

Sample Answers for the Exam in International Economic Law

Please note: *These sample answers structured in bullet points are just a help for you to understand how the exam was corrected. In the exam you were expected to write a coherent text with full sentences.*

Question 1 (25% = 10 points)

In a recent book, Nobel prize winner Joseph Stiglitz writes: “Today we have a system of global governance without global government – an array of institutions and agreements (global, regional, bilateral) affecting every aspect of life.” In addition he complains about the inadequacy of enforcement mechanisms.

How would you assess this statement with regard to international economic law? Which are the key institutions and what is their role?

Assessment with regard to International Economic Law (5.5 points)

Global governance without global government (3.5 points)

- General context: Increasingly powerful international institutionalised cooperation through international organisations
- Dispersed power
- Law making:
 - No institutionalized central law making authority
 - Types of norms
 - Hierarchy

Inadequacy of enforcement mechanisms (2 points)

- Different enforcement mechanisms working in different ways (WTO DSB, ICSID, ...)
- Enforceability against economically powerful actors

Note: Different assessments of the statement were equally accepted.

Key institutions and their functions (4.5 points)

- WTO: Facilitation of trade by reducing tariffs and other trade barriers, eliminating discriminatory treatment in international trade relations, providing a rule-oriented trading environment.
- IMF: Promote international monetary cooperation, facilitate international trade, promote exchange stability, assist in establishing a multilateral system of payments and eliminating foreign exchange restrictions.
- World Bank: Lend to governments of middle-income and creditworthy low-income countries, provide interest-free loans and grants to governments of the poorest countries.

Note: Points were also awarded for correct explanations of the key institutions and their functions as part of the assessment of Joseph Stiglitz’s statement.

Question 2 (25% = 10 points)

Several countries have introduced so called plain packaging laws for cigarettes. Do you see any legal issues that may arise with such laws?

How would you advise a tobacco company that wants to take legal steps against a plain packaging law? What are the options?

Legal issues (4 points)

- Potential expropriation or restriction of intellectual property rights by hindering use of trademark.
- Plain packaging law as a technical regulation, which represents a potentially unnecessary obstacle to international trade.
- Legal sources: National law, potential BIT, TRIPS Agreement, TBT Agreement, GATT.

Note: To be awarded points you were expected to explain the relevance of the legal questions for the practice of plain packaging in general.

Options and advice (6 points)

- Proceedings in national courts
- Arbitration under BIT (ICSID, UNCITRAL)
- WTO Dispute Settlement Mechanism

Note: To be awarded points you were expected to highlight the advantages and disadvantages of the different options for the issue of plain packaging in general. Different conclusions were accepted.

Question 3 (25% = 10 points)

The concept of likeness is not defined in the GATT but jurisprudence established a four-tier test; discuss the relevance of the four criteria in the Banana case and in the Asbestos case.

In the Japan – Alcoholic Beverages II case the Panel added a fifth criterion, namely the “market place”; what are the relevant elements of this criterion?

Discussion of the concept of “likeness” and the four criteria (5 points)

- Relevance of the likeness-test within the context of the basic principles of WTO law (national treatment and MFN principle, Articles I and III GATT).
- General discussion of the four criteria with special emphasis on the characteristics of the likeness-test as clarified by jurisprudence (case-by-case assessment, accordion analogy etc.).

Discussion of the cases EC – Bananas/EC – Asbestos (3 points)

- Highlighting the decisive criteria in the respective case.

Discussion of the case *Japan – Alcoholic Beverages II* (2 points)

- Discussion of the concept of “market place” as set forth by the WTO dispute settlement bodies and the criteria for the assessment thereof.

Note: Points were awarded for a discussion of the relevance of the “likeness” assessment in WTO law, the four criteria established by jurisprudence (“BTA-criteria”) as well as for placing them in the context of the mentioned cases. Thoughts on the consequences and relevance of the respective Panel and Appellate Body decisions were awarded with a maximum of one extra point.

Question 4 (25% = 10 points)

According to new Canadian regulations, renewable energy producers domiciled in Canada are permitted to enter into long-term fixed-price electricity purchase contracts at premium rates in exchange for feeding this electricity into the grid if specific domestic content requirements are fulfilled. Do minimum domestic content requirements (LCR) comply with WTO law?

If the answer to the above question would be “no”, could Canada justify the regulations by referring to the need of strengthening renewable energy in the interest of combatting climate change?

WTO law compatibility of local content requirements (LCR) (5 points)

- Elaboration of the compatibility of LCR with the non-discrimination obligations anchored in WTO law and the respective legal assessment under Article III GATT.

Justification through the General Exception Clause in Article XX GATT (5 points)

- Assessment of the justification reason of Article XX GATT: On what grounds in Article XX GATT could a breach of Article III GATT be justified? Does a provisional justification meet the requirements as set forth in the “Chapeau” of Article XX GATT?

Note: The applicable law for electricity is the GATT. However, correct legal analyses undertaken under the GATS were equally awarded points.

If other potential legal issues were mentioned and explained, this was rewarded with a maximum of one extra point.