

INTERNATIONAL TRADE

SPRING 2013

LOYOLA LAW SCHOOL

PROF. HUGHES

Take Home Examination

Introduction

This is an twenty-four (24) hour, take-home examination.

You are to access this exam via download pursuant to a system the LLS Registrar's Office will designate and to upload your answer within 24 hours to the same.

Once you have accessed this examination, you may not discuss it with anyone prior to turning in your answers. Nor may you discuss the examination at ANY time with any student in the class who has not taken it or *is taking it*. Nor may you collaborate on the exam.

By turning in your answers you certify to all of the above and that you did not gain advance knowledge of the contents of the examination, that the answers are entirely your own work, and that you have complied with all relevant Loyola Law School rules.

This is an open book, take home examination. Professor Hughes permits you to use any and all inanimate resources (that is, NOT your fellow students or outside counsel). The only limitations on outside materials are those established by the law school.

Part I is a set of true/false questions. Part II is one essay question; the essay should be no more than 1800 words total. Professor Hughes takes on no responsibility to read beyond this word limit. Please start the essays on a separate page from the T/F answers.

GOOD LUCK

*Best wishes for those graduating, happy summer to all,
and thanks for a fun class*

I. TRUE/FALSE QUESTIONS -- 30 POINTS

This part of the exam is worth 30 points. Each answer is worth 2 points. Note that there are 17 questions, so in the same spirit as the LSAT, you can get 2 wrong and still get a maximum score on this section.

Please provide your answers to this section as a single column series, numbered 1 to 17, with “T” or “F” besides each number.

If you are concerned about a question, you may write a note at the end concerning that question, but only do so if you believe that there is a fundamental ambiguity in the question.

TRUE OR FALSE

01. Under the General Rules of Interpretation (GRI) applicable to the Harmonized Tariff Schedule of the United States (HTSUS), if a tariff classification names a particular material (like wool, steel, or platinum), that classification includes alloys and mixtures of the named material.
02. Whisky, brandy, rum, and gin were held to be “like” products to Japan’s shochu under GATT Article III.2 in *Japan – Taxes on Alcoholic Beverages* (1996).
03. In *Korea – Measures Affecting Import of Fresh, Chilled, and Frozen Beef* (2000) Korea successfully established that its dual retail distribution system was “necessary” under GATT Article XX(b) for the protection of local bovine species.
04. In holding that the President had the power to nullify attachments of Iranian assets and suspend claims against Iran in US courts to settle the Iranian hostage crisis (1979-1980), the Supreme Court considered it “crucial” that Congress had implicitly approved the practice of claim settlement by executive agreement.
05. According to the reasoning in *Spain – Unroasted Coffee* (1981) and *Japan – SPF Dimension Lumber* (1989), the only relevant criteria for determinations of GATT Article I “like” products are customs classifications in the respondent country.

06. In *Belgian Family Allowances* (GATT, 1952), the Panel concluded that Belgium's levy on public bodies purchasing goods originating in countries lacking "family allowance" programs that met specific requirements was a violation of the Most Favored Nation Principle and also possibly a violation of the National Treatment Principle, that is, GATT Articles I and III respectively.
07. In contrast to a free trade area, in a "customs union" under GATT Article XXIV each country in the customs union retains its own tariff structure.
08. Although the 1958 GATT panel ruled that the Italian loan program at issue in *Italian Discrimination Against Imported Agricultural Machinery* (1958) was a violation of GATT Article III, that same loan program would be permitted today as a "green light" subsidy under the SCM Agreement.
09. As described in *Len-Ron Manufacturing v. U.S.* (Fed. Cir. 2003), a general principle of customs classification is that when a product is equally described by both a "use" provision and an *eo nomine* provision in the HTSUS, the "use" provision is typically considered to be more specific.
10. In *Indonesia – Certain Measures Affecting the Automobile Industry* (1998) some of the specific subsidies being challenged were revenue foregone ("revenue foregone" as a form of subsidy is described on page 717 of the case book).
11. In *Canada – Import Restrictions on Ice Cream and Yoghurt* (1989), the Panel found that there was not sufficient evidence that quotas on importation of American ice cream and yoghurt were "necessary" to the operation of Canada's restrictions on domestic milk production.
12. The "precautionary principle" is a universally accepted principle of customary international law.
13. According to the analysis in *Koru North America v. United States* (CIT, 1988) if a fishing boat flying a Mexican flag caught one ton of Chilean sea bass 225 miles off the coast of Chile and brought the fish

