

STATEMENT OF OBJECTION

Council Regulation (EC) No 510/2006 on protected geographical indications and protected designations of origin

1 NAME OF PRODUCT

[as given in *Official Journal (OJ)* publication]

Gouda Holland

2 OFFICIAL REFERENCE

[as given in *Official Journal (OJ)* publication]

Reference number: EC No: NL/PGI/005/0328/27.11.2003

Date of *OJ* publication: March 3, 2008

3 CONTACT DETAILS

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4 REASON FOR THE OBJECTION:

- Non-compliance with the conditions laid down in Article 2 of Regulation (EC) No 510/2006
- Registration of the name would be contrary to Article 3(2) of Regulation (EC) No 510/2006 (plant variety or animal breed)
- Registration of the name would be contrary to Article 3(3) of Regulation (EC) No 510/2006 (name wholly or partially homonymous)
- Registration of the name would be contrary to Article 3(4) of Regulation (EC) No 510/2006 (existing trademark)
- Registration would jeopardize the existence of names, trademarks or products as specified in point (c) of Article 7(3) of Regulation (EC) No 510/2006
- The name proposed for registration is generic; details to be provided as set down in point (d) of Article 7(3) of Regulation (EC) No 510/2006

5 DETAIL OF OBJECTION

Provide a statement setting out the reasons and justification for the objection. Provide also a statement explaining the legitimate interest of the objector, unless the objection is lodged by the national authorities, in which case no statement of legitimate interest is required. The statement of objection should be signed and dated.

See Comments below on subsequent page, which include citation of the fact that the U.S. dairy industry has exported gouda to the EU and produces significantly quantities for sale of it in other markets as well.

August 29, 2008

**Comments by the U.S. Dairy Export Council (USDEC) and the
National Milk Producers Federation (NMPF)
Regarding Applications for
Protected Geographical Indications for
“Gouda Holland” EC No: NL/PGI/005/0328/27.11.2003
and “Edam Holland” EC No: NL/IGP/005/0329/27.11.2003**

The National Milk Producers Federation (NMPF) and the U.S. Dairy Export Council (USDEC) hereby submit comments in opposition to the applications published in the Official Journal of the European Union on March 1 and 6, 2008, which seek protection for the terms “Gouda Holland” and “Edam Holland” on grounds of geographical indication or designation of origin. NMPF and USDEC assert that special protection of these terms under EU law is inconsistent with long-standing international rules and commercial practice that recognize gouda and edam as generic cheese types, is unnecessary for consumer information purposes, and would establish a dangerous and unsettling precedent.

NMPF is the national association of federated dairy cooperatives in the United States that represents, through its 31 member cooperatives, which market a majority of the milk produced in the U.S., making NMPF an effective voice on national issues for dairy cooperatives and their dairy farmer members. Many NMPF cooperatives are also processors of cheese, and the milk produced by NMPF members is used, among many other purposes, for the production of gouda and edam cheeses that are marketed both in the United States and in international trade. NMPF represents its members on both national and international policy matters.

USDEC is an association of U.S. dairy producers, dairy processors and exporters that assists the U.S. dairy interests by monitoring trade and developments in the world market and by identifying export market opportunities for U.S. dairy products. The Council’s mission is to increase the volume and value of U.S. dairy product exports.

Edam and Gouda are types of cheese that are produced in many countries around the world and that are traded internationally. They are generic names for cheese types; they are not names that indicate a particular geographic origin. This is not an American perspective; it is perspective based on the reality of commercial trade that has developed over centuries, and on European and international law rules established nearly six decades ago.

In 1951, the countries of Europe, including most of the countries that now comprise the European Union, established the Stresa Convention on the Use of Appellations of Origin and Denominations of Cheese. While certain cheese names listed in Annex A of the Convention were determined to confer origin, others listed in Annex B of the Convention were deemed to be generic names. Edam and Gouda were among those generic, Annex B cheese names. Annex A cheese names were protected even if combined with other words; Annex B cheese names – and again we emphasize, these included edam and gouda – were not protected and, in fact, could never become protected terms under the terms of the Convention.

The distinctions established in the Stresa Convention reflected the reality of actual trading behavior prior to the formation of the Convention, and reflect the reality that has existed ever

since. Dairy producers and processors in the United States and other countries have for many years produced both "edam" and "gouda" cheeses and have marketed those products both nationally and internationally. Indeed, the United States has exported both edam and gouda cheese products into the markets of countries that are members of the European Union without facing any restrictions with respect to the use of those terms.

