

**Comments by the Consortium for Common Food Names
Regarding the 2017 Special 301 Review
Docket Number USTR–2016-0026
February 9, 2017**

Our organization submits these comments in response to the notice of request for public comments concerning the 2017 Special 301 Review: Identification of Countries Under Section 182 of the Trade Act of 1974 (Docket Number USTR-2016-0026). The Consortium for Common Food Names (CCFN) appreciates the opportunity to present its views on this important annual report. In addition to these written statements, our organization intends to testify to the points cited below at the Special 301 Public Hearing to be held by the Special 301 Subcommittee on February 28, 2017.

The Consortium for Common Food Names (CCFN) is an independent, international non-profit alliance that represents the interests of consumers, farmers, food producers and retailers. Membership includes companies and organizations from across the world, including in several emerging economies. Our mission is to preserve the legitimate right of producers and consumers worldwide to use common names, to protect the value of internationally recognized brands and to prevent new barriers to commerce.

Our comments are focused on the abuse by certain countries of one form of intellectual property – geographical indications (GIs) – at the intentional expense of American companies, their employees and supplying farmers. In addition, these policies also harm companies, workers and farmers in a number of other countries around the world, including developing countries. In addition to GI-specific concerns, we are also concerned about efforts to use similar types of regulatory restrictions such as the EU’s “traditional terms” program and its “traditional specialty guarantee” program to impose limits on the fair use of common food terms.

CCFN is not at all opposed to the concept of geographical indications. In fact, the U.S. itself protects GIs – both foreign and domestic – through its certification mark system. When properly targeted to protect unique regional products, combining a specific regional name with the common term for the type of product, GIs can be a useful intellectual property tool for some producers. For instance, CCFN fully agrees that a GI such as Mortadella Bologna should be able to be protected; but the generic term bologna must remain free for use by any producer around the world. Likewise, protection for the GI Parmigiano Reggiano is entirely appropriate; but EU intentions to use this GI to bar use by all non-Italians of the generic term parmesan is entirely unacceptable.

U.S. companies employing American manufacturing sector workers and making their goods with American farmers’ products would be the ones hurt by restrictions on common food names. Companies like the following:

- **Seltzer’s Lebanon Bologna, based in Palmyra, PA:** This family-founded company has been making bologna in the heart of Pennsylvania Dutch country since 1902. It is the world’s largest producer of Lebanon Bologna and produces its great bologna “the old-fashioned way – in tall, wooden smokehouses over hand-tended fires”.
- **BelGioioso Cheese, based in Green Bay, WI:** This family-run company, founded by an

immigrant from Italy, is almost 40 years old but the family history of cheese making dates to 1877 in Italy. The company currently has several manufacturing plants and hundreds of employees across the state that making dozens of varieties of high-quality cheese.

In recent years, however, the European Union and certain of its trading partners have been aggressively promoting the global adoption of GI policies with an overly broad scope of protection and specific GI results expressly intended to shield European companies from competition by American companies, as well as those in other nations. These harmful impacts on American companies and bans on what types of products they can freely sell in a variety of countries around the world are not collateral damage of the EU's GI policy agenda. Rather, they are the express intent of the way in which the EU has pursued its GI agenda.



Such policies and inappropriate registrations can cause significant unnecessary trade damage, put U.S. jobs at risk and undermine the value of market access concessions, by barring producers outside the EU from using terms that have become the common names for various types of products. Moreover, several of the countries that have granted such registrations have bypassed their normal intellectual property procedures and approved a list of names in the context of bilateral trade negotiations. This approach has made it impossible for interested parties to register objections to the registration or to influence decisions regarding scope of protection.

In a similar vein, other countries have opted to conduct a cursory and poorly publicized consultation on particular GIs under consideration through a regulatory avenue other than the country's intellectual property system. This bypassing of the country's normal IP procedures not only avoids standard IP evaluations but it also impairs transparency due to the fact that automated watch systems for trademark systems are well developed but do not exist as widely for all the various regulatory publication tools that may exist. If a country opts to bypass the standard transparency tools of its IP system, it should be obligated to notify trading partners of its deliberations on GIs such as through WTO notices that provide the opportunity to comment prior to the final decision period.

As it currently stands, this issue holds significant potential nontariff barrier concerns for U.S. farmers and food makers. However, we note as well that multiple developing countries include within their

GI systems non-agricultural products as well, such as textiles for instance. The EU too is contemplating the expansion of its GI system to include non-agricultural products.

As the 2016 USTR Report noted:

“Within its borders, the EU is progressing toward enlarging its system beyond agricultural products and foodstuffs, to non-agricultural products, including apparel, ceramics, glass, handicrafts, manufactured goods, minerals, salts, stones, and textiles. Beyond its borders, the EU has sought to advance its agenda through bilateral trade agreements, which extend the negative market impacts of the EU GI system on the scope of trademark protection to third countries.”

This means that the policies being put in place today on GIs around the world hold significance for an even broader swath of U.S. manufacturing interests – not solely those in the food processing sector, but also those in other sectors as well that may ultimately find themselves at similar risk of restrictions being placed on commonly used generic terms that are vital to global trade and supply chains.

Last year’s Special 301 Report issued by USTR very rightfully noted:

“The EU GI agenda remains highly concerning in two key respects—in terms of the significant extent to which it undermines the scope of other IPRs, particularly trademarks, held by U.S. producers, and concomitantly imposes barriers to market access for American-made goods and services that rely on the scope of such rights.”

In addition, we would note that the overly broad scope of protection for GIs – one which significantly exceeds typical trademark protections in most countries – is part and parcel of the market access constraints American-made goods may encounter around the world. The EU’s GI agenda is so particular harmful because it is not simply a bilateral issue, impacting conditions in one particular trading partner’s region and our trade with that particular partner; but rather it is a global policy agenda being carried out across many key U.S. export markets and intended to hamstring competition from American and other companies.

Our organization strongly supports U.S. government efforts to ensure that GI protections are properly notified and applied and do not prevent the use of generic or common terms, or violate prior rights – such as market access commitments under trade agreements, obligations regarding technical barriers to trade or trademark rights.

We look forward to continuing to work closely with the Office of the United States Trade Representative (USTR), the United States Patent and Trademark Office (PTO) and the United State Department of Agriculture (USDA) to ensure that our trading partners live up to their commitments under the World Trade Organization (WTO) and bilateral trade agreements with respect to common food names and to use all necessary tools to dismantle illegitimate trade barriers that the EU is working to erect through their bilateral trade negotiations and in international forums such as World Intellectual Property Organization (WIPO) and the WTO.

Cross-sector Relevance of GI and Common Names Issue:

As noted above, this issue threatens to impact a broad swath of U.S. farming and manufacturing sectors. A USDA-funded project designed to address export constraints on common food names

has participants from the dairy, meat, wine and rice sectors, as well as additional supporters representing wider agriculture and processed food sector interests.

