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Rules of origin for preferential treatment of salted snoek under the AfCFTA: state of play and policy options

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Policy note

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Executive summary

i. Snoek is one of the many vernacular names of *thyrsites atun* in use in the various parts of the world.

ii. In average over the 2017-2019 period, Africa accounted for about 26% of the global capture of snoek. However, no intra-African trade in snoek was recorded during the same period. Nevertheless, it is to be acknowledged that snoek may have been imported though not necessarily recorded as such.

iii. For trading purposes, frozen snoek is classified under HS 0303.89 and salted snoek under HS 0305.69.

iv. Although the note acknowledges that the data is incomplete, it is estimated that the risk related to accommodating Mauritius' request is limited in light of the small existing demand for snoek products in State Parties and the even smaller expected impact of liberalizing markets to allow preferential access to the potential Mauritian exports.

v. On the basis of the lacunar evidence available, four scenarios have been envisaged.

vi. The status quo scenario is deemed to be associated with a risk that may be detrimental not only to this specific discussion on salted snoek but also to the overall negotiation process.

vii. The adoption of the wholly obtained scenario is deemed to be potentially excluding any country from trading processed snoek on a preferential basis in the short- to medium-term.

viii. The adoption of the CTH criterion is deemed to discard the possibility of sufficient availability in the longer term.

ix. Based on the estimated Mauritian needs, it is unlikely that a flexible rule causes any injury to the fishing industry or any disruption of the socio-economic structures in any AfCFTA State Party.

x. For the above-mentioned reasons, it is suggested to consider the practicality and acceptability for each participating Member State to concede to a flexible rule, with the eventual appropriate caveats to avoid preempting future opportunities.

Rules of origin for preferential treatment of salted snoek under the AfCFTA: State of play and policy options

Policy note

I. Introduction

1. To date, the negotiations on rules of origin for fishery products are ongoing.

2. As of the latest meeting of the African Ministers of Trade, held in November 2020, the state of play pertaining to the official proposals for all fishery products can be summarized as follows:

Chapter (Heading) (Sub-Heading)	**Rule Proposed (Or Agreed by majority)**
Chapter 3 Fish and crustaceans, molluscs and other aquatic invertebrates	The majority of Member States have agreed on the wholly obtained rule. However, some heavily fishery reliant Member States are of the view that rules for this Chapter cannot be agreed until outstanding definition of "their vessels" and "their factory ships" in Article 5.2 of Annex 2 on Rules of Origin is resolved.

3. Nevertheless, since the last AMOT, some consultations have taken place and have managed to find a mutually agreeable consensus between some of the key players interested in fisheries.

4. With this new proposal, the heavily fishery reliant Member States have expressed consent to endorse the wholly obtained criterion for all products under HS Chapter 3, except salted snoek of subheading 0305.69.

5. The present note aims to provide the Member States involved in the consultation with the elements to make the most informed proposal with regards to the outstanding proposal under HS Chapter 3.

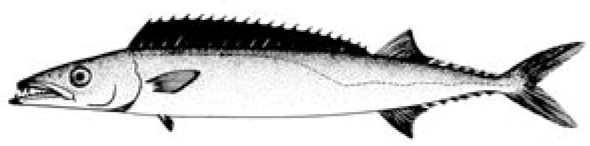
II. Background

A. Description

6. Snoek (scientific name : *thyrsites atun*)(Figure 1) is a fish from the snake mackerel (Gempylidae) family found in the seas of the Southern Hemisphere, in the coastal regions from 35° to 55°S latitude, penetrating north only in the waters of cold streams of Chile, southern Peru, Argentina, Uruguay, Tierra del Fuego, Tristan da Cunha, South Africa, Islands of St. Paul and Amsterdam, Tasmania, New Zealand, southern coast of Australia.

7. Snoek is one of the many vernacular names of *thyrsites atun* in use in the various parts of the world, including in Southern Africa. Amongst other names, it is referred to as barracouta in New Zealand and sierra in Chile.

