

# Assessment One

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This assessment consists of two parts

1. Written paper: 1500 words
2. Workshop in class work (group work/class presentations) + reflective statement (200 words)

## **PART ONE** **Written Paper**

### **Background to the Task**

This research assignment relates to the ongoing *Tobacco Plain Packaging* dispute at the WTO. Five separate complaints against Australian laws regulating the sale and packaging of tobacco products were lodged at the WTO and proceeded to a joint Panel hearing (DS434 Ukraine, DS435 Honduras, DS441 Dominican Republic, DS458 Cuba and DS467 Indonesia. These countries will be referred to collectively as the complainant states.) A record number of other WTO Member States including China, Russia, Thailand and the United States also participated in the dispute Panel hearings as third parties. The meetings of the Panel are now complete and a decision is expected sometime after June in 2016. (In 2015, Ukraine's request to suspend its complaint was granted. Consequently, the report will not be effective between Ukraine and Australia).

The dispute is of enormous interest to a broad range of states, industry groups (tobacco farmers and tobacco product manufacturers, manufacturers of packaging, and retailers) and NGOs focusing on public health issues as well as health providers and health professionals. The complaints cover three WTO Agreements, including the GATT. In this way, the dispute is illustrative of how the key disciplines of international trade law and the regulatory exceptions originally found in the GATT, have been embedded and embellished in the other agreements that make up the WTO package.

This assignment is based on your understanding of the key disciplines and exceptions of GATT that you develop over lectures, pre-class tasks and in the workshop activities in weeks 1 - 3. However, it also requires you to go beyond the 'taught' material. To complete the task you will have to independently develop your understanding of the provisions and extrapolate as to how they might apply in the plain packaging case. Your understanding of the key disciplines and legal principles such as 'necessity' and chapeau, in context of GATT developed in lectures and your pre-class and in class work will be the basis on which you will build. This task is designed to test your knowledge and understanding of relevant WTO law, your ability to analyse the effectiveness of those laws and consider their broader policy implications. Here past disputes, as reported or commented on in journals and text books, and the opinions of commentators on WTO law, also to be found in journals and texts, will help deepen your understanding of relevant provisions and the questions of policy you have been asked.

In all the complaints considered by a WTO Panel, the complaining states allege that Australia's laws breach obligations found in three WTO Agreements – TRIPS, TBT and the GATT (as amended in 1994). For the purposes of this assignment, you will only need to examine the issues under the GATT. For your information, the TBT Agreement introduces more specific obligations that apply to member states technical regulations and standards. Technical regulations, which include mandatory requirements around packaging and labeling come in for more onerous scrutiny under the TBT Agreement. The complaining states have based their complaints on provisions in the TBT that set out MFN, NTO obligations as well as the

requirement that technical regulations should not be more trade restrictive than necessary.<sup>1</sup> Under the Trade Related Intellectual Property Agreement (TRIPS), one of the key issues is whether the Australian measures are 'special requirements' that amount to an 'unjustifiable encumbrance' on the use of a trademark.<sup>2</sup> The definition of these terms and their application in practice is uncertain, due to a lack of previous case law that addresses these provisions. In likelihood, the panel will use prior understanding of the key disciplines and regulatory exceptions developed in the context of the GATT to interpret the provisions in TRIPS and, to a lesser extent, the TBT Agreement in order to make its decision. For these reasons, this assignment task is limited to consideration of the GATT.

**Question 1**

In your own words, what are the facts of the Plain Packaging dispute?

[75-100 words]

**Question 2**

Critically discuss the case that the complaining states are likely to present to the panel under the GATT. In your examination you should discuss the arguments the complainant states likely to make to support their assertion that the Australian measures breach Articles III.4 and XI.1 of the GATT as well as any counter-arguments you think Australia will make. Finally, you should also indicate how you think a Panel's would determine these questions.

[275-300 words]

**Question 3**

Critically discuss Australia's likely defence under Article XX (b). In your examination you should anticipate how Australia will argue that Article XX justifies the measures it has taken and what counter-arguments will the complainant states likely make. Again, also indicate how you think a panel will determine these questions.

[700-725 words]

**Question 4**

Why has this dispute generated so much interest, especially from other Member States. What are the long-term implications of the outcome of this dispute for different Members and other interests and how significant will the outcome of this case be to the ongoing debate over the relationship between international trade law and states' ability to regulate for non-trade objectives?

