

Boostland:

Boostland is a developing country Member of the WTO. The country has a long history of enriching foodstuffs with different energizing substances.

In recent years, the energy drinks sector has experienced an exponential growth in the country due to the dynamic marketing strategies of these drinks, which promise a notable increase in energy levels "in a convenient package". The clear market leader is FullBooster, enriched with vitamin B, caffeine (300 mg / litre), and taurine. FullBooster has a sweet taste, and the colour of the energy drink is yellowish.

Taurilania:

Taurilania is a developed country Member of the WTO. It borders Vitalistan, and the two countries share a long history due to the fact that from the 11th century up to the 18th century, Taurilania formed part of the Vitalistani kingdom.

Taurilania produces energy drink Pink Toro, enriched with vitamin B, caffeine (300 mg / litre), and taurine (this substance was actually discovered by a Taurilian scientist almost two centuries ago). Taurilania does not currently export Pink Toro to Vitalistan, but it is interested in exploring export opportunities there. Pink Toro accounts for 40% of the world's energy drink sales.

Paradistan:

Paradistan is a least-developed country (LDC) Member of the WTO. It is an island state located near the equator, and it is one of the poorest countries in the world.

The country holds the world's greatest reserves of guarana, a tropical plant purported to increase stamina and energy levels. The international scientific community agrees fully that guarana is a natural source of caffeine (its extract contains approximately 5% caffeine, more than coffee beans). Thus, the effects of products that contain guarana do not differ from other caffeine-containing products, and the possible side effects are also similar.

With donor support and "learning-by-doing", Paradistan has been able to enter the world markets by exporting a new sports drink containing vitamin B and guarana (bringing the caffeine content of the drink to 190 mg / litre). In total, Paradistan's export revenues from this sports drink account for 20% of the country's GDP. Paradistan does not possess the technological capacity to produce taurine in quantities required for enriching foodstuffs with it, so the country has not been able to produce or export energy drinks.

What now?

One of Boostland's major soft drink producers was recently looking at opportunities to begin exporting FullBooster to Vitalistan. In the course of designing its export strategy, the company observed the measures that Vitalistan has recently put in place and that may negatively affect its export opportunities. After an intense lobbying campaign by the industry (led by the company that produces FullBooster), the government of Boostland has now decided to challenge Vitalistan's measures in WTO dispute settlement proceedings.

Taurilania and Paradistan participate as third parties in the panel proceedings. During the panel proceedings, the non-governmental organization "Soft Drinks Watch" submits an *amicus curiae* brief which it requests the panel to take into account in its deliberations.

BEVERAGES FROM BOOSTLAND

Vitalistan:

Vitalistan is a developed country Member of the WTO with a flourishing industry of non-alcoholic beverages, "soft" drinks. The country is known for its strict food standards, and the Vitalistani people can, in general, be described as very health conscious. The government of Vitalistan has recently enacted a comprehensive programme through which it intends to regulate the production and marketing of foodstuffs in the country. According to a recent survey, the programme, named "Wheat, meat, sweet – watch what you eat", has had a clear positive impact on the popularity rate of the government.

A few years ago, one of Vitalistan's leading soft drink producers launched a new product, VitalLife Plus, on the market. VitalLife Plus is a sweet, yellowish sports drink – a non-carbonated soft drink enriched with vitamin B and caffeine (190 mg / litre), generally used as a thirst-quencher in sports activities as it is purported to rehydrate and to give energy and nutrients. VitalLife Plus is hugely successful among the health-conscious Vitalistani population.

However, in recent times a new soft drink category, energy drinks, has made its way to the Vitalistani market. Energy drinks contain high amounts of caffeine and other ingredients such as taurine (an amino acid) and vitamin B that are purported to provide their consumers with instantaneous extra energy. The principal consumer group of these drinks is the Vitalistani youth, who use them in sports activities, when studying for exams, or even as a mixer with some alcohols. Vitalistan does not produce energy drinks, so all the energy drinks consumed there are imported. Vitalistan levies a 20% *ad valorem* customs duty on energy drinks

Pursuant to the recent "General Drinks and Beverages Tax Act", Vitalistan has imposed an internal sales tax on all beverages sold in the country. For imported products, the tax is levied at the time of importation. The categories and tax rates as set out in Section A of the act are the following:

Non-alcoholic beverages, "soft" drinks

- Standard rate (Group A), including soft drinks containing ingredients other than vitamins, minerals or stimulants (stimulants = caffeine, taurine) – 5%
- Sports drinks (Group B), including soft drinks enriched with vitamins or minerals and containing less than 200 mg / litre of caffeine – 10%
- Energy drinks (Group C), including soft drinks enriched with vitamins or minerals and containing taurine and 300 mg / litre or more of caffeine – 15%

Furthermore, within the wider framework of the food programme "Wheat, meat, sweet – watch what you eat", the Vitalistani Government has issued two Decrees that affect the sale of energy drinks in the country. Firstly, due to the known risks of excessive caffeine intake for certain population groups, it issued Decree No. 158, according to which foodstuffs containing 300 mg / litre or more of caffeine must be labelled with the text "High caffeine content – Note if you are a child or are expecting a child". Secondly, it issued Decree No. 159, which limits the sale of taurine-enriched foodstuffs to pharmacies. Like caffeine, taurine is known to be risky when ingested in large quantities.

