



GLOBAL DAIRY ALLIANCE

WTO Doha Development Round

GEOGRAPHICAL INDICATIONS

The Global Dairy Alliance position on geographical indications is

- to oppose any moves to increase protection for GIs

Because:

- current rules for the protection of agricultural GIs are sufficient and are working effectively. There is no need for additional protection
- claims to increase GI protection, especially through clawback, go beyond the Doha mandate, and confuse intellectual property rules with agricultural market access issues
- the push for increased GI protection is creating uncertainty and confusion in the world dairy industry, as well as defying common sense
- increased GI protection would restrict trade in cheeses which have long become generic products, produced, marketed, and sold world-wide. GDA members are among those who have created the brand value and reputation of these products
- increased GI protection would cause significant damage to producers, manufacturers and consumers around the world, for no obvious benefit in return
- increased GI protection is an attempt to privilege specific producer groups at the expense of all other producers and consumers – and to privilege the EU in particular at the expense of the rest of the world

The Global Dairy Alliance:

- accepts a role for GIs in international trade rules as currently provided for under Article 22 of the TRIPs Agreement
- but opposes any extension of that protection beyond the current yardstick of “misleading the public”

- opposes the creation of monopoly rights to the use of cheese names in common use world-wide such as “cheddar”, “brie”, “emmental”, “mozzarella”, “feta”, “parmesan” and the like. These names cannot be defined as GIs as they are clearly now generic products
- believes that trademarks and certification marks should continue to be accorded full protection under the provisions of the WTO Agreements and that the rights of trademark owners should not be affected by the subsequent registration of a GI
- firmly opposes the implementation of a multilateral register for wines and spirits that has automatic legal effect in national jurisdictions, and opposes the inclusion of products other than wines and spirits in any multilateral system for notification and registration of GIs
- also opposes names of common production processes (so-called “traditional specialties” such as “washed rind”) or common descriptive terms (so-called “traditional expressions” such as “aged”, “vintage”, or “double cream”) receiving special protection under WTO rules or being reserved for the exclusive use of any WTO Members
- extension of GI protection beyond current arrangements would disrupt existing access arrangements and require major changes in customs tariff schedules. This would be grossly inequitable.

SUBSTANTIAL IMPACT ON TRADE

GDA member countries have been producing a large variety of cheeses for over 100 years, and trading in them around the world, including in North America, Japan, Oceania and the Middle East. Most GDA members are developing countries. Restriction of their ability to produce and sell those cheeses, through enhanced GI protection for dairy products, carries potentially significant cost to their economies.

Annex 1 provides some illustrative data on the principal cheeses produced and traded around the world. It shows that around three-quarters of production in major cheese-producing regions (the EU, US, Australia, Canada, New Zealand, Argentina and Switzerland) is of cheeses with a European-origin name.

If GI protection were increased as requested by GI proponents, this trade and production would be negatively affected. Manufacturers would need to switch to new names for these products, resulting in consumer confusion, loss of sales, and expensive re-branding and communication.

SIGNIFICANT CONTRIBUTION TO NAME VALUE

GDA members have themselves contributed substantially to the value of generic cheese names. They therefore have a share in the brand ownership of those names.

It is a fact of history that virtually all non-EU cheese-producing countries in the world were once colonies or part of EU Member States. Colonists carried traditional cheese-making methods and names with them to their new homes. In some cases (such as cheddar in British Commonwealth countries) use of the EU name was even obligatory under local law.

Since that time, producers and manufacturers in those countries have contributed significantly, through their own investments in branding, marketing and product innovation, to the popularity and renown of their products. For example, it is absurd to claim that the worldwide fame of cheddar or parmesan cheese is solely or even mostly attributable to the marketing efforts of the inhabitants of the village of Cheddar or a region of Italy.

It would be unfair now to take away the fair share of this brand ownership from those countries and reserve it exclusively for a small number of, mainly European, regions.

It would be equally unfair to reserve for the exclusive use of certain producers widely used terms for common production processes or descriptive use, such as “aged”, “vintage”, or “washed rind”. Yet this would be a consequence of GI proponents’ push to extend wine and spirits protection to dairy products.

PROTECTION FOR MOST WIDELY TRADED PRODUCTS

It is no coincidence that GI proponents want to extend GI protection precisely to the names of those cheeses that are most widely produced and traded in the world today, and that have had the most value built up by new world producers.

