

**GUJARAT NATIONAL LAW UNIVERSITY
GANDHINAGAR**

**Course: International Trade and Business Law
Semester- X (Batch: 2017-22)**

End Semester Online Examination: May 2022

Date: 06th May, 2022

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.
- Word Limit: 10 Marks: 700-750 words, 5 Marks: 400-450 words, 3-4 Marks: 350-400 words.

- | | Marks |
|--|-------------------|
| <p>Q.1 A Chinese buyer entered into a contract with a U.S seller for the purchase of Microchips in several {installments}. The seller delivered a sample. The contract contained a clause limiting the seller's liability to a certain sum and requiring the buyer to file any claim in writing within forty days after the goods arrived. The seller delivered the Microchips. Later the buyer's customers complained that goods (Microchips) were not as described in the certificates and they doubted their authenticity. The buyer requested the Arbitral Tribunal to order the seller to take back the unsold goods i.e., approximately one quarter of the total volume, and refund the price already paid and compensate for the buyer's other losses.</p> <p>In view of this, answer the following:</p> <ol style="list-style-type: none"> a) Whether the CISG will be the governing law of the contract? b) Whether the buyer is entitled for damages as claimed? c) Discuss the provision of installment contract under the CISG? | <p>(3+3+4=10)</p> |
| <p>Q.2 This dispute concerns the imposition of definitive anti-dumping duties by Thailand on H-beams from Poland. On 21 June 1996, Siam Yamato Steel Co. Ltd. ("SYS"), the sole Thai producer of H-beams, filed an application with Thailand's Ministry of Commerce for the imposition of anti-dumping duties on, <i>inter alia</i>, H-beams originating in Poland.</p> <p>On 6 April 1998, Poland requested consultations with Thailand pursuant to Article 17.3 of the Agreement on the Implementation of Article VI of GATT 1994 ("the AD Agreement") and Article 4 of the Understanding on Rules and Procedures Governing the Settlement of Disputes ("the DSU") regarding Thailand's imposition of final</p> | <p>(4+3+3=10)</p> |

anti-dumping duties on imports of angles, shapes and sections of iron or non-alloy steel: H-beams ("H-beams") originating in Poland. Poland and Thailand held consultations on 29 May 1998 but failed to reach a mutually satisfactory resolution of the matter.

On 13 October 1999, pursuant to Articles 4 and 6 of the DSU and Article 17 of the AD Agreement, Poland requested the establishment of a Panel to examine the matter. At its meeting held on 19 November 1999, the Dispute Settlement Body ("the DSB") established a Panel in accordance with Poland's request. At that meeting, the parties to the dispute also agreed that the Panel should have standard terms of reference. The Panel rejected Poland's claim that the Thai authorities' initiation of the investigation could not be justified due to the insufficiency of evidence originally contained in the application. The Panel considered that the application need not contain analysis, but only information. The Panel also rejected Poland's claim that Thailand violated Article 5.5 by failing to provide a written notification of the filing of application for initiation of investigation. The Appellate Body while concurring with the Panel's interpretation of Article 3.4, that an investigating authority should consider *all* the injury factors listed in Article 3.4, the Appellate Body upheld the Panel's finding that Thailand acted inconsistently with Article 3.4.

However, the Appellate Body reversed the Panel's interpretations that Article 3.1 require an anti-dumping authority to base its determination only upon evidence that was disclosed to interested parties during the investigation. Similarly, it also reversed the Panel's interpretation that, under Article 17.6, panels are required to examine only an investigating authority's injury analysis based on the documents shared with the interested parties. The Appellate Body found that the scope of the evidence that could be examined under Article 3.1 depends on the "nature" of the evidence, not on whether the evidence was confidential or not. A panel should consider all facts, both confidential and non-confidential, in its assessment of the establishment and evaluation of the facts by investigating authorities under Article 17.6.

In view of the above mentioned facts, answer the following:

- a) Discuss the provision under Article VI of GATT and the Anti-Dumping Agreement under the WTO.
- b) Discuss the determination of dumping and calculation of dumping margin.

- c) What are 'de minimis margins' and 'price undertakings' which necessitate the suspension or termination of anti-dumping investigations?

- Q.3 A German buyer and a Czech seller concluded a contract for the sale of a certain quantity of cheese. According to the contract the buyer should take delivery of the cheese in 15 separate truck loads at a distribution center indicated by the seller in the Czech Republic. The buyer was obliged to offer advance payment for each delivery. Upon advance payment the first truck load was handed over to the buyer. When it came to the second truck load, however, the seller refused to deliver it, though advance payment had been made, as long as other outstanding debts of the buyer remained unpaid. The buyer declared the contract avoided with respect to all deliveries not already performed and, pursuant to a clause contained in the contract, commenced arbitral proceedings to recover the advance payment made plus interest. (3+3.5+3.5=10)

In view of the above mentioned facts, answer the followings:

- a) Determine the applicability of law.
 - b) Discuss the provisions applicable to both the buyers and the sellers, which address avoidance (or partial avoidance) of contract, or suspension of performance in certain special situations—specifically, where a party has in some fashion threatened future non-performance of its obligations in case of contract of delivery goods in installments.
 - c) Whether there is a fundamental breach of contract with respect to future installments?
- Q.4 'Subsidy may play an important role in developing countries and in transformation of centrally planned economies'. (10)

In view of the forgoing statement, discuss the WTO provisions on Subsidies and Countervailing Duties.

- Q.5 Write short note on **any two** of the following: (5x2=10)
- a) The Bretton Wood System
 - b) Security Exceptions Under the GATT
 - c) Green Box support under the WTO
