

*Taikon – Requirements on the Importation of Prepared Foods and Live Animals from Astor
For the 18th Edition of the John H. Jackson Moot Court Competition*

CORRECTIONS AND CLARIFICATIONS

1 CORRECTIONS

1. The mention to Taikonese Law 14/2013 in the title of Annex II(B) should be understood to refer to Taikonese Law 14/2012.
2. The ESODEC Summit of 10 March 2015, which adopted the ECP Regulation, took place in Kontai. The ESODEC regulatory community was celebrated during this summit. It entered into force formally on 24 March 2015, as provided for in the RCA.
3. The words 'responding for' in para. 1.8 should be understood to mean 'being responsible for'.
4. The panel request was submitted to the DSB on 31 July 2019. The DSB composed the panel at its Meeting of 9 August 2019.

2 CLARIFICATIONS

2.1 Status of the entities mentioned

5. ESODEC is not a WTO Member.
6. When the WTO was established, Astor, Taikon and Cosmia declared to be, and were treated as, developing countries.

2.2 Trade policy

7. Prior to the constitution of the ESODEC FTA, Taikon, Astor and Cosmia applied their MFN tariffs to each other, varying between 5% and 55%.
8. All ESODEC Members have independent tariff schedules and apply tariffs to non-ESODEC Members. Cosmia applies a 10% tariff to live animals and a 12% tariff to prepared foods. Astor applies a 12% tariff to live animals and an 18% tariff to prepared foods. Bound tariffs and applied MFN tariffs for these products are the same, and have remained unaltered since the establishment of the WTO.
9. Prior to the establishment of the regulatory community, Taikon, Astor and Cosmia applied their individual conformity assessment procedures and sanitary and phytosanitary controls to imported products, including products imported from each other. After the constitution of the regulatory community, they continued to apply conformity assessment procedures and sanitary and phytosanitary controls to products not covered by ESODEC regulations.
10. To assess the presence of marbled crayfish in prepared food products, domestic authorities apply a method to detect a protein that is present in most aquatic animals, including the marbled crayfish, and absent in the Stormian crab. The process takes 8 hours from when the product is submitted to it at an appropriate facility.
11. Border inspection fees apply to products subject to sanitary and phytosanitary controls in the East Stormy Ocean nations. The amount and means of application of these fees follow international practices.

2.3 Geography

12. Mainland Taikon is located 336 Km (181 nautical miles) away from mainland Cosmia. Mainland Cosmia is located 348 Km (188 nautical miles) from Astor. Between mainland Taikon and mainland Astor, the shortest distance is 625 Km (337 nautical miles). The nearest continent is located 1348 Km (728 nautical miles) away from Taikon.
13. While the best speed boats can travel at up to 80 knots, the fishing boats typical of the East Stormy Ocean travel at around 8 knots.

2.4 Features and Status of the Stormian Crab

14. The Stormian crab is able to move within the East Stormy Ocean.
15. The population of Stormian crabs is essentially uniform across the East Stormy Ocean.
16. The request by Astor, Taikon and Cosmia to the Secretariat of CITES to include the Stormian crab in Annex III of CITES took the form of a communication of a list of species under Article XVI:2 of CITES. The new list took effect 90 days after the date of such communication, as provided for in Article XVI:2.
17. Many claim to be able to differentiate between marbled crayfish meat and Stormian crab meat in food products, on the basis of their taste and texture. At blind tests conducted with 2,000 consumers in Taikon who claimed to be able to differentiate between the two, 87% were found to be unable to differentiate between them consistently.

2.5 Inspection Data

18. The data for Taikon in Table 1 refers to hotels and restaurants that breed Stormian crabs in Taikon. These establishments mainly operate as tourist attractions, where tourists can catch the crabs themselves or see them in a semi-natural environment and be reassured of the origin of their food. Due to the higher labour costs and higher prices of seaside property, commercial breeding of Stormian crabs in Taikon to make prepared foods is economically uninteresting.
19. Since November 2018, each ESODEC Member State has been inspecting every establishment in its territory that is considered by the ESODEC Regulations Authority to be at substantial risk of having marbled crayfish. No marbled crayfish have been found after April 2019.

