EUROPEAN COMMISSION
DIRECTORATE-GENERAL FOR AGRICULTURE AND RURAL DEVELOPMENT

[redacted]

Brussels, 23 February 2015

LIMITED

Council of the European Union
General Secretariat

Trade Policy Committee

[redacted]

NOTE FOR THE ATTENTION OF THE TRADE POLICY COMMITTEE

SUBJECT: ***EU-U.S. Transatlantic Trade and Investment Partnership (TTIP). Line to take on Geographical Indications (GIs)***

[redacted]

OBJECTIVE: **For information**

REMARKS: DG AGRI would like to provide Member States with briefing material on agricultural trade matters related to the Transatlantic Trade and Investment Partnership (TTIP), and specifically to Geographical Indications (GIs).

In the context of negotiations under subject, GIs have attracted considerable political and media attention and EU positions have been frequently described in an inaccurate manner. This situation calls for a coordinated outreach effort, aiming at clarifying and explaining EU

positions and addressing the main criticisms expressed by GI opponents.

The material attached is intended to be used by EU officials and Member States representatives during contacts with U.S. counterparts and/or media. It contains key messages and defensive points, addressing the most controversial areas of the GI debate.

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GIs in TTIP

I General messages

- **GIs** in TTIP wrongly depicted as **stumbling block**. Need to see them as **part of solution, instead**.

- **GI outcome in TTIP is possible**, and pragmatic solutions are within reach. **95%** of the names for which the EU seeks protection are **not problematic for the U.S. –** this is acknowledged by U.S. dairy producers. **Solving the remaining handful of names is the task of negotiators.** In looking for such common grounds they will be guided by the WTO rules we both abide and strongly support.

- **Protection of EU GIs in the U.S. is a must-have**. Part of balance in agriculture. Same for wine semi-generics.

- **Legal costs to protect and notably enforce geographically-based trademarks are currently prohibitive** in the U.S., notably for SMEs. This is why we aim at protecting EU names through TTIP.

- **U.S. producers suffer from the same shortcomings in the US TM system as the EU ones**. The Idaho potato growers spent 1 million USD to fight one Court case alone. This is not sustainable for local producers/SMEs.

- No one comes here to expropriate anything; however, as in any other business, **we should respect good faith and expose bad faith**. Consumers have the right to make an informed choice and all producers have the right to fair conditions.

- **Need to de-dramatize current debate**. Anti-GIs lobby in Congress and media not helpful and misleading. Nobody in the EU wants to claw back names such as *gouda* or *cheddar*. Chairman Ryan (R-Wisconsin) should not fear GIs in TTIP: "*Wisconsin Gouda*" is not in danger and <u>can already be exported to EU.</u>

- **GI not one-sided file**: consumers in EU and U.S. want products reflecting history and heritage. Think Napa Valley, Idaho potato, Vidalia Onions, not just Feta and Parmesan. This is the trend. GIs have become a global phenomenon in developed, emerging (India, China) and developing countries (in Africa, in South East Asia, in Latin America). Also in the U.S there are voices strongly supporting the geographical indications' approach and advocating a better protection for this particular property right. These are producer groups recognizing the value of that approach for their business, whether domestically in the U.S. or vis-à-vis export markets.

- **GIs are an IP right at par with other intellectual property rights (IPR)**. The protection of intellectual property rights (IPR) is one of the foundations of both the US and the EU economic systems, as millions of jobs across the Atlantic depend on an effective protection of those legitimate rights. Consequently, both U.S. and the EU are

pleading for stronger IPR protection in the respective bilateral and multilateral trade agendas. The EU does not see why GIs in the context of TTIP should be an exception and should not be treated at par with other IPR.

- **GIs are "products with a story".** Consumers want fruit, sausages, wine or whisky etc. with a story – stories of the men and women keeping alive traditional ways of doing things, in the place they call home; stories reflecting history and heritage. A name recognised as a GI tells such a story.

- **Are TMs products without a story?** Of course, there can also be a story behind a trade mark, but it is mostly not linked to a place, a traditional way of doing it. There is an "Apple" story, even a great one - but your Apple smart phone is "designed" in Cupertino, California, not made there. Buy an "Armagh Bramley apple" (from the UK) and you can be sure the apple is from there - not only the design.