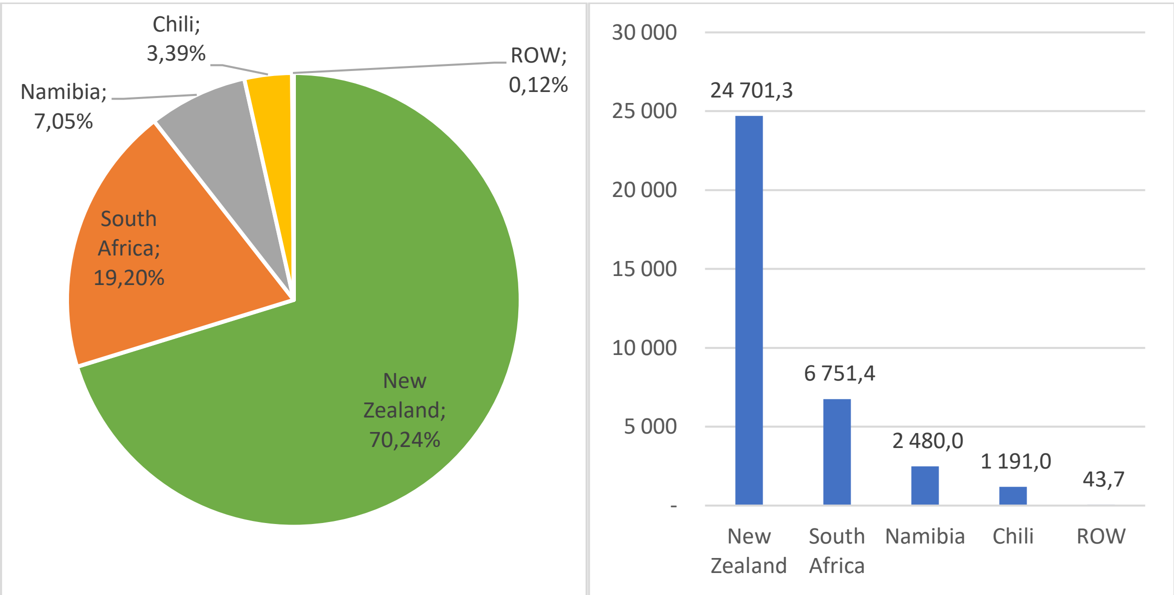
Figure 1: Snoek representation



Source: FAO

8. More specifically, in average over the 2017-2019 period, the world total catch of snoek was according to the following repartition: New Zealand (70%), South Africa (19%), Namibia (7%), and Chile (3%). The rest of the world accounts for about 0.1% of the total snoek catch (see Figure 2).

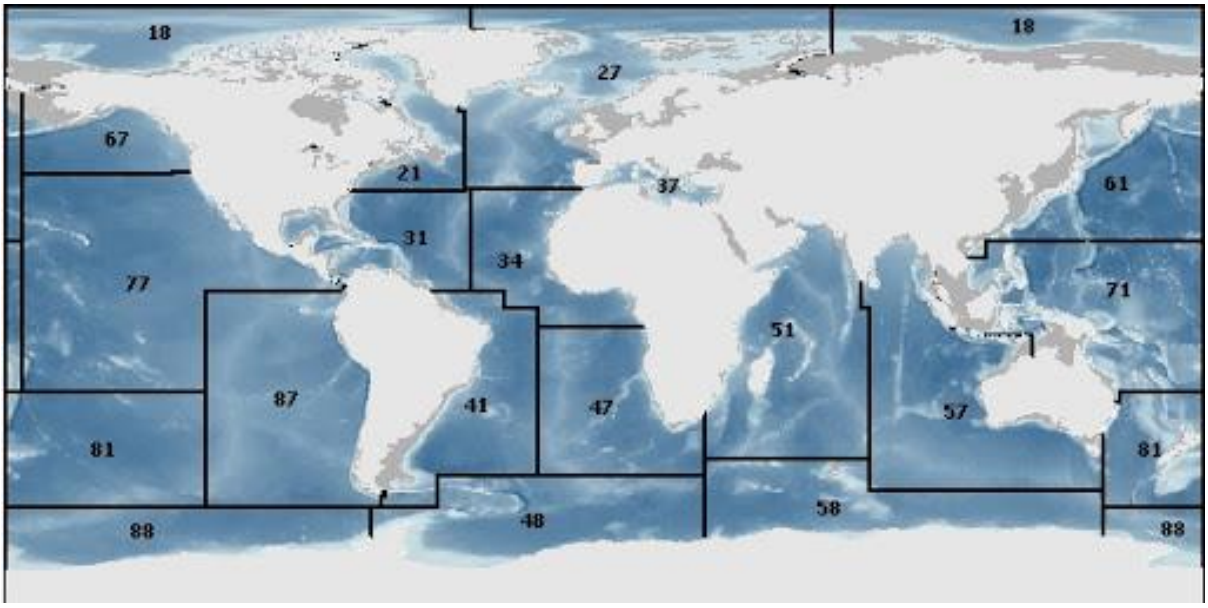
Figure 2: World captures of snoek, share by reporting country (left), tonnage by reporting country (right), average 2017-2019