As an example, feta cheese is on the EU GI list, despite the fact that:

- the name feta does not refer to any geographic region
- large quantities of feta have long been made elsewhere both inside the EU (including Denmark, Germany and France) and outside
- a key part of the supposed geographic indication is the requirement that feta be made from sheep’s milk, which has nothing to do with any geographical origin

As another example, “parmigiano reggiano” is a registered EU GI, and the EU’s proposed clawback list claims multilateral protection for both this term and the term “parmesan” as its translation, despite the fact that:

- EU members themselves do not agree on protection of the translation “parmesan”
- the EU is unable clearly to explain the limits of its translation argument (ie where does protection of unspecified “translated” terms end – see further below)

Both feta and parmesan are widely produced and traded inside and outside Europe – not just in Greece and Italy. Indeed more product is made and traded outside of those two countries than inside them. In many parts of the world consumers are not even aware of their initial geographic origins. To them, the terms simply denote a type of cheese.

EU calls to claw back these names as GIs, and, for example, to prevent the development of a Codex standard for parmesan as a generic cheese name, are simply an attempt to benefit EU producers exclusively from the value of names now widely known around the world, in part thanks to the efforts of other countries to build up that value over many years.

DISRUPTION TO ACCESS AND CUSTOMS SCHEDULES

The detailed nature of varietal tariff lines and the distorted nature of existing access arrangements, particularly with product variety and/or country specific quotas, mean that extension of GIs as proposed will result in the blocking of existing business. Where an alternate category exists for a re-designated product, it is unlikely that the applied tariff will be the same.

Extensive changes would be required in customs tariff line classifications to accommodate all these changes and until producers decide how they will re-designate their product, it may not be possible to determine what changes will be required. There is a potential administrative nightmare in this area.

ALL GAIN TO THE EU

Given the history of the development of the cheese industry, the overwhelming majority of cheese names happen to be European. Conferring special value on certain of these names through regulation would benefit Europeans only. There would be little or no value or opportunity to gain value in registering GIs in developing countries, in “new world” countries, or indeed in any non-European country.

INTELLECTUAL PROPERTY, NOT MARKET ACCESS

Claims for increased GI protection through clawback dangerously confuses intellectual property rules with market access, and goes well beyond the agreed mandate for the Doha Development Round.

It is inappropriate, illogical and dangerous to introduce new access demands based on GIs to the agriculture negotiations. GIs are a form of intellectual property and should continue to be subject to agreed intellectual property rules, not special rules of their own.

Clawback is completely outside the rationale for GI protection laid down in TRIPs. It would amount to a “special deal” for the EU offering neither substantive justification nor reciprocal opportunities for others (nor indeed, clear benefits for EU producers themselves).

LACK OF CLARITY ON LIMITS TO PROTECTION CLAIMS

Proponents of increased GI protection, particularly the EU, have consistently refused to set out the limits of their demands for such increased protection, including a refusal to place limits on the cheese names it may seek to “protect” under clawback.

Clearly the EU does not want to limit the scope of potential protection, creating huge uncertainty for world dairy producers.

Furthermore, the EU has registered certain names for specific varieties of major cheeses as GIs internally only in a composite form that includes a specific geographic identifier, and has even specified in a footnote that protection of the more general name is not sought *at the moment*.¹

However, the footnote does not make clear that protection for the more general name will not be sought in future. Nor has the EU been willing to rule out that it may seek such protection at a later date.

With this approach the EU is creating scepticism about its real intentions, adding uncertainty to its claims, and adding risk to future investment intentions by global producers and manufacturers.

BILATERAL PRESSURE

As the main proponent of increased GI protection, the EU has not hesitated to use bilateral pressure in trade agreement negotiations to extend recognition of its GI ambitions. In FTA negotiations and other preferential trade deals it has used its considerable negotiating strength as bilateral leverage over third countries to enforce extended GI protection over names that are widely considered generic.

¹ For example, ‘Mozzarella di Bufala Campana’ is a GI – but “protection of the name Mozzarella is not sought”. Similarly, Camembert de Normandie, Brie de Meaux, Emmental de Savoie and Nord Hollandse Gouda are all registered GIs, but not (so far) the more general terms camembert, brie, emmental and gouda.

