

International Economic Law, Spring 2010, Exam (4 hours)

GATT and GATS include general exceptions in Articles XX and XIV respectively.

Please address the following questions regarding these rules:

1. Why are there differences of wording between Art. XX of GATT and Art. XIV of GATS? Please identify possible explanations for differences and provide examples from the texts of the provisions.
2. Can the general exception of Art. XX of GATT be applied in a case where the Appellate Body has concluded that there is a violation of Article 2.1 of the Agreement on Technical Barriers to Trade (TBT Agreement)?
3. The general exceptions of Art. XX of GATT have been a significant factor in cases concerning the relationship between trade and environment. Can you explain how the Appellate Body proceeds when addressing such cases and give an assessment based on existing case law of which conditions would be most burdensome to fulfill for a state invoking the exception?
4. How would you as an Appellate Body member address the following argument brought forward by the defendant, Importia, under Article XX of GATT in a dispute concerning import restrictions imposed on fish products from Majoria: “As long as the exporting country cannot demonstrate that the fish has been caught in accordance with the Code of Conduct for Responsible Fisheries adopted by the UN Food and Agriculture Organization in 1995, we are allowed to assume that restrictions on importation of the fish is allowed under Article XX(g) of the GATT. This is so even if it must be admitted that the Code of Conduct is voluntary rather than mandatory, and aimed at everyone working in, and involved with, fisheries.”