

NATIONAL LAW UNIVERSITY, JODHPUR

End Term Examination, November 2024

Semester-UG IX

(Trade and Investment Law Hon's)

Subject: Dispute Settlement in International Trade

Time: Three Hours

Marks- 100

Instructions:

1. Answer any **FIVE** questions.
2. All questions carry equal marks.
3. Bare text of the treaty or bare Act is not allowed.
4. Try to answer the questions citing the relevant provisions and case laws.

Q.1.

What are the primary aims and objects of Third Parties rights under Dispute Settlement Understanding of the WTO? How different criterion has been used in this regard at Consultation, Panel and Appellate Body stage of the dispute settlement mechanism? Does a panel have to address, and decide on, every claim of the complaining party? Can the panel ignore an explicit request of the complaining party to rule on a particular claim? What is the standard of review a panel has to apply in reviewing the WTO consistency of a measure challenged by the complaining party? Why is it important that the request for the establishment of a panel be sufficiently precise? How precise must the panel request be? Who decides what the 'reasonable period of time' for implementation in a particular dispute is?

(Marks 20)

Q.2.

Who has access to the WTO dispute settlement system? When can WTO Members have recourse to the WTO dispute settlement? List the different causes of action provided for in Article XXII of the GATT, 1994. How can a complainant show 'nullification or impairment' of a benefit accruing to it under the covered agreements? Can a presumption of nullification or impairment, provided for in Article 3.8 of the DSU, be rebutted? In your opinion, why have there been so few 'non-violation' complaints? Do the dispute settlement provisions of the GATS and TRIPS Agreement provide for non-violation and situations complaints? Can a Member bring a case against another Member regardless of its 'interest' in the outcome of the case? Is a Member's decision to recourse to the WTO dispute settlement subject to judicial review? Do you agree that companies and industry's associations can be considered to have 'indirect' access to the WTO dispute settlement system?

(Marks 20)

Q.3.

Describe the various steps in panel proceedings. What is the purpose of the 'organisational meeting', which the panel will have with parties soon after its compositions? Can developing country Members request additional time to prepare their written submissions? Briefly describe the purpose and content of the various written submissions of the parties to the Panel. When will a Panel have its first and second 'substantive meeting' with the parties? Are *ex parte* communications with the panel be allowed? Are parties to a dispute obliged to provide the Panel with the information or the documents that the Panel requests? What are the consequences of a failure or refusal to provide information or documents requested by a Panel? Can parties submit new evidence to the panel at any stage of the panel proceedings? In your opinion, is an interim review of the panel reports useful and/or appropriate in the current dispute settlement system? Discuss the importance of the confidentiality of the interim report. Does a party to the dispute have an opportunity to comment on a panel report prior to the adoption by the Dispute Settlement Body of the WTO?

(Marks 20)

Q.4.

What is the prime object and purpose of the WTO dispute settlement system? Why is the WTO dispute settlement important to the multilateral trading system? The WTO dispute settlement system has been defined as 'a comprehensive, integrated dispute settlement system'. What does this mean and why is this important? Briefly discuss the different methods of dispute settlement provided for in the DSU and the use made by the Members of each of these disputes. Does Article 23 of the DSU prohibit any form of unilateral conduct by Members when seeking redress of a violation of WTO obligations or does it prohibit only the unilateral suspension of concessions or other obligations?

Make a blue print of the WTO dispute settlement system from the consultation to the adoption stage of the settlement system.

(Marks 20)

Q.5.

What are the criteria which an Appellate Body or the Panel has to satisfy for arriving 'at just solutions' under Article 21 of the DSU? What is the difference between a violation, non-violation and situational complaints under GATT, 1994? What kind of potential remedies available for the WTO Members? Must Members comply with the recommendation and rulings adopted by the DSB 'immediately' or within a 'reasonable period of time'? How the 'reasonable period for implementation' is determined? Has retaliation been an effective temporary remedy for the breach of the WTO law? Do WTO rules on remedies deviate from customary international law on remedies? If so, does customary international law nevertheless apply?

Whether WTO Panel can examine the domestic legislations of the WTO Members? Discuss the manner of deciding the jurisdictions of the Panel.

(Marks 20)

Q.6.

Write short notes on any two of the followings:

- (a) Special rules for Developing countries for resolving disputes under DSU
- (b) Reforms in the Dispute settlement process of the WTO
- (c) Judicial Economy
- (d) Terms of reference in the DSB

(Marks 10+10)