Comments by the Consortium for Common Food Names Regarding the 2025 Special 301 Review (Docket: USTR-2024-0023) January 27, 2025

The Consortium for Common Food Names (CCFN) submits these comments in response to the notice of request for public comments concerning the 2025 Special 301 Review: Identification of Countries Under Section 182 of the Trade Act of 1974 (Docket Number USTR-2024-0023). CCFN values this opportunity to present its views on this important annual report.

In addition to these written statements, CCFN requests the opportunity to testify to the points cited below at the Special 301 Public Hearing to be held by the Special 301 Subcommittee on February 19, 2025. CCFN Senior Director Shawna Morris will be available to serve as the witness.

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 from several emerging economies. Our mission is to preserve the legitimate rights of producers and consumers worldwide to use common names, such as "parmesan" or "feta," through actions such as informing relevant stakeholders and officials of the damage that will be caused in their own countries if efforts to restrict the use of common food names go unchecked; working with policymakers to protect common food names in domestic regulations and international agreements; developing a clear and reasonable scope of protection for geographical indications (GIs), and fostering the adoption of high-standard and model GI guidelines throughout the world.

Throughout 2024, CCFN members faced increased restrictions - or attempts to impose restrictions - on the use of common food and beverage terms in various markets. As CCFN has detailed in previous submissions, the European Union (EU) has been a leading offender of the rights of common name food and beverage producers. We expect the EU to continue to impose this model on its trading partners, as part of its well-known strategy to establish unique monopolistic benefits for producers of food and beverage products in EU countries.

Considering the timely importance of this issue, we urge the Administration to adopt a decisive and proactive strategy to address the abuse of GIs around the world in ways that impede fair trade and creative unjustified monopoly rights for certain EU producer groups.

To that end, we request that the Administration support U.S. farmers' and manufacturers' ability to compete fairly in foreign markets by securing firm and explicit commitments ensuring the future ability to use specific commonly used generic food and beverage terms that are being 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.

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Bilateral and Selected Multilateral Issues

Australia

In June 2018, Australia and the EU commenced free trade agreement (FTA) negotiations. As in other trade negotiation processes, the EU has sought to impose restrictions on the use of common names through the recognition of GIs. In July 2023, negotiations broke down, and in October 2023, they faced a new stalemate that ended in the suspension of trade talks and further negotiations. Talks have not yet resumed; however, we note that it is not atypical for EU FTA negotiations to take a hiatus before fully concluding.

To seize this window of opportunity that current exists, CCFN strongly encourages the Administration to collaborate with its Australian counterparts to ensure that this key U.S. partner preserves the unrestricted use of common food and beverage names. To prevent any renewed efforts by the EU to claim generic names and to safeguard the full value of the market access concessions under the AU-U.S. FTA framework, we urge the Administration to negotiate protections for U.S. exporters of common name products with Australia.

Canada

As the U.S.-Mexico-Canada Agreement (USMCA) Sunset Review process commences in the coming year, CCFN urges the Administration to collaborate closely with Canadian authorities to guarantee that GI applications in Canada follow a robust due process approach and that Canada preserves the free use of common names, as stipulated in the USMCA.

Separately, CCFN has monitored the potential impact on common names of Quebec's Bill 96, an amendment to the Charter of the French Language, which promotes French as Quebec's official language and mandates French translations on all labels. CCFN is specifically focused on ensuring that the translations of recognized GIs do not negatively impact the use of common names. To help address this issue, on February 15, 2024, CCFN signed a joint industry letter prepared by the International Trademark Association (INTA) to strongly oppose any negative impacts of the measures on U.S. exporters and retailers operating in Canada. Additionally, a letter was submitted to Canadian authorities requesting clarification on the scope of the exceptions to the mandated French translation to confirm the conditions under which common names can continue to be used. CCFN has not yet received a response.

CCFN reaffirms the importance of monitoring any future approach towards GIs recognition in Canada, as well as any actions that could be taken by the EU to take advantage of and expand the protection over the names already recognized as GIs under the CETA. For example, trademark applications whose scope of protection goes beyond the scope of protection of the GI, a recent tactic pursued by certain European consortia, would further limiting the use of the terms in sectors which do not relate to the protection of the GI. CCFN has had to combat various applications seeking to do just that in Canada in years past.

