



**Comments by the Consortium for Common Food Names Regarding the
2024 Special 301 Review (Docket: USTR-2023-0014)
January 24, 2024**

The Consortium for Common Food Names (CCFN) submits these comments in response to the notice of request for public comments concerning the 2024 Special 301 Review: Identification of Countries Under Section 182 of the Trade Act of 1974 (Docket Number USTR-2023-0014). 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 21, 2024. CCFN Executive Director Jaime Castaneda 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 2023, CCFN members faced increased restrictions - or attempts to impose restrictions - on the use of common food and beverage terms in various markets. These restrictions don't only contradict international commitments adopted by U.S. trading partners but call into question the integrity of procedures under the intellectual property (IP) systems of the different countries involved.

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. The EU doubled down in 2023, developing new regulations to further promote its biased and unfair approach towards GI recognition. 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 once again urge the Administration to adopt a decisive and proactive approach to address the abuse of GIs around the world, either by specific agents, or by the imposition of the unfair model pursued by the EU. This engagement is key to ensure the success of the efforts from our organization.

To that end, we request that the Administration intensify its support of U.S. farmers' and manufacturers' ability to compete fairly in foreign markets by securing firm and explicit commitments ensuring the future ability to use

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.

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 sought to impose restrictions on the use of common names through the recognition of GIs. The 15th round of negotiations took place from April 24 to 28, 2023. In July 2023, negotiations broke down, but both parties agreed to the possibility of further discussions. However, in October, negotiations faced a new stalemate, which considerably reduced the prospects of reaching an agreement in the near term, particularly due to European Parliament elections in 2024.

Despite the failure by Australia and the EU to reach an agreement in 2023, we urge the Administration to engage with its Australian counterparts to ensure that this important U.S. partner maintains the free use of common food and beverage names and prevents any new attempt from the EU to confiscate generic names and preserving the full value of the market access concessions in the framework of the AU-US FTA.

Canada

The EU and Canada failed to make significant progress in the implementation of the Comprehensive Economic and Trade Agreement (CETA) in 2023. However, CCFN would like to reiterate the importance of ensuring that any future request for recognition of GIs in Canada be conducted consistent with its obligations under the Agreement between the United States of America, the United Mexican States and Canada (USMCA), including due process procedures, guidelines for the determination of common names, and requirements applicable to multi-component terms. This is key as the three countries move towards the Sunset Review, foreseen under article 34.7 of the USMCA.

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 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 by European consortia, thus further limiting the use of the terms in sectors which do not relate to the protection of the GI.

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, the Dominican Republic-Central America FTA, or even new integration efforts, such as the Americas Partnership for Economic Prosperity (APEP), 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.

Chile

On December 13, 2023, EU and Chile signed an Advanced Framework Agreement (AFA) and an Interim Trade Agreement (ITA). The ITA comprises most of the trade provisions of a bilateral FTA, including disciplines regarding GI recognition. It will enter into force once the Chilean Congress and the European Parliament conclude their corresponding approval procedures. The ITA will not be submitted for approval of the parliaments of the different EU Member States.

The GI provisions agreed under the ITA to grant expansive protections for 216 GIs, including many commonly used names. Once ratified, the agreement will grant monopolistic rights to EU suppliers of many common name products, negatively impacting U.S. exports to Chile.

The GI provisions under the ITA reflect the biased and unfair approach that the EU has imposed on its recent FTA negotiations around the world. The Agreement does not exclude common food and beverage names from GI protection. On the contrary, it only allows for the continued use of the terms “parmesan” and “gruyere” for prior users under a set of strict conditions that did not allow the consideration of foreign agents. Therefore, only Chilean producers and importers that were able to prove a recurrent presence in the Chilean market for a period of 12 months before December 9, 2022, were given the opportunity to request to be added to the prior users list. Since U.S. producers and exporters were unable to file the request to local authorities, CCFN requested last year the support from the U.S. government to resolve this issue. CCFN takes this opportunity to reiterate the urgent need to approach the Chilean government to not only call their attention to the discriminatory prior users’ list, but to avoid the approval of an Agreement that is already undermining an important relationship with the U.S.

Moreover, since Chile has yet to provide an opposition process regarding the names for which the EU is seeking recognition as GIs under the ITA, we also request that the Administration seek clarifications from Chilean authorities on how they will ensure compliance with the obligations applicable to GI-recognition procedures under the Comprehensive and Progressive Agreement for Trans-Pacific Partnership (CPTPP). The goal is to ensure the existence of opposition procedures with respect to GIs that could be recognized or protected pursuant to agreements that enter into force after the CPTPP.

Chile has ongoing FTA negotiations with the European Free Trade Association (EFTA). As part of these negotiations, on April 6, 2023, Chilean authorities opened a public consultation regarding the terms for which EFTA countries have requested recognition as GIs, to inquire if their recognition as GIs could undermine or affect any commercial interests. The list of terms included “emmental” and “gruyere”.

