

PROFESSIONAL PROGRAMME EXAMINATION
DECEMBER 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) "Organisations are becoming more responsive, flexible and adaptable to changing business situation." Comment with example. (5 marks)*
- (b) IOC Ltd. has changed its vision statement to capture the collective aspirations of its stakeholders to create a 'shared vision' rather than 'vision shared'. Comment. (5 marks)*
- (c) Discuss Porter's Five Forces Model of industry analysis. (5 marks)*
- (d) Describe the main approaches to evaluation of strategic alternatives. (5 marks)*

Answer 1(a)

It is correctly remarked that organizations are becoming more responsive, flexible, and adaptable to changing business situations. Today, businesses are becoming more complex due to rapid changes in environment. It is becoming increasingly difficult to predict the environment accurately. The internal and external environments of organizations are now driven by multitudes of forces that were hitherto non-existent. Earlier, the changes in technology were not so rapid but today the information from all over the globe is pouring in through the computers. The world in fact has shrunk. This has created fierce competition as the customers and stakeholders have become more aware of their rights.

The number of events that affect domestic and world market are now far too many and too often. Over reliance on experience in such situations may really work out to be very costly for companies. For example, Reliance has shifted to more creativity, innovation and new ways of looking at business and doing it in novel ways. The earlier concepts of having highly specialized departments and developing specialization of labour is losing its credibility. Organizations are becoming more responsive, flexible, and adaptable to changing business situations. In such an environment which is charged with high level of competition, developing competitive edge for survival and growth has become imperative for companies. For example ITC began as a tobacco company. Over the years, it has diversified into paper (ITC Bhadrachalam), hotels (Welcome Group), food (ITC Agro), and garments (Wills Lifestyle) in order to take advantage of changing environments and to achieve its growth objectives.

Answer 1(b)

"Shared Vision" connotes the idea of stakeholders' acceptance and commitment to the vision whereas "Vision Shared" gives the impression of compliance of the vision

imposed from the top management. The former creates a sense of communality that permeates the organization and gives coherence to diverse activities. On the other hand, the latter connotes sharing of values already decided by the higher management. The former indicates bottom up approach and the latter top down approach of the management.

Answer 1(c)

Porter's five forces model of industry analysis

The nature of competition in an industry in large part determines the content of strategy, especially business-level strategy. Based as it is on the fundamental economics of the industry, the very profit potential of an industry is determined by competitive interactions between different market forces. Where these interactions are intense, profits tend to be whittled away by the activities of competing firms. Where they are mild and competitors appear docile, profit potential tends to be high.

All these forces assist in identifying the presence or absence of potential high returns. The clear understanding of these forces and their influences on competition within an industry enables the strategist to identify the most advantageous strategic position.

The five forces that influence the intensity of competition are explained below:

- (i) *Intensity of Rivalry among Competitors* : Some industries appear inactive because of a low level of rivalry among competitors. An example might be industrial fasteners, the manufacturers of nuts and bolts and other devices used to connect the components of products.
- (ii) *Power of Buyers* : From an industry's point of view, the buyers can usually be classified into three major categories i.e.: consumers, industrial customers, and commercial customers. Consumers include the purchasers of the firm's service or product for their own use. Goodyear, for example, sells tyres directly to the people who use them in their cars and two wheelers. Industrial buyers include the companies which purchase the firm's product or service to be used as a component in its product. Continuing with the Goodyear example, automobile manufacturers who put Goodyear tyres on new cars would be one group of its industrial buyers. Commercial customers include other companies that sell Goodyear's products to consumers.
- (iii) *Power of Suppliers* : The suppliers of goods and services to an industry have the power to influence their customers through their ability to set price and control quality, delivery time, and order quantity. If these customers cannot manage successfully one supplier against another to protect their interest, then the industry's profits can be drained off by the suppliers.
- (iv) *Substitute Products* : Substitute products refer to those products of industries which serve similar consumer needs. Existence of close substitutes represents a strong competitive threat which limits the price fixation power and the profitability of the firm. Conversely, if the firm's products have very few substitutes, then the company has the opportunity to raise prices and earn additional profits. It is an eye opener for the firms to select those lines which have least substitutes.

- (v) *Potential Entrants* : New entrants to an industry pose several threats to existing competitors. New competitors can reduce the market share of all participants by dividing the pie into more pieces. As a result of this they may also bring new technology or greater resources not available to present competitors and capture a high market share position quickly to the detriment of all existing participants.

