

**Comments by the Consortium for Common Food Names
Regarding the 2022 Special 301 Review (Docket: USTR-2021-0021)
January 31, 2022**

The Consortium for Common Food Names (CCFN) submits these comments in response to the notice of request for public comments concerning the 2022 Special 301 Review: Identification of Countries Under Section 182 of the Trade Act of 1974 (Docket Number USTR-2021-0021). CCFN greatly values the opportunity to present its views on this important annual report.

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 focuses on the preservation of the legitimate rights of producers and consumers worldwide to use common names, to protect the value of internationally recognized brands, and to prevent new barriers to commerce.

As we pointed out in our submission for the 2021 Special 301 Review, many trading partners continue to put in place trade restrictions on the use of common food and beverage terms in ways that run counter to our trading partners' WTO and/or FTA commitments and often flout the integrity of their intellectual property system procedures. In this regard, decisions on EU government-requested GIs continue to be made at the trade negotiating table, not by impartial IP examiners based on the merits of the applications.

Considering this dynamic of how GIs are routinely dealt with in practice, we reiterate our urgent request that the U.S. government pursue a more targeted and proactive approach to effectively dealing with the abuse of GIs.

To that end, we request the Administration to more robustly support U.S. farmers' and manufacturers' ability to compete fairly in foreign markets by securing firm and explicit commitments assuring the future use of specific generic food and beverage terms targeted by or at risk of EU monopolization efforts. Failing to do so will consign American-made products – produced by American workers and using inputs from American farms – to ever-growing foreign blockades against the high-quality products they produce.

In the case of GIs and common food and beverage terms, the predatory practices plaguing U.S. companies are not the work of rogue foreign firms but instead are the result of an international strategy by one of the world's most powerful governments to use their political influence and treasury to establish unique monopoly benefits for producers of common food and beverage products in EU countries. As extensively as our organization works to address the growing barriers to common name products, the U.S. private sector has neither the financial means nor the policy incentives necessary to effectively combat foreign government pressure and resources.

Overview of Global Dynamic

By intentionally erecting trade barriers to the U.S. through its own internal GI policies and the exporting of those policies via EU trade agreements, the EU government has pursued a multi-pronged, dedicated approach of:

- 1) Registering terms already widely used by other producers, both within and outside the EU; and
- 2) Establishing an exceedingly broad yet often unclear scope of protection for multi-component GIs that can include, as the EU see fit.

The EU government's anti-competitive and protectionist practices deny U.S. companies a level playing field by prohibiting them from marketing their products with accurate labels that can correctly convey to consumers the type of product they are purchasing. The impacts of this are not contained merely to the EU market but instead have expanded like policy tentacles around the world to throttle competition from U.S. suppliers.

Bilateral and Selected Multilateral Issues

We provide below several examples of the way in which this global phenomenon is manifesting itself. This is an illustrative, not a comprehensive list.

Australia

In June 2018, Australia and the EU launched negotiations for a free trade agreement. The EU has made clear its goal of using this process to secure the GI registration of common names, as it has done in other markets. An extensive list¹ of list EU GIs remains under active consideration and debate between the EU and Australia. As an EU update report² noted in June 2021: *"Geographical Indications: Negotiators bridged a number of gaps in their positions. Progress also took place on prior use conflicts with several EU Geographical Indications names. Discussions are overall evolving positively."* Were the applications being considered independently on their true merits no such negotiations on specific terms and prior usage would be needed.

We urge the Administration to secure confirmations from Australia that specific common food and beverage terms will remain free for use by U.S. exporters in order to preserve the full value of the market access concessions the United States secured under the U.S.-Australia FTA.

Canada

The U.S.-Mexico-Canada Agreement (USMCA) implemented in 2020 includes several notable precedents that we encourage the Administration to ensure are fully utilized in the North American trade context and to work to build upon with additional trading partners moving forward. Some of these key elements relevant to Canada include:

¹ <https://www.dfat.gov.au/trade/agreements/negotiations/aeufta/geographical-indications/list-of-eu-requested-geographic-indications-gis>

² https://trade.ec.europa.eu/doclib/docs/2021/june/tradoc_159652.pdf

- Important due process procedures governing future GI applications to create transparency and help provide tools to preserve the use of common food names in trade; and
- Mandated government to government discussions to “pursue solutions to GI requests arising from trade treaties...[to] endeavor to reach mutually agreeable solutions before taking measures in connection with future requests of recognition or protection of a geographical indication from any other country through a trade agreement.”

