

**Comments by the Consortium for Common Food Names
Regarding the 2018 Special 301 Review
Docket Number USTR–2017-0024
February 8, 2018**

Our organization submits these comments in response to the notice of request for public comments concerning the 2018 Special 301 Review: Identification of Countries Under Section 182 of the Trade Act of 1974 (Docket Number USTR-2017-0024). 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 27, 2018.

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 around 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.

CCFN members are facing increased threats of barriers to the trade of their products over the last year. We greatly appreciate the Administration's strong focus on rejecting barriers to the trade of foods and beverages relying on common product terms and urge the U.S. government to engage in robust actions in the coming year to keep doors around the world and here at home open for equitable competition. Moreover, we believe engagement with the EU to address its protectionist and trade-violating approach to restricting global trade of common product categories is essential, particularly as the EU continues to move further and further in the wrong direction with its own domestic policies on this issue.

Opening Commentary:

As will be reflected in our comments, countries around the globe are under pressure from EU trade negotiators to ignore the rights of third party countries (including the U.S.) and non-EU companies, and to sacrifice basic intellectual property principles, in order to grant EU producers monopolies in their country in exchange for market access into the EU. In addition, users of common food names are being exposed to significant legal costs and jeopardy as entities supported by European governments attempt to register GIs, trademarks, and threaten litigation in order to clear the field of non-EU competitors in many markets, including the U.S.

American companies, their employees and supplying farmers are harmed greatly by these EU efforts as barriers to the trade of these products and increased risks of doing business result in lost sales, jobs and economic development. The U.S. is not alone in confronting the impact of these actions; workers and farmers in a number of other countries around the world, including developing

countries, are also impacted by these EU efforts and their trading partners' acquiescence. 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 and its members have never been opposed to the concept of geographical indications. Appropriately, the U.S. protects GIs – both foreign and domestic – through its certification mark system. Legitimate GIs can be a useful intellectual property tool for some producers when it is properly targeted to protect truly unique regional products, combining a specific regional name with the common term for the type of product. For example, CCFN fully agrees that a GI such as Mortadella Bologna should be able to be protected; but the generic term bologna, which has been made generically for decades around the world by various producers, must remain free for use by any producer.

Unfortunately, our members repeatedly witness the EU trying to abuse this respect for truly unique products by expanding their GI monopolies to cover clearly generic names. An example of this indefensible voracious behavior is the EU's approach to dealing with the GI Parmigiano Reggiano. The EU is not content with having the unique right to just this legitimate term but instead is pushing in many markets to go beyond any reasonable scope of rights in order to bar use by all non-Italians of the generic term "parmesan". Of course, this is outrageous as parmesan is a type of cheese that has always been recognized around the world as generic. However, even in this obvious case, CCFN and its members are forced to expend great time, effort and money to defend their rights to use the name parmesan in foreign markets against the encroachment of EU government funded organizations.

The consequences of the EU succeeding in its efforts would not be simply the embarrassment of the U.S. losing an academic intellectual property argument. What the EU is perpetrating on the world is not a victimless wrong. It impacts real U.S. companies employing American manufacturing sector workers who are making their goods with American farmers' products. Companies like:

- **Schuman Cheese, based in Fairfield, NJ:** Schuman Cheese is a fourth-generation Italian cheese company based in New Jersey. Founded in 1945 as an importing business, today the family-owned business is also a cheese manufacturer and processor with a diverse network of partner cheese companies and customers around the globe. For 70 years, Schuman Cheese has enjoyed success at the most prestigious cheese competitions, winning multiple awards with many exceptional lines of cheeses.
- **Kraft Heinz, based in Chicago, IL and Pittsburgh, PA:** This company employees 20,000 people in the United States and produces a wide range of familiar house-hold staples including bologna, black forest ham, parmesan, feta and others. It has cheese and meat facilities making those common products that are located in various states across the country.

