

*Budica - Measures relating to the importation and marketing of nutrition food bars  
For the 19<sup>th</sup> Edition of the John H. Jackson Moot Court Competition*

CORRECTIONS AND CLARIFICATIONS

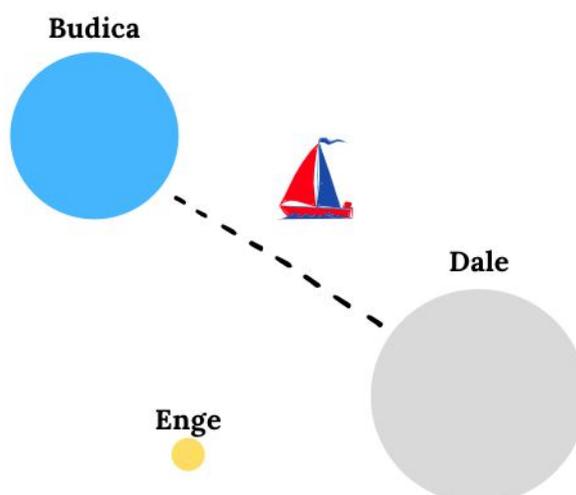
**1 CORRECTIONS**

1. Article 16.1 of the *Food Information Package* shall read as follows: "(...) in case of import, re-consignation or **return** of the merchandise."
2. Article 7.2 of the *Food Information Package* shall read as follows: "Only products in compliance with literals 7.1(a) **and/or** 7.1(b), **as applicable**, may be sold in the national territory with the "Free-Content" front-of-pack nutrition label."
3. Paragraph 4.2 of the case shall read as follows: "On the same date, this decision was notified via e-mail to **Spear Bars Inc.'s representative in Budica**, the **importer**. The notification read as follows "(...) the **importer** shall re-consign or return the merchandise (...)."
4. Paragraph 4.3 of the case shall read as follows: "In the absence of a response from the **importer**, on 13 April 2020 (...)."
5. Paragraph 4.4 of the case shall read as follows: "The customs authority informed the **importer** about the decision adopted on 13 April and the subsequent destruction of the merchandise."
6. Annex I, *Labelling requirements under Decree No. 457*, in the relevant part shall read as follows: "The front-of-pack nutrition label set out in Article 7 shall consist of the expression "[SUGAR/SATURATED FAT/SODIUM] **FREE**," as applicable (...)."

**2 CLARIFICATIONS**

**2.1 Geography**

7. The distance between the main ports of Dale and Budica is 1.959 nautical miles. At a vessel speed of 13 knots, the time between both is 6 days, 7 hours. Cargo ships travelling from Budica to Dale, including those carrying Healthy Spear Bars, usually travel at 13 knots, but may travel at up to 24 knots.



## 2.2 Harmonized System

8. The Harmonized System (“HS”) for classifying goods is a six-digit international product nomenclature.
9. The HS is arranged in 99 Chapters and grouped in 21 Sections.
10. The first two digits of the HS correspond to the relevant Chapter. These are followed by digits three and four, which correspond to the relevant Heading. Digits five and six correspond to the relevant Subheading.
11. Economies are allowed to further subdivide HS codes, for greater clarity, by incorporating additional digits.
12. Prepared foods obtained from unroasted cereal flakes or mixtures of unroasted cereal flakes and roasted cereal flakes or swelled cereals are classified under HS 190420.

## 2.3 Food Information Package

13. The content of the *Draft Presidential Decree No. 457* is the exact same as the adopted *Food Information Package*.
14. The *Food Information Package* was published in Budica’s Official Gazette on 1 October 2019.
15. Pursuant to its Article 18, the *Food Information Package* entered into force on 1 April 2020.
16. If a product complies with the thresholds set forth in Article 7.1(a) or Article 7.1(b), as applicable, it may use the provided “Free-Content” front-of-pack nutrition label.
17. The specific trade concern raised by Dale during the TBT Committee meeting, held on 16 October 2019, regarding the *Food Information Package* covered all substantive matters outlined in Dale’s request before the Budican enquiry point, dated 15 September 2019.

