



KISII UNIVERSITY
UNIVERSITY EXAMINATIONS

SPECIAL EXAMINATIONS
FOURTH YEAR EXAMINATION FOR THE AWARD OF THE
DEGREE OF BACHELOR OF LAWS
FIRST SEMESTER, 2021/2022
(FEBRUARY - JUNE, 2022)

LLBK 417: INTERNATIONAL TRADE LAW

STREAM: Y4 S1

TIME: 2 HOURS

DAY: WEDNESDAY, 8:00 – 10:00 A.M.

DATE: 27/07/2022

INSTRUCTIONS

- 1. Do not write anything on this question paper.***
- 2. Answer question ONE (Compulsory) and any other TWO questions.***
- 3. Illustrate your answer with relevant cases and statutory provisions where applicable.***

QUESTION ONE

South Africa has a thriving timber industry. Timber production in South Africa has historically (1920-2000) accounted for approximately 80% of domestic timber demand. The remaining 20% has over the same period been met by 'hardwood' timber imports from temperate zones, notably Canada, Europe and the United States. Hardwood timber is used both in the building industry and in the furniture industry. In recent years imports of so-called 'tropical timber' have begun to increase. Tropical timber consists of both hardwood and softwood timber, but softwood timber is used principally in the furniture industry. Imports of tropical timber have gradually begun to gain increasing market share, reducing sales of both domestically-produced and imported hardwood timber. Tropical timber grows in tropical forests, and the main producers of tropical timber are Brazil, the Congo and Indonesia. The majority

of South Africa's tropical timber imports originate in Indonesia, but Brazil has also recently begun exporting tropical timber to South Africa. The South African government is concerned about the impact that tropical timber imports is having on the domestic timber industry, which has had to retrench 10 000 workers due to declining demand for its timber. The government is also concerned that a large proportion of the tropical timber being exported to South Africa may be the result of illegal or unsustainable logging. The destruction of tropical forests is of concern to many governments around the world, since tropical forests represent important 'carbon sinks' and their destruction is contributing to climate change. South Africa therefore proposes introducing a law that only timber that has been 'legally and sustainably grown and harvested' may be sold within or imported into South Africa. The proposed law then goes on to distinguish between timber that originates from temperate zones and timber that derives from tropical forests in the following way: timber that originates from a 'temperate zone' will be deemed to have been legally and sustainably grown and harvested, while timber that originates from a 'tropical forest' must be accompanied by a certificate from the exporting country's agricultural department confirming that the timber has been legally and sustainably grown and harvested. The import of tropical timber will be prohibited in the absence of this certificate. The law provides a definition of temperate and tropical timber by reference to the lines of latitude within which temperate forests as opposed to tropical forests are found. All timber originating in South Africa, Canada, Europe and North America falls within the temperate zones. All timber originating in Brazil, Congo and Indonesia falls within the tropical zone. The proposed law provides an exception to the certification requirement for Brazilian exports, on the basis that Brazilian law itself requires that all timber producers be licensed and that timber be harvested from pre-approved areas only, in order to ensure the sustainability of its tropical forests. The law is rigorously enforced in Brazil. Indonesia is unhappy with the proposed law, which it feels prejudices its timber producers and exporters. Indonesia is of the view that it is logistically and financially impossible for it to certify that all timber destined for export from Indonesia has been lawfully and sustainably harvested. Indonesia accepts that a large proportion of its timber does derive from illegal and unsustainable harvesting, but it feels that since tropical timber is one of its natural resources, and since it enjoys sovereignty over its natural resources, it should not be compelled to introduce environmental standards that it considers inappropriate to its development needs. Indonesia approaches you for advice on the lawfulness of South Africa's proposed measure. In particular, Indonesia asks you to advise it on the following two issues:

- a) Whether South Africa's proposed law *prima facie* violates its GATT commitments. You are specifically asked to simply identify the relevant provisions in GATT that may be violated, and to briefly explain why the provision appears, on the face of it, to be violated. **(10 marks)**
- b) Whether South Africa has any potential arguments/defences it can raise that it is either not in violation of some or all of the GATT commitments identified under (a), or if it is in violation of some or all of those commitments, whether its violations are justifiable and permitted under the GATT. You are specifically asked to provide Indonesia with an opinion analysing the strength of South Africa's possible arguments/defences and on South Africa's consequent prospects of success were it to raise these arguments/defences before a WTO panel. **(10 marks)**
- c) Outline steps involved in the dispute resolution mechanisms until the implementation of retaliatory measures by Indonesia. **(10 marks)**

QUESTION TWO

The United States of America and the United Kingdom are the architects of the multilateral trading system, which is exemplified by a commitment to trade-liberalisation and a rules-based system. However, current policies within the USA and UK as reflected in Donald Trump's protectionism and in Brexit, have been criticised for signalling a shift away from trade-liberalisation. What are the advantages and disadvantages of free trade? Consider in light of the arguments that have been made for, and against, trade liberalisation.

(20 marks)

QUESTION THREE

The WTO's dispute settlement system has garnered both praise and criticism from numerous commentators. Critically evaluate both the strengths and weaknesses of the existing dispute settlement system, as well as the proposals that have been made for reforming the system. **(20 marks)**

QUESTION FOUR

Two former Directors-General of the WTO have commented critically on the process of negotiation and decision-making within the WTO. Pascal Lamy once described decision-making within the WTO as 'medieval', while Peter Sutherland expressed the view that 'on a day-to-day basis, the WTO has become too much of a talking shop'. Consider whether these criticisms are well-founded, in light of the negotiation and decision-making processes within the WTO. **(20 marks)**

QUESTION FIVE

Write brief notes on any **TWO** of the following topics;

- a) Regional Trade Exceptions under the GATT 1994 **(10 marks)**
- b) Tariff Barriers to trade **(10 marks)**
- c) Non-Tariff barriers to trade **(10 marks)**
- d) Concept of 'like product' under Article I: 1 and Article III of the GATT 1994 **(10 marks)**
- e) Effectiveness of the participation of developing countries in the WTO's dispute settlement system. **(10 marks)**