The impact on American companies and other competitors around the world is not accidental collateral damage caused by EU initiatives but are the purposeful deliberate results the EU intends as they pursue their global GI agenda. The European Union has been relentless in aggressively promoting the global adoption of GI policies with an overly broad scope of protection and specific GIs expressly intended to shield European companies from competition by American companies, as well as those in other nations. This effort is not limited to bilateral agreements and initiatives but

is also extends into international forums like the World Intellectual Property Organization (WIPO), World Trade Organization (WTO), United Nations Food and Agricultural Organization (FAO), and others. CCFN in collaboration with its members and the U.S. government must be equally determined if we are to prevent common name users from losing their intellectual property rights and free access to markets around world.

Such policies and inappropriate registrations can cause significant unnecessary trade damage and put U.S. jobs at risk. They specifically undermine the value of market access concessions gained by the U.S. in its trade agreements with these countries by barring producers outside the EU from using terms that have become the common names for various types of products. Simply put, what is the value of the U.S. gaining no or low tariffs into a country's market in an FTA if U.S. producers are then banned from selling that product into that country due to their later GI concessions to the EU?

Just as troubling is the total disregard for a clear and transparent process. Several countries that have granted such registrations to the EU have bypassed their normal intellectual property procedures and instead considered very lengthy lists of names in the context of bilateral trade negotiations with no preliminary independent review by local authorities on the merits or scope of protection for the terms at issue. At times, this has been conducted with limited to no consultation with their other trading partners, like the U.S., making it then 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 at times 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 the type of standard IP evaluations that would take place prior to publication and in an objective manner following receipt of opposition information, 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 has become a significant nontariff barrier for U.S. farmers and food makers. However, GI use doesn't stop at food. We note that multiple developing countries include within their GI systems non-agricultural products as well, such as textiles. The EU too is contemplating the expansion of its GI system to include non-agricultural products.

As the 2017 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, especially because of the significant extent to which it undermines the scope of trademarks and other IP rights held by U.S. producers, and imposes barriers on market access for American-made goods and services that rely on the use of common names, such as parmesan or feta.”

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 particularly 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), the United State Department of Agriculture (USDA), the Department of Commerce, and the Department of State 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.

Many organizations recognize the risk associated with unchecked EU GI aggression. In a letter to President Trump in October 2017 eleven food and agriculture groups including the American Farm Bureau Federation, Brewers Association, Grocery Manufacturers Association, International Dairy Foods Association, National Council of Farmer Cooperatives, National Milk Producers Federation, North American Meat Institute, United Fresh, U.S. Dairy Export Council, USA Rice, and the Wine Institute joined CCFN in condemning the EU's unreasonable negotiating positions and asking the U.S. government to take action:

“The European Union is currently negotiating with both of these nations on lists of protected geographical indications, and seeks to secure a monopoly on certain common names for

meats, cheeses, wines and other beverages – such as “parmesan”, “bologna” and “vintage”... If the U.S. government firmly expresses its concerns now to Mexico and Japan regarding the importance of safeguarding common names and terms for all to use, both nations might be more inclined to take the right and just steps in these discussions. For the same reason, we strongly encourage firm and clear communications on these points with the Mercosur bloc of countries... Some nations have already carelessly given the EU virtually everything it asked for on its GI lists, in disregard of their own intellectual property laws. The result – seen most notably today with Canada – is confusion and potential disruption in the marketplace, with a direct negative impact on U.S. food and beverage producers and the farmers who support them...

Through industry submissions coordinated by the international Consortium for Common Food Names (CCFN), Japan and Mexico are being urged to carefully review these GI lists to ensure that they include no common names, and that only legitimate, compound terms (such as “Greek Feta” or “Italian Asiago”) would be protected, and not the generic terms “feta” or “asiago”. A fair, acceptable protection of GIs that does not distort trade and negatively impact America’s ability to compete globally can only be achieved by ensuring that it also robustly safeguards the usage of common names.

This is a critical moment. We stand ready to assist you as needed. We hope the United States will make its voice heard with Mexico and Japan, and in turn with Mercosur countries as well, clearly stating that we expect them to respect current trade agreements, including our market access rights under those agreements, and that it is in their best interests to safeguard common terms for all producers.”

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 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.