The disciplines in the USMCA should help to effectively guard against replication of actions such as the failure to provide any opposition process before granting IP rights to European GIs under the Comprehensive Economic and Trade Agreement (CETA). In addition, we remain concerned about actions by some EU GI stakeholders, who have sought to exploit Canada’s trademark system to subvert the grandfathering and “-style” allowance provisions of CETA.

While we reiterate our firm disagreement with the Canadian government’s decision to impose limits on the use of terms in generic usage in Canada, the CETA terms clearly allow the use of the specified terms by grandfathered users and Canada’s trademark system must not be allowed to be used as a tool to circumvent those residual protections. Canada’s trademark office should consistently reject any applications that would impose restrictions on the use of terms expressly permitted under CETA. We also reiterate our belief that a lack of action on these issues would undermine the value of USMCA market access concessions.

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

The consequences in this region resulting from the implementation of 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 United States 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. These steps have helped to preserve a significant portion of the value of market access commitments contained in the U.S.-CAFTA.

In other markets in the region, namely Panama, Nicaragua and Costa Rica, the governments have to date declined to provide clarity regarding multi-term GIs in writing. We reiterate our call to USTR and USDA to seek clarifications and assurances from our trading partners regarding how these foreign FTA commitments – particularly multi-term GIs – are to be interpreted and how they will impact U.S. exports opportunities.

We strongly urge further work with Central American countries 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 that restricts trade. Specifically, CCFN urges the Administration to secure confirmations from our Central American trading partners that specific common food and beverage terms will remain free for use by U.S. exporters in order to preserve the full value of the market access concessions the United States secured under CAFTA.

Chile

The EU and Chile are in a very advanced stage of negotiations aimed at modernizing the EU-Chile FTA. As

part of the negotiations, in 2019 Chile published a list of 222 GIs for which the EU government has been seeking registration. As in other markets, the EU has worked to use this negotiation to create monopolies for European companies in common food and beverage categories while denying common name users the right to sell products in Chile. This is clearly indicated in EU progress reports on the negotiations such as from May 2021³: *“Geographical Indications Both parties made substantial progress in agreeing on the level of protection for GIs. The parties also continued discussions on administrative enforcement as well as on the conditions for co-existence between geographical indications and trademarks. The round allowed confirming the substantial reduction of conflicts achieved during previous discussions during an inter-sessional. Discussion on the remaining ones will continue.”*

We urge the Administration to secure confirmations from Chile that specific common food and beverage terms will remain free for use by U.S. exporters in order to preserve the full value of the market access concessions the United States secured under the U.S.-Chile FTA.

China

In 2020, China and the EU government signed a “100 for 100” GIs agreement which entered into force early in 2021. The EU GIs covered by this treaty include dairy and meat products, wine, beer, and spirits. Some GIs were approved that now restrict the ability of U.S. exporters to ship products to China with common trade names. In addition, the EU government and China have agreed to undertake consideration of a second wave of 175 additional GIs by early 2025.

In May 2021, China’s National Intellectual Property Administration (CNIPA) issued a Guiding Opinion on the protection of GIs. As problematic GIs have not used the new process yet it remains too early to determine how it will work in practice and whether the new Guidance will effectively curtail excessively broad protections for GIs.

We note concern with some troubling determinations in 2021 by China’s Intellectual Property authority on certain trademarks. It is critical to ensure that the generic assurances granted by the U.S.-China Phase One agreement and as part of the EU-China GI agreement are applied consistently in China – both by those considering GIs and by those considering trademarks.

We continue to support the U.S.-China Phase One agreement’s inclusion of assurances and due process procedures related to GIs and common food names. The full usage of these provisions is even more critical now, given the entry into force of the China-EU Agreement and the expectation of further discussions to broaden the products subject to its provisions.