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

CCFN remains concerned that Central American countries, namely Panama, Nicaragua, and Costa Rica, have not provided the same assurances as other Central American partners to protect multi-component and other commonly used terms. We call on the Administration to use bilateral channels or the U.S.-Central America-Dominican Republic FTA (CAFTA-DR) to obtain assurances from our trading partners that specific common food

and beverage terms will remain free for use by U.S. exporters, in a manner that preserves the full value of the market access concessions the United States secured under CAFTA-DR.

Chile

As noted in our 2024 comments, on December 13, 2023, the European Union and Chile signed an Advanced Framework Agreement (AFA) and an Interim Trade Agreement (ITA). The ITA incorporates most of the trade provisions typically found in a bilateral FTA, including regulations on the recognition of GIs. Both agreements were approved by the European Parliament on January 6, 2024. The ITA is set to take effect on February 1, 2025, and will automatically expire once the AFA enters into force, contingent upon approval by the EU Member States. Disappointingly, the GI provisions under the Agreement establish expansive protections for 216 GIs, including many commonly used names, granting monopolistic rights to EU suppliers of many common name products, and thereby limiting access for those U.S. exports to Chile. This exemplifies the biased and unfair approach that the EU has imposed through its recent trade negotiations around the world. Chile appears to have entirely bypassed its CPTPP commitments regarding due process procedures for GIs applications.

To mitigate these market distortions, the U.S. and Chile signed an agreement through an exchange of letters on June 21, 2024. This agreement was then unanimously approved by Chile's Senate on September 3, 2024 and has now been incorporated into the Chile-U.S. FTA.

The letter exchange agreement[1] is modeled off the ground-breaking approach created in USMCA[2] of establishing market access protections for specific common food names. Building off that precedent, the agreement ensures that a wide variety of products originating in the U.S. and exported to Chile will not face restrictions due to the use in them of twenty-nine cheese and eight meat-related terms (as well as their corresponding translations or transliterations). Additionally, the agreement establishes grandfathering protections preserving Chilean market access for all U.S. parmesan producers by defining the term "prior users" in a manner that captures the full breadth of the U.S. parmesan production market. The agreement's incorporation into the U.S.-Chile FTA solidifies its strength as a market access bulwark against future trade barrier risks.

Last year Chile also concluded its FTA negotiations with the European Free Trade Association (EFTA), signing an agreement on June 24, 2024. Although the agreement restricts use of "gruyere", it does not include restrictions on the generic term "emmental", as Switzerland had sought to capture. Emmental is among the terms recognized as generic in the U.S.-Chile letter exchange.

China

The common names issue of greatest concern at present in China is the lack of consistency exhibited by that government on the topic of GIs and common names. For instance: the trademark application of one of CCFN's members has been rejected by China IPO multiple times based on the purported protection of the Parmigiano

[1]https://ustr.gov/about-us/policy-offices/press-office/press-releases/2024/june/us-and-chile-sign-exchange-letters-protect-market-access-us-cheese-and-meat-products-chile

[2] https://ustr.gov/sites/default/files/files/agreements/FTA/USMCA/Text/MX-US_Side_Letter_on_Cheeses.pdf

Reggiano GI, despite the fact that the China-EU GI Agreement explicitly excludes "parmesan" from the scope of that GI's protection. The case is presently before China's Supreme Court.

This calls into question the following U.S.-China's Phase One commitments:

- *"China shall ensure that any measures taken in connection with pending or future requests from any other trading partner for recognition or protection of a geographical indication pursuant to an international agreement do not undermine market access for U.S. exports to China of goods and services using trademarks and generic terms."*
    - China IPO's acquiescence to the Parmigiano Reggiano Consortium's request to broaden the scope of their trademark protection beyond that established in the EU-China GI agreement runs counter to this commitment.
- *"Each Party shall ensure that an individual component of a multi-component term that is protected as a geographical indication in the territory of a Party shall not be protected in that Party if that individual component is generic. When China provides geographical indication protection to a multi-component term, it shall publicly identify which individual components, if any, are not protected."*
    - China did determine in the EU-China Phase One agreement that parmesan was not covered by the GI for Parmigiano Reggiano. China IPO's rulings run directly counter to this prior finding and as such are counter to the Phase One commitment.

Additionally, we noted that CNIPA has denied a trademark application containing the generic term "bologna," citing an opposition filed by the Mortadella Bologna Consorzio and simply stating that it was a well-known geographical name. Such decisions undermine the generic use of the term by all market participants and create unnecessary barriers for U.S. businesses.

Also of note last year were the developments on China's second wave of its GI agreement with the EU. In 2022 China's National Intellectual Property Administration (CNIPA) opened a two-month opposition period for a list of 173 additional names for which the EU was seeking recognition as GIs under the Phase 2 of the China-EU GI Agreement. As in the case of the original list of recognized terms, this new list includes commonly used food and beverage terms.