CCFN looks forward to working closely with the Administration to ensure that these types of harmful consequences for American jobs, farmers and the economy do not come to pass.

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.

Over the last year the EU has been particularly aggressive in pursuing multiple trade agreements with the U.S.'s trading partners and injecting into those negotiations GI demands that completely disregard the rights of third parties, including the U.S. 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 are also obligated to avoid doing so under U.S. bilateral 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. will insist that our trading partners honor those obligations and avoid imposing nontariff barriers, disguised as GIs, on U.S. exports.

Canada

Last year Canada implemented 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 grandfathered 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 in 2016 to seek to entirely ban the use of one of the grandfathered generic terms (feta) by non-Europeans in Canada within five years.

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.

In addition to the problems caused by CETA for common name users, organizations supported by EU governments have aggressively pursued a strategy of seeking to register

as trademarks some of the terms which CETA expressly permits the continued use of under certain conditions (to date, asiago and gorgonzola). If these registrations are successful they risk eliminating all remaining competitors from the Canadian market for those names. The approval by Canada's trademark office of these applications runs directly counter to clear positions taken by the Canadian government during CETA that those terms were generic in Canada; as such they should be ineligible for trademarks that would monopolize use of those terms if left to stand. CCFN urges the Administration to ensure that Canada is upholding a consistent approach to treatment of these generic terms and does not further damage access to the Canadian cheese market.

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. Previous U.S. government efforts in this region to secure clarifications regarding the right to use several generic names 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.'s geographical advantage to these markets.

It should be noted however that, despite what these governments have done to clarify the issue, the EU has not stopped its efforts. For example, over the last few years, CCFN and its allied organizations in Guatemala have had spend considerable time, effort and resources to fight continued EU attempts to use the court system to monopolize the name "parmesan". As an example of the EU's determination to aggressively, if not irrationally, pursue its agenda, despite the indisputable fact that the name parmesan is generic, this case has been appealed all the way the Guatemalan Supreme Court despite the fact that the EU has lost every judicial decision along the way.

Approximately two years ago, 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. CCFN urges the Administration to replicate this constructive model with respect to securing clarity on the use of common terms impacted by compound GIs and couple those efforts with strong defense of common names impacted by single term GIs as well in regions around the world.

For instance, 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 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 situation in Costa Rica with respect to this issue has posed serious concerns given

past cases where the country has disregarded standard intellectual property considerations and issued decisions restricting the use of various common names. We remain extremely concerned about the prospect of market access barriers in this major market in Central America.

Statements upholding the generic nature of the terms parmesan, provolone and romano remain needed. Such actions would not conflict with preservation of the compound GIs that include these terms – rather they would preserve clarity in the market surrounding the preservation of long-standing use of these common terms. We 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).

In 2017 Costa Rica began a process to review their GI laws. CCFN made extensive comments, working with other like-minded groups in Costa Rica during this process. Currently CCFN is seeking important clarifications on the process and changes to the substance of proposed changes. Of particular importance are ensuring that all interested parties (both commercial and non-profit, both trademark holders and non-trademark holders) maintain full access to the country's objection tools, and that the government pursue a consistent approach to establishing clarity on GIs' scope of protection for not only new applications but existing registrations as well. The U.S. government should insist that Costa Rica respect the rights of common name users and provide important clarifications consistent with the comments above.

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.

Chile

On November 16, 2017 the EU and Chile formally announced their intention to modernize the EU-Chile FTA. As has been seen in other EU FTAs, the EU will try to use this negotiation to create monopolies for European companies in common food and beverage categories while working to deny common name users the right to sell products in Chile. CCFN looks forward to working closely with the U.S. government to defend the intellectual property rights of producers and exporters' access to the Chilean market.

