

**GUJARAT NATIONAL LAW UNIVERSITY
GANDHINAGAR**

Course: **WTO Law**

Semester-VII (Batch: 2017-22)

End Semester Online Examination: December 2020

Date: 27th December, 2020

Duration: 8 hours

Max. Marks: 50

Instructions:

- The respective marks for each question are indicated in-line.
- Indicate correct question numbers in front of the answer.
- No questions or clarification can be sought during the exam period, answer as it is, giving reason, if any.

- | | Answer Any Five | Marks |
|-----|--|----------------------|
| Q.1 | <p>The Japanese Liquor Tax Law has laid down a system of internal taxes applicable to all liquors, which are defined as domestically produced or imported beverages having an alcohol content of not less than one degree and which are intended for consumption in Japan. For this purpose, the Liquor Tax Law classifies the various types of alcoholic beverages into ten categories and additional sub-categories: Sake, Sake Compound, Shochu (a native beverage), Mirin, Beer, Wine, Whisky/Brandy, Spirits, Liqueurs, and Miscellaneous (various sub-categories). It is alleged that the Liquor Tax Law taxed Shochu at a lower rate than the other beverages.</p> <p>a) Whether Japan has acted inconsistently with National Treatment obligation under the GATT 1994 by applying a higher tax rate on various categories of spirits than on Shochu? Examine.</p> <p>b) Why must the concept of 'like products' embodied in National Treatment obligation under the GATT 1994 be interpreted narrowly? What is the basic approach followed by the WTO Panels and Appellate Body in other similar cases? Elucidate.</p> | <p>(2x5=
10)</p> |
| Q.2 | <p>The Plant Protection Enforcement Regulation, 2018 of Ultrania required exporters of various fruits and nuts to submit each variety they intended to export to Ultrania to an extensive regime in order to verify that fumigation with methyl bromide effectively killed the eggs and larvae of codling moths, the pests of quarantine significance to Ultrania. As a result, the importation of eight agricultural products (i.e., apples, cherries, peaches, walnuts, apricots, pears, plums and quince) originating from Silverland was disallowed on the ground that they were potential hosts of codling moths. Consider both Ultrania and Silverland as members of the WTO.</p> <p>a) Whether the varietal testing requirements prescribed under Ultrania's Regulation are in accordance with the risk assessment obligation as stipulated under the SPS Agreement? Examine.</p> <p>b) Can the above-said varietal testing requirements become more trade-restrictive than required? Assess.</p> | <p>(2x5=
10)</p> |

- Q.3 In view of a threat of global outbreak of Avian Influenza (AI), Baltorica, a regular bulk importer of certain agricultural and poultry products from Arguania, had last year amended its Livestock Importation Act, 1898, to contain provisions regulating, restricting, or prohibiting the importation of livestock, which may be liable to be affected by infectious or contagious diseases. As per section 2(d) of the said Act livestock products include meat and meat products of all kinds. Baltorica's Department of Animal Husbandry, Dairying, and Fisheries (DAHDF) had prepared a National Action Plan (NAP) pursuant to the Livestock Importation Act, 1898, as amended, taking into account new experiences, lessons from the past and contemporary scientific information on various infectious or contagious diseases, including AI, affecting livestock to deal any eventuality. Owing to recent concerns related to AI, Baltorica has imposed prohibitions on the importation of certain poultry products from Arguania. Whereas, Arguania fears that the said prohibition is inconsistent with the relevant provisions of the Agreement on the Application of Sanitary and Phytosanitary Measures (SPS Agreement), and Article I (Most-Favoured-Nation Treatment) and Article XI (General Elimination of Quantitative Restrictions) of the General Agreement on Tariffs and Trade 1994 (GATT 1994), and thereby benefits accruing to it directly or indirectly under the cited agreements appear to be nullified or impaired. On 10th December 2020 Arguania moved the WTO Dispute Settlement Body (DSB) requesting consultations with Baltorica pursuant to Articles 1 and 4 of the Understanding on Rules and Procedures Governing the Settlement of Disputes (DSU), Article 11 of the SPS Agreement, and Article XXII of the GATT 1994 with respect to the above-said prohibition. Presume that Baltorica and Arguania are members of the WTO, and also that the WTO Appellate Body remains functional. (2x5=10)
- As chief legal counsel of Arguania, elaborate on the legal recourse Arguania can avail under the WTO dispute settlement mechanism with respect to consultations and also panel procedures, if the consultations fail.
 - In case the Panel and Appellate Body find Baltorica's prohibitive measures inconsistent with the above-cited agreements, what are the options available for Baltorica for complying with the rulings and recommendations of the DSB? Advise.
- Q.4 European Communities (EC) initiated anti-dumping investigation into certain imports of cotton-type bed linen from India, and thereupon identified certain number of different 'models' or 'types' of that product. Then, the EC calculated for each of these 'models' a weighted average normal value and a weighted average export price. The EC next compared the weighted average normal value with the weighted average export price for each 'model'. For some 'models' normal value was higher than export price; whereas, for some other 'models' normal value was lower than export price. By subtracting export price from normal value for these other 'models', the EC established 'negative dumping margin'. (2x5=10)
- Whether the method of calculation employed by the EC is consistent with the Agreement on Anti-dumping for establishing the existence of margins of dumping? Evaluate.
 - What are the basic requirements for the 'determination of injury' in accordance with the Agreement on Anti-dumping? Elucidate.

- Q.5 On 26th November 2020 Rockland informed the WTO Dispute Settlement Body (DSB) (2x5=10) that the consultations held with Dirania had failed to resolve the dispute satisfactorily in respect of Diranian National Regulation, 2018, which prohibited the manufacture, import and sale of asbestos in its (Diranian) territory. Hence, upon the request of Rockland the DSB established a panel on 10th December 2020 to examine the said Regulation. It may be noted that Rockland has been a major exporter of chrysotile asbestos to Dirania for decades. Dirania argued that the Regulation was adopted as a health measure. Rockland claimed *inter alia* that the Regulation was inconsistent with Article 2 of the TBT Agreement and also Article XXIII:1(b) of the GATT 1994, as the Regulation nullified or impaired benefits accruing to Rockland directly or indirectly under the WTO dispensation. Presume that Rockland and Dirania are members of the WTO.
- a) Whether Rockland's claim of non-violation nullification or impairment of benefits under Article XXIII:1(b) of the GATT 1994 can be successful? Examine.
 - b) Can Diranian Regulation be held to constitute a technical regulation under the TBT Agreement? Evaluate.
- Q.6 India had effectively blocked the adoption of the Trade Facilitation Agreement (TFA), (2x5=10) an agreement on new global customs rules, at the General Council meeting of the World Trade Organization (WTO) held on 31st July 2014. After intensive consultations, the WTO Members reached an agreement at the General Council meeting on the Protocol text, amending the WTO Agreement, leading to the adoption of TFA on 27th November 2014.
- a) How could India successfully block the adoption of TFA at the General Council meeting held on 31st July 2014? Analyze it in the light of the method of decision-making at the WTO.
 - b) Pursuant to the above-given situation, elaborate how an amendment can be effected into the WTO Agreement.
