

**GUJARAT NATIONAL LAW UNIVERSITY  
GANDHINAGAR**

Course: **WTO Law**  
Semester-VII (Batch: 2013-18)

End Semester Examination: October 2016

Date: 28<sup>th</sup> October, 2016

Duration: 3 hours

Max. Marks: 50

**Instructions:**

- Read the questions properly and write the answers in the given answer book.
- The respective marks for each question are indicated in-line.
- Do not write any thing on the question paper.
- Indicate correct question numbers in front of the answers.
- No questions or clarifications can be sought during the exam period, answer as it is, giving reason, if any.
- **Bare Act is not allowed.**

**Answer any five of the following:  
(word limit: 550-600 words each)**

**Marks**  
(5x10=  
50)

- Q.1 New Land, a member of the WTO, under its 2008 Car Programme provided that National Cars manufactured in a foreign country, Old Land, by New Land nationals fulfilling the local content requirements prescribed by the New Land Ministry of Industry and Trade, shall be treated the same as National Cars manufactured in New Land and therefore were exempted from import duties and luxury tax. The Car Programme further provided that the above-said exemptions would be granted only once for a maximum period of one year and would involve a total number of vehicles to be stipulated by the said Ministry.
- (a) Whether the Car programme of New Land can be held to be consistent with Article I:1 of the GATT, 1994?
- (b) Whether Article I:1 of the GATT, 1994 does include *de facto* discrimination? Explain.
- Q.2 Korea has maintained a multi-tiered taxation regime on the sale of various categories of alcoholic beverages. The Liquor Tax Law, 1949, as amended, lays down a system of excise taxes applicable to all beverages (whether manufactured in Korea or imported) intended for consumption in Korea. The taxes applied to the categories are in the form of different *ad valorem* taxes. The Liquor Tax Law divides alcoholic beverages into eleven categories, some of which are further divided into sub-categories, and assigns to each of them a different tax rate. These categories include 'soju', 'whisky', 'brandy', 'general distilled liquors' (which covers beverages such as vodka, gin, rum and tequila), 'liqueurs', and 'other liquors'. However, it was alleged that Korea had accorded preferential tax treatment to 'soju', a traditional Korean alcoholic beverage, as compared with certain imported 'western-style' alcoholic beverages.
- (a) Whether Korea has acted inconsistently with Article III:2, second sentence, of the GATT, 1994 by imposing different *ad valorem* tax rates for various categories of alcoholic beverages?
- (b) How is Article III:2, first sentence, different from Article III:2, second sentence, of the GATT, 1994? Analyze with the help of relevant case laws.

- Q.3 An EC Directive, imposed in 1981 and strengthened in 1988 and 1996, banned imports of meat from animals that had been administered natural or synthetic hormones. Exceptions were allowed for hormones that were used for therapeutic purposes but not hormones used to promote growth in cows. American, Canadian and other beef producers used hormones to accelerate growth that reduced costs and yielded higher quality meat. The Codex Alimentarius Commission, which adopts international standards for food safety, did not prescribe six hormones that are banned by the EC as health hazards. EC argued that SPS Agreement explicitly allows members to adopt standards that are stricter than international norms if those standards are based on an assessment of risk. Further, although scientific studies had suggested no objective risk but there were incidents, which made consumers suspicious of eating beef administered by hormones.
- (a) Whether the EC measure had failed in conducting the risk assessment as required under Article 5.1 of the SPS Agreement?
  - (b) Did the EC measure violate Article 5.5 of the SPS Agreement by demanding different levels of SPS protection in comparable situations?
- 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. 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'.
- (a) Whether the method of zeroing employed by the EC is consistent with Article 2.4.2 of the Agreement on Anti-dumping for establishing the existence of margin of dumping?
  - (b) What is meant by sales made in the ordinary course of trade? Elaborate.
- Q.5 'As per the negotiating history of Article 1 of the Subsidies and Countervailing Measures Agreement, inclusion of 'financial contribution' in the text of the provision was meant to guarantee that not all government measures that confer benefits would be considered to be subsidies and to avoid the countervailing of benefits from government measures by restricting the kinds of such measures that would constitute subsidies if they conferred benefits'.
- (a) What is meant by 'financial contribution'? When can a financial contribution be held to confer a benefit?
  - (b) Which subsidies are prohibited under the Agreement on Subsidies and Countervailing Measures? Also, differentiate prohibited subsidies from actionable subsidies.
- Q.6 In August 2016 Takeda informed the WTO Dispute Settlement Body (DSB) that the consultations held with Roteka had failed to resolve the dispute satisfactorily in respect of Rotekan National Regulation, 2015 prohibiting the manufacture, import and sale of asbestos in its (Rotekan) territory. Hence, upon the request of Takeda the DSB established a panel to examine the said Regulation. It may be noted that Takeda has been a major exporter of chrysotile asbestos to Roteka for decades. Roteka argued that the Regulation was adopted as a health measure. Takeda 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 Takeda directly or indirectly under the WTO Agreement. Presume that Takeda and Roteka are members of the WTO.

- (a) Whether Takeda's claim of non-violation nullification or impairment of benefits under Article XXIII:1(b) of the GATT, 1994 can be successful?
- (b) Can Rotekan Regulation be held to constitute a technical regulation under the TBT Agreement?

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