

Seat No.: _____

Enrolment No. _____

GUJARAT TECHNOLOGICAL UNIVERSITY
MBA – SEMESTER- IV. EXAMINATION – SUMMER 2016

Subject Code: 2840010

Date: 03/05/2016

Subject Name: WTO Multilateral Trading System and its Impact on Business

Time: 10.30 am to 01.30 pm

Total Marks: 70

Instructions:

1. Attempt all questions.
2. Make suitable assumptions wherever necessary.
3. Figures to the right indicate full marks.

Q.1 (a) Objective Questions

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1. In a state trading the primary obligations are
 - A. Clarity & simplicity
 - B. Detailed technicalities
 - C. Commercial considerations
 - D. All of the above
2. The objective of Government procurement of goods & services is of non discrimination between
 - A. Foreign supplier and domestic supplier
 - B. Asian and western countries
 - C. None of the above
 - D. Developing countries and least developed countries
3. Government procurement of goods and services applies to
 - A. Purchases of whole year
 - B. Purchases beyond threshold limit
 - C. Purchases of capital goods
 - D. Necessities of life
4. GATS Rules pre supposes the protection to the service industries by
 - A. Tariff imposition
 - B. Prohibition of services
 - C. National domestic regulations
 - D. All of the above
5. GATS presupposes the ingredients of services like
 - A. Tangible characteristics
 - B. Prompt technical services
 - C. Temporary movement of natural persons
 - D. None of the above
6. The operation framework of GATS Rules advocates
 - A. Transparency of Regulation
 - B. Discouraging monopoly
 - C. None of the above
 - D. All of the above at A & B

Q.1	(b)	01] Discuss the principle of Transparency	04
		02] Explain the term Tariff and quantitative embargo	
Q.1	(c)	01] Objects of GATS And TRIP agreements	04
		02] Role of Dispute settlement body (DSB) of WTO.	
Q.2	(a)	Explain the conceptual applicability of GATS Rules with governing pre-requisites	07
	(b)	Analyse the General and conditional obligations Engraved in GATS Rules with exceptions if any	07
		OR	
	(b)	Explain the GATS Rules governing the principles of participation of developing countries	07
Q.3	(a)	Explain the philosophy of MFN Principles, National Treatment principle under GATS Rules	07
	(b)	Explain the GATS Rules for horizontal and sectorial commitments	07
		OR	
Q.3	(a)	Explain the beneficial implications of GATS Rules On Export opportunities, skilled and unskilled workers	07
	(b)	Discuss the benefits from commitments by countries on Financial services, Health related services.	07
Q.4	(a)	Discuss with example the benefits of TRIPS Agreement on creative and innovative work, transfer of technology.	07
	(b)	Analyse the concept of Trade Mark with purpose served and remedial measures for infringement	07
		OR	
Q.4	(a)	Analyse the concept of Patents with pre-requisites and remedial measures for infringement	07
	(b)	Analyse the concept of Compulsory Licensing with pre conditions engraved in TRIPS Agreement.	07

India's national solar programme, which was launched in 2010, aims to "establish India as a global leader in solar energy, by creating the policy conditions for its diffusion across the country as quickly as possible". To incentivise the production of solar energy within the country, the government under the programme agrees to enter into long-term power purchase agreements with solar power producers, effectively "guaranteeing" the sale of the energy produced and the price that such a solar power producer could obtain. Thereafter, it would sell such energy through distribution utilities to the ultimate consumer. However, a solar power producer, to be eligible to participate under the programme, is required compulsorily to use certain domestically sourced inputs, namely solar cells and modules for certain types of solar projects. In other words, unless a solar power producer satisfies this domestic content requirement, the government will not 'guarantee' the purchase of the energy produced.

In 2013, the U.S. brought a complaint before the WTO arguing that the domestic content requirement imposed under India's national solar programme is in violation of the global trading rules. Specifically, it said, India has violated its "national treatment" obligation by unfavourably discriminating against imported solar cells and modules. In other words, India was discriminating between solar cells and modules which were otherwise identical on the basis of the national 'origin' of the cells and modules, a clear violation of its trade commitment. India principally relied on the 'government procurement' justification, which permitted countries to derogate from their national treatment obligation provided that the measure was related to "the procurement by governmental agencies of products purchased for governmental purposes and not with a view to commercial resale or use in production of goods for commercial sale". India also argued that the measure was justified under the general exceptions since it was necessary to secure compliance with its domestic and international law obligations relating to ecologically sustainable development and climate change.

The panel, in its 140-page report, examined in detail the submission of the parties and rightly concluded that India, by imposing a mandatory domestic content requirement, had violated its national treatment obligation. In so far as the government procurement derogation was concerned, the panel found that the product being subject to the domestic content requirement was solar cells and modules, but the product that was ultimately procured or purchased by the government was electricity. The domestic content requirement was therefore not an instance of "government procurement". Finally, the panel found that since India failed to point out any specific obligation having "direct effect in India" or "forming part of its domestic legal system", which "obligated" India to impose the particular domestic content requirement, the general exception was not available to the Indian government in the instant case.

Use of clean energy

The ruling, however, has come under intense criticism, particularly from environmentalists, as undermining India's efforts towards promoting the use of clean energy. However, there appears to be no rational basis for how mandatory local content requirements contribute towards promoting the use of clean energy.

If the objective is to produce more clean energy, then solar power producers should be free to choose energy-generation equipment on the basis of price and quality, irrespective of whether they are manufactured locally or not. In fact, by mandatorily requiring solar power producers to buy locally, the government is imposing an additional cost, usually passed on to the ultimate consumer, for the production of clean energy. The decision may therefore stand to benefit the interest of the ultimate consumer. It is entirely possible to give preferential treatment to clean energies (in the form of tax rebates for solar power producers and so on) without requiring mandatory local content. Perhaps, what is even more instructive is the fact that India during its submissions before the WTO did not invoke the general exceptions under article XX(b) or (g) of the General Agreement on Tariffs and Trade typically relied upon in trade disputes by parties seeking to protect their domestic regulations on 'environmental' or 'health' grounds. India therefore did not itself believe that the local content requirement under the programme was imposed for the 'conservation' of 'clean air'.

The panel ruling, however, is not final and reports indicate that India will prefer an appeal to the appellate body. Simultaneously, India may be exploring the option of filing a counter complaint against the U.S., with several states in the U.S. such as Michigan, Texas and California having also reportedly been accused of employing mandatory local content requirements in the renewable energies sector.

Nevertheless, amidst the cacophony of the Prime Minister's 'Make in India' campaign, India must resist the temptation of adopting protectionist measures such as domestic content requirements which are inconsistent with its international obligations. Domestic content measures, despite their immediate political gains, have a tendency to skew competition. Manufacturers must remain free to select inputs based solely on quality and price, irrespective of the origin. The Modi government must continue working towards building a business and regulatory environment which is conducive to manufacturing. This would require systemic changes in the form of simpler, transparent and consistent laws and effective dispute resolution mechanisms.

Question: Analyze the following case. Do you agree with this analysis? Write your five major arguments or observations with reasons, why do you agree or disagree with the views expressed in the case.