Lastly, it is to be noted that Vitalistan grants a duty-free access to sports drinks imports from Paradistan pursuant to the recent Sports Drink Tariff Order, which has its basis in the agreement "PARAVITA – For Closer Economic Cooperation", concluded between Vitalistan and Paradistan. The agreement, pursuant to which the countries created the free-trade area PARAVITA, eliminates customs duties on approximately 60% of all products that are traded between the two countries.

First Simulation Exercise: Preparation of Panel Request

Introduction:

On 17 September 2012, Boostland requested consultations with Vitalistan with regard to certain measures imposed by Vitalistan which affect the sale of energy drinks in that country. The request was circulated in document WT/DS111/1 and dated 18 September 2012. The consultations were held in Geneva on 15 October 2012. In light of the fact that consultations have not led to a satisfactory resolution of the matter, Boostland has decided to request the Dispute Settlement Body to establish a Panel to determine its claims against the measures imposed by Vitalistan.

Instructions:

- In your respective groups, you are required to draft a document that requests the Dispute Settlement Body to establish a Panel in respect of Boostland's claims. The request must comply with the requirements set forth in Article 6.2 of the DSU.

H.E. [Name]
Chairperson, Dispute Settlement Body
World Trade Organization
Rue de Lausanne 154
1202 Geneva, Switzerland

Re: Request for the Establishment of a Panel by Boostland (DS111)

Dear H.E. [Name]

Upon instruction from my authorities, I wish to convey the request of the Government of Boostland ("Boostland") to the Dispute Settlement Body (the "DSB") for the establishment of a panel pursuant to Article XXII of GATT 1994, Articles 4 and 6 of the Understanding on Rules and Procedures Governing the Settlement of Disputes (the "DSU"), and Article III of the General Agreement on Tariffs and Trade 1947 with respect to certain measures imposed by Vitalistan on imports of certain beverages from Boostland.

I. Consultations

Pursuant to Article 4 of the *Understanding on the Rules and Procedures Governing the Settlements of Disputes* (DSU), Boostland requested consultations with Vitalistan regarding certain measures imposed by Vitalistan on imports of certain beverages from Boostland. Boostland requested consultations with Vitalistan on 17 September 2012, and the request was circulated on 18 September 2012 as document WT/DS111/1.

Vitalistan and Boostland held consultations on 15 October, 2012 in Geneva. Those consultations were held with the hope of reaching a mutually satisfactory solution. The parties at consultations gained a better understanding of the issues under consideration, but did not reach a satisfactory resolution of the matter. Therefore, Boostland hereby requests that a panel be established pursuant to Article 6 of the DSU.

II. Summary of Measures and Legal Basis of Complaint

(i) Measures:

Vitalistan maintains its energy drink measures through the following legal instruments:

- Internal sale tax under "The General Drinks and Beverages Tax Act";
- The labelling requirement under Decree No. 158 according to "Wheat, meat, sweet-watch what you eat" programme, and;
- The sale restriction under Decree No. 159 according to "Wheat, meat, sweet-watch what you eat" programme.

Mr. X

**Chairman of the Dispute Settlement Body
World Trade Organization**

**Reference: VITALISTAN – CERTAIN MEASURES AFFECTING THE SALE OF
ENERGY DRINKS: Request of the Establishment of a Panel by Bootsland**

Dear Mr. Chairman,

On 17 September 2012, the Government of Bootsland ("Bootsland") requested consultations with the Government of Vitalistan ("Vitalistan") pursuant to Article 4 of the *Understanding on Rules and Procedures Governing the Settlement of Disputes*, and Article XXII of the *General Agreement on Tariffs and Trade 1994* (the GATT 1994) concerning certain measures imposed by Vitalistan which affect the sale energy drinks in Vitalistan.

The request was circulated on 18 September 2012 as document WT/DS111/1. The consultations were held in Geneva on 15 October 2012. Unfortunately, the consultations failed to reach the satisfactory resolution of the dispute. Accordingly, Bootsland respectfully requests to establish a panel in order to examine this matter pursuant to Article 6 of the *Dispute Settlement Understanding*.

The specific measures at issues are:

1. The imposition of internal sales taxes on all beverages at different tax rates sold in the country under Vitalistani General Drinks and Beverages Tax Act
2. The labelling requirements according to which foodstuffs that contain 300 Mg/Litre or more of caffeine must be labelled with the text "High caffeine content – Note if you are a child or are expecting a child" under Vitalistani Governmental Decree No. 158.
3. The limitation of the sale of taurine-enriched foodstuffs to pharmacies under Vitalistani Governmental Decree No. 159.
4. The Vitalistan's granting of duty-free access to sports drinks imports from Paradistan under Vitalistani Soft Drinks Tariff Order, according to which sports drinks from Paradistan may be entitled to duty-free access whilst imported energy drinks are levied a 20% ad valorem customs duty.

