

29 APR 2025

NATIONAL LAW UNIVERSITY, JODHPUR
End Term Examination- April- May 2025

Semester-UG VI

Subject: General Principles of International Trade Law (Compulsory)

Time: Three Hours

Marks- 100

Instructions:

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

Q. 1

What is the objective of the most-favoured-nation treatment obligation? When is there a violation of the most-favoured-nation treatment obligation? Is the concept of "advantage" limited to internal taxes, laws, regulations and requirements? Is the concept of "like products" interpreted consistently in the different provisions of the GATT 1994? What are the criteria to determine whether two products are "like" within the meaning of Article I:1 of the GATT 1994? Once a WTO Member has granted an advantage to a country, can it impose conditions on other WTO Members for them to benefit from that same advantage?

(Marks 20)

Q. 2

Hakistan is a predominantly Muslim country in Southern Asia that imports significant quantities of meat and meat products, including beef and lamb, from several countries, including Hindia. To protect the religious beliefs and practices of its Muslim population, Hakistan has introduced a new measure that requires all imported meat and meat products to be certified "halal" by a recognized Islamic certification body.

Hindia is a predominantly Hindu country that has banned the sale of beef in its domestic markets, due to the sacred status of cows in Hinduism. Hindia is a major exporter of lamb and other meat products, and sees the halal certification measure in Hakistan as a form of discrimination against its products.

Hindia challenges the measure under the GATT 1994, arguing that it unfairly discriminates against its products and creates unnecessary barriers to trade. It also argues that the certification process is opaque and arbitrary, and imposes unnecessary costs on exporters. Hindia highlights that the halal certification process in Hakistan lacks transparency, as it is not publicly available, and there are no clear guidelines on how to obtain certification. The certification process is also non-uniform, with different Islamic certification bodies having different standards and procedures for certification. This lack of transparency and consistency in the certification process creates unnecessary



uncertainty for exporters, as they are unable to ensure that their products meet the necessary certification requirements.

In addition, Hindia argues that Hakistan's measure violates the TBT and SPS agreements, as it creates technical barriers to trade and is not based on scientific evidence. It contends that the halal certification process is not transparent or non-discriminatory, and may not be necessary to ensure the safety and quality of meat products.

Hindia also argues that the measure is not consistent with the principles of non-discrimination and national treatment, as it creates a preference for products from Muslim-majority countries that are able to obtain halal certification, while discriminating against products from Hindu-majority countries that are unable to obtain such certification.

On the other hand, Hakistan argues that the measure is necessary to protect the religious beliefs and practices of its Muslim population, which requires that meat products be prepared and processed in accordance with Islamic law. It also argues that the halal certification process is transparent and non-discriminatory, and is necessary to ensure the authenticity of the certification.

The trade dispute between the two countries is complicated by underlying religious and territorial conflicts. Hakistan and Hindia have a long-standing territorial dispute over a border region that has led to multiple military clashes in the past. Hindia believes that the halal certification requirement is merely a retaliation action by Hakistan due to the ongoing territorial dispute. According to Hindia, the dispute has created a longstanding tension between the two countries, and the halal certification requirement is a way for Hakistan to exert its influence and gain an advantage over Hindia. Additionally, some officials in Hindia argue that the halal certification requirement is not necessary as the existing certification processes already ensure the safety and quality of imported meat products. They believe that Hakistan is using the certification requirement as a pretext to cause difficulties for Hindia and gain a favorable position in the territorial dispute.

The trade dispute between Hakistan and Hindia is also having a ripple effect on the overall South Asian region. Hakistan and Hindia are two of the largest economies in the region, and their trade relationship is crucial to the economic stability of the region. The delays and increased costs caused by the new halal certification requirements are affecting not only Hindia's exporters but also other countries in the region that rely on trade with Hakistan.

Furthermore, the trade dispute is exacerbating the existing tensions between the Muslim and Hindu communities in the region. The religious and territorial conflicts between Hakistan and Hindia are not unique, and other countries in the region have also experienced similar conflicts. The trade dispute is fuelling these tensions and increasing mistrust between the different communities.

Argue the matter before the WTO Panel.

(Marks 20)

Q. 3

In general terms what is the test to determine whether a measure which is otherwise inconsistent with the GATT, 1994 is justified under Article XXIV of the GATT, 1994? Under what conditions is it possible for WTO Members to derogate from the most-favoured-nation treatment obligation for the purpose of creating customs unions or free trade areas with a view to facilitating trade between the constituent territories? How are "customs unions" and "free trade areas" defined in the GATT 1994? What is the meaning of the concept of 'substantially all trade' in Article XXIV of GATT, 1994? How far the jurisprudence had developed in this regard at the WTO?