2.6 Trade Data

20. In case of conflict between the trade data in Annex II and the extrapolations put forward by Astor's Ministry of Economy in para. 4.4, Annex II provides the actual data.
21. Annex II is missing data for May 2019. The relevant numbers are, vertically: 17, 0, 42, 0, 1, 0.
22. The price increase referred to in para. 3.4 refers to the average increase in the final price of products sold in Taikon.
23. The fall in exports to Taikon of prepared foods from Astor in May 2018 is due to Astor's largest producer of prepared foods filing for bankruptcy, on 22 April 2018. Its main factory was sold to a cooperative of Stormian crab farmers on 20 June 2018.

2.7 Law

24. Astor, Taikon and Cosmia are Members of the United Nations and parties to the Vienna Convention on the Law of Treaties as well as the Convention on Biological Diversity.
25. Article 58 of the ESODEC Agreement, entitled "Settlement of Disputes" provides:
 1. Any dispute regarding the interpretation or application of this Agreement shall be settled amicably between the parties, without prejudice to the provisions of this Agreement and other legal instruments.
 2. Any Member may request consultations for amicable dispute settlement in respect of any issue arising between itself and another Member regarding the operation of this agreement.
 3. If consultations for amicable dispute settlement under the previous paragraph are not fruitful within 30 days, the Member that initiated consultations may seek a Judgment from the Court on legal aspects of the dispute. The Judgment of the Court shall be final and not subject to appeal.
26. Article 50 of the ESODEC Agreement, entitled "Accession", provides:

- Any country may accede to this Agreement subject to such terms and conditions as may be agreed between such country and the Joint Committee and following approval in accordance with the applicable legal procedures of each country.
27. Like Taikon, Astor and Cosmia have incorporated the ESODEC Agreement and the RCA into their domestic legislation.
 28. Article 23 of the RCA, entitled "Settlement of Disputes" provides:
Disputes arising under this agreement shall be settled through the means provided for under the Agreement Establishing the East Stormy Ocean Development and Economic Community.
 29. In its Judgment of 12 May 2013 in *Tribianna (Taikon v. Cosmia)*, the ESODEC Court concluded that Article 1(2) of the RCA requires domestic authorities of ESODEC Member States to apply ESODEC regulations as part of their domestic law. There is no suggestion that the principle enshrined in this Judgment has systematically been violated by an ESODEC Member State since.
 30. Astor ceased to be a Member of ESODEC on 14 April 2019, 0:00, Cosmopolis time.
 31. Upon leaving ESODEC, Astor passed a law converting all ESODEC regulations into domestic law, *mutatis mutandis*. Astor's customs authorities have instructions to accept the regulatory equivalence of products from Taikon and Cosmia previously covered by ESODEC regulations "until such time as, due to factual or regulatory changes, these products are declared by the competent Astorian agency to no longer hold substantive equivalence with Astor's products for the purposes of the relevant legislation".
 32. The Crayfish Ban regulation entered into force immediately upon adoption. The crayfish ban, imposed by the Crayfish Ban regulation, entered into force as determined by Article 2 of the regulation.
 33. Taikonese law imposes fines, confiscation and destruction of cargo and prison as possible sanctions for the unauthorized possession of products, substances or elements prohibited by ESODEC regulations. In the case of the Crayfish Ban, the Taikonese Product Regulations Agency waived the application of sanctions until the end of 2018.
 34. Other than those mentioned in the Problem or in these Corrections and Clarifications, provisions of ESODEC Law or of domestic laws of the parties are not relevant to the dispute.
 35. The legal interpretation of the events referred to in the Problem and in these Corrections and Clarifications, including the words used by representatives of the parties and other persons mentioned in the problem and in these clarifications, is to be determined by the panel.

2.8 Science

36. The article marked as [fictional] in Footnote 2 and Annex III is fictional in the sense that it is real in the fictional Earth in which the East Stormy Ocean exists. In this reality, it exists and is published as an article, not just as an abstract.
37. Other than for the existence of the elements mentioned in or inferable from the Problem and these Corrections and Clarifications, the science on the fictional Earth within which the East Stormy Ocean exists should be presumed to be the same as that which exists on the Earth we live in.

2.9 Reality

38. Other than for the existence of the places, entities and other elements mentioned in or inferable from the Problem and these Corrections and Clarifications, the fictional Earth within which the East Stormy Ocean exists should be presumed to be the same as the Earth we live in.