gives a sense of the stretches and bumps in the road before us. In many respects, the news is good in terms of global economic health. The World Bank reported in January that the global economy has been out-performing most predictors; it expects global economic growth to increase up to 3.1 percent in 2018 after a much stronger-than-expected 2017, as the recovery in investment, manufacturing and trade continues. The report also describes robust global trade and favorable financing conditions.



On the other hand, Global Trade Magazine recognizes as one of its top global trends that the European Union is “churning out trade agreements”. As we know, the EU now routinely includes within these trade agreements overly restrictive demands for protecting geographical indications (GI) that step on the rights of producers that use common food and beverage names. CCFN anticipates that this year the EU will continue to actively forge agreements, and in so doing will expand its efforts to use GIs to draw restrictions around common names.

Meanwhile, the North American Free Trade Agreement (NAFTA) negotiations are expected to continue for much of this year. Regional trade deals such as those pursued by Mercosur or the Comprehensive and Progressive Agreement for Trans-Pacific Partnership (CPTPP) are moving forward, but it's not yet clear what this will mean in terms of GI-related restrictions in practice. Already CCFN and its members have been working hard in these areas to safeguard common names. At the same time, the EU is preparing to join the Lisbon Agreement (see story below), which will likely create multilateral challenges in our work to assure that nations don't trample on common names and terms included in a newly expanded Lisbon Agreement.

If I can expand on the “road” metaphor, let me say that CCFN has worked hard to develop a nimble four-wheel drive SUV to navigate these rocky twists and turns. That is, over the years we have built a global name and network for ourselves so that we can more easily spread the alarm and take action when common names are threatened. We have developed an effective approach to GIs in trade negotiations that has already served our members well in Japan, portions of Latin America and other areas. Our successes come thanks to you and your support,

and the commitment by industries and officials around the world to draw a line with the EU on GI transgressions. So buckle up – We’re already well on the road to another eventful year in protecting our rights to use generic names!

Errico Auricchio
CCFN Chairman

CCFN Calls for U.S. to Reject the EU’s Flagrant Abuse of GIs and to Safeguard Generic Food Names



In testimony before the Office of the U.S. Trade Representative (USTR) March 8, CCFN urged the U.S. government to intensify its efforts to repel attempts by the European Union (EU) to confiscate generic terms within major trading markets, as well as within the United States itself. CCFN’s testimony was presented as part of the USTR’s preparation of its annual Special 301 review of intellectual property rights protections among U.S. trading partners.

“The persistent and serious problem of the EU’s transgressions regarding geographical indications (GIs) continues to be highly problematic for the U.S. food and agriculture sector,” said CCFN Senior Director Shawna Morris. “It will require continued vigilance and action on the part of the U.S. government. We ask you to continue the core objectives outlined in the 2017 Report and to continue to enhance U.S. efforts to hold our trading partners to their commitments.”

In extensive [written testimony](#) and [oral comments](#), CCFN noted that in 2017, the EU’s GI efforts “reached a fever pitch”, especially in terms of trade agreements that the EU forged with some of the U.S.’s largest and most important trading partners: Mexico, Japan, China, and the Mercosur nations. As part of each of these agreements in 2017, “the EU consistently sought to confiscate common food and beverage names to block competition in those markets.”

“The U.S. must continue to hold other nations to their trade commitments concerning market access, but also to intellectual property rules that they have already established within their own countries,” Morris said.

The EU’s GI strategy expands beyond free trade deals, and in 2017 also included the EU’s disregard of established international standards under the Codex Alimentarius. Moreover, the list of products the EU is targeting continues to change and expand. And in the area of GI and trademark filings, CCFN notes that entities supported by European governments continue to attempt to misuse the U.S. trademark system to try to inappropriately register certification marks within the United States for terms that have long been generic.

“We strongly recommend that further improvements are made to the PTO trademark review process to more effectively ensure that the U.S. system can safeguard the rights of producers that use common names,” Morris said.

