CFN Consortium for Common Food Names

Oral Testimony by the Consortium for Common Food Names
Regarding the 2017 Special 301 Review
Docket Number USTR–2016-0026
March 8, 2017

Thank you [Madame/Mr.] Chairman,

I appreciate the opportunity to present the views of the Consortium for Common Food Names on a matter of critical importance to our members – the aggressive pursuit by the European Union to misappropriate the right to use commonly used food names worldwide and the actions of several of our trading partners in response to that pressure.

CCFN is a global non-profit alliance of consumers, farmers, food producers and retailers. Our mission is to preserve the legitimate rights of producers and consumers to use common names, to protect the value of internationally recognized brands and to prevent new barriers to commerce.

We have submitted for the record a detailed examination of the scope and breadth of the EU's efforts to harm U.S. farm, food and manufacturing sectors by monopolizing common food names through geographical indications (GIs). So, in the time available today, I will just touch on some key points.

First, let me say that CCFN is not at all opposed to the concept of geographical indications. Many countries protect legitimate GIs, including the United States through its certification mark system. When properly targeted to protect unique regional products, GIs can be a useful intellectual property tool for some producers.

But the EU's approach is far from properly targeted. Rather, it is a system designed to steal commonly used names from those who built markets for those products and instead monopolize use of those terms in foreign and domestic markets. What better way to erase competition in third country markets than to ban the use by competitors of commonly used names?

And make no mistake, this is not about the quality of products being sold under those terms. In fact, when a Wisconsin-made parmesan went head to head against all Italian Parmigiano Reggiano's in a cheese competition in the EU a few years ago, it was the Wisconsin cheese that beat out its Italian competitors. The Italian response to this was not to applaud a worthy competitor and up their own game next year. Instead it was to force the competition to eliminate the parmesan category entirely so that such a travesty could never happen again.

Not content to strip competitors from using long-established and widely used food terms in its domestic market alone, for the past few years, the EU has also been pursuing through its many FTAs and through the World Intellectual Property Organization an increasingly aggressive strategy to restrict the worldwide use of common food names by non-EU producers.

As a result, several of the EU's FTA partners and WIPO Lisbon Agreement members have bypassed their normal intellectual property procedures and approved lists of GI names in the

context of those trade agreements. This approach has often made it very difficult if not impossible for interested parties to register objections to the registrations or to influence decisions regarding scope of protection. The fact that these countries have taken these actions in response to pressure from the EU does not alleviate those countries' own obligations to uphold their commitments to provide certain levels of market access to American-made products and follow critical IP due process procedures.

This is an issue that threatens to impact a variety of sectors – from dairy to wine to meat to horticulture to rice and more. GI systems cover all manner of food and agricultural products and are poised to continue an expansion into covering non-food manufactured products such as textiles and apparel, ceramics and other products as well.

Existing IP and trade restrictions on the use of common names across broad categories of products will continue to expand if efforts of GI proponents are not properly checked with robust due process procedures and safeguards for commercially important common terms. As critical as IP rights are, all companies also rely on a variety of common names. Undermining these bedrock safeguards, which are so essential to well-functioning trade and IP systems, will threaten the production of a variety of U.S.-made products and the jobs of the American workers that produce them.

We strongly condemn the EU's policies and actions, but we also believe that those countries that are flagrantly disregarding their trade and IP commitments in order to curry favor with the EU must be held to account for the unjustified market access restrictions they are creating against U.S. exports. The EU-Canada FTA is a prime example of this wherein fault lies with the EU for insisting on GIs for generic terms such as muenster and asiago, but considerable fault also lies with Canada for caving to the siren song of securing greater market access to the EU and in the process abandoning its due process procedures for IP and prior market access commitments.

In the context of these challenges, it is worth noting that the United States is by far the largest foreign destination for EU food and agricultural products. In addition, the U.S. runs a trade deficit in goods with the EU of $146 billion with well over a billion dollar deficit in dairy products alone. Intentionally trying to hamstring its largest customer and make them less globally competitive is certainly an interesting way to show appreciation for the strong market the EU enjoys in this country.

As trade policy strategy is developed this year, we would urge the Administration to build further upon its past successes in pushing back against the EU's global GI agenda. This work should continue to include both bilateral engagement with our trading partners and incorporation into any trade agreement discussions. A strong starting spot for the latter is the ground-breaking GI text that was included in the Trans-Pacific Partnership.

In conclusion, our organization strongly supports the government's efforts to ensure that GI and other similar regulatory petitions are properly notified and applied; that they do not prevent the use of common terms; that clear and reasonable scope of protection is established that preserves the use of common terms; and – most importantly – that they do not violate prior rights and obligations under international agreements. We cannot allow our trading partners to chip away at the value of prior WTO or FTA concessions through the imposition of unjustified restrictions on common terms.

We look forward to continuing to work closely with USTR, USPTO and USDA to achieve these ends.

Thank you.