Some examples of 2016 comments by additional CCFN partners on this issue are as follows (<http://www.commonfoodnames.com/wp-content/uploads/informa-study-comments-final-101016.pdf>):

- “Manufacturers remain highly concerned by EU efforts to promote a set of policies that will restrict access and sales of food products relying on common names to the detriment of jobs and production in the United States...”
 - *Linda Menghetti Dempsey, Vice President, International Economic Affairs, National Association of Manufacturers*
- “We are very concerned that geographic indicators are being used by some countries as trade barriers. These protectionist measures have no place in our modern system of international trade and we will continue to oppose their use for trade restrictive purposes.”
 - *Zippy Duvall, President, American Farm Bureau Federation*
- “...If unchecked, the EU GI strategy could have wide impacts across the food chain, and GMA urges the U.S. government to take steps to address this serious trade concern.”
 - *Mary Sophos, Executive Vice President, Strategic Planning and Policy, Grocery Manufacturers Association*

In addition, members of Congress continue to express serious concerns about the impacts of the EU’s GI strategy as well including comments such as the following from 2016:

- “Europe’s plan to expand geographical indications will harm American farmers, manufacturers, and consumers. Open and free trade cannot occur with this kind of GI system. Parmesan, Feta, Asiago, and many other Wisconsin cheeses have won international acclaim, and they should be able to compete fairly in the world market.”
 - *Rep. Paul Ryan (R-Wis), Speaker, House of Representatives*
- “While there are legitimate and agreed upon uses for Geographic Indications, the European Union’s approach has become another tool to block market access for American products using common food names...If the U.S. gives in to the EU’s demands on GIs, it will have a significantly negative impact on the U.S. economy – from the dairy farmer to the local grocer to the consumer at home.”
 - *Senator Pat Roberts (R-Kan.), Chairman, Senate Agriculture Committee*
- “Vermont makes some of the finest cheeses in the world. This push to restrict common cheese names in use for hundreds of years in Vermont and around the globe is in reality an attempt to force competitors out of business. Europe’s ‘geographical Indications’ agenda must be rejected.”
 - *Rep. Peter Welch (D-Vt.), Co-Chair of the Congressional Dairy Farmer Caucus*

Case-Study Examination of Economic Impact

The U.S. dairy sector is a strong example of the impact that inappropriate GI restrictions risk having on U.S. farmers and companies. The following information is provided in order to offer a “case-study” look at the commercial relevance of this issue to just one of the impacted sectors.

As was earlier the case with wine when the U.S. wine industry began to challenge the EU’s longstanding lock on global wine markets, limiting competition in the dairy category has been a particular focus target of current EU GI scheme policies. As the world’s largest single country cheese producer and a burgeoning cheese export power-house, the U.S. has been taking the brunt of the impact of the EU’s expanding global GI policies. This is despite the fact the U.S. is a major customer for European Union food exports, particularly its cheeses.

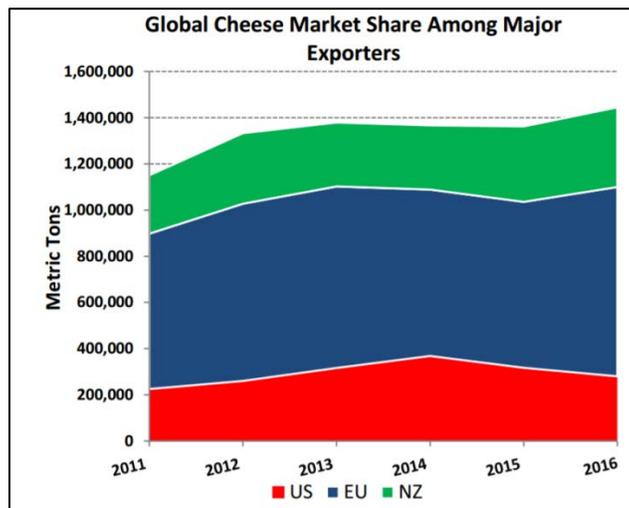
The U.S. is the EU’s largest cheese export market by far. On average, the EU exports almost \$1 billion in cheese exports to the U.S. in a typical year while last year the U.S. exported a scant \$6 million in cheese to the EU. **Wielding a global campaign intentionally harming your largest customer is certainly an interesting approach to business.**

Cheese-making is a large and value-added element of the U.S. dairy industry. Approximately half of all U.S. milk production is used to produce cheese. Most cheese is produced in plants located near areas of ample milk supply. They are therefore situated in predominantly rural communities across the country and provide important manufacturing jobs in those areas. In fact, the U.S. is the world’s largest single country cheese producer. The EU (all 28 members) collectively produce more than the U.S., but no single EU member produces more cheese than the U.S. The U.S. produces roughly as much cheese as the top three EU cheese-making countries combined.

Looking in turn at cheese through a global lens, cheese exports are becoming increasingly important to U.S. given that this country is a sizable and growing cheese exporter to various markets around the world. In 2015, the U.S. exported \$1.4 billion worth of cheese globally. Since 2005, U.S. cheese exports have grown by 587%. In 2016, slightly weaker global dairy markets data for U.S. cheese exports showed a total of \$1.2 billion. Those sales are made to a total of 95 countries around the world.

Over the 2015-2016 period, U.S. overall dairy exports have declined while European cheeses and dairy products have experienced a rebound after the loss of the Russian cheese import market in 2014 due to economic sanctions levied against the U.S., EU and Australia. The gains made by European cheese and dairy producers has been mostly achieved at the expense of U.S. cheese shipments particularly in Asian markets.

As was rightly pointed out by the Foreign Agricultural Service in its December 2016 “Dairy: World Markets and Trade” report, the United States is the only country among the top three major cheese exporters that has experienced a loss in market share between 2014 and 2015 (presented in graph below).



Source: USDA FAS Dairy – World Markets and Trade.

Global cheese opportunities will be growing larger in the years to come. The U.S. Dairy Export Council forecasts that five years from now there will be 66,000 more Metric Tons (MTs) of global demand for mozzarella for use in pizza production. In addition to that, five years from now there will be 266,000 MTs more global demand for natural cheese within the retail and food service sectors. As demand, particularly in Asia and the Middle East, continues to grow for a wider variety of cheese types, opportunities for American-made high-value cheeses will also grow. The U.S. dairy industry wants to ensure it can continue to maximize those opportunities.

The consequences of failing to preserve those opportunities, however, are sobering. In September 2016, a study commissioned by the Consortium for Common Food Names was published by Informa Economics IEG assessing the potential Impact of Geographical Indications for Common Cheeses on the U.S. Dairy Sector. This study found that imposing Geographical Indications restrictions on a variety of commonly used cheese names in the United States could cost the U.S. dairy industry billions of dollars, slash domestic cheese consumption, close family farms and eliminate thousands of rural jobs. The study also found that these policies will also increase prices for consumers and hurt the overall U.S. economy.

In specific statistics, the study found that in 10 years European-imposed restrictions on common cheese names would reduce U.S. cheese consumption up to 21%, or 2.3 billion pounds. At 2016 prices, this consumption decline would equal up to \$5.2 billion in lost cheese sales over that period. Family dairy farmers would also be severely damaged by Europe's policies, according to the study, with the revenue impact ranging up to a cumulative \$59 billion. Farm margins could be driven below the break-even point for up to six out of 10 years, as dairy farmers would lose up to 15% of their revenue. These losses would trigger a reduction in the U.S. dairy herd of up to 9%, or 852,000 cows, forcing many dairy farmers to quit.