Colombia

As part of the Colombia-EU FTA, which was implemented in 2013, Colombia acquiesced to EU government demands to establish GIs for certain common food names. This action impaired the value of concessions granted to the United States under the U.S.-Colombia FTA. At the same time, however, Colombia also took positive steps to address U.S. concerns regarding other terms by clarifying the scope of protection provided for certain multi-term GIs including terms such as parmesan, provolone, brie and others. Those generic use assurances related to compound GIs must be upheld and should be further memorialized, building upon

³ https://trade.ec.europa.eu/doclib/docs/2021/may/tradoc_159588.pdf

the type of approach employed in USMCA with a properly expanded set of commonly used terms.

To that end, we urge the Administration to secure confirmations from Colombia that specific common food and beverage terms will remain free for use by U.S. exporters in order to preserve the full value of the market access concessions the United States secured under the U.S.-Colombia FTA.

Ecuador

In 2017, Ecuador implemented an FTA with the EU that included granting protection to numerous GIs requested by the EU government. 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 work with Ecuador to establish an appropriately defined scope of protection for multi-term GIs that preserves the maximum range of market access to this market.

Europe

The EU continues to issue new restrictions on the use of common food and beverage terms within its borders. The EU continues to expand its list of GIs, and even as it does so, it continues to refuse to issue an illustrative list of common terms nor to provide clarity at the initial application stage regarding the scope of protection of each GI.

Beyond these persistent problems, the EU continues to advance additional policy changes to its GI and related “quality program” regulations. We are deeply concerned that these proposals will make a bad situation even worse by:

- Loosening evidentiary requirements regarding the historic origination of the product,
- Expanding member states’ authority in deciding if a GI application is eligible for protection and in amending GI specifications, thereby magnifying the likelihood of commerce challenges across the EU’s common market as well as with trading partners,
- Shortening the opposition deadline to respond to GI applications,
- Expanding the scope of protection granted; and,
- Continuing the glaring absence of a list of names that the EU considers to be generic and of objective criteria to determine what constitutes a generic name.

In November 2021, the European Parliament approved the legislative package for Common Agricultural Policy reform, which will enter into force on January 1, 2023. The package introduces changes to existing legislation on GIs, which deepen our concerns on the overprotection of GIs.⁴ Some of the changes are the following:

- The opposition period was reduced from five to two months, since the new regulation suppresses the need to present an opposition notice (which previously involved a three-month period) and extends the reasoned opposition statement from two months to three months,
- The scope of protection was extended to the use of GIs as ingredients (there were no express provisions on this previously),
- Protection is extended against the use that exploits, weakens, or dilutes the reputation of an AO or GI,

⁴ https://ec.europa.eu/info/food-farming-fisheries/key-policies/common-agricultural-policy/new-cap-2023-27_en#documents

- The examination of applications is watered down. From now on, the European Commission will only examine the file to determine whether there are mistakes in the application, with consideration for the control and opposition procedures carried out by the Member State; and
- Protected GIs will be expressly protected on e-commerce (internet) and goods which are only in transit through the EU.

The EU continues to pursue greater restrictions that shift beyond GIs themselves and also impinge on the generic use of various images and country references. References to countries in the marketing of products is extremely common and often used to denote a type of food rather than the location where the product was produced (e.g., swiss cheese, Italian sausage, French baguette, Belgian waffles, etc.). If left unchecked, these will create additional barriers to fair competition by U.S. exporters.

We also reiterate our long-standing concerns regarding the EU's abusive restrictions of commonly used winemaking 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, but they are common nouns and adjectives used to describe the wine. These so-called "traditional" terms include "chateau," "clos," "ruby," "crusted/crusting," "noble," "superior," "sur lie," "tawny" and "vintage/vintage character." A summary of our concerns is listed below:

- 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 continue to use 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, it 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, numerous 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 trademark 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, to "simplify" the traditional terms application and approval process,
- We would like to reiterate that although the U.S. wine industry has sought to play a constructive role in this process by seeking more transparency from European officials, the EU has to date 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 Member 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 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,
- Likewise, we remain concerned about how the Traditional Specialty Guarantee (TSG) program may be abused by the EU moving forward. 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 United States 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 protections for generic names under the regulation. 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 worldwide; and
- 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 is important for the U.S. government to monitor evolution of this program and to discourage its incorporation into EU FTAs. As we stated before, should the EU wish to create global product standards for products the

proper pathway for doing so is through the established Codex process.