In February 2023, CCFN opposed the recognition of "fontina" as a GI as part of this list. However, in April 2024, the CNIPA ruled against CCFN's opposition on the grounds that CCFN was unable to prove that "fontina" was a generic term. This decision was subsequently upheld by the reviewing authorities in July 2024. The rulings lacked proper justification, as the authorities failed to provide a rationale for their conclusions and appeared to disregard the generic use evidence CCFN had submitted. This absence of transparency has left the process shrouded in uncertainty, undermining confidence in the system. Moreover, it raises concerns about the undue influence from the EU.

The approach taken by trademark authorities in refusing trademarks due to alleged geographical origin connotations exhibits an even more concerning pattern of inadequate reasoning and lack of consistency.

We urge the Administration to ensure that any measures taken in China do not undermine market access for U.S. exports or the use of trademarks comprising common names, and that China fully upholds its Phase One commitments.

Colombia

CCFN requests the Administration's attention and engagement concerning developments that are already affecting the use of common food and beverage names in Colombia.

Colombian IP authorities have adopted interpretations that resulted in cancellation processes of trademark registrations comprising common names, such as "parmesan", on the grounds that they may mislead the consumer public, even if those trademarks were registered in good faith and have been in force for several years. Additionally, these interpretations have resulted in trademark refusals based on opposition from European entities citing GI recognition, even when the terms involved, such as "parmesan" and "Parmigiano Reggiano," are distinct. These actions have effectively broadened the scope of GI protection in a way that restricts the use of common names.

These actions by Columbian authorities raise concerns about the certainty and predictability for U.S. traders regarding the IP rights they have acquired in good faith in Colombia and the IP system in general. We ask the Administration to engage with their Colombian counterparts to discuss and address this situation and ensure continued use of common names in this FTA partner market.

European Union

In 2024, the EU continued its campaign to confiscate common names as GIs around the world via FTA and standalone GI negotiations. Internally, the EU moved forward with trade restricting changes to its GI regime.

Just prior to last year, the Regulation (EU) 2023/2411 entered into force on November 16, 2023 and established a GI protection regime for craft and industrial products. This is of relevance for CCFN's global work on GIs and common names as this type of GI has been of notable interest for several of the EU's developing country trading partners. Additionally, in November 2023, the EU finalized a reform of its GI regime for wines, spirits, and agricultural products, aimed at expanding protection under EU law. The reform was enacted as the Regulation (EU) 2024/1143[3], which came into force on May 13, 2024. Some of the most notable provisions include the following:

- The expanded role of the EU Member States authorities in deciding if a GI application is eligible for protection and in amending GI specifications with the Commission checking only for "manifest errors" in applications.
- A single set of procedures for all GIs (wine, spirit drinks and agricultural products).
- Procedural changes, such as the shortening of the opposition procedure deadline from 5 to 3 months.
- The scope of protection of GIs is extended to e-commerce, domain names, goods in transit and goods destined for exports.
- EU Member States are now obliged to prevent illegal use of GIs online. This measure applies to all content accessible within the EU —regardless of its origin as long as a person located in the EU can access it.
- Notification to GI producers will be a precondition for the use of the GI as an ingredient in the name of pre-packaged processed products.

[3] Regulation (EU) 2024/1143 of the European Parliament and Council, dated 11 April 2024, on geographical indications for wine, spirit drinks and agricultural products, as well as traditional specialties guaranteed and optional quality terms for agricultural products, amending Regulations (EU) No 1308/2013, (EU) 2019/787 and (EU) 2019/1753 and repealing Regulation (EU) No 1151/2012.

Importantly, the new measures lack - once again - a list of names that the EU considers to be generic, as well as objective criteria to determine what constitutes a generic name. This merely preserves a status quo that does not provide much-needed certainty for users of common name products.

CCFN is not only concerned with the negative effects of the procedural changes, such as the shortening of the opposition procedure, but also with the disproportionate expansion of the scope of protection. Additionally, the expanded role assigned to Member States in managing applications is likely to increase the bias toward limiting the use of common food names, at the expense of non-EU producers. Given how politicized the EU's GI process is – having never resulted in the rejection of a GI application on generic grounds – this will exacerbate the current flaws in the system. Ultimately, the provisions represent further constraints to the right to use common names and related market access opportunities since the proposal includes elements that the EU is already pursuing as part of the GI provisions negotiated under FTAs and "standalone" GI agreements worldwide.