The study also finds that this damage would not only affect the dairy industry, but that it could also ripple through reliant industries like grain farming, transportation and veterinary

services. The U.S. economy could lose up to 175,000 jobs and \$23 billion in Gross Domestic Product in the short run. While this analysis just looked at the dairy industry, restrictions on common food names would likely have similar impacts on other food sectors.

Geographical Indications (GIs) Wielded as a Non-Tariff Barrier to Trade

As referenced above, for the past few years, the European Union (EU) has been pursuing an increasingly aggressive bilateral strategy to restrict the use of common food names by non-EU producers, often by negotiating protections in the context of free trade agreements (FTAs). The EU's clear goal is to advance their own commercial interests by pushing its trading partners to grant its GIs a scope of protection that prevents producers from other regions from using names that have long since entered into the public domain.

This approach gives EU companies an unfair commercial advantage and allows them in many cases to take over markets that were developed over many years by producers from other regions. Many of the GI registrations at issue violate commitments under the WTO and other trade agreements because they constitute technical regulations that are more trade-restrictive than necessary and because they seriously impair the value of tariff concessions granted under trade agreements.

Previous Administrations have maintained a continued extensive scope of work to tackle this growing global threat to U.S. agricultural export opportunities. We strongly encourage USTR to continue examining the consistency of GI registrations and policies that promote an overly broad scope of protection with international trade rules, including the impairment of market access gains secured under FTAs and WTO commitments. The EU's actions throughout the world put at risk hard-won U.S. market access opportunities in many markets and must be forcefully rejected as the protectionist measures they are.

Bilateral Issues

We provide below a number of examples of the way in which this global phenomenon is manifesting itself. This is an illustrative, not comprehensive list. We will continue to monitor the situation and provide information to USTR as appropriate. Each of these countries is obliged under WTO rules to avoid restricting access for products from the U.S. that rely on common names for their marketing and several of the countries also are obligated to avoid doing so under U.S. trade agreements given the established value of concessions in those FTAs. As U.S. work on this issue continues, it is our expectation that the U.S. should insist that our trading partners honor those obligations and avoid imposing nontariff barriers on U.S. exports.

Canada

On October 30, 2016 Canada and the European Union signed the long-stalled Comprehensive Economic and Trade Agreement (CETA). The agreement codifies the violation by Canada of its TRIPS obligations by bypassing standard evaluation of intellectual property rights for EU GI holders and failing to provide for any opposition process before granting uniquely beneficial IP rights to EU interest groups.

In addition, and as a result in large part of this non-TRIPS-compliant process for granting preferential IP protections to specific EU interests, the agreement commits Canada to establish GI restrictions on the use of multiple generic names that had long been used in Canada. As clear indication of this prior generic use, the agreement grandfathers in companies that had used the terms prior to October 2013 and imposes the requirement that “new” users after that date label their products in a way that could incorrectly suggest to consumers that the product is not genuine. (CETA requires “new” users of the terms feta, asiago, gorgonzola, munster and fontina to label them as “feta-type” or “similar to muenster” and also revise potential packaging images commonly used on food products.)

To rally internal support for the trade agreement, the European Commission committed in the days prior to signing the FTA to seek to entirely ban the use of the grandfathered generic terms by non-Europeans in Canada within five years. Both the European Union and Canada still must ratify the agreement, but its completion indicates further backsliding by Europe on its commitments and illustrates the risk to countries in taking an expedient view rather than a principled one.

The grandfathering provisions and the evasion of Canada’s IP process signal the objective of the measures, which are clearly intended to protect EU and grandfathered Canadian companies from legitimate competition from imported products. We strongly reject Canada’s actions as being inconsistent with their NAFTA and WTO obligations.

Central America (Costa Rica, El Salvador, Guatemala, Honduras, Nicaragua & Panama)

The consequences in this region of the implementation of new FTAs with the EU have been variable. In some countries, such as El Salvador, Guatemala and Honduras, government officials have restricted the use of various single-term names of concern to the U.S. but at least have been willing to provide important clarifications regarding the treatment of common names that are components of certain multi-term GIs of particular interest to U.S. companies. We commend the U.S. government and our trading partners for their extensive work aimed at securing clarifications regarding the right to use several generic names in exports to CAFTA countries. Those efforts have helped preserve a significant portion of the value of market access commitments contained in the CAFTA agreement, which is very important to the industry given the U.S.’ geographical advantage to these markets.

In April 2016, Honduras clarified the scope of protection provided to GIs and illustrated this clarification through clearly documenting examples of the types of common terms that would be preserved for use by all. These assurances include terms such as parmesan, bologna, provolone, prosciutto and others. Although this clarification did not include assurances on the continued use of other single-term common names currently protected in Honduras, it does provide important assurances on many common names used within multi-term GIs that were registered in Honduras. CCFN hailed these important assurances as a strong model for reference by others throughout the Latin American region and elsewhere around the world.

In other countries in the region, such as Nicaragua and Panama, officials have yet to clearly indicate the scope of protection for EU GI registrations, leaving open the risk of future

disruptions to U.S. exports. We encourage these countries to follow the model set last year by Honduras and similarly issue assurances regarding the scope of protection for GIs in their countries and clear preservation for numerous common names of commercial significance.

The most problematic country in the region to date has been Costa Rica, where the country has in multiple cases disregarded standard intellectual property considerations, GI registration criteria and has clearly restricted several products in the past (such as asiago, gorgonzola and fontina). Multiple GI objection procedures remain underway and we remain extremely concerned about the prospect of market access barriers in this major market in Central America.

Following meetings between the U.S. and Costa Rica governments spanning several years and extensive work of the U.S. industry together with the Costa Rican dairy industry, Costa Rica's intellectual property office declared in May 2016 that "mozzarella" is considered generic. The government has to date not provided similar clear standing for the generic terms parmesan and provolone and CCFN efforts to get Costa Rica to clarify the generic nature of the term "romano" continue as well. Given the challenge in combatting and interpreting the scope of protection for GIs on a case by case basis, we would similarly urge Costa Rica to follow the model of Honduras and issue clear guidance laying out that the full GI merits protection in Costa Rica, while making certain that individual elements of the GI used remain free for use (e.g. protection for Pecorino Romano or Mortadella Bologna but preserving generic use of romano or bologna).

Our organizations strongly urge those countries to further work with the Administration to establish clearer trading conditions for U.S. exporters and ensure that the GIs registered in their countries are not protected in an overly expansive manner designed to hinder trade. They are each important growth markets for the U.S., particularly given the geographic advantage that U.S. companies have in supplying these neighboring markets in comparison with other major dairy exporters.

China

China is currently involved in ongoing negotiations with the EU regarding geographical indications. The near-term conclusion of these talks was forecast throughout much of 2015 and 2016, so we view it as highly likely that an agreement could be arrived at this year. We have deep concerns about the impact this agreement may have on U.S. exports and particularly on opportunities to continue to expand the range of U.S. products sold in this rapidly evolving market.

