Commission Implementing Regulation (EU) No 110/2013 of 6 February 2013 entering a name in the register of protected designations of origin and protected geographical indications [Gruyère (PGI)]

COMMISSION IMPLEMENTING REGULATION (EU) No 110/2013

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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) 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[(2)], France's application to register the name 'Gruyère' as a protected geographical indication (PGI) was published in the *Official Journal of the European Union*[(3)].

(2) Australia, New Zealand and the US Dairy Export Council together with the National Milk Producers Federation of the United States submitted objections to the registration pursuant to Article 7(2) of Regulation (EC) No 510/2006. These objections were deemed admissible under Article 7(3) of that Regulation.

(3) The objections concerned non-compliance with the conditions laid down in Article 2 of Regulation (EC) No 510/2006, in particular as regards the fact that the name does not refer to a geographical area. The generic nature of the name and the harm caused to names, trademarks and products that have been legally on the market for at least five years preceding the date of publication provided for in Article 6(2) were also invoked. The objections further claimed that registration of the name in question would be contrary to Article 3(3) of Regulation (EC) No 510/2006.

(4) By letters of 23 May 2011, the Commission asked France and the objectors to seek agreement among themselves.

(5) Given that no agreement was reached within the designated timeframe, the Commission should adopt a decision.

(6) Concerning the alleged failure of the name 'Gruyère' to comply with Article 2 of Regulation (EC) No 510/2006, it should be noted that this name is a traditional name within the meaning of Article 2(2) of Regulation (EC) No 510/2006 and may therefore be registered.

(7) The objectors submitted several pieces of evidence that show, according to them, that the name in question is generic. It is, however, clear that the inclusion of a term given in Annex B to the Stresa Convention of 1951 does not imply that the said term has become *ipso facto* generic. Tariff codes and other similar provisions regarding the name 'Gruyère' relate specifically to customs issues and are therefore in no way relevant to the protection of intellectual property rights or to consumer protection. Furthermore, the data submitted concerning, in particular, the production of 'Gruyère' outside the European Union are not relevant considering the principle of territoriality, according to which the generic nature of a name must be evaluated in relation to the territory of the EU.

(8) The registration of homonymous names is authorised on condition that the name registered subsequently is sufficiently distinct in practice from the name already subject to protection. In accordance with the joint statement annexed to the agreement between the European Union and Switzerland on geographical indications[(4)], France and Switzerland have been consulted in order to identify any additional labelling measures necessary in order to avoid misleading consumers.

(9) As a result of these consultations it appeared necessary to indicate the country of origin, in this case France, on the label in the same field of vision as the name 'Gruyère', in letters of the same size as those of the name. In addition, the use of any flags, emblems, signs or other graphic representations on the labels should be prohibited if it might mislead consumers, in particular as regards the characteristics, origin or provenance of the product.

(10) In the light of the above, the name 'Gruyère' should be entered in the 'register of protected designations of origin and protected geographical indications'.

(11) The granting and duration of the five-year transitional period referred to in Article 8(3) of the Agreement between the European Union and the Swiss Confederation is not being called into question by the registration of the name 'Gruyère' for France under this Regulation.

(12) The measures provided for in this Regulation are in accordance with the opinion of the Standing Committee on Protected Geographical Indications and Protected Designations of Origin,

HAS ADOPTED THIS REGULATION:

Article 1

The name contained in the Annex to this Regulation is hereby entered in the register.

Article 2

Labels featuring the name contained in the Annex to this Regulation shall indicate the country of origin in question in the same field of vision, in letters of the same size as those of the name.

The use of any flags, emblems, signs or other graphic representations on the labels that might mislead consumers, in particular as regards the characteristics, origin or provenance of the product, is prohibited.

Article 3

This Regulation shall enter into force on the twentieth day following that of its publication in the *Official Journal of the European Union*.

This Regulation shall be binding in its entirety and directly applicable in all Member States.

Done at Brussels, 6 February 2013.

For the Commission

The President

José Manuel BARROSO