Such tactics also lead to scepticism and suspicion about the EU's real GI ambitions, and an associated reluctance to consider any of its claims for increased protection.

IMPOSITION OF ONE APPROACH

Through its claims for increased GI protection, the EU is seeking to impose its regulatory approach on the world.

The EU is pushing for a worldwide system of notification and registration of GI-protected wines and spirits similar to its own internal system. The register it proposes would confer extra-territorial legal effect upon all WTO Members, regardless of whether they have chosen to participate in the system.

The EU is also pushing for this proposal to be extended to other agricultural products including dairy. This is outside the mandate of the discussions on a wines and spirits register and would have the effect of extending worldwide the EU's list of GIs and the EU's system of protecting those GIs.

It would greatly increase the burden of costs for all other countries (including developing countries), which would then in effect bear the expense of enforcing EU companies' intellectual property rights for them.

LABELLING: A BETTER SOLUTION

If consumer protection is the problem, then informative labelling is the answer, not increased GI protection.

Article 22 of the TRIPS agreement currently permits the use of labels such as "Parmesan-style cheese from Argentina" or "US Feta".

Proponents of increased GI protection would forbid this labelling style by extending absolute monopoly rights to, for example, Italian makers of parmesan cheese and Greek makers of feta. All other producers around the world would have to use alternative, non-standard names such as "hard-grating cheese". This would confuse consumers, not inform them.

Regulation, such as that pushed by GI proponents, is an overly heavy-handed, high-cost approach to a problem. It would have the effect of reducing consumer choice, arguably at no benefit to the European GI producers, as in many parts of the world the names parmesan and feta would simply disappear from supermarket shelves.

Labelling would be a more effective approach, and a more beneficial one, for consumers and for the world's cheese producers.

CONCLUSION

The GDA advocates a common sense approach to GIs:

- current rules for agricultural GIs, which allow right holders to prevent others from using a name they have protected as a GI where that would mislead the consumer, are sufficient and are working effectively. There is no need to extend these rules to prevent any other use of a GI
- attempts to increase protection of GIs are simply an attempt to privilege particular producer groups at the expense of all other producers and consumers – and to privilege the EU at the expense of the rest of the world
- increased GI protection claims carry the likelihood of significant damage to producers, manufacturers and consumers around the world, including in developing countries, for no obvious benefit in return
- the risks and potential absurdity are shown by the potential for words such as “vintage” and “aged” to be claimed exclusively by certain producers
- the EU’s push for increased GI protection in particular is creating uncertainty and confusion in the dairy business and undermining the effectiveness of current WTO rules. It should be resisted

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Annex : GIs and World Cheese Production

Assessing the exact impact on world production and trade of increased GI protection is difficult because data is often unavailable, especially for specific cheese names, and the names are not always comparable across borders. But some general points can be made:

- total world cheese production is around 15 million tonnes. Only 8% of this (around 1.2 million tonnes) is traded across borders, mainly due to high levels of border protection. Both international and domestic sales would be affected by claims for increased GI protection, as producers would be forced to re-label and re-brand all products – not just exports
- in the principal cheese-producing countries (the EU, US, Canada, Oceania, Argentina) 70-80% of production uses European-origin names that are potentially open to applications for GI registration
- some 42% of world cheese trade is accounted for by EU exports
- in Argentina, a sizeable cheese producer, around 80% of cheeses carry European-origin names, mainly Italian type cheeses²
- in Uruguay 65% of cheeses are produced with European-origin names

The chart below gives illustrative figures on production of some common cheeses (in '000s of tonnes):

| | Cheddar | Mozzarella | Emmental/ Swiss | Parmesan/ Italian Hard | Camembert/ Brie |
|-------------|---------|------------|--------------------|---------------------------|--------------------|
| EU | 210 | 150 | 275 | 200 | 300 |
| USA | 1,250 | 1,320 | 130 | 340 | 7 |
| Switzerland | N/A | 13 | 130 | N/A | N/A |
| Argentina | N/A | 30 | N/A | 45 | N/A |
| Australia | 201 | 54 | 2 | 13 | 3 |
| New Zealand | 150 | 45 | N/A | 7 | N/A |
| Canada | 130 | 110 | 6 | N/A | N/A |

² This explains why most of them are not included in the table