Our organizations see positively the affirmation that the U.S. and China made of an earlier understanding that product names are not eligible for GI protections if they are in common use in a particular territory at the November 2015 meeting of the U.S.-China Joint Commission on Commerce and Trade. In this meeting, China and the United States also confirmed that this applies to all GIs, including those protected under international treaties.

In 2016 China has also continued to work on making progress on its commitments to due process including robust evaluation and opposition procedures and procedures for the

cancellation of previously registered GIs. Equally important to how China conducts its GI sui generis system is how China handles trademarks that could similarly restrict the use of common food terms in a manner similar to traditional GI registrations.

Towards that end, CCFN welcomes the decision taken by China on Dec. 12, 2016 and issued as regulation on Jan. 10, 2017 regarding the grant and determination of trademark rights. Among other elements of that regulation and elements essential to evaluating generic use such as dictionary or reference book citations, China affirmed the importance of industry product standards as a key indicator of genericness.

The regulation states: “A product reference should be deemed a “generic name” of such products if the...relevant industry’s standards have settled on this specific name to refer to such products.” This, among other examples illustrating indicators of generic use, provides essential guidance to trademark examiners to help ensure that common terms of good-faith commercial interest to multiple companies are not monopolized by one supplier in a bad-faith effort to limit all competition from the other producers of those products.

A list of Codex standards can be found here: <http://www.fao.org/fao-who-codexalimentarius/standards/list-of-standards/en/>. A product-specific example of an industry standard that can be found on that prior website is the standard for mozzarella: http://www.fao.org/fao-who-codexalimentarius/sh-proxy/en/?Ink=1&url=https%253A%252F%252Fworkspace.fao.org%252Fsites%252Fcode%252FStandards%252FCODEX%2BSTAN%2B262-2006%252FCXS_262e.pdf.

We look forward to continuing to work with the U.S. and China on furthering China’s work on these types of critical procedural elements, as well as on the bottom-line goal of ensuring that in practice access to one of the world’s fastest growing food markets is not monopolized by European producers.

Colombia

As part of the Colombia-EU FTA, Colombia restricted the use of certain common food names such as feta and asiago. This action impaired the value of concessions granted to the U.S. under the U.S.-Colombia FTA. At the same time, however, Colombia also took positive steps to address U.S. concerns regarding other names by clarifying the scope of protection provided for certain multi-term GIs. We appreciate these clarifications, which helped to provide greater certainty to U.S. exporters regarding the types of products they can continue to ship under the U.S.-Colombia FTA.

Ecuador

In November 2016, Ecuador signed an FTA with the EU that included GI provisions. As part of that agreement, Ecuador banned the import of certain commonly produced U.S. foods if they were labeled using their common names. To ensure that the maximum possible range of U.S. products remain eligible for sale in Ecuador, we urge USTR to engage in discussions with Ecuador regarding the scope of protection established for multi-term GIs.

Europe

In addition to driving the escalating threat of nontariff barriers to U.S. products world-wide, the EU also continues to contemplate new restrictions on the use of common food names within its borders and use regulatory tools similar in intent to its GI system to restrict the use of common names.

GIs:

In 2014, the EU allowed an application from Denmark for a GI for “Havarti” to proceed to the publication stage despite the existence of a Codex production standard for this widely produced type of cheese. The EU and Denmark were extremely active in the Codex process of reviewing and codifying the standard. The Havarti GI application followed on the heels of a prior GI application in 2012 for another type of cheese for which there is a Codex standard: “Danbo”. It is essential that the EU abide by its WTO commitments and the integrity of the Codex process by rejecting these two GIs for Codex-standardized names. Countries cannot abuse the multilateral Codex standards process to develop a global standard for a commonly produced and traded product, only to subsequently seek to monopolize use of the standardized term for their sole benefit. Such actions would make a mockery of the multilateral Codex process that underpins trade predictability and WTO commitments.

In addition to these two deeply concerning applications, the EU last year also advanced an application for a GI for Halloumi, a type of cheese produced in Cyprus, the U.K. and elsewhere around the world. This action is notable since approval of the GI, as proposed, would not only impact multiple countries relying on generic use of the term halloumi, including the U.K.; but it would also negatively impact a large swatch of Cyprus halloumi producers through its narrow GI definition that excludes a large portion of the halloumi currently produced in Cyprus. These inherent conflicts help to illustrate the fundamental flaws with the politically-driven EU GI system which too often bestows monopoly rights on a select group of producers at the expense of others rather than consistently follow the GI model that the UK has largely promoted.

There are example of EU GIs that have not proven to be problematic in practice because of the reasonability of the GI applicants and their EU member state government. One strong example of this alternate path has been the UK. For instance, the UK has multiple GIs registered for types of cheddar, a generic type of cheese that long ago took its name from the town of Cheddar, England (e.g. GIs exist for Orkney Scottish Island Cheddar and West Country Farmhouse Cheddar). Those GI registrations, however, make equally clear that use of the generic term cheddar is preserved.

As we have urged for years, the European Commission should adopt this successful model for GIs that allows for the protection of unique multi-term regional specialties while clearly preserving continued generic usage of the product type. Had the EU followed this model for other GIs such as “Feta”, by requiring the Greeks to submit a GI for “Greek Feta” rather than suddenly deciding the widely used term “feta” was not the sole property of Greece, the Commission could have advanced its GI goals much more successfully and without the consequent harmful impacts on other trading partners. The fact that the EC has deliberately chosen not to adopt this successful UK-style GI model indicates its express intention to continue to use its GI system to unfairly use government dictates to eradicate competition

for its producers around the world.

Traditional Terms:

U.S. winemakers are prohibited from using common descriptive terms related to winemaking on wines exported to the EU. The terms used on U.S. wines which are prohibited in the EU are not associated with a specific place or GI, such as Bordeaux or Napa Valley. Rather, they are common nouns and adjectives used to describe the wine. These so-called “traditional” terms include “chateau,” “clos,” “ruby,” “tawny,” “crusted/crusting,” “noble,” “ruby,” “superior,” “sur lie,” “tawny” and “vintage/vintage character.”

As part of the “Agreement between the United States of America and the European Community on Trade in Wine,” signed in 2006, the EU granted U.S. winemakers a derogation to use the common terms in question for three years. Although there was an understanding that, at the end of the three-year period, the EU would renew the derogation, renewal was never granted. Consequently, in 2010, the U.S. wine industry submitted applications to the EU for approval of 13 terms, with definitions provided for each term as required by the EU. In 2012, the EU approved the applications for “classic” and “cream.” Now, however, almost seven years after the applications were submitted, the EU has failed to respond to any of the 11 remaining applications.

The EU's refusal to process these 11 applications prevents U.S. wineries from using the terms in question on wine labels or even in company names when filing for trade mark protection, unless the term's use pre-dates the 2006 agreement. Regulation EC 207/2009, Section 2, Article 4(j) of EU Directive 2015/2436 on trademarks, protects traditional terms for wine, giving the use of the terms by a third country without an agreement or an approved application, absolute grounds for refusal of a trademark application. Therefore, any U.S. winery that currently uses such a term cannot export its wine to the important European market.