China

China is currently involved in ongoing negotiations with the EU regarding geographical indications. In the second quarter of 2017 China AQSIQ (General Administration of Quality Supervision, Inspection and Quarantine of the People's Republic of China) and the EU announced that they were each reviewing a list of 100 GIs for protection under the their

agreement. The EU published a list of 100 Chinese GIs and China published 2 lists that collectively accounted for 100 EU GIs (21 of these terms were already registered in China but would be covered by any rules in the new agreement; 79 would be new registrations. Our organization filed comments opposing restrictions on 7 key terms. China has not yet published a resolution on how it will handle these terms nor there others covered by the evaluation process. We have deep concerns about the impact this agreement may have on U.S. exports if safeguards for common names are not upheld and particularly on opportunities to continue to expand the range of U.S. products sold in this rapidly evolving market.

Our organization has welcomed the affirmations in recent years between the U.S. and China that commonly used product names are not eligible for GI protections, including those protected under international treaties. We also strongly value the work with China on providing for strong due process protections 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 believes the regulation issued in January 2017 regarding the grant and determination of trademark rights remains very important particularly its clear guidance that elements essential to evaluating generic use include product standards and dictionary or reference book citations.

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 and objective 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 product 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/?lnk=1&url=https%253A%252F%252Fworkspace.fao.org%252Fsites%252Fcode%252Fstandards%252FCODEX%2B262-2006%252FCXS_262e.pdf. We note that China is an active participant in the Codex standard-development process.

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 agreed to establish GIs for 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 including terms such as parmesan, provolone, brie and others.

It is essential those generic use assurances related to compound GIs be upheld. In addition, Colombia should make every effort to ensure that the full spectrum of U.S. exports to this FTA partner market are not harmed. We will continue working with the U.S. government and Colombian authorities to make sure U.S. exporters' rights under the U.S.-Colombia FTA are not limited.

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 2017 the EU crossed yet another line when it approved Danbo as a GI, granting Denmark sole use of this common cheese name. Danbo indisputably already held the status of a generic term according to Codex. Both the EU and Denmark participated in and approved the process to preserve the inclusion of Danbo in the Codex cheese standards, a process that was finalized in 2007. Danbo is produced in numerous countries including Uruguay, Argentina and South Africa among others. The EU's behavior in this case contradicts its own previous position and exemplifies why no name is safe from the EU's zealous attempts to expand the number of GIs and to broaden the protection of GIs.

The Danbo decision is a bad omen for other common names. Another example: 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. Again, 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 Danbo cheese for which there is also a Codex standard (mentioned above).

It is essential that the EU abide by its WTO commitments and the integrity of the Codex

process by reversing the Danbo decision and rejecting Havarti as a GIs. 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 has also been advancing 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 examples 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 in Europe and around the world.

Traditional Terms:

Certain 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 eight 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 newly 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 few 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:

We remain strongly concerned about how the TSG program may be abused by the EU moving forward given changes to it a few years ago to align it with the competition restricting approach employed by the EU through its GIs and TTs programs.

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) has been created. 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 to Generic 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.

Last year, press reports indicated that the Greek government was actively considering next legal or regulatory steps to address the issue. As one of the Czech producers of the product clearly laid out the issue: "The name 'Greek yoghurt' is now used worldwide, it does not refer to the origin of the product but to technology and composition. In Greece itself, the name straggisto (Greek yoghurt in greek language) is used for this type of product."

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 in trade agreements and utilize multilateral forums like the World Intellectual Property Organization to advance their goals. In 2017, CCFN started hearing references to this same type of approach in other countries that are in negotiations with the EU (e.g., Japan). CCFN is deeply concerned about how global restrictions on the use of generic country references may evolve and block the use of marketing practices that are widely viewed as common-place for the vast majority of other products.

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 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.

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). 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 on TTIP are currently paused, 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 with or without a TTIP agreement, and in any negotiations with the UK post Brexit.

The U.S. offers a large and lucrative market to European producers of the products in question; it is entirely unacceptable that the EU response to this has been to predatorily work to restrict the sale of common American-made products all around the world.

Japan

Japan concluded its FTA negotiations with the EU in 2017. In keeping with recent practice, the EU proposed in this context the registration of a long list of GIs and an overly broad scope of protection for those terms. In July 2017 the EU and Japan released a GI list of more than 200 proposed protected names. CCFN opposed restrictions for key terms,

including for cheese and meat, and supported similar comments filed by The Wine Institute regarding potential restrictions on common wine terms.

