

# INTERNATIONAL TRADE

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FALL 2018

LOYOLA LAW SCHOOL

PROF. HUGHES

## Take Home Examination

### *Directions, conditions, and your professional commitments*

This is a twenty-four (24) hour, take-home examination. You have 24 hours from the time you pick up this examination at the Office of the Registrar to return your completed examination answer back to the Office of the Registrar.

**Remember that your submitted examination answer MUST have only your LLS ID Number and shall not have your name on any pages. Please make sure that the examination answer has page numbers, preferably with your LLS ID Number AND the page number in the footer on each page.**

Once you have received this examination, you may not discuss it with (1) anyone prior to the end of the examination period or (2) at ANY time with any student in the class who has not taken it. You may NOT collaborate on the exam.

**This is an open book, take home examination.** Professor Hughes permits you to use any and all inanimate LEGAL resources. However, you should NOT do additional factual research for the questions. The examination's fact patterns may be based on real circumstances, but changed into *hypotheticals* and you should treat the "facts" as limited to what you are told in the examination.

**By turning in your answers you certify that you did not gain advance knowledge of the contents of the examination, that the answers are entirely your own work, and that you complied with all Loyola Law School rules. Violation of any of these requirements will lead to discipline by the Academic Standing Committee.**

The Examination consists of two parts. Part I is a set of true/false questions (30 points); Part II is an essay question with an 1800 word limit (70 points). **You must give a word count at the end of the essay.** Professor Hughes takes on no obligation to read beyond the essay's 1800 word word limit.

*Thanks for a fun class and best wishes for the holidays  
- eat plenty of bananas, yogurt, beef, and sardines this winter*

## I. TRUE/FALSE QUESTIONS ~ 30 POINTS

This part of the exam is worth 30 points. Each answer is worth 2.5 points. Note that there are 14 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 14, with “T” or “F” beside each number. Make sure these T/F answers are on a separate page from the essay. If you are concerned that a question is unclear, write a note at the end, but only if you believe that there is a fundamental ambiguity in the question.

TRUE OR FALSE

01. The loan program at issue in *Italian Discrimination Against Imported Agricultural Machinery* (1958) would be a forbidden “red light” subsidy under the WTO’s SCM AGREEMENT.
02. Article 2.1 of the WTO AGREEMENT ON TECHNICAL BARRIERS TO TRADE embodies both the principle of “most favored nation” and the principle of “national treatment.”
03. According to the analysis in *Koru North America v. United States* (CIT, 1988), if a fishing vessel flying a Chinese flag caught two tons of fish 300 miles off the coast of Mexico, brought the fish directly to the port of Matzalan, Mexico, and the fish were quickly frozen at a port facility (adding 5% to their value), then if the fish were immediately shipped by railway to California the fish would be NAFTA products.
04. Based on the analysis in *Japan – Trade in Semiconductors* (1988), if a country requires licenses to permit the exportation of products, but issues such licenses by the third business day after an application for the export license is made, this will not be a “restriction on exportations” within the meaning of GATT Article XI:I.
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 [a] the chemical

and physical characteristics of the products, and [b] the customs classifications of the products in the respondent country.

06. The *Mead v. United States* litigation (2002) established that the federal courts must give U.S. Customs strict “*Chevron* deference” in respecting Customs determinations of proper tariff classifications.
07. For a “relevant international standard” to exist for purposes of Article 2.4 of the WTO AGREEMENT ON TECHNICAL BARRIERS TO TRADE, the standard must have been reached by consensus within an international organization open to the participation of all WTO Members.
08. In *Dames & Moore v. Regan* (1981), the U.S. Supreme Court’s holding that the President had the power to suspend legal claims against Iran as part of the settlement of the Iran hostage crisis relied, in part, on “a long-standing practice of settling such claims by executive agreement without the advice and consent of the Senate.”
09. The Harmonized Tariff System of the United States (HTSUS) has 30 “sections” and for each ten (10) digit classification code only the first six digits are really the tariff classification while the last four digits of each code are strictly “for information gathering purposes”
10. In *European Communities – Trade Description of Sardines* (2002), the Appellate Body concluded that the sardine labeling provisions of the Codex Alimentarius had not been used “as a basis for” the EC Regulation challenged by Peru because the EC Regulation and “Codex Stan 94” were found to be contradictory.
11. In *Korea – Measures Affecting Import of Fresh, Chilled, and Frozen Beef* (2000) Korea successfully argued that its dual retail distribution system was “necessary” under GATT Article XX(b) for the protection of human health.
12. Under the WTO ANTI-DUMPING AGREEMENT permissible responses to dumping include anti-dumping duties, provisional measures, price undertakings, and, when intentional dumping is proven, punitive damages.

13. In *Cummins, Inc. v. United States* (Fed. Cir. 2006), the crankshafts imported into Mexico from Brazil did not qualify as “products . . . which have not been further worked than roughly shaped by forging” because at least one of the processes undertaken in Brazil on the crankshafts (“trimming”) was found to have taken place after forging.
14. In *Bausch & Lomb v. United States* (Fed. Cir. 1998), Bausch & Lomb failed in their argument that the imported electric toothbrush product should be classified under “brushes” because the court interpreted that tariff category “to cover only brushes that are a part of a machine, appliance, or vehicle that [is] imported separately.”

