

6 MAY 2024

NATIONAL LAW UNIVERSITY, JODHPUR

End Term Examination- 2024

Semester-UG VIII  
(Trade and Investment Hons)

Subject: Trade Remedies

Marks- 100

Time: Three Hours

Instructions:

1. Answer any five questions.
2. All questions carry equal marks.
3. Try to answer the questions citing the relevant provisions and case laws.

Q.1

On 21 June 2007, company M, the sole producer of steel I-beams in a WTO member, files an application requesting the member to initiate an anti-dumping investigation against imports of the same product originating in country A, a WTO member.

The application identifies company M as the applicant and contains a description of the volume and value of company M's domestic production. It also describes the allegedly dumped product as steel I-beams of all standard sizes and colors, not custom made. It states that the application concerns I-beams originating in country A and identifies two companies in country A that are known producers and exporters of I-beams. It identifies two companies in the member as known importers of the allegedly dumped I-beams and states that it is the only domestic producer of the I-beams as described in the application.

Company M's application contains sections entitled "dumping," "injury," and "causation." It provides comprehensive evidence for all factors, except for information about the volume of the allegedly dumped imports, which is not publicly available in the member. All of the information provided for dumping, injury, and causation is supported by data including company reports, audited financial statements, invoices, import certificates, and other relevant sources.

Company M's desire for the member to open an anti-dumping investigation is well-known in steel industry circles. An industry magazine devoted to steel construction publishes an article reporting on company M's submission of the anti-dumping application.

An industry representative in country A reads the article and brings it to the attention of government officials dealing with external commerce-related issues. Country A government officials call the member. A meeting is set up for 19 July 2007. The member's internal meeting report notes that member officials met with country A officials about the receipt of company M's anti-dumping application. Member officials informed country A officials that they considered the application to be properly documented and therefore intended to proceed with an examination of whether there was sufficient evidence to justify the initiation of an anti-dumping investigation.

On 22 July 2007, the member sends a copy of this note to country A authorities by registered mail. The cover letter states, in part:

Please find enclosed a summary of our 19 July 2007 meeting concerning the receipt of a properly documented anti-dumping application on 21 June 2007 from Company M requesting us to initiate an anti-dumping investigation against I-beams (of all standard sizes and colors, not custom made) originating in your country. As discussed at the meeting, we are currently examining the adequacy and accuracy of the evidence in the application to determine whether there is sufficient information to initiate an anti-dumping investigation.

The member finds that company M has submitted sufficient evidence of dumping, injury, and causation to justify initiation of an investigation. It notes that invoices and import certificates provided as part of the "dumping" section of the application prove that I-beams are being exported at much lower price than the sale price on country A's domestic market and interprets this as evidence of dumping. It decides not to conduct any further examination of the issue.

The evidence of dumping provided by company M in its application is summarized as follows:

Two invoices dated 17 December 2006 and one invoice dated 14 February 2007. The first 17 December 2006 invoice is for a sale of five I-beams by a retailer in country A to a construction company for a price of 15 Member Currency units (MC) per beam. The second 17 December 2006 invoice involves a purchase by a construction company from a wholesaler. This invoice is for 10 I-beams at 14MC per beam. The invoice dated 14 February 2007 is for a sale of 15 I-beams to a construction company at 12MC per I-beam.

Two import certificates, one dated 29 December 2006 and one additional import certificate dated 3 March 2007. The first import certificate is for the sale of 100 I-beams at 9MC per beam, and the second is for 200 I-beams at 8MC per beam.

In order to analyze injury further, the member investigating authority consults import data not generally available to commercial entities in the member, and finds that imports of I-beams originating in country A increased both in volume and relative to domestic production from 2002 to June 2007. It also takes injury data submitted by company M into account. These data show that profits, market share, production, and employment in the investigating member all decreased from 2002 to 2007, and that the price of I-beams originating in country A significantly undercuts domestic prices.

Following verification of the data and further analysis of other potential causes of injury, the member investigating authority determines that there is evidence that the allegedly dumped imports have caused injury to company M, the only producer of I-beams in the member. Because company M is the only producer, the application is made by or on behalf of the domestic industry.

The investigating authority provides public notice in the member's official gazette on 6 September 2007 of an anti-dumping investigation concerning I-beams originating in country A. The notice stipulates that the date of publication in the gazette is the date of initiation and identifies all steel I-beams of whatever standards, size, and color, not custom made, as the product and country A as the country concerned. It describes the basis on which dumping is

alleged and summarizes the factors on which the claim of injury is based. It also provides the address to which representations by interested parties can be directed and the time limit for them to make their views known. The same day, the member sends the notice as published in the gazette to known exporters and country A.