CCFN strongly objects to the EU's unreasonable refusal to process the remaining applications.

Over the past two years, the European Commission, has continued to stall the application approval process by engaging in a supposed review of EU traditional term wine regulations, including Commission Regulation (EC) No 607/2009 laying down certain detailed rules for the implementation of Council Regulation (EC) No. 479/2008, in order to “simplify” the traditional terms application and approval process.

The U.S. wine industry has sought to play a constructive role in this process, seeking more transparency from European officials. However, to date the EU has failed to adopt a clear and transparent approach to the process, including notification of issues and claims that delay or prevent a prompt decision.

Applicants continue to be prevented from reviewing and responding to written objections submitted by Members States and other stakeholders. In addition, the EU has refused to amend its notification and objection procedures to allow those who have made prior use of a term in the EU the opportunity to object or register their own usage of the same term.

The Commission has also failed to revise its regulations to ensure use of legitimate

descriptive terms without the need to go through a cumbersome and unnecessary registration process that creates cost and uncertainty for both regulators and industry, by:

- Broadening the definition of what is considered “generic” in the legislation;
- Limiting the high level (Article 40(2)) protection of traditional terms to wines from the country seeking protection only – uses by other countries would therefore only be prohibited where this could be shown to be actually misleading or deceptive; and
- Developing a non-protected list of descriptive terms of third countries that may continue to be used by those countries in the EU, including in co-existence with registered traditional terms.

Finally, in violation of its National Treatment obligations and basic principles of good regulation, with respect to traditional terms the EU has apparently failed to utilize the same regulatory process and criteria for applications from Member States that it uses for those submitted by third countries.

Traditional Specialty Guarantee Program:

The TSG program was initially a program whereby producers that fit a specified product definition earned the right to use a particular EU TSG logo on their packaging. However, in 2013 the EU reformed this program to instead require that new TSGs be implemented in a restrictive manner, blocking use of the registered term by any who do not meet the specific product definition. Mandatory product standards and their enforcement are not in principle a concern. When properly employed, they can provide essential consistency and information to consumers. For instance, the U.S. has a standards of identity program that specifies what products can be accurately labeled as “milk” or as “gruyere cheese”, regardless of where that product is produced.

However, given the EU’s track record of using its quality labeling programs to deter competition for groups of producers in specific regions of the EU, CCFN is concerned about how this regulation may be applied in practice and the lack of sufficient clear safeguards for generic names under the regulation. For instance, a TSG for neapolitan pizza (“Pizza Napoletana”) was created last year. Although the U.S. is presumably unlikely to export pizza to the EU, the EU’s propensity to “export” its regulations in the form of global regulatory and standards restrictions around the world could ultimately create challenges for restaurants and their global suppliers, including U.S. companies, if an overly restrictive standard for the term were imposed world-wide.

Although not strictly an IP issue itself, the development of the TSG program must be viewed in the context of what the EU has done with its established GI system and policies. It will be important for the U.S. government to monitor evolution of this program and to discourage its incorporation into EU FTAs; should the EU wish to create global product standards for particular products the proper pathway for doing so is through the established Codex process, not unilateral dictate by Europe.

Emerging Threats Country Name Use:

In addition, the EU has also used other methods to discredit products with certain names produced outside of specific EU member countries. This threatens a variety of companies that generically use country names to make references to their products. Here too, these developments must be carefully evaluated in the context of what the EU has done on GIs to date and ongoing discussions on the topic in international IP discussions.

For example, in October 2016 the European Commission decided that, even though “Greek yogurt” is not protected by a geographical indication, nor even a TSG, and despite the fact that it has become a widely used term to describe a type of high-protein yogurt, use of the term on products made outside Greece “would deceive consumers and would create unfair competition”. Counter-intuitively, the EU was reported in press reports as further stating that even clearly labeling the product with where it was produced to communicate to consumers that it was not produced in Greece would be insufficient. Although for now, the EU is continuing to permit in principle use of the terms “Greek-type yoghurt”, “Greek-style yoghurt” or “Greek-recipe yoghurt”, it has also warned that further assessments will be made on a case by case basis, ultimately to be decided by European courts.

In a similar vein, there are ongoing efforts by additional European countries such as Switzerland and Italy to restrict the generic use of country names as well. Italian government officials have campaigned against Italian colors on labels (despite no unique proprietary rights to use the colors, red, green and white) and the common marketing practice of making some reference to the country from which a particular style of food initially originated.

Below are excerpts from Italian materials providing examples of this “problem”. The examples provided make clear the potentially broad impact across various food sectors that could result from restrictions on country-references and common labeling imagery. Products such as Wishbone Italian Salad Dressing, Progresso Italian Wedding Soup, Rita’s Italian Ice or Chef Boyardee Spaghetti & Meatballs are surely not confusing consumers as to their origin, Italian claims to the contrary.

Excerpt & Translation from Italian Materials:

The business of the fake made in Italy		
<i>(% on total of “Italian sounding”)</i>		
Product	Genuine	Fake
Ready pasta sauces	3%	97%
Canned tomatoes	24%	76%
Olive oil	89%	11%
Pickles	6%	94%
Pasta	72%	28%
Parmigiano cheese (pieces)	27%	73%
Parmigiano cheese (grated)	4%	96%
Mozzarella cheese	3%	97%
Provolone cheese	3%	97%
Ham	54%	46%
Salami	7%	93%
Coffee	49%	51%



These threats pose concerns to a range of U.S. companies and the workers they employ. Although the most immediate impacts are likely greatest for U.S. companies seeking to sell their established brands of Greek yogurt in the EU, this is clearly not the full extent of the impact that could be had on U.S. companies should European interests to impose new restrictions on the use of generic country references prevail. Given the history of the EU initiating its GI system internally, only to subsequently export its policies and restrictions

around the world and utilize multilateral forums like the World Intellectual Property Organization to advance their goals, CCFN is deeply concerned about how global restrictions on the use of generic country references may evolve.

CCFN has also witnessed how those types of threats can ultimately come to impact the U.S. market as well, even independent of a trade agreement, such as evidenced by ongoing efforts in the U.S. by the Italians to restrict the use of asiago and by the French and Swiss to restrict the use of gruyere, despite the fact that both have long-established FDA standards of identity (i.e. U.S.-government issued origin-neutral recipes for how a product should be made if it is to be sold in the U.S.). This is a particular concern given Italy's clear messaging that it views the "abuse" (such as the examples provided above from the Italian material on this issue) to be greatest in the U.S. market.

As such, European governments may seek to explore avenues to impose restrictions on typical marketing practices and food terms in the U.S. Even if these attempts are not successful, they would likely require U.S. companies to invest resources simply to defend their current business practices – as is currently the case where multiple U.S. companies are saddled with defending their longstanding of the generic term gruyere in light of French and Swiss efforts to newly monopolize its use here in the U.S. market.

Conclusion:

In sum, we reject the EU's continued efforts to monopolize the use of common names on behalf of its member states. We also note with disappointment the EU's refusal to take even minimal systemic steps to provide clarity regarding the scope of protection for certain compound GIs or regarding translations and transliterations.

