Comments by the Consortium for Common Food Names Regarding the 2023 Special 301 Review (Docket: USTR-2022-0016) January 30, 2023

The Consortium for Common Food Names (CCFN) submits these comments in response to the notice of request for public comments concerning the 2023 Special 301 Review: Identification of Countries Under Section 182 of the Trade Act of 1974 (Docket Number USTR-2022-0016). CCFN values the opportunity to present again its views on this annual report.

CCFN is an independent, international non-profit alliance that represents the interests of consumers, farmers, food producers and retailers. Membership includes companies and organizations from around the world, including in several emerging economies. Our mission focuses on the preservation of the legitimate rights of producers and consumers worldwide to use common names, 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 them 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.

In 2022, CCFN celebrated its 10th anniversary. Looking back on a decade of defending common names, we feel proud of our accomplishments and as committed as ever to our mission. Consumers deserve to enjoy a variety of high-quality products and preserving the right to use common names is key to achieving that goal. To that end, we will continue our unwavering efforts to achieve market access for producers of products relying on common food names – including those in the United States – and urge the support of the U.S. government in securing a level playing field for American-made products.

CCFN members are facing increased restrictions on the use of common food and beverage terms in various markets, in ways that contradict international commitments and even call into question the integrity of procedures under the countries' own intellectual property (IP) systems. Throughout the last year, the European Union (EU) was persistent in its endeavors to monopolize common food and beverage names through unfair schemes that require the recognition of GIs and other protected terms in the context of the negotiations of trade agreements, among other actions in different jurisdictions.

Considering this dynamic of how GIs are routinely dealt with in practice, we would like to call your attention again to the need to pursue a more targeted and proactive approach to effectively dealing with the abuse of GIs.

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 assuring 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.

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

Overview of Global Dynamic

Our prior submissions have highlighted the risks arising from disproportionate GI policies adopted by the EU and have warned about the barriers resulting from the EU's strategy to export those policies via its trade agreements in different jurisdictions.

Last year, the EU published a revised version of its GI legislative framework, which we consider a new step in the wrong direction. The framework lacks clarity regarding the existence of common names, and broadens the scope of protection for GIs, including in the domain names system.

At the same time, the EU has continued to negotiate free trade agreements in key markets for U.S. products (such as Australia, Chile, and New Zealand). The strategy remains unchanged: in exchange for ostensibly expanding market access concessions, the EU monopolizes the use of a significant number of commonly used terms, even when it is clear the terms have long-standing generic usage in those other jurisdictions.

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

Bilateral and Selected Multilateral Issues

Through our submission, we welcome this opportunity to provide information about several cases that exemplify the way in which the EU is expanding its unfair GI protection model. This is an illustrative, not comprehensive list of global challenges.

Australia

In June 2018, Australia and the EU launched negotiations for a free trade agreement. During 2022,

an extensive list (composed of 166 foodstuff names, and 234 spirits names)[1] of EU GIs remained under active consideration between the EU and Australia. An update report on the negotiations held from February 7 to February 18, 2022,[2] stated that "*further discussions took place on solutions for prior use conflicts with several EU GI names and respective disciplines. While a number of important issues remain, discussions have continued to evolve positively*". In October 2022, an official report stated that "*positions on solutions for prior use conflicts also came closer and the situation regarding prior rights was clarified*". These reports clearly indicate that Australia is not judging the EU's GI requests on their impartial merits but rather on how they fit into the negotiating dynamic. If the requests for recognition were considered independently and based on their genuine merits, no such negotiations on specific terms and prior usage would be needed given that Australia has a fully functioning IP system capable of extending protection to legitimate GIs that do not impair the use of generic terms.

It is our understanding that both sides intend to conclude negotiations during 2023. We urge the Administration to secure confirmations from Australia that specific common food and beverage terms will remain free for use by U.S. exporters to preserve the full value of the market access concessions the United States secured under the U.S.-Australia FTA.

