

**THIS EXAMINATION CONSISTS OF 3 PAGES
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**THE UNIVERSITY OF BRITISH COLUMBIA
FACULTY OF LAW**

FINAL EXAMINATION – APRIL 2015

**LAW 327
International Trade Law**

**Section 1
Professor Paterson**

TOTAL MARKS: 100

TIME ALLOWED: 2 HOURS and FIFTEEN MINUTES

NOTE: This is an open book examination. Please answer both questions.

THIS EXAMINATION CONSISTS OF TWO QUESTIONS

QUESTION ONE**Problem Question (55 Marks or 55 Percent)**

1. In January 2012, the state of Nevada (in the United States) established a scheme to enhance the establishment of new businesses in the state. The scheme (called “Renewal”) involved the introduction of a special fund to provide low-cost loans to such businesses. Under its terms, corporations and other entities carrying on business in the state could borrow up to twenty million dollars at an interest rate of one and one-half percent (1.5%) less than the current commercial rate for similar loans and on longer repayment terms.

The establishment of the new lending facility coincided with the expansion in Nevada of businesses concerned with the development of new anti-aging drugs. While the loans were available to any businesses that could meet certain minimum requirements, as to solvency, etc., over 80 percent of the actual borrowers who used the program during its first two years of operation were in the anti-aging drug industry. Some of these were subsidiaries of Canadian corporations. The legislation establishing “Renewal”, however, sets out objective criteria for loan eligibility and does not refer to borrowers being limited to or preferred as being from any particular manufacturing or other business sector.

After the Nevada loan program has been in existence for two years, several Canadian anti-aging drug companies noticed a decline in their sales volumes of products similar to those being produced in Nevada and exported to Canada. The concerned Canadian drug manufacturers are all located in Alberta, British Columbia and Saskatchewan.

When the state of Nevada learns of the Canadian concerns, it suggests that the reason for the declining sales of the Canadian producers is that their products are less advanced and “user-friendly” than those being produced by the Nevada companies. The Nevada state government says that the scheme was designed to enhance the level of economic development in the state and prevent it lagging behind other American states. The Canadian businesses reply that the loans made in Nevada by the government to drug firms in the state are giving these Nevada businesses an unfair advantage in western Canadian markets.

Write a memorandum for a representative of the Canadian drug manufacturers which outlines the possible available remedies:

- (i) What action can the Canadian anti-aging drug manufacturers take under Canadian law to obtain relief? Outline the elements needed to obtain relief and any additional information you would need to advise your clients more fully. **(40 marks)**
- (ii) What can the Canadian government do, if anything, in respect of the “Renewal” lending program? What sort of remedies could it obtain? **(15 marks)**

QUESTION TWO**Short Answer Question (45 Marks or 45 Percent)**

Answer **ALL** of the following questions:

- (a) Give two reasons why tariffs are generally preferred by economists and policy-makers over quotas (or quantitative restrictions). **(4 marks)**
- (b) Identify two exceptions to the Most-Favoured-Nation principle in GATT 1994, Article 1 **(4 marks)**
- (c) Name the organization responsible for developing the Harmonized Commodity Description and Coding System (HS) **(3 marks)**
- (d) Why are more stringent rules concerning firearm ownership in Canada (compared to the US) not a violation of the national treatment obligation (NAFTA, Article 301)? **(3 marks)**
- (e) How many standing members does the WTO Appellate Body have? **(3 marks)**
- (f) Briefly explain the “reverse consensus” system used by panels and the Appellate Body pursuant to the WTO Dispute Settlement Understanding (DSU) **(5 marks)**
- (g) What substantive limit (or condition) is placed on a NAFTA Party’s ability to rely on NAFTA, Article 104, which allows for the provisions of several listed environmental treaties to prevail over the obligations contained in the NAFTA itself? **(3 marks)**
- (h) What are the names of the two WTO plurilateral agreements? **(4 marks)**
- (i) What is the duration (lifespan) of a countervailing duty or an anti-dumping duty imposed under the *Special Import Measures Act*? **(3 marks)**
- (j) Who, apart from the domestic producers of “like goods”, has standing to initiate a countervailing or anti-dumping duty investigation under the *Special Import Measures Act*? **(3 marks)**
- (k) How many individuals does each NAFTA Party’s roster of eligible panelists comprise under Chapter 19 of NAFTA? **(3 marks)**
- (l) Give the name of two WTO agreements that can impact member’s responsibilities towards foreign investment. **(4 marks)**
- (m) Which of the following NAFTA dispute resolution procedures, that are available to private parties, stipulate consultation as a pre-requisite to the establishment of a panel – Chapter 11 or Chapter 19? **(3 marks)**

END OF EXAMINATION