(Marks 20)

Q. 4

The current crisis at the WTO has been ascribed, at least partly, to the institutional imbalance between the political (negotiation) and the judicial (dispute settlement) functions of the organization. Discuss this statement critically with reference to:

- a) the decision-making procedures of the political organs of the WTO, in practice, and their role in the current crisis at the WTO;
- b) the question whether WTO panels and/or the Appellate Body may, or do, engage in judicial activism (by adding to or diminishing WTO Members' rights and obligations) or otherwise engage in the development of WTO law;
- c) the actions of the United States to paralyze the WTO Appellate Body and their effect on the WTO dispute settlement system and the rules-based trading system as a whole.

(Marks 20)

Q. 5

- a. Define 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?
- b. 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 10+10)

Q.6

Write short comments on two of the followings:

- a. WTO and NGO
- b. National Treatment provision of the GATT
- c. Definition of subsidies and its types
- d. Accession process of the WTO Members



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Q.1

What is the objective of the National Treatment obligation under GATT 1994? Is there any reason to have different National Treatment standards for tax and regulatory measures? A number of different elements have been proposed as the basis for identifying discrimination. Putting aside the issue of appropriate part of the provision under which they would be considered what do you think of a standard that would weigh and balance all of the relevant considerations, as follows (i) the existence of, and degree of, disparate impact on imports;(ii) the various subjective intents of the government officials involved in the enactment of the measures; (iii) the objective intent of the measure based on its working (including an examination of whether the means-ends relationship of the measure and its stated goals).

(Marks 20)

Q.2

The country Winterfell adopted a legislative scheme banning the importation and marketing of medicinal products made from bears. While the ban was temporary and selective at first in 2005, it was extended several times until 2017 when it finally became permanent. The ban was the result of a general public denouncement by the community of Winterfell of the cruel and inhumane methods typically used to extract bear bile for medicinal purposes, and was thus justified on the ground that it protected the morals of the citizens of Winterfell by shielding them from products made through such inhumane treatment. Winterfell maintained that a general ban was necessary, as opposed to a ban solely on products from treating bears inhumanely, because it would be extremely difficult and likely inaccurate to monitor effectively whether particular bears were treated inhumanely for extraction.

However, the law carved out several exceptions from the ban, the key limitations being for (i) bear products made by indigenous communities such as the Baratheons who have survived from such bear bile harvesting;(ii) those made from bears for purposes of research and resource management - in order to qualify for this exception, such products

can be placed on the market only on a nonprofit basis and their quantity cannot suggest that they are marketed for commercial reasons; and (iii) products brought in by travelers for their own use in a quantity that does not suggest commercial purpose of possession.

Bile production is both economically and culturally important for the countries of Dorne and Casterly Rock, which have two of the largest bear bile producing industries in the world. In 2023, both of these countries challenged the ban at the WTO. Aside from the threshold TBT issue of whether the regime was a technical regulation, the principal issues raised pertained around whether Winterfell's public morality defence to its action was legitimate; whether the regulations enforced were even-handedly applied, and whether the general ban on bear products was unnecessarily trade-restrictive.

Dorne and Casterly Rock argue that it is discriminatory and restricts trade in violation of the EU's obligations under Articles 2.1 and 2.2 of the TBT Agreement, as well as Articles I:1 and III:4 of the GATT 1994.

The crux of the challenge is that the Winterfell legislative scheme was more trade-restrictive than necessary to protect its public morality. They argued that there existed reasonable, less restrictive alternatives, such as simply labeling the products based on whether animal welfare standards had been met.

Dorne and Casterly Rock also argued that the implementation of the ban's exceptions resulted in discrimination, or less favorable treatment, against products from Dorne and Casterly Rock in favor of those from countries within and outside of Winterfell. Notably, they alleged that although the Winterfell bear protection regime was aimed at addressing public concerns regarding bear welfare, those public concerns are not moral concerns for the public of Winterfell and are thus not justified under Article XX (a) of the GATT.

Argue before the WTO Panel.

(Marks 20)

Q. 3

- (a) Discuss the concept of dumping in the context of WTO. 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-dumping law of the WTO?
- (b) 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 10+10)



Q.4

The Dispute settlement of the World Trade Organization which is considered the “crown jewel” has served the purpose of increasing the confidence of the Members in multilateral trading system. Analyze. One of the aims of the WTO is to bring security and predictability in the world trading system. How far DSU had helped the WTO in achieving those objectives? 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?

(Marks 20)

Q.5

Define regional trade agreements in the light of Article XXIV of GATT? What is the test to determine whether a measure which is otherwise inconsistent with the GATT, 1994 is justified under Article XXIV of the GATT, 1994? How are “customs unions” and “free trade areas” and “preferential trade agreements are defined in the GATT 1994? To what extent you agree that Regional Trade Agreements are Spaghetti bowl? Provide reasons. Is there any ‘necessity test’ is there to establish the consistency of Regional Trade Agreements with GATT obligations?

(Marks 20)

Q.6

Write short comments on two of the followings:

- (a) Sovereignty and WTO obligations
- (b) Industrial policy and subsidies regulations
- (c) Four modes of the supply of services trade
- (d) Export controls and WTO obligations

(Marks 10+10)