On May 8, 2023, CCFN participated in this process and provided evidence that those terms were of common use in the industry. However, Chilean authorities have yet to respond or provide the results of the public consultation. We urge the Administration to inquire with the local authorities about outcome of the public consultation to provide certainty for U.S. traders regarding the continued common use of those terms in Chile.

China

On December 2nd, 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 is seeking recognition as GIs under the Phase 2 of the *Agreement between the European Union and the Government of the People’s Republic of China on*

Cooperation on, and Protection of, Geographical Indications. 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, however, Chinese authorities have not released the results of the opposition process.

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. Ultimately, only by obtaining commitments protecting the use of common food and beverage terms will the U.S. be able to fully address the expanding challenges in this market for common name users.

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. These interpretations have also resulted in trademark refusals based on the opposition from European entities on the grounds of a GI recognition, despite involving different terms such as “parmesan” and “Parmigiano Reggiano”. These interpretations broaden the scope of protection of GIs in a manner 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 request the Administration engage with their Colombian counterparts to discuss and address this situation.

Ecuador

In addition to restrictions that resulted from Ecuador’s FTA with the EU, U.S. dairy producers faced common name constraints imposed via litigation, which began in 2021, impacting the use of the generic term “parmesan”. As legal proceedings continue, we reiterate our call for USTR to work with Ecuador to establish an appropriately defined scope of protection, which respects the generic nature of food and beverage names in the Ecuadorean market, as well as those individual components of multi-term GIs that should remain free for use by U.S. exporters.

European Union

In 2023, 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.

In the first instance, the Regulation (EU) 2023/2411 entered into force on November 16, 2023. This new policy establishes a GI protection regime for craft and industrial products. At the same time, significant changes were being proposed to the existing regulations covering GI protection for wines, spirit drinks, and agricultural products.

In November 2023, EU institutions finalized a reform of the EU GI regime¹ for wines, spirit drinks and agricultural products, which aim to expand the protection granted under the EU legal framework. These provisions are expected to be officially published and entered into force this year. CCFN filed comments on August 30, 2022, but we have not received a response. Some of the most notable provisions include the following:

- The document provides a single set of procedures for all GIs (wine, spirit drinks and agricultural products), instead of a more limited set for 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.
- 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.
- 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. Moreover, the welcomed proposals from the European Commission, which involved assigning the EU Intellectual Property Office the task of scrutinizing applications, were ultimately rejected during the legislative process. The strengthening of rights and prerogatives of GI producer groups.

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 towards 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 revisions 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

¹ Proposal for a Regulation of the European Parliament and of the Council on European Union 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.

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.

More than ten years have passed since the U.S. wine industry applied for approval of their use and, to date, the EU has only approved two of the thirteen applications. Winemakers from at least seven 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 2023, 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

In 2022, Japan agreed to recognize 28 additional terms as GIs under its FTA with the EU. Japan's GI opposition process continues to be used as the vehicle to consider additional applications. While Japan's approach to dealing with common names is preferable to other markets, it too leaves room for improvement. We recommend the U.S. officials work with Japanese counterparts so that:

- Japan ensures that all those with products in the market prior to the implementation of the Japan-EU FTA be covered by the "prior use" provisions, in keeping with the terms of the 2018 notification from Japan to the Members of the Committee on Technical Barriers to Trade, regarding prior users.
- Japan provides assurances that specific common food and beverage terms will remain free for use by U.S. exporters.

We urge the Administration to seek and negotiate with Japan a common food and beverage term list 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 to avoid any future disruptions in trade.

Kenya

On December 18, 2023, EU and Kenya concluded negotiations of an Economic Partnership Agreement (EPA). This agreement included 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.

Those provisions include cooperation to develop policies and legal frameworks on GIs, as well as to establish regulations on GIs. This could constitute the departure point for the EU to seek the imposition of its unfair GI model on to the Kenyan legal framework. Therefore, we urge the Administration to work with Kenya to obtain an agreement regarding common food and beverage terms, with the goal of ensuring that the terms remain free for use by the U.S. producers and exporters.

Korea

In 2022 the Korea-EU FTA expanded its set of recognized GIs. The Korean government's assurances to protect multi-term GIs, translations or transliterations of GIs, and generic terms are particularly vital, yet would benefit from further expansion. Therefore, we reiterate our request to the Administration to negotiate with Korea a 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.

India

Since June 2022, the European Union (EU) and India have been engaged in the negotiation of a bilateral FTA, an Investment Protection Agreement (IPA), and an Agreement on Geographical Indications.