Those measures imposed by Vitalistan are inconsistent with a number of Vitalistan's obligation under the GATT 1994 as follows:

1. The imposition of internal sales taxes on all beverages at different tax rates sold in the country under Vitalistani General Drinks and Beverages Tax Act is inconsistent with Article III.2 of the GATT 1994 because the imported products are subject to internal sales tax in excess of those applied to like domestic products.

[To
Chairperson,
DSB]

Upon the instructions of my authorities, I hereby convey the request of the Government of Boostland for the establishment of a panel under Article 4.7 and 6 of the Understanding on Rules and Procedures Governing the Settlement of Disputes ("DSU") with respect to *[Name of the Dispute as provided in the Consultation (Reference Number)]*.

The Government of Vitalistan maintains several measures concerning import of energy drinks including but not limited to:

- (i) the General Drink and Beverages Taxes Act;
- (ii) the Decree No. 158 and 159 under the food programme "Wheat, meat, sweet – watch what you eat"; and
- (iii) the duty free import permitted to soft drinks from Paradistan pursuant to the Sports Drinks Tariff Order.

(collectively hereinafter referred to as "**Measures**").

On 15 October 2012 Boostland and Vitalistan held consultations under Article XXIII of the General Agreement concerning the obstacles to the import of energy drinks including but not limited to soft drinks containing stimulants such as caffeine ("**Energy Drinks**") to the Vitalistan market.

These consultations followed repeated representations by the Boostland to the Vitalistan authorities made with a view to finding solutions to the problems encountered by Boostland during exports of Energy Drinks.

As the consultations conducted under Article XXIII have not resulted in a satisfactory settlement, Boostland wishes to request establishment of a panel to consider the injury being caused to Boostland by the measures adopted by the Vitalistan on the import of Energy Drinks to the Vitalistan market.

These measures prohibit or restrict imports of Energy Drinks from Boostland and other Members of the World Trade Organization in contravention of the Government of Vitalistan obligations the General Agreement on Tariffs and Trade 1994 and would not be justified under Article XX of GATT (General Exception).

In particular Boostland considers that the Vitalistan measures are inconsistent with the following obligations of the WTO Agreements:

- (i) The Measures are in contravention of the provisions of Article III of GATT 1994. The discrimination is due to:
 - Sports drinks and Energy Drinks are like products. The tax imposed on Energy Drinks is in excess of tax imposed on sports drinks. Therefore, this Measure is in inconsistent with first sentence of Article III:2 GATT 1994;
 - Alternatively, the sports drinks and Energy Drinks are directly competitive and substitutable products and the taxes imposed on Energy Drinks are not similar to

Second Simulation Exercise: Substantive Meeting with the Panel

Introduction:

A Panel has been established by the Dispute Settlement Body to examine the matter raised by Boostland in its panel request. It was relatively easy for the parties to agree on three qualified individuals, nominated by the Secretariat, to be the panellists. The Panel has informed the parties of its working procedures and its timetable.

"Soft Drinks Watch", an NGO concerned about additives in soft drinks and currently advocating for a ban on taurine, has requested the permission of the Panel to submit an *amicus curiae* submission in the proceedings, and submit a brief outlining its views on the WTO-consistency of the challenged measures. It is to be remembered that according to Appellate Body jurisprudence, a panel's comprehensive authority to seek information from any relevant source (Article 13 of the DSU) and to add to or depart from the Working Procedures in Appendix 3 to the DSU (Article 12.1 of the DSU) permits panels to accept and consider or to reject information and advice, even if submitted in an unsolicited fashion.

The Parties have exchanged their first written submissions and must now attend the first substantive meeting with the Panel to present their evidence and legal arguments orally.

For the purpose of this exercise, the four groups (A - D) represent:

GROUP	WTO MEMBER
A	Boostland (Complainant)
B	Vitalistan (Respondent)
C	Taurilania (Third Party)
D	Paradistan (Third Party)

Instructions:

1. Boostland, the complainant, should attempt to substantiate its claim that the measures at issue (measure A – sales tax, measure B – labelling requirement, measure C – sales restriction, measure D – preferential tariff treatment), are WTO-inconsistent.
2. Vitalistan, the defendant, should attempt to refute the factual and legal allegations and arguments put forward by Boostland
3. Taurilania and Paradistan, third parties in the panel proceedings may, in presenting their arguments, side with either one of the parties, or make more general comments on the interpretation of the agreements (in line with their own economic and/or systemic interests in the dispute). Paradistan, in particular, should address whether, and to what extent its free trade agreement with Vitalistan, the defendant, has a bearing on Boostland's claim that measure D (preferential tariff treatment) is WTO-inconsistent.
4. All parties and third parties must, in their arguments, address whether the Panel should accept the *amicus curiae* brief submitted by "Soft Drinks Watch".

Note: In presenting their legal arguments to the Panel, the parties and third parties should, to the extent possible, rely on panel and Appellate Body jurisprudence.