Our organizations monitored closely the negotiations for the Transatlantic Trade and Investment Partnership (TTIP), where we strongly advocated for the removal of EU barriers to U.S. agricultural exports, predominantly EU GI abuse. We find unacceptable Europe's attempts to eliminate competition by clawing back use of a growing list of common food names. Negotiations for this agreement are currently paused until at least the fall of 2017 (if they are ever resumed), but we urge USTR to continue seeking avenues to eliminate these barriers and stop the EU's attempts to escalate the threat of nontariff barriers worldwide.

Japan

Japan is involved in FTA negotiations with the EU. These negotiations have picked-up speed after the declared pause of the TTIP negotiations and the current lack of clarity regarding future U.S.-Japan trade relations. In keeping with recent practice, the EU has proposed in this context the registration of a long list of GIs and an overly broad scope of protection for those terms. We are very concerned that an eventual agreement could restrict current and future opportunities in the Japanese market for third parties exporting commonly produced types of food.

We thank the U.S. government for their extensive work with Japan as it worked to finalize its GI law and regulations in 2015. In addition, we commend USDA's Japan office for its particularly thorough tracking and reporting of developments since then regarding Japan's

GI system.

Japanese government actions last year suggest, however, that Japan may be contemplating ignoring these obligations and providing protection to EU GIs for terms commonly used by U.S. producers – whether that protection takes place via its sui generic GI system or through its trademark system. Foreign GIs have begun to move through the Japanese system. As those applications proceed and as the Japanese trademark system encounters efforts by U.S. companies to document the generic use of key commonly used terms, it is of utter importance that Japan ensures the application of the principles that have been approved.

Of particular current note:

- A GI application from Italy that seeks to restrict use of the generic terms “parma ham” rather than solely establishing protection for the GI “Prosciutto di Parma”
- Trademark system actions that have called into question whether Japan will uphold the extensive existing generic use of terms such as parmesan and feta.

We urge the Administration to insist that Japan abide by both the letter and spirit of its trade commitments to the U.S.

Korea

Overall, Korea has been a very good trading partner of the U.S. and a very important destination for U.S. exports. The U.S.-Korea FTA has been invaluable in maintaining U.S. competitiveness in this market since other major suppliers to Korea subsequently negotiated their own FTAs with Korea. Without the benefits of our FTA, U.S. suppliers would uniquely face tariff burdens while our competitors would have preferential access to this large market.

With respect to the issue of GIs, Korea has provided both positive and negative examples of how countries may handle this important trade topic.

As part of the EU-Korea FTA, Korea banned the import of several commonly produced U.S. foods if they were labeled using their common names. This action impaired the value of concessions granted to the U.S. under the previously negotiated U.S.-Korea FTA by forbidding the sale of accurately labeled U.S. asiago, fontina, gorgonzola and feta. Beginning in 2015, U.S. exporters increasingly reported barriers to their sales of those products given Korea commercial demand for those U.S.-made products. These negative consequences are likely due at least in part to Korea’s decision to – like Canada – bypass its standard intellectual property evaluation and notification procedures when it opted to approve without public consultation a list of EU GIs.

However, at the same time exporters have benefited from the clear agreement reached in prior years between the governments of the U.S. and Korea, which provides clarity regarding the status of common names contained in multi-term GIs. As was the case in Korea, it is important to ensure that understandings with our trading partners are specific enough to provide clarity to U.S. exporters regarding the types of products that will continue to be permitted in the market. The understanding regarding multi-term GIs has allowed the U.S. to capture the majority of the intended benefits of the FTA, although the remaining single-term restrictions have curtailed some of the opportunities that U.S. companies had hoped

to develop in this Asian market.

Indonesia

Indonesia is involved in FTA negotiations with the EU. In keeping with recent practice, the EU is expected to be pursuing the registration of a long list of GIs and a broad scope of protection for those terms. We are very concerned that an eventual agreement could restrict current and future opportunities in the Indonesian market for commonly produced products.

In addition, at the time of the submission of these comments, reports have emerged that Indonesia has recently altered its regulations on GI without providing the opportunity for comment through a WTO notification.

We urge the Administration to insist that Indonesia abide by both the letter and spirit of its trade commitments to the U.S., including the GI letter secured with Malaysia in 2015.

Malaysia

Malaysia is involved in FTA negotiations with the EU. In keeping with recent practice, the EU has proposed in this context the registration of a long list of GIs. We are very concerned that an eventual agreement could restrict current and future opportunities in the Malaysian market for commonly produced products.

We urge the Administration to insist that Malaysia abide by both the letter and spirit of its trade commitments to the U.S., including the GI letter secured with Malaysia in 2015.

Mexico

Mexico is among the most valuable U.S. trading partners for agricultural products. Broadly speaking, Mexico has proven to be a dependable trading partner for agricultural products. As the Administration prepares to embark on new trade discussions with Mexico, we urge it to ensure that those discussions are focused on building upon what is already working well with Mexico – such as the open trade established on agricultural products – and focus agriculture-related discussions on those areas where further improvement could still be made. The area of GIs and common names is among the latter categories.

Last year Mexico took critically important steps to help correct and clarify the scope of protection it is affording to GIs, including those registered under the WIPO Lisbon Agreement to which it is a party. Specifically, Mexico clarified that its protection for the GIs Parmigiano Reggiano and Mozzarella di Bufala Campana provided protection for the GIs in full, not for their individual elements and as such did not restrict use of the generic terms parmesan and mozzarella, both of which U.S. companies export to Mexico. This determination – and Mexico's intention to ensure it was consistently followed as a point of policy on other GIs as well – was very welcome and corrected lower-level trademark preliminary rejections that were issued earlier in 2016.

These developments are particularly timely given two other ongoing issues in Mexico of tremendous systemic concern to U.S. exporters:

- Mexico's membership in and implementation of its WIPO Lisbon Agreement commitments:
 - Mexico is a party to the harmful and unbalanced WIPO Lisbon Agreement. Given the WIPO Lisbon Agreement's deeply flawed process whereby a country's lack of rejection of a GI notification to a central global registry generates a commitment by that country to protect that GI, Mexico last year indicated that it had established protection for multiple GIs for which protection was sought by Italy in 2015. CCFN had in 2015 objected to those GIs, providing evidence of the generic use of the terms in Mexico; however Mexican authorities did not act on this filing and the lack of action in turn triggered the Lisbon agreement's "opt-out" requirement to protect the GIs.
 - As a result, upon receiving the final notice from Mexican authorities in 2016 regarding protection of these terms, CCFN filed constitutional challenges asserting that Mexico's lack of due process in implementing its Lisbon Agreement commitments (due to the lack of publication of GI notices and lack of avenue to process oppositions) was a violation of Mexican law and the rights of stakeholders in Mexico. These cases are scheduled to be heard in early 2016.
 - Mexico's approach to handling WIPO Lisbon Agreement GI applications is fundamentally of concern to a variety of U.S. companies since virtually any term can be placed on the WIPO Lisbon Agreement list, meaning that without careful scrutiny by countries' IP authorities and a robust opposition process, restrictions on common name products are quite likely.
 - We will continue to work in Mexico to try to ensure that the right to use of common names is not revoked, and we urge the Administration to do likewise with its official counterparts.
- Mexico FTA extension negotiations with EU & EFTA
 - As was expected, last year Mexico commenced talks with the European Union to renegotiate their free trade agreement from 2000. Geographical indications are one of the topics on the table and a key priority issue for the EU.
 - In addition, Mexico is engaged in FTA negotiations with the EFTA bloc of countries, including Switzerland. GIs are also a topic of interest in these discussions. In addition, we anticipate that country name restrictions (e.g. impacting products such as Swiss cheese; Italian sausage; Greek yogurt) will also be a key basis of negotiations that hold significant commercial relevance for U.S. companies.