Canada

Despite the unfortunate precedent set by the recognition of IP rights for generic terms under the Comprehensive Economic and Trade Agreement (CETA), 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 U.S.-Mexico-Canada Agreement (USMCA), including due process procedures, guidelines for the determination of common names, and requirements applicable to multi-component terms.

We remain concerned about actions by some EU GI stakeholders which are designed to take advantage of Canada's trademark system to expand the scope of protection for registered trademarks containing names already recognized as GIs under CETA (e.g., to cover not only goods, but also services) and how this may undermine the usage rights for common terms established under CETA.

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

Some countries in the region, such as El Salvador, Guatemala, and Honduras, have at least been willing to provide important clarifications regarding the treatment of common names that are components of certain multi-component GIs of particular interest to U.S. companies. However, we remain concerned that other countries, namely Panama, Nicaragua, and Costa Rica, have to date not yet provided the same assurances for those and other commonly used terms.

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

[2] Source: https://policy.trade.ec.europa.eu/eu-trade-relationships-country-and-region/countries-and-regions/australia/eu-australia-agreement/documents_en

We call on the Administration to use bilateral, CAFTA or APEP channels to secure confirmations from our trading partners in the region that specific common food and beverage terms will remain free for use by U.S. exporters to preserve the full value of the market access concessions the United States secured under CAFTA.

Chile

The Chilean Government and the European Commission (EC) announced the conclusion of the negotiation of the Chile-EU FTA on December 9, 2022. Soon after that, the EU published the text of the agreement, which remains subject to legal scrubbing. The agreement contains more than 200 GIs. As has been the case in other countries, the EU took advantage of these negotiations to impose obligations that would monopolize common food and beverage terms, which will deny buyers and producers the right to trade products using those names once the new FTA is implemented.

The published text of the GI section within the Intellectual Property Chapter of the FTA is the latest example of the approach followed by the EU in previous agreements, such as the Mexico-EU and the Mercosur-EU FTAs. The disciplines provide for an unbalanced GI protection regime, which does not offer enough guarantees for the preservation of the right to use common names.

We urge the Administration to pursue assurances from the Chilean Government regarding the continued free use of common names in this U.S. FTA partner market.

China

September 2023 will mark the third anniversary of the signature of the "100 for 100" GIs agreement, which entered into force early in 2021 and resulted in increased restrictions for U.S. products, including dairy and meat products, shipped to 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 "100 for 100" agreement. As in the case of the original list of recognized terms, this new list includes commonly used food and beverage terms.

CCFN is engaging in the opposition process. In tandem to this we urge the Administration to ensure that any measures taken in China follows the U.S.-China Phase One agreement, and does not undermine market access for U.S. exports using trademarks or generic names. Ultimately, only securing commitments protecting the use of common food and beverage terms will fully address the expanding challenges in this market for common name users.

Colombia

The clarifications provided by Colombia on the scope of protection of certain multi-term GIs must be upheld and the use of additional commonly used terms preserved. Therefore, we urge the Administration to step up its efforts to confirm that specific common food and beverage terms will remain free for use by U.S. exporters to preserve the full value of the market access concessions the United States secured under the U.S.-Colombia FTA.

Ecuador

In addition to restrictions that resulted from Ecuador's agreement with the EU, U.S. dairy producers faced common name constraints last year imposed via litigation 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.

Europe

As explained throughout this document, during 2022 the EU moved forward with the recognition of GIs under FTAs or specific "standalone" agreements. This was coupled with new draft legislation aimed at broadening the scope of protection of GIs, which reinforces its already biased and unbalanced GI protection regime and fails to provide certainty to common name users.

On March 31, 2022, the EC published a proposal reviewing GI legislation (repealing Regulation (EU) No 1151/2012 on agricultural GIs and amending Regulation (EU) No 1308/2013 –wines– and Regulation (EU) 2019/787 –spirit drinks–). The stated objectives that guided this review are to enhance protection of GIs and provide more efficient registration processes, and to increase the uptake of GIs across the EU.