Regarding the GI agreement, according to public information, only two rounds of negotiations have taken place: the first from June 27 to July 1, 2022, and the second in October 3-7, 2022. 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.

We call on the Administration to monitor developments in this process and, whenever needed, engage in discussions with Indian authorities to work on a mechanism that avoids restricting the use of common food and beverage names because of the GI agreement between India and the EU.

Indonesia

Indonesia and the EU launched their FTA negotiations in July 2016. According to information published by the EU, there have been sixteen rounds of negotiations, four of which were held in 2023 (February, May, July, and December). According to the same sources, during the 13th round, in February 2023, an agreement was reached on the GI text, and the list of respective names to be recognized by each party as GIs was expected to be finalized in the following months.

To effectively prevent the creation of new trade barriers in this market, we urge the Administration to step up its efforts to engage its Indonesian counterparts and 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. Since December 2022, Malaysia has yet to take a position on the possible resumption of the negotiations. Regardless of the status of these discussions, CCFN calls on the Administration to work with Malaysia to ensure the existence of a fair GI recognition regime, according to Malaysia's international commitments under the CPTPP, and to work towards 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. However, since the announcement of the conclusion of the Mexico-EU FTA negotiations in 2020, there has been no developments regarding the signature or implementation of the FTA. In 2023, further discussions took place between the parties, pursuant to an agreement between presidents Von der Leyen and Lopez Obrador to conclude negotiations by year's end. However, the deadline passed with no announcements from either side. It is uncertain whether Mexico and EU will continue bilateral discussions during 2024.

Even if the agreement has yet to enter into force, or even signed, the Mexican IP authority has started refusing trademark applications based on EU GIs which are still not recognized in the Mexican territory. This is concerning because the authority claims that GIs are to be considered as a ground for refusal of trademark applications even if they are only protected in their country of origin – and not in Mexico. This deserves action from the Administration in order to avoid uncertainty and trade barriers arising from an FTA that has not yet been signed by Mexican and EU authorities.

In addition, despite the positive precedents set by the USMCA to foster a balanced GI regime in Mexico, including the legitimate right to use common names, we remain concerned that Mexico has not fully implemented the USMCA side letters on cheeses and prior users, the provisions for determining whether a term is a customary term in the common language, and the provisions applicable to multi-component terms. These elements relate to the pending issuance of the Implementing Regulations of the Federal Law of the Protection of Industrial Property (*Ley Federal de Protección a la Propiedad Industrial*). We request that the Administration intensifies its engagement with the Mexican authorities to ensure the GI provisions of the USMCA are fully implemented as soon as possible.

Mercosur: Argentina, Brazil, Paraguay and Uruguay

The FTA negotiations between the EU and the Mercosur countries (Argentina, Brazil, Paraguay and Uruguay) concluded in June 2019. However, the FTA has not yet been signed by the parties. 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.

As noted in previous submissions, the list of prior users set by Brazilian authorities was changed several times from its original publication in 2020, first in December 2021, then in May 2022, and again in July 2022. Each change further narrowed the interpretation of “prior users” and disqualified non-Brazilian entities from claiming prior user status. This confirms the high degree of uncertainty with the implementation of GI commitments under the Mercosur-EU FTA, and the need to communicate with the Brazilian government concerns about its disregard for objective consideration of GI applications and its intent to implement new policies which will restrict trade.

In last year’s submission, we highlighted that CCFN faced administrative actions in Brazil regarding two registered trademarks comprising common terms, “parmesan” and “asiago”. This was particularly concerning in the case of “asiago”, since the term was expressly recognized as common name by the Brazilian IP authority under the domestic legal system. Nevertheless, on November 21, 2023, the Brazilian IP Office accepted the cancellation process of the trademark including the term “asiago” and declared null the prior registered trademark.

While CCFN actively defends its cases and monitors further developments regarding the Mercosur-EU FTA, 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

FTA negotiations between New Zealand and the EU concluded on June 30, 2022, and the agreement was signed on July 9, 2023. As part of the outcome, New Zealand agreed to recognize as European GIs a list of 1,967 terms.

CCFN had previously expressed its appreciation for New Zealand's IP system. However, the provisions and the number of names recognized as GIs is disappointing, considering that many of them are commonly used names. New Zealand's concession to the EU also contradicts its CPTPP commitments to implement a fair and balanced GI recognition system.

In February 2023, CCFN submitted comments as part of the public consultation about the implications of the FTA implementation and the GI legislation of New Zealand. In August 2023, the government provided an update on implementation of the protection system for EU GIs under the FTA and indicated that an FTA Implementation Bill was being prepared, covering the changes to the GI Act. The Bill was scheduled to be introduced before the end of 2023, but there was no indication whether CCFN's comments were taken into consideration.

We urge the Administration to work with New Zealand to guarantee that the free use of common food and beverage names is not as impacted because of the NZ-EU FTA .

