

UNIVERSITY OF SWAZILAND

DEPARTMENT OF LAW

FINAL EXAMINATION PAPER, 2013 (SUPPLEMENTARY)

TITLE OF PAPER : INTERNATIONAL TRADE AND INVESTMENT LAW

COURSE CODE : L508

TIME ALLOWED : THREE (3) HOURS

INSTRUCTIONS : ANSWER FOUR (4) QUESTIONS

ALL QUESTIONS CARRY EQUAL MARKS

**THIS PAPER IS NOT TO BE OPENED UNTIL PERMISSION HAS BEEN GRANTED BY THE
INVIGILATOR.**

QUESTION ONE

Vanin, Tristat and Medatia are WTO Members. In the past, Vanin (a developed country Member) used to classify all beers under the same tariff heading subject to a customs duty of 15 per cent. Recently, Vanin authorities enacted a new customs law which reclassifies beers under different tariff sub-headings, according to their level of alcohol. According to this law, Vanin applies different customs duties: a **10 per cent *ad valorem* customs duty** on beers with a level of alcohol below three per cent and a **25 per cent *ad valorem* customs duty** on beers with a level of alcohol equal or above three per cent.

Vanin applies these customs duties to all countries, except to Medatia, to which it applies a **two per cent *ad valorem* customs duty** on beers with a level of alcohol below three per cent and a **ten per cent *ad valorem* customs duty** on beers with a level of alcohol equal or above three per cent, pursuant to a free trade area formed with this country.

Vanin does not produce beer. Instead, it imports this product from many WTO Members. However, beer with a level of alcohol equal or above three per cent is only imported from Tristat and Medatia.

The chart below summarizes the customs rates applied by Vanin:

Good: Beer	Countries exporting beer to Vanin	Customs Rate applicable to all WTO Members	Customs Rate applicable to Medatia
< 3% alcohol	Many WTO Members	10%	2%
≥ 3% alcohol	Only Tristat and Medatia	25%	10%

Tristat believes that Vanin's new customs law violates the MFN principle. Advise Tristat on the best way to argue its case before a WTO Panel.

(25 marks)

QUESTION TWO

Newland is a developing country, and is considering joining the World Trade Organisation (WTO). The Prime Minister of Newland is opposed to this idea, saying that joining the WTO would be tantamount to 'squandering' Newland's sovereignty, that as a developing country it will not be able to participate effectively in decision making within the organization, and that in any event membership in the WTO would open the country's market up for the benefit of multinationals as this is what the main rules and principles of the WTO are about.

You have been requested by the Minister of Trade to write a brief, responding to the Prime Minister's concerns about WTO membership.

(25 marks)

QUESTION THREE

Alba, Vanin and Tristat are WTO Members. Alba is a traditional producer and exporter of watches. In Vanin and Tristat, watch industries were established just two years ago. However, with rapid innovation of technology, Vanin's and Tristat's watch industries have reduced their production costs quickly and have become strong competitors in the world market. Recently, Alba has introduced a regulation allowing the importation of watches through only one of its six ports. In addition, on hearing of Vanin's intention to distribute its watches to retail shops in Alba, and to set up its own chain of retail shops within Alba, the Ministry of Trade of Alba has stated that according to its law, foreign companies are not allowed to act as wholesale distributors of watches in Alba, and that the number of retail shops in a specific area is limited on the basis of an economic needs test.

Prepare a brief on all the issues that arise above.

(25 Marks)

QUESTION FOUR

The rules on subsidies and dumping are based on unfair trade while the rules on safeguards are not. Critically evaluate this statement.

(25 marks)

QUESTION FIVE

(a) What requirements must be met for the SPS Agreement to apply to a particular measure?

(5 marks)

(b) Describe the relationship between the SPS and the TBT Agreements, stating whether it is possible that both apply to one and the same measure.

(5 marks)

(c) Discuss how the treatment of health measure under the SPS Agreement differs from that under Article XX(b) and the GATT 1994. In your answer state whether and in what way, in your opinion, the necessity requirement of Article 2.2 of the SPS Agreement reflects the necessity requirement of Article XX(b) of the GATT.

(15 marks)