



CAMARA DE LA INDUSTRIA LACTEA DEL URUGUAY

Cecilia Malmström
European Commissioner for Trade
European Commission
Rue de la Loi 200
1049
Brussels, Belgium

Phil Hogan
European Commissioner for Agriculture
and Rural Development
European Commission
Rue de la Loi 200
1049
Brussels, Belgium

24 October, 2019

Re: International industry associations' concerns over registration of "havarti" as protected geographical indication.

Dear Commissioner Malmström and Commissioner Hogan:

We are writing to express our strong opposition to the registration of the generic term "havarti" as a protected geographical indication (PGI). This approval will provide Danish producers the exclusive right to use the name havarti in the EU, notwithstanding the long-standing and widespread use of this generic term by producers around the world.

Such an approval lays bare the fact that all too often the EU GI system is used not for legitimate intellectual property protection, but instead for barely concealed protectionism and economic gain. The approval of havarti as a Geographical Indicator (GI) runs contrary both to the EU's own implicit recognition of the term as generic through the prior Codex standard-setting process and to EU-agreed trade rules under the World Trade Organization (WTO).

The EU purports to be a defender of multilateral rules and a proponent of multilateral standards intended to create a secure, predictable and level playing field for producers and traders from all regions. Yet its approval of GI status for havarti is a decisive step in the opposite direction. Those rules include WTO commitments to use international standards and participate in the preparation of such standards in order to prevent barriers to trade. The standard-setting body Codex Alimentarius established a standard for havarti in 2007 – with Europe's active participation and approval.

The need for a Codex international standard was premised on the very fact that havarti cheese is produced and marketed in many countries throughout the world under that name, and that it is not specific to one EU country. In other words, havarti is a generic term. In the United States alone, for

instance, havarti is produced by over 40 companies in a dozen states. Likewise, a number of companies in Australia and New Zealand produce havarti. Significant international production of havarti played a key role in the objective evaluation process that resulted in the 2007 finalization of the Codex standard for the cheese.

The EU's approval of a GI for havarti directly undermines the Codex standard despite the EU's earlier approval and calls into question the EU's commitment to the international standard-setting process. Recent EU actions at the WTO reinforce the conclusion that this has been a calculated decision. WTO Members have repeatedly challenged the EU to explain its disregard for Codex cheese standards in the WTO committee responsible for overseeing Member implementation of standards, the Committee on Technical Barriers to Trade (TBT). The EU's response that it did not consider standards or the TBT Committee relevant to GIs can only be interpreted as renouncement of the standards it helped create, the standard-setting bodies that it participated in, and the WTO rules it is obliged to follow.

Furthermore, havarti is a varietal that is included in the EU's most favored nation (MFN) tariff rate quota. This clearly indicates that havarti was expected to be produced outside of and imported into the EU. This is not the first time the EU has chosen to erode the trade opportunity available via its negotiated WTO MFN quotas through the registration of a common cheese name as a GI. TRQ access was also diminished by the EU's GI registration of gruyere.

The EU's protectionist motivation is further evidenced by the fact that a reasonable alternative is available that would fully meet the objective of ensuring that consumers understand the source of a havarti product. That alternative would protect a generic term only as part of a compound name that identifies the source of the product. The EU itself has employed this approach in approving GIs for names such as "Orkney Scottish Island Cheddar" and "Holsteiner Tilsiter". In these cases, the EU's approval notice contains clear language stating that the generic names 'cheddar' and 'tilsiter' are not restricted in the EU under these applications.

We therefore strongly condemn the latest example of the EU's effort to restrict and monopolize yet another generic term.

Yours sincerely,

Cámara de la Industria Láctea del Uruguay (CILU)
Centro de la Industria Lechera (CIL) Argentina
Consortium for Common Food Names (CCFN)
Australian Dairy Industry Council (ADIC)
Dairy Companies Association of New Zealand (DCANZ)
National Milk Producers Federation (NMPF)
U.S. Dairy Export Council (USDEC)

cc:

Rodolfo Nin Novoa, Minister of Foreign Affairs, Oriental Republic of Uruguay
Ambassador Jorge Marcelo Faurie, Minister of Foreign Affairs and Worship, Argentine Republic
The Honorable Robert Lighthizer, U.S. Trade Representative
Senator the Honorable Simon Birmingham, Minister for Trade, Tourism and Investment
The Honorable David Parker, Minister for Trade and Economic Growth, New Zealand