- **Distinctiveness / specificity**: you can only get a trade mark if it is distinctive; you can't get if for a generic term. The same applies for GIs.

- **GIs maintain jobs in rural areas / the country side**: Both in the US and in Europe, there is concern about abandoned small towns and villages in the countryside. How to keep people and jobs there? How to offer a perspective to the young? Many GIs are produced in rural areas, often poor ones, and often threatened from depopulation. GI protection means that the name can only be used as long as the product is made in a specific place. It has been shown that this can ensure that the jobs stay where they are and production does not move to the place where it is cheapest.

- **GIs help small farmers**: Small farmers producing for a GI – e.g. milk for a GI cheese – have an alternative to selling to big buyers and the mass market; GI offer alternative market outlets.

- **Wines vs. food names. Think Napa Valley:** Consumers expect that a bottle of "Napa Valley" contains wine from Napa valley, made from grapes that have grown there, by the wine-makers who know how to get the best out of the soil, sun and grapes in this unique region. That's why the US protects these names at home in the US; and try to do so in third countries as well. The EU does the same with certain names for EU foods, wines and spirits. What Tennessee whiskey is in the US, Scotch Whisky or Irish Whisky is for Europe. We are on the same line on wines and spirits, we can be it on food products as well.

II Defensives

On common names/generics

- **The EU is attempting to monopolize common names**. The EU approach to GIs in its trade negotiations has often been depicted as an attempt to "monopolize" common food names used worldwide for the benefit of some European producers. This is plain wrong. The EU legislation on GIs foresees that a name that has become generic cannot be protected and that, in a compound term, the generic component of the term is not protected (e.g. Gouda Holland, where Gouda is not protected). The EU accepts that a name that is protected as a GI in its territory could also, in principle, be considered as generic in another territory. The EU believes that this test should be done on the basis of serious evidence, not mere assumptions, as it is the case in the narrative of the anti-GI lobbies. Names that anti-GIs lobbies depict as common names in the U.S. (e.g. *feta*, *parmesan*, *asiago*) are widely used in association with symbols (flags, monuments, etc.) that re-link those products to the names' place of origin. This is the best evidence that those names are not common names, as U.S. companies feel the need to convey to consumers an image that evokes a (false) origin. We want to fix this in TTIP.

- **Names of EU origin which are not GIs**: Several names of products which are undisputedly of European origin and which, for some of them, refer to a specific place have become common names to designate a type of products, also in the EU. Such common names and genuine GIs are often mixed up and some of the misunderstandings about the EU's position on GIs have emerged as a result of these errors. Here are some of those names which are not protected as GIs in the EU: **camembert, brie, cheddar, edam, gouda, mascarpone, mozzarella, provolone, blue and bologna**.

- **EU names that are not protected as they are common names**: We have been perplexed to see media reports stating that we are looking to protect names such as **chorizo, ricotta, salami, kielbasa, chevre and prosciutto**. This is simply wrong, as these terms are not protected within the EU. The bulk of the U.S. agricultural industrial production operates using these terms that are not in question by any party.

- **The EU is expanding the GI list as to include names that gain international standards in the past.** One can perfectly understand that a country which aims at protecting the name of its products uses the GI route where it is available (i.e. in the EU for instance) while making also its utmost in the rest of the world to prevent the marketing of products having nothing to do with the original recipe. Promoting a Codex alimentarius standard can be part of such a strategy.

- **In recent FTAs, EUs negotiated outcomes which amount to limiting competition on certain names regardless of IP status in hosting countries (e.g. 5 cheeses in Canada and Feta in South Africa).** This is wrong and inaccurate. While it is true that the 5 cheese names were used to various extents in Canada by a number of companies

other than the GI holders, there is no compelling evidence (jurisprudence or other legally conclusive acts) that these names were generic in that territory. Solutions found were respectful of existing users (grandfathering) and add transparency to the labelling (use of "style" etc. for newcomers), which is a plus for consumers.

- **What about Parmesan?** The term "Parmesan" is not registered as a GI in the EU. What is registered is the term "Parmigiano Reggiano". The question whether using the term "Parmesan" for cheese that is not "Parmigiano Reggiano" is an abuse and misleading was hotly debated in the EU for years. Finally, the question ended up before a judge – Europe's highest court, in fact. The judges finally held that in the EU market, using "Parmesan" in the EU evokes "Parmigiano Reggiano" and is therefore illegal unless used for selling real "Parmigiano Reggiano". In the EU, we believe that such questions should be looked on a case by case; and there should be a judge competent to handle such disputes.