We would also like to reiterate our long-standing concerns with the EU's abusive restrictions on commonly used winemaking terms. Over centuries, European immigrants to the United States have brought with them the knowledge, language, and tradition of wine making from Europe. However, the EU continues to prohibit the use of certain descriptive or "traditional" terms on U.S. imported wine, claiming exclusive use of these terms for European producers and other wine regions through free trade agreements. As an example, a California Port producer interested in exporting to the EU will not be able to use "port" due to its GI status within the EU, nor will they be able to use terms relating to port production such as "ruby" and "tawny," thus being excluded from using common descriptions of the beverage. While the EU claims the terms are distinctive "European" expressions, the terms are not tied to a specific place; they are common nouns and adjectives associated with winemaking practices. Terms such as "chateau," and "clos" may only be used in the European market if approved by the EU. The 2006 Bilateral Agreement specifically allowed use of these terms for three years and, at the time, U.S. industry members expected that the EU would extend that period.

The U.S. wine industry has long since applied for approval of their use and, to date, the EU has only approved two of the thirteen applications. Meanwhile, winemakers from other non-EU countries have been approved to use terms such as "chateau" in the EU, using definitions essentially identical to those contained in the U.S. submission. Moreover, the use of these terms in the European market and elsewhere has resulted in no consumer confusion. There is no health or safety issue, nor is there any consumer risk in using wine descriptive terms that have always been and continue to be in the public domain. The revision of the traditional terms regulation (G/TBT/N/EU/570) in 2018 by the European Commission did not address these concerns.

Separately, we remain concerned with the status of generic plant variety names within a compound GI which is recognized by the EU. For example, montepulciano is a wine grape varietal name which is official recognized by the U.S. Alcohol and Tobacco Tax and Trade Bureau. Montepulciano d'Abruzzo, an Italian wine GI, translated into English is "Montepulciano from Abruzzo". Any country negotiating a free trade or GI agreement should indicate which part of a compound GI is generic. Unfortunately, the EU-China GI agreement could potentially restrict any wine made with the montepulciano grape. "Vino nobile di Montepulciano" is protected in the agreement with a footnote stating, "the protection of the term 'vino nobile di' is not sought" thus designating montepulciano as the singular protected term.

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.

- 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.

Considering developments in the EU during 2024, CCFN calls on the Administration to seek alternatives to remediate the unbalanced situation we have been facing in trading conditions with the EU for many years. The EU takes full advantage of the large and lucrative U.S. market while at the same time imposing arbitrary restrictions and unfair competition conditions to food and beverage products from U.S. that bear common or generic names not only in the EU market but around the world as well. This is not how strong allies and important trading partners should deal with each other.

Japan

On January 1, 2025, the Strategic Partnership Agreement (SPA) between the EU and Japan came into force. The agreement includes various areas of cooperation, with agriculture standing out, where the parties commit to strengthening their cooperation for the protection of GIs[4].

Also, during the fourth meeting of the Committee on Intellectual Property under EU - Japan FTA, held in Brussels on November 11, 2024, the agenda included the amendment of the list of GIs to be protected under the FTA as well as the enforcement and control measures on GIs. The outcomes of these discussions remain unclear, as the meeting minutes and agreements have not yet been made public. However, the inclusion of these topics on the agenda indicates that negotiations regarding GIs are actively ongoing. Such discussions could potentially result in changes affecting common terms.

[4] Pursuant to article 27 of the SPA.

With these updates, the risk of restricting the use of common term is increasing, making it essential for the Administration to negotiate with Japan protections for specific common food and beverage terms to ensure the continued free use of those terms. Additionally, we request that the U.S. seek guarantees that the "prior use" of such terms (before the Japan-EU FTA implementation) is respected in line with Japan's 2018 WTO TBT notification terms to avoid any future disruptions in trade.

Kenya

On July 1, 2024, the Economic Partnership Agreement (EPA) between the EU and Kenya entered into force. This agreement includes provisions addressing GIs in a very general way, only referring to their contribution to sustainable agriculture and rural development, as well as the need to cooperate in the identification, recognition, and registration of products that could benefit from protection as GIs.

However, those provisions include cooperation to develop policies and legal frameworks on GIs, as well as to establish regulations on GIs. This could serve as the starting point for the EU to attempt imposing its inequitable GI model onto Kenya's legal framework. Accordingly, we encourage the Administration to engage with Kenya to secure an agreement on common food and beverage terms, ensuring these terms remain freely available for use by U.S. producers and exporters.

