



GIs and Trade

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Consortium for Common Food Names

CCFN: Who We Are

PURPOSE AND STRUCTURE:

- CCFN works to protect the rights of producers and consumers to use common food names. We support protections for legitimate GIs while opposing the misuse of GIs to restrict common names.
- Our office is based outside of Washington, DC, with members and supporters from developing and developed countries in the Americas and Oceania, including many small manufacturers and farmer-owned cooperatives.



WE BELIEVE:

- GIs can be a legitimate form of intellectual property.
- Registration systems that guard against consumer confusion and the use of misleading information are appropriate.
- Unique compound GIs such as “Parmigiano Reggiano” merit protection but the right to use common names such as “parmesan” should not be restricted.

Basis for Respecting Rights of Common Name Users

RIGHTS AND REASON:

- **Inherited tradition:** The producers of these products have existed for generations throughout the world with their products being used domestically and in international trade continuously.
- **Global migration's influence:** International migratory movements beginning in the late 15th century diffused food traditions in markets around the world.
- **Quality products:** The quality of these products have not just been validated by consumer behavior but also by respected experts. Example: dozens of medals won by non-EU cheesemakers in 2019 World Cheese Awards.
- **Consumer preference:** The consumer is “king” and they have confirmed that they value these products through their purchases.



Basis for Respecting Rights of Common Name Users

RIGHTS AND REASON:

- **Part of the public domain:** These generic product names, describing a type of product and not a geographic location, have been used far and wide for many years by many people in many markets.
- **WIPO calls for protection of generic names as part of the public domain.**
- **Many of these products have globally recognized objective measures:** global standards (e.g., CODEX), market and trade stats, trademarks, prior users, tariff lines, even have been historically recognized in Europe itself as generic.
- **Protected by multilateral (e.g., WTO) and regional/bilateral trade deals.**
- **Economic importance:** These businesses have been producing goods, creating jobs, and promoting the local economy for years and should have a right to continue.



What Common Name Users Want



All CCFN members want is to continue to offer their quality, competitively priced products to customers as they and their predecessors have been doing for decades.

To do so, we must address the proliferation of GI-driven barriers to trade.

What's Driving Growing Barriers to Trade?

Power, Politics & Euros

Developed, Rich, and Powerful Countries

- **Have domestic political problems because some powerful domestic producers can not compete on level playing field in their home markets and globally.**
- **So, policy tools are used to solve this domestic political problem by using their economic leverage to strong-arm developing countries' governments to:**
 - Grant foreign monopoly control over generic names that are in the public domain in violation of global trade and IP rules.
 - Ban third party competitors that are not even at the negotiating table through these government-granted monopolies.
 - Forfeit rights to their domestic markets, markets that the GI demanders did not create, educate, build, or serve.
 - Force increased prices on users and consumers so the chosen suppliers can make larger profits through these government mandated "name monopolies".
 - Impose obligations to enforce protection of these monopolies in their domestic markets.



Stamping Out Competition Has Real Consequences



Examples of Actors & Commitments Harmed:

- **Consumers** – Fewer choices, higher prices, and lower quality.
- **Private markets** – Up for bid by government-to-government negotiations, without compensation...principles of private IP ownership and public domain are ignored.
- **IP system** – Damaged as names long in the public domain are lost, fundamentally undermining sacred IP principles in developing countries and globally.
- **Public confidence** –Lost as local investors and producers face uncertainty in the public domain because any foreign power may decide to force a local government to effectively nationalize any product for the benefit of foreign interests.
- **Trading system** – Undermined as WTO obligations and other trade commitments to third parties are ignored, without the other parties even being included or compensated.
- **Free Trade Agreements principles** – Reversed as the purpose of FTAs is to open markets but restrictions on common names eliminate competition and market access.
- **International product standards** – Ignored, even standards GI-demandeur countries participated in creating.

Trade Environment Impacts: Recent Examples

Free Trade Agreements

- **EU FTAs with Mexico and with Mercosur – EU FTAs:**
 - Lengthy list of GIs subject to government-to-government negotiations over individual terms not handled through existing IP structure.
 - Multiple GIs registered despite ample prior generic usage.
Clear evidence: Mercosur prior users lists; approval of GI restrictions for terms previously treated as generic by countries' IP systems.
 - Local companies, trading partners to be cut off from usage rights.
- **Australia – EU FTA:**
 - GI applications under consideration through process parallel to Australia's existing IP system.
 - Terms treated as generic to date by Australia's IP system not immediately rejected, creating uncertainty for both domestic companies and trading partners relying on their usage. Approvals linked to market access outcomes.
- **MFN Risk:**
 - Failing to follow a consistent, methodical process for every GI registered could leave a country vulnerable to claims of unequal treatment in violation of their WTO MFN obligations.



Trade Environment Impacts: Recent Examples

WIPO Geneva Act

- **Lisbon Agreement and Geneva Act compounds existing GI system shortcomings by:**
 - Facilitating GI registration without properly safeguarding the rights of other economic actors (e.g., by mandating proper objection procedures and outlining objective criteria to protect common name usage)
 - Registration automatic if no action taken
- **Challenges:**
 - Practical: High volume and limited time undermines local control, greater costs due to obligation to enforce large number of GIs
 - WTO Compliance: GIs must be treated consistently across origins
- **Key Prerequisites if Considering Becoming a Party:**
 - Strong, methodical, and consistent IP systems and processes that protect the rights of common name users, trademark owners and current market participants, and properly vet the legitimacy of GIs.
 - Rigorous analysis, transparency, and due process are essential to ensure that illegitimate GI name monopolies are not granted for common terms.



How to Get From Bad to Better

Objectives: Register legitimate GIs, Protect rights of common name users

Require ALL GIs to submit to thorough local application processes in each country

- Applicant seeks a monopoly, so they should have burden to prove the name is not generic.
- Transparency requires all compound terms, translations and transliterations to be identified.
- Where IP systems exist to process GIs, they should be used.

Refuse to register GIs names that have become part of the public domain.

- Encourage GI protections solely for compound terms not for individual elements.
- Avoid registering common names as single term GIs.
- Require disclaimers for generic portion(s) in all GI compound name Applications.
- Any of the following are indicators that a GI should not be accepted:
 - Non applicant users, production, IP owners (current and/or historical).
 - Public info (e.g., websites, recipes, dictionaries, menus, publications, POS/retail info).
 - Other relevant information (e.g., countries' tariff lines, prior communications/policies, product standards including international ones set by Codex, etc.).



How to Get From Bad to Better

Objectives: Register legitimate GIs, Protect rights of common name users

Local application processes in each country must be consistent, methodical, transparent, and free from political and economic influence, including:

- Examination – Does the GI application deserve to be considered? If authorities, for any reason, identify that the GI name is generic or prior rights exist (e.g., trademarks, existing products in the market, international standards, generic usage, etc.) then it should not proceed to being published.
- Publication – If a GI name is published, it is important that it is publicly announced and all information is easily accessible through a website.
- Opposition – Opposition period must be long enough to allow domestic and foreign opponents time to analyze the application and gather the information to respond.
- Cancellation – According to TRIPS preamble, GIs are a private right and the burden is on the GI registrant to control use of the GI. If GIs are not used or become generic, the GI should be able to be cancelled.



Opportunity



Preserving the right to use common names does not need to prevent registration and protection of GIs.

Possible to grant GI applicants protections they deserve without unduly affecting economic interests of producers in other countries.

We can find common ground and work together to build world markets rather than erecting barriers to trade, investment, and innovation.