Answer 1(d)

Once the organization identifies various strategic alternatives, the next important step of strategic management process is to make a choice from among available alternative strategies. The rationale of strategic choice is to direct resources towards objectives in accordance with chosen strategy.

Different approaches are developed by experts to evaluate strategic alternatives and choose the best among them subject to given conditions. We can classify the evaluation approach in the following categories:

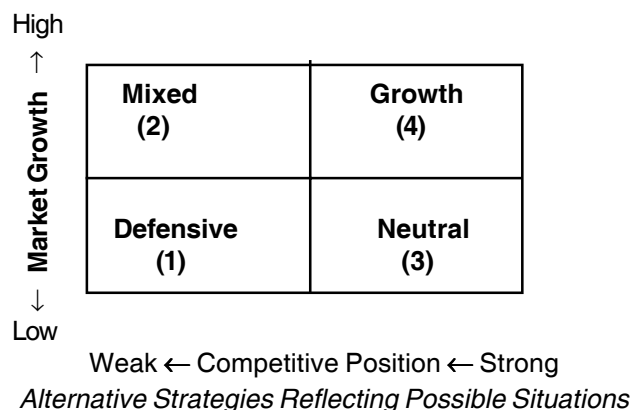
- (i) Simple Approach
- (ii) Analytical Models Approach.

(i) Simple Approach

Let the strategic alternatives be grouped on the basis of key variables, viz., potential market growth and the firm's competitive position. This is a logical starting point since the appropriateness of the strategic choice depends upon the firm's position in relation to the external market and its competitive position assuming that the firm has or can secure the necessary financial resources. The alternative strategies may thus be said to comprise the following combinations of the two variables:

- (1) Low market growth potential/Weak competitive position.
- (2) High market growth potential/Weak competitive position.
- (3) Low market growth potential/Strong competitive position.
- (4) High market growth potential/Strong competitive position.

The quadrant 1 which represent the defensive situation in the following diagram shows low market growth potential and weak competitive position. The organization may seriously consider the defensive retrenchment or divestment—and use excess cash to invest in areas where profit potential is greater.



The quadrant 2 depicts the mixed situation where an organization has high market growth potential and weak competitive position. In this situation, some variant of the combination or mixed strategy is called for.

In quadrant 3 the organization is in neutral situation where the organisations having low market growth potential but strong competitive position. In this situation, organization should normally favour a stable growth strategy so as to maintain its market share.

The Quadrant 4 depicts growth situation which reflects high market growth potential and strong competitive position. These strategies are ideally suited for growing organization situation.

(ii) Analytical Models Approach

A number of analytical conceptual models have been developed by experts for managers to evaluate strategic alternatives before making a choice. Some of them include: Growth share Matrix—Boston Consulting Group (BCG) Model; General Electric's Stoplight Grid, Life Cycle Theory, etc.

Question 2

Read the following extract from the annual report of Sterlite Industries (India) Ltd. and answer the questions given at the end :

"Our business and operations are subject to a variety of risks and uncertainties which are no different from any other company in general and our competitors in particular. Risks are identified through a formal risk management programme with the active involvement of business managers and senior management personnel at both the subsidiary level as well as the corporate level. Each significant risk has an 'owner' within the group at a senior level, and the impact to the group, if a risk materialises and its likelihood of crystallization is regularly reviewed. A risk register and matrix is maintained, which is regularly updated in consultation with business managers. The risk management process is coordinated by our management assurance function and is regularly reviewed by our Audit Committee. Key business decisions are discussed at the monthly meetings of the Executive Committee and senior managers address risk management issues when presenting initiatives to the Executive Committee. The overall internal control environment and risk management programme is reviewed by our Audit Committee on behalf of the Board of directors.

The areas identified for risk management by the company include – Treasury Management; Commodity Risks; Political, Legal, Economic and Regulatory Risks; Ore Reserves and Resources; Delivery of expansion projects on time and within budget; ASSET use and Insurance; Safety, Health and Environment Risks; Operational Risks; Financial Risks; Liquidity; Foreign Currency; Interest Risks; Counterparty Risks; and Employees.