[450-500 words]

[The suggested word count in brackets indicates the emphases in the marking guide]

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<sup>1</sup> Article 2.2 of the TBT Agreement will be central.

<sup>2</sup> Articles 20, 7 and 8 of the TRIPS Agreement will be central here.

**PART TWO**  
**Tutorial Group Presentations and Individual Reflection**

**10% of your mark will be awarded for your individual contribution in class to your group and informal presentations. Your workshop instructor will award an in-class mark on the basis of your oral contributions in class as well as your ability to reflect on and analyse that performance.**

Briefly reflect on how your preparation for classes and your participation in class assisted in your ability and preparedness to complete this assignment task. The purpose of this task is NOT to convince the reader of how well you performed, but rather to assess your contribution, performance and to reflect on what you have learned. Think about: What was your contribution to your group's performance in solving the problem questions and how did your group perform?

To put it simply: reflect on **what worked well and what you would do differently**. For example, how well did you work together, how and how well you strategized before the tasks, did you and your group have a good handle on the issues, did you and your group show good problem-solving behaviour, how did you manage disagreements with other group members, and what would you do differently?

You may find it helpful to refer to the criteria included in the marking rubric for in class work.

[200 words]

## **PART ONE FURTHER INSTRUCTIONS and SUBMISSION INSTRUCTIONS**

**Reflection and research:** The essential materials and further materials available via moodle provide a good starting point, but you should also find your own relevant and quality sources. Quality sources most obviously refer to refereed academic journal articles, but also include good quality books and other publications. While there is an overabundance of information available on the internet, treat these sources with care. Ask yourself whether the source is credible and authoritative?

**Effective use of materials:** Your essay should not simply describe or summarize the unit materials or results of your research. Rather you need to use the research effectively. For example, past disputes and secondary sources may usefully explain how particular provisions are interpreted.

**Answer the questions:** Remember, your task is to provide an answer to the questions asked. Not to talk generally about the GATT, MFN or exceptions. Make sure you answer the questions. Apply the provisions, using past cases and quality commentary to elaborate on how they work and how they will apply to the particular facts of this case.

**Plan, structure and organization:** Before writing out your arguments in response to the questions, think about what goes where in the paper. The marking criteria also place weight on your ability to present a well-structured and logically organized answers to the questions. You do not need to provide an overall introduction or conclusion. However, your responses to each question should still be logically organized and well structured. You are encouraged to use headings and sub-headings. Your ability to communicate clearly, articulate your arguments with support and draw conclusions appropriate to your discussion are also important criteria assessed in the marking criteria.

**Writing style and referencing:** Your work should be in full paragraphs and full sentences and be properly referenced, proof-read and spell-checked before submission. Good use of paragraphs, sentence structure and correct use of citations is rewarded in the marking scheme. Your answers must be fully referenced using the Australian Guide to Legal Citation or other footnoting reference scheme (not Harvard or in-text citation). You must also include a bibliography. A bibliography refers to all sources you consulted and found useful in the preparation of your assignment. It will include sources that you have not specifically paraphrased or quoted. Students who do not include a bibliography or use the AGLC or other footnoting reference style will be **penalized by 1 mark**.

**Plagiarism and collusion:** Your paper must be your own independent work. All quotes must appear in quotation marks "" and be properly referenced. Paraphrased text must also be referenced to the original source.

**Submission instructions/cover sheet:** When submitting your paper on Moodle, you must name the document containing the text of your assignment with your full name and student ID. You must paste a coversheet (moodle) into the front of your document prior to submission.

**Formatting instructions:** Use a minimum 12 pt font and minimum 3 cm margins on both sides of the page. Use 1.5 line spacing.

**Word limit:** Your answers to PART ONE must not exceed a total of 1500 words. This limit includes footnotes where footnotes have been used to present additional text (ie. quotes, provisions, discussion). Responses that exceed the word limit by more than 10% will be **penalized by 1 mark per 10% over**.

**Penalty for late submission:** In accordance with BLT policy, late assignments will be penalized by 10% for every day or part day they are late. See the unit guide for full details.

Submissions will not be accepted more than three weeks after the due date or after assignments have been returned to other students. Students who submit after this time or who fail to submit will receive a mark of 0. This rule does not apply where a student has been granted an extension.

