

**Question 1 (30% || 12 points max)**

In 1993, the European Community (EC) harmonized the import rules for bananas, which until then had been determined independently by the individual states. A quota limit was set at around 2 million tonnes, with almost half being reserved for the ACP countries (Africa, Caribbean, Pacific States). In addition the EC introduced import tariffs. However, the ACP States were completely exempted from the import tariffs. A group of Latin American States (Colombia, Costa Rica, Guatemala, Nicaragua and Venezuela) complained to the then GATT Council. Attempts to mediate were unsuccessful, which is why a case was initiated and the EC was ultimately condemned and adapted its import rules for the respective Latin American countries in 1995 by means of a framework agreement. In return for their agreement, the group of Latin American States declared to withdraw the GATT complaint and to refrain from further GATT challenges.

Ecuador and Honduras, both of which are major banana exporting nations, find the deal between the EC, which has meanwhile mutated into the EU, and the five Latin American countries incompatible with world trade law and are considering how to tackle it. The governments of Ecuador and Honduras ask you as their legal advisor to answer the following questions:

- a) Which legal claims could Ecuador and Honduras bring against the European Union in which proceedings?

Required elements	Points awarded
<u>Possible legal claims:</u> complainants alleged that the European Communities' regime for importation, sale and distribution of bananas is inconsistent with Articles I, II, III, X, XI and XIII of the GATT 1994  special emphasis: Most-Favored-Nation (MFN) treatment <ul style="list-style-type: none"> <li>• Four-tier Test of Consistency</li> <li>• Measure covered by Art. I:1 GATT</li> <li>• Granting an "advantage"</li> <li>• "like product"</li> <li>• "immediately and unconditionally"</li> </ul>	<b>6 P</b>
<u>Proceedings:</u> Institutional setting: WTO (question of membership) Short outline of the proceedings (Consultations / Panel and Appellate Body Proceedings)	<b>3 P</b>

b) How would a potential defense strategy of the European Union most likely look like?

Required elements	Points awarded
<ul style="list-style-type: none"> <li>• Challenging a violation of the MFN?               <ul style="list-style-type: none"> <li>○ Customs unions and free-trade areas (Art. XXIV:5 and 8 GATT)</li> <li>○ Waivers (Art. XXV:5 GATT, Art. IX:3 WTO Agreement): ACP-EC Partnership Agreement (2001-2007)</li> <li>○ Generalized System of Preferences (GSP)</li> </ul> </li> <li>• General exceptions (Art. XX GATT)?</li> <li>• Security exceptions (Art. XXI GATT)?</li> </ul>	<b>3 P</b>

**Question 2 (20% || 8 points max.)**

How does current international economic law reflect the theory of comparative advantage?  
What are in your view the main challenges regarding this theory?

Required elements	Points awarded
<p>Description of Ricardo's basic argument:</p> <p>A country has a comparative advantage in producing a good if its opportunity costs – expressed in other goods - are lower than in other countries.</p>	<b>2 P</b>
<p>Current IEL:</p> <ul style="list-style-type: none"> <li>• liberalizing trade</li> <li>• unilateral vs. multilateral</li> <li>• Institutional setting: GATT / WTO [Removal of trade barriers / MFN-Principle etc.]</li> </ul>	<b>3 P</b>
<p>Critique: In real life, foreign trade cannot only be explained with different levels of productivity but also reflects different allocation of resources such as e.g. raw materials / commodities (i.a. Heckscher-Ohlin Model (factor-proportions model).</p> <ul style="list-style-type: none"> <li>• Regulatory competition and race to the bottom</li> <li>• Limited room for independent policies</li> <li>• Securing jobs in high wage countries</li> </ul>	<b>3 P</b>

**Question 3 (30% || 12 points max.)**

In May 2016, WINDFORTE, a company based in Mexico signed a contract for a wind power project with the Provincial Government of Ontario/Canada.

The contract provided for fixed pricing for power generated over a 20-year period on the condition that WINDFORTE brought its project into commercial operation by May 31, 2017. This included acquiring all of the necessary permits and approvals to develop the project.