CCFN expressed its appreciation for the strong and swift U.S. government responses over the past year to the EU’s competition-restricting efforts on GIs. It urged the Administration to continue those efforts, and to intensify opposition to what amounts to a growing threat to the U.S. food and agricultural sector.

Japan Rejects EU Attempts To Confiscate Many Generic Names

CCFN welcomed the Japanese government’s decision in December to assure the continued general use for many generic food terms as part of its trade agreement with the European Union (EU) – especially highly contested terms such as “parmesan” and “romano”, even as CCFN seeks further assurances on several common terms still at risk. Japan has assured continued common use for the generic cheese names brie, camembert, cheddar, edam, emmental, gouda, grana, mozzarella, parmesan, pecorino, provolone and romano; for the meats bologna, bratwurst and mortadella; and for varietal terms such as “kalamata” for olives and “valencia” for oranges.



“Japan took the right steps in preserving the vast majority of terms that were of concern to CCFN members worldwide, and in doing so helped maintain the choices and fair competition that will benefit Japanese consumers,” said CCFN Executive Director Jaime Castaneda. “Now we are urging continued consistency and fairness as they establish the finer points of new policies in Japan, so that names that are clearly generic in the marketplace will remain accessible to everyone and that commonplace marketing practices can continue.”

Japan will provide a transition period of seven years for some prior users of certain terms, including cheese names asiago, feta, fontina and gorgonzola, after which time the EU could have sole rights to these names. In addition, Japan appears to be newly enforcing certain labeling restrictions, such as a prohibition on the use of certain flags and other common labeling images.

“Japan can be viewed as a leader on this important issue if it follows its own law and preserves the present ability to cancel GIs if protection for them is no longer warranted,” Castaneda said. “We also expect Japan to ensure that all companies that make use of the targeted terms in Japan prior to implementation of the EU-Japan FTA are able to retain their rights to that grace period and that standard marketing practices are not upended as a means to disrupt competition.”

CCFN worked extensively to communicate with Japanese officials about the harm that would be done to Japanese consumers, producers and retailers, as well as to relationships with key trading partners, if Japan granted sole rights to the EU to use these generic names on products in the Japanese marketplace. Read the press release [here](#). In 2018, we continue to interact with Japanese policy makers on the outstanding issues of concern in this major market.

CCFN Engages Closely with China on GIs

CCFN Executive Director Jaime Castaneda traveled to China in January with the President and CEO of the U.S. Dairy Export Council to meet with Chinese Ministry of Commerce officials on GI issues. Castaneda commended China on its efforts to balance GI protections with the preservation of common food terms, and highlighted specific areas of concern.



“In particular, we told Chinese officials that we strongly supported China’s decision to provide the opportunity for third parties to oppose the GIs that were published for comment last year under the framework of a bilateral GI agreement with the European Union,” Castaneda said. “In addition, we expressed appreciation for China’s consistent commitment to ensure that generic terms are not eligible for protection as GIs.”

CCFN flagged to Chinese officials its concern with pending trademark issues in China related to the generic cheese terms “parmesan”, “mozzarella”, “edamer”, “emmentaler”, “gouda” and “asiago”.

In a positive development, in response to a CCFN submission, the Chinese trademark office has ruled to uphold the generic status of “munster” by rejecting a trademark application for the name “Munsterland”, noting as grounds for rejection that “munster” is a generic term for a type of cheese. A German firm had applied for this trademark in May 2015; CCFN filed its opposition to the application in 2016 to oppose restriction of the generic term munster.

NAFTA, Mexico-EU and Mercosur-EU Trade Deals Still in Process

Three of the largest trade deals currently in the works – each with potential impact on geographical indications – are the renegotiation of the North American Free Trade Agreement (NAFTA) and the EU’s negotiations with Mexico, and with the Mercosur bloc (Argentina, Brazil, Paraguay and Uruguay). The deals all remain active, but with their outcomes uncertain. With Canada, the United States and Mexico having recently wrapped up their seventh round of negotiations on NAFTA, CCFN continues to urge that these talks yield a modernized agreement that addresses abusive non-



tariff barrier tactics such as the use of GIs to impede the sale of common food names. CCFN has talked with key U.S. congressional members involved in the negotiations about the importance of the U.S. holding firm on matters concerning common food and beverage terms.