Korea

In 2022 the Korea-EU FTA expanded its set of recognized GIs. The Korean government's assurances[5] to protect multi-term GIs, translations or transliterations of GIs, and generic terms are particularly vital, yet would benefit from further expansion.

On July 2, 2024, during the 11th meeting of the EU-South Korea Working Group on GIs, both parties discussed recent legislative developments related to GIs, and exchanged information on their respective trademark systems, including the tools and databases utilized during examination and registration processes, and shared experiences regarding enforcement mechanisms and control practices to ensure compliance with GI protections. The discussions clearly demonstrated the EU's proactive approach to influencing the evolution of GI protection in South Korea. Additionally, both parties committed to continuing the exchange of information and collaborating on monitoring the use of GIs in online markets.

In addition to all the above, the influence of the EU can be seen reflected in the decision by the Korean Intellectual Property Office to reject a compound trademark containing the term "parmesan" in 2024. This was done in response to opposition filed by the Consorzio, claiming that the term "parmesan" is similar to the Parmigiano Reggiano GI, which is protected under the EU-FTA. This is in direct contradiction, however, to the assurances provided by Minister Kim to Ambassador Kirk in 2011 regarding the treatment of compound GIs such as Parmigiano Reggiano. This type of decisions raises concerns about the potential limitations on the use of terms widely used by traders, producers and consumers in the local market.

[5]https://ustr.gov/trade-agreements/free-trade-agreements/korus-fta/exchange-letters-between-ambassador-kirk-and-trade-minister-kim-geographic-indications

Therefore, we urge the Administration to negotiate with Korea a broader list of recognized common food and beverage terms to ensure that the use of those terms will not be affected by future GI recognition requests from foreign actors, such as the EU or European consortia or by unfounded decisions from Korean authorities.

India

Since June 2022, the EU and India have been engaged in the negotiation of a bilateral FTA, an Investment Protection Agreement (IPA), and an Agreement on Geographical Indications. This is the second attempt by both countries to reach a GIs agreement since 2010. Unlike the last time, the EU now has a domestic legal framework to protect craft and industrial products, so the initial concerns from India regarding the protection of their non-agricultural GIs are likely to be overcome.

With respect to the GI agreement, publicly available information indicates that six rounds of negotiations have taken place, the most recent occurring from March 12 to 13, 2024. Following this round, it was announced that both parties agreed to exchange shortlists of GIs by the end of April 2024. The lists were expected to include approximately 200 GI; however, their contents remain undisclosed.

With the completion of the GI protection agreement increasingly near, we encourage the Administration to engage in discussions and negotiations with Indian authorities to prevent the restriction of common food and beverage names.

Indonesia

Indonesia and the EU launched their FTA negotiations in July 2016. According to information published by the EU, there have been nineteen rounds of negotiations, three of which were held in 2024 (February, June and July). The most significant movement on GIs occurred during the 18th round of negotiations, held from June 13 to 17, 2024. During this round, it was announced that significant advancements had been made in the Subsection on GIs, which was expanded to include protections for craft and industrial GIs.

In January 2024, a new list of GIs proposed for protection under the agreement was published, complementing the list released in 2019. While these lists are not final, the latest update prompted several U.S. organizations including CCFN to write to Indonesia's Trade Minister in May 2024 expressing their concerns about the ongoing EU-Indonesia FTA negotiations and the potential restrictions on the use of common food and beverage names. The letter included a list of common food and beverage names that Indonesia should not restrict as a result of trade talks with the EU.

To effectively prevent the creation of new trade barriers in this market, we urge the Administration to prioritize engagement with its Indonesian counterparts to obtain assurances that specific common food and beverage terms will remain free for use by U.S. exporters, regardless of the outcome of their FTA negotiations with the EU.

Malaysia

Malaysia and the EU launched FTA negotiations in 2010. However, they have remained on hold for over a decade now. However, on December 11, 2024, the EU announced the financing of the multiannual action plan in favor of Malaysia for 2025-2027, to strengthen its trade relations. These actions by the EU mark the beginning of a series of negotiations or agreements that could be reached in the future, where the use of common terms could be at risk.

CCFN calls on the Administration to work with Malaysia to ensure the existence of a fair GI recognition regime and toward the development of a list of common food and beverage names to guarantee free use of these terms regardless of any developments in the discussions with the EU.