## 2.4 Application of the Food Information Package by Budican customs authority

18. Spear Bars Inc. acted, through a representative in Budica, as the importer of 10 containers filled with *Healthy Spear Bars*, which arrived at Budica’s main port of entry on a Dalean ship on 2 April 2020.
19. Spear Bars Inc. does not produce *Healthy Spear Bars* in Budica’s territory.
20. Spear Bars Inc. could have re-consigned or returned the merchandise to Dale. Both were alternative options given to Spear Bars Inc. by Budica’s customs authority under Article 16.1 of the *Food Information Package*.
21. Spear Bars Inc. effectively received the decision by Budica’s customs authority via e-mail on 3 April 2020.

## 2.5 Budica's Domestic Law

22. Pursuant to Budica’s legislation, the enactment and modification of decrees is an exclusive power of the Government.
23. Nonetheless, Budican administrative tribunals may invalidate or suspend the application of enacted decrees if found to be inconsistent with domestic laws.
24. Pursuant to Budica’s legislation, if a decree is invalidated or suspended by an administrative tribunal, the Government is prohibited from enacting further regulations substantially replicating such decree.
25. The interim measure granted by Budica’s tribunal on 23 August 2020 aimed at preserving the *status quo* existing prior to the entry into force of the *Food Information Package*.
26. The interim measure granted by Budica’s tribunal on 23 August 2020 was applied for the whole duration of the tribunal proceedings. The interim measure may be lifted if its underpinning risk of irreparable harm ceases to exist.
27. The interim measure granted by the Budican tribunal on 23 August 2020 suspended the application of the *Food Information Package* in its entirety for all domestic and imported packaged processed food products sold in the national territory.
28. Section 48 of the Budican Customs Act has been in full force and effect since 2010.

## 2.6 Nutrition Food Bars

29. Annex II shows how *Celtic Flavour Bars*, *Wild Tropic-All Natural Bars*, and *Healthy Spear Bars* would have been labelled pursuant to the *Food Information Package*.
30. Figure 1 in Annex III shows import volumes in tonnes per month.
31. Figure 2 in Annex III shows average market shares calculated by taking a company's sales (value in USD) over the reference period and dividing it by the total sales of the industry over the same period.
32. Prices of nutrition food bars in Budica remained steady during 2019-2020.
33. Packaged processed food products sold in Budica, Dale, and Enge have nutrition facts labels. However, the dispute at hand concerns the front-of-pack nutrition labels identified by Dale and does not comprise nutrition facts labels.

## 2.7 Miscellaneous

34. Budica notified on 5 December 2016 the Definitive Implementation Date of its Category A commitments (including Article 10.8 of the TFA) to be on 22 February 2017.
  35. Budica is a WTO Member and therefore assumes obligations under the DSU, TBT Agreement, and TRIPS Agreement.
  36. Teams shall only use the *fictional* nutrient content claims of the FAO Codex Alimentarius *Guidelines for Use of Nutrition and Health Claims* (CAC/GL 23-1997, p.3), as included in Annex IV to the case.
  37. The Budican enquiry point received roughly 50 requests from different WTO Members regarding the Draft Decree. To the date, the enquiry point has responded, in written, 32 requests.
  38. Budican enquiry point acknowledged the receipt of Dale's request dated 15 September 2019.
  39. Concerning the percentages outlined in Annex IV with regard to the 2017 survey *Obesity: Front of Pack Labelling and Consumer Behaviour*, 48.1% of the surveyed consumers affirmed they examined the presence of the labelling when buying, of which 79.1% indicated that the label influenced their purchasing decisions.
  40. The matter included in Dale's request for the establishment of the Panel is the same as the one brought up for consultations.
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