## Assignment 1 Marking Rubric: Written Paper

Marking Criteria (note that the criteria are not of equal weight)	Achievement level				
	HD	D	C	P	N
<b>Quality of writing, syntax etc.</b>					
Appropriate selection of words, sentence length, tone and purpose	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Grammar, punctuation, spelling	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Use of paragraphs	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
<b>Structure/organisation</b>					
Responses to questions show a well-devised, logical structure	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Responses demonstrate internal consistency and flow	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
<b>Knowledge and exposition</b>					
Identification and understanding of the issues raised by the questions	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Understanding of the relevant provisions, relevant cases and commentary	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Focus and relevancy of responses	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Originality					
<b>Critical analysis</b>					
Critical evaluation the provisions, cases and commentary	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Arguments are clearly set out, developed and supported	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
<b>Referencing and Use of sources</b>					
Quality and relevancy of sources	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Effective use of sources	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Appropriate citations and attribution of work	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Correct use of referencing system	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Comments					

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## Assignment 1 Marking Rubric: In Class Work Weeks 1-3

Mark	Criteria
<b>0</b>	<ul style="list-style-type: none"> <li>Absent &gt; more than two classes from weeks 1-3</li> </ul>
<b>1 - 4</b>	<ul style="list-style-type: none"> <li>Demonstrates poor preparation: responses to questions and participation in in class activities demonstrate little evidence of completion of pre-class tasks</li> <li>The student shows poor familiarity with the key GATT provisions, cases and concepts covered in the pre-class tasks and raised in the in-class activity questions</li> <li>May make some contribution to work in small group, but has little impact on the quality of discussions and does not aid a productive group dynamic</li> <li>Does not contribute to presentation of group work back to whole class</li> </ul>
<b>5 - 6</b>	<ul style="list-style-type: none"> <li>Demonstrates adequate preparation: responses to questions and participation in small and whole class exercises demonstrate some evidence of completion of the pre-class work</li> <li>Identifies the GATT provisions, cases and concepts from the pre-class tasks that are most relevant to the in class activities</li> <li>Demonstrates basic knowledge (ie. mainly descriptive) of the key GATT provisions, cases and concepts raised in the pre-class tasks</li> <li>Little evidence of attempting to relate key GATT provisions, cases and concepts to analysis of the in class activity questions</li> <li>Participates in small group exercises making a moderate contribution to the group dynamic and quality of discussion</li> <li>Contributes straightforward information presentation of group work back to whole class, without elaboration, or does so very infrequently (eg. once a class) when called on.</li> <li>Demonstrates sporadic involvement.</li> </ul>
<b>7 - 8</b>	<ul style="list-style-type: none"> <li>Demonstrates good or very good preparation: responses to questions and participation in small and large group exercises demonstrate evidence of completion of the pre-class tasks</li> <li>Identifies key GATT provisions, cases and concepts from the pre-class tasks and prior topics or from further readings relevant to the in class work</li> <li>Demonstrates sound knowledge and understanding of the key GATT provisions, cases and concepts from the pre-class tasks and raised in the in class activity questions</li> <li>Evidence of critical engagement with the readings and key GATT provisions, cases and concepts</li> <li>Offers contributions to discussions and analysis of the in class activities and questions in small group exercises, listens to peers and makes a good contribution to the group dynamic and quality of discussion. Sometimes shows leadership in facilitating discussions by encouraging and supporting peers.</li> <li>Offers contributions to the group's class presentation without individual prompting</li> <li>Demonstrates consistent ongoing involvement.</li> </ul>
<b>9 - 10</b>	<ul style="list-style-type: none"> <li>Demonstrates excellent preparation; responses to questions and participation in small and large group exercises demonstrate that the student has carefully completed the pre-class tasks and thought extensively and deeply about the questions raised in these tasks</li> <li>Demonstrates excellent understanding of the key GATT provisions, cases and concepts from the pre-class tasks and raised in the in class activity questions.</li> <li>Demonstrates leadership in small group discussions by actively listening, supporting and encouraging peers to participate as well as contributing to those discussions</li> <li>Offers analysis, synthesis, and evaluation of the materials (provisions, cases and readings) and broader unit materials in response to the in class questions. For example, puts together pieces of the discussion to develop new arguments that take the class further – by using the facts innovatively or recognising a complex issue of interpretation</li> <li>Contributes in a very significant way to group reporting back to whole class; keeps analysis of the in-class activities focused, responds very thoughtfully to other students comments, contributes to the cooperative argument building, suggests alternative ways of approaching materials and helps class analyse which approaches are appropriate etc.</li> <li>Demonstrates ongoing very active involvement.</li> </ul>