CCFN thanks the U.S. government for its extensive work to date with Mexico on these issues and urges the Administration to work with Mexican officials to avoid the introduction of new European-instigated restrictions on the use of generic names. Thanks to NAFTA, Mexico is one of the largest markets for a wide variety of U.S. agricultural products and consists of a

particularly wide breadth of U.S. product offerings as well.

Morocco

In January 2015 Morocco and the EU announced that they had reached an agreement on GIs. The agreement, which is broader in scope than any previous agreement of its kind, requires each party to protect all GIs that were registered in the other party before January 2013. To our knowledge, neither party afforded outside interests the opportunity to register opposition to any of these registrations or to seek clarifications regarding, for example, scope of protection.

After a subsequent freeze in movement on this agreement, last year the EU and Morocco announced that it was proceeding. We are very concerned about the impact of this agreement and the uncertainty it will create in this U.S. FTA partner market. It is also a very harmful example of an approval en masse of GIs that would appear to violate existing international obligations to subject IP applications to certain due process procedures. The agreement is expected to advance towards implementation this year.

Already, companies in the region are reporting that interpretation of this agreement has caused changes impacts in what officials are permitting to be imported. For instance, an anecdotal report indicated that Edam from a country other than the Netherlands was stopped at Customs and returned to its country of origin for relabeling, despite the fact that the EU GI for Edam Holland does not in the EU restrict use of the generic and Codex-standardized term “edam”.

Engagement is needed with Morocco to secure assurances about what the U.S. will continue to be permitted to ship to this FTA partner and to preserve the value of the market access package that the U.S. negotiated with Morocco.

Peru

As part of the Peru-EU FTA, Peru has granted protection to commonly produced U.S. products and products that were generic in Peru such as feta and asiago. For instance, the feta sold in Peru was not typically sourced from Greece, but rather from other markets. This action violated WTO rules and impaired the value of concessions granted to the U.S. under the U.S.-Peru FTA, which pre-dated the EU agreement. We urge Peru to work with the Administration to at a minimum establish clear trading conditions for U.S. exporters and ensure that the GIs registered are not protected in an overly expansive manner designed to hinder trade.

Philippines

The government of the Philippines has been considering new regulations on the protection of GIs. We appreciate the U.S. government’s proactive work with the Philippines throughout that process over the past few years. Quite troubling, however, is the fact that the most recent version of those regulations that CCFN is aware of did not adequately take into

account potential trade effects or protect the right of producers to use common food names. Among other things, that draft would allow foreign GIs protected pursuant to a trade agreement to bypass the normal the GI evaluation process and objection procedures. It is our understanding that Philippine officials are still evaluating which elements to include as they work to finalize the regulations.

We urge the Philippine government to take into account the potential for unintended trade and commercial restrictions that could result from a lack of clarity in GI registrations and from allowing foreign GI registrants to effectively bypass the GI regulations that will govern domestic GI applicants. We fail to see as how it is in the Philippines' interest to create a short- circuit path for the approval of foreign GIs which could result in harmful consequences for local producers and consumers, and other trading partners while requiring domestic GIs to utilize the due process the Philippines has been working so extensively to put in place. We urge the Administration to continue to engage with Philippine officials on this issue to ensure that the final rules do not harm U.S. interests.

South Africa

In 2014 South Africa moved quietly to register a list of EU GIs in the context of a bilateral trade deal and to propose new restrictions on the use of a number of common food names including feta, a term which is so generic in that market that an FAS report indicated it is one of the largest cheese types produced in South Africa. In October 2016 South Africa published the final notice regarding GI restrictions established under the prior agreement with the EU. That agreement has now been provisionally implemented by both parties.

South Africa took its action without providing the necessary notification to the WTO TBT Committee nor subjecting the proposal to its standard intellectual property procedures, thereby depriving the U.S. and other trading partners of the opportunity to comment at an earlier stage on the proposed regulation. In late 2016 South Africa finally notified the WTO of its intention to create a system for registering GIs. CCFN will provide comments on that notice separately through the WTO comment process, but this process appears to put the cart before the horse.

Countries should not approve a lengthy list of GIs and then work backwards to create a framework under which to consider those GIs. The due process procedures, transparency that they provide and – most critically – the opportunity to oppose unjustified GIs and pursue their cancellation where needed must come before the final decisions are issued, not afterwards. By publishing a list of final GI determinations in October 2016 and only in December 2016 notifying to the WTO proposed regulations for creating a process to deal with GIs, South Africa has inverted the necessary process that is essential to ensuring that its trading partners have the opportunity to provide input on issues that will impact them.

We appreciate the U.S. government's work to secure clarity regarding the treatment of components of a multi-term GIs under the new registrations. We remain concerned about restrictions on the use of certain common names such as feta, which has been widely produced in South Africa for decades and is clearly a generic term in that market.

United Kingdom

Although clearly a part of Europe, CCFN wishes to additionally call out some important points with respect to the United Kingdom itself.

In the wake of the United Kingdom's vote to leave the European Union, news stories suggested geographical indications were suddenly in jeopardy across Europe. In fact, the European GI system is required to continue to cover UK products in the EU, just as the U.S. intellectual property system covers foreign products. This obligation was clarified thanks to a WTO case that the U.S. successfully brought against the EU several years ago. It is a violation of a country's WTO national treatment obligations to maintain a GI system that is not accessible to foreign registrants.

The EU system already has multiple foreign GIs from non-European countries registered; maintaining the existing protection for UK GIs and even approving new ones would simply be in keeping with the EU's international trade obligations. In addition, while they may be less inclined to do so, EU authorities still have an obligation to chase down GI offenders in the EU market. Discrimination against foreign GI registrants and preferential treatment for EU GI registrants would not be in keeping with the EU's clear WTO obligations.

Moreover, with respect to how the UK now prepares to deal with GIs, the break with the EU affords the UK the opportunity to revisit how it handles the topic of GIs and institute a system more in keeping with the reasonable and pragmatic approach that UK officials and industry have typically advocated on GIs. We encourage USTR, at the approach time in the UK's EU exit process, to work with the UK to help foster the creation of a balanced GI system that breaks with the destructive and deeply flawed GI model advanced by the EU to instead create a more balanced system.

Through the course of that work the U.S. should address concerns about how UK courts have restricted the generic use of the term "Greek yogurt" despite its lack of a registration in the EU as a GI or registration in the UK as a trademark. This type of yogurt is widely produced and commonly known to mean a type of high-protein yogurt. Efforts by Greece to restrict usage of this generic term, particularly without following any due process procedures to seek its registration as a unique regional term, are inappropriate restrictions on sales.