On January 15, 2017, the Government of Ontario decided to defer all wind development and stop related projects until the necessary scientific research is completed and an adequately informed policy framework can be developed.

WINDFORTE considers the Government of Ontario's action as unlawful and in violation of Canada's obligations under international law.

WINDFORTE's chairman asks you as the legal advisor to answer the following questions:

a) Which legal bases could WINDFORTE invoke?

Required elements	Points awarded
Investment Protection Framework <ul style="list-style-type: none"> <li>○ General remarks on International Investment Protection Law (Customary International Law, BITs etc.)</li> <li>○ Specific case: NAFTA Chapter 11</li> </ul>	<b>2 P</b>

b) Which legal claims can WINDFORTE bring against the Government of Ontario/Canada?

Required elements	Points awarded
<ul style="list-style-type: none"> <li>• „Fair and equitable treatment“ (NAFTA Art. 1105)               <ul style="list-style-type: none"> <li>○ National treatment and most favourite nation treatment</li> <li>○ International minimum standard                   <ul style="list-style-type: none"> <li>▪ Transparency</li> <li>▪ Predictability</li> </ul> </li> </ul> </li> </ul>	<b>4 P</b>
<ul style="list-style-type: none"> <li>• Expropriation (Art. 1110)               <ul style="list-style-type: none"> <li>○ Requirements                   <ul style="list-style-type: none"> <li>▪ Public Purpose</li> <li>▪ Non-discriminatory</li> <li>▪ Due process</li> <li>▪ Compensation (fair market value)</li> </ul> </li> </ul> </li> <li>• Problem of measures which have effects similar to expropriation (“creeping expropriation”)</li> </ul>	<b>4 P</b>

c) What will the defense strategy of the Ontario provincial government most likely look like?

Required elements	Points awarded
<ul style="list-style-type: none"> <li>• Question of sovereignty / right to regulate</li> <li>• Environment / health protection vs. investment protection</li> </ul>	<b>2 P</b>

**Question 4 (20% || 8 points max.)**

A WTO Member State registers an alarming increase in antibiotics resistance, posing a threat to public health. In an emergency procedure, it thus decides to ban all meat products from countries that allow the use of antibiotics in livestock feed. Please assess the compatibility of this import ban with the WTO Agreement on the Application of Sanitary and Phytosanitary Measures.

Required elements	Points awarded
<ul style="list-style-type: none"> <li>• Basics to SPS Agreement <ul style="list-style-type: none"> <li>○ WTO multilateral agreement (Annex 1A to the GATT)</li> <li>○ Parallel application of GATT and SPS disciplines</li> </ul> <p>It allows countries to set their own standards. But it also says regulations must be based on science. They should be applied only to the extent necessary to protect human, animal or plant life or health. And they should not arbitrarily or unjustifiably discriminate between countries where identical or similar conditions prevail.</p> </li> </ul>	<b>2 P</b>
<ul style="list-style-type: none"> <li>• Harmonization around international standards (Art. 3) <ul style="list-style-type: none"> <li>○ Measures based on standards ⇒ “best efforts” provision</li> <li>○ Measures conforming to standards ⇒ presumption of consistency</li> <li>○ Measures exceeding standards ⇒ requires risk assessment</li> </ul> </li> </ul>	<b>3 P</b>
<ul style="list-style-type: none"> <li>• Risk Assessment: <ul style="list-style-type: none"> <li>○ Article 5.1 SPS Agreement</li> <li>○ no prescribed methodology for risk assessment...</li> <li>○ ...but members must take account of available scientific evidence (Arts. 2.2 and 5.2)</li> <li>○ SPS precautionary measures “where relevant scientific evidence is insufficient” (Art. 5.7) <ul style="list-style-type: none"> <li>▪ Temporary measures (“provisionally”) ⇒ review</li> <li>▪ Based on the available pertinent information</li> <li>▪ Active seeking of the necessary scientific evidence for a more objective risk assessment</li> </ul> </li> </ul> </li> </ul>	<b>3 P</b>

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**General remark:**

To get the full score, it is not enough to name the “buzzwords”. Rather it is essential to explain the principles and apply them on the specific case.