The United States 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 U.S.-made products all around the world. The United States should take further steps to combat the EU's increasing escalation of its "quality system schemes" to limit fair competition from American suppliers.

Japan

Japan implemented an FTA with the EU in 2019. The agreement established an appropriately specific scope of protection with respect to compound GIs wherein the relevant common terms included in those compound GIs were preserved for free use by all. At the same time, 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." Since then, Japan has used its GI system to consider additional GIs which to date have not posed concerns.

Should the United States pursue further negotiations with Japan to secure a comprehensive agreement, we urge the Administration to secure the following outcomes:

- Japan ensures that all those with product in the market prior to the implementation of the EU-Japan FTA be covered by the "prior use" allowances, in keeping with the terms of the 2018 WTO notice published by Japan regarding prior users,
- Japan not unduly restrict common labeling practices (e.g., colors, images) if information on the product's location is still conveyed to consumers on those labels,
- Japan's existing GI regulations' checks and balances, including with respect to cancellation rights, be preserved and apply to all terms registered including via FTAs; and
- The United States secure confirmations from Japan that specific common food and beverage terms will remain free for use by U.S. exporters in order to preserve the full value of the market access concessions for U.S. exports.

Kenya

Should the Administration continue to pursue FTA negotiations with Kenya, this represents an excellent opportunity to forge optimal GI regulations and due process procedures and to secure explicit assurances regarding specific common food and beverage terms to preserve U.S. export market access rights. We urge the Administration to pursue these goals if it further pursues trade negotiations, including Trade and Investment Framework Agreement discussions, with Kenya.

Korea

As part of the EU-Korea FTA, South Korea banned the import of several commonly produced U.S. foods if they were labeled using their common names without conducting a due process procedure that included an impartial review of the terms and a public comment period. This action impaired the value of

concessions granted to the United States under the previously negotiated U.S.-Korea FTA by forbidding the sale of accurately labeled U.S. asiago, fontina, gorgonzola, and feta to one of the world's most important cheese import markets. Fortunately, the United States salvaged a key portion of the value of KORUS' benefits by securing a commitment⁵ from Korea that 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 can be exported to Korea.

Accordingly, we urge the Administration to secure confirmations from Korea that specific common food and beverage terms will remain free for use by U.S. exporters in order to preserve the full value of the market access concessions the United States secured under the U.S.-Korea FTA, and to establish a clear understanding that the compound protection only approach laid out in the 2012 letter exchange pertains to new GIs as well such as those presently under consideration by Korea.

India

In May 2021, India and the EU announced, after a Leaders' Meeting, their agreement to resume talks for a "balanced, ambitious, comprehensive, and mutually beneficial trade agreement (FTA)."⁶ As part of the Indo-Pacific Economic Framework, we encourage the Administration to work with its Indian counterparts to ensure that EU-India negotiations do not result in restrictions for specific common food and beverage terms in the Indian market.

Indonesia

Indonesia is involved in FTA negotiations with the EU. A goal of these negotiations for the EU government is to secure the registration of a long list of GIs and a broad scope of protection for those terms. Should the EU succeed in this effort, it would result in restrictions on current and future opportunities in the Indonesian market for products identified with common trade names. To most effectively combat the threat of future trade barriers in this market, we urge the Administration to work with Indonesia to secure confirmations that specific common food and beverage terms will remain free for use by U.S. exporters, and to ensure that Indonesia's GI regulations incorporate robust due process procedures for all GIs – including those considered as part of trade agreements.

Malaysia

Malaysia is involved in FTA negotiations with the EU. A goal of these negotiations for the EU government is to secure the registration of a long list of GIs and a broad scope of protection for those terms. Should the EU succeed in this effort, it would result in restrictions on current and future opportunities in the Indonesian market for products identified with common trade names. To most effectively combat the threat of future trade barriers in this market, we urge the Administration to work with Malaysia to secure confirmations that specific common food and beverage terms will remain free for use by U.S. exporters, and to ensure that their GI regulations incorporate robust due process procedures for all GIs – including those considered as part of trade agreements.

