European Community Common Position regarding the answer to the questions forwarded by the CCMMP to the CAC on the proposal for the elaboration of a standard for Parmesan

(Point 13 of the CAC Agenda)

Question 1:

To what extent, if any, should a PDO recognized in EC legislation for a product otherwise considered to be generic by the majority of the members present be grounds for rejecting elaboration of a Codex standard when in the opinion of the majority of members present existing criteria for acceptance have been met?


This Regulation sets out rules for the registration and the protection within the European Community of designations of origin (PDOs) and geographical indications (PGIs). Both categories are based on a link between the product characteristics and its geographical origin and are GIs under the terms of the TRIPS Agreement.

Once registered a name benefits from a high level of protection, which includes protection against any misuse, imitation or evocation even if the true origin is indicated or if the name is translated or accompanied by an expression such as ‘type’ etc. It is important to note that the protection attaches to the name and not to the product. This means that the existence of a PDO would not be an issue should the Codex standard bear a different name.

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1 A designation of origin means “the name of a region, a specific place or, in exceptional cases, a country, used to describe an agricultural product or a foodstuff: - originating in that region, specific place or country, and – the quality or characteristics of which are essentially or exclusively due to a particular geographical environment with its inherent natural and human factors, and the production, processing and preparation of which take place in the defined geographical area” (Article 2(2)(a) Regulation 2081/92).

2 Article 13(1) of Regulation 2081/92 provides: “Registered names shall be protected against: (a) any direct or indirect commercial use of a name registered in respect of products not covered by the registration in so far as those products are comparable to the products registered under that name or insofar as using the name exploits the reputation of the protected name; (b) any misuse, imitation or evocation, even if the true origin of the product is indicated or if the protected name is translated or accompanied by an expression such as ‘style’, ‘type’, ‘method’, ‘as produced in’, ‘imitation’ or similar; (c) any other false or misleading indication as to the provenance, origin, nature or essential qualities of the product, on the inner or outer packaging, advertising material or documents relating to the product concerned, and the packing of the product in a container liable to convey a false impression as to its origin; (d) any other practice liable to mislead the public as to the true origin of the product. Where a registered name contains within it the name of an agricultural product or foodstuff which is considered generic, the use of that generic name on the appropriate agricultural product or foodstuff shall not be considered to be contrary to (a) or (b) in the first subparagraph.”
As regards names that have become generic, these may not be registered and thus cannot benefit from the protection of the Regulation. Hence, the fact that a name has been registered as a PDO means that this name is not considered generic and cannot become generic in the European Union.

Should a Codex standard be adopted under a name that is registered as a PDO in the European Community, the European Community would not be able in accordance with Community law to adopt this standard. Such adoption would prejudice the acquired rights of the holders of the PDO to prevent the sale within the European Community of products bearing the concerned name that do not come from the designated geographical area and do not otherwise conform with the product specification of the PDO.

As regards what may constitute grounds for rejecting elaboration of a Codex standard, it is noted that the criteria for the Establishment of Work Priorities include “Consumer protection from the point of view of health and fraudulent practices” as well as “Diversification of national legislations and apparent resultant or potential impediments to international trade”. The European Community considers that the answer to Question 1 cannot be in the form of a general rule, but instead that a case by case assessment is called for.

In the specific case of a product that is traded worldwide and has a reputation on foreign markets under a name that is registered as a PDO in the European Community:

- The adoption of a worldwide standard under the same name would in fact contribute to a misleading labelling for the consumer, who could then buy under the same name products of completely different origins;

- Moreover, given that the European Community would not be able to accept such a standard, it is also questionable to what extent its adoption would constitute an effective contribution to reducing impediments in international trade;

- However, this should in no way preclude the elaboration of a standard under a different name that does not engender similar problems.

The European Community would urge the CAC to bear in mind the above considerations in deciding on the elaboration of a new standard.

**Question 2:**

*Should aspects of intellectual property protection e.g. trademarks, certification marks, geographical indications (GI's) or PDO’s be considered as legitimate criteria by Codex when deciding on acceptance of new work or adopting standards?*

The same considerations as outlined in answer to first question apply.

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3 “Names that have become generic may not be registered. For the purposes of this Regulation, a ‘name that has become generic’ means the name of an agricultural product or a foodstuff which, although it relates to the place or the region where this product or foodstuff was originally produced or marketed, has become the common name of an agricultural product or a foodstuff. To establish whether or not a name has become generic, account shall be taken of all factors, in particular: - the existing situation in the Member State in which the name originates and in areas of consumption, - the existing situation in other Member States, - the relevant national or Community laws.” (Article 3(1) of Regulation 2081/92).
In other words, a case by case assessment would be called for taking into account *inter alia* the acquired intellectual property rights in a member country that would prevent the acceptance of a standard by that member and the worldwide trade that concerns this member or legitimate traders situated outside this member. In the light of these considerations alternative names for the standard (or revision of existing standards) may be explored or a decision not to continue with the work may be appropriate.

*If the answers to both questions are that these matters are not legitimate considerations for CCMMP, will the CAC request that the CCMMP begin new work on the promulgation of a standard for Parmesan Cheese?*

The name ‘Parmigiano Reggiano’ is registered as a PDO by means of Regulation 1107/1996 of 21 June 1996 and protected in the European Community under the terms of Regulation 2081/92, that is including its translations such as ‘Parmesan’.

The product bearing the PDO is traded worldwide and has a worldwide reputation⁴.

In the light of the above considerations, the European Community considers that the CAC should not ask the CCMMP to begin new work on a standard for Parmesan cheese. A revision of the Extra Hard Grating Cheese standard should instead be undertaken.

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⁴ Exports of Parmigiano Reggiano outside the EU, in constant increasing, account for approximately 6-8 % of the total sales volume (of Parmigiano Reggiano) representing 65 Mio Euro. These are exported mainly to North and South America.