

JUS5850 Home Exam Autumn 2021

Part 1

This part will count as 2/3 of your grade.

Forestia is a developing country member of the World Trade Organization (WTO). Approximately 20 % of the world's remaining natural forests is located within the territory of Forestia. During the past 20 years, the natural forests areas within Forestia had gone down from 60 % to 50 % of its land area.

The emission of greenhouse gases generates increased concern that the world is on a path to significant and very harmful global warming. Scientists and political leaders around the world voice strong concerns about the rate of deforestation in Forestia. They argue that deforestation within Forestia contributes to global warming and changes in weather patterns around the globe. Scientists conclude that there is a significant risk that the forest ecosystem in the region, which covers Forestia and three neighbouring countries, will collapse, and that such a situation most likely will generate draught and forest fires.

Forestia argued that other countries had already removed much of the natural forests within their territories and that it was unfair to expect that Forestia should forsake economic development within rural communities by preventing deforestation. Forestia argued that its per capita greenhouse gas emissions were lower than that of many other countries, even when taking into account deforestation. Moreover, it argued that it had already fulfilled its political commitment to protect 17 % of its land area in accordance with Aichi Biodiversity Target no. 11, including 20 % of its natural forest area. Very few other countries had protected such a significant share of their natural forests.

In recent years, Forestia had become a main producer and exporter of a broad range of agricultural products, including meat and dairy products. Currently, as much as 60 % of the exported meat and dairy products originate from deforested areas. The current government of Forestia had abandoned previous policy measures to reduce the rate of deforestation, and the deforestation had therefore increased significantly during the three years it had been in power. If the current rate of deforestation continue, scientists estimate that natural forest area in Forestia will go down to 40 % within the next 10 years.

The Customs Union of Western Countries (CUWC) has 25 member countries that all are developed countries and members of the WTO. So far, the members of the CUWC have cut their greenhouse gas emissions by an average of 25 % over the past 30 years. Due to concerns about the climate effects of continued deforestation in Forestia, NGOs within the CUWC are launching various proposals to take trade measures against meat and dairy products originating from deforested areas in Forestia. You work as legal advisor to the Foreign Trade Department of the CUWC. The Trade Commissioner of the CUWC asks you to prepare a memorandum in which you assess the compatibility of the following two alternative measures with the WTO commitments of the CUWC and its members:

1. The proposal to ban all importation of meat and dairy products originating from Forestia unless the products have been certified as not originating from deforested areas. Such a certification scheme should be established by joint agreement between Forestia and the CUWC.
2. The proposal to impose a tax on all meat and dairy products originating from Forestia unless the products have been certified as not originating from deforested areas. Such a certification scheme should be established by joint agreement between Forestia and the CUWC. The proceeds from the tax shall be placed in a fund to be administered by the Food and Agricultural Organization (FAO). The purpose of the fund shall be to finance protection of natural forests in Forestia.

Part 2

This part will count as 1/3 of your grade.

Many provisions of various agreements under the WTO Agreement refers to the concept “like products”. It is generally accepted that two products that are regarded as “like” according to one rule may not be regarded as “like” under another rule. Discuss, based on relevant case law, **how** and **why** the interpretation of “like products” varies between the following three provisions:

1. Article III:2 of GATT
2. Article III:4 of GATT
3. Article 15.1 of the Agreement on Subsidies and Countervailing Measures (SCM Agreement)

Relevant case law is available through search in the WTO Analytical Index (https://www.wto.org/english/res_e/publications_e/ai17_e/ai17_e.htm).