Codex Alimentarius Commission (28th Session)  
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European Community Position on the Proposal for a Standard on Parmesan Cheese

(Agenda item 13, ALINORM 05/28/9D Add.1)

The European Community (EC), representing its 25 Member States, considers that the Codex Alimentarius Commission should not ask the CCMMP to begin new work on a standard for cheese called “Parmesan”.

The following are the main arguments for this position:

1- **Codex is supposed to work on the basis of consensus**

The normal rule of Codex is to work by consensus during the procedure of elaboration of standards. This is a valuable safeguard for preserving the interests of all Members of Codex.

All Members of Codex may be confronted by issues which are of particular political importance and sensitivity in their country, but which are not regarded in the same light by global commercial interests. The consensus rule protects the legitimate interests of each Member of Codex.

A “Parmesan precedent” would be very unfortunate. It could be used in future to override the interests of other Members on issues of particular concern.

Breaking the consensus rule on this issue would diminish the standing and authority of Codex in the international community.

2- **Effectiveness of Codex work and good use of limited Codex resources**

Codex has many demands on its scarce resources.

The focus of Codex is on protecting public health and protecting consumers against fraud. The strategic objective of Codex is to “use limited resources of
Codex for the development of horizontal standards aimed at assuring the protection of the health of consumers”\textsuperscript{1}.

In the light of this strategic aim, why should Codex waste resources on a highly contentious issue such as a “Parmesan standard”?

Codex’ own external audit has concluded that Codex limited resources should be concentrated on questions that have a prospect of an outcome\textsuperscript{2}. Work on the Parmesan Standard has no such prospect. The Committee on Milk and Milk Products has already an ambitious work programme. If work on Parmesan were to be launched, the EC would have to oppose it at every stage of procedure. This raises the prospect of a phenomenal waste of Codex time and resources on an issue that is not a priority for Codex.

In addition a proposal for new work on a Codex Standard for Parmesan Cheese would have to follow the Procedures for the Elaboration of Codex Standards and Related Texts as detailed in the Procedural Manual, and in particular the requirements of the Critical Review\textsuperscript{3}. In this regard, a project document would have to be developed detailing in particular the “information on the relation between the proposal and other existing Codex documents”. In this specific case, this would make crystal clear that an existing standard (C-35 1978 to be possibly revised) already covers this type of cheese, highlighting the incoherence of this initiative from a Codex perspective.

There is no objective reason that work on Parmesan should not follow rules-based decision-making procedures notably the principles of the critical review, and given the workload of the Committee on Milk and Milk Products, this proposal should not be retained.

3- A Codex Standard for Parmesan cheese would impede trade and sow confusion

One of the main purposes of Codex standards is to ensure fair practices in the food trade and consequently avoid confusing and misleading consumers.

There is no evidence of any need for this standard or any existing impediment to trade. However, if this standard were adopted, traders would be faced with legal uncertainty and confusion. Traders might expect that cheese could be traded

\textsuperscript{1} Codex evaluation and Statement found under Objective 6, 4\textsuperscript{th} bullet of the Strategic Framework 2003-2007.


among Codex members under the name of a Codex standard. However, they would find that in Member countries where there are intellectual property rights (which is the case of the EU), they would be prevented from using the Codex-approved term.

Thus we would have the situation where use of a Codex standard leads to confusion, legal uncertainty, and cost — all of which impede rather than facilitate trade.

4- **Unnecessary work as a suitable standard already exists**

The Codex standard for “Extra Hard Grating Cheese”, adopted in 1978⁴, covers the production and trade for these types of cheeses in order to protect consumers from health risks and fraudulent practices.

Comparing the standard “Extra Hard Grating Cheese” and the draft “Parmesan” standard presented in 2002 by the International Dairy Federation, few differences are apparent. The descriptions of the cheeses, concerning fat content and dry matter, are identical; the ingredients of standard C-35 cover those of the « Parmesan » draft; and the processes for manufacture and maturation are identical.

Given that standard C-35 has existed since 1978, the EC can fully accept technical arguments that it may be time for a revision or amendment, in line with Codex procedures and overall strategy, as proposed in document CX/MMP 04/6/13 (January 2004). Standard C-35 is a horizontal standard, and its revision would be fully in line with the recommendation to work on horizontal standards and this work could wholly cover the needs of operators who wish to develop a Parmesan standard.

5- **Motive for the Parmesan proposal has nothing to do with the Codex mandate; Standard C-35 already caters for use of “Parmesan” without treading on intellectual property rights**

While standard C-35 is entitled “Extra Hard Grating Cheese”, the text makes explicit that in trade other names may be used in the territories of various Members “cheese conforming with the standard may be designated Extra hard Grating Cheese or any recognized variety name in consuming country. A ‘coined’ or a ‘fanciful’ name, may also be used if it is not misleading and is accompanied by the phrase ‘Extra hard grating cheese’”⁵.