*FUNDAMENTAL AMBIGUITIES? Note them with your T-F answers!*

## Part II – Essay Question ~ 70 points

*There is a 1800 word limit to your essay. Please indicate the total word count at the end of the essay. Please make sure that you use 1.5 line 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 additional research (as fun as that might be).*

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Your boss Mona Jaconde is the Deputy United States Trade Representative (“DUSTR”). Ambassador Jaconde – DUSTRs have the rank of “ambassador” – is currently on a tour of African capitals, but returns tomorrow night. The day after tomorrow, she is having a meeting with Esther Eggerton, the Minister of Trade of the Kingdom of Latveria. The United States requested this meeting because U.S. companies are concerned about a package of laws recently passed by the Latverian parliament.

Ambassador Jaconde needs a short memo from you analyzing the Latverian law in relation to WTO commitments; this memo will prep her for the informal meeting with Minister Eggerton. Here is what we know about the situation:

### LATVERIA – ECONOMY, TRADE, AND TRADE COMMITMENTS UNTIL 2018

The Kingdom of Latveria is a jurisdiction in northern Europe on the Baltic Sea. Latveria has a population of 7.8 million people, a per capita GDP of \$US 21,000, and high rankings on international indices of health and safety, worker rights, gender equality, and rule of law. Latveria is not a member of the European Union, but maintains close ties with EU countries.

Latveria is an original member of the World Trade Organization (WTO). It has made WTO tariff commitments (tariff bindings) on *only* some industrial products. As of 1 June 2018, Latveria had the following relevant customs classifications and tariffs:

Passenger cars	12%	<b>WTO-bound</b>
Bicycles, conventional, motorized, or e-bike; Motorcycles; and mopeds	5%	<i>No WTO obligation</i>

Latveria currently produces neither automobiles nor motorcycles. It imports the following automobile brands [along with their place of manufacture and vehicle power source]:

BMW	Germany	internal combustion
Honda	Japan, United States	hybrid, internal combustion
Mini Cooper	UK	internal combustion
Opel [GM]	Germany, Poland	internal combustion
Proton	Malaysia	internal combustion
Tesla	United States	electric
Toyota	Japan, United States	hybrid (Prius), internal combustion
Volkswagen	Germany, Brazil	hybrid, internal combustion

Latveria also currently imports the following brands of motorcycles, all using internal combustion engines:

BMW	Germany
Chang Jiang	China
Ducati	Italy
Harley-Davidson	United States
Honda	Japan, Thailand
Kawasaki	Japan

Latveria does produce bicycles: its domestic company, Baltik Velosipēdu (“Baltik”) is one of the largest bicycle manufacturers in northern Europe. The company manufactures around 320,000 bicycles per year, with annual capacity of 500,000, and exports its production to 15 countries. Baltik is co-owned by a Latverian investment fund and a German manufacturing conglomerate. Total *consumption* of bicycles in Latveria ~ that is domestic bicycle purchases ~ is about 400,000 units annually – approximately half Baltik and half imports.

## LATVERIA RESPONDS TO CLIMATE CHANGE

Earlier this year, Latveria enjoyed a two day visit by California Governor Jerry Brown in which Brown gave a rousing speech to the Latverian parliament about the dangers of climate change. In response – and after much study – the Government of Latveria has passed a multi-faceted “Address Climate Change and Environmental Protection Today” Law (the “ACCEPT Act” or “ACCEPT program”). The ACCEPT Act will become effective 1 January 2019.

The ACCEPT Program has the following major components:

\* **Support for Baltik bicycle factory and other Latverian industry**

Baltik Velosipēdu will receive the following under the ACCEPT program:

[1] A \$US 500 million loan directly from the Government of Latveria on favorable terms (0% interest for the first 10 years) to expand its bicycle production with \$US 300 million targeted for production of new “e-bike” models.

[2] The Royal Bank of Latveria (RBL) and the Latverian Development Bank (LDB) will further provide \$US 250 million in loans to Baltik for expansion of bicycle production, including the new e-bikes. The Royal Bank of Latveria is known to be controlled by Latverian President-for-Life Victor von Doom; we do not know the ownership or control structure of LDB.

[3] Waiver of all government taxes and charges on foreign air travel (obviously originating in Latveria) by Latverian business persons (not limited to Baltik) who can prove they are on trips to promote “ecologically friendly Latverian exports”; this is to be further defined in regulations from the Ministry of Trade.

\* **New tariff classifications and rates for passenger automobiles**

The ACCEPT law will establish new tariff classifications and rates for Latveria, as follows:

Passenger cars

- Electric	0% [duty-free]
- Hybrid	5%
- Combustion engine	10% + “fuel economy differential”

The “fuel economy differential” is calculated based on the 2017 Latvian average passenger vehicle fuel economy of 22 miles-per-gallon (22 mpg). [By comparison, U.S. fuel economy for new cars sold in 2016 was 24.7 mpg.]