During the year 2008-09, the world witnessed several mine closures, production cutbacks and deferral of projects. Despite such negative market sentiments and a depressed outlook for demand, we remain focused on our basic objectives of achieving a least-cost position and developing low capital cost projects on or ahead of schedule and within budgets. Thus the year 2009-10 augurs well."

Questions —

- (i) *What is risk management ?*
- (ii) *What are the major steps in risk management process ?*
- (iii) *Who is responsible for putting in place risk management process ?*
- (iv) *What is the risk management style in the company ?*
- (v) *What could be the possible reasons to have negligible provision for bad and doubtful debts ?* (4 marks each)

Answer 2(i)

Risk Management' is an integral part of business process. It is the process for identifying and assessing opportunities and avoiding and mitigating losses. It is a logical and systematic process of establishing the context, identifying, analyzing, evaluating, treating, monitoring and communicating risks associated with any of the business activity, functions in a way that enables an organization to minimize losses and maximize opportunities/gains. In practice, it is about identifying potential variations from what is planned targets and managing those to maximize opportunity, minimize loss and improve decisions and outcomes. Corporate risk has been classified into (a) Enterprise risk management and (b) Project risk management.

Answer 2(ii)

Risk management process consists of following main steps:

- (i) *Risk identification* : Risk cannot be managed unless it is first identified. Once the context of the business has been defined, the next step is to utilize the information to identify as many risks as possible. The aim of risk identification step is to identify possible risks which may affect, either negatively or positively, the objectives of the business and the functioning of the enterprise.
- (ii) *Risk assessment* : Every organization is continuously exposed to an endless number of new or changing threats and vulnerabilities that may affect its operation or the fulfillment of its objectives. Identification, analysis and evaluation of these threats and vulnerabilities are the only way to understand and measure the impact of the risk involved and hence to decide on the appropriate measures and controls to manage them.
- (iii) *Risk measurement and analysis* : Risk measurement includes a determination of (a) The probability or chance of the losses that will occur, (b) The impact of the losses upon the financial affairs of the firm, and (c) The ability to predict the losses during the financial period.

The risk analysis assists in determining which risks have a greater consequence or impact than others. This helps to provide a better understanding of the possible impact of risk, or the likelihood of its occurring, in order to make a decision about committing resources to control the risk.
- (iv) *Risk evaluation* : Risk evaluation implies ranking in terms of importance, and ranking suggests measuring some aspect of the factors to be ranked. Risk

evaluation involves comparing the level of risk found during the analysis process with previously established risk criteria, and deciding whether these risks require treatment.

- (v) *Risk treatment* : Risk treatment is basically concerned with identifying options for treating or controlling risk, in order to either reduce or eliminate negative consequences, or to reduce the likelihood of an adverse occurrence. Risk treatment should also aim to enhance positive outcomes. It is often either not possible or cost-effective to implement all treatment strategies
- (vi) *Risk monitoring and review* : Risk monitor and review is an essential and integral step in the risk management process. A business owner must monitor risks and review the effectiveness of the treatment plan; strategies and management system which have been set up to effectively manage the risk.

Answer 2(iii)

Part IV(C) of Clause 49 of the Listing Agreement requires laying down procedures for informing the board members about the risk management and internal control systems in critical areas of operation. The CEO and CFO are responsible for putting in place risk management and internal control system in critical areas of operations of their companies. These procedures have to be periodically reviewed to ensure that executive management controls risk through means of a properly defined framework. Simply stated, the company has to adopt appropriate risk management policies, commensurate with its size and requirement of business, and review these periodically in the light of changing economic and corporate scenario. In the present case, for practical purposes, each significant risk has a 'owner' within the Group at a senior level. The risk management issues are discussed at the Executive Committee meetings held every month and the overall risk management programmes are reviewed by the Audit Committee on behalf of Board of Directors.

Answer 2(iv)

The company has a participative style of risk management involving the top, middle and lower management at the holding and subsidiary companies. The company has in place a formal risk identification programme at the holding and subsidiary level where the board identifies and manages various business risks. The holding, subsidiary and departments manage risk continuously and systematically. Such a risk management process is essentially a part and parcel of the operations and management function of the company at corporate level.

Answer 2(v)

The company could have negligible provision of bad and doubtful debt by proper management of default risk. This is to manage the uncertainty associated with realization of receivables from the customers. The underlying objective is to ensure timely receipt of contractual interest and principal from the short-term and long-term debtors. It involves (i) insisting on payment by letter of credit; (ii) receiving part payment in advance; and (iii) strict receivable management.