Source: FAO Fishstat

9. Over the same period, the totally of the Namibian catches and near entirety of the South African catches were recorded in FAO fishing zone 47 (Southern and Eastern Atlantic), with only 0.02% of catches reported by South Africa from FAO fishing zone 51 (Western Indian Ocean) (see Figure 3).

Figure 3: FAO fishing areas



Source: FAO

B. Harvest

10. Snoek is mainly caught by line fishing methods.

11. In New Zealand (where snoek is referred to as barracouta), snoek accounted for 18.8% of the total landings of pelagic (high seas) fish[1] in 2013, representing about 6.8% of the total fish production of the country (including fisheries and aquaculture). Nevertheless, in 2013, only 76% of the total allowable catch for snoek was utilized.[2] The fishing season in New Zealand is only between October and March.[3]

12. In Namibia, the linefish industry is made up of two subsectors, the commercial freezer lineboats and the angling subsectors. The angling subsector is further divided into two types of fishing activities, a subsistence component and a recreational component. The species

[1] Pelagic fish inhabit the water column (not near the bottom or the shore) of coasts, open oceans, and lakes. They can be categorized as: (i) coastal, and (ii) oceanic fish, based on the depth of the water they inhabit. Coastal pelagic fish inhabit sunlit waters up to about 655 feet deep, typically above the continental shelf (Examples of coastal pelagic species include forage fish such as anchovies, sardines, shad, and menhaden and the predatory fish that feed on them). Oceanic pelagic fish typically inhabit waters below the continental shelf (Examples of oceanic pelagic fish include larger fish such as swordfish, tuna, mackerel, and even sharks). Source: National Ocean Service, US Department of Commerce

[2] Source: FAO, update 2014

[3] Source: (L'Express, 2004)

most targeted by this sector are kob or kabeljou, steenbras and galjoen, with snoek and others in less demand.

13. The last Namibian stock assessment conducted on the linefish resources was done in 2006 and their state is still to be re-evaluated. However, due to low catches in stocks such as cob, west coast steenbras and galjoen, a moratorium on commercial fishing on linefish was put in place.[4] However, angling fishing (subdivided into artisanal and recreational fishing) continue.

14. In South Africa, industrial fleets is mainly fish snoek as a by-catch of bottom trawl, longline; whilst targeted fishery is mainly by hand line fishing methods by small-scale fishermen (See Table 1). The fishing season in the Atlantic coast of South Africa is the Easter period and performed by small-scale fishing communities (Isaacs, 2013).

