

MAC ADVICE

Aquaculture Advisory Council's Recommendation on Labelling of Caviar

Brussels, 14 April 2021

1. AAC's Recommendation

On September 2018, the Aquaculture Advisory Council (AAC) adopted a recommendation on the labelling of caviar¹.

According to the AAC, the current EU rules on caviar labelling are mainly related to compliance with the rules governing the movement and marketing of species and their products subject to CITES, the Convention on International Trade in Endangered Species of Wild Fauna and Flora (Council Regulation (EC) No 338/1997), which provide, in the case of caviar, a specific identification string/code to be affixed to the label to ensure that traded caviar comes from licit sources. In the view of the AAC, the rules do not allow consumers to obtain clear and complete information about the origin of the animals and/or caviar. Traceability under the CITES legislation is fulfilled, but correct information to consumers is lacking. Additionally, the described situation leads to difficulties for EU sturgeon farmers and producers of caviar in terms of valorisation of the product and unfair competition.

The AAC outlines that caviar is not covered by the consumer information requirements established by Regulation (EU) No 1379/2013, arguing that the inclusion of this aquaculture product within the scope of the regulation is required. Furthermore, the AAC proposes a list of indications to be clearly specified on the caviar boxes, taking into account Regulation (EU) No 1169/2011 on the provision of information to consumers.

¹ To access the recommendation: https://aac-europe.org/images/AAC_Advice_Caviar_labelling.pdf.

2. DG MARE's Reply

On October 2018, the Commission replied to the mentioned AAC's recommendation².

In their reply, the Commission outlines that the goal of the codes present on caviar labels is to allow control by authorities and not to provide information to consumers on the origin of the product, so the lack of clarity for consumers does not raise concern. The Commission explains that caviar and caviar substitutes are not covered by the consumer information requirements established in Regulation (EU) No 1379/2013, since the co-legislators decided that the application of specific consumer information rules to prepared and preserved fishery and aquaculture products was not justified.

Nevertheless, Regulation (EU) No 1169/2011 on the provision of food information to consumers requires the country of origin or place of provenance of the food to be indicated where the failure to indicate such information could mislead consumers as to its origin or place of provenance. In addition, Commission Implementing Regulation (EU) 2018/775 laying down rules for the application of Article 26(3) of that Regulation requires that where the country of origin or the place of provenance of a food is given, and where it is not the same as that of its primary ingredient, the country of origin or place of provenance of the primary ingredient in question shall also be given or indicated as being different to that of the food. This Commission Implementing Regulation is applicable since 1 April 2020.

The Commission notes that that the extension of consumer information provisions under the CMO Regulation cannot be subject to amendments for a single product. Since this would imply the application of fishery-specific consumer information rules to all prepared / preserved products under code 1604 and 1605.

Finally, the Commission invited the AAC to continue discussions on this topic, including with the MAC, and to provide an advice on the Commission on this. As for the information to be

² To access the reply: https://aac-europe.org/images/lettre_Labelling_of_Caviar.pdf.

provided on caviar cans, the Commission invited the AAC to justify why stricter provisions on consumer information to be presented on the product are being requested.

3. Developments in the AAC and in the MAC

The AAC has not adopted any further advice on labelling of caviar. According to information provided by the Secretariat of the AAC³, the topic is currently on standby within the AAC, even though activity likely continues internally among some of their member organisations. The Secretariat of the AAC further informed that they held several meetings with DG MARE, where the MAC/AAC work on common topics was discussed, but that different views in successive meetings were expressed, so they could not provide a clear idea of DG MARE's perspective. The AAC has expressed willingness for an endorsement by the MAC of their recommendation. Additionally, the AAC aims to continue working on the issue of consumer information.

The topic was introduced in the MAC, on October 2018, with a presentation by an AAC representative. Since then, the topic has been discussed several times within the MAC⁴ with the presence of active observers from the AAC.

