

NATIONAL LAW UNIVERSITY, DELHI
B.A.LL.B.(HONS.), V YEAR, IX SEMESTER
Repeat/Improvement Examinations, January-2017

Paper 9.1: International Trade Law

Time: 3.00 Hours

Total Marks: 70

Instructions:

1. Read the questions carefully and answer.
2. No clarification shall be sought on the question paper.
3. Do not write anything on the Question Paper except your Roll No.

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- Q1. Following a 1993 amendment to the Clean Air Act, country -Xø Environment Protection Agency (EPA) promulgated the gasoline Rule on the composition and emission effects of gasoline, in order to reduce air pollution in the country.
From 1st of January, 1995, the -Gasoline Ruleø permitted only gasoline of a specified cleanliness (reformulated gasoline) to be sold to consumers in the most polluted areas of the country. In the rest of the country, only gasoline no dirtier than that sold in the base year of 1990 (conventional gasoline) could be sold.
The Gasoline Rule applied to all US refiners, blenders and importers of gasoline. It required any domestic refiner which was in operation for at least 6 months in 1990, to establish an individual refinery baseline, which represented the quality of gasoline produced by that refiner in 1990.
The Environment Protection Agency also established a statutory baseline intended to reflect average US 1990 gasoline quality.
The statutory baseline was assigned to those refiners who were not in operation for at least six months in 1990, and to importers and blenders of gasoline. Compliance with the baselines was measured on an average annual basis.
Decide and explain whether the requirement of the -statutory baselineø is violative of any of the WTO-GATT principles-
(7 Marks)
- Q2. Country -Aø introduced certain tax measures that imposed an excise tax at different rates depending on the type of product (alcoholic beverages, etc) under the øTransitional Systemö and according to the degree of alcohol content (35%, 36%.....39%) under the øNew Systemö. This øTransitional Systemö allegedly imposed a higher tax on imported spirits than on the locally brewed spirit.
Decide whether country -Aø's measure falls foul of the GATT 1994: Article III:2.
(7 Marks)
- Q3. Compare and contrast David Ricardo's theory of -Comparative Advantageø with that of Adam Smith's theory of -Absolute Advantageø. State which of the theory is relevant/significant in the contemporary era of globalization.
(6 Marks)
- Q4. Country -Bø imposed certain import restrictions (-Quantitative Restrictionsø) on importation of a large number of agricultural, textile and industrial products. It claimed that this was done to protect its balance-of-payments situation under GATT Article XVIII: import licensing system, imports canalization through government agencies and actual user requirement for import licences.
Country -Cø challenges this measure on the ground (a) that it was inconsistent under Article XI: 1 of GATT 1994 and (b) that there was no immediate BOP problem that country -Bø was facing under GATT Article XVIII 11.
Prepare a brief for both country -Bø and -Cø
(8 Marks)
- Q5. Country -Xø imposed certain import prohibitions on retreaded tyres, fines on importing, marketing, transportation, storage, keeping or warehousing of retreaded tyres. It also imposed certain state law restrictions on the marketing of imported retreaded tyres and also gave out certain exemptions for the product imported from Mercosur countries from the import ban and fines.
Country -Yø challenged these measures on the ground that they are violative of GATT principles.
Prepare a brief for both the countries on the basis of Article XX(b),(d) and the øchapeauö to GATT Article XX
(7 Marks)
- Q6. Enunciate on the different types of complaints that can be brought by a WTO Member for a remedy under the Dispute Settlement Understanding of the WTO. Differentiate between a violation complaint under Article XXIII:1(a) and a non-violation complaint under Article XXIII:1(b) of the GATT, 1994.
(7 Marks)
- Q7. What is the scope and rules on -suspension of obligations and -countermeasuresø under the Dispute Settlement Understanding of the WTO.
(7 Marks)
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- Q8. Operating under its governing statute, the Haiti Rice Board Act, , the Haiti Rice Board (öHRBö) is the largest exporter of rice in the world. The HRB is one of the largest exporters in Haiti. It also has the exclusive right to purchase and sell southern Haitian rice for export and domestic human consumption. Each year, the HRB sells over 30 million metric of rice to over 30 countries, creating the revenue of \$7-8 million. The HRB has the right (subject to approval of the government) to set the initial price paid to the farmers upon delivery of Southern Haitian rice. The government guarantees this initial payment on behalf of the farmers to the HRB, as well as any borrowing by the HRB and sales on credit made by the HRB to foreign buyers.