Table 1: Snoek capture production in South Africa

Target Species	Annual Catch	Gear / Fishery	Main Bycatch	Main Ports in Priority
Cape Hake	Hake : TAC 2009 = 119 000 tonnes Catch 2008 = 126 000 tonnes Sole TAC 2009 = 871 tonnes	Bottom trawl, longline, hand line	kingklip, monk, **snoek**, dory, horse mackerel, sole	Cape Town Saldanha Mossel Bay Port Elizabeth Gansbaai
Linefish (2007 Catch est.)	**Snoek** = 2 741 tonnes Cob = 312 tonnes Geelbek = 426 tonnes Yellow Tail = 461 tonnes	Hand line	Shark Other linefish	All ports, harbours and beaches around the coast

Source: FAO

15. In Chile, during the 2003-2008 period, landings of fishing industrial catch steadily declined. The main cause of this decline has been the decrease in abundance or availability of pelagic resources such as horse mackerel. The largest landing corresponded to pelagic resources: anchovy, mackerel, horse mackerel and common sardine (93% of industrial landings). No other data specific to linefish or snoek was available.[5]

C. HS Classification

16. Snoek is mostly traded internationally in the form of a frozen fish and is classified under

[4] Source: FAO, update 2013

[5] Source: FAO, update 2010

0303	Fish, frozen, excluding fish fillets and other fish meat of heading 03.04
	- Other fish, excluding edible fish offal of subheadings 0303.91 to 0303.99
0303.89	-- Other

17. In a more processed form, snoek is notably salted. In this instance, it is classified under

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
	- Fish, salted but not dried or smoked and fish in brine, other than edible fish offal:
0305.69	-- Other

18. See Table 2 for commodity classification purposes.

Table 2: Taxonomic classification

Scientific classification	
Kingdom:	Animalia
Phylum:	Chordata
Class:	Teleostei
Order:	Perciformes
Suborder	Scombriformes
Family:	Gempylidae
Genus:	Thyrsites
Species:	Thyrsites atun

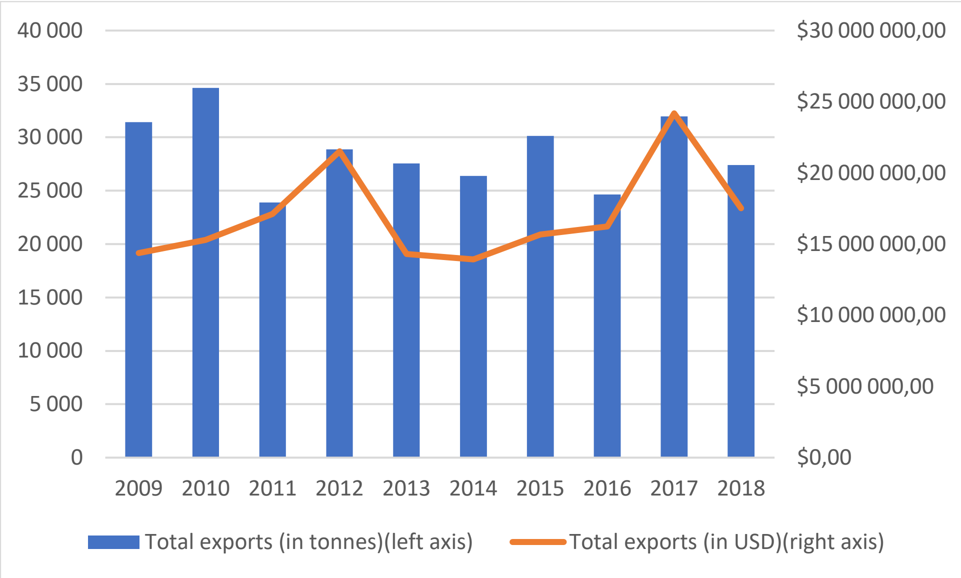
Source: Global Biodiversity Information Facility

III. State of play: International trade in snoek

A. Global trade in snoek

19. Over the 2009-2018 period, the world total exports of frozen snoek amounted to an average of 28,695 tonnes for a value of 17 million USD per year (see Figure 4).