From CCFN's standpoint, the proposal does not represent an improvement for producers and users of common food names, and instead, includes provisions that favour GI applicants even more. The main points of interest in the proposal are the following:

- The document provides a single set of procedures for all GIs (wine, spirit drinks and agricultural products).

- The inclusion of procedural changes, such as the shortening of the opposition procedure deadline (now 3 months), the distinction between standard and European Union amendments, and a reduced role of the EC in scrutinising applications.

- The insertion of the meaning of evocation, the protection of GIs in the domain names' system and as ingredients.

- A framework to include sustainability criteria as part of GI specifications, on a voluntary basis.

- The establishment of stronger prerogatives for specific producer groups on enforcement.

CCFN is concerned not only with the negative effects that will result from procedural changes, such as the shortening of the opposition procedure, but also with the disproportionate expansion of protection through the definition of evocation, the protection of GIs as ingredients, and protections within the domain names' system. Additionally, a reduced role for EU-wide scrutiny by the EC is likely to result in even more applications that impact the use of common food names as the perspectives individual member states will be elevated in this new approach at the expense of producers in other member states

and those outside the EU. 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.

In addition to the points mentioned above, we note that the proposal does not include a provision on generic names. According to the document, the EC can adopt secondary legislation providing for additional rules for determining the generic status of terms. However, this possibility has always existed, so it is unlikely that any breakthrough will happen as result of this new proposal. This merely preserves a status quo that lacks much-needed certainty for common name users.

Finally, the proposal includes the possibility of producer groups to agree on sustainability undertakings to be adhered to in the production of a GI. Even though these undertakings are not compulsory, we consider that they should comply with specific principles, and they are better suited to cross-cutting sectoral or economic policy frameworks, not producer intellectual property protections.

In brief, the measures under the proposal published by the EC in March 2022 reconfirm the EU's continued efforts to establish greater restrictions that extend beyond GIs themselves.

We would also like to reiterate our long-standing concerns regarding the EU's abusive restrictions of commonly used winemaking terms. Certain U.S. winemakers are prohibited from using common descriptive terms related to winemaking on wines exported to the EU. The terms used on U.S. wines which are prohibited in the EU are not associated with a specific place or GI, but they are common nouns and adjectives used to describe the wine. These so-called "traditional" terms include "chateau," "clos," "ruby," "crusted/crusting," "noble," "superior," "sur lie," "tawny" and "vintage/vintage character." A summary of our concerns is listed below:

- As part of the "Agreement between the United States of America and the European Community on Trade in Wine," signed in 2006, the EU granted U.S. winemakers a derogation to continue to use common descriptive terms in question for three years. Although there was an understanding that, at the end of the three-year period, the EU would renew the derogation, it was never granted. Consequently, in 2010, the U.S. wine industry submitted applications to the EU for approval of 13 terms, with definitions provided for each term as required by the EU. In 2012, the EU approved the applications for "classic" and "cream." Now, however, numerous years after the applications were submitted, the EU has failed to respond to any of the 11 remaining applications.

- The EU's refusal to process these 11 applications prevents U.S. wineries from using the terms in question on wine labels or even in company names when filing for trademark protection unless the term's use pre-dates the 2006 agreement. Regulation EC 207/2009, Section 2, Article 4(j) of EU Directive 2015/2436 on trademarks, protects traditional terms for wine, giving the use of the terms by a third country without an agreement or an approved application, absolute grounds for refusal of a trademark application. Therefore, any U.S. winery that newly uses such a term cannot export its wine to the important European market.

CCFN strongly objects to the EU's unreasonable refusal to process the remaining applications,

- Over the past few years, the European Commission has continued to stall the application approval process by engaging in a supposed review of EU traditional term wine regulations, to "simplify" the traditional terms application and approval process.

- Although the U.S. wine industry has sought to play a constructive role in this process by seeking more transparency from European officials, the EU has to date failed to adopt a clear and transparent approach to the process, including notification of issues and claims that delay or prevent a prompt decision. For instance, applicants continue to be prevented from reviewing and responding to written objections submitted by Members States and other stakeholders. In addition, the EU has refused to amend its notification and objection procedures to allow those who have made prior use of a term in the EU the opportunity to object or register their own usage of the same term.

