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European Commission
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1049 Bruxelles

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YOUR REF | (2018)5464609 – 24/10/2018
SUBJECT | LABELLING OF CAVIAR

Dear Mr Aguiar Machado,

We thank you for your mail drawing our attention to the legal points governing the caviar market.

Nonetheless, we would like to draw your attention to certain elements.

Firstly, we read in the CMO that caviar is listed in Annex I [under letter h)] and that this exempts it from the application of Article 35. Under code 1604, caviar is listed as 'prepared and preserved fish'. In this case, we believe that there is a clear misunderstanding in the legislation here.

In fact, according to the following definitions, caviar is a pre-packaged, salted aquaculture product (as it should be the case for all the other fish farming roe):

Regulation 1379/2013 : Art. 5 b) '**Aquaculture products**' mean aquatic organisms **at any stage of their life cycle** resulting from any aquaculture activity or products derived therefrom, as listed in Annex I.

Art. 5 h) '**prepacked fishery and aquaculture products**' means fishery and aquaculture products which are '**prepacked food**' as referred to in point (e) of Article 2(2) of Regulation (EC) No 1169/2011.

Regulation 1169/2011 : Art. 2.2 e) '**prepacked food**' means any single item for presentation as such to the final consumer and to mass caterers, consisting of a food and the packaging into which it was put before being offered for sale, whether such packaging encloses the food completely or only partially, but in any event in such a way that the contents cannot be altered without opening or changing the packaging; 'prepacked food' does not cover foods packed on the sales premises at the consumer's request or prepacked for direct sale.

Furthermore, caviar cannot be assimilated to a processed fish since the following definition states that there must be a **significant modification** of the final product (which is not the case here):

Regulation 852/2004 : Art. 2 m) '**processing**' means any action that **substantially alters** the initial product, including heating, smoking, curing, maturing, drying, marinating, extraction, extrusion or a combination of those processes;

These demonstrative arguments having been made, we ask that the caviar does not make any exception to what it is by nature but that it is recognised again for what it is in Annex 1, namely:

Regulation 1379/2013 : Annex I b) **'0305' Fish**, dried, **salted** or in brine; smoked fish, whether or not cooked before or during the smoking process; flours, meals and pellets of fish, fit for human consumption.

We also wish to remember one of the considerations that led to the formulation and writing of the CMO is :

Regulation 1379/2013: (21) 'In order to enable consumers to make informed choices, it is necessary for them to be provided with **clear and comprehensive information on**, inter alia, **the origin** and the method of production of the products.'

Finally, we also remind that Art. 35.1 clearly states:

Regulation 1379/2013 : Art 35.1 **'Without prejudice to Regulation (EU) No 1169/2011, (...).'**

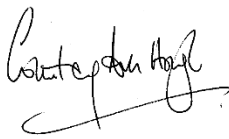
This position, from our point of view, implies that these two Regulations must be applied together, without excluding one from the other, with the following prevalence:

- First and specifically, the CMO Regulation (EU 1379/2013). This is the starting point: caviar is a pre-packaged, salted aquaculture product and not a canned, processed aquaculture product.
- Second, and with a transversal character, EU Regulation 1169/2011, without considering the discussion above on the nature of the product, there is a priority interest to preserve, by the express mandate of the same CMO Regulation, which is the right of the European food consumers to receive **true, clear and not confusing information**. This consumer right is currently violated regularly since foreign caviar is being imported to EU and placed in the EU market suggesting that it is a European product, when it was cultured in third countries (a fundamental issue that implies the contravention of the duty of truthful information **that does not induce error to the consumer's perception of the product being purchased**).

Finally, we understand that there are sufficient regulatory instruments in place to be able to consider caviar as a product that should require specific information about its place/location of production, based on the Consumer Information Regulation (EU 1169/2011) that applies across all food products when there is **certain risk**, as in this case, of **misuse** and **biased information** of the omission of certain information relative to the product in question.

We thank you in advance for your interest in analysing these new elements in this complicated issue.

Yours sincerely,



Courtney Hough
FEAP General Secretary



Benoît Thomassen
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