Mexico

As we have previously noted, CCFN is deeply disappointed with the Mexican government's decision to surrender to EU demands by giving up several widely used common terms in the course of negotiating the Mexico-EU FTA, which now appears slated to move forward. On January 17, 2025 the two parties concluded FTA negotiations, with the agreement now pending ratification.

Quite concerningly, even prior to the conclusion of the negotiations, the Mexican IP authority had started refusing trademark applications based on EU GIs which are still not officially registered in Mexico.

As an example of this practice in 2024, the Intellectual Property Chamber upheld the refusal of a registration for a compound trademark containing the term "feta," which was disclaimed as generic. This decision was made despite the fact that "feta" not protected under the Lisbon Agreement (to which Mexico is a Party) and that the FTA with the EU has not yet entered into force, in addition to the fact that ample evidence was provided to demonstrate that the term is of common use in Mexico to indicate a type of cheese with no geographical connotation. CCFN urges the administration to take proactive measures to address the uncertainty and potential trade barriers that could arise from the negotiated FTA.

Of greatest priority for the coming year are elements of USMCA implementation that are still lingering The first Trump administration secured important protections with Mexico in USMCA, yet Mexico has not fully implemented the USMCA side letters on cheeses and prior users, the provisions in the IP chapter for determining whether a term is a customary term in the common language, and the IP chapter provisions applicable to multi-component terms. These elements appear to be delayed from being formally implemented due to the five year delay in advancing Mexico's Implementing Regulations of the Federal Law of the Protection of Industrial Property. We urge the Administration to include these important implementation issues in its coming USMCA Review engagement with Mexican authorities to ensure the common name provisions of the USMCA are fully and swiftly implemented.

Mercosur: Argentina, Brazil, Paraguay and Uruguay

The FTA negotiations between the EU and the Mercosur countries (Argentina, Brazil, Paraguay, and Uruguay) initially concluded in June 2019. After a long hiatus, on December 6, 2024 it was announced that the renewed

negotiations, which had kicked off in August 2024, had been concluded. The FTA has not yet been signed by the parties, nor has a signing date been announced.

The EU stated that this is the largest agreement ever reached in terms of the protection of food and beverage products, as more than 350 EU products are to be protected as GI. The list of GIs recognized under the FTA demonstrated that the decisions to protect certain terms as GIs were not made based on the merits of each term, but rather on concessions that Mercosur countries received in other areas of the FTA, such as market access for agricultural products. This is clear due to the ample prior generic use of several terms that will be newly restricted by the FTA.

We noted that the announcement of the conclusion of the negotiations was accompanied by public lists of prior users. No U.S. entity is listed as a prior user of “parmesano”, “parmesao”, “gruyere”, “fontina”, “gorgonzola”, or “grana” for any Mercosur country, effectively sidelining U.S. stakeholders’ market access to those markets and further entrenching the EU’s dominance in the use of these terms.

This is deeply concerning. Agreements like this represent extremely protectionist measures that hinder fair trade competition, as they restrict the use of certain common terms necessary for the marketing of U.S. products. Therefore, we urge the Administration to engage with the Mercosur countries to negotiate assurances for U.S. exporters to access these markets in a fair manner moving forward.

Previously, we have highlighted that CCFN faced adverse administrative actions in Brazil regarding two registered trademarks that included the common terms “parmesan” and “asiago”. This was particularly concerning in the case of “asiago”, since the term had been expressly recognized as a common name by the Brazilian Trademark Office (BTO) under the domestic legal system. Nevertheless, on November 21, 2023, the BTO declared null the prior registered trademark.

Similarly, in the case of "parmesan," the registration was granted in 2021. However, months later, the BTO requested its annulment, supported by the Parmigiano Reggiano Consorzio, and on May 21, 2024, the annulment of the trademark was approved on the grounds that "parmesan" was a translation of "parmigiano.". This decision underscores the significant legal uncertainty that arises in cases like this and the lack of a truly impartial IP office examination of common names.

The BTO’s approach to refusing or canceling trademarks on the grounds of false indications of origin unjustly penalizes good faith users of common terms by denying them the right to continue using these terms. By adopting an overly broad interpretation of the potential for consumer confusion, and without providing thorough, reasoned explanations, the BTO’s refusal of trademark applications arbitrarily restricts the use of widely recognized generic terms.

We urge the Administration to engage with the Mercosur countries to discuss and address the uncertainty and the restrictive trade policies that U.S. exporters face when they try to access these important markets.