On 20 September 2007, the member sends a copy of the application to country A officials and the two known exporters of I-beams in country A. The application designates all company M's price and sales, profits, production, capacity utilization, employment and wage, cash flow, inventory, and investment information as confidential, but does not provide any specific reason why it should be treated confidentially. Company M provided a non-confidential version of the application with "indexed" information. The member sends that version of the application to country A and the known exporters.

Now answer the followings with the above facts:

1. Did company M's application meet the requirements of Article 5.2 of the ADA?
2. Did the member properly notify country A after receipt of the application?
3. Did member, as required by Article 5.3, properly examine the adequacy and accuracy of the evidence in the application to determine whether there was sufficient information to initiate an anti-dumping investigation?
4. Assuming member did sufficiently examine the adequacy and accuracy of the evidence submitted by company M and there was sufficient evidence to initiate an investigation, did the member provide proper notification?

Marks 20

## Q. 2

Company A is a major computer chip manufacturer in a WTO member. It employs over 50,000 people within the member's territory, comprises 1% of its economy, and is responsible for 5% of the member's exports. Company A has significant debt, amounting to twice its net worth. The member has become aware that a sizeable amount of company A's debt (more than its cash flow) will be maturing in the coming year. The member is concerned that company A may face insolvency if measures are not taken to address its short-term liquidity problem. The member believes that the potential dissolution of such a key company would not be in the public interest. It takes the following measures to address this problem.

### Measure A

The member is aware that eight private banks appear interested in participating in a syndicated loan to help company A address its short-term cash flow problem. Under the terms of the contemplated syndicated loan, each bank would provide \$100 million of a total \$800 million loan.

The member is aware that bank A, a privately owned bank, will not be able to participate in the syndicated loan if the member does not grant a special exemption authorized by its law. The member's law prohibits a financial institution from extending credits exceeding 25% of its equity capital to the same individual, corporation, and person. Because the \$100 million loan will cause bank A to exceed the credit limit prescribed by law, it would not normally be able to participate in the loan. Nevertheless, member's law allows its Financial Supervisory Commission (FSC), an administrative agency of member, to grant a waiver permitting banks to exceed the ceilings when it is recognized that it is "inevitable for industrial development or the stability of national life."

Economic ministers of the member hold a meeting and discuss the issue of company A. They decide to pursue a resolution of special approval by the FSC upon application by bank A. Following the meeting, a record of the meeting's resolutions, including the decision to approve an increase in bank A's credit ceiling, is sent to bank A. The cover letter states, in part:

Dear Bank A,

Enclosed please find discussion results on alleviating the cash crunch of company A which are part of discussion items at the Economic Ministers meeting held yesterday. Please make sure they are carried out perfectly.

Bank A applies for the waiver from the FSC the following week. FSC commissioners approve the increase in the credit ceiling for bank A, noting that company A is "too big and too important to fail." The minutes of the meeting also explain:

The computer chip industry is a strategic industry; after company A's merger with company B in 1999, company A accounted for 20% of the world computer chip market and 5% of the member's exports. Company A employs 50,000 employees in the industry, and other involved companies exceed 2,500 with over 150,000 employees. To support the syndicated loan would improve the member's international competitiveness.

Therefore, for the promotion of the computer chip industry policy, the FSC finds it in the best interest to increase the ceiling.

Following bank A's receipt of the waiver, it and the seven other private banks finalize the terms of the syndicated loan. Although the loan is financed by eight banks, it is provided to company A on a common set of terms, which include, among other things, identical interest rates and fees. The seven other banks participating in the syndicated loan are privately owned and have no government affiliation. In addition, none of the other banks applied for or received a special waiver from the FSC in order to participate in the syndicated loan.

#### Measure B

Company A currently has a 90-day documents against acceptance (D/A) export credit facility of \$800 million. According to this arrangement, company A can receive immediate payment for export transactions from 14 participating member private banks based on submission of relevant export transaction documents.

Overseas purchasers pay the banks later. Member private banks decide to increase company A's export credit facility from \$800 million to \$1.4 billion, following a guarantee from member Export Insurance Corporation (EIC) to pay any money due if the exporter or importer goes bankrupt. Private banks located in member territory refused to grant the increase before company A arranged for the guarantee from the EIC. Company A also approached other banks in the member country before applying for the guarantee. It was unable to obtain an extended credit facility from other banks.

The EIC is the official export agency of member. It is a specialized non-profit corporation that operates under the Ministry of Commerce. The National Assembly determines total

limits for business underwritten and contributions to the Export Insurance Fund, which is the basis of EIC operations. According to its bylaws, the EIC must transfer all its profits to reserves that are used to cover its deficits. In case of a shortage of reserves, the member provides funding to cover the losses.