Similarly, producers in various European countries, and not just the Netherlands, have produced edam and gouda cheeses and have exported those cheeses to the United States without facing any restrictions with respect to the use of those terms. As a matter of international law, it has been perfectly clear for nearly 60 years that both uses are entirely legitimate and that the terms "edam" and "gouda" are generic terms for cheese that can be used by anyone who manufactures cheese to certain specifications, and not terms that denote a geographical indication or an appellation of origin.

This reality has also been reflected in the development of international trade rules, most prominently in the standards of the Codex Alimentarius with respect to the labeling of cheese, that also identify gouda and edam as generic terms. As recently as 2007, the Codex Committee endorsed new cheese labeling standards that continue to treat gouda and edam as generic terms and which the Committee described as "equitable." International law recognizes that, given the history of trade in these cheeses, that the terms gouda and edam can be fairly used by manufacturers in any country.

The suggestion in the applications that they are somehow intended to facilitate consumer information or to protect consumer interests are contrived and misleading. We would note that under the terms of the Stresa Convention, there is a proviso that countries manufacturing Annex B type cheeses are to indicate on the cheese label the name of the country in which the cheese was manufactured. In addition, many countries maintain country of origin labeling requirements. Thus, there are already national and international rules which are intended to guarantee that consumers are provided with information both about the type of cheese they are purchasing and where that cheese was produced. Thus, the applications under consideration seeking specific protection for the terms "Gouda Holland" and "Edam Holland" are not only inconsistent with the long-standing international law principles treating these cheese names as generic, they are totally unnecessary for consumer information purposes as gouda and edam cheeses manufactured in the Netherlands can be – and are -- already labeled to indicate national origin.

The only purpose that can be served by approving these applications is to insert uncertainty and confusion into the international cheese markets where clarity has existed for nearly 60 years. Under European decisional law, the protection of a compound term – such as "Gouda Holland" or "Edam Holland" – does not confer protection on the individual elements of that term. Under that well established rule, the protection of "Gouda Holland" would not constitute a protection of either "gouda" or "Holland" and, thus, manufacturers of gouda in the United States and other countries would presumably remain free to market their products under the generic terms of "gouda" or "edam" without restriction.

However, recent European court decisions interpreting EC Regulation 510/06, and in particular Article 13(1)(b) of that regulation, now make this uncertain. The European Court of Justice has generously applied the so-called "evocation" standard in EC regulations to protect terms that have been afforded geographical indication status from other terms that are significantly different from protected terms, but which that court determined are similar

enough to "evoke" the protected terms in the consumer's mind. For example, the European Court of Justice has held that the term "Cambazola" is evocative of "Gorgonzola" and the term "Parmesan" is evocative of "Parmigiano Reggiano." In light of these decisions, applications for special protection of "Gouda Holland" or "Edam Holland" create significant concern for the U.S. industry.

Most prominently, the U.S. dairy industry is concerned that the applicants are attempting to obtain special protection of the terms "gouda" and "edam" through the back door. Even though those terms have been considered generic for many decades and permissible for use by manufacturers in all countries, special protection under European law of the terms "Edam Holland" or "Gouda Holland" will create legal uncertainty for companies who have previously -- and legitimately -- labeled their products as edam and gouda. Will the use of the terms gouda and edam by manufacturers outside of Holland be suddenly challenged in the European courts as "evocative" of the newly protected terms "Gouda Holland" or "Edam Holland." Will legitimate trade suddenly be determined no longer permissible?

While the U.S. dairy industry is immediately concerned that these applications could be used to undermine the legitimate trade interests of its members in selling gouda and edam cheeses, it is worthwhile to also note that it would be in the best interest of many throughout Europe for these applications to be rejected. "Edam Holland" and "Gouda Holland" are simply attempts by the applicants to appropriate to themselves trade generic terms that have been legitimately available world-wide to all participants in the industry. If the European Union fails to maintain rigor in its system, it will lose the respect of other participants in the world trade and of other governments who will immediately recognize this as a blatant attempt to overreach. Ultimately, the biggest loser will be European interests.

In summary, the terms edam and gouda have been considered for decades as generic terms as a matter of commercial practice, under international conventions, in international standard-setting, and as a matter of European law. Applicants' requests for special legal protection for compound terms that incorporate edam and gouda are nothing more than thinly-veiled attempts to appropriate to themselves trade terms that have heretofore been legitimately available to everyone in the cheese trade. The request is legally unjustified, patently unfair, and, if approved, would constitute a dangerous precedent, potentially destructive not only to the interests of U.S. producers, but ultimately to the EU system and to EU producers.

NMPF and USDEC thank the Commission for this opportunity to express their views and respectfully request that the applications be rejected.

Sincerely,



29/8/08

Jerry Kozak
President and CEO
National Milk Producers Federation



29/8/08

Thomas M. Suber
President
U.S. Dairy Export Council