Figure 4: World exports of frozen snoek



Source: FAO FishStat

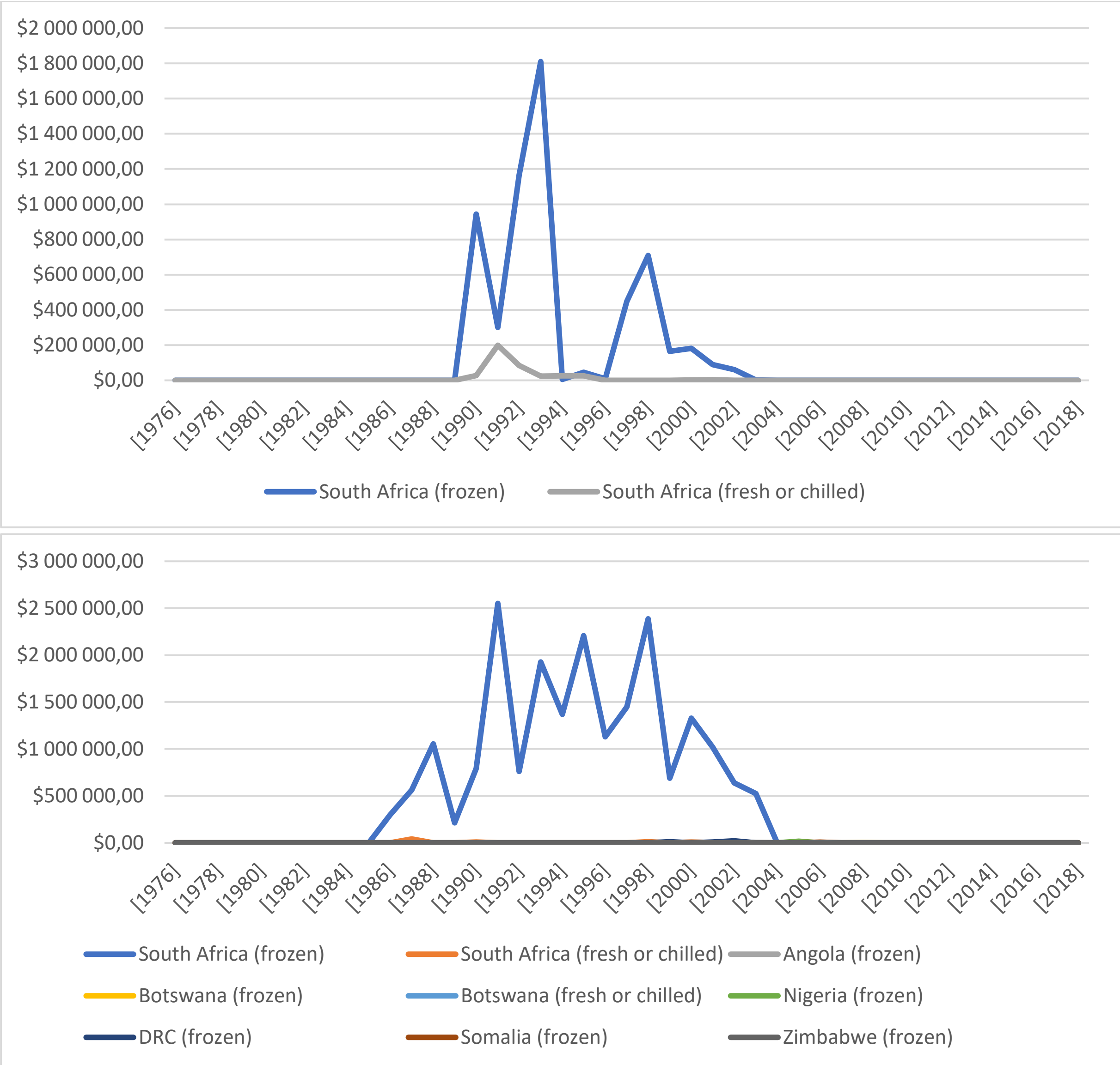
20. Over the same period, this consistently represented an average of 0.01% of world total fish exports. This suggests that snoek is not an internationally traded fish, which seems to be confirmed by the lack of available data on the matters even in specialized literature and databases.[6] This may be explained by the fact that the snoek demand was traditionally mostly driven by poorer, coastal communities in spite of recent growing demand in urban areas of the Western Cape region. Nevertheless, in his 2013 survey of small-scale coastal fishing communities' consumption of snoek, the author finds that seem to a demand for more fresh and processed snoek, as a preferred source of protein which is otherwise met by chicken and meat, in the absence of fish, including snoek (Isaacs, 2013).