⁵ <https://ustr.gov/sites/default/files/uploads/pdfs/PDFs/December%202012/062011%20Kim-Kirk%20Letter%20on%20GIs.pdf>

⁶ <https://www.consilium.europa.eu/media/49523/eu-india-leaders-meeting-joint-statement-080521.pdf>

Mexico

In the comments CCFN submitted last year, we referred to the precedents set by USMCA that merit robust enforcement in Mexico. Some of those precedents include (1) the U.S.-Mexico side letter establishing a broad scope of coverage for any grandfathering rights extended to prior users of common terms; (2) an additional side letter that includes a non-exhaustive list of commonly used food terms that may not be restricted by Mexico moving forward; (3) due process procedures governing GI applications to increase transparency and help provide tools to preserve the use of common food names throughout the course of GI consideration procedures; (4) guidelines for determining whether a term is a customary term in the common language; and (5) a provision in the GI consideration procedures allowing the protection of multi-component terms while assuring that individual generic components of the compound name are not restricted.

We remain concerned that Mexico's newly created IP law does not provide clear reference to implementing USMCA's side letters as well as the agreement's guidelines and provisions for determining whether a term is a customary term in the common language and for the protection of multi-component terms. The development of the Implementing Regulations to the new IP law offers a unique opportunity to ensure the implementation of these provisions so that the U.S. fully benefits from its investment in the USMCA negotiations. We request the Administration engage with the Mexican government to ensure an effective implementation of the USMCA commitments in order to preserve the right to use various common names.

On a related front, Mexico was expected to sign its updated FTA with the EU last year, but it remains unclear when will this happen. CCFN reiterates its deep disappointment in the Mexican government's decision to surrender to EU demands by giving up several widely used common terms in the Mexico-EU FTA. CCFN firmly believes that these GIs were illegally granted by disregarding the evidence our organization submitted in conflict with Mexican laws. Therefore, in 2018 we filed several "amparos" (constitutional legal challenges) contesting these decisions. Those cases have not been successful, which has increased the level of market barrier threats regarding the continued free use of several common names.

MERCOSUR: Argentina, Brazil, Paraguay, and Uruguay

In June 2019, FTA negotiations between the EU and the Mercosur bloc of countries concluded. In that agreement the EU government was able to secure registration of all the GIs it sought despite widespread use of numerous terms within Mercosur. That contradiction was dealt with through a combination of phase-out periods and grandfathering clauses. The very existence of these concessions indicates that the terms were already in generic use in the Mercosur region and, as such, should have been rejected had the GI process been handled objectively and independently. The vast majority of the companies benefiting from these phase-out and grandfathering provisions were – as intended – domestic firms, thereby blocking future access opportunities to those markets for virtually all U.S. exporters for the relevant products.

Leaked reports,⁷ as well as public interviews with the negotiators and the very results of the GI registrations themselves, made it abundantly clear that the decisions on GIs were not made on their merits, but rather traded new bans on trade and competition for access to the EU market – thereby erecting trade barriers to

⁷ <https://www.bilaterals.org/IMG/pdf/20180829123331.pdf>

Mercosur's other competitors to effectively purchase market access expansions into the EU market. Another indication of the faulty process followed was CCFN's ability to secure the cancellation of a GI registered through the FTA process by clearly demonstrating through the standard IP system channels in Brazil its generic nature; despite this, it will gain protection again once the FTA takes effect.

Moreover, on December 27, 2021, the Brazilian Ministry of Agriculture, Livestock and Supply issued an Ordinance granting a sixty-day period (starting on January 5, 2022) to prior users of one or more specified terms, to submit documentation to prove their right to continue using those terms. This new Ordinance revoked previous ones with the same objective, which is even more concerning given that a prior users list was already published by the Brazilian Government. This action adds uncertainty to the process and clearly demonstrates that the Brazilian government ignores past consultations where prior users participated and provided the required documentation to demonstrate their status.

We urge the Administration to be active in engaging with these trading partners to address the uncertainty and the negative impacts on U.S. exporters' ability to access these markets.

Morocco

In 2015, Morocco and the EU announced that they had reached an agreement on GIs. We believe that to date it remains unimplemented, however. We urge the Administration to secure confirmations from Morocco that specific common food and beverage terms will remain free for use by U.S. exporters in order to preserve the full value of the market access concessions the United States secured under the U.S.-Morocco FTA.