And in extensive comments to the Mexican government related to the EU-Mexico trade negotiations, CCFN made clear that Mexico must reject the EU's request to appropriate such common cheese names as "feta", "asiago", and "gorgonzola" (see CCFN [press release](#)). Mexico's decision on EU's GI list is still pending.

As for EU-Mercosur, the latest round of talks ended on March 2; the issue of GIs remains on the table. CCFN worked with our allies in those countries throughout much of 2017 and provided extensive comments to the Mercosur nations late last year (see CCFN [press release](#)), raising objections to generic terms on the EU's published list of GIs to be protected. With about 260 million consumers, Mercosur is the fifth largest market in the world.

More EU Trade Deal Activity on the Horizon

EU-Chile: The two nations are currently working to "modernize" their existing agreement, including the addition of GI protections. The latest preliminary meeting to organize negotiations took place in February. The EU has presented a proposal on the GI section that provides for an opposition period, similar to the ones in the EU-Mexico and EU-Mercosur free trade agreements. Given the early stage of negotiations, the EU has not yet presented a specific list of GIs for consideration.

EU-Singapore: This trade deal is currently moving slowly through the EU's parliamentary approval process. CCFN anticipates that within the next year Singapore will invite input on a total of roughly 200 GIs for which the EU is seeking registration. This list includes the EU's "usual suspects" of cheese, meat and other terms for protection. CCFN plans to strongly defend common name users' rights as that process moves forward.

EU-Vietnam: CCFN also expects to see ratification of this agreement proceed over the next year with approval most likely taking place in early 2019. Unlike Singapore, Vietnam has already agreed to protect a list of EU GIs, having earlier conducted a comment period on those terms. Upon ratification, grandfathering clauses will go into effect for asiago, fontina and gorgonzola if producers marketed these products in Vietnam before January 2017.

Emmentaler Trademark Application Requires EU Rejection

CCFN has learned that a Swiss GI organization is seeking a trademark in the European Union for the term "emmental/emmentaler". Emmental or emmentaler is a cheese originally made in Switzerland, but now produced in



German emmentaler

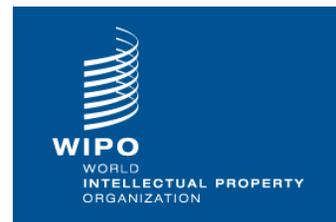
multiple other countries – including EU members Germany, France, Finland and Austria. According to a [German culinary website](#), for example, Swiss cheesemakers first brought the method for producing emmentaler to Germany’s Bavaria region in 1821; by 1840 “many dairies were able to produce a high-quality Emmentaler.”

The news is particularly alarming because an international standard for the generic name “emmental” already exists under the Codex Alimentarius. In fact, this standard, agreed to by the EU, dates back to 1967. Moreover, when GI status was granted to “Emmental de Savoie” and “Emmental Français Est-Central”; and Protected Designation of Origin status to “Allgauer Emmentaler” (the Bavarian cheese pictured above), it was explicitly clarified that both “emmental” and “emmentaler” were not sought for protection, indicating their generic nature.

CCFN has submitted comments in opposition to the trademark application to defend the integrity of the international Codex standard for this term and its long-standing generic status within the EU.

Also...