21. In terms of African trade in snoek, no trade at all of was recorded for period 2009-2018 (see Figure 5). However, it is to be acknowledged that snoek may not always labeled as such. It is thus possible that some trade actually happens, though likely at a rather low scale.

22. For instance, based on some private companies' New Zealand to South Africa exports data, estimates are made that up to 1/3 of the total South African demand of snoek may be met through imported New Zealand snoek (Hara, 2014), thus suggesting that some untapped potential exists in South Africa to foster the – fresh and processed – snoek value chain to supply a still niche but expending market (Isaacs, 2013; Hara, 2014).

[6] There is very little data available on international trade in snoek. This is also the case for Mauritian trade in snoek. The following thus relies on sporadic literature. Indeed, snoek is not listed amongst the species monitored by the main trade information systems, including the GLOBEFISH – s Information and Analysis on World Fish Trade

Figure 5: Total African snoek exports (top) and imports (bottom), 1976-2018



Source: FAO Fishstat

B. Estimate of the Mauritian demand for frozen snoek for processing and export purposes

23. Despite the lack of data, some information on the Mauritian demand for frozen snoek was found.

24. A document from the Mauritian Blue Economy Ministry produced during the mid-2000s (Ministry of Blue Economy) informs that two companies were engaged in the production of salted snoek in Mauritius. A total of 962 tonnes of frozen snoek were imported for salting purposes in 2006, representing a -14.6% variation compared to the previous year, despite steady imports throughout the 5 preceding years.
25. The same year, the amount of salted snoek produced in Mauritius was 644 tonnes out of which 107 tonnes were exported to the United Kingdom, France (included its overseas territory la Reunion).
26. No other updated data was found.
27. Nevertheless, it is to be mentioned that in 2017, Mauritius was granted a derogation to the rules of origin laid down under the Economic Partnership Agreement between the European Union and Eastern and Southern African States for a 120 tonnes of salted snoek. The explanation provided in the decision of the joint EU-ESA Customs Cooperation Committee is the unavailability of raw material, either in ESA countries or the cumulation eligible countries, including the grouping of African, Caribbean and Pacific States.[7] The derogation was in effect from 2 October 2017 to 1 October 2018. The utilization data of this derogation is not available; however, it is described as "low" by the joint ESA-EU Customs Cooperation Committee.[8]
28. The joint EU-ESA Customs Cooperation Committee granted new derogations to Mauritius for a 100-tonne quota of the same product in 2019 for the period from 14 January 2019 to 13 January 2020[9] and in 2020 for the period from 5 May 2020 to 4 May 2021.[10]

[7] Recital 6 of DECISION No 2/2017 OF THE ESA-EU CUSTOMS COOPERATION COMMITTEE of 2 October 2017 on a derogation from the rules of origin laid down in Protocol 1 to the Interim Agreement establishing a framework for an Economic Partnership Agreement between the Eastern and Southern Africa States, of the one part, and the European Community and its Member States, of the other part, to take account of the special situation of Mauritius with regard to salted snoek

[8] Recital 4 of DECISION No 1/2019 OF THE ESA-EU CUSTOMS COOPERATION COMMITTEE of 14 January 2019 on a derogation from the rules of origin laid down in Protocol 1 to the Interim Agreement establishing a framework for an Economic Partnership Agreement between the Eastern and Southern Africa States, of the one part, and the European Community and its Member States, of the other part, to take account of the special situation of Mauritius with regard to salted snoek