In relation to the guarantee provided for company A, the member's minister of commerce and minister of economy sent a letter to the EIC stating:

As for the provision of D/A backed loans, the EIC will temporarily resume the insurance for the balance of the non-negotiated D/A. Please take actions accordingly.

Company A pays the EIC a premium for the guarantee and pays interest to the banks concerned for the D/A amounts withdrawn until the importer makes the final payment.

#### Measure C

Under the member's law, companies with a credit rating above A—can issue bonds through the normal bond market. Because the member considers it important to set up a program to provide needed liquidity for companies, like company A, that are otherwise viable but cannot issue bonds to raise capital needed to resolve short-term cash flow problems, it sets up a program.

To be placed in the program, companies have to be able to repay 20% of their maturing bonds, normalize business operations through a rescue plan, and have credit ratings below A but higher than BB. If a company is admitted into the program, it repays 20% of the corporate bonds coming due and the Member Development Bank (MDB) assumes the remaining 80%. Company A was admitted to the program and the MDB, as stipulated by the program rules, purchased 80% of the bonds coming due.

Since the enactment of the program, the member has admitted only five companies, although the economic data indicate that 200 companies are potentially eligible for the program. In addition, three out of the five companies admitted, including company A, are all part of the same corporate group. Forty-one per-cent of total program funds were used to purchase corporate bonds from company A. Soon after the enactment of the program, newspapers reported widespread criticism from other industries in similar financial situations complaining about the transparency of the process and eligibility criteria for the program.

The MDB is wholly government-owned. It was created pursuant to Article 3 of the member's Development Act to promote "the sound development of the economy."

The director of the MDB is appointed and dismissed by the member's president and assisted by deputy directors appointed and dismissed by the member's Ministry of Finance and Economy.

Answer the followings with the help of above facts:

1. Do measures A, B, and C involve a "financial contribution by a government or any public body within the territory of a member" within the meaning of Article 1 of the Agreement on Subsidies and Countervailing Measures of the WTO?
2. Assuming measures A, B and C involve a financial contribution by a government or public body, do they also provide a benefit to company A?

3. Assuming measures A, B and C is subsidies, are they specific?

Marks 20

Q.3.

- a. A domestic industry of a WTO Member alleges that the currency depreciation of another WTO Member allows the exporters of that Member to sell at dumped prices. Assuming that the other conditions have been satisfied, can the WTO Member initiate an anti-dumping investigation?
- b. A domestic industry argues that while its financial situation is all right for the moment, it fears that dumped imports may cause it injury in the future. Is the importing country Government allowed to start an anti-dumping case on this basis?

Marks 10+10

Q.4.

- a. A WTO Member decides to treat a non-market economy country as a market economy for purposes of its anti-dumping law and practice. Can it do so under the WTO?
- b. An export-oriented company has only minimal sales in its home market. Can such sales be used as the basis for normal value? Are there alternative manners in which normal value may be established?
- c. A company sells in its domestic market to a related distributor for a price of 100. The related distributor sells to a related retailer for a price of 140. The retailer sells to an (unrelated) end-user for a price of 190. Which price should an investigating authority use? Which allowances, if any, should be made?
- d. In an anti-dumping case involving five exporters, the investigating authority finds that four of them did not dump. The fifth exporter dumped some 50 per cent of its exports while the other 50 per cent was not dumped. In analysing the volume of the dumped imports, which data should the investigating authority use?

Marks 5+5+5+5

Q.5.

- a. The cost of borrowing for the Government in a WTO Member is 6 per cent. The comparable commercial interest rate is 7.5 per cent. The Government provides an interest-free loan to a company. What is the subsidy under the cost-to-the-government approach? What is the subsidy under the benefit-to-the-recipient approach?
- b. The law of a WTO Member provides for an exemption of import duties on imported machinery. Is this a subsidy? Is it countervailable? What if there is a requirement that the company must be located in an export-processing zone? What if there is a requirement that the company must use at least 45 per cent local content?

Marks 10+10

Q.6.

- a. A WTO Member receives a complaint for safeguard protection from the domestic industry producing certain agricultural products. The WTO Member has reserved no right to impose special safeguard measures in its agricultural schedules. Can it still follow up its industry's request?
- b. A company files a petition for safeguard relief and argues that because of an international financial crisis, which has struck many WTO Members with consequent high depreciation of their currencies, domestic production of such countries is bound to be massively exported. Is this sufficient to warrant an affirmative determination of "increased imports".

Marks 10+10