In announcing the results of that process in December 2017, Japan exercised an appropriately specific scope of protection with respect to compound GIs wherein all the relevant common terms included in those compound GIs were preserved for free usage by all. In contrast, however, some terms were restricted such as various wine terms and generic terms impacted by several single-word GIs such as asiago, feta, fontina and gorgonzola.

While we commend Japan for having a transparent process and for making the right decision to preserve market access rights with respect to properly defining the scope of protection for compound GIs, the work in this market is not over. It remains essential that: 1) Japan's existing GI regulations' checks and balances including with respect to cancellation rights be preserved and apply to all terms covered by this exercise; 2) Japan ensure that all those with product in the market prior to the implementation of the EU-Japan FTA be covered by the "prior use" allowances; and 3) that Japan not unduly restrict common labeling practices if information is still clearly conveyed to consumers by those labels.

We thank the U.S. government for their extensive work with Japan as it worked to finalize its GI law and related regulations in 2015 and immediately prior to that. In addition, we commend USDA's Japan office for its particularly thorough tracking and reporting of developments since then regarding Japan's GI system. We also greatly appreciate the strong emphasis the Administration placed on this issue and its importance to U.S.-Japan trade last year. This strong preparatory and follow-through work showed its value in the recent GI process outlined above.

While we have made progress in Japan the past couple of years, we cannot ignore the ongoing risks in this important market. Some the decisions regarding GIs in 2017 are not supported by the evidence in this important market (e.g. re: feta's widely common use), and U.S. and other producers may be paying an expensive price for them. The U.S. must continuously engage with the Japanese authorities to ensure they do not ignore their obligations and provide protection for commonly used terms, both through the *sui generis* GI system and through Japan's trademark system. Foreign GIs have begun to move through the Japanese trademark 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 important that Japan ensures the application of the principles that have been approved.

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. This type of very specific understanding with a key trading partner has been essential to providing clarity to U.S. exporters regarding the types of products that will continue to be permitted in the market. We continue to believe it is a strong model for use with other trading partners.

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 2016 Indonesia proposed altering its GI regulations, a process that does not appear to have been properly notified to the WTO and contains a number of highly troubling provisions with penalties and scope that appear to be even more draconian than those employed in the EU.

We urge the Administration to insist that Indonesia abide by both the letter and spirit of its trade commitments to the U.S. and to work to improve the deeply flawed GI regulations in place in this country.

Malaysia

Malaysia is involved in FTA negotiations with the EU. In keeping with recent practice, the EU is believed to be pursuing 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.

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. As the Administration is having trade discussions with Mexico, we urge it to ensure that those discussions are building upon what is already working well with Mexico – such as the open trade in 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 category.

In 2016 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. In light of this clear position communicated so recently, there can be no acceptable result to the ongoing EU-Mexico FTA negotiations other than outcomes consistently with this policy cited above.

There are multiple key areas of high priority related to GIs and the use of common names in this major U.S. trading partners' market:

- Mexico FTA extension negotiations with EU & EFTA
As was expected, in 2015 Mexico commenced talks with the European Union to renegotiate their free trade agreement from 2000. Geographical indications have been one of the topics on the table and a key priority issue for the EU. Over the last year these negotiations have intensified and are very close to final as of early February 2018.

In August 2017 Mexico published a list of over 340 GIs (including foods, wines and spirits) that were subject to opposition. CCFN opposed restrictions on 24 key terms, including several cheese and meats names. In addition, we supported comments filed by The Wine Institute as well. This process, however, does not appear to be firmly guiding the decisions of Mexico on how to handle those terms at issue. If this process has a shred of integrity, Mexico will reject the creation of new restrictions on common terms and register only genuinely unique GIs which were not opposed during the notification process.

Moreover, the Mexican government absolutely must stand by its obligations to the United States under NAFTA and not allow the EU to force its indefensible GI positions on producers in Mexico, the U.S. or other countries. Mexican consumers will be hurt by the creation of EU name monopolies where competition in common names should not be disrupted by giving EU producers exclusive rights to the market.