New Zealand

On May 1, 2024, the New Zealand-EU FTA and New Zealand legislation implementing the EU FTA entered into force. Under the FTA, New Zealand agreed to recognize as European GIs a list of 1,967 terms. The provisions and

the number of names recognized as GIs are disappointing, considering that many of them are commonly used names. Moreover, the FTA allows for the introduction of additional GIs for protection in the future, further raising the likelihood that the limited pool of commonly used terms available to non-EU producers will face additional restrictions. This development underscores significant challenges for producers outside the EU who rely on these terms to describe their products.

Furthermore, New Zealand's concession to the EU also contradicts its CPTPP commitments to implement a fair and balanced GI recognition system. We urge the Administration to seek clear measures with New Zealand to protect common name use.

Peru

In late 2024, the European Commission prompted the Peruvian Intellectual Property Office ("Indecopi") to issue letters to supermarkets threatening enforcement actions against the use of "parmesan" when marketing cheese despite long-standing government recognition of the term as generic for more than a decade after the EU agreement with Peru. This illustrate the importance of securing in writing explicit assurances regarding the use of common names with key trading partners to guard against shifting interpretations of their GI treatment over time.

Therefore, we urge the Administration to engage with the Peruvian authorities to respect and maintain the protection of the generic and common food and beverage terms for a free use of the U.S. producers and address this issue with the Peruvian counterparts.

Philippines

In March 2024, the EU and the Philippines resumed FTA negotiations with a focus on protecting intellectual property rights, including GIs. While a new round of negotiations was anticipated by the end of 2024, no updates have been reported. We continue to urge the Administration to engage in parallel discussions with Philippine counterparts to safeguard the free use of common terms and ensure market access for U.S. exporters.

The Philippine's Rules and Regulations on Geographical Indications were effective as of November 20, 2022. CCFN participated in the consultation stages for the development of this instrument. CCFN is concerned that the final version of the Rules and Regulations included certain provisions which run counter to a balanced GI protection regime, such as a broad scope of protection to terms recognized as GIs (mirroring the European system and going beyond what is provided under the WTO Agreement on Trade Related Aspects of Intellectual Property Rights). There is uncertainty regarding the treatment of translations and transliterations of terms applying for registration as GIs, and limited timeframes for opposition procedures, among others.

On June 27, 2023, CCFN received an invitation from the Senate Committee on Trade, Commerce, and Entrepreneurship of the Philippines to submit its comments or position on Senate Bill No. 1868: An Act Providing for Protected Geographical Indications of Locally Produced Agricultural or Natural (Unprocessed or Wild) Products, Processed Products, or any Products of Handicraft or Industry. CCFN filed comments on July 4, 2023, within the timeframe required by the Committee. The comments were consistent with those submitted during the public consultation of the Rules and Regulations on Geographical Indications, and strongly urged the

Philippine government to work closely with the U.S. government to establish protections for key common food and beverage terms and ensure the continued rights to use them by both domestic and trading partners' companies. Comments would be considered in a Bill's Committee Report, which was expected to be finalized before July 2023, however, there has been no news up to date.

Given the ongoing FTA negotiations with the EU, we urge the USTR to maintain close collaboration with Philippine authorities to address the development of the new GI regime and to secure specific protections for common name users.

Singapore

Since the entry into force of the Singapore-EU FTA in 2019, efforts to ensure the preservation of the legitimate use of common names in that jurisdiction have been jeopardized. Stakeholders have faced considerable costs and challenges in using the system to handle GI procedures. In short, there is not a viable system in place for pursuing clarity on a spectrum of common names given the exorbitant costs involved in pursuing this for even a single term.

Despite these glaring shortcomings, positive news was seen last year. On November 22, 2024, the Singapore Court of Appeal issued a landmark ruling affirming that the term "parmesan" is not a translation of "Parmigiano Reggiano" and as such would remain available for use as a generic term in Singapore. This decision overturned a lower court ruling that had caused significant market disruption, including the relabeling of products and the delisting of non-Italian suppliers from supermarkets. The ruling establishes an important precedent for international markets, reinforcing the status of "parmesan" as a common name for a type of cheese.

On July 25, 2024, the EU and Singapore concluded negotiations for a Digital Trade Agreement, which complements their prior FTA. This new agreement is aimed at the trade of goods and services through digital platforms. Among its provisions, the agreement requires each party to adopt or maintain measures to proscribe misleading, fraudulent and deceptive commercial activities that cause harm, or potential harm, to consumers engaged in electronic commerce. Given the EU's stance that common terms are misleading to consumers due to their "recognition" as GIs, these measures could create barriers to online trade, particularly for products using generic terms that the EU regards as protected GIs.