Vietnam

In January 2016, the text of the free trade agreement (FTA) between Vietnam and the European Union (EU) established stronger clarity about the scope of protection for key common names impacted by GIs, assuring that those names can continue to be used in Vietnam. In addition, although the FTA imposes future restrictions on the use of the common terms asiago, fontina and gorgonzola, it allows those that initiated exports of asiago, fontina and gorgonzola to Vietnam by Dec. 31, 2016 to sell those products in Vietnam moving forward. (Unfortunately, the grandfathering clause announced in early 2016 effectively excludes U.S. feta by limiting the type of milk that can be used to produce it. This is disappointing and restrictions on the possibility to sell feta in Vietnam are quite concerning.)

While we very much disagree with the decision to grant the EU GIs for these common names

and impose new limitations on the use of these terms past 2016, forward-looking opportunities for other countries to establish an in-road in Vietnam is a less harmful approach than the outright bans on the usage of such terms seen in numerous other EU FTAs. In addition, Vietnam's inclusion of much-needed clarity limiting the scope of protection for several multi-term GIs was a very welcome step and much-needed in order to ensure that GIs are not interpreted in an overly broad manner.

We strongly thank U.S. government officials for their work with Vietnam and urge continued engagement with them to ensure that U.S. companies can access the maximum possible range of export opportunities in this TPP partner market. Multiple U.S. companies sent products for sale of the covered product names in the grandfathering provision, making them eligible to continue using the generic terms. We expect the government of Vietnam to comply with their agreement and honor the allowance of these products in future years.

Multilateral and Regional Trade Agreements:

World Intellectual Property Organization (WIPO)

Our organizations remain highly concerned with the Geneva Act of the Lisbon Agreement on Appellations of Origin and Geographical Indications, approved in 2015. This agreement was negotiated over the objections of numerous WIPO countries. It facilitates GI registrations without allowing sufficient objection procedures and makes registrations automatic in WIPO-member countries unless the country objects. This agreement dramatically expands international protections for GIs in ways that could negatively impact trade. Ignoring WIPO precedent, Lisbon members denied non-members the right to participate in the negotiation on equal terms. The new Agreement ignores potential trade damage and does little to safeguard the interests of users of common names. Moreover, despite this exclusionary process and clear concerns regarding the impact of the agreement on multiple WIPO member countries, in fall 2016 WIPO issued a draft strategic plan urging WIPO staff to promote implementation of the Geneva Act of the Lisbon Agreement on Appellations of Origin and Geographical Indications.

As a response to these latest actions, a group of several U.S. food and agriculture organizations, including CCFN, sent a letter in fall 2016 urging the World Intellectual Property Organization to reconsider the aforementioned draft strategic plan urging WIPO staff to promote implementation of the Geneva Act of the Lisbon Agreement on Appellations of Origin and Geographical Indications. The letter noted that U.S. organizations have been working with WIPO to encourage more balance in how the agency approaches geographical indications. The letter added that it "will be impossible to achieve anything close to balanced treatment" if the WIPO Secretariat is promoting implementation of the Geneva Act and the expansion of membership in the Lisbon System. "We therefore urge you to reconsider the draft Strategic Plan and adopt a more neutral stance," the letter said. The signers of the letter included dairy, meat and rice sector organizations along with the American Farm Bureau Federation, Grocery Manufacturers of America, National Association of Manufacturers and National Council of Farmer Cooperatives.

CCFN remains deeply concerned that implementation of the new Lisbon Agreement will give GI holders an unfair commercial advantage in markets around the world at the expense

of companies in the U.S. and the developing world, who have for many generations used common names in the marketing of their cheeses, meats, wines and other products. We look forward to working with the Administration to help educate WIPO members on the deeply flawed nature of the Lisbon Agreement and on educating existing Lisbon members on ways in which they could mitigate its potential trade impacts when they implement its provisions.

In the spring of 2017, WIPO will hold a session examining how countries handle GIs, how internet domain names deal with GIs, and how country names should be treated, with potential impacts on the latter topic for products like Swiss cheese and Italian sausage. CCFN welcomes the opportunity to directly participate in that dialogue but notes that WIPO treatment of the topic of GIs still too often gives relatively short shrift to the fundamental question of sufficient protections for common names that have already entered into the public domain and as such as commercially important for stakeholders in various WIPO countries.

As the world's leading IP organization, it is incumbent upon WIPO to help promote approaches to IP that appropriately balance the interests of rights holders and the interests of those reliant on strong safeguards of terms and information in the public domain.

Model for Future U.S. FTAs: GI Provisions in Trans-Pacific Partnership Agreement

The final TPP agreement text contained ground-breaking new commitments that would have helped to keep in check the prospect for TPP countries to erode existing and future market access opportunities for U.S. dairy exporters through unjustified GI-driven barriers to trade. The due process improvements in the TPP IP Chapter's GI provisions represented a notable accomplishment particularly given the fact that over the course of 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.

TPP's novel commitments on geographical indications (GI) and common food names were a critical element of that agreement and widely supported by the agriculture sector. Those provisions, for the first time, established a more equitable process for considering GIs and emphasize the importance of safeguarding usage of common food names. This feature is a key priority as common name users work to combat the European Union's global efforts to wield GIs as nontariff barriers to trade in order to limit competition and market access from U.S. suppliers. The U.S. should continue to hold firm in insisting on holding our trading partners accountable for both the letter and spirit of these GI commitments as they elaborate upon existing international commitments.

While the Administration has decided to withdraw from TPP, we urge the U.S. to continue to build upon the substance of TPP GI provisions to further tackle the EU's aggressive agenda to limit competition from other suppliers in common food categories. We view the TPP GI text as an important starting point for future work on the issue of GIs and common food names. It does not resolve this matter since it does not directly block the EU from inappropriately restricting the use of common food names important to global trade, but it does chart the course for addressing this topic in a much stronger direction. These GI provisions should remain a centerpiece starting point for any new U.S. trade agreements.

In conclusion, we support continuation of the core objectives outlined in the 2016 Report and included here below, as well as an enhanced effort to hold our trading partners to their commitments to us and preserve the value of market access the U.S. negotiated for in prior WTO and trade agreement contexts.

- *“Ensuring that the grant of GI protection does not violate prior rights (for example, in cases in which a U.S. company has a trademark that includes a place name);*
- *Ensuring that the grant of GI protection does not deprive interested parties of the ability to use common names, such as parmesan or feta;*
- *Ensuring that interested persons have notice of, and opportunity to oppose or to seek cancellation of, any GI protection that is sought or granted;*
- *Ensuring that notices issued when granting a GI consisting of compound terms identify its common name components; and*
- *Opposing efforts to extend the protection given to GIs for wines and spirits to other products.”*

Thank you for this opportunity to comment on these issues so important to U.S. companies, their employees and their supplying farmers. We look forward to working with the Administration to tackle foreign policies that threaten U.S. exports and the American jobs they support here at home.

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