Moreover, restrictions on products which the U.S. today has the right to freely export to Mexico under NAFTA would run directly counter to the Mexican government's and U.S. agriculture community's repeated refrain that any improvements to NAFTA must build upon the base of open market access already in place. If Mexico instead chooses to restrict trade and harm U.S. export avenues, this will have a very serious and harmful negative impact on the ability to make progress in the right direction in NAFTA.

In addition to its discussions with the EU, 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.

- 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 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 ample 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, in which appeals have been filed in 2017, are continuing and we continue to seek a fair resolution of the problems created by this unjust process.

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.

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. It is also important that the U.S. government use the current NAFTA modernization negotiations to insist that Mexico does nothing in its EU negotiations to limit the U.S.'s access to the Mexican market, including gaining specific due process provisions on GIs and safeguards for common food and beverages names, and to establish new rules to govern GI consideration and provide for the preservation of trade in common food categories moving forward.

MERCOSUR: Argentina, Brazil, Paraguay and Uruguay

The Mercosur countries and the EU have been engaged in the negotiation of an FTA for many years. However, in 2017 these negotiations moved to a higher level of intensity. In the fall of 2017 these countries published hundreds of EU GIs for opposition. CCFN opposed restrictions on 24 names. In addition to strong concerns about the potential results of this process, CCFN has also strongly objected to the process being used.

In a letter to Mercosur governments last year CCFN outlined both types of concerns:

“...These lists of hundreds of GIs recently published by MERCOSUR countries’ governments for comment were subjected to this process despite ongoing Free Trade Agreement (FTA) negotiations with the European Union (EU). It is astounding that MERCOSUR has cowed to the EU’s pressure to hold this GI evaluation process during the course of the negotiations despite the fact that doing so: 1) undermines the integrity of the independent decision process within Mercosur countries on the merits of these terms; and 2) deprives MERCOSUR countries of the knowledge of the full value of market access that this FTA will ultimately offer to their exporters. Past EU FTA partners in Latin America such as Colombia and Central America, as well as those half-way around the world such as Singapore have insisted on first concluding their agreements before conducting an evaluation of the GIs of interest to the EU in order to alleviate just such concerns. We question why MERCOSUR’s governments have failed to properly defend their own domestic interests and independence by also following this model.

The MERCOSUR countries’ intellectual property principles and GI regulatory processes should not be “for sale” to the EU either directly or indirectly through these negotiations. It is entirely clear that, just as the EU has sought to do around the world through other FTAs, it now wishes to impose European product monopolies on your four economies as well.

It is inappropriate for countries that long ago exported their people and culture to your countries and elsewhere, including as former colonial powers, to now insist that the food traditions adopted in any country must be abandoned...It is particularly egregious when these former colonialists attempt to now impose colonial-like dominance by undermining the rule of law and ignoring the rights of others in gaining restrictions for their claimed GIs through leverage and aggressive tactics at the negotiating table...

... A state sanctioned single-source supplier defies what should be one of the main goals of a free trade agreements, which is to encourage competition not prohibit it, and would certainly not be in the interest of the many companies that use these names nor the MERCOSUR consumers who have come to expect the high quality reasonably priced products provided by non-EU suppliers. Moreover, imposing defacto nontariff barriers on the commonly produced products of MERCOSUR's other trading partners would be harmful to the positive trade relationship that is so important to maintain between MERCOSUR, the U.S. and other countries...

We urge the Administration to continue to work with Mercosur countries to ensure that U.S. trade rights are upheld and that these partners do not capitulate to EU demands for market restrictions at the expense of not only U.S. exporters but also Mercosur's own food and agriculture industries.

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, in 2016 the EU and Morocco announced that it was proceeding. However, the timing and process of this agreement are not yet fully clear. 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 soon.

Already, companies in the region have reported that interpretation of this agreement has caused changes in what officials may permit 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".