Question 3

- (a) *Critically examine the major characteristics of information systems (IS). (8 marks)*

(b) *In the context of Management Information Systems (MIS), state, with reasons in brief, whether the following statements are correct or incorrect :*

- (i) *Study of MIS is about the use of computers.*
 - (ii) *More data in reports means more information for managers.*
 - (iii) *Accuracy in reporting is of vital importance.*
 - (iv) *Strategic information meets information requirements of the top management.*
- (2 marks each)*

(c) *“Internal control can provide only reasonable, but not absolute assurance that the objectives are achieved.” Critically examine the statement with four inherent limitations of internal control systems.*

(4 marks)

Answer 3(a)

Information system refers to a set of people, procedures and resources that collects, transforms, and disseminates information in an organization.

In other words an information system is a system of collecting, storing, retrieving and processing data for providing appropriate and timely information to managers at different levels of organization hierarchy for helping them in performing managerial activities. It consists of people, procedures, methods, equipments and other resources that work together in a desired manner to provide necessary information supports to managers with an objective to increase effectiveness of management

The major characteristics of Information Systems are as follows :

- (i) *Repetitiveness* : The information produced by these systems is usually repetitive in nature at periodic intervals such as daily, weekly, or monthly.
- (ii) *Predictability* : The information they produce usually does not contain any surprises for the manager or the users of the information.
- (iii) *Emphasis on the past* : The information generated by the systems usually describe the past.
- (iv) *Detailed nature* : The information produced is very detailed.
- (v) *Internal origin* : The data for operational system usually spring entirely from internal sources.
- (vi) *Structured form* : The form of the data input and the form of the output produced by the operational information systems is structured.
- (vii) *Great accuracy* : The accuracy of the data used as input to such systems and of the output produced by such systems is usually very high.

However, there is no such tailor made information system which can be universally applied to **all situations**. Therefore it has to be adjusted as per the requirements **and objectives** of an organization.

Answer 3(b)

In the context of Management information system (MIS) correctness or incorrectness of the following statements are clarified below:

- (i) **The statement is incorrect.** MIS may or may not be computer based on use of computer. Computerization is just a tool for installation of required MIS, depending

on several factors like how critical is the response time required for getting the information, how big is the organization and how complex are the needs of information processing.

- (ii) **The statement is incorrect** because what is important is the quality of data and information in reports rather than the quantity of data and information. In fact, the data provided in reports should meet information requirements of management. Unorganized mass of data may create confusion than bringing clarity to the issues.
- (iii) **The statement is correct** at the operating level because the degree of accuracy is closely related to the decision problem. For example, accuracy is really important in medicine, control of aircrafts, design of dams, bridges, flyovers and railway tracks.
- (iv) **The statement is correct** because the top level management requires strategic internal and external information for formulating long-term objectives, strategies and major policies and programmes of the company. It is the top management, who is concerned with the determining, maintaining and supplying of required information.

Answer 3(c)

Internal control system means all the policies and procedures (internal controls) adopted by the management of an entity to assist in achieving management's objective of ensuring, as far as practicable, the orderly and efficient conduct of its business, including adherence to management policies, the safeguarding of assets, the prevention and detection of fraud and error, the accuracy and completeness of the accounting records, and the timely preparation of reliable financial information.

Experience proves that best of internal control system in any organization can provide *only reasonable, but not absolute assurance* that the objectives are achieved. The four inherent limitations of internal control are as under:

- (i) Management's usual desire is that a control should be cost-effective, i.e., the cost of a control procedure should not be disproportionate to the potential loss due to fraud or error.
- (ii) Most of the controls tend to be directed at anticipated types of transactions and not at transactions of unusual nature.
- (iii) The potential for human error due to carelessness, distraction, mistakes of judgement or the misunderstanding of instructions can not be ruled out.
- (iv) The possibility of circumvention of controls through collusion with parties outside the entity or with employees of the entity may be present.

PART B

(Answer ANY ONE question from this part.)

Question 4

- (a) Explain whether every technical collaboration is a strategic alliance. (5 marks)
- (b) Explain briefly the various types of strategic alliances. (5 marks)
- (c) What are the advantages of a technical collaboration ? (5 marks)
- (d) What are the important factors for the success of a technical collaboration ? (5 marks)

Answer 4(a)

Every technical collaboration is a strategic alliance. 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 a commitment by the two companies to provide capabilities or cross servicing in certain identified areas.

