



FACULTY	LAW		
DEPARTMENT	COMMERCIAL LAW		
SUBJECT	INTERNATIONAL ECONOMIC LAW		
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DURATION	Three (3) Hours	MARKS	100

REGULAR EXAMINATION

Examiner: **DR. A JORGE**

Moderator/s: **PROF. H. CHITIMIRA**

This question paper consists of 5 pages, including the cover page.

Instructions:

Answer **ALL QUESTIONS** in Part 1 and **ONE QUESTION ONLY** in Part II of the paper. Follow the instructions given in each question.

Each question carries the assigned marks.

Read carefully and understand the question before answering.

Underline any authority referred to.

PART I = COMPULSORY SECTION:

ANSWER ALL QUESTIONS IN THIS SECTION. (QUESTIONS 1 TO 3).

QUESTION 1

SUBTOTAL=25 MARKS

QUESTION 1A

[15 marks]

Explain the meaning of the three main principles of the WTO; the **Most Favoured Nation (MFN)**, the **National treatment and Reciprocity principles**. Are there any differences in these principles between the three main agreements: GATT, the GATS and the TRIPS? (If so, explain what the differences are). What is the relationship between the **MFN** principle and regional cooperation such as the EU, SADC or Mercosur?

QUESTION 1B

[10 marks]

The international economic structure consists of three international organizations. These are: the International Monetary Fund, the World Bank, and the International Trade Organization (ITO/WTO).

- Explain in some detail the functions of these organizations?
- Historically, despite the ITO main document(s)- the GATT 1947- having been drafted and finalized in 1947, yet no International Trade Organization was formed prior to 1994. Explain the reason(s) why there was no International Trade Organization formed prior to 1994.

QUESTION 2

25 MARKS

Articles I and III of GATT 1994 clearly establishes that a WTO member cannot discriminate between “like products” produced in its own domestic market and those originating from other WTO members. However, the language and meaning of “like product” in Article I and Article III(2) and III(4) of GATT 1994 differ slightly. WTO jurisprudence has somewhat muddled the interpretation of the concept when it refers to internal measures taken by a WTO member, and when it refers to tariffs. For example in the original **Coffee case** involving Brazil & Spain the Panel had one view on ‘like product’, which is arguably a broader interpretation of the concept ‘like product’; while subsequent cases sometimes have used a narrower interpretation of the concept or they have even expanded it.

Based on your readings of the Coffee case (*Brazil v Spain (Spain – Unroasted Coffee Case)*) as well as the Various “Alcohol Beverages” cases, (E.g. *EC v Japan (Alcoholic Beverages DS8,10, 11)*; *EC/USA v Korean (Alcoholic Beverages, DS75, 84)*; *EC v Chile (Alcoholic Beverages, DS 87, 110)*, etc, as well as academic literature on the WTO, discuss in great detail the various criteria the WTO case law has used in determining whether the products are “alike”; and the various shades the concept “like product” has acquired in current WTO jurisprudence.

QUESTION 3

SUBTOTAL=25 marks

QUESTION 3A

[10 marks]

International trade is the exchange of capital, goods and services across international borders or territories. In most countries, such trade represents a significant share of gross domestic product (GDP). While international trade has been present throughout much of history, its economic, social, and political importance has been on the rise in recent centuries. It is the presupposition of international trade that a sufficient level of geopolitical peace and stability are prevailing in order to allow for the peaceful exchange of trade and commerce to take place between nations.

Describe and explain in detail the justifications given for the need of international trade in the following models: **Adam Smith's model**, **Ricardian model**, **Heckscher-Ohlin model**, **Neo-Ricardian model**, and **other contemporary theories**. State how these theories differ from each other.

QUESTION 3B

[5 marks]

The WTO dispute settlement system is considered the most important part of the WTO. Explain in detail the procedures that must be followed to bring a dispute before the WTO and also give accurately the duration of each stage of the process.

QUESTION 3C

[10 marks]

[3.1] - (a) -Name five regional integration agreements other than **SACU**, **SADC** and **EU** (European Union). **(b)** From a WTO law perspective, what is the problem with regional integration agreements? **(c)** Why does WTO law, under certain conditions, allow for regional integration agreements? **(2.5 marks)**

[3.2] Discuss in the differences between the SADC Protocol on Trade (1996) and the GATT 1994 in relation to the Most Favourable Nation (MFN), National Treatment Principles, technical barriers to Trade and Dispute Resolution mechanisms and GATT 1994 on the same principles. As much as possible refer to relevant provisions in both instruments. **(2.5 marks)**

[3.3] In general terms, what are the main exceptions provided for in GATT Article XX and GATS Article XIV that may relieve a member from complying with its obligations under WTO? **(2.5 marks)**

[3.4] Give a brief overview of the Special and differential treatment provisions set out in the WTO agreement. Briefly discuss the infant industry protection exception under Article XVIII:7 of the GATT 1994. **(2.5 marks)**

PART II = SELECTIVE SECTION:

ANSWER ONLY ONE QUESTION FROM THIS SECTION: **EITHER QUESTION 4 or 5.**

QUESTION 4

25 MARKS

QUESTION 4A

[15 Marks]

Case study question (FACTS)

Dolzir Republic, a WTO Member, is severely affected by the global economic crisis. To boost the national economy and halt the increase in unemployment, Dolzир Republic has adopted a huge economic stimulus programme. To finance this programme, Dolzир Republic has decided to take the measures set out below.