The mission of the HRB is to promote sales of quality wheat, and Section 65(5) of the Act enables the HRB to do so at a öreasonableö price, whether or not that price maximizes its profit. Significantly, the aim is not for the HRB to maximize profit for itself. To the contrary, at the end of each crop year, the HRB pools the revenue it obtains from wheat sales, deducts its marketing expenses, and returns the net amount to the rice producers in Southern Haiti. The HRB is governed by a board of directors. The board is elected by the same rice and barley producers in southern Haiti who produce the rice that the HRB markets.

Thailand found this kind of operation not only perplexing, but anti-commercial. Subsequently, it filed a WTO action against Haiti.

Prepare a brief for both Haiti and Thailand basing your arguments on GATT, 1994, Article XVII. **(8 Marks)**

- Q9. Argentina has brought a complaint before the WTO against Chile for sustaining WTO-inconsistent export restrictions on natural resources. The raw materials subject to the export restraints are various forms of bauxite, coke, fluorspar, magnesium, manganese, silicon carbide, silicon metal, yellow phosphorous and zinc. China is a leading producer of each of the raw materials which are used to produce everyday items as well as technology products.

Argentina argues that the use of export restraints creates scarcity and causes higher prices of the raw materials in global markets. They also provide Chilean domestic industry with a significant advantage by way of a sufficient supply, and lower and more stable prices for the raw materials.

Decide whether the Chilean measure is consistent/inconsistent with WTO-GATT, 1994 provisions in light of the general exceptions under Article XX. **(7 Marks)**

- Q10. With Reference to the Agreement on Implementation of Article VII of GATT (Customs Valuation Agreement), answer the following questions:

(a) The rationale/aim of the Agreement **(2 Marks)**

(b) What is öTransaction Valueö under the Agreement? í í í í í í í í í í . **(2 Marks)**

(c) Explain what is öNotional Valueö? **(2 Marks)**

NATIONAL LAW UNIVERSITY, DELHI
B.A.LLB.(Hons.): V-YEAR, IX-SEMESTER
Repeat/Improvement Examination, January-2017

Paper 9.2: Judicial Process and Interpretation of Statutes

Time: 3.00 Hours

Total Marks: 70

Instructions:

1. Read the questions carefully and answer.
2. No clarification shall be sought on the question paper.
3. Do not write anything on the question paper except your Roll No.

