



International Dairy Foods Association
Milk Industry Foundation
National Cheese Institute
International Ice Cream Association

**Comments by the International Dairy Foods Association
Regarding the Proposed Transatlantic Trade and Investment Partnership
Docket Number USTR-2013-0019
May 10, 2013**

IDFA submits these comments in response to the request for comments concerning the Proposed Transatlantic Trade and Investment Partnership (TTIP) with the European Union (EU): USTR-2013-0019. IDFA appreciates the opportunity to present its views on this important issue. We would also like the opportunity to testify at the hearing on this issue that will be held on May 29 and 30.

The International Dairy Foods Association (IDFA), Washington, D.C., represents the nation's dairy manufacturing and marketing industries and their suppliers, with a membership of 550 companies representing a \$125-billion a year industry. IDFA is composed of three constituent organizations: the Milk Industry Foundation (MIF), the National Cheese Institute (NCI) and the International Ice Cream Association (IICA). IDFA's 220 dairy processing members run more than 600 plant operations, and range from large multi-national organizations to single-plant companies. Together they represent more than 85% of the milk, cultured products, cheese and frozen desserts produced and marketed in the United States. IDFA can be found online at www.idfa.org.

Overview:

IDFA supports the TTIP negotiations. It is our hope that a comprehensive trade agreement can remove the many tariff and non-tariff obstacles to trade that currently hinder greater U.S. dairy exports to the EU, especially geographical indications. With global exports of \$5.2 billion last year, the U.S. is a major dairy exporter, yet we face a dairy trade deficit with the EU that exceeds \$1 billion. In 2012, the EU exported \$1.3 billion in dairy products to the U.S. while U.S. companies exported only \$88 million in dairy products to the EU. The TTIP must remove the barriers to our products that have so greatly impeded U.S. market access to the EU.

For purposes of these comments, we would like to primarily focus on the EU agenda on geographical indications (GIs). We would also like to reference the recent action by the National Conference on Interstate Milk Shipments regarding the International Certification Program.

Geographic Indications (GIs):

GIs are an attempt by the EU to monopolize usage of certain cheese and other food names that the U.S. and many other countries regard as generic.

Retaining the use of product names that have long been commonly used in the U.S., as well as in many other areas around the world, is a very important issue to the U.S. dairy and processed foods industries. For food products, this most significantly impacts cheese production.

The importance of these well-recognized cheese names goes beyond solely their significant commercial impact to the U.S. dairy industry, however. Preservation of the right to continued use of these names affirms what producers throughout much of the New World and certainly this country strongly believe to be true – that we are using these terms in good faith and largely as a result of the influence of generations of European emigration. The EU's desire to turn back the clock and now seek to monopolize names that had already become generic is an affront to the many companies – small and large – who have worked to help build the markets for these products, as well as to the industry as a whole through the incorrect suggestion that our use of these terms has not been legitimate.

We view these efforts by the EU to ban our food producers from using several important names that have long been generic in the U.S. market and are commonly used internationally as well, as de facto barriers to trade. They are a clear effort by the EU to limit competition and to bestow upon their producers a considerable portion of the value of markets that our companies have devoted time and resources to helping build. In this way, we see the EU's GI strategy as completely incompatible with the fundamental goal of a trade negotiation – to remove trade barriers and allow for greater competition.

Given this, and the recognition that the EU is aggressively pushing for negotiations on the issue of GIs, we are deeply concerned about how this topic will be dealt with in the context of TTIP.

1. We strongly oppose any inclusion of GIs in TTIP discussions as well as any type of linkage of this issue to those discussions. We remain convinced that inclusion of GIs in TTIP or linkage in any way of GIs to that effort would result in a harmful outcome for our industry and burdensome new regulations for the U.S. food sector.
2. If this issue is to be discussed with the EU, it must be done in a completely separate context. It is possible that a GI Discussion Forum could be established to provide the opportunity for dialogue on this topic provided that the Discussion Forum is placed on a completely separate track – in terms of timing, form and substance – from TTIP talks and has absolutely no mandate to conclude if common ground cannot be found. It is not clear that even under these conditions a mutually agreeable outcome could be found, but it is virtually certain that one will not be found if GIs are dealt with as part of or linked to TTIP.
3. Given that the goal of a trade negotiation is to remove barriers to trade and competition, it is essential that any GI discussions are directed to focus first on finding an acceptable resolution to the trade barriers that our industry has experienced as a result of the EU's over-reach on GIs. Examples of these barriers include our inability to sell parmesan and feta into the EU and the EU's increasingly aggressive efforts to block us from selling those and other products into important export markets as well. It is only after some possible resolution can be found on the trade barriers to our products that the EU has been erecting in its market and around the world that the GI Discussion

Forum should be permitted to consider what EU offensive interests might be acceptable in a GI-specific agreement.

For more information on GIs, please review the attached Appendix.

International Certification Program:

The meeting of the National Conference on Interstate Milk Shipments (NCIMS) was held April 19-24, 2013 in Indianapolis, Indiana. At this meeting, the delegates voted to incorporate the International Certification Pilot Program into the Grade "A" program. This pilot program had been operating to allow foreign dairy companies to work with third party certifiers to allow foreign dairy products to enter the U.S. as long as those products met NCIMS requirements and inspection criteria on the farm, in processing plants, and in laboratories. By incorporating this program into Grade "A", the U.S. has responded to a concern voiced by the EU that the Grade "A" program was operating as a trade barrier.