Strategic alliance has three distinguishing characteristics:

- (i) the two or more firms that unite to pursue a set of agreed goals remain independent subsequent to the formation of an alliance.
- (ii) the partner firms share the benefits of the alliance and control over the performance of assigned tasks.
- (iii) the partner firms contribute on a continuing basis in one or more key strategic areas e.g. technology, products and so forth.

Answer 4(b)

Various types of strategic alliances are as follows:

- Joint Venture.
- Equity strategic alliances.
- Non-equity strategic alliances.
- Global strategic alliances.
- Research & Development.
- Management contract.
- Franchising.
- Supply or purchase agreement.
- Marketing or distribution agreement.
- Agreement to provide technical services.
- Licensing of know-how, technology, design or patent.

Answer 4(c)

Advantages of a technical collaboration are as follows:

- Move to decisively seize opportunities before they disappear.
- Respond more quickly to change.
- Adapt with greater flexibility.
- Gain overseas presence.
- Gain overseas expertise and technology.
- Increase a company's market share.
- Gain access to a new market or beat others to that market.

- Quickly shore up internal weaknesses.
- Gain a new skill or area of competence.
- Rapidly meet a company's need for key resources.
- Gain a means of Distribution in International market.
- Overcome legal or Regulatory barriers.
- Diversification of business.
- Avoiding competition.
- Focus on New Products and Restructuring.
- Gaining cost and quality competitiveness defend business interests, updating technology.
- Increasing efficiency through economies of scale, specialisation etc.

Answer 4(d)

Certain key success factors are:

- *Mutual Trust* : Mutual trust at senior management level carry ventures through turbulent times.
- *An ability to compromise* : When there are two strong companies, the ability to compromise is not easy to achieve. If you expect to receive some valuable technology, production or marketing know how from a partner, you must be willing to give something.
- *Favourable business condition* : Launching an alliance when favourable business conditions exist makes a venture life considerably easier for its partners.
- *Alliance Autonomy* : The autonomy mandates a high degree of responsibility and good judgement by the ventures management.
- Dynamic management structure.
- Encouragement of calculated initiatives.
- Systematic task setting.
- Equal distribution of authority.
- Streamlined communication channels.
- Development of multi-manager roles.

The benefits of alliances can be leveraged by adequate internal communication mechanisms. Managing alliances will test even the most competent of executives. The capabilities include not only careful planning and implementation, but also a broad perspective and an open mind.

Question 5

Modern Pharmaceuticals Ltd., India (hereinafter called the First Party), is entering into a joint-venture agreement with Afro-Drugs, Nigeria (hereinafter called the Second

Party) to incorporate a new company in India for setting-up a pharmaceutical manufacturing project. In this context, answer the following :

- (a) What is the nature of the joint-venture project ? (5 marks)
- (b) Draft the following clauses to be included in the joint-venture agreement/articles of association of the new company :
- (i) Allotment of shares to the first Party and second party with lock-in-period.
 - (ii) Suitable restrictions on the transfer of shares during the lock-in-period.
 - (iii) Exit route.
 - (iv) Right to first refusal in case any party decides to exit.
 - (v) Arbitration under the London Court of International Arbitration.
- (3 marks each)

Answer 5(a)

The nature of the joint-venture project is 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.

The parties to a joint venture agreement agree on purposes and functions of the newly created entity, the proportion of capital contribution by each party and the share of each party in the profits of the company and on other matters such as its management, operation, duration and termination and exit route etc.

Answer 5(b)

The drafts of clauses are as under in the joint venture agreement/articles of association of the new company:

- (i) The New Company shall initially allot 51% (fifty one per cent) shares to the Mordern Pharmaciutical Ltd. (herein after called FIRST PARTY) and 49% (forty nine per cent) shares to the Afro-drugs, Nigeria (herein after called SECOND PARTY) in the total paid-up capital of the New Company. The initial allotment of shares shall be subject to a lock-in-period of three (3) years from the date of allotment of shares by the New Company.
- (ii) The shares held by the FIRST and SECOND PARTY during the locked-in-period can be transferred to and amongst the promoters. They shall, however, not sell, transfer, pledge and assign their shares and voting rights to any third party during the locked-in period, save and except to banks and financial institution or any other government or statutory body to fulfill the conditions for seeking loan and investments for the Company.
- (iii) In case of unavoidable circumstances like statutory hurdles, non cooperation or irreconcilable difference, if either PARTY would have to exit from the New

Company, the Board of Directors shall appoint and engage independent chartered accountants of neutral nationality to evaluate and determine the 'Net Asset Value' of the shares as per the latest available Balance Sheet and Profit and Loss Account of the new company.

