

INTERNATIONAL TRADE

SPRING 2015

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 anyone prior to the end of the examination period. Nor may you discuss the examination 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 resources.

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 relevant Loyola Law School rules. Detected 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.

GOOD LUCK

*Best wishes for those graduating and thanks for a fun class
-- eat plenty of bananas, yogurt, and sardines this summer*

I. TRUE/FALSE QUESTIONS -- 30 POINTS

This part of the exam is worth 30 points. Each answer is worth 3 points. Note that there are 12 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” 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. In *Brazil- Measures Affecting Imports of Retreaded Tyres* (AB, 2007), the Appellate Body concluded that an import ban that made only a “marginal or insignificant contribution” to a country’s efforts “to protect human, animal, or plant life or health” cannot be considered “necessary” under GATT Article XX(b).
02. GATT Article 1 enshrines one of the global trading system’s bedrock principle, the principle of “national treatment.”
03. In the 2000 *Canada- Certain Measures Affecting the Automobile Industry* decision, Canada’s “Motor Vehicle Tariff Order 1988” was found compatible with Canada’s WTO obligations because the tariff order allowed automobile makers from any country to qualify for the tariff reduction by producing a certain amount of cars in Canada.
04. If the S.S. *Seabed Worker*, a ship registered in the United States and flying an American flag, recovers 300,000 troy ounces of pure silver from the wreck of the SS *Mantola*, a 450 foot British-flagged steamer sunk by a German submarine on February 8, 1917 and now on the ocean floor 250 miles east of Lisbon, Portugal, then when the S.S. *Seabed Worker* docks in Halifax, Nova Scotia, the silver will be considered a NAFTA product under NAFTA rules of origin.
05. In the pre-WTO system, there was no process to appeal panel decisions, but a single country or a few countries could prevent a GATT panel decision from becoming binding.

06. The *Spain – Unroasted Coffee* (1981) and *Japan – SPF Dimension Lumber* (1989) decisions establish that the “most favored nation” principle in the GATT system applies only to customs duties for which a country has made binding concessions under GATT Article II.
07. In *European Communities – Trade Description of Sardines* (2002), the Appellate Body concluded that the Codex Alimentarius was a relevant international standard for naming food products despite the fact that the Codex had not been approved by consensus of the countries involved.
08. According to the GATT Panel in *Japan – Trade in Semiconductors* (1988), any and all formal government requests to private industry, whether mandatory or non-mandatory, should “be regarded as measures within the meaning of Article XI:1” of GATT.
09. In *United States – Measures Affecting Trade in Large Civil Aircraft* (AB, 2012), the Appellate Body concluded that neither NASA procurement contracts for space-related research nor U.S. Department of Defense “assistance akin to a kind of joint venture” were specific “subsidies” to Boeing within the meaning of the WTO Subsidies and Countervailing Measures Agreement.
10. If a WTO Member applies internal charges to imported products that it does not apply to “like” domestic products, there will be a GATT Article III violation regardless of whether the charges are “applied . . . so as to afford protection to domestic production.”
11. In *Cummins, Inc. v. United States* (Fed. Cir 2006), the crankshafts imported into the United States from Mexico were found to have undergone a tariff shift during the “fourteen different steps” in their industrial processing in Mexico.
12. Under the European Union’s General Rules for the Interpretation of the Combined Nomenclature (for interpretation of the EU’s tariff classifications), any reference in a tariff heading to a material or substance is taken to include mixtures or combinations of that material or substance with other materials or substances.

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 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).

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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 en route from Geneva to a meeting in Dubai, but she has been getting lobbied right and left by parties concerned about the “vibranium crisis.” Here is what she told you in a long conference call:

- + Vibranium is a little known, rare metal discovered in the early 20th century. It is known to exist in extractable deposits only in a few places on Earth. The process to mine vibranium requires tremendous amounts of fresh water and produces extremely toxic waste run-off. Even without environmental controls, the mining process is extremely expensive.
- + The United States has two vibranium mines as does China, but the world’s largest deposit of vibranium is in the African kingdom of Wakanda. For decades, Wakanda has operated a small mine, selling most of its production to research laboratories in developed economies. Wakanda has required export licenses for its vibranium, requiring exporters to certify that the metal will not be used for military applications; these licenses have typically taken 2-3 weeks to process because Wakanda is a developing economy and the Wakandan government does much of its paperwork on, yes, paper.
- + Global production of vibranium was relatively constant 2000-2013 at approximately 10 metric tons [322,000 troy ounces] annually. This situation was fairly stable as long as vibranium was mainly the subject of research with no large-scale applications. (It has long been rumored that the U.S. intelligence and the U.S. military have used amounts of vibranium they have obtained for special alloys in armor and shields, these reports have never been corroborated.)
- + But beginning in 2013 a new type of semiconductor – called the Challa configuration semiconductor – was introduced: these “Challa chips” use an extremely small amount of vibranium to achieve unprecedented efficiencies. These Challa chips are already being used (sparingly) in the latest generation of

