

PROFESSIONAL PROGRAMME EXAMINATION

JUNE 2009

**STRATEGIC MANAGEMENT, ALLIANCES AND
INTERNATIONAL TRADE**

Time allowed : 3 hours

Maximum marks : 100

PART A

(Answer ANY TWO questions from this part)

Question 1

*(a) Attempt **any two** of the following :*

- (i) Describe salient features of strategy in the light of launch of Nano car by Tata Motors Ltd.*
- (ii) "The more important the decision, the less quantifiable it is and the more we will have to rely on the options of others and our own best judgment." Explain.*
- (iii) "SWOT analysis is a strategic planning tool." Discuss.*
- (iv) In the process of strategic change, managers face the problem of resistance to change. Discuss the factors responsible for individual resistance.*

(5 marks each)

*(b) Enumerate the steps involved in logical sequence in respect of **any two** of the following :*

- (i) BCG Matrix*
- (ii) Strategic programming*
- (iii) Benchmarking process.*

(5 marks each)

Answer 1(a)(i)

Strategy is the pattern of organizational responses to its environment. Henry Mintzberg defines strategy as: "a pattern in a stream of decisions and actions". Based on the various views, the term strategy, is considered as a long term course of action through which an organization relates itself to the environment so as to achieve its objectives. Strategy is a unified, comprehensive and integrated plan designed to assure that the basic objectives of the enterprise are achieved. It means that the plan joins all the parts of an enterprise together, covers all the major aspects of the enterprise, and that all parts of the plan are compatible with each other.

Tata Motors Ltd. has recently launched its new model, small car 'Nano'. It is intended to be used as a fuel efficient, safer alternative to the motorcycles/two wheelers used by millions of Indians. It is launched as a part of its strategy to tap the vast low and medium income customers and to provide a safer and convenient mode of transport. It is a car of many people who are dreaming about cheapest possible higher technology vehicles. Tata Motors is expecting a revolution in Indian car market and giving stiff threat to its competitors. As the cheapest car, every ordinary person can become a proud owner of a car, sooner than later.

The following are the salient features of strategy:

- (i) Strategy is a relative combination of actions aimed to meet a particular condition to solve certain problems, or to achieve a desirable end.
- (ii) Strategy is a major course of action through which an organization tries to relate itself with environment to develop certain advantages which help in achieving its objectives.
- (iii) Strategy may involve contradictory action. As the strategic action depends on environmental variables, an organization may take contradictory actions either simultaneously or with a gap of time.
- (iv) Strategy is forward looking and it has orientation towards future as it is required to face a new situation.

Answer 1(a)(ii)

Strategic management is basically the art and science of formulating, implementing and evaluating cross-functional decisions that enables an organization to achieve its objectives. It is the process of specifying the organization's objectives, developing policies and plans to achieve these objectives, and allocating resources to implement the policies and plans to achieve the organization's objectives. Strategic management is thus a set of decisions and actions resulting in formulation and implementation of strategies designed to achieve the objectives of an institution.

Strategic management is an ongoing process that assesses the business environment and the industries in which the company is involved; assesses its competitors and sets goals and strategies to meet all existing and potential competitors. It later reassesses each strategy annually or quarterly i.e. regularly to determine how it has been implemented and whether it has succeeded or needs replacement by a new strategy to meet changed circumstances, new technology, new competitors, a new economic environment, or a new social, financial, or political environment.

Therefore, it is correctly stated in the context of strategic management that the more important the decision, the less quantifiable it is and the more we will have to rely on the options of others and our own best judgment. Strategic management is essentially a decision-making activity. It is the result of a series of managerial decisions. Although these decisions are supported by quantifiable data, but in situations where decisions cannot be quantified, managers must rely on 'informed judgment'. For example, the most important organizational decisions, such as entering a market, introducing a new product or service, or acquiring a company, although based on information and analysis, are essentially informed judgments.

Answer 1(a)(iii)

SWOT analysis is a strategic planning tool used to evaluate the Strengths (S), Weaknesses (W), Opportunities (O), and Threats (T) involved in a project or in a business venture. While opportunities and threats are external to the organization, strengths and weaknesses are internal to it. The approach of matching internal capabilities with the environmental opportunities and threats is known as SWOT. Thus, it involves specifying the objective of the business venture or project and identifying the internal and external factors that are favorable and unfavorable for achieving that objective.

SWOT analysis can be best understood as under:

- *Strengths* : Attributes of the organization which are helpful in achieving the objective.
- *Weaknesses* : Attributes of the organization which are harmful in achieving the objective.
- *Opportunities* : External conditions which are helpful in achieving the objective.
- *Threats* : External conditions which are harmful in achieving the objective.

Thus, the basic objective of SWOT analysis is to provide a framework to reflect on the firm's ability to overcome threats and to avail of the opportunities emerging in the environment. Indeed the dimensions of internal capabilities have relevance in so far as they relate to the environmental conditions. Hence the analysis of comparative strengths and weaknesses requires linking internal competencies with the characteristics of external environment.

Identification of SWOT is essential as subsequent steps in the process of planning for achievement of the selected objective may be derived from the SWOT. The decision makers have to determine whether the objective is attainable, given by the SWOT. If the objective is not attainable a different objective must be selected and the process is repeated.

Answer 1(a)(iv)

Strategic change management is the process of delivering the strategy of an organisation in a controlled, efficient and effective manner. It is not about the delivery of a single project or monitoring business as usual activities. It is basically the process of governing a portfolio of programmes, projects and initiatives within the context of a wider strategy for the organisation. The purpose of the whole exercise is to deliver value to the organization.

In the process of strategic change, managers face the problem of resistance to change. It is a human tendency to resist any change. People resist change because it requires new habits, new skills, knowledge and some sacrifices to do things by new methods. The reasons underlying resistance to change may be individual or group resistance.

