

## **International Trade Law, Mock exam**

Please spend 4 hours, word limit: 2,500 (there is **no** word limit at the real exam!)

Please spend an equal amount of time on Part I and II.

### **Part I**

Minoria is among the least developed country members of the WTO. It is very dependent on its trade with Majoria, to which it exports almost all the agricultural products that are produced for export. Due to increasing competition in the markets of Majoria, the agricultural products of Minoria have achieved lower and lower prices in recent years. This has led to unrest among poor farmers in Minoria, and some have initiated violent protests against Majoria.

Minorian agricultural products enjoy preferential treatment in Majoria according to the Generalized System of Preferences (also called the Enabling Clause, see the Annex). Due to the increasing hostilities against Majoria among the rural population of Minoria, the Government of Majoria has decided to suspend the preferential treatment of agricultural products from Minoria unless the Government of Minoria takes effective measures to stop the hostilities.

Peter Hill is professor of international trade law at the Faculty of Law, University of Minoria. He is asked by the Government of Minoria to provide advice regarding the rights of Minoria in this situation. You work as Peter's research assistant, and is asked to produce a memo on whether Majoria can unilaterally withdraw the preferential treatment and what claims and arguments Minoria can bring against Majoria before the dispute settlement mechanism of the WTO should the preferential treatment be withdrawn due to the reasons indicated above.

### **Part II**

Discuss the rules on "non-attribution" as related to countervailing duties (Article 15.5 of the Agreement on Subsidies and Countervailing Measures) and anti-dumping duties (Article 3.5 of the Anti-Dumping Agreement).

### **Annex – Enabling Clause**

#### **Decision of 28 November 1979 (L/4903)**

Following negotiations within the framework of the Multilateral Trade Negotiations, the CONTRACTING PARTIES decide as follows:

1. Notwithstanding the provisions of Article I of the General Agreement, contracting parties may accord differential and more favourable treatment to developing countries<sup>(1)</sup>, without according such treatment to other contracting parties.
2. The provisions of paragraph 1 apply to the following<sup>(2)</sup>:
  - a) Preferential tariff treatment accorded by developed contracting parties to products originating in developing countries in accordance with the Generalized System of Preferences<sup>(3)</sup>,
  - b) Differential and more favourable treatment with respect to the provisions of the General Agreement concerning non-tariff measures governed by the provisions of instruments multilaterally negotiated under the auspices of the GATT;
  - c) Regional or global arrangements entered into amongst less-developed contracting parties for the mutual reduction or elimination of tariffs and, in accordance with criteria or conditions which may be prescribed by the CONTRACTING PARTIES, for the mutual reduction or elimination of non-tariff measures, on products imported from one another;
  - d) Special treatment on the least developed among the developing countries in the context of any general or specific measures in favour of developing countries.
3. Any differential and more favourable treatment provided under this clause:
  - a) shall be designed to facilitate and promote the trade of developing countries and not to raise barriers to or create undue difficulties for the trade of any other contracting parties;
  - b) shall not constitute an impediment to the reduction or elimination of tariffs and other restrictions to trade on a most-favoured-nation basis;
  - c) shall in the case of such treatment accorded by developed contracting parties to developing countries be designed and, if necessary, modified, to respond positively to the development, financial and trade needs of developing countries.
4. Any contracting party taking action to introduce an arrangement pursuant to paragraphs 1, 2 and 3 above or subsequently taking action to introduce modification or withdrawal of the differential and more favourable treatment so provided shall:<sup>(4)</sup>
  - a) notify the CONTRACTING PARTIES and furnish them with all the information they may deem appropriate relating to such action;

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<sup>1</sup> The words “developing countries” as used in this text are to be understood to refer also to developing territories.

<sup>2</sup> It would remain open for the CONTRACTING PARTIES to consider on an ad hoc basis under the GATT provisions for joint action any proposals for differential and more favourable treatment not falling within the scope of this paragraph.

<sup>3</sup> As described in the Decision of the CONTRACTING PARTIES of 25 June 1971, relating to the establishment of “generalized, non-reciprocal and non-discriminatory preferences beneficial to the developing countries” (BISD 18S/24).

<sup>4</sup> Nothing in these provisions shall affect the rights of contracting parties under the General Agreement.

b) afford adequate opportunity for prompt consultations at the request of any interested contracting party with respect to any difficulty or matter that may arise. The CONTRACTING PARTIES shall, if requested to do so by such contracting party, consult with all contracting parties concerned with respect to the matter with a view to reaching solutions satisfactory to all such contracting parties.

5. The developed countries do not expect reciprocity for commitments made by them in trade negotiations to reduce or remove tariffs and other barriers to the trade of developing countries, i.e., the developed countries do not expect the developing countries, in the course of trade negotiations, to make contributions which are inconsistent with their individual development, financial and trade needs. Developed contracting parties shall therefore not seek, neither shall less-developed contracting parties be required to make, concessions that are inconsistent with the latter's development, financial and trade needs.

6. Having regard to the special economic difficulties and the particular development, financial and trade needs of the least-developed countries, the developed countries shall exercise the utmost restraint in seeking any concessions or contributions for commitments made by them to reduce or remove tariffs and other barriers to the trade of such countries, and the least-developed countries shall not be expected to make concessions or contributions that are inconsistent with the recognition of their particular situation and problems.

7. The concessions and contributions made and the obligations assumed by developed and less-developed contracting parties under the provisions of the General Agreement should promote the basic objectives of the Agreement, including those embodied in the Preamble and in Article XXXVI. Less-developed contracting parties expect that their capacity to make contributions or negotiated concessions or take other mutually agreed action under the provisions and procedures of the General Agreement would improve with the progressive development of their economies and improvement in their trade situation and they would accordingly expect to participate more fully in the framework of rights and obligations under the General Agreement.

8. Particular account shall be taken of the serious difficulty of the least-developed countries in making concessions and contributions in view of their special economic situation and their development, financial and trade needs.

9. The contracting parties will collaborate in arrangements for review of the operation of these provisions, bearing in mind the need for individual and joint efforts by contracting parties to meet the development needs of developing countries and the objectives of the General Agreement.