[9] DECISION No 1/2019 OF THE ESA-EU CUSTOMS COOPERATION COMMITTEE of 14 January 2019 on a derogation from the rules of origin laid down in Protocol 1 to the Interim Agreement establishing a framework for an Economic Partnership Agreement between the Eastern and Southern Africa States, of the one part, and the European Community and its Member States, of the other part, to take account of the special situation of Mauritius with regard to salted snoek

[10] DECISION No 1/2020 of the ESA-EU CUSTOMS COOPERATION COMMITTEE of 5 May 2020 on a derogation from the rules of origin laid down in Protocol 1 to the Interim Agreement establishing a framework for an Economic Partnership Agreement between the Eastern and Southern Africa States, of the one part, and the European Community and its Member States, of the other part, to take account of the special situation of Mauritius with regard to salted snoek

29. Of the 2019 derogation, the utilization rate was 0%. Furthermore, the 2020 derogation has so been used at a rate of 0%.[11]

30. Although the data is incomplete, there is converging evidence to reasonably think that:

    - The demand for frozen snoek by Mauritius has not significantly changed over the two past decades and that the production capacity of salted snoek is likely to be comparable to those of the mid-2000s;

    - The volume of salted snoek to be exported to State Parties under AfCFTA preferences is likely to marginal in commensuration of their total imports of fishery products from the rest of Africa;

    - Even if the total production of total Mauritian salted snoek were to be shifted for export to one or several States Parties, only the smallest of them may experience significant undesirable effects from this surge. Nevertheless, should this situation arise, it would be legitimate for those affected State Parties to take the appropriate measures to mitigate such negative outcome. It is to be noted however that the likelihood of this situation arising is low due to the difficulties for operators to change their supply chains in a short period of time. This is all the more the case for countries like Mauritius that are in a situation of overall limited connectivity to other State Parties and which would heavily rely on costly facilities to preserve perishable goods, both domestically and on the territory of trading partners.

31. Some feedback received from Mauritius in response to the draft version of the present paper confirms the fact that although inexistent now, the Mauritian producers are expecting to benefit from AfCFTA preferences to explore new market opportunities in AfCFTA State Parties.

IV. AfCFTA Rules of origin for salted snoek of HS 0305.69

32. On the basis of the consensus that emerged on the definition of "vessels" and "factory ships", the participants agreed on the wholly obtained criterion as a chapter rule, applicable to all positions under Chapter 3, with an exception for salted snoek.

33. With regard to the proposed exception, Mauritius proposed a change of tariff heading (CTH) criterion for salted snoek.

34. In light of the elements described in the previous sections of the present note, the following scenarios can be envisaged as possible outcomes:

    - The status quo;

    - The adoption of the wholly obtained criterion;

[11] Source : European Commission, DG TAXUD, tariff quota database, order number 091611

- The adoption of the CTH criterion;
- The adoption of an alternative solution.

35. The merits and drawbacks of those four possible outcomes are being considered below.

A. Scenario 1: The status quo

36. In this scenario, the Member States cannot find a mutual agreeable solution.

37. The risk associated to this situation is that the discussion stalls after two fruitful meetings during which the participating Member States exerted some outstanding understanding of each other's concerns and interests, good will and constructiveness that managed to create an atmosphere where a possible resolution of all fishery-related pending issues may be resolved.

38. Such progress is not welcomed from a fishing industry development perspective, but also from an overall negotiating perspective as this item had been pending resolution of since early days of the negotiations.

39. The African Union Commission believes that the resolution of this issue during the next round of negotiations may provide the whole AU Membership with the needed impetus to fulfil the instruction given by the Assembly during their 13th Extraordinary Summit, held in December 2020. Pour memoire, the Summit directed the negotiating institutions to conclude all outstanding matters under the rules of origin negotiations by July 2021.

40. From this standpoint, the status quo is the worst case scenario since it may give a stop to the good progress made since February 2021 in the consultation meetings; or even revert to the status quo ante where the Member States undo the good progress made so far. This would significantly deteriorate the climate of confidence that has been reached.