There are many factors operating at the individual level which are responsible for resistance. Degree of resistance depends on how people feel about the change. Their feelings may be either real or emotional. The following are the factors responsible for individual resistance:

- (i) *Economic Factors* : People feel attached to the organization for satisfying their needs. The economic needs i.e. physiological, job security, etc., precede over other needs. People may perceive that they will be adversely affected by the change in terms of their need satisfaction due to: (a) obsolescence of skill; (b) fear of economic loss; and (c) reduced opportunity for incentives.
- (ii) *Psychological Factors* : It covers those factors which are based on people's emotions, sentiments and attitudes towards change. These are qualitative rather

than quantitative. Major psychological factors responsible for resistance may include: ego defensiveness; status quo; low tolerance of change; lack of trust on change agent and fear of unknown.

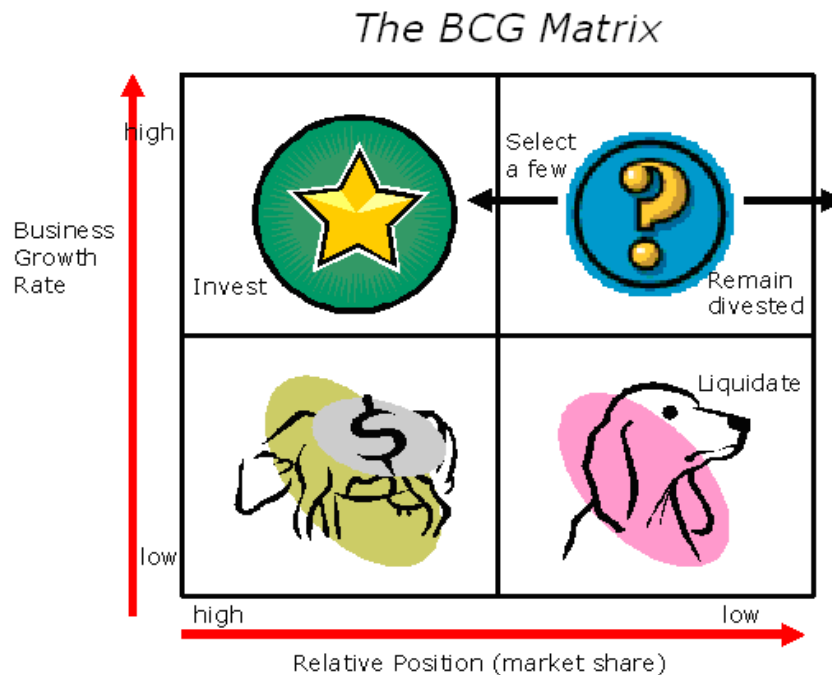
- (iii) *Social Factors* : People derive need satisfaction, particularly social needs through their mutual compatible interaction and form their own social groups at the workplace for the satisfaction of their social needs. The satisfaction of these needs is affected by a change which people resist. The major social factors causing resistance to change are: (a) desire to maintain existing social interaction; and (b) feeling of outside interference.

Answer 1(b)(i)

BCG Matrix

The Boston Consulting Group developed the growth-share matrix to analyze the problem of resource deployment among the business units or products of multi-business firms i.e. a model for managing a portfolio of different business units (or product lines). It is based on product life cycle theory. The basic idea behind this model is that if a product has a bigger market share or if the products' market grows faster, it is better for the organization. The original BCG model was based on a lifecycle view of the product of a company. It is also known as a portfolio management tool.

BCG matrix may be graphically shown as under:



BCG matrix provides four categories in the portfolio of an organization which are as follows:

- (i) *Dogs (Low Growth and Low Market Share)* : Each of businesses or products in quadrant I with low expected growth rates and low relative market standing are labeled as "dogs" or "cash traps." The strategy in this category should consist of cost cutting by divestments, retrenchment, or even liquidation. These units or products are likely to be characterized by high costs, low quality, less effective marketing procedures, and so on, which would collectively contribute to weak competitive position and low potential for profits.
- (ii) *Question Marks (High Growth and Low Market Share)* : Those in quadrant II, with high projected growth rates and low market standing, are labeled as 'question marks'. The reason is that although they are operating in markets with expected growth potential, they are otherwise experiencing competitive disadvantage. This quadrant has worst cash characteristics, because they have high cash demands and generate low returns because of their low market shares.
- (iii) *Stars (High Growth and High Market Share)* : Products or business units in quadrant III, have both high market standing and high industry growth potential and are labeled as 'stars'. They should receive heavy cash investment in order to maintain their market share. Successful resource deployment beyond cash requirements could lead to a superior market share when industry growth potential falls off. Resources should be allocated to these units to grow faster than the competitions in sales and profits. Stars are leaders in the business and generate large amounts of cash.
- (iv) *Cash Cows (Low Growth and High Market Share)* : A product or business would become a cash generator in quadrant IV. Cash cows have a strong market position in industries that have matured. These products or businesses can thus be "milked" by investing just enough cash to maintain market standing and applying excess cash inflows to the firm's other activities which are growth industries or products.

Answer 1(b)(ii)

Strategic programming

A programme is a statement of the activities or steps needed to accomplish a single use plan. Program is a list of planned activities or the plan for future action. The programs make the strategy action oriented. Strategic programming concerns with planning as to how the deliberate strategy can best match the intended strategy to the realized strategy for effective implementation of strategy. A strategic programming is aimed at producing a particular kind of realized strategy.

Following are the major steps involved in strategic programming:

- (i) Identification mission.
- (ii) Setting objectives.
- (iii) Developing alternative strategies.
- (iv) Evaluation of strategies.