New Zealand

New Zealand and the EU continue to pursue free trade agreement negotiations. We note that New Zealand has a well-designed and highly functioning IP system in place already that is more than capable of providing reasonable protection to legitimate GIs. The fact that GIs are instead being considered under the auspices of the FTA process despite this reality indicates the EU's goal of negotiating based on the balance of concessions in the agreement rather than the objective merits of the GIs at issue. New Zealand has long been an ally on the topic of GIs. To guard against the threat of future trade barriers in this market, we urge the Administration to work with New Zealand to secure confirmations that specific common food and beverage terms will remain free for use by U.S. exporters, and to ensure that their GI regulations incorporate robust due process procedures for all GIs – including those considered as part of trade agreements.

Peru

As part of the Peru-EU FTA, Peru granted protection at the request of the EU government to some commonly used terms that were at that time generic in Peru. This action violated WTO rules and impaired the value of concessions granted to the U.S. under the U.S.-Peru FTA. In 2019, Peru's IP authorities entered into a partnership arrangement with the world's leading proponent for excessive GI policies – the organization OriGIn. We view this agreement with concern given its potential to influence the degree of impartial treatment Peru is obligated to utilize with respect to GI applications.

We urge the Administration to secure confirmations from Peru that specific common food and beverage

terms will remain free for use by U.S. exporters in order to preserve the full value of the market access concessions the United States secured under the U.S.-Peru FTA.

Philippines

GIs are protected under the Trademarks section of the Intellectual Property Code as collective marks. Nevertheless, the government of the Philippines has been considering new regulations on the protection of GIs over the course of the last few years. We appreciate the U.S. government's proactive education and outreach work with the Philippines throughout that process, particularly to avoid a result whereby GIs considered as part of an FTA are allowed to effectively bypass any due process protections in the market. This is particularly important as the Philippines and the EU have been involved in FTA negotiations (seeing varying degrees of focus and progress) over the past several years.

To guard against the threat of future trade barriers in this market, we urge the Administration to work with the Philippines to secure confirmations that specific common food and beverage terms will remain free for use by U.S. exporters, and to ensure that their GI regulations incorporate robust due process procedures for all GIs – including those considered as part of trade agreements.

Russia

The Russian law introducing GIs came into force on July 27, 2020, except for the provision regarding liability for illegal use of a GI symbol alongside an unregistered GI, which will come into effect on July 27, 2024.⁸ Before July 2020, it was possible to register geographically related signs and names in Russia as appellations of origin (AO), however, introducing GI protection makes it simpler and faster for foreign and domestic producers to obtain protection, which is why transparent and effective resources should be considered to preserve the legitimate role of common terms.

Singapore

The EU-Singapore FTA entered into force in 2019, including new provisions pertaining to GIs. While in principle Singapore established use of a formalized system for considering GIs and handling cancellations, in practice the ability of stakeholders to make good faith use of this system has been extremely problematic. Singapore approved for registration certain GIs without any apparent effort to evaluate the clear evidence of widespread use in the Singapore market (acknowledged as such even by Singapore in its FTA text with the EU⁹) while other terms were published without providing sufficient clarity regarding their scope of protection. While a process exists to contest these errors and omissions, our organization has found it exceedingly costly to use, thereby introducing a real-world impediment to securing accurate treatment for common terms in this market.

We urge the Administration to work with this U.S. FTA partner to shore up access for U.S. products to avoid the further erosion of our market access to Singapore and to secure confirmations that specific common food and beverage terms will remain free for use by U.S. exporters in this FTA partner market.

South Africa

⁸ <https://wipo.lex.wipo.int/en/legislation/details/19276>

⁹ https://trade.ec.europa.eu/doclib/docs/2013/september/tradoc_151779.pdf

Under a trade agreement with the EU, South Africa imposed restrictions on the use of several common terms including “feta,” a term which is so generic in that market that past FAS reports noted that it is one of the largest cheese types produced in South Africa. That agreement has now been implemented by both parties. South Africa took that action without providing the necessary notification to the WTO TBT Committee at a time when stakeholders could still comment on and influence the decisions regarding the GIs. In addition, South Africa’s GI regulations, published in 2019, continue to have gaps regarding sufficiently robust protections for the use of common names. We urge the Administration to memorialize market access assurances with this trading partner, drawing upon previous precedents, and work to improve South Africa’s GI regulations.