- (iv) The continuing PARTY shall have 'the right to first refusal' in case any PARTY decides to exit. The exiting PARTY shall, therefore, offer its entire shares to the continuing PARTY at the Net Asset Value price. Valuation shall be made by a independent chartered accountants of neutral nationality.
- (v) Any dispute arising out of or in connection with this joint-venture agreement, 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 (LCIA) at London.

PART C

(Answer ANY TWO questions from this part.)

Question 6

Write notes on any four of the following :

- (i) Controversy on Regional Free Trade Agreements.*
- (ii) Advantages of India joining the Association of South-East Asian Nations (ASEAN).*
- (iii) Main objectives of the World Trade Organisation (WTO).*
- (iv) Rules of origin.*
- (v) Dispute Settlement System – rules-based or justice-based. (5 marks each)*

Answer 6(i)

Regional Free trade agreements are considered policy compulsions, but highly controversial in terms of economic advantages. On the one hand, RFTAs are promoted as the instrument of forging partnerships to strengthen their position in the global economy and to sustain economic growth. These are considered vehicles of mutual gains between developing countries by opening up of the trade and services sectors bilaterally. However, there is question about the economic gains from the Regional FTAs. It may cause increasing unaccountable concentration of power and decision making; environmental degradation; eroding workers rights; brain drain from poor countries to rich countries; protectionism for the rich and open market for poor; positive or negative form of interdependence. There are also concerns about the non-transparent/transparent pricing mechanism and massive hidden subsidies and recurring trade deficits.

Answer 6(ii)

Advantages of India joining the ASEAN

- Enhancing India's close economic cooperation and to work towards an India-ASEAN Regional Trade and Investment Area (RTIA) as a long term objective.
- Minimising barriers and deepen economic linkages of India.
- Increasing intra-regional trade and investment.

- Increasing economic efficiency.
- Creating a larger market with greater opportunities and larger economies of scale for the businesses; and
- Enhancing the attractiveness to capital and talent.

Answer 6(iii)**Main objectives of the WTO**

- Promotion of free trade among member countries
- Expanding trade in goods and services,
- Optimal use of the world's resources in accordance with the objective of sustainable development, and environmental protection.
- Ensuring that developing countries, especially the least developed countries (LDCs), secure a proper share in the growth of international trade.
- Removal of obstacles to free trade.
- Administration of Rules, Regulations for settlement of trade related dispute among member countries under Dispute Settlement Mechanism.
- Providing technical advice in trade related matter to all member countries.

Answer 6(iv)

“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 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 under WTO requires its members to ensure that their rules of origin are transparent; they do not have restricting, distorting or disruptive effects on international trade. They are administered in a consistent, uniform, impartial and reasonable manner; and that they are based on a positive standards (in other words, they should state what does confer origin rather than what does not). For the longer term, the agreement aims for common (“harmonized”) rules of origin among all WTO members.

Answer 6(v)**Dispute Settlement System**

The WTO dispute settlement system is a rule-oriented system where recommendations and rulings must aim at achieving a satisfactory settlement in accordance with the rights and obligations of the Members under the WTO Agreement. As a result, all solutions to matters formally raised under the consultation and dispute settlement provisions of the WTO agreements must not nullify and impair benefits accruing to any Member under those agreements.

Under the DSU, the “players” in a dispute settlement process are subject to certain rules aimed at ensuring due process and unbiased recommendations and rulings. For

instance, there must not be any ex parte communications with the panel or Appellate Body members concerning matters under consideration by the panel or the Appellate Body.

The WTO dispute settlement mechanism provides for three main ways of resolving disputes: (i) bilateral consultations; (ii) good offices, conciliation and mediation; and (iii) adjudication, including arbitration.