- (v) Selection of optimal alternatives.
- (vi) Preparation of master plans.
- (vii) Preparation of medium term plan.
- (viii) Preparation of short-term plan.
- (ix) Evaluation of results.

Answer 1(b)(iii)**Benchmarking process**

Benchmarking is the continuous process of measuring products, services and practices against the competitors and those companies recognized as industry leaders. It is another method of comparative analysis of organizational strengths and weaknesses. It is a process of identifying, understanding and adapting outstanding practices from within the same organization or from other businesses to help improve performance. It involves open learning how others do something better than one's own company so that one not only can intimate, but perhaps even improve on their current technique. The benchmarking process normally includes the following steps:

- (i) Identify the area or process to be examined.
- (ii) Find behavioural and output measures of the area or process and obtain measurements.
- (iii) Select an accessible set of competitors and best-in-class companies against which to benchmark.
- (iv) Calculate the differences among the company's performance measurements and those of the best-in-class and determine why the differences exist.
- (v) Develop tactical programs for closing performance gaps.
- (vi) Implement the programs and then compare the resulting new measurements with those of the best-in-class companies.

Question 2

- (a) *State, with reasons in brief, whether the following statements are correct or incorrect:*
- (i) *Leadership is not confined just to the CEO or the top level of the organisation.*
 - (ii) *Environmental analysis consists of external analysis.*
 - (iii) *Strategies for global business do not differ from domestic business.*
 - (iv) *Mission is a statement which distinguishes the organisation from others.*
 - (v) *Defensive types of strategies do not include retrenchment.*
 - (vi) *Vision is not a mental perception of the environment an organisation wants to create.*

(2 marks each)

(b) Calculate 'economic value added' (EVA) from the following data :

Particulars	Rs. in Crores
Turnover	1,000
Cost of production	600
Average cost of capital :	
Debt (Long+Medium+Short Term)	200
Equity	100
Income-tax is @ 30%. Net operating profit after tax is 20%.	

(8 marks)

Answer 2(a)

- (i) **Correct** : Leadership is not confined just to the CEO or the top level of the organization as leadership is a performing art, a collection of practices and behaviors and not a position. For strategic management to be successful, everyone should be encouraged to think strategically and thus encouraged to be a leader.
- (ii) **Correct** : Environmental analysis consists of external analysis. However, it includes internal analysis too. It is the process by which organizations comprehends various environmental factors and determines the opportunities and threats that are provided by these factors.
- (iii) **Incorrect** : Strategies for global business differ from those of domestic business because of difference in the nature of competitive forces. A firm's decision to adopt strategies for global business depends on two factors: (a) extent of cost pressures to denote the demand on a firm to minimize its per unit costs; and (b) extent of pressures for local responsiveness to denote to make a firm to tailor its strategies to respond to national-level differences in terms of variables like customer preferences and tastes, government policies, and business practices.
- (iv) **Correct** : An organization's mission is a fundamental statement of the purpose and direction which defines the place of the organization within its environment. Thus, mission statements of every organization differs from others of its type, thereby separating it from competitors as well as non-competitors.
- (v) **Incorrect** : Generally not all strategies have expansion orientation. Very often the strategist is forced to control the firm's operations. There are three basic types of defensive strategies i.e., retrenchment, divestment and liquidation. Thus, defensive types of strategies include retrenchment.
- (vi) **Incorrect** : Vision of a company is the mental perception of the kind of environment that an organization aspires to create with a broad time frame. A vision relates to an organization's broadest and most desirable goal. A company forms its vision in the light of the information and insight gained from studying its internal and external environments.

Answer 2(b)

$$\begin{aligned}
 \text{Economic Value Added (EVA)} &= \text{Net operating profit after taxes} - \text{Cost of capital employed} \\
 &= \text{NOPAT} - \text{Cost of capital employed}
 \end{aligned}$$

$$\begin{aligned}
 \text{Now, Cost of capital employed} &= \text{Cost of debt} + \text{Cost of equity} \\
 &= \text{Rs. 200 crores} + 100 \text{ crores} \\
 &= \text{Rs. 300 crores}
 \end{aligned}$$

NOPAT, as given in the question = 20%

$$\begin{aligned}
 \text{i.e. NOPAT} &= 20\% \text{ of Rs. 1000 crores} \\
 &= (20/100) \times 1000 \text{ crores} \\
 &= \text{Rs. 200 crores}
 \end{aligned}$$

$$\begin{aligned}
 \text{So, Economic value added (EVA)} &= \text{NOPAT} - \text{Cost of capital employed} \\
 &= \text{Rs. 200 crores} - 300 \text{ crores} \\
 &= \text{Rs. (-100 crores)}
 \end{aligned}$$

Ans: EVA = Rs. (-100 crores)

Question 3

- (a) *Risk management has become prime concern and acquired added significance after the global financial crisis and corporate frauds. The operations of your company are global and attract various types of risks and uncertainties. Prepare a note on risk management process for submission to the Managing Director of your company. (12 marks)*
- (b) *Write short notes on **any two** of the following :*
- (i) *Strategic decision-making*
 - (ii) *Steps involved in business process re-engineering (BPR)*
 - (iii) *Integration strategies. (4 marks each)*

Answer 3(a)

To
Managing Director
XYZ Ltd.

10th June, 2009

Sub. : Risk Management Process

Risk management has become a prime concern for every business in the present global competitive and knowledge based environment. Every business entity in the world exists for providing value to its stakeholders. All entities face uncertainty or risk and the challenge for management is to determine how much uncertainty or risk to accept. Uncertainty presents both risk and opportunity with potential to erode or enhance value. Risk management enables management to effectively deal with uncertainty and associated risk and opportunity enhancing to build the value.