4. MAC's Position

The MAC takes note of the proposals put forward by the AAC under the Recommendation on Labelling of Caviar. The MAC also thanks the AAC for the continued openness to hold discussions on this matter.

The MAC understands the concerns expressed by the Commission in its reply, particularly that the extension of consumer information provision under the CMO Regulation cannot be subject to amendments for a single product.

³ This information was provided via email to the Secretariat of the MAC on 3 March 2020.

⁴ The topic was, for example, discussed at the MAC WG3 meetings of 18 October 2018, 12 February 2019, 17 May 2019, 3 September 2019, and 30 January 2020. To access the minutes of these meetings: <https://marketac.eu/en/minutes-of-meetings/>

The MAC highlights that, under the Combined Nomenclature (CN), caviar is considered as a prepared or preserved product, even though it is not actually the case. Caviar is only fresh fish with a small addition of salt, comparable to CN subcategory 0305.20 “Livers, roes and milt of fish, dried, smoked, salted or in brine”. It is also important to take into account the definitions of “caviar” and “caviar substitutes” provided by the World Customs Organisation (WCO). According to the WCO Explanatory Notes to the Harmonized System, “caviar substitutes” are products consumed as caviar, but prepared from the eggs of fish other than sturgeon. The most recurrent ones are lump eggs, but could also be, for example, salmon, carp, tuna, cod, or mullet eggs. The MAC recognises that the CN codes were not established by DG MARE and that amending these would require significant effort and time, since this is a global issue that involves a large number of stakeholders.

In the view of the European aquaculture sector, supported by the European catching sector and by environmental and development NGOs, an appropriate solution could be the division of the CN category 1604, which falls under paragraph h) of Annex 1 of the CMO Regulation, into CN subcategories 1604 31 “Caviar and caviar substitutes” and other subcategories⁵. This would not create an exception for a single product, but for a range of products. Furthermore, it would not truly be an exception, since, as described above, caviar is not actually a prepared or preserved product. This change could be an opportunity to place provisions in their correct place, in order to improve the level playing field between caviar and the other fresh fish products.

On the other hand, the European processing sector disagrees with the proposed solution, considering that an extension of the labelling rules provided by Article 35 of the CMO Regulation to products under CN codes 1604 and 1605 would not be appropriate. The sector emphasises the importance of taking into account the positions expressed by the MAC’s

⁵ The aim of the mentioned change would be to extend labelling requirements for the proposed new “caviar and caviar substitutes” subcategory. Labelling requirements of the other subcategories under paragraph h) of CN category 1604 are outside the scope of the present advice.

membership on the MAC Advice on Consumer Information on Fishery and Aquaculture Products⁶. Bearing in mind that all the information proposed by the AAC, namely: a) the origin of production of fishing and the country of repacking; b) the species (common and scientific name); c) the type of production (eggs ovulated or not); d) the production or fishing date (month/year) and the date of repacking; e) thermal treatments: fresh, pasteurised flash, or pasteurised, may be provided on a voluntary basis, the AAC should consider updating its Recommendation on Labelling of Caviar to reflect the entry into force of the Commission implementing Regulation (EU) 2018/775 of 28 May 2018 laying down rules for the application of Article 26(3) of Regulation (EU) No 1169/2011 on the provision of food information to consumers, as regards the rules for indicating the country of origin or place of provenance of the primary ingredient of a food. In the view of the sector, the most appropriate solution would be the establishment of a common marketing standard for caviar, as part of an implementation regulation of Article 33 of the CMO Regulation.

The MAC underlines that, regardless of any potential amendment to the legislative framework applicable to caviar products, the correct CITES labelling must be respected in any case, which e.g. means that all primary containers of caviar must have a non-reusable label that contains the correct details regarding the source of the product. The non-reusable label must either seal the container or be packaged in such a way that the label cannot be removed without being visibly damaged.

⁶ Advice available on the MAC's website: <https://marketac.eu/en/mac-advice-consumer-information-on-fishery-and-aquaculture-products/>