- The EC has also failed to revise its regulations to ensure use of legitimate descriptive terms without the need to go through a cumbersome and unnecessary registration process that creates cost and uncertainty for both regulators and industry, by:
    - Broadening the definition of what is considered “generic” in the legislation,
    - Limiting the high level (Article 40(2)) protection of traditional terms to wines from the country seeking protection only – uses by other countries would therefore only be prohibited where this could be shown to be misleading or deceptive; and,
    - Developing a non-protected list of descriptive terms of third countries that may continue to be used by those countries in the EU, including in co-existence with registered traditional terms.

- Finally, in violation of its National Treatment obligations and basic principles of good regulation, with respect to traditional terms the EU has apparently failed to utilize the same regulatory process and criteria for applications from Member States that it uses for those submitted by third countries.

Likewise, we remain concerned about how the Traditional Specialty Guarantee (TSG) program may be abused by the EU moving forward. The TSG program was initially a program whereby producers that fit a specified product definition earned the right to use a particular EU TSG logo on their packaging. However, in 2013 the EU reformed this program to instead require that new TSGs be implemented in a restrictive manner, blocking use of the registered term by any who do not meet the specific product definition.

- Mandatory product standards and their enforcement are not in principle a concern. When properly employed, they can provide essential consistency and information to consumers. For instance, the United States has a standards of identity program that specifies what products can be accurately labeled as “milk” or as “gruyere cheese,” regardless of where that product is produced.

- However, given the EU’s track record of using its quality labeling programs to deter

competition for groups of producers in specific regions of the EU, CCFN is concerned about how this regulation may be applied in practice and the lack of sufficient clear protections for generic names under the regulation. The EU's propensity to "export" its regulations in the form of global regulatory and standards restrictions around the world could ultimately create challenges for restaurants and their global suppliers, including U.S. companies, if an overly restrictive standard for the term were imposed worldwide.

- 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.

During 2023, we would also expect European products utilizing GIs to be part of an aggressive promotional campaign in various markets. This is supported by financial resources allocated under the 2023 promotion policy work program, which supports EC policy priorities, such as the Farm to Fork Strategy. This program serves as a platform for the EU to inform consumers within the EU and abroad about the "quality schemes" and labels, such as the GIs. This effort complements the aggressive strategy pursued by the EU to achieve the recognition of GIs through FTAs.

Considering last year's developments in the EU, 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 for 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 deal and important trading partners should deal with each other.

Japan

Japan implemented its FTA with the EU in 2019. Since then, both sides have extended their GI lists. In 2021 the parties agreed to protect 28 new terms, and one year later, they agreed to protect that same number of terms.

Japan's GI opposition process continues to be used as the vehicle for consideration of additional applications. While Japan's approach to dealing with common names is certainly preferable compared to other markets, it too leaves room for improvement, namely we recommend the U.S. work to ensure 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.

Kenya

The Eastern African Community (Burundi, Kenya, Rwanda, Tanzania, and Uganda) finalized negotiations for an Economic Partnership Agreement with the EU in October 2014. According to information published by the EC, Kenya and Rwanda signed it but only Kenya ratified it. For the agreement to enter into force, more countries need to ratify the agreement.

In February 2022, Kenya and the EU agreed to advance negotiations on an interim Economic Partnership Agreement (iEPA). According to the EC, the iEPA will liberalize the trade of goods on mutual basis and will set up trade-related rules on sanitary and phytosanitary measures, technical barriers to trade, and customs and trade facilitation. The new agreement will be accompanied by trade-related development cooperation with a view to boost sustainable economic growth and job creation.

Although public information available about the iEPA does not expressly mention the insertion of GI-related commitments, we presume it is highly likely to be a feature of this agreement given the EU's consistent inclusion of GIs in all its trade negotiations. We encourage the Administration to consider the insertion of workstreams to safeguard the use of common names and provide for a balanced GI regime in the Strategy Trade and Investment Partnership launched by the U.S. and Kenyan Governments in July 2022.