Risk management refers to identification of opportunities and avoiding or mitigating losses. It is a logical and systematic process of establishing the context, identifying, analyzing, evaluating, treating, monitoring and communicating risks associated with any activity, function or process, in a way which enables an organisation to minimise losses and maximise opportunities.

Risk management helps management to achieve the entity's performance and profitability targets and prevent loss of resources. It ensures effective reporting and compliance with laws and regulations and helps to avoid damage to the entity's reputation and associated consequences. It also helps an entity to accomplish its target where it wants to go and avoid pitfalls and surprises along the way.

As the operations of our company are global we may attract the following types of risks:

- (1) *Systematic Risk* : It refers to risk which affects the entire market. This type of risk is not diversifiable and can not be eliminated. A significant political event, for example, could affect several of the assets in our portfolio. Interest rates, recession, political disturbances, change in government policy etc., all represent sources of systematic risk because they affect the entire market and cannot be avoided through diversification.
- (2) *Market Risk* : The market risk is also called the undiversifying risk, because this risk can not be avoided no matter how many different stocks might be present in the portfolio.
- (3) *Business Risk* : It basically refers to the situation of uncertainty associated with operating cash flows of a business. It may be external and internal risk. External business risk is the result of operating conditions which are imposed upon the organisation by circumstances beyond its control. Internal business risk is associated with the efficiency with which a firm conducts its operations within the broader operating internal environment imposed upon it.
- (4) *Purchasing Power Risk* : It refers to the impact of inflation or deflation in the economy on an investment.
- (5) *Interest-Rate Risk* : It is the risk where an investment's value will change as a result of a change in interest rates.

In the present era of economic recession and corporate financial fraud it has become inevitable for an organization to have a sound risk management framework, which will mitigate the impact of any arising risk and enhance the value of business. But by following a comprehensive risk management process our company can overcome the risky prepositions and manage risk.

In this direction, we may consider a comprehensive risk management process containing the following:

- Evaluate the methodology for identifying the risks surrounding the business activities
- Assessment of the likelihood of an event occurring for each asset
- Explanation of the course of action say, how to respond to these events
- Putting systems in place to deal with the consequences
- Monitoring the effectiveness of our risk management approaches and controls
- Prioritize risk reduction measures based on the strategy of the organization.

Submitted for your kind information and advice please.

Sd/-

Company Secretary

Answer 3(b)(i)**Strategic decision making**

Strategic decision making is the core of strategic management. It enhances manager's abilities to obtain insight and exercise judgment by deepening their decision making skills and helping them to design more effective decision processes. Strategic decision is a major choice of an action concerning committing of resources with a view to achieve organizational objectives. Unlike many other decisions, strategic decisions deal with the long run future of the entire organization. It has the following features:

- (i) Strategic decision is a major choice of action which affects the entire organization or major parts of it.
- (ii) It affects the long-term prosperity of the organization because the commitment is for long-term.
- (iii) It involves commitment of large amount of resources i.e., human, financial and physical in implementing the chosen strategic option.
- (iv) Because of high-level of futurity, a strategic decision is made after analyzing various factors both within the organization and its environment.
- (v) Since a strategic decision has major impact on the organization on long-term basis, it is made by top management which has much wider perspective of the organization and its environment.

Strategic decision making involves the usual decision-making process-specific objectives derived from organization's strategic intent, search for alternatives to achieve those objectives, evaluation of these alternatives and choice of the most appropriate alternative. Thereafter, this choice is put into action. Strategic choice cannot be taken without careful thought as to their implementation. It must be feasible as well as appropriate to the requirement of the situation.

After comparing possible strategies, the manager must decide what will be the future strategies of the organization. Many different decision models have been proposed to explain how these decisions can be made. The decision-making contexts constitute different frames of reference a decision maker might take. It is important to note which frame of reference or context surrounds a particular decision model and then to compare it only with other decision models within that context. The manager may actually select more than one model or strategy. In contingency planning systems, an action plan could be selected for the environmental scenario that is most likely to occur and/or the set of goals appropriate to that scenario. Another strategy would be selected for an optimistic scenario - a reasonable but very favorable set of environmental circumstances with a somewhat low probability of occurrence. Then a third strategy would be chosen for the pessimistic scenario, which also has a low probability of occurrence but carries unfavorable implications.

Answer 3(b)(ii)**Steps involved in business process re-engineering**

Business process re-engineering (BPR) is a management approach aimed at improvements by means of elevating efficiency and effectiveness of the processes

which exist within and across organizations. Business process re-engineering can be defined as the analysis and design of workflows and processes within and between organizations. It is basically the critical analysis and radical redesign of existing business processes to achieve breakthrough improvements in performance measures. Business process re-engineering is also known as business process redesign, business transformation or business process change methodology.

Following steps are involved in business process re-engineering:

- (i) *Developing business vision and process objective* : Under this process it is desirable that a vision of organization is defined clearly so that one can put business process function in tune with the vision. BPR is driven by a business vision which implies specific business objectives such as cost reduction, time reduction, output and quality improvement, etc. Accordingly, organization should make projections about where it should go and what are the major challenges ahead.
- (ii) *Identifying the process to be redesigned* : Once business vision and process objectives are clearly defined, the organization should focus and identify those processes which needs redesigning.
- (iii) *Measuring the performances of existing processes* : Under this step, the organisation should focus on various methods used to measure the performance of a process to determine whether an opportunity exists to improve its efficiency, effectiveness and adaptability.
- (iv) *Identification of the opportunity for application of information technology* : Under this step, the emphasis is placed on application of information technology knowledge to support a process and redesign the process accordingly.
- (v) *Building prototype of new processes* : Under this step, the organization should design a new process on an experimental basis in the light of series of revision and improvement until the redesign process is put in actual operation. The prototype must be tested to measure this performance and incorporate needed changes.

