

Industry Rep. Says Food Label ‘Clawback’ Hurts US Trade

By **Jimmy Hoover**

Law360, Washington (April 8, 2016, 10:07 PM ET) -- Overbearing rules that “claw back” food names so that only certain geographic producers can use them hamper U.S. agricultural sales in European and global markets, a trade group representative said Friday, rejecting claims that American concerns about such indicators are overblown.

Geographical indications, or GIs, often serve as “trade barriers” to U.S. makers of Parmesan cheese and other geographically descriptive foods that have become generic to consumers, said Covington & Burling LLP attorney Marney Cheek on behalf of the Consortium for Common Food Names, a group representing domestic dairy producers.

The CCFN has consistently pressed the European Union to take such familiar GIs off the table in trade talks with the U.S.

“It’s creating a lot of market uncertainty and it’s making GIs a really high-stakes game because you can get protection for a very specific GI, but in some jurisdictions that can [extend] much broader protection, which leaves other competing products out of the market,” Cheek said at the American Bar Association’s Annual Intellectual Property Law Conference in Bethesda, Maryland.

Cheek gave the example of an EU decision not to allow Kraft Foods Inc. to sell American-made “Parmesan” cheese in its member countries, forcing the U.S. dairy giant to market one of its successful products as “Pamesello” so as not to interfere with the GI.

“What the heck is Pamesello cheese? So of course their market plummeted,” she said.

Rebecca Gan of Wenderoth LLP, arguing on behalf of U.S. and global GI beneficiaries at the conference, insisted that 95 percent of GIs are widely agreed upon in trade negotiations while the contention only surrounds around 5 percent.

Nevertheless, Gan said, demanding GIs for specific foods like feta cheese in certain markets can inform consumers that the product is made in Greece using the traditional ingredient of sheep or goat milk, rather than from cow’s milk in Wisconsin.

The issue is one of the most controversial areas of the Transatlantic Trade and Investment Partnership talks. According to trade analysts, the TTIP’s recently published lengthy list of GIs for cheese, wine and spirits that the EU seeks to give exclusive marketing rights to, and the scope of the list, seems to suggest

a protracted battle with U.S. trade officials.

Along with the presentation of the EU's formal negotiating positions, an official readout from the February TTIP meeting said the two parties are gearing up for a special session devoted exclusively to the GI issue sometime before the next full negotiating round, indicating that officials are beginning to look at GIs more seriously as the talks progress.

Included in the EU's list are popular cheese names such as feta and Asiago. If Brussels had its druthers, only cheese producers in Greece and Italy, respectively, would be able to use the names in marketing their products, stripping that right from scores of U.S. producers that have marketed those products for decades.

—Additional reporting by Alex Lawson. Editing by Bruce Goldman.

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