Consequently, we strongly urge the Administration to engage with Singapore to prevent any further erosion of U.S. market access in this critical region. It is important to secure assurances that specific common food and beverage terms will remain freely available for use by U.S. exporters, particularly given the potential implications of the newly established Digital Trade Agreement. This proactive engagement will help safeguard fair trade practices and protect U.S. interests in the evolving digital marketplace.

Thailand

In March 2023, the EU and Thailand agreed to relaunch negotiations for an FTA with sustainability at its core. During 2024, three rounds of negotiations were held, the last one taking place in November 2024. During these rounds, the negotiating group advanced in consolidating the text of the IP chapter, discussing for the first time

the enforcement of IP rights and addressing GIs. However, there has been no official information regarding the dispositions discussed.

On December 14, 2023, Thailand published the Draft Geographical Indications Protection Act and opened a public consultation period. CCFN submitted its comments on February 2, 2024, and on March 26, 2024, Thai authorities published their responses. However, several critical points remain unaddressed. We strongly urge the Administration to engage with Thai counterparts to address these unresolved issues, particularly in the context of the ongoing FTA negotiations. It is crucial to secure assurances on key provisions, including:

- A clear and transparent definition of "generic name."
- The ability to oppose GI recognition based on a prior trademark registration or a pending application.
- The establishment of a cancellation process for GIs.

Moreover, negotiations are needed to establish robust protections for specific common names in this market of considerable potential for U.S. cheese exporters.

United Kingdom

CCFN urges the resumption of FTA negotiations with the UK, to promote the implementation of a balanced GI recognition regime. This is an opportunity to pursue reforms to the EU-like GI framework which was largely adopted wholesale into UK Law because of the Brexit negotiations. Breaking the destructive and deeply flawed GI model of the EU and creating a balanced GI regime should be priorities in U.S.-UK negotiations.

The UK formally joined the CPTPP in December 2024, subjecting the UK to the trade agreement's provisions requiring transparent and consistent GI recognition procedures.

In light of this, we encourage the Administration to engage with UK authorities to prioritize the resumption of negotiations and work toward establishing broader protections for common name use in the UK.

Vietnam

The Vietnam-EU FTA was implemented in 2020. The FTA contains provisions on GIs, including grandfathering rights. As we have noted in prior submissions, Vietnam has to date failed to confirm in writing those companies that have met the grandfathering clause provision. We urge the Administration to work with Vietnam to obtain this written confirmation.

Multilateral and Regional Trade Agreements

World Intellectual Property Organization (WIPO)

As more countries ratify the Geneva Act of the Lisbon Agreement on Appellations of Origin and Geographical Indications, CCFN is concerned with the disadvantages this represents for users of common names of cheeses, meats, wines, and other products. CCFN has continued to reach out to stakeholders in the U.S. and other countries about the risks to trade presented by the adoption of this biased system.

While WIPO has historically favored GI interests to the detriment of non-EU producers, CCFN has worked diligently to try to shift this dynamic. As the leading advocate for common names, CCFN holds "observer status" at this forum, leveraging its position to promote more balanced policies that protect the rights of common name users and prevent monopolistic control over food and beverage terms.

However, WIPO as an organization has yet to take a fulsome approach to ensuring true balance between the interests of GI applicants and the rights of common name users. We urge the Administration to collaborate with like-minded partners to support initiatives within WIPO that elevate the perspectives and interests of common name users as part of a fair and balanced GI protection regime. Addressing the current disparity in the multilateral system, where GI holders often enjoy disproportionate rights compared to common name users, is essential for promoting equity and protecting global trade practices.

UN Food and Agriculture Organization (FAO)

The UN FAO plays a vitally important role – it is through the FAO that critical international standards are developed by the Codex Alimentarius. As such, U.S. active membership and engagement in FAO – and Codex – is essential for U.S. exporters. However, as an organization funded in significant part by dues from the U.S. 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 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.

We urge collaboration with FAO to prompt a more balanced approach to the issue of GIs and common names.

Conclusion

In the face of various challenges that arose and continued in different countries in 2024, CCFN reaffirms its mission to preserve the right to use common food names. To this end, we are prepared to work closely with the Administration and look forward to reinforcing our collaboration in 2025 with the Office of the United States Trade Representative (USTR), the United States Patent and Trademark Office (PTO), the United States Department of Agriculture (USDA), the Department of Commerce, and the Department of State to ensure compliance by our trading partners with their international commitments with respect to common food and beverage terms, and guarantee market access rights for U.S. stakeholders.

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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