Korea

In November 2022, Korea and the EU announced that 44 names were recognized as European GIs in Korea (including black forest ham, edam holland, and gouda holland), in addition to the original list of GIs recognized under the Korea-EU FTA.

As Korea expands its set of GIs, the Korean Minister of Trade's assurance on June 20, 2011[3] continues to be of the utmost importance to U.S. exporters. The Korean government's assurances with respect to the protection of multi-term GIs, translations or transliterations of GIs, and generic terms are particularly vital yet would benefit from further expansion. To augment this letter, we urge the Administration to obtain assurances from Korea that specific common food and beverage terms will remain free for use by U.S. exporters to preserve the full value of the market access concessions under the U.S.-Korea FTA.

India

In June 2022, India and the EU relaunched their FTA negotiations, as well as separate discussions on a GIs Agreement. The parties have held two rounds of negotiations, where both parties discussed, among other elements, the EU's requests for protection of GIs under the bilateral agreement, and

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

for the provision of a "high level of protection" beyond wines and spirits. As part of the second round (October 2022), both parties discussed the development of their respective GI lists and the timing for exchanging the lists.

The bilateral GIs Agreement is an EU effort that replicates instruments negotiated in other markets, such as China. As CCFN monitors the development of these negotiations, we encourage the Administration to seek parallel discussions with its Indian counterparts to establish assurances about the preservation of the rights to use common names.

Indonesia

The Indonesia-EU FTA negotiations will continue in 2023. Although we are unaware of publicly available information following the 11th round held in November 2021, that same year both sides launched a guidebook on GI Branding to "boost the economy." CCFN considers this a sign of willingness to with the EU on the issue further or even adopt their approach towards GI recognition and protection. CCFN is concerned about a lack of transparency and due process in GI recognition procedures and the ability of common name users to preserve their rights in Indonesia.

To effectively prevent the creation of new trade barriers in this market, we urge the Administration to step-up efforts 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 outcomes of FTA negotiations with the EU.

Malaysia

The Malaysian Government adopted a new legal framework for GIs, which was codified by the Geographical Indications Act 2021, the Geographical Indications Regulations 2022, and the Guidelines of Geographical Indications 2022. Although the framework includes provisions that may support the legitimate use of common terms in certain aspects, CCFN is concerned that additional information is needed on how translations and transliterations will be handled, as well as how common terms will be considered as part of multi-component terms applying for recognition as GIs.

Malaysia launched FTA negotiations with the EU in 2010. Since August 2021, progress appears to have stalled. Should negotiations resume and the EU achieves recognition of a specific list of GIs, new restrictions may be imposed on current and future opportunities in the Malaysian market for products identified with common trade names. We request he Administration work with Malaysia to secure confirmations that specific common food and beverage terms will remain free for use by U.S. exporters.

Mexico

Despite the positive precedents set by USMCA to foster a balanced GI regime including the legitimate right to use of 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.

The Implementing Regulations to the IP law issued in July 2020 continue to evolve. This instrument offers an opportunity to ensure the effective implementation of pending USMCA provisions. In the coming year, we request that the Administration engage with the Mexican authorities –in particular, with the recently appointed officials at the Secretariat of Economy and the Mexican Institute of the Industrial Property– to ensure the GI provisions of the USMCA are fully implemented.

Despite the announcement of a conclusion of Mexico's FTA negotiation with the EU, both sides have yet to sign the agreement, and it remains unclear when this will happen. As we have noted previously, 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 Mexico-EU FTA. Although we attempted to challenge these decisions legally by filing "amparos" (constitutional legal challenges) in 2018 contesting the decisions to recognize several GIs, the cases have been dismissed for procedural reasons (largely the lack of harm to date as the EU agreement has not been implemented). Relatedly, last year jurisprudence was published on April 30, 2022, which ruled that the process under which evidence was submitted on the common terms did not constitute an opposition process. This demonstrates the high level of uncertainty arising from the GI-recognition processes under the FTAs negotiated by the EU, and the need to ensure a clear and balanced process for GI recognition in Mexico, in line with the relevant provisions under the USMCA.