- **Good Ruling on Parmesan in Guatemala** – In response to CCFN filings, the Supreme Court issued a positive ruling to maintain the generic use of “parmesan”. CCFN has continued to coordinate with local industry in Guatemala on this issue and will work with them moving forward to ensure that we fully solidify this win in the Guatemalan marketplace.
- **EU Takes Steps to Join Lisbon Agreement** – The European Union is taking steps to join the World Intellectual Property Organization’s (WIPO) Lisbon Agreement as a means to obtain protection for GIs in multiple countries through a single registration. The Lisbon Agreement, which is administered by WIPO, currently has 28 contracting parties including 7 EU member states. Russia, China, India and 17 francophone African states have recently expressed interest in joining the agreement. In a [“roadmap”](#) posted for comment, the EU states that “The new Geneva Act is a potentially significant tool in the EU's international strategy for the protection of GIs around the world in addition to the negotiation of bilateral and regional agreements and efforts to promote the protection of GIs in the WTO, especially if the Lisbon system can be extended to new members (such as ASEAN countries, India, China, Korea, Brazil or Turkey) or international organisations such as the African IP organisation OAPI.... EU accession to the Geneva Act of the Lisbon Agreement is currently the only viable option for protecting EU GIs in a multilateral forum outside the EU.” See also this U.S. Department of Agriculture Foreign Agricultural Service [newsletter article](#).



CCFN has opposed the updated Lisbon Agreement because it lacks adequate safeguards for common name use and inappropriately expedites the process for registering GIs.

Educational outreach to WIPO countries by CCFN over the past several years, including in presentations in China and Latin America last year, has highlighted these deficits in the treaty and underscored its problematic nature.

- **Industry Letter to USPTO Stresses Continued Vigilance on GI Issues** – In February CCFN joined a group of major industry food and agricultural organizations in sending a letter to the new director of the U.S. Patent and Trademark Office, Andrei Iancu, to make him aware of the importance of GI issues and the need for maintaining a strong government policy team to address them as USPTO evaluates possible changes. CCFN was joined on the letter with the American Farm Bureau Federation, Grocery Manufacturers Association, International Dairy Foods Association, National Council of Farmer Cooperatives, National Milk Producers Federation, North American Meat Institute, USA Rice, U.S. Dairy Export Council and the Wine Institute.

UnCommon Hero

Hisao Fukuda, COO and Secretary General, The Japanese Foodservice Association

One of the more recent CCFN supporters is the Japan Foodservice Association, which is Japan's largest foodservice industry organization, with more than 800 companies and 65,000 outlets represented in its membership. The organization has one central mission: To support Japan's foodservice industry in its pursuit to achieve healthy economic growth while fulfilling social responsibilities.



In helping guide the organization, COO and Secretary General Hisao Fukuda says his members face a number of challenges, including labor shortages, increasing food costs, how to assure food safety, and numerous regulatory constraints. But Hisao adds that the issue of protecting common food names is also very important to his members.



“Japan's foodservice industry members and related businesses have long used imported food items, some of which now carry ‘generic’ names,” he says. “In particular, many cheese varieties are commonly traded and used under these generic names regardless of their country of origin – such as parmesan, mozzarella, gouda, edam, camembert and brie.

“If our members were unable to use common food names and terms, all the menus, recipes, and related documents that carry such names in question would have to be renamed and reprinted,” he said. “We support the work of the CCFN because restricting use of the names of these commonly traded/used food items would greatly confuse our members and disrupt their business practices.” The organization estimates the size of the dynamic Japanese foodservice market at more than \$234 billion.

And finally...

A Chilling Victory Against the Champagne Lobby

On the eve of 2018, as Germans were poised to pop the cork on thousands of bottles of Champagne, the European Court of Justice [ruled](#) they could also continue to enjoy a bowl of “Champagner Sorbet” from Aldi’s supermarket. The Champagne ‘police’ – the Comité Interprofessionnel du Vin de Champagne (CIPV) – sought an injunction against Aldi, suggesting it was abusing the good name and geographical indication of Champagne by attaching it to sorbet. But after five years of back and forth, the legal battle reached the EU’s top court, the European Court of Justice (ECJ), which ruled in favor of Aldi. The deciding factor was that the sorbet does actually contain Champagne – 12% by volume.



“Use of the name ‘Champagner Sorbet’ does not take undue advantage (and therefore does not exploit the reputation) of the Protected Designation of Origin ‘Champagne’ if the product concerned has, as one of its essential characteristics, a taste that is primarily attributable to Champagne,” the ECJ said in its decision.

The ruling suggests that “Champagne” is not strictly a region and sparkling wine, but can also be a flavor and descriptor. And probably makes for a pretty tasty sorbet.

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