Dolzир Republic has decided to increase the value added tax (VAT) on tobacco products. Previously Dolzир Republic imposed a VAT of 15% on all tobacco products. Now the VAT on cigarettes has gone up to 21% and the VAT on cigars to 15.5%. Exempted from this increase in VAT are cigars and cigarettes produced in neighbouring Republic of Azania, which is not a WTO Member. Note, moreover, that the VAT for loose-leaf tobacco remains at the original level of 15%. While Dolzир Republic is a significant producer of loose-leaf tobacco, it produces very limited quantities of cigars or cigarettes but instead imports them primarily from the Republic of Ungar, which is a WTO Member.

■ May Dolzир Republic increase its VAT on tobacco products in the way described above and remain consistent with its obligations under WTO law? Explain which provisions of WTO law are relevant in this respect and whether these provisions are complied with in the case at hand. (**NOTE: Do not address the question whether possible violations may be justified under an exception in WTO law.**)

QUESTION 4B

[10 Marks]

= On Anti-dumping measures

The WTO Anti-Dumping Agreement provides for three kinds of anti-dumping measures, namely: (a) **provisional measures**; (b) **price undertakings**, and (c) **definitive anti-dumping duties**.

The text of Anti-Dumping Agreement in its Articles 7 and 8 provides, inter alia, that before applying “provisional anti-dumping measures, the investigating authorities must make a preliminary affirmative determination of dumping, injury and causation”.

Based on your knowledge of WTO rules on anti-dumping, answer the following questions:

(i) When can provisional anti-dumping measures be imposed according to Anti-dumping Agreement? (ii) What form can these provisional measures take? (iii) How long can provisional anti-dumping measures be applied? (iv) What are price undertakings within the meaning of Article 8 of the Anti-dumping Agreement? (v) When can such price undertakings be made? [2 marks each for total (10 marks)]

QUESTION 5

25 marks

Precision Tools Ltd is a New York based manufacturer of specialist machines. It contracts with Metal-Fabricators Ltd, a Walvis-Bay (Namibia) company, for the international sale of a role forming machine. The contract of sale calls for a documentary sale, CIF Walvis-Bay. The machine is loaded in a container and shipped on board the vessel "Sahara" at New York Port under a bill of lading issued by *ArticLines* on 1 April 2016 for delivery to Walvis-Bay. The bill of lading incorporates the Hague-Visby Rules and is a port-to-port bill marked to "seller or order". The bill, on its face, states that one container, containing one role forming machine', has been received on board as container cargo for shipment from New York to Walvis-Bay.

The Bill of lading contained a "Himalaya"¹ clause, extending the benefits of defences and immunities conferred by the bill of lading upon a carrier to the independent contractor employed by the carrier.

On May 2016, the machine was in the custody and control of stevedores engaged by the carrier to unload it and store it pending collection by the consignee. The stevedores were transporting it to the warehouse when it fell and was damaged beyond repair. The buyer begins legal proceedings against the carrier in a Walvis-Bay court alleging that the damage was caused by the negligence of the servants and agents of the carrier, namely the stevedores.

- Comment on all aspects of the buyer's case, in particular, whether the buyer can recover damages from the carrier.

¹ **NOTE ON THE HIMALAYA CLAUSE:** [A **Himalaya clause** is a contractual provision expressed to be for the benefit of a third party who is not a party to the contract. Although theoretically applicable to any form of contract, most of the jurisprudence relating to Himalaya clauses relate to marine matters, and exclusion clauses in bills of lading or the benefit of stevedores in particular].

The text of the clause in question read as follows: "*It is hereby expressly agreed that no servant or agent of the carrier (including every independent contractor from time to time employed by the carrier) shall in any circumstances whatsoever be under any liability whatsoever to the shipper, consignee or owner of the goods or to any holder of this Bill of Lading for any loss, damage or delay of whatsoever kind arising or resulting directly or indirectly from any act, neglect or default on his part while acting in the course of or in connection with his employment and, without prejudice to the generality of the foregoing provisions of this clause, every exemption, limitation, condition and liberty herein contained and every right, exemption from liability, defence and immunity of whatsoever nature applicable to the carrier or to which the carrier is entitled hereunder shall also be available and shall extend to protect every such servant or agent of the carrier acting as aforesaid and for the purpose of all the foregoing provisions of this clause the carrier is or shall be deemed to be acting as agent or trustee on behalf of and for the benefit of all persons who are or might be his servants or agents from time to time (including independent contractors as aforesaid) and all such persons shall to this extent be or be deemed to be parties to the contract in or evidenced by this Bill of Lading*".