MERCOSUR: Argentina, Brazil, Paraguay and Uruguay

The FTA negotiations between the EU and the Mercosur countries concluded in June 2019. The list of GIs recognized under the agreement demonstrated that the decisions were not made based on the merits of each term, but rather on concessions that Mercosur countries may receive in other areas of the FTA, such as market access. However, the FTA has not yet been signed yet by the parties.

The provisions concerning the recognition of GIs include phase-out periods and grandfathering clauses, which mainly benefit domestic producers of the respective products. In the case of Brazil, on December 27, 2021, the Ministry of Agriculture, Livestock and Supply issued an Ordinance granting a sixty-day period to prior users of one or more specified terms and required them to submit documentation to prove their right to continue using those terms. This new Ordinance revoked previous ones with the same objective, despite the fact that a prior users' list had already been published by the Brazilian Government. As expected, the new list of prior users – published on May 24, 2022 – only included national producers, excluding traders and retailers from other countries (companies which were on the previous prior users list and that are important avenues for U.S. exporters to work with in cultivating future market opportunities). Moreover, in July 2022, an amendment to the new prior users list was published, which narrowed the interpretation of "prior users" even more. This confirms the high degree of uncertainty about the implementation of GI commitments under the Mercosur-EU FTA, and the need to underscore with the Brazilian government concerns about their own disregard for objective consideration of GI applications and their intent to implement new policies which will restrict trade.

In last year's submission, we highlighted CCFN's inability to obtain cancellation of a GI registered through the FTA process (despite the lack of FTA implementation) even if a product with a generic name was recognized under the standard IP system Brazil. In addition, during 2022, CCFN faced administrative actions in Brazil against two registered trademarks comprising common terms.

While we actively defend our cases and monitor 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 negative impacts that U.S. exporters face as they try to access these markets.

Morocco

In 2015, Morocco and the EU announced that they had reached an agreement on GIs. It is our understanding that the agreement has yet to be ratified by both parties. We request that the Administration engage with Moroccan authorities to obtain assurances that specific common food and beverage terms will remain free for use by U.S. exporters to preserve the full value of the market access concessions secured under the U.S.-Morocco FTA.

New Zealand

The negotiations of the FTA between New Zealand and the EU concluded on June 30, 2022. CCFN had previously expressed its appreciation for New Zealand's IP system. However, under the provisions of this FTA, more than two thousand names of food and beverages are recognized as European GIs, with many of them being commonly used names. This is despite New Zealand's CPTPP commitments regarding GIs and common names.

New Zealand is currently conducting a public consultation period about the amendments to its GI legislation that would be necessary to abide by its FTA with the EU; this is an opportunity to express U.S. concerns about the new, extensive GI list and its negative impact on generic name users in New Zealand and in New Zealand's trading partners. The public consultation is taking place during the first two months of 2023, so we urge the Administration to work with New Zealand to object to the decisions made to date on GIs and ensure that the resulting GI recognition regime does not have further negative impacts in U.S. exporters. Additionally, we recommend establishing a clear set of commitments on common name usage looking forward.

Peru

October 2022 saw the entry into force in Peru of the Geneva Act of the Lisbon Agreement on Appellations of Origin and Geographical Indications, which sets an overly restrictive GI protection regime. We are concerned about the likelihood of this expanded WIPO agreement to further restrict market access for exporters from the U.S. and abroad. We call upon the Administration to approach the Peruvian authorities to avoid the implementation of policies which will restrict the legitimate use of common names in the market and to work to secure specific assurances establishing protections for commonly used food and beverage terms.

Philippines

The Rules and Regulations on Geographical Indications of the Philippines took effect on November 20, 2022. CCFN participated in the consultation stages for the development of this instrument, both

submitting written comments and attending a public session hosted by the Philippine Intellectual Property Office.