Conclusion:

The U.S. dairy industry looks forward to a comprehensive TTIP agreement with the EU that will address the full range of regulatory barriers inhibiting dairy trade between the U.S. and the EU. However, on the problematic issue of GIs, we oppose the inclusion of this issue in the broader TTIP. We would be open to a bilateral discussion with the E.U. on the GI issue with the goals of: avoiding any new limitations on the usage of generic cheese and other food terms in the U.S. domestic market; addressing GI trade barriers erected by the EU in other countries; and removing the barriers to the sale of U.S. "parmesan" and "feta" in the EU domestic market.

Finally, it is important to note that incorporating the International Certification Program into Grade "A" has largely addressed the EU contention that the U.S. Grade "A" program was operating as a trade barrier.

Thank you for the opportunity to comment. For further information, please contact me at chough@idfa.org.

Clay Hough
Senior Group Vice President and General Counsel
International Dairy Foods Association

Appendix:

GIs: Supporting Details and Information

Impact Statistics:

- According to USDA's NASS report, there were over 500 cheese plants in the U.S. last year.
- Roughly \$21 billion in U.S. cheese production utilizes European-origin names.
- Last year almost \$1 billion in U.S. cheeses were exported.
 - Cheese exports are a particular growth opportunity for our industry, expanding by approximately 30% a year on average over the past five years.
- Case Study Example: Parmesan

The U.S. is estimated to produce more than 1/3 of global "parmesan" production with EU "parmesan"/"Parmigiano Reggiano" production totaling a bit less than 40% of the global quantity. Major dairy producing developing countries (largely in Latin America) are estimated to make approximately 1/4 of global "parmesan"/"parmesao" production.

- U.S. parmesan production was 126,000 MT in 2011 – a growth of 18% over 2010. (By way of comparison, Italy produced just slightly more Parmigiano Reggiano - 133,436 MT in 2011.)
- 44% of U.S. parmesan is made in Wisconsin with the rest spread across the country, particularly in major dairy production areas.

U.S. parmesan exports in 2011 were estimated to be approximately 10,000 MT, equating to approximately 8% of total U.S. parmesan production.

- In the USDEC-commissioned Global Commodity Cheese Varietal Demand Study, parmesan was cited as one of the top cheeses varieties with the strongest export growth potential.

Background Facts:

What are GIs?

GIs are a form of intellectual property that bestows on a certain group of producers in a specific region the right to use a particular product name. Therefore, even if producers in a different region/country follow the same production practices, they are not permitted to use the GI in the country where it is registered.

Description of Current Challenge Facing U.S. Industry:

Beginning in the mid-1990s, but increasingly in the past decade, the EU has been working to prohibit the use of many commonly-used cheese names (see below) within the EU by anyone other than an approved GI holder. Some names are banned explicitly (e.g. feta) and others are banned due to claims that they evoke the GI (e.g. parmesan). Both cases are concerning but the latter introduces a particularly harmful element of uncertainty since it makes the scope of protection of a GI extremely broad and unclear.

- In the past 3 years the EU has been working aggressively to expand its approach to GIs to export markets as it negotiates FTAs. Given this, the challenge facing the U.S.

industry is one to both domestic sales (in the context of TTIP) and export sales (a threat that already exists and appears to be increasing).

Impacted Cheese Categories:

- The EU system bans the use of many cheese names (other than by the GI holder in a specific EU region) that are in common usage in the U.S. including: asiago, feta, fontina, gorgonzola, grana, gruyere, parmesan, muenster and neufchatel. (A GI application for havarti is also under EU consideration.)
- Lack of clarity on the scope of protection – particularly in markets outside the EU – also puts at risk other names such as: camembert, emmental, provolone, ricotta, romano.
- Finally, although the EU has publically asserted that brie, cheddar, edam, gouda and mozzarella are generic names within the EU, it has not yet disclaimed any efforts to monopolize those names in foreign markets outside the EU.

Current U.S. System's Openness to EU GI Applicants:

The EU already possesses ready access to the U.S. trademark system, which is our vehicle for registering GIs, both domestic and foreign. In fact, several EU GIs are already registered either in forms identical to their EU GI or in similar ones that take into account the generic nature of the original GI. Given this, it would seem the primary EU goal of inclusion of GIs in TTIP talks would be to extract significant changes to U.S. generic safeguards and/or our system of enforcement.

Examples of EU GIs (in original or modified form) that are registered in the U.S. include:

- FONTINA DOP ZONA DI PRODUZIONE · REGIONE AUTONOMA VALLE D'AOSTA (Registered on 1/13/09; Exclusive use of Fontina is disclaimed; EU GI is for "Fontina")
- PARMIGIANO REGGIANO (Multiple marks registered but earliest dates to 2/23/93)
- PROSCIUTTO DI PARMA (Registered on 11/12/96; Exclusive use of prosciutto disclaimed)
- PROVOLONE VALPADANA (Registered on 6/25/96; Exclusive use of provolone disclaimed)

Current U.S. Cheese Industry's Limited Use of Trademarks for Generics:

In the U.S. cheese industry it is not common to trademark the generic portion of the product name. Rather, the typical approach is to trademark the company name and logo unless the product name is specialized in some way – in this way companies need not apply for trademarks each time they introduce a new cheese line.