B. Scenario 2: The adoption of the wholly obtained criterion

41. In this scenario, the Member States find a common understanding on the fact that the sufficient volumes of snoek are available throughout the continent for Mauritius to be able to cumulate the origin of the frozen snoek to qualify for preference under the AfCFTA for its salted snoek.

42. Recalling the data gathered on global capture production of snoek, the yearly volume of capture in Africa seems to indeed be sufficient to supply the entirety of Mauritius' salted snoek producers.

43. However, should the moratorium on commercial fishing on linefish in Namibia still be in force, the possibility to ensure supply would be limited to only one country. The recent – and still ongoing – crisis of COVID-19 has shown the risks for businesses to rely on undiversified sources of supply.

44. It is to be noted that no exports of frozen snoek were recorded in the recent years neither for Namibia nor South Africa.

45. Although it can be hypothesized that the AfCFTA is likely to enhance and diversify the State Parties' trade patterns, the scare but converging evidence suggests that not only the existing production of raw material is nearly or fully absorbed by the domestic markets in Namibia and South Africa, and that this supply is even likely to be insufficient to satisfy fully the demand ; hence, based on data reported in the literature, the import of New Zealand snoek in South Africa.

46. Therefore, a policy recommendation in favor of a wholly obtained criterion for salted snoek is unlikely to foster intra-African trade in snoek products.

C. Scenario 3: The adoption of the CTH criterion

47. In this scenario, the Member States find convincing the argument that there is not enough available frozen snoek on the continent for Mauritius to be able to cumulate the origin of the frozen snoek to qualify for preference under the AfCFTA for its salted snoek.

48. In this condition, it may seem reasonable to allow for a flexible rule at this point in time. Nevertheless, it is to be noted however that some anecdotal evidence points towards the fact that policy efforts are being made to restore the healthy stocks of snoek where they were found to be deteriorated. Therefore, it believed that the outcome should be mindful of the possible long-term perspective of a growth of the Southern-Eastern Atlantic snoek stocks.

D. Scenario 4: The adoption of alternative solution

49. In this scenario, the Member States envisaged an alternate solution that was not considered so far.

50. Having discussed the advantages and drawbacks of the status quo, the adoption of the wholly obtained criterion or the CTH criterion, the merit of an alternative scenario would yield the result of allowing preferential trade in salted snoek under the AfCFTA to take place, despite the fact that the conditions are not currently in place for the wholly obtained criterion to be fully satisfactory in the short- and medium-term. However, this should not preclude the possibility of a recovered availability in the long-term.

51. In practical terms, the solution would endorse the possibility that originating frozen snoek be traded for cumulation purposes. It would also encapsulate a mechanism for non-originating material to fill the gap when the raw material is not available in sufficient quantity to satisfy the Mauritian salted snoek factories' needs.

52. For this purpose, alternative solutions such as a periodical assessment of the situation or a tariff rate quota system for salted snoek may constitute balanced compromises between the immediate need of non-originating material and the prospective availability of originating material.

V. Conclusion

53. Although the note acknowledges that the data is incomplete, it is estimated that the risk related to accommodating Mauritius' request is limited in light of the small existing demand for snoek products in State Parties and the even smaller expected impact of liberalizing markets to allow preferential access to the potential Mauritian exports.

54. On the basis of the lacunar evidence available, four scenarios have been envisaged.

55. The status quo scenario is deemed to be associated with a risk that may be detrimental not only to this specific discussion on salted snoek but also to the overall negotiation process.

56. The adoption of the wholly obtained scenario is deemed to be preventive of any country to trade processed snoek on a preferential basis in the short- to medium-term.

57. The adoption of the CTH criterion is deemed to discard the possibility of sufficient availability in the longer term.

58. Based on the estimated Mauritian needs, it is unlikely that a flexible rule causes any injury to the fishing industry or any disruption of the socio-economic structures in any State Party.

59. For the above-mentioned reasons, it is suggested to consider the practicality and acceptability for each participating Member State to concede to a flexible rule, with the eventual appropriate caveats to avoid preempting future opportunities.

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