With the exception of arbitration, adjudication cannot be requested until consultations have taken place or unsuccessful attempts to consult have been made. The Dispute Settlement Mechanism contains rules and procedures to be followed by WTO Members.

Question 7

- (a) *Prepare an executive note for the Director (R&D) explaining the roles and functions of the Trade-Related Aspects of Intellectual Property Rights (TRIPS), World Intellectual Property Organisation (WIPO) and Patent Cooperation Treaty (PCT).*
(10 marks)
- (b) *Briefly explain the dispute settlement procedure of the WTO with particular reference to dispute settlement body and provision for appeal and decision-making process.*
(10 marks)

Answer 7(a)

The WTO's Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS) is an attempt to narrow the gaps in the way these rights are protected around the world, and to bring them under common international rules. When there are trade disputes over intellectual property rights, the WTO's dispute settlement system is available. The second part of the TRIPS agreement looks at different kinds of intellectual property rights and how to protect them. The purpose is to ensure that adequate standards of protection exist in all member countries. The Council for Trade-Related Aspects of Intellectual Property Rights monitors the working of the agreement. The areas covered under the TRIPS agreement include Copyright and related rights, such as Trademarks, including service marks, Geographical indications, Industrial designs, Patents, Layout-designs (topographies) of integrated circuits, Undisclosed information including trade secrets.

The World Intellectual Property Organization (WIPO) is an international organization dedicated to helping ensure that the rights of creators and owners of intellectual property are protected worldwide and that inventors and authors are, thus, recognized and rewarded for their ingenuity. In 1974, WIPO became a specialized agency of the United Nations system of organizations, with a mandate to administer intellectual property matters recognized by the member states of the UN. WIPO expanded its role and further demonstrated the importance of intellectual property rights in the management of globalized trade in 1996 by entering into a cooperative agreement with the World Trade Organization.

WIPO seeks to:

- Harmonize national intellectual property legislation and procedures.
- Provide services for international applications for industrial property rights.

- Exchange intellectual property information.
- Provide legal and technical assistance to developing and other countries.
- Facilitate the resolution of private intellectual property disputes.
- Marshal information technology as a tool for storing, accessing, and using valuable intellectual property information.

Patent Cooperation Treaty (PCT) implements the concept of a single international patent application which has legal effect in the countries which are bound by the treaty and which are designated by the applicant. Once such an application is filed, an applicant receives valuable information about the potential patentability of his invention (through the international search report and the optional international preliminary examination report) and has more time than under the traditional patent system to decide in which of the designated countries to continue with the application. Thus, the PCT system consolidates and streamlines patenting procedures and reduces costs, providing applicants with a solid basis for important decision-making.

Answer 7(b)

The operation of the WTO dispute settlement process involves the Dispute Settlement Body, the panels and the Appellate body, the parties and the WTO Secretariat. The General Council discharges its responsibilities with respect to dispute settlement through the Dispute Settlement Body, which is composed, of representatives of all WTO members. Panels and the Appellate Body are the entities in charge of adjudicating disputes. The former are composed of experts selected on an ad hoc basis. The latter is a permanent group of seven experts in trade issues and trade law in charge of reviewing the legal aspects of the reports issued by panels.

As a general rule the DSB is to take decisions by consensus, as is the case for all decision-making in the WTO. It is deemed to have decided by consensus on a matter submitted for its consideration, if no WTO Member, present at the meeting of the DSB when the decision is taken, formally objects to the proposed decisions. However, a radically different procedure is followed in decision-making at four key stages in the dispute settlement process: establishment of panel, adoption of panel and Appellate Body reports and authorization for retaliation. At these stages the decision is taken to accept the request or adopt the report unless there is a consensus against it.

Only WTO Members can take part in dispute settlement under the WTO. WTO dispute settlement is not open to WTO observers, other international organizations, non-governmental organizations, local governments or private persons.

The WTO dispute settlement mechanism provides for three main ways of resolving disputes: (i) bilateral consultations; (ii) good offices, conciliation and mediation; and (iii) adjudication, including arbitration. With the exception of arbitration, adjudication cannot be requested until consultations have taken place or unsuccessful attempts to consult have been made.

Either side can appeal a panel's ruling. Sometimes both sides do so. Appeals have to be based on points of law such as legal interpretation. They cannot reexamine existing evidence or examine new evidence.