directly to the port of Los Angeles, the fish would be NAFTA products.

14. In *United States – Import Prohibition of Certain Shrimp* (1998) the Appellate Body agreed with Malaysia’s argument that when exceptions from compliance with GATT rules are justified in order to protect living species those exceptions can only be considered under GATT Article XX(b) and not under GATT Article XX(g).
15. If a panel decision is appealed to the WTO Appellate Body (AB), the appeal is heard by five (5) members of the AB and the AB decision is adopted by the WTO unless three (3) or more WTO Members object.
16. In *European Communities – Trade Description of Sardines* (2002), the Appellate Body concluded that a relevant international standard cannot be said to have been used “as a basis for” a domestic regulation under Article 2.4 of the Technical Barriers to Trade Agreement if the domestic regulation is contradictory to the international standard.
17. According to the Supreme Court’s reasoning in *Crosby v. National Foreign Trade Council* (2000) a state law affecting international trade can be preempted by federal law if the challenged state law stands as an obstacle to the “accomplishment and execution of the full purposes and objectives of Congress.”

Part II – Essay Question -- 70 points

There is a 1800 word limit to your essay answer. Please indicate the total word count at the end of the essay. Please make sure that you use 1.5 line or double line spacing and include a header or footer that has the page number and the exam number on each page. Assume the facts you are told here are true – do not do your own research on the products in question (as fun as that might be).

Your boss Monda Jaconde is the Deputy United States Trade Representative (“DUSTR”). DUSTR Jaconde expects to meet her Australian counterpart, Deputy Minister James Shorts, on the margins of

the next WTO Ministerial. Although this will not be a full-blown discussion of Australia-US trade issues, DUSTR wants – by tomorrow – a concise (up to 1800 word) briefing memo on Australia’s new “green cycle” initiative.

Australia and the US are founding members of the WTO. In addition to their WTO obligations, Australia and the US have a free trade agreement, creatively named the *Australia – United States Free Trade Agreement* (AUSFTA). Your briefing paper is only to analyze Australia and US obligations to each other in the WTO; another colleague is looking at the AUSFTA. [*In other words, ignore the AUSFTA.*]

Information about the Australian program is limited to the facts below; in your briefing memo be sure to describe additional information that would be critical to the analysis of compliance of these programs with Australia’s WTO obligations.

GREEN CYCLE

Australia’s Parliament recently passed a package of new laws called “The Green Cycle” in order to make motorcycle and scooter use in Australia more popular, more ecologically friendly, and safer. The principal components of the legislative package are described here.

Tariff changes

Australia has no WTO tariff bindings on motorcycles and scooters. Until the new law, Australia had 0% tariffs on motorcycles and scooters.

A total of 91,918 motorcycles and scooters were sold in Australia in 2012. There are no official statistics breaking down conventional motorcycle sales versus electric motorcycles and hybrids, but industry experts believe the sales of these latter categories are negligible.

As part of the Green Cycle laws, Australia will revise its tariff structure effective 1 September 2013 as follows:

Motorcycles with engines above 1100cc	15%
-- said models with V-twin engine design	25%
Motorcycles/scooters with engines below 1100cc	10%

Electric motorcycles/scooters	0%
Hybrid (gas/electric) motorcycles/scooters	10%

Customs Australia is expected to publish regulations with definitions for these categories early in the summer.