The purpose of business process reengineering is improvement in business performance by redesigning the various processes involved. This is because business performance is the result of outcome of the inter-related work processes that constitute the business system.

Answer 3(b)(iii)

Integration strategies

Integration strategies seek to acquire a service or product by merging with or acquiring the prior provider. Therefore, the process of integration should be implemented within a framework of goals that spells out the limits of such evaluative criteria as return on sales and investment, pivotal expense items, time, and cash flow. Integration strategies can be achieved in the following ways:

- (i) *Backward Integration*

Backward integration involves gaining increased control over the firm's supply (or input) activities. It can be implemented through merger with or acquisition of

the organization that produces the company's inputs or by growing one's own supply systems. However, it is often easier to finance an acquisition than internal expansion. The main reasons to support the backward integration are: (a) getting regular and adequate supply of inputs; (b) enjoying the benefits of enhanced quality control; (c) getting higher return on investments by better use of facilities; (d) improving negotiation power with suppliers; and (e) saving indirect taxes payable on purchase of inputs.

(ii) *Forward Integration*

Forward integration consists of obtaining control over the external portions of the organizations marketing systems. This is down stream expansion which refers to moving higher up in the production and or distribution process towards the end user or consumer. In most cases this means either acquiring a distribution system or establishing one internally. For example, a textile unit producing cloth, opens its own retail outlet is an example of forward integration.

(iii) *Horizontal Integration*

Horizontal integration refers to a situation when two or more firms engaged in similar activities think of joining hands for their betterment. Integration is the order of the day particularly with sweeping phase of globalization. It builds up synergy and can provide companies with opportunities to have fast access to new products, services, geographical regions and customers.

(iv) *Vertical Integration*

Vertical integration is a case when a firm accepts either earlier activities or the latter activities than what it is engaged in the series of activities that start converting raw materials till the handling over of the end products to the class of consumers. In a sense, vertical integration permits the organization to enlarge its scope of operations within the same overall industry. It is characterized by the firm's expansion into other parts of industry value chain directly related to the design, production, distribution and marketing using existing set-off products or services. For example, a dyeing unit takes over the spinning, weaving, bleaching and printing, finishing and marketing is a case of vertical integration.

PART B

(Answer ANY ONE question from this part.)

Question 4

- (a) Briefly explain the concept of 'strategic alliance', its forms and principles for its success. (8 marks)
- (b) The Board of directors of your company has forwarded you the proposed foreign technical collaboration agreement for scrutiny and comments. There are clauses in the agreement putting restrictions on use of technical know-how after the expiry of the agreement; further research and development of technical know-how after the expiry of the agreement; sharing of technical know-how with any other Indian company; sale of goods outside assigned territory and price-fixation. Examine the agreement and pinpoint restrictive clauses and their effect on interests of your company in particular and Indian industry in general. (8 marks)

(c) Explain briefly 'equity joint venture' and 'contractual joint venture'.

(4 marks)

Answer 4(a)

Any arrangement or agreement under which two or more firms cooperate in order to achieve certain commercial objectives is referred to as strategic alliance.

A true strategic alliance is a written arrangement between two companies that complement each other in a particular identified area. It is not a partnership, and neither company has legal power to control or obligate the other. Instead, it is a commitment by the two companies to provide capabilities or cross servicing in certain identified areas.

By properly utilizing a strategic alliance, companies can expand their product and service offerings substantially, without the usual corresponding investment in staff, equipment, and facilities. Strategic alliances are motivated by considerations such as cost reduction, technology sharing, product development, market access etc.

Strategic alliances have objectives similar to those of conventional acquisitions but such alliances can prove to be less expensive than acquisition, if they are structured properly. This is because if two or more companies pool their resources they can secure their joint objectives more easily and economically.

Such alliance may be in the form of:

- Management contract.
- Franchising.
- Supply or purchase agreement.
- Marketing or distribution agreement.
- Joint Venture.
- Agreement to provide technical services.
- Licensing of know-how, technology, design or patent.

Principles for successful strategic alliances includes Articulating Goals, Selection of Appropriate Partners, Working at Strategic and Operational Levels, Organizational Alignment, Dealing with Conflicts and Cultural issues, Maintaining Strong Executive Sponsorship, Experimenting and Committing to Learning.

Answer 4(b)

Restrictions after Expiration of Arrangements

The use of such clauses in technology transfer agreements generally oblige the company acquiring technology to pay royalties during the entire duration of manufacture of product or the application of the process involved, without specifying any time limit. Sometimes these clauses also contain restrictions to be continued even after the expiration of the agreement, for example, restrictions on competition, restriction on Research and development activities and specially, the acquiring company's obligation to keep secret and not to make use of the confidential information even after the expiration of the life of the arrangement.

Restrictions on Research and Development

Such restrictions in the technology transfer agreement generally involve limitations on the research and development policies and activities of the company acquiring technology.

The use of such clauses affects directly or indirectly the possibilities for the technological development capabilities of the recipient company. Such provisions also restrict the freedom of recipient party to undertake its own Research and development programmes. These restrictions also cover such provisions which are in direct competition with Research and Development activities of the company supplying technology.

The restrictions on Research and Development activities of recipient company have also been declared as restrictive practices under the UNCTAD Code. The provisions recognised such clauses as restricting the acquiring party from undertaking R&D activities directly to absorb and adapt the transferred technology to suit local conditions or restriction on initiation of R&D programmes in connection with new products, processes or equipment.

Price Fixation

Price fixing clauses in a technology transfer arrangement involve the practices where the supplier company reserve the right to fix the sale or resale price of the product manufactured by the imported technology. In certain cases the imposition of resale conditions might be justified, e.g. where the supplier company practices a legal selective distribution system, the supplier may impose the conditions on his distributor only to sell to qualified dealers. Therefore, the price-fixing clauses may cover the price determined by the supplier on goods produced with the help of transferred technology. Price-fixing may also involve horizontal price cartels between several technology suppliers or several technology recipients.