We are concerned that the final version of the Rules and Regulations includes 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), lack of clarity regarding the treatment of translations and transliterations of terms applying for registration as GIs, and limited timeframes for opposition procedures, among others.

In this regard, we respectfully request USTR to engage with authorities in the Philippines to address these outstanding concerns. In doing so, we urge again the Administration to work with the Philippines to obtain assurances that specific common food and beverage terms will remain free for use by U.S. exporters.

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. We urge the Administration to work with Singapore to avoid the further erosion of our market access to this important market and to obtain assurances that specific common food and beverage terms will remain free for use by U.S. exporters.

South Africa

South Africa adopted commitments related to the recognition and protection of GIs under a bilateral protocol agreed between the EU and South Africa as part of the Economic Partnership Agreement between the EU and the Southern African Development Community (Botswana, Lesotho, Mozambique, Namibia, South Africa and Eswatini). Measures resulting from the implementation of the protocol include restrictions on the use of several common terms of cheese, including “feta”, a term which is so generic in that market that past FAS reports noted that it was one of the largest cheese types produced in South Africa. In addition, little clarity was issued regarding the continued use of generic terms, including in cases of individual names that are part of multi-term GIs.

South Africa implemented the bilateral protocol without providing the necessary notification to the WTO TBT Committee at a time when stakeholders could still comment on and influence the decisions regarding the GIs. In addition, South Africa’s GI regulations, published in 2019, continue to have gaps regarding sufficiently robust protections for the use of common names. We urge the Administration to guarantee market access for U.S. exporters, drawing upon previous precedents, and encourage review and improvement of South Africa’s GI regulations while – most importantly – working to establish protections for the use of specific common food and beverage terms.

United Kingdom

CCFN reiterates its request to resume FTA negotiations with the UK and promote transparency and efficiency in the procedures for the protection of IP rights. This would also provide a structured opportunity to review and pursue reforms to an EU-like GIs framework which was largely imported 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.-U.K. negotiations. Furthermore, we urge the U.S. government to obtain confirmation through future trade negotiations that specific common food and beverage terms will be available for free use in the U.K. by U.S. exporters.

Vietnam

The EU-Vietnam FTA was implemented in 2020. The agreement contains several provisions on GIs including the establishment of a clear scope of protection for key common names impacted by GIs and grandfathering rights. These provisions apply to those who initiated exports of asiago, fontina, and gorgonzola to Vietnam by December 31, 2016, and allow sales of those products in Vietnam moving forward. Despite the FTA's clear language regarding these grandfathering rights, 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 (especially for U.S. exporters). Finally, Vietnam should confirm that specific common food and beverage terms will remain free for use by U.S. exporters in this key market.

Multilateral and Regional Trade Agreements

World Intellectual Property Organization (WIPO)

As more countries ratify the Geneva Act of the Lisbon Agreement on Appellations of Origin and Geographical Indications, we are concerned about 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 around the world. 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 a significant part by dues from the United States and with a responsibility to represent the interests of the whole of the UN membership, in which there exists a broad diversity of views on the topic of GIs, we are concerned that FAO's approach to GI topics does not adhere to the neutral role it should play with respect to

policy in this area. Rather, FAO has in recent years opted to encourage the use of GIs as a development tool without promoting appropriate due process procedures to ensure that GIs are handled in a manner that avoids negative impacts on other stakeholders in the developing country's market that rely on generic terms.

Moreover, FAO has not provided fully inclusive information as it works closely with developing countries to encourage the crafting of GI systems – namely, thanks to the WTO case that the U.S. won against the EU several years ago, GI holders all around the world have the right to register their GIs in the EU on their merits and there is no obligation for those countries to simultaneously recognize EU GIs in their own market if not merited. We are also concerned that FAO is not ensuring that developing countries know that if they utilize sui generis systems 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 in different countries and in the context of our 10th anniversary, 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 2023 with the Office of the United States Trade Representative (USTR), the United States Patent and Trademark Office (PTO), the United State Department of Agriculture (USDA), the Department of Commerce, and the Department of State to ensure 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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