Philippines

On July 31, 2023, the EU and the Philippines announced their intention to explore the relaunch of negotiations for an ambitious, modern, and balanced FTA. Negotiations are expected to begin in 2024 and to conclude within 5 years. We call on the Administration to seek parallel discussions its Philippine counterparts to ensure the free use of common terms and market access for U.S. exporters of products.

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*. According to the invitation, the Committee deemed it necessary to seek the position and comments of relevant organizations who were unable to attend a public hearing and technical working group meetings held previously. Comments would be considered in a Bill's Committee Report, which was expected to be finalized before July 2023.

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 Philippines 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. In this regard, we request USTR to follow-up with authorities in the Philippines to address the development of the new GI regime.

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 been hampered in using the system to handle GI cancellations and CCFN has faced extensive costs and difficulties contesting errors and omissions in the GI recognition system.

As an example of the increasing restrictions to the use of common names, on March 31, 2023, the High Court of Singapore issued a decision that declared that “parmesan” is a translation of Parmigiano Reggiano. Neither the text of the EU-Singapore FTA, nor the GI registration of Parmigiano Reggiano, included reference to the term “parmesan”. The decision broadened the scope of protection that was only given to the term Parmigiano Reggiano and resulted in the removal of parmesan-labeled products from retail stores’ shelves. These actions were taken without a mandate from the authorities, which added further uncertainty to the free use of common names in that market.

As CCFN analyzes its options to avoid further common name restrictions, we urge the Administration to engage with Singapore to avoid the further erosion of our access to this important market and to obtain assurances that common food and beverage terms will remain free for use by U.S. exporters.

South Africa

On June 30, 2023, South Africa and EU held an event entitled “An African perspective on GIs: how the Continental Strategy for Geographical Indications in Africa contributes to resilience and sustainability of food systems.” Topics covered included “GIs as a guarantee for food safety” and the entry into force of the African Continental Free Trade Area which stipulates that consumers be fully informed about food quality schemes like GIs. Considering these developments, we call on the Administration to take action to avoid further erosion of the use of common food and beverage names to preserve access to this growing market for U.S. exporters.

Thailand

In March 2023, the EU and Thailand agreed to relaunch negotiations for an ambitious, modern, and balanced free trade agreement (FTA), with sustainability at its core. A first round of negotiations took place September 18-22, 2023, in Brussels.

The EU has already imposed its GI approach in different FTAs with key Asian markets, such as Korea, Japan, and Vietnam. We urge the Administration to engage with its Thai counterparts to seek mechanisms that prevent any impact on the free use of common names that may result from the ongoing FTA negotiations with the EU.

United Kingdom

CCFN reiterates its request for 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.

Vietnam

The Vietnam-EU FTA was implemented in 2020. The FTA contains provisions on GIs, including grandfathering rights. As we noted in prior submissions, Vietnam failed for more than two years 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 as soon as possible.

During the past year, Vietnam issued legal measures regarding their IP regime. In August 2023 CCFN submitted comments to the Draft Circular Guiding and Implementing the IP Law, but no update has been issued by authorities to date. On October 3, 2023, Vietnam implemented the *Decree No. 65/2023/ND-CP detailing and guiding the implementation of some articles of the 2022 Intellectual Property Law with respect to the establishment and protection of industrial property rights*, which regulates the general principles on establishment, control, and enforcement of IP rights. On November 30, 2023, the Vietnamese government implemented the *Circular No. 23/2023/TT-BKHCN detailing the implementation of some articles of the 2022 Intellectual Property Law*, which refers to GIs.

We call on USTR to clarify with Vietnamese authorities the implementation status of its international commitments, and to ensure that the new measures enacted in 2023 provide security and predictability as to the availability of common terms and their free use in the Vietnamese market. We urge the Administration to negotiate with Vietnam to establish a common food and beverage term list to ensure that their use and the corresponding access for U.S. products to that market is not disrupted. CCFN will continue to monitor any developments and share information on possible trade barriers arising from measures or decisions taken by Vietnamese authorities.

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, we are concerned with the disadvantages this represents for users of common names of cheeses, meats, wines, and other products. CCFN will continue to reach out to stakeholders in the U.S. and other countries about the risks to trade with the adoption of this biased system.

We request that the Administration work closely with like-minded partners to support efforts within WIPO to position the views and interests of common name users, as part of balanced GI protection regimes. We believe this could assist in addressing the tremendous imbalance between the rights available to GI holders in the multilateral arena vis-à-vis common name users around the world.

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 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 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

In the face of various challenges that arose and continued in different countries in 2023, CCFN reaffirms its mission to preserve the right to use common food names. Therefore, we are prepared to continue our joint work with the Administration, and look forward to reinforcing our collaboration in 2024 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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