The developing countries have enacted regulations on transfer of technology which deal with restrictive business practices on the basis of a conceptual approach which, though not necessarily incompatible with anti-trust or competition laws, but substantially differs from it.

The main object of such an approach is to protect certain wider interests which are closely related to the economic and technological development of the recipient country. The approach adopted by the developing countries seeks to prohibit any practice that establishes a relationship of dependence or control over the productive, technological or marketing activities of the recipient country or any other practices which adversely affect the economy and development policies of the recipient country.

Answer 4(c)**Equity Joint Venture**

The equity joint venture is an arrangement whereby a separate legal entity is created in accordance with the agreement of two or more parties. The parties undertake to provide money or other resources as their contribution to the assets or other capital of that legal entity. The entity is generally established as a limited liability company and is distinct from either of the parties which participate in its creation. The newly created

company, thus, becomes the owner of the resources contributed by the parties to the joint venture arrangement. Each of the parties in turn becomes the owner of the company having equity in the company.

Contractual Joint Venture

The contractual joint venture might be used where the establishment of a separate legal entity is not needed or the creation of such a separate legal entity is not feasible in view of one or the other reasons. The contractual joint venture agreement can be entered into in situations where the project involves a narrow task or a limited activity or is for a limited term or where the laws of the host country do not permit the ownership of property by foreign citizens. For the purposes of contractual joint venture, the relationship between parties is set forth in the contract or agreement concluded between them.

Question 5

- (a) *Your company is negotiating an international joint venture with a company registered in Italy for the manufacture of fuel efficient engine for a small car. As a Company Secretary, prepare a note for the consideration of the Managing Director —*
- (i) *giving the best method of resolution of disputes in international joint ventures; and* (8 marks)
 - (ii) *drafting of arbitration clause nominating the London Court of International Arbitration for resolution of disputes between the parties.* (8 marks)
- (b) *State the steps involved in the process of integrating alliances into corporate strategy.* (4 marks)

Answer 5(a)(i)

To

The Managing Director

Internationally, it is accepted that commercial disputes should be resolved through arbitration and not through normal judicial system. The object of arbitration is settlement of dispute in an expeditious, convenient, inexpensive and private manner so that they do not become the subject of future litigation between the parties.

International commercial arbitrations are those which satisfy two basic criteria, i.e., different nationality of parties and international character of the transaction. UNCITRAL Model Law on International Commercial Arbitration under Article 1(3) enumerates the basic ingredients of international commercial arbitration.

The Model Law clarifies that the term “commercial” in relation to international commercial arbitration covers matters arising from all relationships of a commercial nature, whether contractual or not.

Parties to an international commercial arbitration are generally free to choose the place for conduct of arbitral proceedings. The place of arbitration chosen by or on behalf of the parties may expressly be provided in the arbitration agreement or the terms of reference or in some other way. However, the place of arbitration as designated by the parties does not imply that the arbitral tribunal must hold meetings or hearings at the

designated place of arbitration. In international commercial arbitration, it is well established that the arbitral tribunal may meet or hear the parties at different places, if considered necessary, but the place or seat of arbitration remains the same as agreed upon between the parties.

Sd/-

Company Secretary

Answer 5(a)(ii)

To

The Managing Director

Arbitration Clause Recommended by London Court of International Arbitration (LCIA)

Parties to an international contract who wish to have any disputes referred to arbitration under the LCIA Rules are recommended to insert in the contract an arbitration clause in the following form:

“Any dispute arising out of or in connection with his contract, including any question regarding its existence, validity or termination, shall be referred to and finally resolved by arbitration under the Rules of the London Court of International Arbitration, which Rules are deemed to be incorporated by reference into this clause”.

Parties are also reminded that difficulties and expenses may be avoided if they expressly specify the law governing their contract. The parties may if they wish also specify the number of arbitrators, and the place and language of the arbitration. The following provisions may be suitable:

“The governing law of this contract shall be the substantive law of.....”

“The tribunal shall consist of(a sole or three) arbitrator(s).”

In the case of a three-member tribunal, the following words may be added

“...two of them be nominated by the respective parties”

“The place of the arbitration shall be(city)”

“The language of the arbitration shall be

Sd/-

Company Secretary

Answer 5(b)

Strategy for Alliances must be integrated into the overall corporate strategy and articulated in the strategic plan with a process for implementation. The entire process of developing and managing an alliance could be as follows;

- (a) Development of the strategic domestic or global plan

- (b) Development of the alliance plan
- (c) Alliance partner — search and selection
- (d) Development of the implementation plan
- (e) Execution of the implementation plan

PART C

(Answer ANY TWO questions from this part.)

Question 6

Read the following passage and answer the questions given at the end :

India has imposed anti-dumping duties on imports of compact discs recordables (CDRs) from China, Hong Kong, Singapore and Chinese Taipei. The move is expected to give some relief to domestic producers of CDRs. The Central Board of Excise and Customs (CBEC) had notified the imposition of anti-dumping duty in the range of \$0.050 to \$0.099 per piece.

Imposition of duty is expected to level the field for domestic players. The domestic industry had petitioned the government against such imports as these were eroding their margins.

The designated authority – Director General of Anti-Dumping (DGAD) had made a recommendation to the CBEC in this regard. The authority, in its final findings, had concluded that the CDRs had entered Indian market from the identified countries at price less than their normal value in the domestic market.

“The domestic industry had suffered material injury and the injury has been caused to the domestic industry both by volume and price effect of dumped imports of subjected goods originating in or exported from the subject countries”, it had said.

The authority maintained that dumping margins of the CDRs imported from these countries were substantial and above the de minimis and recommended imposition of definitive anti-dumping duties.

