

7 MAY 2025

NATIONAL LAW UNIVERSITY, JODHPUR

End Term Examination- May 2025

Semester-UG VIII  
(Trade and Investment Hons)

Subject: Trade Remedies

Time: Three Hours

Marks- 100

Instructions:

- a. Attempt any five questions.
- b. All questions carry equal marks
- c. Try to answer the questions citing the relevant provisions and case laws if any.

**Question No.1**

What is anti-dumping duty? What is the purpose of regulating anti-dumping measures in international trade? Can a WTO Member decide 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 Anti-dumping Agreement of the WTO? Does dumping mean cheap or low priced imports?

**Question No.2**

**(Marks 20)**

What does the term 'injury' in the Anti-dumping Agreement of the WTO mean? How is an anti-dumping investigation initiated? 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?

**Question No.3**

**(Marks 20)**

Country A is a Member of the WTO. In the year 2000, in order to boost the slumping domestic industry of cellulose, the government of country A issues certain measures.

These consist of:

- ❖ A programme involving stocking of domestically produced 'lumber', setting a maximum price and guaranteeing supply of raw material;
- ❖ A scheme granting credit to exporters of finished paper to be offset against the payment of customs duties on subsequent imports;
- ❖ The reimbursement mechanism for production taxes is made more efficient for exporters. For cellulose exporters, the mechanism prescribes that when a company exports more than 60 per cent of its production, the tax payable on the cellulose sold

on the domestic market is made payable at the end of the year instead of on a monthly basis;

- ❖ To 150 companies producing mainly cellulose, certain financial contributions, amounting to 0.9 per cent *ad valorem*, are made. The expressed purpose of these contributions is research and development, although it appears that some of the companies have used the financing for increased production.

Country B, an industrialized neighbouring WTO Member, has a small domestically orientated cellulose industry with insignificant exports, producing 60 per cent of the country's consumption of cellulose. Following the introduction of country A's measures, domestic producers in country B experience a loss of market-share and a decrease in price of both cellulose and finished paper. Simultaneously, the world market share of country A and country A's imports of cellulose in country B increase rapidly.

The producers in country B file a complaint before the competent authorities, and tension builds between the two countries.

1. You work for the government of country B and receive the complaint. You are made responsible for making a first evaluation of the situation. What is your position with regard to the following?
  - (a) The character of the four measures issued by country A. Do these measures fall under the definition of 'subsidies' provided by the ASCM?
  - (b) What are the possibilities to take action concerning the different measures, and can action be taken to stop the losses sustained by the finished paper industry in country B?
  - (c) If country A is a developing Country but does not figure in Annex VII of the ACSM, would your answer in (a) and (b) be different?
2. Suppose country C has an export oriented cellulose industry, originally mainly focused on neighbouring country A's market. Following the adoption of the measures in country A, country C's exports to country A registered a remarkable decrease. Can country D, neighbouring country of A and C, initiate countervailing duty action against country A alleging displacement of country C's exports of cellulose from country A to its own market?

(Marks 20)

#### Question No.4

An export-oriented company has only minimal sales in its home market. Can such sales be used as the basis for normal value determination for anti-dumping investigations? Are there alternative manners in which normal value may be established? An administering authority investigating injury allegedly caused by dumped tomato imports determines that inventories are not a relevant injury factor for such a highly perishable product and therefore does not evaluate it in the definitive measure. Discuss on the legality.

(Marks 20)

**Question No.5**

What can the allegedly subsidizing Member State do when accused of causing serious prejudice to the interest of another Member State under the multilateral track? Discuss the concept of serious prejudice for actionable subsidies determination.

**(Marks 20)**

**Question No.6**

Write short notes on two of the followings:

- a. Lesser duty rule under Anti- dumping Agreement
- b. Developing country and remedies under Anti- dumping Agreement
- c. Safeguard measures under Regional Trade Agreements
- d. Public interest and review of anti- dumping duty imposition

**(Marks 10+10)**

30 AUG 2025

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**Question No.1**

Discuss the concept of dumping in the context of international trade law. Is dumping unfair? Why does GATT, 1994 Article VI say it is to be 'condemned'? Analyze the process of dumping determination under the Anti Dumping Agreement of the WTO. What is the relationship of 'dumping', 'price discrimination' or 'predatory pricing' under anti-trust/competition law?

(Marks 20)

**Question No.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?

**Question No.3**

**(Marks 20)**

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? Analyse the role of IMF and WTO in this regard.

**(Marks 20)**

**Question No.4**

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 Anti-dumping Agreement of the WTO? Provide the details.

**Question No.5**

**(Marks 20)**

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 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? Suppose that the normal import duty is 20 per cent and the CIF value of the machinery imported in 1995 was US \$10,000,000. A countervailing duty investigation is initiated in 2002 with 2001 as the investigation period. Is there still a countervailable subsidy and, if so, how much?

**Question No.6**

**(Marks 20)**

Write short notes on two of the followings:

- a. Sun-set review mechanism;
- b. Constructive remedies under Anti-dumping Agreement;
- c. Special Safeguard mechanism;
- d. Public interest and anti-dumping duty imposition

**(Marks 10+10)**