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- Q.1.a) What are the Primary rules of interpretation. **(3 Marks)**
- b) Illustrate each of the above principles/rules with the relevant case laws (at least one for each). **(7 Marks)**
- Q.2. Explain the role of presumptions in the interpretation of law. **(5 Marks)**
- Q.3. Explain the different parts of a statute and the role played by each in understanding, interpretation of a statute. **(5 Marks)**
- Q.4. Interpretation must depend on the text and the content. They are bases of interpretation. One may well say, if the text is the texture, context is what gives the colour. Neither can be ignored. Both are important. That interpretation is best which makes the textual interpretation match the contextual. A statute is best interpreted when we know why it was enacted.
This was held in Reserve Bank of India V. Peerless General Finance and Investment Co. Ltd. & others (1987), 1SCC424. Chinnappa Reddy & Khalid J.J. Illustrate the above statement with suitable examples. **(5 Marks)**
- Q.5.a) Supreme Court in interpreting the entries in the Seventh Schedule of the Constitution, List I, II and III have laid down certain principles and doctrines. What are they? **(5 Marks)**
- b) Explain each of the above principles/doctrines with at least one case law. **(5 Marks)**
- Q.6. Section 6 of The Hindu Minority and guardianship Act, 1956 read as:-
The natural guardian of a Hindu minor, in respect of the minor's person as well as in respect of the minor's property (excluding his or her undivided interest in joint family property) are:-
I. In the case of a boy or an unmarried girl- the father, and after him, the mother.
The Constitutional validity of the above section was challenged as violating Art.14 and 15 of the Constitution. The Court declared it constitutionally valid. Which rule of the interpretation was applied and how this section was interpreted by the Court? **(5 Marks)**
- Q.7. The work of a judge is in one sense enduring and in another sense ephemeral. What is good in it endures? What is erroneous is pretty sure to perish. The good remains the foundation on which new structures will be built. The bad will be rejected and cast off in the laboratory of the years-Justice Cardozo.
Explain few land mark decisions of the Supreme Court of India which you consider as the foundation (enduring) on which our Constitution now stands. Give some examples of cases which have become ephemeral. (perished) **(5 Marks)**
- Q.8. Law must be stable and yet it cannot standstill. Roscoe Pound. Discuss.
The Mystery of change and motion still vexes the minds of men. Justice Cardozo. Discuss.
What are the causes for uncertainties in law? **(5 Marks)**
- Q.9. The National Legal Services Authority, constituted under the Legal Services Authority Act, 1997, to provide free legal services to the weaker and other marginalized sections of the society, files public interest litigation on behalf of members of Transgender Community (for short -TG community) seeking a legal declaration of their gender identity than the one assigned to them, male or female, at the time of birth. It has been prayed that non-recognition of their gender identity violates Articles 14 and 21 of the Constitution of India. Hijras/Eunuchs, who also fall in that group, claim legal status as a third gender with all legal and constitutional protection.

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The petition states that transgenders (TGs) are deprived of social and cultural participation and hence restricted access to education, health care and public places which deprives them of the Constitutional guarantee of equality before law and equal protection of laws. Further, it is also pointed out that the community also faces discrimination to contest election, right to vote, employment, to get licences etc. and, in effect, treated as an outcast and untouchable in India. It has been submitted in the petition that transgender persons have to be declared as a socially and educationally backward classes of citizens and must be accorded all benefits available to that class of persons, which are being extended to male and female genders. Answer the following:

- i. Whether the petition is maintainable before the Supreme Court of India? **(2 Marks)**
- ii. Can the Supreme Court of India frame rules and regulations for protecting the interests of the transgenders community? **(3 Marks)**
- iii. For safeguarding the rights of the transgenders community, whether the Supreme Court of India has any right to issue appropriate directions to the government? **(5 Marks)**

Q.10. National Judicial Appointments Commission (NJAC) is a body which will be responsible for the appointment and transfer of judges to the higher judiciary in India. The Commission has been established by amending the Constitution of India through the ninety-ninth constitution amendment vide the Constitution (Ninety-Ninth Amendment) Act, 2014 passed by the Lok Sabha on 13 August 2014 and by the Rajya Sabha on 14 August 2014. The NJAC has replaced the current collegium system for the appointment of judges. The Commission consists of the following six persons:

- Chief Justice of India (Chairperson, ex officio)
- Two other senior judges of the Supreme Court next to the Chief Justice of India - ex officio
- The Union Minister of Law and Justice, ex-officio
- Two eminent persons

These (two) eminent persons are being nominated by a committee consisting of the Chief Justice of India, Prime Minister of India, and Leader of Opposition in the Lok Sabha (or where there is no such Leader of Opposition, then, the Leader of single largest Opposition Party in Lok Sabha), provided that of the two eminent persons, one person would be from the Scheduled Castes or Scheduled Tribes or OBC or minority communities or a woman. The eminent persons shall be nominated for a period of three years and shall not be eligible for re-nomination.

Answer the following:

- i. Can the Constitution (Ninety-Ninth Amendment) Act, 2014 be subjected to judicial review? **(5 Marks)**
- ii. What is the constitutional validity of the current collegium system relating to appointment of judges in higher judiciary in India? **(5 Marks)**