Answer the following questions —

- (i) *What is dumping ? Illustrate.*
- (ii) *How did DGAD come to the conclusion of dumping of CDRs ?*
- (iii) *Under what conditions DGAD would have suspended the investigations ?*
- (iv) *With whom the appeal against the order of DGAD may be filed and in how many days ?* (5 marks each)

Answer 6(i)

Dumping occurs when the export price of goods imported into India is less than the Normal Value of 'like articles' sold in the domestic market of the exporter. Imports at cheap or low prices do not per se indicate dumping. The price at which like articles are sold in the domestic market of the exporter is referred to as the "Normal Value" of those articles.

The normal value is the comparable price at which the goods under complaint are sold, in the ordinary course of trade, in the domestic market of the exporting country or

territory. If the normal value cannot be determined by means of domestic sales, the Act provides for the following two alternative methods:

- (i) Comparable representative export price to an appropriate third country.
- (ii) Cost of production in the country of origin with reasonable addition for administrative, selling and general costs and for profits.

The export price of goods imported into India is the price paid or payable for the goods by the first independent buyer.

Answer 6(ii)

In determining the dumping of CDRs first of all the DGAD must have constructed Export Price. If there is no export price or the export price is not reliable because of association or a compensatory arrangement between the exporter and the importer or a third party, the export price may be constructed on the basis of the price at which the imported articles are first resold to an independent buyer. If the articles are not resold as above or not resold in the same condition as imported, their export price may be determined on a reasonable basis.

Thereafter, DGAD must have decided about margin of dumping. Margin of dumping refers to the difference between the Normal Value of the like article and the Export Price of the product under consideration.

The export price and the normal value of the goods must be compared at the same level of trade, normally at the ex-factory level, for sales made as near as possible in time. Due allowance is made for differences that affect price comparability of a domestic sale and an export sale. These factors, inter alia, include physical characteristics, levels of trade, quantities, taxation and conditions and terms of sale.

Anti-dumping action can be taken only when there is an Indian industry which produces “like articles” when compared to the allegedly dumped imported goods. The article produced in India must either be identical to the dumped goods in all respects or in the absence of such an article, another article that has characteristics closely resembling those goods.

The Indian industry must be able to show that dumped imports are causing or are threatening to cause material injury to the Indian ‘domestic industry’. Material retardation to the establishment of an industry is also regarded as injury.

A ‘causal link’ must exist between the material injury being suffered by the Indian industry and the dumped imports. In addition, other injury causes have to be investigated so that they are not attributed to dumping.

Answer 6(iii)

The DGAD may suspend or terminate the investigation in the following cases:

- (i) if there is a request in writing from the domestic industry at whose instance the investigation was initiated.
- (ii) when there is no sufficient evidence of dumping or injury.
- (iii) if the margin of dumping is less than 2% of the export price.

- (iv) the volume of dumped imports from a country is less than 3% of the total imports of the like article into India or the volume of dumped imports collectively from all such countries is less than 7% of the total imports.
- (v) injury is negligible.

Answer 6(iv)

Appeal against the order of the DGAD may be filed with the Customs, Excise and Gold (Control) Appellate Tribunal within 90 days of the date of the order.

Question 7

- (a) *Describe the time-frame for different stages of dispute settlement under the WTO.* (8 marks)
- (b) *Write short notes on any three of the following :*
 - (i) *Objectives of ASEAN*
 - (ii) *Rules of origin criteria*
 - (iii) *Distortion of trade*
 - (iv) *Non-tariff barriers.* (4 marks each)

Answer 7(a)

The approximate period for each stage of a dispute settlement procedure are target figures - the agreement is flexible. In addition, the countries can settle their dispute themselves at any stage. Totals are also approximate.

60 days	Consultations, mediation, etc.
45 days	Panel set up and panelists Appointment.
6 months	Final panel report to parties.
3 weeks	Final panel report to WTO members.
60 days	Dispute Settlement Body adopts appeals report.

(if no appeal)

Total = 1 year

If Appeal

60-90 days	Appeal report
30 days	Dispute Settlement Body adopts appeals report.

Total = 1 year 3 months

Answer 7(b)(i)

Objectives of ASEAN are as under: to accelerate the economic growth, social progress and cultural development in the region through joint endeavours in the spirit of equality and partnership in order to strengthen the foundation for a prosperous and peaceful community of South East Asian nations, and to promote regional peace and stability through abiding respect for justice and the rule of law in the relationship among countries in the region and adherence to the principles of the United Nations Charter.

Answer 7(b)(ii)

“Rules of origin” are the criteria used to define where a product was made. They are an essential part of trade rules because a number of policies discriminate between exporting countries: quotas, preferential tariffs, anti-dumping actions, countervailing duty (charged to counter export subsidies), and more.

Rules of origin are also used to compile trade statistics, and for “made in” labels that are attached to products.

This first-ever agreement on the subject requires WTO members to ensure that their rules of origin are transparent; that they do not have restricting, distorting or disruptive effects on international trade; that they are administered in a consistent, uniform, impartial and reasonable manner; and that they are based on a positive standard. In other words, they should state what does confer origin rather than what does not.

Answer 7(b)(iii)**Distortion of Trade**

Trade is distorted if prices are higher or lower than normal, and if quantities produced, bought, and sold are also higher or lower than normal — i.e. than the levels that would usually exist in a competitive market. For example, import carriers and domestic subsidies can raise crop prices on a country’s internal market. The higher prices can encourage over-production, and if the surplus is to be sold on world markets, where prices are lower, then export subsidies have to be paid. When some countries subsidize and others do not, the result can be that the subsidizing countries are producing considerably more than they normally would. Governments usually give following reasons for supporting and protecting their farmers, even if this distorts agricultural trade:

- to make sure that enough food is produced to meet the country’s needs,
- to shield farmers from the effects of the weather and swings in world prices to preserve rural society.