Noise abatement importation ban

As part of the Green Cycle package, Australia will ban the importation of all motorcycles after 1 September 2013 that produce more than 72 decibels of noise pollution when traveling 50 kilometers per hour (31.06 mph); this noise level will be measured 20 meters (61.61 feet) from the center of the lane in which the motorcycle is traveling.

Australia will also ban the importation after 1 September 2013 of after-market exhaust system kits that are used to increase motorcycle noise above factory standards. The Green Cycle Law also requires the Australian Ministry of Transportation to publish for public comment draft regulations on domestic manufacture and sale of after-market exhaust systems for motorcycles no later than 1 June 2014 and have final regulations in place no later than 1 June 2015. The Green Cycle Law is ambiguous as to whether these new regulations must ban such manufacture and sale.

Although it does not have any motorcycle manufacturers, Australia does have one company, Staintune, that is a well-known manufacturer of after-market exhaust system kits with removeable noise restrictors. As the Staintune site says, “*With the restrictors in place you can attend the summer parties down the street. With the restrictors removed you can pretty much count on not getting an invitation in the mail.*” <http://www.staintune.com.au/faq6.htm>.

In the United States, a federal regulation established by the Environmental Protection Agency in 1980 (and not revised since) mandates a maximum 80 decibel limit for bikes manufactured from 1985 onwards. Only a few states have stricter standards than the EPA regulation; the strictest state law is Connecticut, where a motorcycle traveling in an urban area at 35 mph or less can be no louder than 74 decibels. In the US, noise levels for motorcycles are measured 50 feet from the lane in which the motorcycle is moving. In Canada, there are no motorcycle noise regulations at either the federal or provincial level. Most

European Union countries adhere to an 80 decibel limit, although there are variations in how this is measured.

Hybrid (electric/gas) motorcycle factory

Finally, the Government of Australia has announced a grant of \$AUS 400 million (approximately 411 million \$US) for the development of a factory to produce hybrid motorcycles. The factory will be operated by a consortium called "Green Cycle Australia," that will be 25% owned by Honda and 75% owned by the Australian Government until those shares can be sold to investors.

Construction of the factory has started and the first models are expected to roll off the assembly line in January 2014. At capacity, the Green Cycle factory will produce 215,000 hybrid motorcycles.

In addition to welcoming foreign investors in Green Cycle Australia, the Australian Government has announced an innovative program for Green Cycle "distribution partners." Any foreign company that becomes a Green Cycle distribution partner will receive, for each Green Cycle motorcycle exported, a voucher that will permit importation of any one motorcycle or scooter duty-free. Italian motorcycle manufacturer Ducati has already become a Green Cycle distribution partner and pledged to sell 10,000 Green Cycles in Europe in 2014.

United States interests

The United States' only large-scale, traditional motorcycle manufacturer is the Harley-Davidson Company; Harley-Davidson uses a V-twin engine design (as does Ducati). Harley-Davidson production models basically come with a 1450cc engine (Twin Cam 88s) or a 1130cc engine (the "Revolution" engine).

The average noise level of a US-manufactured Harley-Davidson motorcycle with factory equipment is 77 decibels under measurement conditions approximating what the Australians will use, but some 1130cc engine Harleys produce only 71 decibels of noise under these conditions. Preliminary reports to USTR indicate that Japanese manufacturers (Suzuki, Kawasaki, Honda, and Yamaha) will all meet the new Australian requirement, as will BMW motorcycles. There is also information that Ducati motorcycles produce noise levels in the same range as Harleys.

The US has a number of after-market exhaust system manufacturers that export globally; just three examples are Rinehart (<http://rinehartracing.com/>), Wild Pig Pipes (www.wildpigpipes.com), and CobraUSA (www.cobrausa.com/).

Only the United States and Japan have manufacturers of electric motorcycles.

The DUSTR is counting on you – and just 1800 words.

END OF EXAMINATION

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