In July of 2017 CCFN sent a letter to the Moroccan government expressing its concerns:

"We strongly encourage the Moroccan government to actively engage with the U.S. government and industry in ensuring that any agreement with the EU and its implementation do not interrupt U.S. trade with and investment in Morocco.

Since the implementation of the Moroccan-U.S. FTA, U.S. agricultural exports to Morocco have increased significantly to \$307 million in 2015 from \$164 million in 2005,

the year before the FTA. This successful and smooth trading dynamic is now in jeopardy if the Morocco-EU GI Agreement causes certain common names to be lost to U.S. agricultural producers and exporters. Such an outcome would not just be negative to Moroccan-U.S. relations and Morocco's relationship with other trading partners, but would also negatively impact Morocco's consumers by limiting competition, thereby resulting in fewer consumer choices, increased prices, and lower quality...

...Morocco and the U.S. have an interest in not seeing U.S. products locked out of the Moroccan market due to counterproductive GI policies. It is essential that Morocco preserve the market access for U.S. products relying on common names that was agreed to in the U.S.-Morocco FTA."

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 concessions 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 including a well-attended and successful workshop organized by FAS last year.

One of the particularly troubling aspects of the most recent version of those regulations is that it 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 have allowed 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.

Singapore:

The EU and Singapore concluded their FTA negotiations in 2012. However, the implementation has been delayed for many reasons, including internal EU legal and political processes. However, it is expected that the FTA will begin to be implemented soon, including the provisions related to GIs. CCFN is concerned about how these provisions will be applied and urges the Administration to ensure that commonly used names are not in any way limited given the impact this would have on our existing U.S.-Singapore FTA market access rights. We encourage the U.S. Administration to insist that common names are protected and EU mischief, like that mentioned in other parts of this document, is not permitted.

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 its 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 provided comments on that notice separately through the WTO comment process early in 2017. However, we are concerned that 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 currently part of Europe, CCFN wishes to additionally mention 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 appropriate 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 shipped for sale products using the covered terms 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 once the FTA is in place.

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.

As part of its ongoing efforts to find opportunities to work with WIPO, in June 2017 CCFN participated in WIPO’s Worldwide Symposium on Geographical Indications and reiterated the same concerns regarding the Geneva Act and the need for further engagement with the users of common food names. CCFN participated in another WIPO event in the fall of 2017. We welcome these opportunities yet the lack of sufficient advance notice of WIPO GI-related events and the imbalanced time devoted to GI-holders interests vs. those of other stakeholders impacted by GI IP policies remain strong concerns.

It remains a reality 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.

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.

Other Multilateral Fora and Organizations

There are two other high priority global-level areas of active concern related to GI policies that CCFN urges the Administration to take firm stances in engaging with: the Hague Convention on the Recognition and Enforcement of Foreign Judgments negotiations and the UN Food and Agriculture Organization (FAO)’s work on GIs.

The potential inclusion of IP issues in the Hague Convention runs directly counter to the notion of IP rights as being territorial rights. The EU’s efforts to include IP in the scope of this Convention appear aimed at inappropriately co-opting other countries into leveraging sanctions on common name users. There are a myriad of concerns with folding IP into this agreement and we strongly urge the Administration to continue to insist that these topics be excluded from the scope of this treaty.

With respect to the FAO, we recognize FAO’s development mandate and that FAO seeks to use various means to spur agriculture, fisheries, forestry and rural development. We also reiterate CCFN’s support of well-designed and appropriately focused GI policies.

However, as an organization funded in part by dues from the United States and with a responsibility to represent the interests of the whole of the UN membership, in which there exists a broad diversity of views on the topic of GIs, we are concerned that FAO's approach to GI topics is not mindful of the neutral role it should play with respect to policy in this area. The following language from a recent flyer announcing a joint FAO-World Food Law Institute event is a prime example of the type of stance by FAO that requires change:

“Several countries use GIs to promote local foods and added value products, as well as to support local communities. But, as the NAFTA2 negotiations show, GIs are highly contentious and unpopular among most US farm interests who prefer trademarks.”

Conclusion

In conclusion, we support continuation of the core objectives outlined in the 2017 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 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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