Answer 7(b)(iv)

Non-Tariff Barriers are

- technical regulations and standards
- import licensing, import quota restriction
- rules for the valuation of goods at customs
- preshipment inspection: further checks on imports

- investment measures
- export subsidies and domestic support
- service barriers
- lack of adequate protection to intellectual property rights.

Question 8

(a) *State, with reasons in brief, whether the following statements are correct or incorrect :*

- (i) *The World Trade Organisation (WTO) is a simple extension of GATT.*
- (ii) *SAPTA is a free trade agreement between South Asian Countries.*
- (iii) *Most favoured nation (MFN) concept means some kind of special treatment for one particular country.*
- (iv) *The word 'plurilateral' in the context of the WTO means plurality of agreements.*
- (v) *'Champagne' a term associated with wine produced in a certain region of France can be made in India and exported as 'Champagne'.*

(2 marks each)

(b) *"Subsidies and countervailing measures (SCM) agreement creates three basic categories of subsidies." Explain.*

(6 marks)

(c) *What are the objectives of South Asian Association for Regional Co-operation (SAARC) ?*

(4 marks)

Answer 8(a)(i)

Incorrect

Reason : The World Trade Organization is not a simple extension of GATT; rather it completely replaces its predecessor and has a very different character. The principal differences are GATT was a set of rules, a multilateral agreement, with no institutional foundation, only a small associated secretariat which had its origins in the attempt to establish an International Trade Organization in the 1940s. The WTO is a permanent institution with its own secretariat.

The GATT rules applied to trade in merchandise goods. In addition to goods, the WTO covers trade in services; Trade-related aspects of intellectual property and Trade related investment measures.

Answer 8(a)(ii)

Incorrect

Reason : SAPTA is the acronym of SAARC Preferential Trading Arrangement. In this Agreement, the Contracting States establish the SAARC Preferential Trading Arrangement (SAPTA) to promote and sustain mutual trade and the economic cooperation among the Contracting States, through exchanging concessions in accordance with this Agreement. SAPTA will be governed by the provisions of this Agreement and also by the rules, regulations, decisions, understandings and protocols to be agreed upon within its framework by the Contracting States.

Answer 8(a)(iii)**Incorrect**

Reason : Most-favoured-nation (MFN) under WTO is actually non-discrimination — treating virtually everyone equally. What happens under the WTO is this; each member treats all the other members equally as “most-favoured” trading partners. If a country improves the benefits that it gives to one trading partner, it has to give the same “best” treatment to all the other WTO members so that they all remain “most-favoured”.

Answer 8(a)(iv)**Incorrect**

Reason : Plurilateral agreements are those agreements which are negotiated amongst a narrower group of signatories and is binding only between/among those signatories. Some of the examples plurilateral agreements are: Trade in Civil Aircraft, Government Procurement.

Answer 8(a)(v)**Incorrect**

Reason : Place names are sometimes used to identify a product. Well-known examples include “Champagne”, “Scotch”, “Tequila”, and “Roquefort” cheese. Wine and spirits makers are particularly concerned about the use of place names to identify products. A company situated outside that area, or a product not using the raw material used that particular place, can not use the name of that area.

Such products are governed by the law of Geographical indications and Appellation of Origin.

The TRIPs agreement of WTO contains special provisions for such products. In India the Geographical Indications of Goods (Registration and Protection) Act, 1999 provides protection to such products.

Therefore, Champagne can not be made in India and exported as Champagne.

Answer 8(b)

The SCM Agreement creates three basic categories of subsidies, namely prohibited, actionable (i.e., subject to challenge in the WTO or to countervailing measures), and non-actionable. All specific subsidies fall into one of these three categories.

Prohibited subsidies are those subsidies that require recipients to meet certain export targets, or to use domestic goods instead of imported goods, are prohibited because they are specifically designed to distort international trade, and are therefore likely to hurt other countries’ trade. They can be challenged under the WTO dispute settlement procedure where they are handled under an accelerated timetable. If the dispute settlement procedure confirms that the subsidy is prohibited, it must be withdrawn immediately. Otherwise, the complaining country can take counter measures. If domestic producers are hurt by imports of subsidized products, countervailing duty can be imposed.

Actionable subsidies : The complaining country has to show that the subsidy has an adverse effect on its interests. Otherwise the subsidy is permitted. The agreement

defines three types of damage they can cause. One country's subsidies can hurt a domestic industry in an importing country. They can hurt rival exporters from another country when the two compete in third markets. And domestic subsidies in one country can hurt exporters trying to compete in the subsidizing country's domestic market.

Non-actionable subsidies : These can either be non-specific subsidies, or specific subsidies for industrial research and pre-competitive development activity, assistance to disadvantaged regions, or certain types of assistance for adapting existing facilities to new environmental laws or regulations. Non-actionable subsidies cannot be challenged in the WTO's dispute settlement procedure, and countervailing duty cannot be imposed on subsidized imports.

Answer 8(c)

The objectives of SAARC are as under:

- To promote the welfare of the peoples of South Asia and to improve their quality of life;
 - To accelerate economic growth, social progress and cultural development in the region and to provide all individuals the opportunity to live in dignity and to realise their full potentials;
 - To promote and strengthen collective self-reliance among the countries of South Asia;
 - To contribute to mutual trust, understanding and appreciation of one another's problems;
 - To promote active collaboration and mutual assistance in the economic, social, cultural, technical and scientific fields;
 - To strengthen cooperation with other developing countries;
 - To strengthen cooperation among themselves in international forums on matters of common interests; and
 - To cooperate with international and regional organizations with similar aims and purposes.
-