Commission Implementing Regulation (EU) 2019/1751 of 21 October 2019 entering the name 'Havarti' (PGI) in the register of protected designations of origin and protected geographical indications

COMMISSION IMPLEMENTING REGULATION (EU) 2019/1751

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entering the name 'Havarti' (PGI) in the register of protected designations of origin and protected geographical indications

THE EUROPEAN COMMISSION,

Having regard to the Treaty on the Functioning of the European Union,

Having regard to Regulation (EU) No 1151/2012 of the European Parliament and of the Council of 21 November 2012 on quality schemes for agricultural products and foodstuffs[(1)], and in particular Article 15(1) and Article 52(3)(b) thereof,

Whereas:

(1) Pursuant to Article 50(2)(a) of Regulation (EU) No 1151/2012, the application sent by Denmark to the Commission on 5 October 2010 to register the name 'Havarti' as a protected geographical indication, was published in the *Official Journal of the European Union*[(2)].

(2) Germany, Spain, the US Dairy Export Council together with the National Milk Producers Federation and the International Dairy Foods Association, the Office of the United States Trade Representative, the Ministry of Foreign Affairs and Trade of New Zealand, the Dairy Companies Association of New Zealand (DCANZ) and Dairy Australia Limited, supported by the Australian Government opposed to the registration in accordance with Article 51(2) of Regulation (EU) No 1151/2012. These oppositions were deemed admissible.

(3) The Commission received also two notices of opposition from 'Camara Nacional de Productores de Leche' of Costa Rica and from 'Asociación de Desarollo Lácteo' (ASODEL) of Guatemala. However, no reasoned statements of opposition were submitted in accordance with Article 51(2) of Regulation (EU) No 1151/2012.

(4) The Commission invited the interested parties in the admissible oppositions to engage in appropriate consultations. Upon request of Denmark, in accordance with Article 51(3) last subparagraph of Regulation (EU) No 1151/2012, by letters of 5 August 2014 and 22 September 2014 the Commission extended the deadline for each of the ongoing consultations for additional three months.

(5) Given that no agreement was reached within the designated time frame, the Commission should adopt an implementing act deciding on the registration in accordance with the procedure referred to in Article 52(3)(b) of Regulation (EU) No 1151/2012.

(6) The opponents claimed that 'Havarti' does not possess a specific quality, reputation or other characteristics that are attributable to the geographical origin. They consider that the registration of the name would be liable to mislead the consumers as to the true identity of the product in the light of the reputation and renown of an existing trademark. In their opinion, that registration would also jeopardise the existence of identical name, trademarks and products that have been legally on the market for at least 5 years. In addition, they alleged that the name at stake is presumed to have become generic for the following reasons: 'Havarti' has been subject to a Codex Alimentarius Standard since 1966, it is listed in Annex B of the Stresa Convention of 1951 and it has its own tariff line. Production and consumption of 'Havarti' exists in several EU and non-EU countries, certain of which have a specific legal standard for it.

(7) The Commission has assessed the arguments expressed in the reasoned statements of opposition in the light of the provisions of Regulation (EU) No 1151/2012, taking into account the results of the appropriate consultations carried out between the applicant and the opponents and it has concluded that the name 'Havarti' should be registered.

(8) Concerning the alleged failure of the name 'Havarti' to comply with Article 5 of Regulation (EU) No 1151/2012, it should be noted that the registration of 'Havarti' as a protected geographical indication is applied for on the basis of its reputation that is attributable to its geographical origin, within the meaning of Article 5(2)(b) of Regulation (EU) No 1151/2012.

(9) Denmark has submitted a number of specialised publications and references that demonstrate that a reputational link exists between Denmark and 'Havarti'. This cheese was granted with numerous distinctions, prizes, awards received in various national or international fora. The reputation of this product is also built on its specific method of production and historical 'savoir faire'.

(10) In the opposition procedure the Danish authorities have also specified that reputation of 'Havarti' has been achieved through legislative initiatives and quality work for more than 100 years.

(11) As regards the EU territory, 'Havarti' is produced essentially in Denmark. At the date of application Spain, Germany, Poland, Finland and Estonia were also producing limited quantities. The production of 'Havarti' in these Member States is not per se liable to put in question the link of 'Havarti' to Denmark. Quantities are very limited if compared with the overall production in Denmark. In particular, production of cheese labelled 'Havarti' in Spain started only in 2010 and became more substantial only after Denmark had lodged its application for registration of the name 'Havarti' as PGI with the Commission.

(12) Denmark provided evidence that the overwhelming majority of the Danish consumers does recognise persistent link of 'Havarti' with Denmark. The results of a survey conclude that the vast majority of Danish consumers are familiar with 'Havarti' and associate it with Denmark. Outside Denmark, knowledge of 'Havarti' is extremely limited.

(13) Spain also transmitted a study showing the results of a survey carried out in Spain on consumers' awareness of 'Havarti' and its origin. This study is not conclusive. The percentages of unawareness of the product itself and of unawareness of its Danish origin are high. Consumers have indicated several different countries as being at the origin of 'Havarti'. Such unawareness of the product and of its Danish origin may not be considered as positive awareness of any generic character of the name.

(14) The opponents claimed also that the name should not be registered since it is liable to mislead the consumer as to the true identity of the product in the light of the reputation and renown of an existing trade mark. However, the reputation or renown of any relevant trade mark was not demonstrated. The way in which the consumer would be misled was not explained either.

(15) Furthermore, the third-country opponents considered that the registration of 'Havarti' as a protected geographical indication would jeopardise the existence of the identical name 'Havarti', of trade marks and of products that have been legally produced and marketed for more than 5 years, this being one of the grounds for opposition listed in Article 10, paragraph 1, point (c) of Regulation (EU) No 1151/2012.

(16) It appears that the third country opponents in this opposition procedure have not placed a cheese named 'Havarti' on the EU market. Therefore, the existence of a product bearing the name 'Havarti' and produced in these third countries is not affected by the registration of 'Havarti' as a protected geographical indication in the EU.

(17) Regulation (EU) No 1151/2012 does not apply to the territory of third countries. Therefore, the registration of 'Havarti' as a protected geographical indication under Regulation (EU) No 1151/2012 is not liable to jeopardise the use of the name 'Havarti' on the market of third countries.

(18) As regards trade marks already registered, applied for or established by use, in good faith, within the territory of the EU, prior to the date of the Denmark's application to register the name 'Havarti', in line with Article 14(2) of Regulation (EU) No 1151/2012 they are not affected by the registration of a PGI.

(19) Spain and Germany have claimed that they have been producing a cheese named 'Havarti'. The registration of 'Havarti' as a protected geographical indication under Regulation (EU) No 1151/2012 would therefore jeopardise the existence of the name 'Havarti' referred to the product elaborated in Spain and Germany, which is identical to the name applied for registration on 5 October 2010.

(20) In the light of the information included in the German and Spanish opposition and submitted to the Commission, it appears that the production of a cheese bearing the name 'Havarti' started in Spain in 2010 and it reached 5 100 tonnes in 2014. In Germany, only data concerning the production in 2012 are available (2 571 tonnes) but it is stated that Germany has produced a cheese bearing the name 'Havarti' for more than 20 years. In the light of the above, in accordance with Article 15(1)(a) of Regulation (EU) No 1151/2012, transitional periods should be granted to the operators in Spain and in Germany who started marketing a cheese product bearing the name 'Havarti' before the date of submission of the Danish application to the Commission in order to allow