Commission Implementing Regulation (EU) 2017/1901 of 18 October 2017 entering a name in the register of protected designations of origin and protected geographical indications [Danbo (PGI)]

COMMISSION IMPLEMENTING REGULATION (EU) 2017/1901

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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 52(3)(b) thereof,

Whereas:

(1) Regulation (EU) No 1151/2012 entered into force on 3 January 2013. It repealed and replaced Council Regulation (EC) No 510/2006 of 20 March 2006 on the protection of geographical indications and designations of origin for agricultural products and foodstuffs[(2)].

(2) Pursuant to Article 6(2) of Council Regulation (EC) No 510/2006 of 20 March 2006 on the protection of geographical indications and designations of origin for agricultural products and foodstuffs, Denmark's application to register the name ‘Danbo’ as a protected geographical indication (PGI) was published in the *Official Journal of the European Union*[(3)].

(3) Austria, Argentina together with Centro de la Industria Lechera — Dairy Industry Federation of Argentina, Australia together with Dairy Australia, New Zealand together with Dairy Companies Association of New Zealand, Uruguay, the Office of the United States Trade Representative and the Consortium for Common Food Names of the United States submitted oppositions to the registration pursuant to Article 7(2) of Regulation (EC) No 510/2006. These oppositions were deemed admissible under Article 7(3) of that Regulation, except for the one from Austria that was not received within the prescribed time-limit.

(4) The oppositions concerned non-compliance with the conditions laid down in Article 2 of Regulation (EC) No 510/2006, replaced by Article 5 of Regulation (EU) No 1151/2012, in particular arguing that ‘Danbo’ does not possess a specific quality, reputation or other characteristics that are attributable to the geographical origin. They also assert that the name ‘Danbo’ would not qualify as a traditional non-geographical name and that no exceptional circumstances exist that would justify the designation of the whole of Denmark as the delimited geographical area. The oppositions further claimed that the name ‘Danbo’ has become a generic name as provided for in Article 3(1) of Regulation

(EC) No 510/2006, replaced by Articles 6(1) and 41 of Regulation (EU) No 1151/2012. In this respect they pointed out that 'Danbo' has been subject to a Codex Alimentarius Standard since 1966 as well as it has been included in the Annex B of the Stresa Convention of 1951. The generic nature of the name would be demonstrated by the fact that 'Danbo' has also its own tariff line. The oppositions further indicate the importance of the production and consumption of 'Danbo' in several EU and non-EU countries, certain of which have a specific legal standard for it.

(5) By letters of 18 September 2012, in accordance with Article 7(5) of Regulation (EC) No 510/2006, the Commission invited the interested parties to engage in appropriate consultations.

(6) Given that no agreement was reached within the designated timeframe, the Commission should adopt a decision in accordance with the procedure referred to in Article 52(3)(b) of Regulation (EU) No 1151/2012.

(7) Concerning the alleged failure of the name 'Danbo' to comply with Article 2 of Regulation (EC) No 510/2006, replaced by Article 5 of Regulation (EU) No 1151/2012, it should be noted that the relevant provision in force does not distinguish a country as an exceptional case for a geographical indication. Likewise, appreciation whether or not 'Danbo' is a 'traditional non-geographical name' is not any more required. The registration of 'Danbo' as a PGI is actually 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 and which is extensively described in the published single document and in the product specification. The opponents did not provide a valid reasoning challenging that description.

(8) The opponents submitted several pieces of evidence that allegedly show that the name in question is generic. However, having a specific Codex Alimentarius Standard as well as an inclusion of 'Danbo' in Annex B to the Stresa Convention does not imply that the said name has become *ipso facto* generic. As indicated by the Court of Justice in its standing case law, tariff codes relate to customs issues and are therefore not relevant to the intellectual property rights. Furthermore, the limited data that were submitted concerning, in particular, the production of 'Danbo' outside the European Union are not relevant considering the principle of territoriality inherent to Regulation (EU) No 1151/2012, according to which the possibly generic nature of a name is to be assessed in relation to the territory of the EU. The perception of this term outside the European Union and the possible existence of related regulatory production standards in third countries are not deemed relevant to the present decision.

(9) No evidence has been provided in the opposition procedure as regards imports of such cheese from third countries to the European Union. As a consequence, there are no grounds for a transitional period under Article 15(1) of Regulation (EU) No 1151/2012 to be granted to specific producers in third countries.

(10) The link between Denmark and Danbo is based on reputation. Denmark has submitted a high number of specialised publications and references that demonstrate that a reputational link exists between Denmark and Danbo. Its reputation is further confirmed