- **EU GI limits on common names are recent (20 to 10 years)**. An EU wide system of protection for food GIs is in place since 1992. On certain names (Parmesan and Feta), decisions were brought to Europe's highest Court and the said Court took clear-cut determinations, after lengthy processes. The fact that some names have attracted disputes which led to clear legal determinations does not amount to any proof of genericness. The debate on those terms is definitely over in Europe and cannot be re-opened. Any use of those terms other than the original products is illegal and policed by MS authorities. If the U.S. has evidence demonstrating an illegal use of these terms in the EU, this will be prosecuted accordingly.

On alleged inconsistencies of the EU system of GI protection/enforcement[1]

- EU legislation severely punishes any infringement of GIs in Europe, through civil enforcement measures, border enforcement and even (through national legislation in several countries) criminal enforcement.

- Slides used to display alleged infringements of European GIs by EU companies showed mostly pictures taken outside the EU, i.e. in third countries where our GIs are not legally protected and where such display and sale is not an IPR infringement.

- The Commission notes that we have information about a number of products (ex: cheeses) produced in Europe, that are exported to third countries under a legal brand and subsequently re-packaged in the country of importation with a label that would not

[1] In particular for people meeting USTR officials, it is important to counter allegations referring to "repeated violations in the EU of EU GIs that are allowed to take place, while the EU asks the US to enforce EU GIs in the US.", based on alleged evidences (pictures showing EU GIs misused by EU companies);

be allowed in the EU. EU relevant authorities are not in a position to control a possible rebranding of products taking place after those products have left the EU territory.

- No legal system is 100% effective and it is conceivable that – if intensely researched - random examples of products using illegally GI names can be found in Europe or exported from Europe. Those products face the risk of being seized and destroyed *ex-officio* by customs, police or food/safety/ inspection authorities. These odd cases are no different from stalls that can be found in Washington D.C. selling clothes, bags or perfumes with trademark infringing labels of European or US brands, some in the sidewalk in front of the USTR or in New York's Chinatown. They should by no means be used as an illustration of lesser commitment to the highest standards of protection and enforcement of IPR in the U.S. or in the EU.

On compound names

Only compound names should be protected as GIs in the EU and worldwide. This statement is, at best, too simplistic. The EU does protect many compound terms e.g. "West Country Farmhouse Cheddar cheese", "Mozzarella di Bufala Campana", "Noord-Hollandse Edammer", "Noord-Hollandse Gouda". The practical implication is that a product sold in the EU as "West Country Farmhouse Cheddar cheese" must originate from four specific counties in England (Dorset, Somerset, Devon and Cornwall) and be produced according to precise specifications. On the other hand, "cheddar" originating from other parts of the world can be sold in the EU. That does not imply of course that only compound names are protected as GIs in the EU. "Roquefort" for instance is a well-known GI. In fact, for most cases, the scope of protection for compound names is relatively straightforward, as compound names are generally made from one part which is clearly a type of product and one other part which is the geographical area ("Esparrago de Navarra" (asparagus from Navarra), "Clémentine de Corse" (clementine from Corsica), "Zafferano di Sardegna" (saffron from Sardinia)). For a limited number of cases, the compound name is made of two geographical terms ("Parmigiano-Reggiano" or "Pessac-Léognan", "Camembert de Normandie", "Gouda Holland"). In the two first cases, the two components are protected. In the second case, the protection was sought only for the name as a whole when the name was registered. In the last case, it was made clear at the time of registration that the term "Gouda" can continue to be used. The EU does not see the "compound vs. sole term" as a significant parameter. Some cases will have ultimately to be decided on a case-by-case basis.

On GIs not being an EU-wide priority in TTIP

EU claims that GIs are an EU-wide priority; "but GI benefits are highly concentrated (89%) in 5 MSs and 60% of GI earnings are held by FR and IT". GIs are indeed an EU wide priority and the EU FTA agenda reflects just that reality. It is true that the EU-wide GI system has roots in prior existing systems set up in certain MSs, and hence GIs in those MSs have more history and still represent the majority of the EU GI turnover. However, now all MSs are adhering to the GI approach.