The appeal can uphold, modify or reverse the panel's legal findings and conclusions. Normally appeals should not last more than 60 days, with an absolute maximum of 90 days. The Dispute Settlement Body has to accept or reject the appeals report within 30 days and rejection is only possible by consensus.

These approximate time lines for each stage of a dispute settlement procedure are target figures. In addition, the countries can settle their dispute themselves at any stage. The approximate period of settlement of dispute is 1 year (without appeal) and 1 year 3 months (With appeal).

Question 8

Attempt any five of the following :

- (i) *Explain 'domestic industry' in the context of dumped goods.* (4 marks)
- (ii) *Explain the 'principle of distortion'.* (4 marks)
- (iii) *"Presently Indian exporters are facing non-tariff barriers and quantitative restrictions from the European Union facing economic slowdown." In this context, distinguish between the 'non-tariff barriers' and 'quantitative restrictions'.* (4 marks)
- (iv) *The Indian manufacturers of industrial goods and chemicals have complained to the Director General of Safeguard, Ministry of Finance, about heavy losses suffered by them due to cheap import of industrial goods and chemicals from China. State whether the Director General of Safeguard should exercise total control over import of industrial goods and chemicals or impose import duties on the imported industrial goods and chemicals.* (4 marks)
- (v) *The European Union has registered complaint with the WTO that India is restricting import of foreign liquor by imposing very high duties. Comment on the Indian plea that sale of liquor in India is a State subject.* (4 marks)
- (vi) *US has imposed a 98.4% anti-dumping duty against the Chinese imports of steel pipes, besides additional countervailing duties to off-set the subsidies given by China on steel pipes. What remedy is available to China ?* (4 marks)

Answer 8(i)

Domestic industry in the context of dumped goods means the Indian producers of like articles as a whole or those producers whose collective output constitutes a major proportion of total Indian production. Producers who are related to the exporters or importers or are themselves importers of the allegedly dumped goods shall be deemed not to form part of the domestic industry.

Answer 8(ii)

Essentially, 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. higher 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.

Answer 8(iii)

Non tariff barriers are technical regulations and standards; import licensing; rules for the valuation of goods at customs; preshipment inspection; further checks on imports; investment measures.

Quantitative Restrictions, on the other hand, refer to specific limits imposed by countries on the quantity or value of goods that can be imported or exported to regulate or prohibit international trade. Quantitative Restrictions specifically refer to measures such as licensing requirements for exports/imports, quotas and ceilings.

Answer 8(iv)

The Director General (DG) of Safeguard, on the complaints of the India manufacturers, cannot put total control over import of industrial goods and chemicals imported from China because a total control violates the WTO multilateral trading norms.

The right course of action is that DG Safeguard can carry out safeguard investigations against import of industrial goods and chemicals. The investigations if lead to the conclusion that there is sharp increase in the import of industrial chemicals, leading to losses for the domestic industry, it can impose 200-day temporary import duties on the import of industrial chemical. The safeguard duty could be in place up to three years if the injury continues. Safeguard duty usually takes the form of increased duties and acts as quantitative restriction on imports.

The WTO allows use of 'Special Safeguard Measures (SSM)' to its members for preventing injury to a local industry due to imports. The SSM leads to imposition of additional import duties on products after it is conclusively proved that there has been a surge in the import of an identified product leading to domestic market disruption and injury to the industry. India can use the WTO approved SSM where special import duties are imposed to prevent import surges to help Indian industry against cheap imports.

Answer 8(v)

There is a threefold distribution of legislative powers stipulated in Article 246 read with Schedule VII of the Constitution of India. List I of the Union list in Schedule VII comprises of 99 items or subjects over which the Union shall have the exclusive powers of legislation. List II comprises of 61 items over which the State Legislature shall have the exclusive powers of legislation. List III the concurrent list comprises of 52 items over which the Parliament and the Legislatures of States shall have concurrent powers.

Imposition of excise duties on alcoholic liquor for human consumption, opium etc is the legislative competence of the State Government under Article 246 read with Schedule VII of State List.

Answer 8(vi)

The Chinese Government can seek and question the safeguard investigation report of the US Government on the import of steel pipes by the US industry. In case the investigation lacks of factual data, the Chinese Government can ask for withdrawal of the antidumping and countervailing duties. China can use the WTO's dispute settlement procedure to seek the withdrawal of the subsidy.