If an imported vehicle has better than 22 mpg fuel efficiency, for each gallon of improved efficiency, the tariff is reduced a *further* \$US 50. So, a car imported at \$US 25,000 with a 30 mpg rating would have a \$400 reduction in the tariff [30 mpg - 22 mpg = 8mpg savings x \$50 = \$400]. So, the tariff on that vehicle would be as follows:  $\$25,000 \times 10\% = \$2,500 - \$400 = \underline{\$2,100}$ .

If an imported vehicle has worse than 22 mpg fuel efficiency, for each gallon of worse performance, the tariff is increased a *further* \$US 100. So, a car imported at \$US 25,000 with a 18 mpg rating would have a \$400 increase in the tariff [22 mpg - 18 mpg = 4mpg worse x \$100 = \$400]. So, the tariff on that vehicle would be as follows:  $\$25,000 \times 10\% = \$2,500 + \$400 = \underline{\$2,900}$ .

\* **New tariff classifications and rates for two-wheeled vehicles, powered and unpowered**

The ACCEPT law will also establish new tariff classifications and rates as follows:

Bicycles

0% [duty-free]

Motorcycles, mopeds, and other motorized bikes (internal combustion engines)

20% *subject to ACCEPT “green biking” initiative*

E-bikes

25%

Under the ACCEPT “green biking initiative, a company that exports up to 5,000 bicycles [conventional or e-bikes] manufactured in Latvia can import the same number of internal combustion engine motorcycles or mopeds into Latvia duty-free. So, if Harley-Davidson’s subsidiary in Latvia purchases 500 Baltic bikes and exports them, Harley-Davidson can bring 500 of its motorcycles into Latvia duty free.

\* **Ban on importation of endangered species**

As the ACCEPT Act was being considered in the Latverian Parliament, a parliamentarian attached a “rider” to the law – which was accepted by the Parliament. Beginning 1 January 2019, Latveria will completely ban the importation of all endangered species, both plant and animal, listed on the “Red List” of the International Union for the Conservation of Nature (IUCN). The IUCN is an international non-governmental organization (NGO) whose membership includes 200+ governments and government agencies, dozens of universities around the world, and many respected non-profits. According to the IUCN website, “[t]he IUCN Red List is used by government agencies, wildlife departments, conservation-related NGOs, natural resource planners, . . . and the business community.”

While it is true that the “Red List” is used around the world by many government offices and agencies studying how to protect endangered species, the IUCN is a different organization from the system established by the 1973 *Convention on International Trade in Endangered Species of Wild Fauna and Flora*, commonly called “CITES.” Latveria is a founding signatory of CITES, an international trade agreement signed by 183 countries, including the United States.

Representatives of CITES member countries meet regularly to vote on what species are to be included in each of the CITES Appendices: I, II, and III. Listing on “Appendix I” effectively bans international trade in a species because exports require an export license from “a Scientific Authority of the State of export [that] has advised that such export will not be detrimental to the survival of that species” and an equally demanding import license. For example, in September 2016, CITES members voted to add several species of pangolins – a small mammal – to the Appendix I list.

The IUCN “Red List” is much more extensive than the CITES Appendix I list, but CITES Article XIV provides as follows:

1. The provisions of the present Convention shall in no way affect the right of Parties to adopt:
  - (a) stricter domestic measures regarding the conditions for trade, taking, possession or transport of specimens of species included in Appendices I, II and III, or the complete prohibition thereof; or
  - (b) domestic measures restricting or prohibiting trade, taking, possession or transport of species not included in Appendix I, II or III.



In remarks following his signing the ACCEPT law, Latverian President von Doom said the following:

“We Latverians must *accept* our joint responsibility to protect human, animal, and plant life – indeed the entire planet – from humanity’s own worst follies. The bill I am signing today will significantly improve Latveria’s environment by increasing bicycle use and reducing automobile emissions, which have seriously polluted our capital and rich agricultural Middle Valley; such reductions will improve the longevity and quality of life of Latverians.

“At the same time, we will be doing our part to improve global health and reduce greenhouse gas emissions by increasing our export of bicycles at very, very affordable prices compared to other bicycle manufacturers. We will also step up our efforts to produce the next generation of electric-powered and electric-power enhanced bicycles that can provide a transportation alternative to those unwilling to use a regular bike. I consider this program to be a sensible effort in keeping with our obligations under both the Paris Accords and the World Trade Organization.”

“Lastly, I am pleased that the Parliament has chosen to defend the public morality of our country by ‘just saying NO to endangered species.’ I consider this action completely in keeping with the spirit of our commitment to the Convention on International Trade in Endangered Species of Wild Fauna and Flora.”

DUSTR Jaconde has sent you a text saying “*This whole thing is giving me a terrible headache. Help get me ready for this meeting!*” Can you get her a short memo – no longer than 1800 words ~ analyzing the various issues that Jaconde might raise with Minister Eggerton concerning Latveria’s obligations under the WTO Agreements.

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

**END OF WRITTEN EXAMINATION**

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