United Kingdom

CCFN urges the Administration to resume FTA negotiations with the UK in light of the opportunity this process provides to create a fresh start on GIs with this market in a manner that could work to the benefit of both UK and U.S. food and beverage producers. This would provide a structured opportunity to pursue reforms to the EU GIs framework which was largely imported wholesale into UK Law through Brexit negotiations, including the omission of an independent review of existing EU GIs.

We urge the Administration to work with the UK to ensure the existence of a balanced GI system that breaks with the destructive and deeply flawed GI model advanced by the EU and to instead create a fairer and more reasonable system for GIs. Furthermore, we urge the U.S. government to secure through future trade negotiations confirmations from the UK that specific common food and beverage terms will be available for free use by U.S. exporters.

Vietnam

The EU-Vietnam FTA was implemented in 2020. The agreement contains a number of provisions on GIs including the establishment of a clear scope of protection for key common names impacted by GIs and grandfathering rights for those that initiated exports of asiago, fontina and gorgonzola to Vietnam by December 31, 2016, to sell those products in Vietnam moving forward. Despite the FTA’s clear language regarding the intent to provide grandfathering rights, Vietnam has to date not provided clear confirmations to the specific companies that shipped the grandfathered products prior the cut-off date so that they can proceed with certainty in the market. We urge the Administration to work with Vietnam to secure clarity on this point to allow for commercial certainty for U.S. exporters. In addition, we stress the importance of securing confirmations that specific common food and beverage terms will remain free for use by U.S. exporters in this key market.

Multilateral and Regional Trade Agreements

World Intellectual Property Organization (WIPO)

CCFN remains strongly concerned with the Geneva Act of the Lisbon Agreement on Appellations of Origin and Geographical Indications. This agreement took effect in 2020.

The Geneva Act was negotiated over the objections of numerous WIPO countries. Like its predecessor agreement, the Act facilitates GI registrations while giving short shrift to the rights of generic users by

automatically granting approval to GI registrations if no objection is received. Implementation of this new Lisbon Agreement is poised to 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.

In contrast to GI holders who now have access to both the Madrid system for trademarks and certifications and to the Lisbon Agreement's Geneva Act to register their GIs in a single one-stop manner, there is no comparable process by which stakeholders can signal to other countries the generic nature and wide-spread global usage of a term. This asymmetry creates a tremendous imbalance and is one we urge the Administration to explore ways to address.

Last year saw progress by WIPO in better balancing the various rights and interests of IP system stakeholders more fully, specifically those of common name users. We strongly welcome the new WIPO Director General selected last year and look forward to working with him and his staff, as well as with the U.S. government, to forge a more balanced approach to GIs and common name treatment in the future by WIPO

UN Food and Agriculture Organization (FAO)

We recognize FAO's development mandate, and that FAO seeks to use various means to spur agriculture, fisheries, forestry, and rural development. We very much support well-designed and appropriately focused GI policies. However, as an organization funded in a significant 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 does not adhere to the neutral role it should play with respect to policy in this area. Rather, FAO has in recent years opted to encourage the use of GIs as a development tool without promoting appropriate due process procedures to ensure that GIs are handled in a manner that avoids negative impacts on other stakeholders in the developing country's market that rely on generic terms.

Moreover, FAO has not provided fully inclusive information as it works closely with developing countries to encourage the crafting of GI systems – namely, thanks to the WTO case that the U.S. won against the EU several years ago, GI holders all around the world have the right to register their GIs in the EU on their merits and there is no obligation for those countries to simultaneously recognize EU GIs in their own market if not merited. We are also concerned that FAO is not ensuring that developing countries know that if they utilize *sui generis* systems in order to allow for free registration and enforcement of domestic GIs then, to fulfill WTO national treatment obligations, they must also shoulder the cost and administrative burden of allowing for free registration and enforcement of all foreign GIs as well. A system based around certificate marks that puts the costs of registration and enforcement appropriately on the applicant would impose a far lower burden on developing country governments.

Conclusion

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 and beverage terms, and secure clear affirmations of our market access

rights for these products with key trading partners.

Thank you for this opportunity to comment on these issues so important to U.S. companies, their employees, and their supplying farmers.

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