



June 19, 2020

The Honorable Robert Lighthizer  
United States Trade Representative  
600 17th Street, NW  
Washington, D.C. 20006

Dear Ambassador Lighthizer,

We would like to thank you for your leadership and the resolute efforts of your office to combat the European Union's (EU) attempts to erect trade barriers that prevent the export of U.S. food and wine products utilizing common names.

We are writing today to draw your attention to a recent development that has occurred in the free trade agreement (FTA) negotiations between the EU and the countries of the Southern Common Market (MERCOSUR) that will significantly and permanently harm the ability of U.S. farm and food producers to sell common-name products in those countries. The negative repercussions of this development will extend even beyond what was already expected as a result of the unjustified recognition of European GIs that will be granted by MERCOSUR countries once the FTA enters into force. We request USTR's immediate engagement with these markets to help avoid such an outcome.

As you are probably aware, on June 28, 2019, the EU and MERCOSUR reached an agreement in principle on an FTA between their nations, yet since then, the EU and MERCOSUR have still not formally consented to be bound by the terms of the treaty by fully concluding it.

Notwithstanding the legal status of the FTA, both the governments of Argentina and Uruguay have started the official process of defining a list of "Prior Users" of some of the names recognized as GIs in the Intellectual Property Rights Chapter of the FTA. Brazil and Paraguay are expected to begin the same process in the near future. Under the rules of the FTA, these lists, once finalized, will establish who has the right as a "Prior User" to continue the lawful use in the MERCOSUR markets of some of the terms recognized under the FTA as GIs.

We are extremely concerned about the publication of these lists not only because we contest the recognition of the GIs on the basis of the overwhelming evidence that many of the names and related terms are generic, but also because the FTA has not even been signed. Without a signed and implemented agreement, it is premature to carry out this process, let alone in such an expeditious manner.

In addition, the process for defining "Prior Users" is being conducted in a patently unfair, non-transparent and discriminatory manner:

- (i) The window to provide evidence, or indicate an intention to do so, in order to be included in the list of “Prior Users” will close at the end of this month, and no other opportunity to provide information to that end will be granted;
- (ii) It appears that the scope is limited only to producers of the relevant products in MERCOSUR countries, while excluding other potential users, such as exporters or traders, as well as companies without a physical presence, but with a commercial presence;
- (iii) According to the official Bulletin, the type of evidence that may be provided to demonstrate qualification as a “Prior User” may only be available for domestic companies and sometimes, due to COVID-19 related measures, impossible to obtain; and
- (iv) Even in the most favorable context (i.e. the process allows U.S. companies to participate), there is no certainty regarding what the follow-on process will entail after companies provide evidence of prior use and it is unclear whether or not the EU will have the right to endorse or approve the list of “Prior Users.”

As currently announced, the effect of these measures will cause irrevocable harm to the U.S. farmers, ranchers, food manufacturers and exporters we represent. That is why we are asking USTR to immediately reach out to your MERCOSUR counterparts and make clear the importance of preventing trade barriers to U.S. exports, especially as the EU-MERCOSUR FTA is not yet legally binding.

We urge USTR to draw upon recent tools negotiated by your office with respect to similar matters (i.e. U.S.-Mexico Side Letter on Prior Users, U.S.-Mexico Side Letter on Cheese Names, Bolivia-U.S. Side letter on Distinctive Products) which should serve as examples of the action that is required to ensure that U.S. companies do not face unnecessary and unjustified barriers to hard-earned market access in the MERCOSUR region. Moreover, an extension of the deadline and greater flexibility on its criteria is critical to allow sufficient usage of any prior use terms secured in this region.

Thank you for your efforts to advance our shared goals of fair trade. We look forward to working together on this issue to ensure that the EU’s aggressive trade policy and attempts to seize the common names used by U.S. producers do not go unchallenged.

Sincerely,

American Farm Bureau Federation  
Consortium for Common Food Names  
National Association of State Departments of Agriculture  
National Milk Producers Federation  
North American Meat Institute  
U.S. Dairy Export Council  
Wine Institute

cc: Secretary Sonny Perdue, U.S. Department of Agriculture