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⁴ Stand C-35-1978

⁵ Extract of Marking and labelling in Standard C-35.
This is a sensible practical rule for a Codex standard. Thus the current standard makes no judgement on use of the “Parmesan” name. That is a matter for the laws and rights in each Member.

6- **Codex is the wrong forum to debate on Geographical Indications**

Parmesan is a French inspired translation of “Parmigiano-Reggiano”, which is a protected designation of origin in the territory of the European Union. The debate on geographical indications is going on in the World Trade Organization (WTO) Doha Round and in the World Intellectual Property Rights Organisation (WIPO). These are the correct fora for these legal issues. They bring together experts in intellectual property policy.

The EC has no intention of pursuing the protected status of Parmesan in Codex. Those discussions should remain confined to the correct fora (the WTO talks). But equally, Codex should resist attempts by other interests to use Codex to pursue political objectives that should be dealt with elsewhere.

Codex is the wrong forum to debate Geographical Indications. Nor is Codex the forum to advance elements of the Doha WTO agenda, aspects of the TRIPS agreement, or indeed duplicate the work of WIPO. The good offices of Codex are at risk of being exploited to advance an issue that Codex is not equipped to deal with.

Codex’s strength lies in the expertise of its delegates on health and consumer protection matters in line with the Codex mandate. Most delegations to Codex, rightly, do not include experts in intellectual property. Most delegations focus their resources on experts in health and consumer protection policy.

Codex should not be used to diminish an important geographical indication. The EC seeks to protect Codex from this kind of misuse. The EC does not ask Codex to take a position on the status of Parmesan. Codex should remain neutral, retain its high standing, and avoid being exploited.

7- **Intellectual property rights**

In creating an international commodity standard, Codex should avoid use of significant intellectual property names (such as trademarks, patents and geographical indications) whenever possible. The purpose of a standard is to facilitate production and trade in the product throughout the world.
The proposal of such a standard is not benign. A Parmesan standard could have a damaging effect on the intellectual property rights of producers and traders inside the EU.

It would also set an unfortunate precedent, not just for geographical indications, but also for trademarks. What will be next?

It is well understood in intellectual property law and policy that the existence of an international standard carrying a certain name may be used in evidence of the generic status of that name. This is as true for trademarks as for geographical indications, collective trademarks, certification trademarks and so on.
ANNEX: European Community Position on the use of names protected in the territories of Members under intellectual property regimes with particular reference to the proposal for the elaboration of a standard for Parmesan

1. Codex Alimentarius Commission should not be used to undermine significant intellectual property rights.

2. Intellectual property protection is an essential tool by which to uphold the commercial rights of legitimate producers, traders and other interested parties. The enforcement of intellectual property also protects consumers from being misled about the identity of goods purchased.

3. Types of intellectual property right that are universally recognised and the subject of rules laid down under the WTO TRIPS agreement, include copyright, trademarks, geographical indications, industrial designs, and patents.

4. Intellectual property protection is territorial in that items protected in one jurisdiction may not be protected in another jurisdiction and may, in certain cases, be considered to be generic. While legal systems and practice among Members differ considerably, in several jurisdictions the generic status of an item of intellectual property is governed inter alia by the perception of the consumer as a key element of evidence. In these countries, generic status is thus a question of evidence rather than legislation. The fact that a name is the title of a Codex Alimentarius commodity standard could be used in evidence to support a claim of generic character in the jurisdictions concerned. This evidential reality in these jurisdictions shows that the actions the CAC may, pursuant to legal provisions in Members, lead to impacts on the standing of intellectual property rights. These impacts have not been explicitly considered by the legal service (ALINORM 04/27/41).

5. The CAC, in approving a commodity standard and in particular selection of the title of a commodity standard, may directly impact on any intellectual property rights held in the name concerned in the territories of Members. The actions of CAC in approving such a name have the potential to diminish and clearly prejudice—without any right of recourse or objection—the valuable intellectual property rights of private operators.

6. Concerning the legal requirements and agreed policy of the CAC, the following should be taken into account in deciding whether to accept new work or launch work on new standards:

   - An objective of the elaboration of norms under CAC is “ensuring fair practices in the food trade” (Codex General Principles). Selecting a significant intellectual property right as the title of a proposed standard is not a “fair practice” for producers and traders who rely on the intellectual property protection;

   - The CAC should not expend resources on elaboration of standards for which there is no reasonable prospect of an outcome (from Objective 6 of the Strategic Framework 2003-2007);

   - The CAC should focus resources on development of horizontal standards aimed at assuring the protection of the health of consumers (Codex strategic framework 2003-2007);