

Mrs. Mariann Fisher Boel
European Commissioner for Agriculture
European Commission
Rue de la Loi 200
B-1049 Brussels

Geneva, 4 of March 2008

Re: European Court of Justice February 26th ruling on the use of the name Parmesan in the EU

Dear Commissioner,

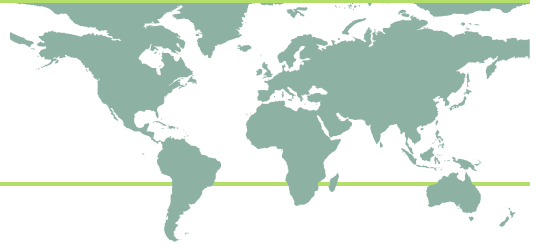
OriGIn – the international organization of Geographical Indications’ producers – has followed with great interest the dispute between the European Commission and Germany on the Parmesan issue.

We are pleased that the Court ruled that Parmesan is not a generic term. Not only it is a very important decision for the Consorzio del Formaggio Parmigiano Reggiano, a founding member of OriGIn, but also to millions of GI producers both in Europe and around the world that are currently competing in unfair terms with so-called “generic descriptors”. We therefore consider that this ruling provides important clarifications on the extent of the protection granted through translation and evocation. In particular, we take good note that the Court looks at “phonetic and visual similarity between names” in order to decide whether or not there is an evocation of a GI name.

However, OriGIn members are concerned with the second part of the ruling which relates to the question of whether or not the Federal Republic of Germany had to proceed against infringements of article 13 of Regulation 2081/92. The ECJ ruled that there is no obligation on Member States to take on their own initiative measures to penalize infringements of Article 13. According to the Court’s interpretation, Member States must only provide legal instruments to ensure the effective protection of GIs.

In a nutshell, the ECJ considers that Regulation 2081/92 does not provide for an ex officio protection of GIs. Arguably, this interpretation would apply to the new GI Regulation 510/2006 which contains similar provisions.

If our analysis is correct, the Court’s interpretation would undermine the EU protection system for geographical indications as well as the EU efforts to promote sui generis GI protection systems in third countries. Should ex officio protection not be available in the EU, GI producers will not be able to rely on public authorities across the EU to enforce the protection of their intellectual property rights. In practice, small GI producers would probably not have the means to go before Courts in the different Member States. As a result, the value of GI protection would be greatly limited.



Bearing in mind the importance of the ex officio protection for all GI producers, but also for consumers who need to be protected against deception, we rely on the Commission to measure the impact of this ruling. Should our analysis be confirmed, we call on the Commission to find a way to include the ex officio protection in the framework of the European GI regulation without any delay. The EU has made a step in that direction in the new wine Regulation which provides in article 38.4 that “Member States shall take the steps necessary to stop unlawful use of protected designations of origin and geographical indications”.

We remain at the disposal of your services for additional comments.

We thank you for the attention you will pay to this important matter and for your continuous support to geographical indications.

Yours sincerely,

A handwritten signature in blue ink that reads "Luis F. Samper".

Luis Fernando Samper
President

Copy:

DG Agriculture: M. Demarty, Mme. Dormal Marino, M.Sivenas, M.Moegele, Mme. Sauze-Vandevyver, M.Hyvonen