high-end smartphones. US chip manufacturers Intel, GlobalFoundries, and WaferTech are producing Challa chips for use in smartphones by Apple, Samsung, and others. Currently, the two US mines produce only 52% of the vibranium needed by US chip manufacturers; the rest comes from China and spot market purchases that are understood to be commodity trader sales of Wakandan vibranium.

+ The new demand for vibranium has put enormous pressure in existing vibranium production, with resulting price spikes. While platinum was selling in the month of April 2015 for approximately \$US 1,150,00 a troy ounce, because of new demand – and expectations of further demand – vibranium was selling during the same period for an average of \$US 1,800.00 a troy ounce.

+ The China Challa Chip Company (CCCC) now has two Challa chip manufacturing facilities slated to open in Wuhan and Shenzhen later this summer. We assume that CCCC is government-financed, but we don't know for sure. There are also Challa chip manufacturing facilities in Germany and Singapore, owned by Siemens and TCMC respectively.

+ In the wake of this explosive growth and volatility in the market for vibranium, China has announced export restrictions on vibranium. First, starting 1 June 2015 it will immediately reduce permissible quarterly vibranium exports to 25,000 troy ounces – that is, approximately 50% of China's vibranium exports in the first quarter 2015 (50,000 troy ounces). Second, any exports above 10,000 troy ounces per quarter will have to pay a 100% export duty, meaning that a \$US 1,800 troy ounce of vibranium will cost \$US 3,600. DUSTR Jaconde has received reports from Singaporean colleagues [who have met with Chinese officials to complain about this new restrictions] that the Chinese claim that these new rules are to prevent the expansion of vibranium mining in China and the terrible environmental damage it is causing.

+ American chipmakers have come to meet (separately) with the Secretary of Commerce and Jaconde to express their great concern about the Chinese measures, which they believe will make it difficult to meet their own vibranium needs.

+ Meanwhile, the Kingdom of Wakanda has announced that it will be devoting a substantial percentage of its foreign reserves – built up from exporting diamonds, oil, and vibranium – to the modernization and expansion of its vibranium mine, owned by the Wakanda Export and Industry Research Directorate (WEIRD). The \$500 million dollar package consists of:

[1] A \$US 320 million dollar grant to WEIRD for modernization of the mine, including environmental protection measures such as a wastewater processing facility;

[2] A commitment to lend \$US 100 million on favorable terms for infrastructure work to rebuild the railway from the mine to the port as well \$US 50 for dredging the port to accommodate larger ships;

[3] A waiver on all tariffs on capital equipment imports for mine modernization;

[4] A \$US 10 million educational and training program to increase the average education of working age people in Leestan province, Wakanda, where the WEIRD mine is located.

[5] A new, two-tier export licensing system in which corporate entities having a 5% stake or more in WEIRD will be granted automatic export licenses, while others will continue with the pre-existing licensing system. The Wakandans have also announced that WEIRD will become a publicly-listed company in July, selling on the Nasdaq, London, and Johannesburg stock exchanges.

+ This overall package is expected to increase Wakandan vibranium exports from 20,000 troy ounces a year to 140,000 troy ounces a year; the financial package granted to WEIRD is expected to reduce the price of Wakandan vibranium to as long as \$US 400.00 a troy ounce.

+ American vibranium miners have come to meet (separately) with the Secretary of Commerce and Jaconde to express their great concern about the Wakandan program, which they believe will make it difficult to operate the two existing American mines profitably and will definitely cause investors to scrap plans to open a third, larger mine that was slated to have better environmental safeguards.

+ Finally, the US has no WTO tariff bindings on vibranium imports. Our current vibranium tariff is 2%.

DUSTR Jaconde says *“This whole thing is giving me a terrible headache.”* Can you get her a short memo – no longer than 1800 words -- analyzing the various issues and how the U.S. might approach the situation – as it develops -- to protect the interests of its miners, chipmakers, and smartphone companies?

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

END OF WRITTEN EXAMINATION

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